

An Appraisal of the Duties of Legal Practitioners Under the Legal Practitioners Act and the Rules of Professional Conduct

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ABSTRACT

*Legal practice is regarded as a highly noble profession worthy of its position in today's modern society, with regard and reference to the very beginning of the profession it has with time evolved with the demands of society. This profession is practiced by lawyers for the good of public interest in the dispensation of justice and for the smooth execution of governmental authorities. The rules and duties of a legal practitioner are embedded in two sacrosanct statutes which are the **Legal Practitioners Act 2004** and the **Rules of Professional Conduct 2007**. In the course of this work we will introduce the topic by touching a little on the historical background of the profession, thereafter, establish the various duties attached to the legal profession. While examining the various regulatory bodies which guides the legal practice, paying close attention to their roles in the maintenance of order in the profession.*

Introduction

The Legal profession has come a long way in the history of professions. It is a profession that cannot exist without references to its historical background. Its past is as important as its present, because events that shaped its history, is still serving not just as a guide to current legal happenings but may possibly shape its future. With the colonialism and its aftermath, the British English Legal system was introduced first to the colony of Lagos in 1863 through the promulgation of the Supreme Court Ordinance. The Chief Justice was empowered to admit and enrol Barristers and Solicitors to practice in Nigeria with specific provisions on those called to the Bar in England, Scotland and Northern Ireland. One of the oldest and most respected profession in modern Nigeria apart from our traditional modern societies is the legal profession. In Nigeria, it stands out as the oldest of the profession being practiced by the practitioners of this discipline having existed in the country since 1876. The legal profession is a noble profession, and legal practitioners by their calling are regarded as ministers in the temple of justice saddled with the responsibility of assisting the court and the state in the administration of justice.^[1]

This profession is one of the most regulated disciplines which is intended to enhance its nobility. The corpus of regulations falls under what is referred to as "legal ethics", which the *Black's Law Dictionary* defines as "Standards of professional conducts applicable to members of the legal profession", or "A lawyer's practical observance of or conformity to established standards of professional conduct".^[2] A lawyer is expected to conduct himself worthy of his calling. He has sacred duties to uphold and observe the rule of law, promote and foster the cause of justice and maintain the high standard of professional conduct. And should not be involved in any conduct that could bring his profession into disrepute. A judge in particular, sit on a higher pedestal, literally. He stands like an institution that has the power of life and death over other mortals. Their verdicts are final and in agreement to the high authority the general response in court is "as the court pleases" or "as my lord pleases", to judicial pronouncement.

In Nigeria just as other countries with different jurisdictions have their laws, synthesised in a body of rules, ours is that of the Rules of Professional Conduct 2007 in the legal profession, elaborated by the General Council of the Bar pursuant to the Legal Practitioner Act 2004 (as amended).^[3] The professionally qualified consists of persons who went through the basic legal educational program, passed the relevant examinations, and got admitted into the Bar to practice either as barristers or solicitors.. Historically, the local attorneys were laymen because there were people who had no formal training or education in law but were licensed by the Chief of Justice of Nigeria to practice law in the country based on acquired experience in law and practice. The regulatory bodies that have been established to help guide legal practitioners in the country and ensure that fit and proper behaviour is exhibited by those called to the Bar. The bodies charged with these enormous tasks include; The Council of Legal Education, Body of Benchers, Legal Practitioners Privileges Committee (LPPC), Legal Practitioners Disciplinary Committee (LPDC), and the Nigerian Bar Association with each having its own enabling statute from which they derive their powers.^[4]

It is important to note that the legal profession occupies strategic position in Nigerian society, in addition to performing the traditional function of protecting individual rights through litigation, lawyers actively involve themselves in the creation of legal institutions and concepts that promote development. Legal services profoundly affect and shape virtually all social, economic and political arrangements in the country. Nigeria is increasingly becoming more reliant on lawyers for its smooth functioning. The country anchors its hope for social and economic development on them. Given this, it is imperative to regulate the duties of legal practitioners in Nigeria. The guiding principles of the status of legal practitioners can be found in the Legal Practitioners Act 2004, while that of their duties is codified in the Rules of Professional Conduct 2007.

