



PROFESSIONAL ETHICS & SKILLS

Practice Handbook



COUNCIL OF LEGAL EDUCATION
NIGERIAN LAW SCHOOL

PROFESSIONAL ETHICS & SKILLS PRACTICE HANDBOOK

**Editor-In-Chief
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Nigerian Law School

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PREFACE

The review of the curriculum for the vocational legal training of aspirants to the Nigerian Bar is a core assignment that has been painstakingly undertaken periodically in line with international best practices. This edition is unique in that it contains: the vision and mission of the Nigerian Law School; the lesson plans for each module as well as the summarized explanatory notes on the topics, all simplified for ease of comprehension on the practical training of Lawyers in the 21st century. A user-friendly soft copy of the practice handbook is also enclosed to enable students work at their pace on their computer devices. The need for this practice handbook is underscored by the fact that a harmonized version of the revised curriculum for the hands-on interactive learning at the Nigerian Law School has not been made available to the students for some years now.

This work is the outcome of a concerted effort by the senior members of the academic faculties across the campuses of the Nigerian Law School. They have employed their years of practice experience and versatility to synthesise leading specialized works in this field to come up with this students cum practitioners' companion. It is a deliberate attempt to bridge the gap and mitigate the hardship which students of modest means may encounter at the Law School in procuring recommended texts.

It is important to point out, however, that this practice handbook is not a substitute for attendance at lectures, active participation in group activities or the procurement of recommended texts. While we have endeavoured to ensure the accuracy of the content of this handbook, we will take responsibility for any error discovered.

I acknowledge the invaluable contribution of all the academic faculties in making this 2016 - 2018 Practice Handbook a reality. Students will, no doubt, find it a treasured companion while preparing for the Bar Final examinations and a practice compass in the early years of legal practice.

PROFESSOR ISA HAYATU CHIROMA, SAN

Director-General.

October, 2019 .

VISION AND MISSION STATEMENTS

1. Vision Statement

1. To be a model Institution that aims to attain the highest standards of legal education and vocational training in the world;
2. Train lawyers grounded in the ethics of the legal profession, who can respond to current national and international legal challenges in a diverse society, providing leadership in many different walks of life; and
3. To maintain vocational training and capacity building for lawyers to be intellectually and professionally effective for meeting global challenges and ethical values.

2. Mission Statement

To:

1. educate and train law graduates in vocational skills that would enable them function optimally as barristers and solicitors;
2. adopt skills-based, interactive and clinical methods of learning that would adequately prepare the graduates for their roles as lawyers to function as teachers, advocates, and solicitors, advisers, leaders in private enterprise and public service;
3. train students to conform to the ethics and traditions of the legal profession and exhibit the highest sense of integrity and candour in the discharge of their professional calling; and
4. inculcate in its graduates the ideals of rule of law, social justice and community service such as providing free legal services to the indigent and encouraging the development of opportunities for access to justice.

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Yabugbe v. Police (1992) 4 SCNJ 116 at 130.

LIST OF ABBREVIATIONS

A.C	Appeal Cases
All ER	All England Report
All NLR	All Nigeria Law Reports
CCHCJ	Cyclostyled Copies of High Court Judgements
C.L.R	Commonwealth Law Reports
COX	Cox's Equity
Cr. App. R.	Criminal Appeal Reports
East, P.L.C	East Term's Reports, Privy Council
ECSLR	East Central State Law Reports
ENLR	Eastern Nigerian Law Reports
ERNLR	Eastern Region of Nigeria Law Reports
FNR	Federation of Nigeria Reports
FRCR	Federal Revenue Court Reports
FSC	Federal Supreme Court
K.B	King's Bench
L.L.R	Lagos Law Reports
LRN	Law Reports of Nigeria
LR, PC	Law Reports, Privy Council Appeals
MJSC	Monthly Judgement of the Supreme Court of Nigeria
MNLR Mid-	Western Nigeria Law Reports
NCLR	Nigeria Constitutional Law Reports
NCR	Nigeria Criminal Reports
NLR	Nigeria Law Reports
NMLR	Nigeria Monthly Law Reports
NNLR	Northern Nigeria Law Reports
NRNLR	Northern Region of Nigeria Law Reports
NWLR	Nigeria Weekly Law Reports
Q.B	Queen's Bench
QBD	Queens Bench Division
SC	Supreme Court
SCNJ	Supreme Court of Nigeria Judgements
SCNLR	Supreme Court of Nigeria Laws Reports.
TLR	Times Law Reports
Vict. LR	Victoria Law Reports
WACA	West African Court of Appeal
WLR	Weekly Law Reports
WLRN	Weekly Law Report of Nigeria

WN	Weekly Notes
WNLR	Western Nigerian Law Reports
WRNLR	Western Region of Nigeria Law Reports

INTRODUCTION

Goals of the Course

1. To equip the students with the knowledge of the ethics of the profession as well as their professional responsibilities in the course of their legal practice and leadership roles.
2. To impart in the students the knowledge of relevant statutes and bodies which regulate the legal profession, including the judiciary
3. To educate the students on how to set up, equip and manage law offices including the staff.
4. To acquaint the students with elementary accounting procedures relating to the keeping and management of the statutory (obligatory) accounts.
5. To equip the students with relevant legal skills necessary for the practice of the legal profession in the country and abroad

General course outcomes

1. At the end of the course, students will be able to exhibit a high degree of professional conduct in the course of their practice of the profession and in their relationship with the society in general.
2. Students will be able to set up, equip and manage a law firm.
3. Students will also be able to maintain and manage the statutory account and make entries in the relevant books of accounts.
4. Students will be able to apply the necessary legal skills in the course of their practice of the legal profession.

Course Contents

The course has four parts

Part A

Professional Ethics and Responsibilities of a Lawyer

1. Introduction.
2. History of the legal profession and regulations.
3. Regulatory bodies in the legal profession.
4. Exclusive rights of a legal practitioner and restrictions
5. Dressing and comportment.
6. Court room decorum and etiquette.
7. The role and duties of counsel to court and contempt of court
8. Duty of court to counsel.
9. Duty of counsel to client.
10. Professional negligence by lawyers
11. Relationship with and duty of counsel to colleagues.
12. Duty of counsel to the community.
13. The qualities of a good advocate.
14. Duty of counsel in special circumstances.
15. Duty of counsel to the state
16. Improper attraction of business.
17. Professional discipline of legal practitioners.
18. Appointment and discipline of judicial officers.

Part B

Legal Skills: ADR, Communication and Drafting Skills

1. Interviewing and counseling
2. Arbitration and conciliation
3. Negotiation
4. Mediation
5. Multi-Door Court houses
6. Letter writing
7. Minutes of meetings
8. Curriculum vitae
9. Drafting of legislations
10. Interpretation of statutes
11. Sentences and paragraphing
12. Legal research

Part C

Law Office Management

1. Introduction.
2. Establishment of a law firm.
3. Classification and organization of a law firm.
4. Law office, layout and administration.
5. Using information technology for administrative, financial, library and case management.
6. Management functions and skills.
7. Case management

Part D

Legal Practitioners' Account and Remuneration

1. General overview of legal practitioner's account rules.
2. Types of accounts.
3. Books of accounts.
4. Inspection and enforcement of accounts.
5. Remuneration and recovery of fees

Interviewing and Counseling skills

General Outcome

The students will be equipped with the ability to plan, prepare and conduct an effective interview and to provide the client with appropriate counseling and advice following the interview.

Contents

1. Meaning and purpose of client interview and counseling
2. Stages of the interview and counseling-
 - i) Preparation for the interview
 - ii) Starting the interview
 - iii) Let the client tell the story
 - iv) Develop a chronology
 - v) Counseling
 - vi) Closing the interview

General criteria for an effective client interviewing and counseling

1. Establishing an effective professional relationship: The lawyer should establish the beginning of an effective professional relationship and working atmosphere. At an appropriate point, the lawyer should orient the client to the special nature of the relationship (confidentiality, fees, mutual obligations and rights, duration, and plan of interview, methods of contract, etc) in a courteous, sensitive and professional manner;
2. Obtaining information: The lawyer should elicit relevant information about the problem from the client. “Relevant information” may include matters that affect the client considerably but are not “legally” relevant. They should develop a reasonably complete and reliable description of the problem and reflect this understanding to the client;
3. Learning the client’s goals, expectations and needs: The lawyer should learn the client’s goals and initial expectations and, after, input from the client, modify or restate them as necessary, giving attention in doing so to the emotional aspects of the problems;
4. Problem and analysis: The lawyer should analyze the client’s problem with creativity and from both legal and non-legal perspectives and should convey a clear and useful formulation of the problem to the client;
5. Legal analysis and giving advice: Legal analysis and the consequent legal advice given should be both

accurate and appropriate to the situation and its context. If appropriate, the lawyer should give pertinent and relevant non-legal advice.

6. Developing reasoned courses of action (options): The lawyer, consistently with the analysis of the client's problem(s), should develop a set of potentially effective and feasible options, both legal and non-legal;
7. Assisting the client make an informed choice: The lawyer should develop an appropriate balance in dealing with the legal and emotional needs of the client. He or she should assist the client in his or her understanding of problems and solutions and in making an informed choice, taking potential legal, economic, social, and psychological consequences into account;
8. Ethical and moral issues: The lawyer should recognise, clarify and respond to any moral or ethical issues which may arise, without being prejudicial in judgments;
9. Effectively concluding the interview: The lawyer should conclude the interview skillfully and leave the client with a feeling of reasonable confidence and understanding; appropriate reassurance; and a clear sense of specific expectations and mutual obligations to follow.

Drafting skills Outcomes

Students should be able to:

- Learn how to produce error free documents.
- Learn how to use appropriate language and style in writing
- Develop a bird's eye for mistakes – proofreading
- ‘plan’, ‘write’ and ‘revise’ approach to effective writing
- Understand the client’s needs
- Learn how to plan for drafting.
- Use precedents
- Cover all relevant legal or other formal requirements
- Use proper grammar and avoiding ambiguity
- Meet the client's goals, carry out the client's instructions and address the client's concerns.

Contents

1. This will involve an overview of the contents below on which students would have earlier been given reading assignments.
 - i) Stages of Drafting;
 - ii) Habits to Avoid in Drafting;
 - iii) Aid to Clearness and Accuracy;
 - iv) Sentences and Paragraphs;
 - v) Letter Writing;
 - vi) Designing the Draft;
 - vii) Rules of Interpretation.
2. Special attention will be given to exercises in letter writing, opinion writing, letter before action, written submissions, agreements, office memorandum, minutes writing, report writing and research reports.
3. By the conclusion of this aspect of the course students should be able to draft a range of business letters, prepare legal opinion indicating an understanding of

available facts, general principles and legal authority, in a structured, concise and persuasive manner.

4. The students will devote their time to practically learning the following by directly applying their skills on a case study to be made available to them prior to the session on:
 - i) Simple opinion writing on any legal issue. This must pay particular reference to the stages of drafting which shall include design, planning and outline of a draft, composition, scrutiny, editing and checking the draft.
 - ii) Particular attention must be placed on habits to avoid in drafting with particular reference to archaic words, passive language, verbosity, excessive and intricate expressions, unfamiliar words, tone, and inconsistency.
 - iii) Particular attention must also be placed on aid to clearness and accuracy in drafting which includes certain words that should be avoided, certain words that should be used to avoid context, ambiguity, punctuations, capitalization, definitions and interpretation clauses, interpretation act, The use of schedule, marginal notes and cross headings and computation of time.
 - iv) Sentence structure and paragraphing techniques must also be practised.
 - v) Letter writing.

Note that these letters must pay particular reference to words of negotiations; letter headed paper; letter layout; the form of a letter which include letter references; date; status of a letter; name and address; attention; salutation; subject heading; body of the letter; subscription or complimentary close; signature; name; enclosures; copies and continuation sheet.

- vi) Report writing.
- vii) Minutes writing, curriculum vitae.

5. Legislative Drafting.

Alternative Dispute Resolution (ADR)

1. The goals and objectives of the course

- a. To educate the students on the availability of other methods of resolving disputes without recourse to Litigation and the advantages associated with the processes.
- b. To acquaint the students with the ethical values of the legal profession when engaged in an alternative dispute resolution process.
- c. To equip the students with the necessary skills and techniques needed for engaging in an Alternative Dispute Resolution process.

2. Contents and outcomes:

General

- i. Ability to explain to a client what ADR processes are and the differences between them, Knowing how to identify clients needs.
- ii. Demonstrate understanding of the law and procedure of arbitration
- iii. Demonstrate understanding of the principles and processes of negotiation and mediation
- iv. Conduct a negotiation and mediation
- v. Explain the scope and mechanisms of court-connected ADR centres

Negotiation

- i. Overall aims:
The student should be able to:

- (a) Demonstrate an understanding of the importance of negotiation as a means of settling a case;
 - (b) Demonstrate an understanding of the importance of planning a negotiation;
 - (c) Select strategies and methods for conducting a negotiation that further the client's best interests;
 - (d) Demonstrate an understanding of the need to observe professional ethics when conducting and concluding a negotiation.
- ii. Planning:
- When planning a negotiation the student should be able to:
- a) Identify the factual and legal issues and how they relate to each other;
 - b) Identify the objectives of the client and of the other side;
 - c) Identify any conflict in the objectives of both sides and identify means of resolving such conflicts;
 - d) Prioritise objectives;
 - e) Identify the strengths and weaknesses of each side;
 - f) Counteract the perceived weakness of his/her own case, undermine the strengths of the other side's case, and exploit weaknesses of the other side's case;
 - g) Identify the best alternative to a negotiated settlement (BATNA) and bottom line as appropriate.

iii. Conducting

When conducting a negotiation the student should be able to:

- a) Choose and implement a strategy or strategies for achieving the realistic objectives of the client;
- b) Modify and/or change the chosen strategy or strategies as appropriate;
- c) Construct and work within a structure that allows the negotiation to proceed in a clear, logical and coherent fashion;
- d) Present arguments clearly and in a confident and persuasive manner;
- e) Present the case in a favourable light by emphasizing its strengths and mitigating its weakness and in a way that is likely to achieve its desired ends;
- f) Pick up points made by the opponent and reply in a way that progresses the client's case;
- g) Respond to offers made and make concessions where it is in the client's best interest to do so, but not otherwise;
- h) Seek to protect the client's position against the arguments of the opponent and respond in a way that is likely to achieve the desired ends;
- i) Demonstrate an understanding of the need to observe professional ethics, when conducting and concluding a negotiation.

Mediation

The overall learning outcome is to educate students in the mediation process and in mediation advocacy so that, when they begin to practice or work, they may provide well informed advice on all aspect of mediation and represent clients effectively in mediations. In order to do this, students need to become acquainted with the skills and techniques adopted by mediators and need to acquire an

insight into how mediators work. However, the course does not set out to train them as mediators.

The course will cover the following:

- i. Knowledge-based Aspects of Mediation
 - a. The essential characteristics of mediation
 - b. Mediation compared and contrasted with other forms of ADR, especially negotiation, arbitration and litigation.
 - c. The scope of mediation in various contexts
 - d. The suitability or otherwise of mediation
 - e. The structure and stage of the mediation process
 - f. Different models of mediation
 - g. Ethical issues, including relevant codes of practice
- ii. Mediation Skills
 - a) Advising and preparing and representing lay clients
 - b) Organization concern
 - c) Advocacy and negotiation in mediation
 - d) Awareness of the mediator's skills and techniques
 - e) Drafting case summaries and settlement agreement.

Arbitration

Arbitrable matters and arbitration clause/agreement

Outcomes:

Students will be able to:

1. Explain arbitrable and non arbitrable matters
2. Identify the law that governs arbitration in Nigeria
3. Explain the features of an arbitration agreement
4. Draft an arbitration clause

CONTENTS

1. Arbitrable and non arbitrable matters
2. Arbitration agreement
3. Draft an arbitration clause
4. Ethics in arbitration

2. Arbitration proceedings, challenge and enforcement of award

OUTCOMES

Students will be able to:

1. Describe arbitration proceedings
2. Explain how to challenge an arbitral award
3. Explain how to enforce an arbitral award

CONTENTS

Arbitration process or proceedings:

- i. Notice of arbitration
- ii. Constitution of the arbitral tribunal/challenge/jurisdiction
- iii. Commencement
- iv. Pleadings
- v. Hearing
- vi. Award, challenge and enforcement
- vii. Termination of proceedings

WEEK 1

REGISTRATION OF STUDENTS

WEEK 2

INDUCTION PROGRAMME

WEEK 3

OVERVIEW OF THE PROFESSIONAL ETHICS AND HISTORY OF THE LEGAL PROFESSION

CONTENTS

1. Overview of Professional Ethics and Skills course
2. Overview of the history of the legal profession in Nigeria
3. Overview of the Rules of Professional Conduct for Legal Practitioners

OUTCOMES

At the end of the lesson students would be able to:

1. Discuss and Explain the scope of the Professional Ethics and Skills course;
2. Discuss and explain the various stages of the development of the legal profession in Nigeria;
3. Explain the various ways of becoming a legal practitioner in Nigeria;
4. Explain the provisions of the Rules of Professional Conduct for Legal Practitioners in Nigeria

Pre-class activities:

Students are required to read the following in advance:

- a. Rules of Professional Conduct for Legal Practitioners 2007
- b. Legal Practitioners Act;
- c. Legal Education (Consolidation Etc.) Act.

ACTIVITIES:

1. Tutor reviews the scope of the Professional Ethics and Skills Course and how it relates with the other courses, with questions and answers – **40 minutes**
2. Tutor gives the overview of the history of the legal profession in Nigeria, stages of development of the profession and the Rules of Professional Conduct - **50 minutes**
3. Group discussion on the stages of development of the legal profession in Nigeria – **15 minutes**

15 MINUTES BREAK

4. Presentation by groups on activity 3---- **15 minutes**
5. Tutor requests students to discuss in groups and state acts that they consider should be misconduct under the rules – **10 minutes**
6. Sample presentations are made with general discussions on the list – **15 minutes**
7. Tutor presents questions relating to acts that may or may not fall within the Rules and requests students to respond to each on whether the act(s) constitute misconduct under the Rules with reasons.
8. Assessment and Evaluation – **15 minutes**

WEEK 4 - REGULATORY BODIES IN THE LEGAL PROFESSION; EXCLUSIVE RIGHTS OF A LEGAL PRACTITIONER; RESTRICTIONS ON THE EXCLUSIVE RIGHTS; IMPERSONATION OF A LAWYER

CONTENTS

1. Regulatory bodies and organs of the legal profession: General Council of the Bar, Nigerian Bar Association, Council of Legal Education, the Body of Benchers, National Judicial Council, Legal Practitioners Privileges Committee, Legal Practitioners Remuneration Committee, Legal Practitioners Disciplinary Committee.
2. Membership and functions of these bodies.
3. National Judicial Council: Legal framework of, composition and duties
4. Exclusive rights of lawyers --- appointment as judicial officers, right of audience in court, preparation of documents to obtain probate or letters of administration, preparation of land instruments for a fee, signing certificates of compliance under CAMA, requirement for the conferment of rank of

- Senior Advocates of Nigeria and appointment as Attorney-General.
5. Restrictions on the exclusive rights --- non-payment of practising fees, engaging in business, salaried employment, public service and private practice, serving and retired judicial officer, mandatory continuing legal education, withdrawal of rank of Senior Advocates of Nigeria, Annual Practising Certificate.
 6. Impersonation of a lawyer through words or conduct.

