

PROFESSIONAL ETHICS AND
DISCIPLINE OF LAWYERS: BEING A
PAPER DELIVERED BY YUSUF ALI SAN
LLM, FCI Arb; FSPSP, F.DRI, ON
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INTRODUCTION

- The liability of lawyers as professionals is an issue that cannot be overemphasized, considering the level of trust and confidence reposed in them by the society.
- It is therefore not out of place to look into how the ethics of the profession is being upheld and the way and manner erring lawyers are disciplined.
- The thrust of this paper therefore, is to look into
 - the supervision of lawyers in Nigeria,
 - the areas where liability is easily insured,
 - the sanction that attaches to liability and the Tribunal responsible for discipline of lawyers in Nigeria.
 - the impact the activities of ethics Tribunal on the professional liability of lawyers in Nigeria.

SUPERVISION OF LAWYERS IN NIGERIA

- Under this head, we will be looking at the
 - liability of lawyers as officers of the court,
 - the rule governing the fiduciary obligation of lawyers and
 - the procurement of liability insurance by law firms in Nigeria.

LIABILITY OF LAWYERS AS OFFICERS OF THE COURT

- A lawyer is regarded first as an officer in the temple of justice before being an advocate representing his client.
- The importance of the duty of the Lawyer as an officer of the court is made clearer by the fact that it is the very first rule in the Rules of Professional Conduct in the Legal Profession in Nigeria.
- Rule 1 of the RPC provides for the duty of the Lawyer to the Court.
- Rule 4 of the RPC goes further to make specific provisions on candour and fairness by counsel.
- The RPC goes further to impose on lawyers, during the conduct of criminal cases, certain duties to ensure that they uphold the cause of justice as officers of the court.
- All the above stipulated duties are expected to be observed by a Counsel as an officer of the court and a minister in the temple of justice, every time he has a case before the court. Failure to observe these duties makes the lawyer liable to be prosecuted before the Legal Practitioners' Disciplinary Committee (hereinafter referred to as the LPDC) set up under the LPA.
- The prosecution before the LPDC is different from the liability to face the penalties that attach to contempt of court.

RULES GOVERNING THE FIDUCIARY OBLIGATION OF LAWYERS

- The Rules of Professional Conduct contains provisions that impose fiduciary obligations on a lawyer with respect to his relationship to his client.
- 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.
- . A Legal Practitioner should not buy his client's property as well as act as solicitor in the case.
- 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 his client after full disclosure.
- A solicitor has absolutely no right to convert the client's property in his possession to his personal use. He can only do whatever is covered by his instructions.
- A legal practitioner must fully disclose to his client, the compensation he has obtained for or on account of the brief. He must also disburse such money only on the instructions of his client.

OBLIGATION BY LAW FIRMS TO PROCURE LIABILITY INSURANCE

- At present, though desirable, there is no statute or law imposing an obligation law firms to take out liability insurance to cover damages that may arise out of court action brought as a result of the negligence of lawyers in the firm.
- The absence of this obligation is probably why none of the insurance companies in the country is offering insurance covers for the liability incurred by law professionals in the discharge of their duties.

THE RISK OF INCURRING LIABILITY ON THE DIFFERENT AREAS OF PRACTICE

- Anyone who has been called to the Nigerian Bar can practice in several areas of law.
- All the areas of practice in Nigeria can be divided into contentious and non-contentious, leaving the area of litigation in the contentious category.
- The issue of liability will readily arise against a lawyer in any field in Nigeria where he acts negligently in carrying out his professional duty.
- In the non-contentious areas of practice, the risk of incurring liability is limited to a large extent because instances of liability only includes giving wrong advice, negligence in the drafting of document and a few others.
 - In the area of litigation however, instances of liability is vast and includes:
 - giving wrong advice,
 - bringing an action that is statute barred,
 - delay in instituting proceedings that leads to the action becoming statute-barred,
 - delay in entering an appearance or serving defence that leads to default judgement being obtained against his client,
 - failure to prosecute a case, with due diligence that leads to the case being struck out for want of prosecution,
 - bringing an action against wrong parties; et cetera.
- In fact, in some jurisdictions in Nigeria, like the Federal Capital Territory, it is compulsory to file, as part of the originating processes, a Pre-action Counseling Certificate.
- In Nigeria that the courts have recently adopted the attitude of ordering that Counsel pays personally part or the whole of the costs awarded against his client, incurred as a result of dereliction of his duty to the court.

SANCTION FOR BREACH OF PROFESSIONAL OBLIGATIONS

- By virtue of Section 11 of the Legal Practitioners Act, a breach that amounts to misconduct attracts disciplinary procedure by the Legal Practitioners Disciplinary Committee, which is an organ of the Body of Benchers, and a finding of guilt may lead to any of the following:
 - Striking out the person's name off the roll or;
 - 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
 - Admonish the practitioner, and any such direction may, where appropriate, include a direction requiring the refund of moneys paid or the handing over of documents or any other thing as the circumstances of the case may require.

CODE OF ETHICS BINDING LAWYERS IN NIGERIA

- As earlier stated, the code guiding the professional conducts of lawyers in Nigeria is the Rules of Professional Conduct 2007.
- Once a complaint is made by an individual against a lawyer, the complaint is juxtaposed with the rules to see if it amounts to a misconduct, in which case, the lawyer will be brought before the Legal Practitioners' Disciplinary Committee and if found liable, will be sanctioned by any of the three means discussed earlier, depending on the facts of the case.

ETHICS TRIBUNAL IN NIGERIA

- The tribunal responsible for the discipline of lawyers in Nigeria is called the Legal Practitioners' Disciplinary Committee (LPDC).
- The Committee, of which I am a member, is a creature of the Legal Practitioners' Act 1975 (as amended) and is charged with the duty of considering and determining any case where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner and should for any reason be the subject of proceedings under the Act.
- Within the last year, the Committee has been able to find in eleven (11) cases that the complaints against the Respondents be discharged, while it disbarred another eleven (11) for misconduct. In two (2) other petitions, the Respondents were suspended from the Bar for a period of five (5) years each, while one (1) Respondent was admonished.

CONCLUSION

- 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 profession that the members of the profession are not only professionally sound, but morally upright.
- It is clear that any fight against corruption by law association in the world will not be taken seriously by the general populace, except we are seen as having done battle against the perceived corruption within the association.
- 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.