However, since the focus of this research is on the duties of the legal practitioners, it shall therefore be concerned with the provisions of the Rules of Professional Conduct bordering on the duties of legal practitioners in Nigeria. The Rules of Professional Conduct 2007 reveals the duties of legal practitioners into three (3) categories; the duties of practitioners to clients; the duties towards fellow lawyers and duties to the court, under Rules 12-25, Rules 26-29 and Rules 30-38 respectively. This research is set to discuss the duties mentioned above along with the history and development of the legal profession; admission in the legal profession and discipline of the legal practitioner if he falls short of the expected duty and expertise required will also be discussed.

Historical Development of Legal Practice in Nigeria.

The Period Before Independence

It is necessary to first trace back the historical background and origin of legal profession from the era of colonialism.

In 1861, following the era of the colonial masters in Nigeria, there was a great need for the establishment of the legal profession, due to the fact that there were so many ethnic groups in the country. A universal Legal system was required to rule the people in unism. This solved the issue of language barrier amongst the people and to breach a gap between them and the white men. The colonial masters enrolled professionally unqualified people as officers of the English court. This practice however, started at Sierra Leone in 1821, whilst in Nigeria the local attorneys until 1900 were Europeans. In due time, Nigerians were made local attorneys. In order to qualify for the position, one must have attained a certain level of education and knowledge of the English law. And must have been admitted into the English Bar as a barrister or solicitor of the law. Following the practice of at least five years continuously in the office of a practicing barrister within the jurisdiction of the court.

The 1863 ordinance paved way for legal profession in Nigeria. It made the laws of England to have the same form and application in Nigeria by virtue of Ordinance No. 3 of 1863.^[5] Although there were not enough legal personnel, solicitors and clerks to effectively administer justice in the country. The first lawyer in Nigeria was Safara Williams. Also, the first local attorney was Charles Foresythe. Charles played the role of a notary public and was the only one who met the requirement of becoming a local attorney. Other people were appointed as local attorneys even though they were not qualified due to the limited number of personnel, until the breakout of protesters in 1914 against the appointment of unqualified local attorney.^[6]

Post-Independence Development

The relief and joy millions of Nigerians felt when the news of Independence was upon them and the ruling of the English man would come to an end was for a moment. Few years after 1st October 1960, the year Independence was declared in Nigeria, the struggle for a stable government continued as Nigerians were tossed by the military government using their authoritative powers as the Head of State. The legal profession was in a position far above other professions to check for any arbitrary use of power and protecting the rights of civilians. Several Individuals stood for the civil rights of Nigerians, some of which are lawyers, such as Femi Falana and Gani Fawehinmi.

There was an immediate need for a more improved legal system.^[7] The government established the Legal Practitioners Act 2004 (as amended) and Legal Education Act 1962, which enacted the Council of Legal Education. This body was saddled with the responsibility of grooming the minds of young lawyers in Nigeria. The Council established the Nigerian Law School. An institution that specialises in the Legal field, making provisions for courses to be taken and court attachment for sharpening the mind of lawyers. The law school is situated presently in six campuses, in different states. The duration of which is one academic year. Admission into the law school is given to indigenous graduates who studied law from various institutions home and abroad.

The Period 1876-1914

Following the cession of Lagos in 1861 by the Supreme Court of her majesty, the Supreme Court Ordinance 1863 was established. The Supreme Court of 1876 was thereafter established and provided for three classes of person to practice in Nigeria;

1. The Professionally qualified legal practitioners

The provisions of section 71 of the Supreme Court Ordinance 1876 empowered the Chief Justice to admit, approve and enrol to practice as barrister and solicitors, such persons who have been called to the Bar or admitted as solicitors in England, Scotland and Ireland.^[8]

2. Those who wrote and served articles

By virtue of section 73 of the Supreme Court Ordinance 1876, the Chief Justice is empowered to admit any person as solicitors who has served five years continuously at the office of a practicing barrister or solicitor residing within the jurisdiction of the court and had passed the examinations of the principles and practice of law.