Outcomes

At the end of this lesson, students would be able to:

1. Explain and discuss the legal framework, powers, functions and composition of the regulatory and controlling bodies and organs of the legal profession;
2. Explain the various exclusive rights of a legal practitioner in Nigeria;
3. Explain the limitations/restrictions on those exclusive rights
4. Describe and explain conducts that amount to impersonation of a lawyer, the exceptions and sanctions

Activities in class

1. Tutor gives an overview of the regulatory bodies in the legal profession and their functions --- **45 minutes**
2. Tutor gives an overview of the exclusive rights of a legal practitioner in Nigeria and the restrictions on the exclusive rights ---**45 minutes**
3. Group discussions on the composition, establishment and functions of the regulatory bodies. **20 minutes**

4. Group discussion on the exclusive rights of a lawyer and the restrictions on those rights --- **20 minutes**
5. Group presentations on activities 1 and 2 ----- **20 minutes**

15 MINUTES BREAK

6. Tutor gives overview of impersonation of a lawyer and the statutory sanctions - **30 minutes**
7. Students' groups list and discuss various conducts that amount to impersonation of a lawyer and conducts that do not constitute impersonation of a lawyer ---- **20 minutes**
8. Group presentation of activity 7 ---- **20 minutes**
9. Assessment --- **20 minutes**

WEEK 5:(i) APPOINTMENT AND DISCIPLINE OF JUDICIAL OFFICERS; (ii) DISCIPLINE OF LEGAL PRACTITIONERS

CONTENTS

1. Appointment of Judicial Officers
2. Removal of Judicial Officers
3. Grounds for removal of Judicial Officers
4. Types of professional offences by lawyers
5. Punishment of lawyers for professional misconduct
6. Re-instatement of a lawyer's name and cancellation of suspension
7. Disciplinary jurisdiction of the Supreme Court and the Chief Justice of Nigeria

OUTCOMES

1. Explain the qualification and procedure for the appointment of Judicial Officers

2. Discuss and explain the grounds and procedure for disciplining judicial officers
3. Explain and discuss the legal framework, rules and procedure for the enforcement of discipline against legal practitioners
4. Explain the professional sanctions for the professional offences
5. Explain the grounds for re-instating the name of a legal practitioner and the cancellation of the suspension

Pre-class activities

Students should read in advance the following:

1. The Constitution
2. Code of Conduct
3. Case Law on the discipline of Judicial officers
4. Revised National Judicial Council Guidelines and procedural rules for appointment of Judges and Kadis
5. Code of conduct for Judicial Officers of the Federal Republic of Nigeria
6. Sections 12 and 13 of Legal Practitioners Act.
7. The case of *Elelu-Habeeb & Another v. A. G. Federation & Others (2012) 13 NWLR (Pt. 1318) 423.*

ACTIVITIES IN CLASS

1. Tutor gives overview of the procedure for the appointment and removal of Judicial Officers – **40 minutes**
2. Group discussion on the procedure and grounds for removal of judicial officers – **20 minutes**
3. Students in groups are to prepare Curriculum Vitae for appointment as judicial officers taking into consideration the provisions of the 1999

- Constitution and the Guidelines for the appointment of Judicial Officers – **30 minutes**
4. Sample presentations of activities 2 and 3 – **30 minutes**
 5. Discussions between tutor and students of the case of **Elelu-Habeeb & Anor v. A. G. Federation & Others** on the procedure for disciplining and removal of judicial officers – **50 minutes**
 6. Questions and answers- **10 minutes**

15 MINUTES BREAK

7. Tutor gives overview of the legal framework, rules and procedure for the enforcement of discipline against legal practitioners including the sanctions, appeals and grounds for restoration of a name – **50 minutes**
8. Tutor discusses with students the disciplinary jurisdiction of the Supreme Court and the Chief Justice of Nigeria –**20 minutes**
9. Group discussion on the legal framework, rules and procedure for the enforcement of discipline against legal practitioners- **20 minutes**;
10. Group discussion on proceedings and trial of a lawyer before the LPDC –**20 minutes**
11. Group presentation - **20 minutes**
12. Assessment – **10 minutes**

WEEK 6 - LAWYER'S DUTIES TO CLIENTS I LAWYER'SDUTIES TO CLIENTS II

CONTENTS

1. Dedication to clients matter
2. Duty to accept brief
3. Conflict of interest
4. Representing client within the bounds of law
5. Representing client competently

6. Professional negligence by lawyers
7. Privilege and confidence of the client (including the mandatory provisions of sections 6, 7 & 8 of the Money Laundering(Prohibition) Act 2011). However note provisions of S.6 Money Laundering (Amendment) Act 2012 and the case of *NBA vs. A. G. Federation and CBN Suit No. FHC/ABJ/CS/173/2013*
8. Lawyer as witness for a client
9. Responsibility for litigation
10. Withdrawal from employment
11. Dealing with clients property
12. Calling at a client's house for instructions
13. General duties of lawyer to client
14. Change of counsel by client

OUTCOMES

At the end of this lesson students would be able to:

1. Discuss and explain the lawyer's duties to the client (Rules 14 – 25);
2. Explain the various duties owed a client by the lawyer (Rules 26 -29) .

Pre – class activities

1. Students to read Rules 14-25 of the Rules of Professional Conduct 2007 in advance
2. Students read Rules 26 – 29 of the Rules of Professional Conduct 2007 in advance
3. Students are to read sections 6 – 8 of the Money Laundering (Prohibition) Act 2011 in advance

ACTIVITIES IN CLASS

1. Brainstorming with the students on the sub – topics and tutor gives an overview of numbers 1 to 14 in the Contents – **2 hours**

15 MINUTES BREAK

2. Group discussion of items 1 to 8 in the contents – **20 minutes**
3. Group presentation of matters discussed in activity 2 -- - **20 minutes**
5. Group discussion of items 9 to 14 in the Contents – **20 minutes**
6. Group presentation of matters discussed in activity 4 --- **25 minutes**
7. Assessment and evaluation – **15 minutes**

**WEEK 7 – (i) ADVERTISEMENT AND IMPROPER ATTRACTION OF BUSINESS;
(ii) CORRUPTION ISSUES**

CONTENTS

1. Advertisement and Soliciting and other illegal means of attracting business by a lawyer.
2. Use of agents and touts to attract business
3. Involvement in corruption by lawyers

OUTCOMES

At the end of the lesson, students will be able to:

1. Explain the meanings of advertisement and soliciting and other illegal means of attracting business by a lawyer.
2. Identify and discuss specifically what aspects of the legal system are affected by corruption and how these encourage or influence lawyers to behave in corrupt or unethical ways;
3. Suggest specifically what lawyers could do to make the legal system to be free from corruption

ACTIVITIES IN CLASS

1. Tutor moderates discussions by students in class on outcomes 2 and 3 – **30 minutes**

2. Assessment -10 minutes

15 Minutes Break

3. Tutor gives an overview of the meaning of advertisement and solicitation and discusses the scope of proper and improper attraction of business under the Rules of Professional conduct. Tutor presents this overview with the aid of real precedents like newspaper cuttings on advertisement, solicitations etc and case studies/quizzes – **30 Minutes**;
 4. Students are grouped (not more than 6 in a group) to present a debate for and against: “In reality there is no difference between advertisement and solicitation by the lawyer under the Rules of professional conduct.” Tutor guides the groups to present their debates using **PRES** (P- Point of View; R- Reason/Ground for the view; E- Evidence/Example for the point of view; S- Summary or conclusion). As much as possible each student in a group would speak within the groups’ presentation plan using **PRES**. The groups prepare their presentations. Tutor to give time-limit for each presentation and be the time keeper during the presentations - **15 minutes**
5. The Debate- **1 hour**
 6. Discussion/Assessment – **15 minutes**

WEEK 8

- (i) **DUTIES OF LAWYER TO COURT, STATE, COLLEAGUES AND PROFESSION;**
- (ii) **CONTEMPT OF COURT BY LAWYERS**

CONTENTS

1. Dressing
2. Duty to treat court with respect and dignity
3. Punctuality
4. Courtroom decorum
5. Relationship with the judge
6. Trial publicity
7. Duty to observe the rule of law, promote and foster the course of justice, and maintain a high standard of professional (and ethical) conduct – Rule 1;
8. Corruption and economic crimes and the lawyers' role;
9. Duty to prevent admission of unfit and unqualified persons into the legal profession and aiding the unauthorized practice of the law - Rules 2 and 3
10. Avoidance of intermediary in the practice of the law and association for legal practice – Rules 4 and 5
11. Notification of legal practice – Rules 9 – 13
12. Lawyer as officer of Court- Rule 30
13. Employment in Criminal Cases and Lawyer for an Indigent accused – Rules 37 & 38
14. Fellowship and Precedence- Rule 26
15. Good faith and fairness among lawyers – Rule 27
16. Associating with other lawyers in matter and change of lawyer
17. Types of contempt
18. Proceedings for contempt
19. Punishment for contempt

OUTCOMES

At the end of this lesson, students would be able to:

1. Explain lawyer's duties to the court, state, colleagues and the legal profession
2. Explain and discuss the types, purpose, procedure and punishment for contempt of court.

ACTIVITIES IN CLASS

1. Tutor gives overview of lawyer's duties to court, State, colleagues and the profession - **1hr**
2. Students act a role play on breach of duties to court—**10 minutes**
3. Discussions of the role play and duties of lawyer to the State, colleagues and the profession --- **50 minutes**

15 MINUTES BREAK

4. Tutor gives an overview of contempt of court including the procedure and punishment— **40 minutes**
5. Tutor presents role plays/written scenarios/quizzes dealing with contempt and students are grouped to discuss the role plays/scenarios and quizzes – **30 minutes**
6. At plenary, presentations are made by the groups on the discussions of the scenarios, quizzes and role plays (and discussions follow) – **40 minutes**
7. Assessment – **10 minutes**

WEEK 9 – DRAFTING 1: (i) BASIC DRAFTING PRINCIPLES AND STAGES OF DRAFTING

CONTENTS

1. Aid to clearness and accuracy
2. Habits to avoid in drafting
3. Sentences and paragraphs
4. Punctuations
5. Expressions relating to time

THE FIVE (5) STAGES OF DRAFTING

7. Understanding the instruction;
8. Analysing of the instruction
9. Design the draft; outline of a draft

- 10.Composition and development
- 11.Scrutiny; editing and checking the draft

OUTCOMES

At the end of the lesson, students will be able to:

1. Demonstrate how to use language, grammar and avoid ambiguity in drafting
2. Identify the difference between the traditional style of drafting and the modern drafting technique using; plain, simple and precise English. Identify words and phrases which are pitfalls to good drafting style.
3. Identify how to use punctuation and language effectively in drafting;
4. Explain the basic principles of drafting legal instruments;
5. Demonstrate how to plan for drafting
6. Demonstrate how to use precedents in drafting documents.
7. Demonstrate how to produce error free documents
8. Observe the need to adequately represent the intention of the clients in drafting documents
9. Draft simple documents

ACTIVITIES

1. Tutor gives an overview of basic principles of drafting
—30minutes
2. Tutor gives overview of different stages of drafting ---
40 minutes
3. Group discussion on stages of drafting --- **20 minutes**
4. Group presentation on stages of drafting --- **20 minutes**
5. Ethical issues arising from the outcomes --- **10 minutes**
6. Tutor presents examples and students use the examples for exercises that illustrate basic drafting principles ---
30 minutes
7. Assessment —**10 minutes**

15. MINUTES BREAK

8. Tutor gives an overview of types legal instruments – **30 minutes**
9. Using case studies provided by the tutor students individually makes different legal drafts.
10. Group discussion on stages of drafting --- **20 minutes**
11. Group presentation on stages of drafting --- **20 minutes**
12. Ethical issues arising from the outcomes --- **10 minutes**
13. Sample drafts are presented and discussed
14. Assessment and evaluation—**10 minutes**.

WEEK 10 – (i) LETTER WRITING; (ii) DRAFTING OF MINUTES OF MEETINGS; OFFICE MEMORANDUM AND CURRICULUM VITAE

CONTENTS

1. Demonstrate the structure of different types of legal instruments.
2. Types of letters
3. Parts of a letter
4. ‘Subject to contract’ and ‘without prejudice in a letter’
5. Types of formal documents
6. Minutes of meetings,
7. Curriculum vitae
8. Office memoranda
9. Legal opinion

OUTCOMES

At the end of the lesson, students will be able to :

1. Demonstrate how to plan for drafting
2. Demonstrate how to use proper language and grammar and avoid ambiguity in drafting.
3. Demonstrate how to produce error free documents
4. Observe the need to adequately represent the intention of the clients in drafting documents.

5. Draft formal documents including; minutes of meetings; curriculum vitae; office memorandum, legal opinion etc.
6. Identify types of letters
7. Draft parts of a letter
8. Explain ‘Subject to contract’ and ‘Without prejudice’ in a letter

ACTIVITIES

1. Tutor gives overview of guidelines for drafting minutes of meetings; office memorandum and curriculum vitae --- **30 minutes**
2. Tutor gives an overview of types and parts of a letter including the words of negotiation – **30 minutes**
3. Using any of the case studies from any of the modules, and a check list, students draft a short legal opinion- **20 minutes**
4. Sample presentations of the draft legal opinion are made and discussions follow – **30 minutes**
5. Assessment – **10 minutes**

15 MINUTES BREAK

1. Tutor presents short case studies and students are required to individually write client letters on these case studies – **40 minutes**
2. Sample letters are presented and discussion on parts of a letter follows – **30 minutes**
3. Write a letter --**10mins**
4. Using a case study provided by tutor, students individually draft the minutes of meeting; curriculum vitae and office memorandum --- 1 hour
5. Selected students present the drafts --- **30 minutes**
6. Assessment and evaluation --- **10 minutes**

WEEK 11: LEGISLATIVE DRAFTING

CONTENTS

1. Principles of legislative drafting
2. Parts of legislation

OUTCOMES

At the end of this lesson, students would be able to:

1. Explain the parts of legislation;
2. Explain and discuss the principles, stages, and formalities of legislative drafting;
3. Critique a legislation or draft legislation;
4. Draft a simple legislation

Activities before the lesson

1. Students are expected to read the topic in advance of the class activities.
2. Each student is to study as many pieces of legislation as possible in advance
3. Each student should bring the 1999 Constitution as amended and at least two statutes to class.

Activities during the lesson

1. Tutor gives an overview of parts of legislation; principles, stages, and formalities of legislative drafting –**1 hour**;
2. Tutor presents a checklist of guidelines of principles for standard drafting of legislation and with the guidelines students are to review privately the laws brought to class to be able to critique the laws by identifying whether or not they conform to the principles of drafting legislation. The opinion of the students should be set down in writing - **30 minutes**
3. Students present their written opinion on the laws and discussions follow – **30 minutes**

15 MINUTES BREAK

4. Tutor presents case studies and requests students to draft legislation- **1hr minutes**
5. Students present the legislation drafted in activity No. 5 and discussions follow- **50 minutes**
6. **Assessment – 10 minutes**

WEEK 12:

- (i) RULES OF INTERPRETATION OF STATUTES**
- (ii) INTERVIEWING AND COUNSELLING SKILLS**

CONTENTS

1. General principles of Interpretation of Statutes. Examples, literal rule, golden rule, mischief rule, ejusdem generis, maxims of interpretation of statutes etc;
2. Advertising, soliciting; Use of agents and touts to attract business.
3. Explain the purpose, stages and criteria for an effective client interviewing and counseling;
4. Plan and prepare for a client's interview.
5. Conduct an interview
6. Stages of interviewing
7. Counseling a client

OUTCOMES

At the end of this lesson, students would be able to:

- I. Explain and discuss the scope and application of rules of interpretation and construction of statutes

Activities before the lesson

Students are expected to read the topics in advance of the class activities including case law, statutes and rules, on the topics.

ACTVITIES

1. Tutor in an overview, explains the rules as well as the maxims of interpretation of statute and the scope and application of the rules and maxims. – **15 minutes**
2. Group discussion of rules of interpretation- **10 mins**
3. At plenary, groups make presentation of work in No 2 activity and general discussion followed by question and answer session- **10 minutes.**

15 MINUTES BREAK

4. Tutor gives an overview of client interviewing and counseling with questions and answers-**30 minutes;**
5. Tutor presents a scripted role play that raises issues of “meet and greet” stage, starting the interview and telling the story stage; and issues of conflicts of lawyers interest and confidentiality. (The role play would not extend to counseling stage) – **15 minutes.**
6. Students discuss the role play and the issues raised– **20 minutes**
7. Students perform additional role plays or video clips are shown; debrief and Discussions follow – **40 minutes**

WEEK 13: (i) ADVOCACY PRACTICE

- (ii) LEGAL RESEARCH;**
- (iii) CLOSING OF FILES**

CONTENT:

- I. Introduction to trial advocacy; presentation of opening statement in civil trial.
- II. Examination and cross examination of witnesses with emphasis on cross-examination
- III. Functions legal research
- IV. Sources of materials in legal research
- V. How files are closed
- VI. Destruction of files

OUTCOME:

At the end of the lesson, student should be able to :

1. Discuss the general principles (including the essence and ethics) of advocacy in the context of a trial;
2. present an opening statement in a civil trial;
3. discuss the principles of examination- in-chief, cross-examination and re-examination of witnesses
4. Explain the importance of legal research
5. Explain the sources of materials in legal research
6. Explain when and how clients files are closed in a law office
7. Explain the necessary matters to be dealt with at the time of closing a file;
8. Draft a letter to a client closing a file;

PRE CLASS ACTIVITIES

Students are expected to read the topic in advance

1. Tutor should provide in advance to the students a scripted record of examination in chief of a witness

ACTIVITIES DURING THE LESSON

2. Tutor gives an overview of Introduction to trial advocacy and presentation of opening statement, an overview of the principles of examination –in-chief, cross examination and re- examination of witnesses- **30 minutes**;
3. In the class video clip of NITA’s “the ten commandments of cross-examination” is previewed- **15 minutes**;
4. There is a general discussion on the video clip, with tutor assisting in drawing attention to the scope and extent of application of the various commandments to Nigerian jurisdiction showing differences if any between civil and criminal litigation- **10 minutes**
5. Tutor provides a scripted record of examination in chief and requires students to conduct short cross-

examinations on a witness based on the scripted recorded examination-in-chief and discussion follow. Preparation for this exercise –

(Note that students should be allowed to object to any question asked by their colleague in the exercise and the student objecting would be required to give reasons for the objections and takeover the cross-examination where the objection is sustained).