3. Local Attorneys

The Chief Justice temporarily admits persons to act as solicitors and barristers in accordance with the provisions of section 74 of the Supreme Court Ordinance 1876.

The Period 1914-1962

In 1914, during the amalgamation of the northern and southern protectorates, legal practice was restricted to only the professionally qualified. Within that period there were no institutions, persons with desires would have to travel to England for training as a barrister or solicitor.

Barristers: The educational qualification was West African School Certificate (WASC). The four Inns (inner temple, middle temple, Grays inn, Lincoln inn) constituted the English Council of Legal Education. The Bar Part 1 and Bar Final were examinations constituted from arranged lectures for students and four dinning terms were compulsory, to be attended and those who passed the examinations were entitled to be called to bar by the benchers of his inn, and formally enrolled at the Supreme Court in England. One-year pupillage along with a three months post call practical course.^[9]

Solicitors: “The least period for a person to qualify as a solicitor is four years coupled with the fact that he ought to be in a firm of solicitors in England. The educational qualification was West African School Certificate.

The Period 1962 Till Date

The legal profession was divided into two classes, barristers and solicitors. The fact that aspirants of the bar who had to go to the England for training so as to practice law in Nigeria raised an alarm as the peculiarities became overwhelming. A person could only train as barrister or solicitor but in Nigeria the legal profession is fused, as we are well aware, aspirants are trained as both barristers and solicitors. The anomalies created in having to be first trained in England before eligibility to practice in Nigeria, the government set up a committee named the Unsworth Committee in April 1959, with the mandate to consider and make recommendations for the future of legal education and admission to practise. The committee published:

- Nigeria should establish its own system of legal education
- Faculty of law should first be established in the university college
- Nigeria should have its own law school and should be called the Nigerian Law School, to provide vocational courses.
- Qualification for legal practice in Nigeria should be:
 1. Law degree from the university
 2. The vocational course prescribed by the Council at the law school
- The Council of Legal Education should be established.[\[10\]](#)

The legal profession is regulated all over the world by certain ethical codes of behaviour commonly referred to as Rules of Professional Conduct for legal practitioners[\[11\]](#). In Nigeria, the legal profession is regulated by several legislations and rules, the main legislations are the Legal Practitioners Act 2004 CAP L11 Laws of the Federation of Nigeria (LPA) and the Rules of Professional Conduct 2007 (RPC).

The Legal Practitioners Act 2004

The General Council of the Bar

In accordance with section 1 of the act, this body was established to discharge its duties as the general management of the affairs of the Nigerian Bar Association. Any function conferred on it by the Act is to be performed accordingly by the body. It is pursuant to its duties that the association came up with the Rules of Professional Conduct for legal practitioners pursuant to the provision of the Legal Practitioners Act 2004. By virtue of section 1(2) of the Act the General Council of the Bar shall consist of;

1. The Attorney General of the Federation of Nigeria as the president of the General Council
 2. The Attorneys General of the states in the Federation and
- Twenty members of the Nigerian Bar Association

The Disciplinary Committee

The legal practitioners Disciplinary Committee was established by virtue of section 11(1) of the LPA. This committee consists of the following;

1. The Attorney General of the Federation as the Chairman of the Committee
 2. The Attorneys General of the states in the Federation.
- Twelve legal practitioners of at least ten years post call at the Bar who would be appointed by the Body of Benchers the nominations of the Nigerian Bar Association.[\[12\]](#)

The provisions of section 11 provides the Disciplinary Committee looks into matters alleging that a person whose name is on the role of legal practitioners has been found guilty of an infamous conduct or misconduct. The Committee may make any of the following others depending on the gravity of the misconduct;

1. Ordering the Chief registrar of the Supreme Court to strike that person’s name off the roll of the legal practitioners or
2. Suspend that person from practice as a legal practitioner for some period of time as may be qualified in the direction.
3. Admonishing that person[\[13\]](#)

Body of Benchers

The provisions of section 3(1) of the Act establishes the Body of Benchers, which is a body of legal practitioners of highest distinction in the legal profession in Nigeria. Section 3(2) of the Act says it is a body corporate with perpetual succession and a common seal, the overall functions of the body under the Act are;