6. Tutor presents special opening speech in criminal trial or plays video clips of an opening speech like the Inns of Court School of Law Legal Skills Training Service “Do you want to hear a story”. Special attention must be paid to the distinction between making opening speeches before a Judge or Jury and between civil and criminal trials; discussions follow – **15 minutes**;
7. Role play by students acting as opposing parties to present short opening speeches in a civil case. The tutor shall be the presiding Judge- **10 minutes**.

15 Minutes Break

1. Tutor gives an overview of principles, functions of legal research and source of materials for it --- **20 minutes**
2. Tutor gives overview of closing of file. --- **10 minutes**
3. Group discussions on activities 1 and 2 ----**10 minutes**
4. Group presentation on activity 3 --- **100 minutes**
5. Students draft a letter to a client closing a file --- **15 minutes**
6. Assessment and evaluation --- **10 minutes**

**WEEK 14: (i) ALTERNATIVE DISPUTE
RESOLUTION (ii) NEGOTIATION; (iii) MEDIATION;
(iv) MULTI-DOOR COURT HOUSE**

CONTENTS

1. Overview of Alternative Dispute Resolution
2. Describe the various methods of Alternative Dispute Resolution(ADR)
3. Negotiation- Meaning, importance, planning and conducting negotiation; and ethical issues in negotiation;
4. Mediation: characteristics, steps, the mediation process and the value of mediation
5. The scope and mechanisms of court- connected ADR centres like the Lagos and Abuja Multi-door Court Houses

OUTCOMES

At the end of the lesson, students will be able to:

1. Explain the meaning of Alternative Dispute Resolution and the various types
2. Explain and discuss the meaning, importance and process of negotiation;
3. Plan and conduct a negotiation taking into consideration appropriate ethical challenges arising in the conduct of negotiation for a client
4. Explain the scope and mechanisms of court-connected ADR centres (ie the multi-door court house);
5. Describe requirement of the rules of professional conduct for lawyers and High court Rules with regard to advising on ADR;
6. Explain, discuss and describe the characteristics, steps and the mediation process; the values of mediation and ethical standards required of mediators;
7. Take part in a mediation exercise.

ACTIVITIES

1. Overview of the ADR processes - **15 minutes**
2. Tutor gives an overview of the principles, strategy, tactics and process of negotiation- **20 minutes;**
3. Tutor gives overview of the principles and process of mediation – **15 minutes**
4. Students present negotiation and mediation role plays based on a scenario given by Tutor - **40 minutes;**
5. Students discuss the role pays pointing out the similarities and differences between negotiation and mediation - **30 Minutes**

15 MINUTES BREAK

6. Group discussion on negotiation tactic, WATNA, BATNA, bottom line and process of negotiation – **20 minutes**
7. Group presentation of activity 5 --- **20 minutes**
8. Tutor gives an overview of the multi-door court house with particular reference to Lagos and Abuja Multi-Door Court Houses and questions and answers follow. These questions should include the requirement on advising on ADR before litigation. Tutor explains the correct position on each issue – **40 minutes**
9. Group discussion on features, procedure and effect of ADR conducted under the multi-door court house – **20 minutes**
10. Group presentation of activity 8 --- **20 minutes.**

WEEK 15: ARBITRATION AND CONCILIATION

CONTENTS

1. Arbitrable matters, arbitration clause and agreement
2. Arbitration proceedings, challenge and enforcement of award;

3. Termination of arbitral proceedings
4. Conciliation procedure
5. Difference between a conciliator and a mediator

OUTCOMES

At the end of this lesson, students would be able to:

1. Explain and discuss arbitrable and non arbitrable matters; the principles and the laws/rules governing arbitration and conciliation in Nigeria;
2. Describe arbitration proceedings and explain how to challenge and enforce an arbitration award;
3. Draft an arbitration clause;

ACTIVITIES

1. Tutor presents an overview of arbitration proceedings and conciliation, and explains how to challenge and enforce an arbitration award/the content of arbitration clauses – **1hr**
2. In the class, tutor generates discussion with students on arbitrable and non arbitrable matters; the principles and the laws/rules governing arbitration in Nigeria- **30 minutes**;
3. Tutor presents quiz/multiple choice questions and students give answers; discussion follow- **30 minute**

15 MINUTES BREAK

4. Group discussion on challenge of arbitrators, award and enforcement of an award --- **30 minutes**
5. Tutor presents case study and students draft arbitration clauses- **20 Minutes**
6. Group discussion of principles of conciliation and the differences between conciliation and mediation - -- **20 minutes**
7. Sample presentation by students groups activities 4 , 5 and 6--- **40 minutes**

8. Assessment --- 10 minutes

WEEK I6 (i) LAW OFFICE MANAGEMENT; (ii) IT IN LAW OFFICE MANAGEMENT

CONTENTS

1. Establishment, classification and organization of law firms; How to find and establish a law office; How to acquire office equipment and list the various office equipment, machines and supplies;
2. Law office administration; Vision and Mission goals of a law firm; How to efficiently run and manage a law firm- Time management; Filing system; Law office records;
3. Classification and organization of law firms; Classification of law firms and criteria for the classification of law firms; small, medium and large firms, criteria for classification: location, client base, facilities, status and number of lawyers in the firm; various types of law firms; the advantages and disadvantages of each type of law firm; explain the restrictions placed on lawyers by the rules against forming partnership with non – lawyers; sole practitionership, sole proprietorship, associateship, partnership, advantages and disadvantages of each unit of practice, restriction on law partnership;
4. Planning and time management; three types of planning; the external environment that affects planning; types of planning: strategic, tactical and operational; social, political and economic environments; items requiring planning; item s of planning: finance, service, clients, facilities, staff; types of legal work in time management; order in which legal work may be prioritized; handling office correspondence; legal component, non-legal component, office correspondence, prioritizing of

- legal work; personal reminder systems (office and firm diary, personal computer), firm-wide reminder system(pre-printed form, office computers);
5. Management structures; the four classes of management system of law firms; management by sole owner; management by managing partner; management by a committee of partners; management by all partners; drafting vision, mission statement and goals;
 6. Management functions: planning; explain the components of planning as one of the management functions in running a law office; the types of planning; things to plan for in a law office; finance, service, clients, facilities; and staff ; Management functions: organizing & coordinating; identify the strategies for implementing the plans; explain the main resources of a law firm; explain how to coordinate the work flow of a law firm; how to implement the planned areas; how to organize resources of the firm; assignment/delegation of work in the firm and harmonization of work for efficiency;
 7. Management functions: controlling & evaluation; Explain how to measure planned areas with set goals to ensure effectiveness; Identify when a firm is well staffed, under staffed or underutilized; Explain how to evaluate the financial state of law firms; How to monitor the performance of work; How to monitor facilities, staff and clients of the firm; Measurement of services rendered to clients and clients' relationship with firm; How to evaluate financial performance of firm;
 8. The various management skills required to run a law firm- organizing and coordinating functions in the firm;

9. The mandatory requirement for registration of legal practitioners once the person commences business under Rule 13 Rules of Professional Conduct.
10. The requirement of the rules for the appointment of SAN regarding law offices.
11. Application of information technology in managing a law office; use of computers; virtual library etc

OUTCOMES

At the end of this lesson students would be able to:

1. Explain and discuss the requirements for the establishment, classification and organization of a law firm;
2. Explain the various management functions and how they are applied to the running of a law firm;
3. Explain the use of and application of information technology in the running of a law office

ACTIVITIES

1. In the class, tutor gives an overview of law office management – **1hr**
2. Students are grouped into firms and required to draw up list of advantages and disadvantages of various types of law firms; make a choice and draft mission/vision statements and goals of the proposed firm and how they would go about the evaluation of the firm after setting it up. The Groups may carry out this activity outside the class – **40 minutes**
3. In the class, presentation of sample group work and discussion – **40 minutes**
4. Assessment – **10 minutes**

15 MINUTES BREAK

5. Tutor gives an overview on the use of IT for

administrative legal work, solicitor's financial transactions, law library, and case management – **30 minutes**

6. Students are grouped to prepare for presentation, advantages/disadvantages; challenges and solutions to the challenges in the use of IT in Nigeria for Lawyers administrative legal work, financial transactions, law library and case management- **30 minutes**
7. Presentations and general discussions follow- **40 minutes**
8. Assessment – **20 minutes**

WEEK 17: (i) **REMUNERATION OF LEGAL PRACTITIONERS;**
(ii) **DUTIES OF LAWYER ON CHARGING OF CLIENTS**

CONTENTS

1. Legal Practitioners Remuneration: tit-bits for charging- time charging, gearing, use of deposits, quotations, discounts, over billing, billing by writing, etc; Guide to fixing fee, retainers, division of fees, contingent fees; suing for fees- right to sue, competent court, conditions precedent, ascertaining proper charges by the court, taxation, awards and quantum meruit; scale of charges, charges for documentation and in contentious business; acquiring interest in litigation, security against remuneration and interest on disbursement, charges, Rules making organs, ethical issues in charging.
2. Drafting bill of charges;
3. Drafting statement of claim for recovery of charges.
4. *Pro bono* and legal aid.
5. Taxation of bill of charges of a legal practitioner

OUTCOMES

At the end of the lesson, students will be able to:

1. Explain and discuss the rules and principles applicable to legal practitioners remuneration including the process of recovery of charges;
2. Draft bill of charges and statement of claim for the recovery of charges.
3. Explain the process of taxation of bill of charges
4. Explain the rules and regulations relating to charging of fees by a legal practitioner

ROLE PLAY 1 ON REMUNERATION

Barrister: Good Morning. Yes, how may I help you?

Mr. Ameh: Good Morning Sir. I have a legal problem and I need the services of a lawyer.

Barrister: You are welcome. Please sit down and let me know your problem.

Mr. Ameh: First I must let you know that I have no resources to pay legal fees. I am hoping to get legal services on humanitarian grounds. I have been out of job for two years now and my wife and kids are barely surviving. Can you help me?

Barrister: I may. What is your problem?

Mr. Ameh: I noticed that the 2 plots of land allotted to me two months ago as my portion of the family land is being encroached upon by an unknown trespasser.

Barrister: You have no problem. I will handle the case for you and if you are successful, you will assign one of the plots to me as your payment for my professional services; or you sell the two plots and we share the money equally.

ROLE PLAY 2 ON REMUNERATION

Barrister: (*A knock on the door*) Yes who is by the door?

Mr. Onuh: Good Morning. You sent for me.

Barrister: (*Immediately frowns on recognizing him and says angrily in a rather loud voice*)

Let me sound a note of warning to you. Nobody, I mean nobody trifles with me and gets away free. I sent you a bill of charges last week. Why haven't you paid?

Mr. Onuh: (*Looking shocked and ruffled stammers*) I.. I was going to send you a Cheque before the end of the week and have already instructed...

Barrister: (*Interjects him in a loud voice*) Look here. If you do not pay up this money before the end of today I will send my boys to teach you a lesson. That way you will realize that no one, I mean no one plays a fast one on me on my charges. Understand?

ACTIVITIES

1. Tutor gives an overview of the rules and principles applicable to legal practitioners' remuneration including the process of recovery of charges and taxation of charges of a legal practitioner. The dimension of the values of *pro bono* matters and involvement of legal practitioners in legal aid for the poor should be discussed too— **1hr**
2. Using Civil litigation case studies 1 or 2 each student is to assume that he/she had concluded the client's case in court and prepare a bill of charges— **30 minutes**
3. Examples of the bills are presented and discussions follow- **30 minutes**

15 MINUTES BREAK

4. Two role plays are presented by students ---- **10 minutes**
5. Using Civil litigation case studies 1 or 2 each student is to assume that he/she had concluded the client's case in court but that the client had failed or

- refused to pay the bill and prepare a statement of claim which assumes that a writ has been filed claiming the lawyers charges- **30 minutes**
6. Examples of the statement of claims are presented and discussions follow- **30 minutes**
 7. Tutor generates the discussions with the students on duties of a lawyer while charging fees; types of fees and extent of liability of a lawyer for negligence when he charges fees for a legal work ----- **30 minutes**
 8. Assessment --- **20 minutes**

WEEK 18: (i) **LEGAL PRACTITIONERS ACCOUNTS;**
(ii) **LEGAL PRACTITIONERS ACCOUNTS RULES**

CONTENTS

1. Books of accounts to be kept by lawyers
2. Legal Practitioners Accounts Rules;
3. Obligatory accounts, books of accounts, objectives and values for keeping various books of accounts;
4. Sources of clients money; rules on clients and trust money;
5. Drafting- cash book and ledger for personal/firm account and client account
6. Inspection of accounts and enforcement

OUTCOMES

At the end of the lesson, students will be able to:

1. Explain and discuss the provisions of Legal Practitioners Accounts Rules;
2. Explain and discuss types of accounts, types and objectives for books of accounts, sources of client's money and how to deal with clients and trust money.
3. Draft a cash book and ledger for personal/firm account and client account

4. Explain and discuss classification of transactions into personal and impersonal accounts;
5. Explain the rules and procedure for inspection and enforcement of lawyer's accounts

ACTIVITIES

1. Tutor gives an overview of the Legal Practitioners Accounts Rules and its application; types of accounts, types and objectives for books of accounts, sources of client's money and how to deal with clients and trust money- **1 hr**
2. Tutor presents sample quiz/questions and students answer in writing- **20 minutes**;
3. Students present answers for plenary discussion – **30 minutes**;

15 MINUTES BREAK

4. Tutor gives an overview of how to draft cash book and ledger for personal/firm account and client account, using examples- **40 Minutes**;
5. Using Example 4 in Students Hand book or any other example presented by the tutor, students draft a cash book and ledger – **20 minutes**
6. At plenary, presentations are made by students of activity 5 (and discussions follow) –**30 minutes**
7. Tutor gives an overview of the rules and procedure for inspection and enforcement of lawyer's accounts and presents quizzes/questions for students to answer --- **30 minutes**
8. Assessment and evaluation --- **10 minutes**

WEEK 19: WORKSHOP ON PLACEMENT (COURT AND LAW OFFICE ATTACHMENT)

Objectives of the Placement Clinic are to ensure that:

1. Each law student is exposed to a learning experience that provides reasonable opportunity to achieve the outcomes of learning at the Nigerian Law School;
2. Appropriate mechanisms are put in place for the Law Firms, Courts and the Nigerian Law School to quality assure the experience.

Contents

1. Range of experiences students are expected to engage in during the placement;
2. Submission of a portfolio;
3. Content of a portfolio
4. Presentation of a portfolio through power point slides/projectors;
5. Criteria for scoring a portfolio;
6. Code of conduct for the placement

Outcomes

At the end of this workshop, students would be able to explain the rules, activities and presentation of portfolios of the placement.

Activities during the workshop

1. In the class, tutor and students review the rules and guidelines for the placement including: the range of experiences students are expected to engage in during the placement; Submission of a portfolio; Content of a portfolio; Presentation of a portfolio through power point slides/projectors; Criteria for scoring a portfolio; Code of conduct for the placement- **30 minutes**;
2. Tutor presents guidelines for entering activities in a log book and writing reflective reports- **20 minutes**;

3. Students carry out an exercise entering activities in a log book and writing reflective reports- **25 minutes**
4. Students present activity No. 3 and discussions follow- **50 minutes;**

15 MINUTES BREAK

5. Tutor presents guidelines for writing reports and presentations by power point slides with multimedia projectors. The guidelines would include the rules for using slides- **25 minutes**
6. Students are grouped to practice setting up projectors and presentations and preparing slides- **5 minutes;**
7. Groups carry out the practice in activity No. 6- **40 minutes;**
8. Students are made to set up the projectors in plenary and show sample slides and presentations from their group work – **40 minutes;**
9. Assessment- **5 minutes**

WEEK 20: REVISION OF THE COURSE

Content

1. Revision of the Professional Ethics, Legal Skills, ADR, Law Office Management and Legal Practitioners' Accounts Course

Outcome

At the end of the Revision class, students would be able to:

1. Answer questions in the course

Activities:

1. Tutor brainstorms with the students on the various ways
2. Students are given different scenarios with questions attached
3. Students present answers at plenary

LAW IN PRACTICE CASE STUDIES

Read the following Scenarios from which you will carry out respective tasks that may be required of you during lessons on law in practice.

PROFESSIONAL ETHICS AND SKILLS SCENERIOS

WEEK 3: HISTORY OF THE LEGAL PROFESSION

Scenario 1

- I practise as a Law Officer in the Ministry of Justice, Cross Rivers State. I have a degree in Law from Ahmadu Bello University, Zaria in 1973 but was not opportune to go to the Nigerian Law School. Is it right that I have a right of audience in Court?

Scenario 2

- I studied in England and was called to the English Bar in 1969 and have been practicing there till date. I was recently invited to handle a matter that involves a sensitive public interest in Nigeria in a Nigerian court. Do I have a right of appearance in a Nigerian Court?

Scenario 3

- I am a Nigerian. I studied Law at a university in London and I want to practice law in Nigeria. What should I do to achieve this?
- What happens if I go ahead to practice law in Nigeria in my current situation?

Role Play on interviewing

IN THE LAW OFFICE OF ABAJE & CO;

In the office of the principal, the principal is seated in his office with the client seated in the chair in front of him; both looking seriously engaged in a discussion.

Principal: (*Looking distracted and appears to be listening for something, suddenly gets up and says*) ‘Please excuse, it seems the front door to the office just opened. I need to find out if a prospective client has just walked in’

Principal: (*Comes back looking very ruffled*) ‘Eh! Eh! continue what you were saying’ (*As the client continues, he abruptly gets up again and walking out of the office to the front door, repeats again*) ‘Continue what you were saying. I don’t have a receptionist so I have to mind the door (*The client is looking harassed when the principal returns*)

Principal: (*In a very off hand manner states*) “Please can you continue what you were saying? Do you think I have the whole day for you? Even from what you have said so far I suspect you are at fault! (*The client gets up from his seat looking shocked, walks out*). ”

General Drafting Exercises in Legal Matters

Scenario

ABC Limited had a contract with ROCK CONTRACTORS LIMITED where the former agreed to supply the later one thousand bags of cement. ABC Limited supplied the cement but ROCK CONTRACTORS Limited has refused to pay for the value claiming that half of the consignment was bad.

Minutes of meeting

As a Lawyer in the Chambers of Okeke & Co, a firm of Legal Practitioners, located at

No.51 Ozumba Mbadiwe Street, Victoria Island, Lagos, you have been instructed to take and produce the Minutes of the quarterly Meetings of the Firm. The meeting scheduled to assess the firm’s 1st Quarter’s Activities for the year 2010 took place on the 1st of

November 2009. The External Training Consultant, Prof. Richard Grimes of the Oxford University, London is in attendance for purposes of ensuring compliance with all the

training modules to which Lawyers in the firm had been exposed in the last two years. The Meeting was presided over by the Head of Chambers.

Using the following Guidelines of a Minutes, develop the appropriate body of the Minutes to be assessed.

1. Heading; (Minutes of ... state nature of, place, date, time)
2. Present (List of Members present);
3. In attendance (List of those in Attendance);
4. List of those Absent (if practicable);
5. Opening Remarks/Prayers
6. Adoption of Agenda
7. Adoption of the Minutes of the last meeting;
8. Matters Arising;
9. Issues discussed following the Agenda;
10. Reports
11. Resolutions
12. General issues
13. Conclusion
14. Adjournment and Closing Remark/Prayer (if any);
15. Signatories.

GUIDELINES TO CREATING CURRICULUM

VITAE

NAME:

ADDRESS: including e-mail and telephone number.

State of origin:

Schools attended:

Educational qualification:

Area of specialization:

Employment record:

Present position:

Summary of present job schedule:

Cognate experience:

Referees:

Signature and date

Uche, is a lawyer in the Law firm of Adaobi & Co. He took up the employment immediately after his NYSC and has been there for six years. Recently he has experienced job dissatisfaction and desires to explore other areas of legal practice. SPDC has advertised the position of a legal officer. Draft the guidelines that Uche would adopt to prepare his Curriculum Vitae.

DUTIES OF COUNSEL TO COURT AND STATE SCENARIO

Chinedu is a legal practitioner representing Henry Alli in the case between Henry Alli and the EFCC. It was Chinedu who approached Henry Alli after his arraignment to represent him and Henry Alli consented. Chinedu also advised Henry to stay away from court in order to avoid tendering a document in court on the next adjournment. On the 17th of June, 2009, Chinedu arrived in court at 10 am by which time the judge was sitting. Chinedu quickly puts on his wig and gown and asked for permission to announce his appearance. The judge ordered him to sit down but he retorted that his case was the first on the cause list and consequently he must be heard. The judge was very angry and asked him to enter the dock and show cause why he should not be committed for contempt.

Contempt of Court:

Scenario One

Registrar: Suit No. HC/C/0110/2008. Between Maria Ade v. George Bada

Alex Victor: May it please this Hon. Court, Alex Victor appears for the Plaintiff.

Francis Ibe: May it please my lord, Francis Ibe for the Defendant.

Justice Boniface: Yes counsel.

Alex Victor: My lord, since the Ruling of this Hon. Court ordering the defendant to remove his earth-moving equipment (Caterpillar) from the Premises pending the determination of this substantive Suit, the defendant has refused to comply with the Order of this Court. My Lord, my Client is apprehensive that the continued stay of this equipment may result in the eventual demolition being threatened. We seek that his Lordship orders the enforcement of his earlier ruling.

Justice Boniface: Is that the position, Counsel?

Francis Ibe: (stammering) ye..yes, to some extent my lord. Since the equipment and the premises are properties of my client I don't think it matters if it remains on the premises.

Justice Boniface: Are you demeaning the authority of this honourable Court, or you are trying to subject my order to your own personal interpretation?

Francis Ibe : My lord, we have filed a Motion to have our claim proved within the shortest time possible.

Justice Boniface: In spite of whatever steps the defendant intends to take, the Ruling of this Court must first be complied with and must be so done before the next adjourned date.

Scenario Two

Justice Randy: So my dear New wig, what can I do for you?

Miss Eko: (*With her right hand on her waist, looking elsewhere*). My lord, I take serious exception to being addressed as “my dear new wig”; I am two years at the Bar and besides, if you look at your records, my name is Angela Eko (Miss) and not “my dear”.

Justice Randy: Oh well, your point is noted. Can you now tell this Hon. Court what the matter is for, my d...,sorry, Miss Eko.

Miss Eko: The matter is for report of service. All the defendants in this Suit have been adequately served and we shall be asking for a date for Mention.

Justice Randy: See me in Chambers for a convenient date for this matter.

Miss Eko: I will do no such thing my lord. Dates are supposed to be given in open courts; and it is against the ethics of my religion to be caught behind close-doors with one of the opposite sex. (*She packs her books and storms out of court*)

LETTER WRITING SKILLS

Mr. Chukwu, lawyer to the Vendor (Chief Agba) has concluded negotiations for the sale of Plot 2311 Ahmadu Bello Way, Central Business District, Abuja for the sum of N10 million and requires confirmation of instructions to proceed to execution.

LEGAL PRACTITIONERS ACCOUNTS

Mr. Chukwu has received a deposit of N5m pending the completion of contract on behalf of his client Chief Agba. Mr. Chukwu also has incurred some costs relating to courier services, secretarial and legal expenses at the rates of N20,000; N10,000 and N50,000 respectively. He has also lodged the deposit in his firm's Account from which he draws for personal and chambers expenses.

Advise Mr. Chukwu as to the type of accounts to be kept as a Legal Practitioner.

Draft a Cash / Ledger Book Account.

ADVOCACY SKILLS

In a criminal trial for Murder, the following was the opening address Made by Mr. Oko Inyang, the Prosecuting Counsel. "My lord, we have brought before you a water-tight case against the accused which I am sure will convince the Court to convict and sentence him to death.

The case was well reported in all the National Dailies which we intend to rely on for the proof of the murder against the accused. All persons who heard about the crime out-rightly condemned the perpetrators of it and no doubt his lordship will agree with me that the accused person cannot go unpunished for his action. The Prosecution is ready to show that the accused is not remorseful ever since he was arrested and has often boasted of his Constitutional rights even while in Police detention. The case offends the laws of not only the Federal and State Governments but also that of the Local Government and even all other constituted authorities and right thinking members of the public.”

REMUNERATION OF LEGAL PRACTITIONERS

Mr. Chukwuma Obilewa who acted for both the Mortgagor and the Mortgagee in a property worth N150 million located at Awolowo Road, Ikoyi – Lagos has drawn his bills of professional charges at the rate of 5% to each party; asking them to settle same within 10 days failing which he intends to recover these in a law suit.

1. Discuss the rules and principles applicable to Legal Practitioner’s Remuneration;
2. Itemize processes for the recovery of the Legal Practitioner’s Charges;
3. Draw a Bill of Charges;
4. Draft a Statement of Claim for the recovery of Charges.

Mediation

Scenario 1

Mr. & Mrs. Lele Dim have been married for about 5 years and have 2 children (a boy of 4years and a girl of 2 years). About 2 years ago, after the birth of their second child, his company desirous of expanding, decided that Mr. Lele Dim should relocate from Lagos to Abuja to head the newly

opened branch office there. He was happy, but his wife gave different reasons why the whole family could not relocate at that time; he went back to Abuja alone. He returned home on weekends, however, this became a source of friction in the home.

About a month ago, the wife paid an unscheduled visit to Abuja and met a lady called Miss Cecilia Yahat in his apartment. All hell has been let loose since. She is bent on a divorce although her husband insists that it was all her fault. He said her refusal to relocate from Lagos amounted to her placing him lower than her job and family, she claimed that the baby was too young to be moved about. In any case, Mr. Dim is indifferent about the divorce option. However, after much persuasion from family members, they have agreed to accept mediation in the matter.

SCENARIO 2

Mr. Okon Samuel was allotted plot 1268 Maitama cadastral district by FCDA Abuja on 20th January, 1990. In 1995, he carried out a survey of ‘his’ property and commenced the development of a 6 storey office complex. He was on the fourth floor when Mr. Sule Onigbanjo went to court to obtain an injunction restraining him from continuing the development on his (Mr. Onigbanjo’s) land. On inspection of the cadastral survey map of Maitama, it was discovered that the plot Mr. Okon had been developing was the adjacent plot 1266. The parties have agreed to submit their dispute to mediation at the instance of the District Governor of Rotary International District 9130 under which is their Club, Rotary Club of Maitama. Both of them are Rotarians. The parties have agreed to respond to mediation by Chief Oloro.

DISCIPLINE OF LAWYERS

Quiz

1. State the laws regulating the discipline of lawyers in Nigeria
2. What rule or rules are applicable to the discipline of lawyers in Nigeria?
3. What are the conducts for which a legal practitioner may be disciplined?
4. State the organs for discipline of legal practitioners as contained in the Legal Practitioners' Act
5. What is the direction under the discipline of lawyers?
6. To whom does a complainant make his complaint?
7. What is the composition of the LPDC?
8. How many members of the committee can form a quorum for the purpose of hearing a complaint?
9. On whom are the documents laying the complaint against a legal practitioner served?
10. What is the duty of the NBA Disciplinary Committee when it receives a complaint? State the organs for discipline of legal practitioners as contained in the Legal Practitioners' Act
11. What is the direction under the discipline of lawyers?
12. To whom does a complainant make his complaint?
13. What is the composition of the LPDC?
14. How many members of the committee can form a quorum for the purpose of hearing a complaint?
15. On whom are the documents laying the complaint against a legal practitioner served?
16. What is the duty of the NBA Disciplinary Committee when it
17. Hearing of the LPDC is always in private. True or False?
18. State the directions that the LPDC can make.
19. When does such a direction become effective?

SCENARIO 1

Mr Olorioko Bale the family head of Ijogbon family sold a piece of family land sometimes in April 2007 to Mr Jeje Nuhu for the sum of =N=1.5m and issued him a purchase receipt to that effect. He later sold the same piece of land in August 2008 to Mr Chukwuma Salami for the sum of =N=3.5M and he executed a deed of assignment in his favour. Mr Chukwuma through his lawyer Mr. Kunle Taiwo registered same at the lands registry Ikeja. Mr. Kunle Taiwo has been the Ijogbon family's solicitor in respect all land transactions since 1988.

LEGISLATIVE DRAFTING

Scenario 1

Omitowoju Local government area of Osun State is known to be very rich in gold and tantalite. Since 2004 when the Federal Government shifted development emphasis in Mining to solid minerals there has been an upsurge in the mining of gold and tantalite in the area in a very indiscriminate and unregulated manner. These mining activities have started have harmful environmental impact. There is strong gully erosion as a result. The Governor of Osun State, after many deliberations with the senators from the state has agreed that there is an urgent need for a Law regulating mining and prohibiting the mining of these minerals without a government mining license. And, for penalties to be imposed on offenders who violate the proposed Act - The Act will be retroactive.

Draft:

- a) The commencement;
- b) Short Title;
- c) Long Title; and
- d) Enacting Clause

ROLE PLAY ON CLOSING FILES

Barrister: (*Briskly walks into his office with his brief case and says to his secretary*) Good Morning Miss Oche. Please can I see you in my office?

Miss Oche: Good Morning Sir. Right away Sir (*She follows him to his office*).

Barrister: I wanted to discuss an issue concerning an appointment I have slated for 12.00noon this afternoon but first I am concerned that our records room is full and I will want you to get rid of the irrelevant files right away.

Miss Oche: I wouldn't know which ones are irrelevant Sir and how do I get rid of them.

Barrister: Well the matters we concluded and have obtained judgments on the two matters I had to withdraw my services from last month because the clients were trying to take advantage of me; and of course the file we opened for that client from Taraba State who never showed up to complete his instructions even though he left his documents with us. You may burn the files. Better still give them to the Akara seller across the street to be in her good will.

Miss Oche: I will do that right away sir.

WEEK 21- Pre Bar exams assessment tests (Plan for Tutors)

Pre- bar exam assessment tests would be held as follows:
Criminal Litigation; Civil Litigation; Property Law Practice; Corporate Law Practice; and Professional Ethics and Skills

Objectives

Prepare students for the Bar examination.

Activities

1. Tutor prepares the students and the classroom/auditorium for the test. Loose sheets of paper should be used for the test and students shall

- be required to write only their registration numbers on it- **10 minutes**;
2. A test lasting not more than one hour is administered on the students – **1 hour**
 3. Tutor and assisting personnel retrieve the answers scripts- **10 minutes**

15 Minutes Break

4. Tutor and assisting personnel redistribute the answer scripts to students, ensuring that students do not receive their own answer scripts. Tutor may retain a few scripts for his own grading- **10 minutes**
5. Tutor presents marking scheme (slides or hard copies) and explains it- **10 minutes**
6. Students mark the scripts using the marking scheme. Tutor also marks the few scripts retained by him/her – **30 minutes**
7. Students/Tutor present marked scripts and discussions/feedbacks follow – **1 hour 20 minutes**
8. Assessment: questions and answers – **10 minutes.**

INDUCTION PROGRAMME

DAY 1 - SOCIAL AND ACADEMIC EXPECTATIONS OBJECTIVES

To get the students familiarized with the new curriculum.
To enable the students understand courses they will offer, the text books/materials to use for the courses; the mode of teaching and the rules and processes for bar examination, assessment and classification.

To acquaint the students with the environment, its regulations and other members of staff

Contents

- i. Courses offered in law school, introduction of lecturers and other principal members of staff Courts and law office attachments

- ii. Modes of dressing
- iii. Principles of good behaviour
- iv. School rules and regulations
- v. Examination rules/regulations and assessment, grading/classification
- vi. Attendance at lectures and signing of register

Activities

- i. Introduce the subject teachers and other principal members of staff **15 MINUTES**
- ii. Discuss the main courses and the allied subjects **30 MINUTES**
- iii. General discussion on the rules and regulations of the school (concept of “fit and proper”, modes of dressing, dinner etiquette, and attendance and signing of register).**60 MINUTES**

BREAK 15 MINUTES

- iv. General discussion on Courts and Law Office attachments **40 MINUTES**
- v. The students will be divided into groups and given a tour of the facilities on campus- **60 MINUTES**
- vi. Question and answer session and Wrap up-**20 MINUTES**

Evaluation Question and answer session will be held in which the students will seek clarifications on issues that may arise in the course of the discussion.

DAY 2- HEALTH AND SAFETY

OBJECTIVES

- i. To acquaint the students with the available health and sporting services and facilities on campus
- ii. To enable the students know how to prevent and manage health and safety issues.
- iii. To enable the students know how to manage fire disasters

- iv. To be able to pursue their academic activities stress free

Content

- i. Identifying common diseases on campus
- ii. Discussing medical and recreational facilities on campus
- iii. Discuss how to stay healthy
- iv. List common causes of fire outbreak and prevention
- v. List steps to be taken in cases of emergency/accidents
- vi. Discuss healthy usage of drugs
- vii. Discuss causes of stress and stress management
- viii. Discuss importance of laboratory
- ix. List environmental safety methods

Activities

- i. Enlightenment by medical personnel **30 MINUTES**
- ii. Discussion on healthy usage of medicine **20 MINUTES**
- iii. General discussion on the sporting facilities on campus **20 MINUTES**
- iv. Overview on fire management and prevention **30 MINUTES**

DAY 3- LIBRARY AND LEGAL RESEARCH

OBJECTIVES

- i. Explain basic terms in manual library use
- ii. Locate available materials within the library
- iii. Locate information through the library automated system
- iv. Conduct legal research

Content

- i. Explain card catalogue definition, types and uses
- ii. Classification schemes, definition and types

- iii. Definition and uses of indexes, bibliographies, abstract, references source

Activities

- i. General overview and discussion on use of library rules and regulation **40 MINUTES**
- ii. Students are divided into groups of four each spending some time in the library under the supervision of lectures and library personnel **1 HOUR 20 MINUTES**

BREAK 15 MINUTES

- iii. Questions and answer session **1 HOUR 30 MINUTES**
- iv. Wrap up **15 MINUTES**
- v. Evaluation: Questions and answers
- vi. Resources: Handouts; Library; Flip charts and pens

DAY 4- INTERNET RESEARCH

OBJECTIVES

- i. Discuss the meaning of keywords and the use of the internet.
- ii. Identify and state the uses of the internet.
- iii. Conduct research on the internet.

Contents

- i. Internet keywords such as e-mail, search engines, legal websites, etc
- ii. Use of the internet e.g. sending e-mails and research generally.
- iii. Legal research on the internet

Activities

- i. Overview of the internet for legal research and law office administration **50 MINUTES**

- ii. Division of the students into small groups to send an e-mail into a specified mailbox as well as carry out legal research from a specified search engine **60 MINUTES**

BREAK 15 MINUTES

- iii. Question and answer sessions **1 HOUR 30 MINUTES**

- iv. Wrap up **25 MINUTES**

Evaluation; Student feedback; Supervision of students

Resources: Computers; Flash drives; Power point slides

DAY 5- LEGAL PROFESSION AND CAREER

OBJECTIVES

Students should be able to know their career prospects in the legal profession.

Students should be acquainted with how they will be disciplined, challenges in the legal profession; history of Legal Profession and Continuing Legal Education in Nigeria;

E-Lawyering and Paperless Law Firm

Contents

- i. Career prospects in the legal profession
- ii. Discipline and challenges in the legal profession
- iii. History of the legal profession
- iv. Continuing legal education, contemporary emerging issues in legal education
- v. E-lawyering and paperless law firm in Nigeria

Activities

- i. General Overview /Discussions on each content by an individual or a panel of resource persons **45 MINUTES**
- ii. Interactive Sessions **40 MINUTES**

BREAK 15 MINUTES

- iii. Seminars **60 MINUTES**
- iv. Mini-workshops **1 HOUR 20 MINUTES**
- v. Students will be given scenarios to use for the Mock Trials for the following week.

Evaluation: Question and answers session

Resources: Power point slides; Flip charts

INDUCTION WEEK 2 MOCK TRIALS

OBJECTIVES

Students will be able to describe progress of civil and criminal trials from beginning to conclusion. Students will be ready for the rigours of what they will be doing throughout the year.