1. Formal call to Bar of aspirants and,
2. Issuance of call to bar certificate,[\[14\]](#) section 4(3).

However, following the promulgation of (Legal Practitioners Amendment) Decree No. 21 of 1994, the function of the

body of benchers were expanded with the following additions:

1. Prescription of call fees^[15]
2. The exercise of disciplinary jurisdiction over members of the profession, students seeking to become legal practitioners^[16]
3. Prescription of practising fees in consultations with the Nigerian Bar Association^[17]
4. They take measures which appears necessary for maintaining the traditional values of the legal profession and in line with this, they have made regulations prescribing the following:
 - The keeping of three dinning terms by aspirants.
 - Unblemished conduct as pre-requisite for call to bar, and
 - Sponsorship of aspirants in writing by two members of the Body of Benchers.

Note further, that the body of benchers has also been given the responsibility of the general management of the affairs of the Nigerian Bar Association.^[18] The body is composed of the following,^[19]

1. Chief Justice of Nigeria and all the Justices the Supreme Court.
2. The President of the Court of Appeal
3. The Attorney General of the Federation
4. Presiding Justices of the Court of Appeal Divisions
5. The Chief Judge of the Federal High Court
6. Two Chief Judge of the FCT
7. The Chief Judge of all the states
8. Attorney General of all the states
9. The Chairman of the Council of Legal Education
10. Thirty legal practitioners nominated by the NBA
11. Not more than ten legal practitioners who appear to the body of benchers to be noteworthy legal practitioner of not less than fifteen years post call.

Privileges committee

Section 5(3) of the Act established a committee called the Legal Practitioners Privileges Committee which consists of the following:

1. The Chief Justice who is the Chairman
2. The Attorney General of the Federation
3. One Justice of the Supreme Court
4. The President of the Court of Appeal
5. Five of the Chief Judges of the states
6. The Chief Judge of the Federal High Court
7. Five Senior Advocates of Nigeria.

The Rules of Professional Conduct will be briefly discussed before more points on the duties of a legal practitioner as it forms the foundational aspect of the duties required of every legal practitioner.

The Rules of Professional Conduct

The aims and objectives under section 1 of the Legal Practitioners Act 2004, the General Council of the Bar introduced the Rules of Professional Conduct 2007 for the purpose of maintaining a high standard of conduct, etiquette and discipline in Nigeria. The Rules of Professional Conduct comprise of 56 rules, having the force of law for the practice in Nigeria. These rules are to be obeyed by legal practitioners, failure to do so would attract the attention of the legal practitioners Disciplinary Committee established by the Legal Practitioners Act in section 10(2).^[20] The rules of professional conduct is arranged into seven parts, part A deals with practice of legal practitioner, part B deals with the relationship between lawyers and clients, part C deals with the relationship between lawyers and other lawyers, part D deals with the court, part E covers improper attraction of business, part F deals with remuneration and fee, and part G deal with miscellaneous of rules.

Duties of Legal practitioners

The duties of legal practitioners as contained in the Rules of Professional Conduct 2007 is shaped to establish a relationship between a lawyer and his client, court and other lawyers for proper execution of his duties owed. The duties owed are broadly classified into three; duties owed to client, duties owed to fellow colleagues and duties owed to the court.

Duties of legal practitioners to the court

The duties of the counsel to the court, are the obligations and responsibilities of lawyers to the court. These duties are imposed to maintain dignity of the profession. The Bar and the Bench are joint partners in progress, as agreed by per Tobi J.C.A (as he then was) in *UBA v. TAAN*. ^[21] The guide and principles of a counsel with the court are encapsulated in rule 30-38 of the Rules of Professional Conduct 2007. These duties are;

- **Duty to respect attitude towards the court**

In Rule 31 RPC provides that a lawyer should treat the court with respect, dignity and honour by not engaging in the

use or exchange of verbal insults or baseless arguments to a counsel or before a presiding judge. Respectful attitude and behaviour is expected when addressing or being addressed by the court. Where a counsel's attitude towards the court is against the tradition of the court he may be sanctioned by the judge and may even be fined.