Contents

- i. Interviewing of client; Drafting of processes; Preparation for trial; Trial
- ii. Skills: Interviewing; Drafting; Advocacy
- iii. Values: Courtroom decorum; Comportment
- iv.

Activities:

Day 1

- 1. The students are shared into Civil and Criminal groups.
- 2. Students share the roles to be played amongst themselves
- 3. Interviewing of clients **2 HOURS**

BREAK 15 MINUTES

- 4. Further Interviewing of clients **1 HOUR 25 MINUTES**

5. Question and answer sessions with supervisor after activities **20 MINUTES**

Day 2

1. Interlocutory applications
2. Drafting of processes **1 HOUR 45 MINUTES**

BREAK 15 MINUTES

3. Further clarifications to perfect drafts and exchange **40 MINUTES**
4. Question and answer sessions with supervisor after activities **20 MINUTES**

Day3

1. Preparation for trial **2 HOURS**

BREAK 15 MINUTES

2. Further preparations for trial **1 HOUR 30 MINUTES**
3. Question and answer sessions with supervisor after activities **15 MINUTES**

Day 4

1. Trial **2 HOURS**
- 2.

BREAK 15 MINUTES

3. Continuation of Trial **1 HOUR 30 MINUTES**
4. Question and answer sessions and clarifications with supervisor after activities **15 MINUTES**

Day 5

1. Trial **2 HOURS**
- 2.

BREAK 15 MINUTES

3. Continuation of Trial **1 HOUR 30 MINUTES**
4. Question and answer sessions and clarifications with supervisor after activities **15 MINUTES**

Evaluation: Question and answer sessions with supervisor after activities **20 MINUTES**

Making Presentations on Day 5

Resources: Classes/Rooms for rehearsals; Tables and Chairs; Access to printers and photocopy machines

Evaluation: Questions and answer sessions; Video coverage of the Mock Trials.

CIVIL LITIGATION

CASE STUDY 1

On the 3rd of October, 2009 Mr. Oke Madu entered into Diamond Super Market at No. 10 Ogui Road, Enugu where he bought a bag of semovita and paid at the counter. On his way out, Mr. Okoro a Security man at the entrance gate of the super market asked him for the receipt of purchase. He searched the pocket of his trousers without finding the receipt, forgetting that it was in the breast pocket of his shirt, where he actually kept it.

While he was still searching for it, fighting started as Okoro felt that Mr. Madu had no receipt for the purchase because he was wasting his time and he shouted at Madu “You thief, you have stolen the semovita to the hearing of one Chika, another customer of the super market. Chika is a friend to Miss Ndidi who is Mr. Madu’s fiancée. On returning home, Miss Chika informed Miss Ndidi of the events that transpired at the super market. On the basis of this information, Ndidi said she would no longer marry Mr. Madu.

However, Mr. Oke Madu saw the receipt on the breast pocket of his shirt and presented it to Mr. Okoro. Nonetheless, Mr. Madu had filed a suit for defamation of

character against Mr. Orji at the High Court of Enugu State.

CASE STUDY 2

City links Transport Company limited is a thriving transport company with a fleet of buses.

Mr. Darlington Okoye (a.k.a. Osama) is one of the drivers of the company. On the 14th of February, 2009, Dr. Henry Obama, a Consultant Physician at the National Hospital, Abuja, was travelling, form Lokoja to Abuja in his brand new Mercedes Benz ML 340 jeep car with Registration Number ABJ 999 BWR, which he bought for Eight Million Naira (N8,000.000. 00) only.

On getting to Giri Junction, near Gwagwalada, in the Federal Capital Territory, Dr. Henry Obama who was then driving at a speed of 120 KM per hour noticed a motor cycle rider attempting to cross the road and applied his break to avoid hitting him. Immediately, Dr. Henry Obama was hit from behind by a bus belonging to City Links Transport Company Limited and driven by Darlington Okoye (a.k.a Osama).

Dr. Henry Obama's car was badly damaged as a result of the accident. In fact, it was a write-off. Dr. Henry Obama also sustained serious injuries and had to be rushed to the University of Abuja Teaching Hospital, Gwagwalada, Abuja, where he received treatment and was discharged after one week. The treatment, in all, cost him one Hundred Thousand Naira (100,000.00) only, for which the hospital issued him a bill and a receipt.

Dr. Henry Obama has now commenced an action for negligence at the High Court of the Federal Capital Territory; Abuja against Mr. Darlington Okoye (a.k.a Osama) and City Links Transport Company Limited claiming general

damages to the tune of Five Hundred Thousand Naira (N500, 000.00) only, and special damages of Eight Million and One Hundred Thousand Naira (N8,100,000.00) only for his damaged car and treatment.

CASE STUDY 3

Dr. Vincent Brown was a senatorial candidate of the National Nigerian Party for Asaba North Federal Constituency, Delta State in the 2007 General Elections. Chief Ben Okagbue contested the same election for the same Senatorial district on the platform of Unity Congress Party.

The Independent National Electoral Commission declared Chief Okagbue as the winner of the election having scored the highest number of votes cast in the Constituency.

Dr. Brown is not satisfied with the outcome of the election. He has therefore brought a petition before the National Assembly, Governorship and House of Assembly Elections Tribunal sitting at Asaba, Delta State, challenging Chief Okagbue's Election on the grounds of irregularity, indictment of Chief Okagbue by the Economic and Financial Crimes Commission and previous conviction of Chief Okagbue for the offence of receiving stolen property by a High Court sitting at Asaba in 1995.

SEE JAMES IBORI V. AGBI

MOTIONS

1. An injunction by the petitioner seeking to restrain the Senate President and the Clerk of the National Assembly from swearing in the 1st Respondent as a Senator of the Federal Republic of Nigeria pending the determination of the partition.
2. A motion on notice by the petitioner seeking to join Unity Congress party as 4th Respondent in the petition.

CASE STUDY 4

On 1st April, 1992, Mr. Kunle Komolafe was employed as a medical doctor in the medical department of First Atlantic Petroleum Company Nigeria Ltd, a subsidiary of Nigeria National Petroleum Corporation (NNPC). By the year 2004 he was elevated to the post of General Manager, Medical Department. Upon his appointment and as part of his total package he was given a 4 bedroom Duplex in the official quarters of his employers at first Atlantic Petroleum Staff quarters, Lekki Phase 1, Lagos as a service tenant. His housing allowance was deducted at the beginning of each year as rent for his occupation of property.

On 28th February, 2006 his appointment with First Atlantic petroleum Company Nig. Ltd. was terminated with immediate effect without any good reason or any just cause. A cheque for the sum of N750,000.00 was enclosed as payment for 3 months salary in lieu of notice.

Also in the same letter, he was asked to vacate his official quarters immediately. On that same day, some men acting as agents of the company entered into the premises of Mr. Kunle Komolafe threw out some of his properties in an attempt to forcefully eject him from the property. Fortunately for Mr. Kunle Komolafe was able to resist all attempt made to unlawfully & forcefully eject him. Presently, he still remains in occupation of the property. Mr. Kunle Komolafe has instituted an action at the Lagos State High Court, Lagos Judicial Divison asking for the following reliefs:

1. A declaration that the purported termination of his employment by virtue of the letter dated 28th February, 2006, is invalid, null and void and of no effect.
2. A declaration that he is still a staff of First Atlantic Petroleum Company Nig. Ltd. in the alternative.

3. N10 million as his salary till the age of compulsory retirement at 65 years of age.
4. An order of injunction restraining the First Atlantic Petroleum Company Nig. Ltd. And their agents from forcefully and unlawful ejecting him from his official quarters.
5. The sum 10 million of damages for unlawful trespass committed when the agents of the defendants unlawfully invaded his house.
6. The sum of N5 million special damages for the destruction of the plaintiff's properties by the agents of the defendants during their attempt to unlawfully eject him from his quarters as follows:
 - i. Damage done to his Kia Rio Car - N3.5 million naira
 - ii. Damage done to his Plasma Sony T.V Set.- N750,000.00
 - iii. Damage done to his Jewelries and wrist watches-N750, 000.00

ISSUES FOR INTERLOCUTORY APPLICATIONS

Interlocutory injunction by the claimant restraining the defendant and or their agents from forcefully and unlawfully ejecting him from his official quarter's pending the final determination of the suit.

Preliminary objection by the defendant that the Lagos State High Court has no Jurisdiction to hear the matter.

READ:

1. **BEN CHUKWUMA V SHELL B. P (1993) 5 S. C. N.J Pg 1**
2. **NWANA V. F. C.D (2004) 13 N. W. L.R (Pt. 889) 128.SC**

CRIMINAL MOOT TRIAL SCENARIOS

CASE STUDY 1

Angela Idoko is a clerical officer at the Admissions office of the Nigerian Law School, Bwari, Abuja.

Because of the volume of work during the period of admissions in September, Angela has had to work late into the night, closing sometimes as late as 10 pm. On the 17th September, 2009, Angela closed from the office at about 11 pm. The following day, when she reported in the office, the cleaner, Mrs. Amina Belloway informed Angela that she did not see the desktop computer with which Angela worked the previous night. Angela was the last person to leave the office on the 17th September, 2009.

Angela screamed and yelled at Amina accusing her of stealing the computer. The security department was alerted and a few days later, the computer was found in sharp-sharp super shop, a dealer of second hand computer systems and accessories. When Mallam Paapawa was invited to the Police Station, he said that he bought the computer from Angela Idoko at the sum of N10, 000.00 and he presented a receipt which Angela issued him. The market price of the computer is N15, 000.00.

Angela has been arrested and is to be arraigned before the Chief Magistrate's Court 1, Bwari, Federal Capital Territory, Abuja.

CASE STUDY 2

Achanya Michael and Onoja Paul are childhood friends of about the same height and weight. Both of them work at MADE IN NIGERIA HOUSEHOLD LIMTED in Gwagwalada but reside at the company's official quarters at Lugbe, each of them occupying a 2 bedroom flat.

Both of them are married, Onoja to Bimbo and Achanya to Nwakaego. They resume work at 2.00p.m and close at

11.00 pm daily and it takes them about 30 minutes to reach home from the office in the official bus after closing each day. On 15th June, 2008, Onoja was directed by the Managing Director of the company to travel to Lagos on urgent official assignment.

This was about 5.00 p.m, Onoja handed over his small bag containing his house spare key, a bottle of perfume and his jacket together with a note for his wife to Achanya for onward delivery to his wife since Achanya was to close at 6.00pm on that day because of the power cut in the company's premises.

Achanya did not go to Onoja's house until 11.30pm. A few metres away from the house, he wore Onoja's jacket and took out the spare key from Onoja's bag with which he opened the rear door leading to Onoja's bedroom. Mrs. Onoja'(Bimbo) was already asleep. At the movement of the door, she turned and on catching the sight of her "husband" in the fairly dark room, she murmured a welcome and slept back.

Achanya went to bed and had sexual intercourse with Bimbo during which Bimbo expressed her love to her "husband" for being unusually nice that night. In the morning, Bimbo woke up only to see Onoja's bag on the table with a note from him informing her of his trip as well as his jacket and the spare key. She quickly reported the matter to the police and after due investigation, Achanya was arrested. He is to be arraigned before the High court of FCT, Gwagwalada Judicial Division Abuja, for rape.

CASE STUDY 3

A Popular fast food Restaurant (Known as 'Quick-Servers) has six service points, each manned by a service attendant. The mode of operation at Quick-servers is that customers

are free to approach any of the six service attendants and place their orders. The Management of Quick-servers provides each service attendant with serially-numbered booklets from which they must issue receipt vouchers to the customers. Each receipt voucher is valued at N300.00 being the unit price per pack of the fast food.

On January 10, 2009 it was discovered that two receipt vouchers were missing from the bottom of the booklet issued to Miss Bunmi Jegede (Service Attendant No.3.). On February 18, 2009 a similar thing was discovered involving her, but this time it was three vouchers that were missing from the middle of the booklet.

On April 22, 2009 four receipt vouchers were also missing from the booklet issued to Miss Jegede. On this day, however, the Manager (Mr. Johnie Walker) directed the supervisor, Miss Onyokomita to conduct a search on Miss Jegede. Upon search, the sum of one thousand two Hundred Naira (N1,200.00) was found on Miss Jegede.

CASE STUDY 4

Mr. Dauda Babamiga lives at No. 14 Agogo Street, Enugu State. He works with the Newera Bank as an Accountant and happily married to Kate and has three children.

On 17th February, 2007 at about 9. 30pm while watching television with his family, there was a bang on the gate and a voice saying we have come, open the gate. Mr. Dauda Babamiga was afraid and refused to open the gate. The gate was later pulled down and two hefty looking men armed with dangerous weapons gained entrance to their apartment. Mr. Dauda Babamiga and his family were robbed, the robbers made away with valuable items. Mrs. Kate Babamiga narrowly missed being raped as she was in

her menstrual period but her daughter was sexually molested. The incident was reported at the police station.

Three days later, while going to the market Mrs. Kate Babamiga spotted one of the robbers at a relaxation spot known as the “Black Spot” and hurriedly reported at the police station and thereafter the robber who gave his name as Yutem Tanga was arrested and charged to Court for Armed Robbery.

- Bolanle v State [2005] 7 NWLR (Pt 925) page 431.

A. Applications:

- a) Bail/ No Case submission
- b) Full Trial

B. Judgment

ETHICAL SCENARIOS/CASE STUDIES

CRIMINAL LITIGATION

A

Utako Ogbole, a senior member of the Bar petitioned the Commissioner of Police, FCT on behalf of his client, Senator Uduak Adebayo Abubakar alleging threat to life against his political rival Isa Isaiah Okechukwu. Utako Ogbole gave the sum of \$5,000 to the Commissioner of Police (a lawyer of 20 years standing) to aid the movement of his officers.

On 20th November, 2011, Isa Isaiah was arrested by the Police and arraigned before the Magistrate's Court 5, Wuse. The Magistrate adjourned the matter to 10th December, 2011 and granted bail to the accused in the sum of N50,000.00 and 2 sureties in like sum.

When Utako was informed of the court and the action of the Magistrate, he was furious: “That wicked, unrepentant and holier than thou Magistrate, we cannot get justice there.

Hon. CP., I want the case to be taken before the Area Court, Gwagwalada, presided over by Edumoga Ocholi. He is a good boy. In fact, my client is the one who recommended him for that job”, he retorted. On 24th November, 2011, another F.I.R. was filed before the Area Court, Gwagwalada. Isa was immediately ordered to be remanded in prison custody for 12 days for attempting to pervert the course of justice before the case is mentioned.

Meanwhile, Isa’s wife approached Omole Joseph Atta, SAN to handle the husband’s defence, but much more urgently, to secure his bail. The learned SAN asked her to deposit the sum of N2M consisting of N1m consultation and filing fees and N1m for logistics. The woman paid after all attempts at reduction failed.

When the bail application was moved on the 27th November, 2011, it was refused on the ground that the offence of threat to life is as bad as culpable homicide. While still standing in front of the court entrance after the ruling, Omole SAN telephoned the Chief Judge who directed that the case be transferred to the High Court while the accused should proceed on bail unconditionally.

B

Chief Do-good is angry that Mr. God-dey a poor neighbour has refused to sell his land to him. He briefed Barrister Bob-Musa to assist in persuading Mr. God-dey to sell the land. Barrister Bob-Musa met the Divisional Police Officer of the area and Mr. God-dey was arrested and detained for one week but still refused to sell. Barrister Bob-Musa later wrote a petition to the Commissioner of Police on behalf of Chief Do-good falsely alleging that Mr. God-dey was threatening his life. Mr. God-dey was subsequently arraigned in court before a Chief Magistrate Court. Barrister Bob-Musa met the magistrate in their club house

and requested that the bail granted to Mr. God-dey should be revoked but the magistrate refused.

Barrister Fair has now undertaken to defend Mr. God-dey free of charge. Chief Do-good has given Barrister Bob-Musa N2m to pass to Barrister Fair to drop the case. Barrister Fair has reported Barrister Bob-Musa to the NBA branch for disciplinary action.

Law in Practice Scenario Based on Civil Litigation

Scenario One

Alhaji Dike Bako a landlord of Plot 175 Jankara Street, Agege, Lagos comprising a block of six two bedroom flats approached Lawyer Do It Fast to eject his tenant, Abdul Okoye. Abdul Okoye is a yearly tenant, whose tenancy commenced on 1st January 2010. He is in arrears of rent and he is always playing loud music to the annoyance of other tenants in the premises.

Lawyer Do It Fast assured Alhaji Dike Bako that he would get the tenant out of the premises within a week.

Immediately Lawyer Do It Fast was briefed, he wrote a letter to Abdul Okoye to vacate the premises immediately or pay the arrears of rent. On receiving the letter, Abdul Okoye approached Lawyer Do it Fast and paid the sum of N120,000.00 being the full yearly rental value of the property. The Lawyer paid the money into his personal account and it was never accounted for.

A month later, Alhaji Dike Bako complained to the lawyer that the tenant is still in the premises. The lawyer advised Alhaji Dike to remove the roof of the apartment Abdul is occupying. Alhaji Dike instructed his boys to remove the roof as a way of getting him out of the premises. Abdul Okoye immediately got a carpenter to replace the roof. On

hearing this development, Lawyer Do It Fast arranged with a Court bailiff to produce proof of service of necessary documents purportedly served on Abdul Okoye. A week later, a Court Bailiff in company of Police men armed with a warrant of possession arrived at the premises and forcefully ejected Abdul Okoye. Abdul Okoye is aggrieved at the action of Lawyer Do It Fast and has contacted you as his counsel for redress because he believes that he has suffered injustice.

Scenario Two

The Oloye Sheriki Family of Lagos State approached Barrister Itam Shehu with respect to the land dispute between the family and one Chief Ali Okon. Barrister Itam who had not paid his practising fees for two years proceeded to file a Writ of Summons, Statement of Claim, Witness' Statements on Oath and List of Witnesses. On the day the matter was scheduled for Pre-Trial Conference, Barrister Itam was not present in court and failed to inform the court of the reason for his absence. As a result, the matter was dismissed.

Barrister Itam brought an application for relisting of the suit. In the affidavit, he failed to state the reason for his absence. The court eventually relisted the matter. On the day scheduled for Pre-Trial Conference, before the Pre Trial Judge sat, Barrister Itam conceded to Barrister Dele Basi (the Defence Counsel) that he was not going to object to his tendering a Deed of Assignment at the hearing. During hearing, to the surprise of Barrister Dele Basi, Barrister Itam objected vehemently to the admissibility of the Deed of Assignment. When Barrister Dele Basi reminded him of his earlier concession, Barrister Itam sharply retorted that if Barrister Dele Basi had actually passed through Law School he would have known better than to produce such a worthless document in court. When

the Pre-Trial Judge tried to remind the counsel of their responsibility to maintain decorum in court, Barrister Itam accused the Judge of having descended into the arena of conflict.

At the trial and in the course of cross-examining the Claimant's witness, Barrister Dele Basi harassed him and shouted at him "Shut up! You are a liar!" Barrister Itam was incensed and objected to the line of questioning. Barrister Dele replied that since it is cross-examination, the sky is the limit. The judge adjourned the matter for continuation of hearing.

Immediately after the adjournment, Barrister Itam approached his client asking for some money to settle the judge in view of the way and manner the matter was going.

PROPERTY LAW PRACTICE

ETHICAL SCENARIO 1

Adisa Emmanuel SAN, an Ibadan based legal practitioner is a distinguished legal practitioner and a Real Property Developer. He is a major shareholder of Emmanuel Properties Ltd, a registered company involved in the development and sales of real properties in Abuja.

In 2009, Adisa Emmanuel SAN was briefed by a client Chinua Balogun Maliki to negotiate the sale of his property at Abuja with Emmanuel properties Ltd. Having been informed of the desperate financial need of his client, Adisa Emmanuel SAN, one of the directors of Emmanuel Properties Limited thought it was a good opportunity for his company to negotiate a better deal and informed the Company Manager of his clients desperate need for money and the possibility of capitalizing on his vulnerability to negotiate a better deal.

Although Estate Valuer's had valued the property for N150,000,000:00, Emmanuel Property Limited was able to negotiate a deal of N70,000.000.

After executing the document of transfer, Chief Chinua Balogun Maliki became aware that Adisa Emmanuel SAN and Emmanuel Properties Ltd are related and has approached you for advice.

Adisa Emmanuel acted as counsel to Chief Chinua Balogun Maliki during the negotiations for the sale of the house. He has written to Chief Maliki demanding for payment of fourteen million naira being 14% of the purchase price.

ETHICAL SCENARIO 2

Ojo Adamu Esq was called to the Nigerian Bar in 2005. Having been trained by his parents who are poor, he is determined to succeed in the legal profession in order to change the status of his family because of their sacrifice throughout his stay in school. In order to secure briefs within and outside Nigeria, he has put out calls for client on CNN and major bus stops in Lagos.

Chief Okpko Abiri Suleman, a Nigerian doctor based in Canada having accessed his phone contact through CNN has briefed him to create tenancies in respect of his house situate at 10 Bordillon Road, Ikoyi Lagos, to execute the tenancy documents and to render account for sums received and has for this purpose donated a power of Attorney appointing Ojo Adamu Esq his Attorney.

Ojo Adamu Esq let out the house to Mr & Mrs Adaka Momoh for N8, 000,000:00. He paid the money into his account and changed his phone number cutting any contact with Chief Okpko Abiri Suleman. Six months later, while the tenancy was still pending, Esien Akpak, a Nigerian

businessman desirous of buying the house approached Ojo Adamu Esq for that purpose. They agreed on a selling price of N50,000,000:00, after which Ojo Adamu Esq executed all the documents of transfer which were prepared by Esien Akpak's property agent, Mr. Peters, a Surveyor, but franked and signed by Ojo Adamu & Co. On receiving the purchase price, Ojo Adamu Esq paid for his long desired house at Dubai.

After several failed attempt to contact Ojo Adamu Esq, Chief Okpko Abiri Suleman returned to Nigeria to investigate the implementation of his instruction and the state of his house. On arrival he discovered tenants in his house who acknowledged that the name of their Landlord is Esien Akpak. He feels betrayed by his lawyer and feels that his lawyer is in breach of his professional duties. He has approached you for professional advice.

Advise him on whether Ojo Adamu Esq. owes him any duty that has been breached and whether he has any remedy by law and rules of professional conduct.

LAW IN PRACTICE – SCENARIO 1 ETHICS

Mr. Ojo Abubakar is a Legal Practitioner practicing under the name and style of ABUBAKAR & CO.

His client, Mrs. Ngozi Hanza, a widow, instructed him to obtain letters of Administration in respect of her late husband's estate. Officers at the Probate Registry are insisting on him paying the sum of N50,000 to facilitate the matter being completed expeditiously.

He has decided to borrow the money from "Clients account" and to refund the money as soon as the letters of Administration is obtained and paid his professional fee. After obtaining the letters of Administration, Mr. Abubakar informed his client that he will only release the documents to her if she agrees to have amorous relationship with him,

after all she has no husband, “and she needs to be taken care of”.

LAW IN PRACTICE – SCENARIO 2 ETHICS

The Law firm of Uche, Adamu & Adigun, is a reputable law firm specializing as Maritime, telecommunication & Oil and Gas. Members of the Law firm believe that they must always deliver to their clients no matter the cost. During Christmas the firm is reputed to give exotic and expensive hampers to Judges and rams plus other gifts to Judges during Muslim festivities.

Among the partners, they have an unwritten rule to give a number of Judges #5000 towers vacation. Within the legal community, the firm is recognized as successful and clients struggle to engage their services.

CORPORATE LAW PRACTICE – SCENARIO 1 ETHICAL SCENARIO IN CORPORATE LAW PRACTICE

Barrister Asuquo Ibiam, a Corporate Law Consultant was requested by the client, Magnum Finance Ltd., to increase its share capital from N10 million to N100 Million, to enable the Company register as portfolio Management Company with the securities & Exchange Commission (SEC). He received the brief and charged for both professional fees and cost.

He however, increased the share capital from N10 million to N50 million and pocketed the balance of the stamp duty and registration fees.

He forwarded the certificate of increase of share capital issued by the Corporate Affairs Commission (CAC) showing that the share capital now stands at N50 million. The Company Secretary, Miss Lizabel Briggs, a Lawyer received the documents and recommended payment of his fees and he was paid.

The Company thereafter forwarded the certificate of increase of share capital to SEC to complete the registration process as portfolio Management Company. SEC rejected the registration on ground of inadequacy of minimum share capital of N100 million.

Scenario

Corporate Law
Criminal Litigation
Law in Practice
Civil Litigation
Property Law

CORPORATE LAW PRACTICE – SCENARIO 2

A counsel was briefed to incorporate a Company. The necessary instructions were given to him together with the proposed name of the Company. Both the incorporation and professional fees were duly paid to him.

Thereupon, he conducted the availability check and reservation of name with the Corporate Affairs Commission, and the name was reserved for 60 days.

The Council failed, refused and, or neglected to incorporate the Company as requested. At the expiration of the 60 days, the name was removed by the Commission from the reservation list, and was used by another person.

When they did not hear from the Counsel, they made several unsuccessful efforts to reach the Counsel. They subsequently briefed another Counsel to conduct a search at the Commission to ascertain what happened. The Company was dismayed to note that the same name which was reserved for them, and with which they had entered into some contractual relationships had been used by another person to incorporate a company.

In another development, a company, a going concern, wanted to make some changes on the particulars of directors (CAC FORM 7), and (CAC FORM 2) for allotment and return on allotment of shares of the company. They briefed a counsel to take the necessary steps to effect the changes as required by the company.

The counsel discovered at the Commission that the names which the Company intended to remove were not even contained in the relevant forms – CAC 2 and 7. The Company was amazed that the counsel they briefed sometime in 2005, did not effect the necessary changes after his brief was duly perfected by the Company at the time.

CHAPTER I

HISTORY OF THE LEGAL PROFESSION AND REGULATIONS

A. 1876 - 1914

The Supreme Court Ordinance of 1876 provided for three classes of people to practice law in Nigeria namely:

(i) Professionally qualified legal practitioners

Those who had been admitted to the Inns of Court or admitted as solicitors in England, Scotland and Ireland were automatically enrolled by the Supreme Court of Nigeria as legal practitioners in Nigeria. Almost all of them were barristers. Bar examination was introduced in England in 1872. The Law society examination for solicitor was introduced much earlier.

(ii) Those who served Articles:

S. 73 of the Supreme Court Ordinance 1876 empowered the Chief Justice of Nigeria to admit as a Solicitor of the Supreme Court, any person who has served 5 years continuously in the office of a practising Barrister or Solicitor residing within jurisdiction of the court and who has passed such examination on the principles and practice of law before such persons as the Chief Justice may from time to time appoint.

(iii) Local Attorneys

Acting under section 74 of the Supreme Court Ordinance of 1876 which empowered the Chief Justice to admit temporarily other fit and proper persons to appear and act in the capacity of barristers, solicitors and proctors as may appear necessary, few people not professionally qualified, were admitted to practice law and were called “Local Attorneys”. The Chief Justice could require appointees to sit for an examination “to test his general education and

knowledge as well as of the principles and practice of the Law." They must be shown to be fit and proper and of good moral character, testified to by a Judge or two district Commissioners.

The enrolment was for six months and was renewable. Only a few local attorneys were appointed under that power. They included Britons, West Indians and Nigerians. In 1914, in response to the protest of professionally qualified lawyers in Nigeria no further local attorneys were appointed. The last applicant was reputed to be one J. Osho Davies whose application was refused by the then Chief Justice. Appeal by him to the full court was dismissed in April 1913 on the ground that the Chief Justice's discretion in that respect was properly exercised.

B. 1914 - 1962

Legal practice in Nigeria was restricted to professionally qualified lawyers, namely those who qualified as barristers or solicitors in Britain, as follows:

(i) Barristers

To be a barrister one had to admitted into one of the four Inns of court in England, namely Middle Temple, Inner Temple, Lincoln's Inn and Gray's Inn. Educational qualification was West African School Certificate. The Inns of court are the English equivalent of the Nigerian Council of Legal Education. Each of the Inns of court arranged lectures for its students on the subjects constituting the Bar examinations. There were two parts of the examination: Bar Part 1 and Bar final. The Council organized lectures on the various subjects but attendance was discretionary. Many students did not attend the lectures but took private tuition or subscribed to a correspondence course. Dinner was compulsory and each candidate must keep 12 dining terms of which there were four each year. A

student who had passed both parts of the Bar examinations and kept his dining terms was called to the Bar by the Benchers of his Inn and thereafter formally enrolled at the Supreme Court in England. If the barrister intended to practice in England, he must take a 3 month post-call practical courses and must serve pupilage in a lawyer's chambers for one year. Until recently he paid a fee of one hundred guineas to the head of the chambers. No fee is now required. The barrister cannot earn any fee during the first six months of pupilage.

While a law degree was not required to become a barrister, most aspirants to the Bar in England had University law degrees. Possession of a law degree with 2nd Class Honour exempts a student from Bar part I examinations. Some Nigerian students attended English Universities and obtained the law degree in addition to their Bar examinations. Recognition was given to graduate barristers in the civil service in Nigeria by giving them an enhanced salary point over those paid to non-graduate lawyers.

(ii) Solicitors

To be a solicitor one must be articled to a firm of solicitors in England for a minimum period of four (4) years. Educational qualification was West African School Certificate. During articleship, a candidate must pass the Solicitors' Part I and Solicitors' Final examinations organized by the Law Society which is the governing body for solicitors. Like barristers, a law degree was not required to be qualified as solicitors. A University Law graduate however spent two years under article instead of four and could also be exempted from solicitors' part 1 examination. A graduate Solicitor in Nigerian civil service gets the same enhanced salary as a graduate barrister. A school was established to organize teaching course for solicitors in 1922 and attendance was compulsory.

In England a solicitor is the general legal adviser to citizens. He draws up leases and conveyances, drafts wills, prepares commercial agreements and gives legal advice on all matters to clients. Where a legal dispute involves going to court he appoints a barrister to settle pleadings and conduct the case in court. He also seeks legal advice from a barrister from time to time on behalf of his clients.

Note that even during the period under discussion, any person who was called to the Nigerian Bar, practised as a barrister and solicitor.

Deficiencies of an English trained lawyer practicing in Nigeria

- (i) In England, he is trained as a barrister or a solicitor and after qualification he only practices there as such. In Nigeria, on being called to the Bar and enrolled at the Supreme Court, he practices as both barrister and solicitor.
- (ii) In England, he studied English textbooks and law reports. In particular, for constitutional law; he studied the unitary system of government while Nigeria is a Federation with a federal constitution. Also, he has no knowledge of Nigerian customary law which is an essential part of our legal system. He also has no knowledge of Nigerian land law.
- (iii) Almost all practitioners in Nigeria trained as barristers in England and most did not have a university degree and did not take the post-call practical course, nor were they attached to chambers for the mandatory period of one year. Until 1967 there was no mandatory course of lectures which an aspiring barrister must take. Dinners

were however made mandatory.

The absence of a post call practical experience for most lawyers who practiced in Nigeria did not extend beyond 1945. The Supreme Court Ordinance of 1876 was repealed by the Supreme Court Ordinance of 1943. The Supreme Court (Civil Procedure) Rules of 1945 validated by the 1943 Supreme' Court Ordinance provided in Order 16 Rule1 additional grounds for the enrolment of lawyers in Nigeria. The Chief Justice may in his discretion approve, admit and enrol to practice as a barrister and solicitor in Court, any person who inter alia: "Has read in the chambers of a practicing barrister or advocate of more than five years standing for at least one year, or has practiced in the courts of the country in which he has been called or admitted for at least two years subsequent to his call or admission; or has subsequent to his call to the bar or admission as an advocate, read in Nigeria in the chambers of a practicing barrister of more than ten years standing for at least two years; or has practiced as a barrister or solicitor in the courts of a British Colony or Protectorate for at least two years."

These were the conditions for the admission to practice law in Nigeria from 1945 until 1962 when the current new regulations were introduced.

The above anomalies were corrected by the government of the Federation of Nigeria in April 1959 when it appointed a Committee consisting of the regional Attorneys General, the Solicitor-General of the Federation, the Legal Secretary of the Southern Cameroons and six distinguished legal practitioners under the chairmanship of the Attorney-General of the Federation, E.I.G. Unsworth. The committee was mandated "to consider and make recommendations for

the future of legal education and admission to practice Law, the right of audience before the court and the making' of reciprocal arrangement in this connection with other countries". From the Committee's report published in October 1959, the following recommendations emerged:

- (i) Nigeria should establish its own system of legal education
 - (ii) A faculty of law should be established, first at the University College, Ibadan, and subsequently, at any other University to be established in future;
 - (iii) A law school, to be known as the Nigerian Law School be established in Lagos to provide vocational course for aspirants to the Bar.
 - (iv) The qualification for admission to legal practice in Nigeria should be a degree in law of any university whose course for the degree is recognized by the Council of Legal Education, and the vocational course prescribed by the Council (at the school established by it).
 - (v) Any person graduating in law from a university which had not accepted the syllabus recommended by the Council of Legal Education should be required to take further examination as the Council may prescribe.
 - (vi) A Council of Legal Education should be established.
- A majority of the Unsworth Committee's recommendations were accepted and implemented by the government vide the Legal Education Act 1962 and the Legal Practitioners Act 1962. The Law School was set up late 1962 and ran its first three month course for eight students at a building acquired by the council at 213, Igbosere Road, Lagos from January - April 1963. The graduates who had already been called to the Bar in England were allowed to take a three-month course. Law graduates who had not been

called to the Bar had to do one-year course, the first of which started in October 1963.

B. POST 1962

Three categories of people could practice as Legal practitioners in Nigeria under the Legal Practitioners Act of 1962, now Cap 207 LFN 1990 and Cap. L11 Vol. 8 LFN, 2004. The Act defines a “Legal Practitioner” in section 24 as “a person entitled in accordance with the Legal Practitioners Act to practice as a barrister and solicitor either generally or for the purpose of any particular office or proceedings”. The three categories are therefore provided for in the definition, namely;

- (i) Those entitled to practice generally;
- (ii) Those entitled to practice for the purpose of any particular office, and
- (iii) Those entitled to practice for the purpose of any particular proceedings.

(i) Those entitled to practice generally

A person shall be entitled to practice generally if, and only if, his name is on the roll of Legal Practitioners kept by the Chief Registrar of the Supreme Court of Nigeria. Section 2(1) Legal Practitioners Act. The Act further provides that a person shall be entitled to have his name on the roll if, and only if

- (a) He has been called to the Bar by the Benchers
- (b) He produces a certificate of call to the Bar to the Registrar -Section 7(1) Legal Practitioners Act.

Section 4(1) Legal Practitioners Act as amended by the Legal Practitioners (Amendment) Decree No.9 of 1992 states the conditions for call to the Nigerian Bar. A person shall be entitled to be called to the Bar if (a) he is a citizen of Nigeria (b) he produces a qualifying certificate to the Benchers (c) he satisfies the Benchers that he is of good

character. However, please note that non-citizens may now also be called to the Bar if they satisfy conditions (b) and (c) above. See Decree No. 9 of 1992. In other words, from the present position of the Law, non-Nigerians may be called to the Nigerian Bar.

Production of Qualifying Certificate

The issuance of a qualifying Certificate, stating that a person is qualified to be called to the Bar is the responsibility of the Council of Legal Education. Two conditions are prescribed by section 5 of the Legal Education Act for the Certificate.

- (i) Nigerian Citizenship
- (ii) Successful completion successfully of a course of practical training in the Nigerian Law School which (including the time spent in taking the examination at the end but excluding any interval between the conclusion of the examination and the announcement of the results thereof) lasted for a period fixed by Council as an academic year.

Note must be taken that by virtue of the provisions of the Legal Education (Consolidation etc.) Amendment Decree No. 8 of 1992, a non-citizen of Nigeria may now be entitled to have a qualifying certificate issued to him by the Council stating that he is qualified to be called to Bar if, except when the Council otherwise directs, he had successfully completed a course of practical training in the Nigerian Law School.

Attendance at the school is mandatory. If what the Council considers a minimum attendance is not satisfied; the student may be asked to withdraw from the course or not allowed to sit for examination. Attendance at other

programmes arranged by the school is also mandatory e.g. law office attachment and Court attachment.

Exemption from Course

The Council can waive the requirement for the attendance of the course at the Law School before issuing qualifying certificate - Sections 2(a) & 2(b) Legal Education (consolidation) Act 1976. This power is very exceptionally exercised under the Professional Bodies Special Provisions Act 1972 and the Professional Bodies (Legal Profession) Exemption Order 1973.

Criteria for Exemption from Attendance at the Law School

The Council in the exercise of its power has set out the criteria for exemption: - (Legal Notice 439 dated 5th day of July, 1989). A person may be exempted from going through the course at the Law School if:-

- a. he is a Nigerian citizen; and
- b. he qualified to be admitted to the Law School
- c. His qualifying subjects for admission to the Law School include all the core subjects prescribed by the Council of Legal Education; and
- d. At the time he qualified to attend the Law School or a reasonable time thereafter he lost the opportunity of doing so for reasons beyond his control.