- **Courtroom decorum**

The provision in Rule 36 RPC, a lawyer is to be clothed in the proper apparel and not one that would draw attention to himself with frivolous dressing. He must rise and remain standing when addressing the court. He cannot appear before the court in his robe where he is a party to the case brought before the judge. Maintenance of decency and decorum, coupled with good behaviour before the court, while respecting the customs and traditions of the court

- **Duty of counsel in assisting the court for quick dispensation of justice**

This duty is necessary as it avoids of slowing down or hindering justice which is cost effective and time wasting. The necessary documents should have been drafted and filed before the date of hearing. Constant adjournment of hearings due to one excuse or the other to further prolong a case should be avoided, as it majorly wastes time, abuses court processes, expensive and delays justice by disturbing court proceedings.

- **Duty not to engage in trial publicity**

A lawyer or law firm engaged in or associated with the prosecution or defence of a criminal matter, make or participate in making any extra-judicial statement that is calculated to prejudice or interfere with, or is reasonable capable of prejudicing or interfering with fair trial of the subject matter or the judgement.

Duties of legal practitioners to clients

Lawyers owe to their client duty to make use of all applicable means to protect and advance the clients legitimate rights, claims and objectives. A lawyer shall not be deterred by a real or imagined fear of judicial disfavour of public unpopularity, nor be influenced by self-interest in an agreement with a client. The duties and responsibility controlling the relationship between the legal practitioners and their client are established in rule 14-25 of the Rules of Professional Conduct 2007, which are as follows;

- Rule 14: Commitment and devotion to the cause of the client.
- Rule 15: Represent clients within the bounds of the law.
- Rule 16: Represent clients.
- Rule 17: Conflict of interest, as referred to in the case of *Samtech Nig Ltd & anor v Mr Temitope Sanni & anor.* [22]
- Rule 18: Contract with client.
- Rule 19: Privilege and confidence of a client.
- Rule 20: Lawyer as witness for client.
- Rule 21: Withdrawal from employment.
- Rule 22: Calling a clients' house or place of business.
- Rule 23: Dealing with clients' property.
- Rule 24: Responsibility for litigation.
- Rule 25: Investigation of facts and production of witness.

Having highlighted the various rules of a legal practitioner to his client, the duties will now be discussed below:

- **Duty to be Honest**

The simplest term to put this is that the relationship between a lawyer and his client is that of a fiduciary and such relationship between a legal practitioner and his client lasts as long as the employment still exist between both parties, He is expected to act in good faith and work in the best interest of his client. The relationship between a lawyer and his client can be seen or observed to be similar with that of agent and principal, while in other aspect, is that of an independent contractor who is given a job to do and who chooses his means of performing it and accomplishing his objective. There is a general knowledge that when money is placed in the hands of a solicitor for a particular purpose, so long as the purpose exist the goal of that employment is to be achieved. However, it is trite to note that once the services of counsel who represents a party in a particular proceeding are disposed with, such counsel cannot act as counsel against agent of the party or the party of subsequent or different proceedings in which that party is involved. But where a third party does not know, after the exercise of the diligence, that the professional or agency relationship between counsel and his formal client has terminated, it will not be justice to punish such party if he acts bona fide in the belief that the relationship was still existing at the time of the innocent conduct. It is important to note however that the relationship between a legal practitioner is fiduciary and this implies that the legal practitioner must act within the utmost honesty and fairness to his client. Any form of dishonesty or fraud perpetrated against the client by the lawyer or legal practitioner will amount to misconduct and the law is guaranteed to sanction rule breakers and law offenders.

- **Dedication and devotion to the cause of the client**

A level of trust can be tested between a lawyer and his client when he is entrusted with the dealings of his property. The RPC contends that the highest standards must be maintained. In Rule 23 (1), a lawyer is not expected to be involved with any act whereby for his personal profit or benefit, he misuses or takes advantage of the self-confidence of his client. In Rule 23 (2) RPC makes provisions that where a lawyer collects money for his client or is in position to deliver property on behalf of his client, he must report and give accurate account for the sums and shall not mix such money or property for personal use.