Criteria for Partial Exemption for Nigerian Universities Law Teachers

- (a) Graduates from Common Law jurisdictions who have been teaching Law for five years and above in a faculty of law in a Nigerian University may be exempted from Bar Part I course; and

(b) Graduates from Common Law jurisdictions who have taught Law in a Faculty of Law in a Nigeria University for ten (10) years and above may be exempted from the Part I course (See Legal notice 446 dated 3rd August 1989). After such exemption they will be eligible for admission to the Part II Course.

**(ii) Those entitled to practice by virtue of office – S. 2(3)
Legal Practitioners Act**

A person for the time being exercising the function of any or the following offices, that is: (a) the office of the Attorney General, Solicitor-General or Director of Public Prosecution of the Federation or of a state; (b) such office in the public service of the Federation, or of a state as the Attorney General of the Federation or of a State, as the case may be, may by order specify, shall be entitled to practice as a barrister and solicitor for the purpose of that office.

Pursuant to this provision, the following offices have been so designated by Legal Practitioners Act

**ENTITLEMENT TO PRACTISE AS BARRISTERS
AND SOLICITORS (FEDERAL OFFICERS) ORDER
SCHEDULE**

1. Directors
2. Deputy Directors
3. Assistant Directors
4. Chief Legal Officers
5. Assistant Chief of Legal Officers
6. Principal Legal Officers
7. Senior Legal Officers
8. Legal Officers
9. Pupil Legal Officers.

Also see; Entitlement to practice as Barristers and Solicitors (National Assembly Office) (Legal Practitioners) Order 1995; Entitlement to practice as Barristers and

Solicitors (Federal Housing Authority) (legal Practitioners) Order 1995; Entitlement to practice as Barristers and Solicitors (Federal Road Safety Commission) (Legal Officers) Order 1997.

(iii) Those entitled to practice in particular proceedings (By warrant) - S. 2(2) Legal Practitioners Act

“If an application under this subsection is made to the Chief Justice by or on behalf of any person appearing to him to be entitled to practice as an advocate in any country where the legal system is similar to that of Nigeria and (he) is of the opinion that it is expedient to permit that person to practice as a barrister for the purpose of proceedings described in the application, he may by warrant under his hand authorize that person on payment to the Registrar of such fee not exceeding fifty naira .., to practice as a barrister for the purposes of those proceedings .. “

Note: *Awolowo v. Usman Sarki, Minister of Internal Affairs and the Attorney-General of the Federation* (1962) LLR 177; (1966) N.S.C.C. 209.

CHAPTER II

KEEPING TERMS AND DINNER ETIQUETTE

Students are expected to keep 3 dining terms, culminating in their Call to the Nigerian Bar. During these dinners, students are expected to observe formal decorum, good table manners and the protocol demands of the occasion. Dinners are compulsory and integral part of socialization training for the Bar. The rules are strict and their breach by an aspirant to the Bar attracts sanction.

The essence of Law dinners is to afford students the opportunity of meeting eminent and distinguished members of the profession from the Bar and Bench and to learn from them first hand, those intangible sterling attributes of the profession; its traditions and its demands: i.e. courage, respect, resilience, thoroughness, and comradeship that cannot be learnt from the pages of text books, law reports or lectures. Every student is expected to seize the opportunity afforded by this forum to broaden his horizon and to learn and imbibe those fine attributes of decency and honesty expected of them as gentlemen to enable them to go into the world to erase or disprove that old uncharitable opinion held by some members of the Society as exemplified in the words of Jonathan Swift (1667 - 1745) when he wrote that lawyers were: “*... A society of men bred up from their youth in the art of providing by words multiplied for the purpose that white is black and black is white according as they are paid*”.

They are expected here to learn and keep those traditions of the profession which have evolved over the years and continued for centuries; they have made the profession of law, the learned, honourable and noble profession that it is and its members champions of the enthronement of the Rule of Law and defenders of our civil liberties.

DRESSING:

All students dining are expected to be in dark clothing. For male students; dark suits with white breast pocket square, white shirts, black ties (not bow tie), black socks and black shoes, pin Stripe (barristers') trousers may be worn under dark jackets. Female students' regulation dress is dark skirt and dark jacket or dark ladies dress.

The dark jacket or dress must be in long or three quarters sleeves. Black shoes are to be worn. For those wearing dark suits, white blouses should be worn under the suits. However, for the final dinner at call to Bar, a camisole is to be worn over the collaret. There should be no trimmings of any type and only moderate jewellery (earrings, rings and watches) are allowed.

There should be no miniskirts or uneven hemlines on the skirt or dress. There should be no covering of the head. Students are to adhere strictly to the prescribed dress code. A student who Fails to keep these regulations will be disallowed from keeping the dining term and that will result in non eligibility of the student for Call to Bar notwithstanding that such student passed the qualifying examinations.

TABLE MANNERS AND DECORUM:

All students are expected to be seated quietly in the Dining Hall by 4.30 p.m. latest. Ideally, practicing barristers should sit in amongst students for the purpose of interaction and guidance in social and dinning etiquette. Dinner is for one hour commencing at 5 p.m. prompt when the dining Benchers and Barristers process into the dining hall. Dinner is usually a three course meal. The tables are laid by stewards. For each student; there is his fork on the left of his plate, the spoon laterally placed in front of his plate, the knife on the right and his side plate on right side of the

plate a little to the top of the plate. One water drinking glass and a wine glass are provided. One bread roll with butter is placed on the student's side plate. Students are expected first; to place the napkins provided on their laps to preserve their dresses while eating. Before commencement of dinner, the presiding Bencher says the grace before meal while everybody stands, dinner commences thereafter.

The soup is first served and students are expected to use their hands to break the bread rolls i.e. break a piece that will conveniently go into the mouth; use the knife to butter the bread and drink the soup gently with the spoon provided. Thereafter, commence eating the main meal using a fork and knife. Students are not expected to make any noise at dinner. Students should not stretch their hands across other diners to reach for things such as the butter, water, pepper, salt etc. Rather, he is to whisper to the colleague nearest to such items to pass them on him. When a student finishes eating, he indicates that by putting his cutlery together and placing them together at the side on his plate. Meanwhile, wine will be served in the wine glasses provided. served in the wine glasses provided. The desert will be served last and it is expected to be taken by students using tea spoons, forks or the appropriate cutlery provided.

During dinner, students are allowed to speak to each other in very low tones only and must observe proper table manners. Students are forbidden from moving about the hall unless in exceptional cases when the presiding Bencher allows on a representation made to him by the Director General or the Secretary to the Council. Photograph taking is also strictly forbidden during dinner. Students should conduct themselves with decorum throughout dinner. All mobile phones must be switched off.

In the course of the dinner, distinguished members of the body of Benchers are usually introduced to students to enable them know the distinguished members of the Bar

and the Bench dining with them; and one of the members usually proposes the loyal toast to the Federal Republic of Nigeria while another gives an after dinner speech to students on diverse topics from his experience in the practice of the profession and what is expected of them as aspirants to Bar. At the end of dinner, the Chairman says the closing prayers, the Benchers bow to the Barristers who bow back and the Benchers and Barristers file out in procession while students remain silent and standing.

CHAPTER III

INTERVIEWING AND COUNSELLING SKILLS AND ETHICS

Interviewing and counselling

Meaning and purpose of client interview and counselling.

- The art of extracting facts or information by means of questioning
- The art of proffering advice for solving a particular problem.
- The essence of the first is to extract necessary information
- The essence of the second is to solve a particular problem.
Skills and Ethics during client interview and counselling
- Good verbal communication skill is required
- The components are vocal, verbal and visual
- Client interview should be done in a law office. Rule 22 RPC
- Client should be assured of confidentiality with respect to the facts extracted. Lawyer owes client a duty to keep in confidence the facts extracted except under the exceptions. Rule 19 RPC
- Lawyer should avoid all manner of distractions during client interview.
- Lawyer should be patient and attentive.
- Legal advice should be given based on the legal analysis of the problem.
- Lawyer should not make a decision for the client, but assist the client in making informed decisions.
- Lawyer should respond appropriately to any ethical and moral issues that may arise during client interview: Rules 15 (1) (2) (a) RPC.

- Client interview should be concluded effectively with a feeling of reasonable confidence and understanding.
- Notes should be taken during client interview if there is no recording device.

Stages of client interview

- Preparation for the interview
- Starting the interview
- Let the client tell the story
- Information gathering
- Analysis
- Closing the interview

Stages of client interview and counselling as propounded by some authors Chay and Smith Propounded 7 (seven) stages which are

- Preparation for the interview.
- Commencement of the interview
- Appreciation of the client's problem from the facts.
- Identification and evaluation of the legal remedies available to the client.
- Closing the interview.
- Reflecting on the conduct of the interview.

Avrom Sherr propounded 3 (three) broad stages consisting of 13 (thirteen) points. The three broad stages are:

- Listening
- Questioning and
- Advising

Mike Wolfe propounded 5 (five) stages which are

- Listening to the client
- Analysis of the facts
- Investigation of facts
- Taking decisions on the course of action
- Implementation of the decision taken

Brayrie and Grurie propounded 11 (eleven) stages which are

- Preparation for the interview
- Connecting or introductory matters
- Establishing legal framework relating to the solicitor is charges
- Listening to the client's story
- Identification of legal issues from the facts
- Questioning the client on the facts that have been narrated
- Analysis of the facts
- Summary of the facts
- Handing over to the client to take decisions
- Closing the interview
- House keeping

General criteria for an effective client interviewing and counselling

1. Establishing an effective professional relationship:
The lawyer should establish at the beginning of an effective professional relationship and working atmosphere. At an appropriate point, the lawyer should orient the client to the special nature of the relationship (confidentiality, fees, mutual obligations and rights, duration, and plan of interview, methods of contract, etc.) in a courteous, sensitive and professional manner;
2. Obtaining information: The lawyer should elicit relevant information about the problem from the client. "Relevant information" may include matters that affect the client considerably but are not "legally" relevant. They should develop a reasonably complete and reliable description of the problem and reflect this understanding to the client;
3. Learning the client's goals, expectations and needs:
The lawyer should learn the client's goals and initial

- expectations and, after, input from the client, modify or restate them as necessary, giving attention in doing so to the emotional aspects of the problems;
4. Problem and analysis: The lawyer should analyze the client's problem with creativity and from both legal and non-legal perspectives and should convey a clear and useful formulation of the problem to the client;
 5. Legal analysis and giving advice: Legal analysis and the consequent legal advice given should be both accurate and appropriate to the situation and its context. If appropriate, the lawyer should give pertinent and relevant non-legal advice.
 6. Developing reasoned courses of action (options): The lawyer, consistently with the analysis of the client's problem(s), should develop a set of potentially effective and feasible options, both legal and non-legal;
 7. Assisting the client make an informed choice: The lawyer should develop an appropriate balance in dealing with the legal and emotional needs of the client. He or she should assist the client in his or her understanding of problems and solutions and in making an informed choice, taking potential legal, economic, social, and psychological consequences into account;
 8. Ethical and moral issues: The lawyer should recognize, clarify and respond to any moral or ethical issues which may arise, without being prejudicial in judgments;
 9. Effectively concluding the interview: The lawyer should conclude the interview skillfully and leave the client with a feeling of reasonable confidence and understanding; appropriate reassurance; and a clear sense of specific expectations and mutual obligations to follow.

CHAPTER IV

FUNDAMENTAL RULES OF GOOD DRAFTING

INTRODUCTION

Drafting, and this includes legislative drafting, is a means of communication in a permanent form. Certain features distinguish drafting from oral communication:

- i. Things said can be amplified, explained or corrected by questions and answers.
- ii. The listener may get the meaning by some extrinsic phenomenon unrelated to the actual words, for examples: the demeanour of the speaker, his gesticulations and mannerism during the speech.

These extrinsic aids are totally absent when you are trying to give meaning to a written text. Accordingly, the drafter has to use words with precise meaning that may not yield to ambiguities or confusion.

- a. Every draft should cover the instruction received from a client. To achieve this, the draft should be accurate, complete, precise, clear, current as well as short simple and comprehensible to the client. This is vital as courts generally ascertain intention only from the document before them.
- b. General Design: conceive the general design of the legal document; for example, note whether the document would need to be divided into parts, chapters or clauses.
- c. The Order: the document should bear such an order that will make it most readily understood. The idea should be arranged in some order, e.g. in order of sequence.

- d. Accurate and precise: All superfluous phrases should be avoided. Legal language should not be both precise and accurate.

THE TECHNIQUE OF DRAFTING

- a. The Arrangement and Order: Quite apart from the order of ideas in a document, each sentence should bear such an order and relation with other sentences in the document that will most readily and clearly bring out the meaning of the sentence and the document.
- b. Avoid long and complicated sentences.
- c. Sentence must be syntactically correct
- d. Use present tense in drafting legislation.
- e. Draft in the singular.
- f. Use active voice and avoid passive expressions.
- g. Use positive expressions
- h. Do not have too many ideas in one legal sentence.
- i. In drafting legal documents, the lawyer should advert his mind to the judicial interpretation of words and phrases commonly used in drafting.
- j. Draft in paragraphs and divide large Acts into Parts.
- k. Paragraphs: Documents should be drafted in paragraph:
 - (i) The structure of the instrument is made more apparent
 - (ii) It helps the drafter to be in control of the draft
 - (iii) It makes drafting easier
 - (iv) It makes for easier understanding and assimilation of the instrument
 - (v) It helps to avoid needless repetition
 - (vi) It helps to remove syntactic ambiguity.
- l. Sentence: use short sentences wherever possible, but this must be to help clarity.

- m. Use the active voice instead of the passive. This makes the meaning of each statement clearer. For instance, instead of “A loan of ₦5000.00 was granted to him by us”, say: “We granted him a loan of ₦5000.00.”
- n. Checking the Draft: When checking the draft, note that:
 - I. All names, places, figures, and other technical words agree with the instruction received.
 - II. Organize materials for your draft logically, and chronologically.
 - Avoid verbosity, choose exact words;
 - Avoid archaic expressions and legalese;
 - Avoid foreign and unfamiliar words;
 - Avoid as much as possible non-English expressions;
 - Avoid emotive expressions;
 - Use words and expressions consistently;
 - Be gender sensitive in your draft;
 - III. Before draft is sent to the client for perusal, invite another person (a lawyer) who has not been involved in the drafting process to go over the draft. He would be quicker at spotting faults and other drafting errors.

FORMS AND PRECEDENTS

- 1. These are model documents that serve as guides in legal drafting. Note the advantages of the use of precedents. However they should be cautiously used and should not be followed slavishly. Some adaptations and modifications are relevant to make them fit in Nigerian context and to the case at hand. (See *Olofintuyi v. Barclays Bank DCO Ltd (1965) NMLR 142*

DRAFTING HABITS TO BE AVOIDED

1. Words or phrases that are unusual.
2. Intricate expressions: these make sentences unnecessarily difficult to understand. For example, instead of “It shall be lawful for a tenant” it is clearer to say “the tenant shall.....”
3. Verbosity: for example, “grant, bargain, sell, alienate and confirm” these expressions simply mean “grant”.
4. Archaic Words and Expressions: Examples of some very common ones are:
 - a. “Said” e.g. “the said vendor”. Simply say “the vendor” or “the lender”
 - b. Clichés: e.g. “Whereas.” It is unnecessary to repeat the word “whereas” to introduce every paragraph of a recital in a document.
 - c. Legalese: “Hereafter”, “Herein”, “hereinafter”, “therein”, “Whereof” etc. These should only be used where they are absolutely necessary.
5. Excessive use of the word “such”: it is used adjectivally to refer to a noun already used. Unless absolutely necessary, do not use “such” when “the” or “a” or “that” could be more elegantly used. See *Mountfield v. Ward (1897) 1 Q. B. 326*.
6. Avoid misuse of the word “same” or “the same” as a substitute for the pronoun “it” e.g. “the application must be in writing and the applicant sign it”
7. Use of pronouns: it may be necessary to avoid the use of pronouns if the use will cause ambiguity, in which case it is better to repeat the noun.
8. Change of nomenclature: Do not start with Landlord and end with Lessor. Be consistent throughout in the use of descriptive words.
9. Improper use of the words: “must”, “will”, “may” and “shall”, See: *Ogwuche v. MBA (1994) 4 NWLR*

(pt. 336) 75; *Atayi Farms Ltd v. NACB Ltd* (2003) 4 NWLR (pt 810) 427; *Kamba v. Bawa* (2005) 4 NWLR (Pt 914) 43; *Kalamu v Gurin* (2003) 16 NWLR (Pt 847) 493.

10. Improper use of the words “ And” and “Or”:
 - I. “And” used ordinarily is conjunctive. See *Ezekwesili v. Onwuagbu* (1998) 3 NWLR (Pt 541) 217. It may, in certain circumstances, have a disjunctive meaning see *Associated Artists Ltd. v. IRC* (1992) LLR 91 Kb 311.
 - II. “Or” used ordinarily is disjunctive. See *Abia State University v Anyaibe* (1996) NWLR (Pt. 439) 646 but, it may, in certain circumstances, have a conjunctive meaning and, therefore, construed as if it were “and” See *R v Eze* 19 NLR 110 and *Tarka v. DPP* (1961) NNLR, 63.
To confine “and” to conjunctive use, employ the drafting device both / and, e.g. both Olu and Ayo have been invited.
To confine “or” to disjunctive use, employ the drafting device either /or e.g. Either Olu or Ayo is expected.
 - III. And / Or may, in certain situations, be used together to effect saving of words but must be avoided if it creates ambiguity, e.g. dogs and / or horses, See *John G. Stein And Co. Ltd v. Ohanlon.* (1965) AC 890 at 904.
11. Avoid demeaning or patronizing or sexist language

SOME AIDS TO CLEARNESS AND ACCURACY

- a. Punctuation: proper punctuation may remove ambiguity.

Section 3 of the interpretation Act 1964, Cap I 23
LFN 2004

Houston v. Burns (1981) A.C. 337; Shell BP v. F.B.I.R. (196) 1 FNLR 197.