- **Duty to accept briefs**

A lawyer is of the duty to accept briefs subject to the payment of professional fees. This brief could also cover appearance before any court in which he professes to practice provided the proper professional fee is offered unless there are unusual circumstances which validates his refusal and is enclosed in Rule 24 (1) RPC. The obligation of a counsel as provided in this rule is otherwise called the “cab rank rule” where the cab driver is compelled to take whichever passenger who boards his vehicle once it is his turn on the rank, regardless of the race or pedigree of the passenger[23]. There are however some exceptions to this rule, which are: personal interest, conflict of interest and religious beliefs.

- **Duty to disclose conflicting interest**

In Rule 17 RPC, a lawyer is required to disclose his interest in the subject of client or in connection with any person which might influence the client in the appointment of a counsel. Legal practitioners are obligated to disclose to their client all circumstance in relation with parties and any interest which might influence the client in the selection of his lawyer. Except with the consent of his client after full disclosure, a lawyer shall not accept a fee of the exercise of his professional judgement on behalf of his client will be or may reasonably be affected by his own financial, business, property interest. A lawyer is not expected to accept offered employment if his professional judgement will likely be affected. He must not also appear as a counsel before a case in which he is a counsel. It would be against professional ethics for a lawyer to appear before a court of which he is a party to the case. He is expected to not be behind the bar and not to be dressed in his robe.

- **Duty to preserve confidential information**

A lawyer is of the duty to preserve his client’s interest by not disclosing any confidential information provided to him by his client. He is obligated to not share confidential information with outsiders and should be smart on the information shared to other lawyers working together on behalf of the client. The opposing parties or others in close relation to them are not to excluded from this, as they are not to possess personal information from the lawyer. Where there is breach of confidence, this could eliminate the trust of the client in his lawyer, and may terminate their relationship, worst case scenario the client could sue the lawyer for breach of confidence of which the lawyer cannot appear before the court to defend himself.

- **Representing clients within the bounds of law**

The very first instruction in Rule 1 clearly reveals the duty of a lawyer to uphold and observe the rule of law and to promote justice. The provisions in Rule 15 shows that in the representation of his client he must inter alia keep strictly within the bounds of law endeavour to prevent his client from breaking the law with particular reference to a judicial proceeding.

Duties of legal practitioner to fellow practitioners

Respect, cordiality, fairness and good faith are the basic requirements for the relationship between lawyers. Rules 22 -25 of the Rules of Professional Conduct 2007 deals with the relationship between colleagues. The general rule is contained in Rule 26(1) which provides that “lawyers shall treat one another with respect, fairness, consideration and dignity, and shall not allow any ill feelings between opposing client to influence their conduct and demeanour towards the opposing clients”. Other duties expected of legal practitioners towards other legal practitioners are;

- Fair hearing.[24]
- Duty to respect understandings.
- Duty not to encroach on the employment of another.
- Duty to respect precedence, as contained in rule 8(4) of the Rules of Professional Conduct 2007.
- Duty to avoid sharp practices,[25] rule 27(1) of the rules of professional conduct 2007.
- Duty not to covet other lawyers’s client(s),[26] rule 27(4) of the Rules of Professional Conduct 2007.
- Negotiating with other parties, rule 19(5), (6) and rule 26(5) of the Rules of Professional Conduct 2007.

Conclusion

In conclusion, a lawyer is a legal practitioner with duties to the court, to his client and to his fellow practitioner in the service of justice to aid the legal system. To his clients; he owes a duty to honesty, to accept briefs, to disclose conflicting interest, to preserve confidential information, to the court; he owes a duty as an officer of the court, not to engage in trial publicity, courtroom decorum and etiquette, to his fellow practitioner; duty not to encroach on the employment of another, respect precedence and a number of them to say as contained in the Act. A lawyers’s conduct should conform to the requirements of the law, both in professional service and in personal affairs. He must demonstrate respect to the legal service and to those who serve it including judges, other lawyers and public officials. A lawyer plays a vital role in the preservation of the society and the administration of justice, and the quality of service rendered by the legal profession while observing and applying the rules of professional conduct in Nigeria.

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