- b. Use of Definitions: The use of a descriptive word or phrase saves repetition.
- c. Use of Interpretation Clause: this is useful where many words or phrases are to be defined in a document. Note the difference in, using the words “means” and “includes”, Interpretation Act 1964, Sections 14 and 18). E.g.
 - I. “month” means calendar month
 - II. “Person” includes a corporation.
- d. Brackets: Advantageous, provided they are accurately used.
- e. Schedule: These make the documents easier to read. Details are banished to the schedule so that the reader is not distracted from the points of the document. See *A.G. v. Lamplough (1878) 3 EX D214*. Note their referential quality.
- f. Repetition of preposition: It is, sometimes, advisable to repeat prepositions to avoid ambiguities, e.g. “To the children of Henry and Mary”. This example can yield to various meanings. It may mean:
 - I. To the children of Henry and children of Mary (children by some other spouses inclusive in this case)
 - II. To Mary and children of Henry
 - III. To the children of the marriage between Henry and Mary.If the real intention is (I), then the text should be re-written to read “To the children of Henry and the children of Mary”.
- g. Enumerating particulars and the exclusion of the “Eiusdem generis rule”: Note the statement of the

- rule. The rule may be excluded by the words “whether of the same genus or not.” Or “notwithstanding” (*Cotman v. Brougham* (1981) AC 514),
- h. Sub-headings: These are used both in statutes and legal documents to assist understanding. They are normally not considered in interpretation and therefore not indicative of the meaning of a paragraph.

SOME USEFUL WORDS AND PHRASES

- (1) “Subject to” “Subject as aforesaid”: This means subject to the foregoing provisions, as far as they operate. It introduces a condition, a proviso, a limitation, a restriction. See *Tukur v. Govt. of Gongola State* (1989) 4NWLR (Pt. 117); *Ebhota v. P.I. & P.D. Co Ltd* (2005) 15 NWLR (Pt. 948) 266
- (2) “Supplemental”: Where a deed is described as supplemental to another, it means that the later deed adds to or amends the earlier one, s S.83 PCL and they are to be read together.
- (3) “Any”: The word is not restrictive or limited in application but includes all things to which it relates, or of the things mentioned. See *Texaco Panama v. Shell Petroleum Development Corporation* (2002) FWLR (Pt 96) 979. For example, instead of- “To A or B or C or to any two A, B or C” one can say simply: “To any of A, B or C”
- (4) “Give”: the word means “...to bestow gratuitously, handover as a present, confer ownership of with or without actual delivery, and cannot properly be interpreted to mean ‘made available’ or ‘show’”—*Ima v Okogbe* (1993) 9 NWLR (Pt. 316) 159 at 173 per Adio JSC

EXPRESSIONS RELATING TO TIME

See sections 15 and 18 Interpretation Act, Cap I 23. LFN 2004, There may be problems with the computation of time i.e. whether to reckon inclusively of named dates or exclusively where certain expressions are used.

“On”: in computing time, the word is reckoned as inclusive of the named date. For instance, a year, commencing on 1st May, would normally end at midnight on the 30th April next.

“From”: The general rule is to exclude the named date. In illustration, “From 2nd June” excludes 2nd June and computation commences on 3rd June. *Stewart v. Chapman* (1951) 1.K.B. 796 and *Cartwright v. Maccormack*, (1963) W. L.R. 18).

“After”: when an event is to take place after a named date, the date of the event is excluded when computing time. See *Brown v. Black* (1912) 1 K. B. 316.

“Till” and “until”: These words are likely to cause ambiguity, as they give little indication as to whether a named date must be reckoned inclusively or exclusively. To avoid ambiguity it is better to use; “till and including” or “till but excluding”

“To”: e.g. “From 1st January to 14th February” excludes 1st January, but does it include or exclude 14th February? It is better to add a phrase such as “both dates inclusive” where reckoning is to be inclusive.

“By”: If an act is required to be done by a specified date, performance on or before that date is sufficient. That is the date mentioned is inclusive when computing time.

“At the expiration of”: This may mean not later than the expiration of. But it has been held to mean “at or after the expiration of.” Therefore, if “within reasonable time after” is intended, it is better to say so. See *In the Goods of Ruddy* (1972) L.R.2 P and D 330.

“Day”: This word is usually interpreted to mean a period of 24 hours, commencing at a midnight and ending on the following midnight. *Belfied v. Belfied* (1945) L.R. 231 *Cartwright v. Maccormack*, (1963) W.L.R. 18)

“Clear day”: This means a period of 24 hours, commencing at midnight and excluding fractions of a day i.e. clear time.

“Month”: Under S. 86 PCL, the word “month” in any deed, will, contract, order and other instrument means calendar month (see section 18 of the Interpretation Act 1964). See *Dodds v Walker* (1981) W.L.R. 1027; *Akeredolu v. Akinremi* (1985) 2 NWLR (Pt 10) 787.

“Year”: This means a period of 12 calendar months, calculated from January 1st or some other named day consisting of 365/366 days.

“Forthwith” “Immediately”: It has been held that these words have their ordinary meaning of promptly and without any delay, hence they should not be used where the draftsman means: “within a reasonable time” or “as quickly as possible”.

“Within a reasonable time”: This phrase should be avoided for the obvious reasons that no two people are likely to agree on what is a reasonable time. It is preferable, if possible to specify a period of time.

“As soon as possible”: These words have been given their ordinary meaning by the courts and are, therefore, capable of more exact meaning than the above.

Note the effect of punctuation in legislation; see section 3 Interpretation Act.

- Full stop = termination of legislative sentence.
- Commas= used to indicate a pulse in communication
- Colon: = introduces enumeration that follows
- Semi colon=separates or coordinates 2 (two) independent clauses that relate to each other in a sentence. It is used to Co-ordinate a series of paragraphs, or listed items
- Colon and Dash = used as an introducer of a graph
- Parenthesis = brackets used to enclose, used to explain or illuminate the foregoing statement.
- The apostrophe = used to indicate possession.
- The hyphen = indicates compound words.

Use capital letters for:

- The beginning of a sentence;
- The first two words in the long title AN ACT to....;
- The first word of the enacting formula;
- The 1st letter of an Act, Bill, Form, Part, Schedule;
- 1st letter of first word in marginal notes;
- For each of the principal word in the short title;
- All the letters in headings of Parts or Chapters;
- First letter in titles, offices, institutions.

CHAPTER V

LEGISLATIVE DRAFTING

VARIOUS STAGES OF DRAFTING LEGISLATION

There are five (5) stages of drafting and they are:

- i. Receiving and Understanding
- ii. Analysis of the instruction
- iii. Designing the Draft
- iv. Composition
- v. Scrutiny or revision

i. UNDERSTANDING THE INSTRUCTION

It is essential that the drafter understands fully, the instruction received in respect of the law he is going to draft. He can consult with the instructing office at an early stage after receipt of the preliminary drafting instructions. It is helpful if the following are borne in mind and are contained in the drafting instruction:

- a. Sufficient background information of the reason for the legislation.
- b. The principal objects of the legislation must be clearly stated.
- c. The means whereby the principal objects are to be achieved should be stated.
- d. All known implications, difficulties whether legal, social or administrative associated or contemplated by the proposals should be stated.

ii. ANALYSIS OF THE INSTRUCTION

Legislative proposals should be carefully analysed in relation to the following:

- a. Existing Law - The Law should not by implication amend or repeal an existing law and should not be a re-enactment of an existing law.

- b. Special Responsibility Area: It should be legal and in consonance with public policy, Constitutional, it should be within the legislative competence of the enacting body. It should not derogate from the fundamental human rights of citizens, and not in conflict with Chapters II and IV of the Constitution of the Federal Republic of Nigeria, 1999. It should not be retroactive; but should take cognizance of the federalism of Nigeria. The electoral promises of party in Government must be borne in mind, etc
- c. Practicality- this goes to enforcement legislation.

iii. DESIGN

This is the outline or framework prepared by the drafter to assist him in visualizing the shape or broad content of the enactment. He then prepares the following:

- a. A precise outline of the objectives and principles to be contained in the legislation.
- b. A statement of the principal means of attaining the objectives and principles.
- c. Design the structure of the draft statute, e.g. the substantive provisions and the administrative provisions of the bill.

This is seen in the arrangement of sections of an Act.

iv. COMPOSITION

The drafter will, invariably, rely on some aids to compose. These aids include precedents, statutes on similar subjects or related subjects, both local and from other jurisdiction. Use of precedents saves time and using precedents from the same jurisdiction may contribute in no small way to consistency of approach, which in turn, will contribute to statute law, becoming a coherent body rather than a patch work.

v. SCRUTINY

This is the last stage of drafting: One expects the draftsman to have checked and rechecked the drafts in previous stages, and must have had series of conferences and meetings, both formal and informal with those sponsoring the statute. At this stage however, one should ask an independent eye, preferably a legal practitioner, to have another critical look at the draft, for someone who has been involved as the drafter may not spot drafting and other clerical errors.

FORMALITIES AND ARRANGEMENTS

i. Arrangement in parts

Parts are desirable in legislation. They are the arrangement of clauses into groups of related ideas. Particularly needed in large or complicated legislation such as; the Constitution, CAMA, Criminal Code, Evidence Act etc. Legislation is divided into parts as a book is broken into chapters to improve its readability. Parts of a legislation are numbered in Arabic Numerals e.g. Part 1, Part 2, Part 3 etc. The criteria to be used to determine if any legislation should be divided into parts or not are:

- a. Length of the legislation
- b. Sub-themes.

The basic divisions or order of arrangement we find in legislation are: preliminary provisions, principal provisions, miscellaneous provisions and final provisions. A printed descriptive heading usually in bold capitals is placed beneath or adjacent to the number of each part.

Advantages of dividing any legislation into parts are

- a. clarity of presentation
- b. ease of reference

ii. Legislation are divided into the following segments:

Preliminary provisions: (is made up of the; long title, preamble, Enacting Clause, Short title, etc)

Principal provisions: (substantive and administrative provisions)

Final provisions: (Saving, transitional provisions, repeals, consequential amendments and schedule)

A FEW CONCEPTS IN LEGISLATIVE DRAFTING

- Arrangement of Sections
- Long title
- Preamble
- Short title
- Commencement
- Enacting formula
- Application
- Interpretation
- Marginal notes
- Establishment
- Application
- Schedule

Long title:

The long title forms part of the enactment. It comes at the beginning of the enactment. It indicates the general purpose of the legislation; contains the essence of the enactment. It can be used in the interpretation of the legislation and ascertaining the scope of the Legislation. See *Vecher & Sons Ltd v. London Society of compositors* (1913) A.C. 107 at 128; *Osawaru v. Ezeiruka* (1978) 6 & 7 S.C. 135 at 149. See also *Wykes* (1961) Ch 229 at 242.

The long title should be drafted in terms wide enough to embrace the whole of the contents of a bill.

It is drafted in bold large letters (take a look at examples from the Laws of the Federation).

Note the inclusion of the phrase “and for connected purpose” or words having the same effect. See *Ibrahim v Judicial Service Commission (1998) 12 SCNJ*. Where the law is to amend or repeal earlier legislation, the long title must reflect that.

Preamble:

The function of the preamble is to explain the object of the law or the reasons why the legislation is desirable. It may be used in the construction of the legislation where the operative parts are ambiguous. See Vol. 36 Halsbury's Laws of England 3rd Edition, page 370-1 and Craines on Statute 7th edition page 203. Note that it is hardly used in modern legislations except in certain circumstances. See *A.G. v. Ernest Augustus of Hanover (1957) A.C. 436 at 463; The Norwhale (1975) 2 ALL E.R. 501; Ogbonna v. A.G. Imo State (1992) 2 SCNJ (Pt 1) 26; Chief Onabanjo v. Concord Press (1981) 2 NCLR 399 @ 406; Opeola v. Opadiran (1994) 5 NWLR (Pt 344) 368.*

For example see Preamble to the Land use Act 1978.

It is generally used in recent legislation where:

1. the subject matter of the legislation is of constitutional or international importance;
2. the legislation is of a formal or ceremonial character or intended to mark a noteworthy event such as an anniversary, state visit or historic occasion.

Commencement:

The commencement of an Act is not the same thing as the passing of the Act. An Act commences when it comes into force. An Act is passed when it is assented to by the President. It then technically becomes part of the country's body of laws. See *Kotoye v. Saraki (1994) 7- 8 SCNJ (Pt*

III) 524; see Obmiami Brick & Stone (Nig) Ltd v. A.C.B (1992) 3 SCNJ 1 at 53. Note the various ways the commencement date can be determined. See *Yabugbe v. Police (1992) 4 SCNJ 116 at 130.*

There are 4 possibilities:

- The legislation may make no specific provision; in which case, it will commence on the day it is assented to by the president or the day it is published.
- It may specify a date for the commencement; it could be drafted thus: “Commencement [23rd November, 2015]” or “This Act comes into force on 23 November 2015.”
- It may empower some named person or persons to specify the commencement date: “This Act comes into force on such day as the Minister appoints by notice in the Gazette.”
- It may provide for the Act to commence upon the occurrence of a stipulated event. This Act comes into force on the day the Supreme Court declares a governor invalidly elected.

Enacting formula:

There is usually an authority which gives efficacy to the statute being made into law. The method of drafting this authority therefore differs from jurisdiction to jurisdiction.

Nigerian Example:

- i. ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:
- ii. In a State’s Legislation: ENACTED by the House of Assembly of Lagos State as follows:
- iii. Under the military regimes we used to have THE FEDERAL MILITARY GOVERNMENT hereby decrees as follows:-

iv. THE STATE MILITARY GOVERNMENT OF OYO STATE hereby makes the following edict:-

Establishment:

This establishes statutory bodies and confers their powers and duties. An establishment clause is drafted where the legislation sets up a statutory body. See *Acme Builders v. KSWB* (1999) 2 NWLR (Pt. 590) 288 at 313. It may be found in any of the segments of legislation. “There is established a body to be known as the

Short Title (Citation):

The purpose of a short title is to identify, describe and cite the law; *Vacher & Sons Ltd v. London Society of Compositors* (1913) A.C. 107 at 128 described short title as “a statutory nickname” to obviate the necessity of always referring to the Act under its full and descriptive title.

Application:

The application of a law could be all embracing. It could be territorial and it could be limited to specific things or persons. Application provisions may relate to:

- (i) The circumstances prevailing when the legislation comes into force;
- (ii) A territorial area;
- (iii) To specific persons or thing e.g. National Youth Service Corps Act Cap 285 LFN 1990 applies only to Youth Corps members. S.I Property and Conveyancing Law 1959 is restricted to conveyancing of land.
- (iv) To the State or the Government

Duration:

In the absence of special provisions to the contrary, legislation, until repealed, spent or otherwise amended, is

of perpetual duration. See *Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR Pt. 498) 124.

“This Act shall continue in force until the 31st day of July 1970, and shall then expire, unless parliament, by affirmative resolutions by both Houses, otherwise determines,”

Marginal Notes:

Also referred to as statutory signpost; they indicate what to find in the section to which they are annexed. They are contained in the margin of each section. See *A. G. Federation v. ANPP* (2003) 15 NWLR (Pt 844) 600. In some jurisdictions marginal notes are referred to as “section notes”, in some, “head notes” or “shoulder headings.” They correspond to the arrangement of sections of the legislation

Savings:

This is used to preserve or save a law, a right or a privilege which would otherwise be repealed or cease to have effect.

Repeals:

Legislation is repealed when its operation is brought to an end by the legislature. The repeal of a law may be express or by implication. See *Raleigh Industries (Nigeria) Ltd v. Nwaiwu* (1994) 4 NWLR (Pt.342) 760. Note the effect of the repeal of a law- Section 6 Interpretation Act, 1964 See *Sossa v. Fokpo* (2000) FWLR (Pt 22) 1111.

Explanatory Notes:

Does not form part of a law - See *Udoh v. National Orthopaedic Hospital Management Board* (1973) 7 SCNJ 432; (1973) 7 NWLR (Pt 304) 139 at 148; *A.G. Abia State v. A.G. Federation* (2003) 4 NWLR (Pt 809) 124

Interpretation/ Definition:

a. Used to avoid ambiguity; clarifies intended meaning

- b. Prevents tedious repetition thereby shortens legislation
- c. To abbreviate group of words e.g. UNESCO
- d. It aids understanding of the Act

When stipulating a meaning use “means”; when extending meaning use “ includes”; when narrowing meaning use “means” or “does not include.”

The meaning of words and phrases provided in an Act is limited to the text of the Act in which they are defined and may not be used in inferring meaning to the same words in a different statute. Where a word is defined in the Interpretation Act, 1964 and the same word is defined by a statute the meaning provided in the statute with respect to that statute shall prevail.

Schedule:

A schedule is a device in a law by which matters of technical and detailed nature that naturally belong to an enacting section are arranged away in the schedule to avoid clumsiness and distraction when reading the law. They also ease comprehension of such provision. A schedule forms part of the law where they are referred to in the enacting section. This is called incorporation by reference. They also refer to the section which enacts them. This is cross referencing. See *A.G. v Lamplough (1878) EXD 214 229; Egolum v Obasanjo (1999) 5 SCNJ 71 at 129.*

CHAPTER VI

GENERAL PRINCIPLES OF INTERPRETATION OF STATUTES AND DEEDS

1. PRIMARY RULES / LITERAL CONSTRUCTION.

See *R. v. Commissioner of Income Tax* (1888) 22 Q.B.S. 296; *Bronik Motors v. Wema Bank* (1983) LSCLR 29; *Awolowo v. Shagari* (1979) 6-9 S.C. 51; *Ndoma Egba v. Chukwuogor* (2004) FWLR (Pt 217) 735; *Ekeogu v. Aliri* (1991) 3 NWLR (Pt. 179) 258; *Ojukwu v. Obasanjo* (2004) FWLR (Pt 222) 1666.

2. THE MISCHIEF RULE:

Heydon's case (1584) 3 CO Rep 7a; *Smith v. Hughes* (1960) 1 WLR 830; *Wilson v. A.G. Bendel State* (1985) 1 NWLR (Pt 4) 573; *National Assemble v. President* (2003) 9 NWLR (Pt 824) 104

3. THE GOLDEN RULE:

Grey v. Pearson (1857) 10 E.R. 1216; *Mitchell v. Torrup* (1766) Park 227; *Bronik Motors Ltd v. Wema Bank Ltd* (1983) All NLR 272; *Lee v. Knapp* (1967) OBD 442; *Onyewu v. K.S.M* (2003) 10 NWLR (Pt. 827) 40

4. BENEFICIAL CONSTRUCTION:

In construing a statute, the words must not be so strained as to include cases plainly omitted from the natural meaning of the language. *Forsdike v. Colquhoun* (1883) 112 B.D. 71; *Savannah Bank v. Ajilo* (*Supra*)

5. THE EJUSDEM GENERIS RULE:

“Of the same kind”; where particular words of the same class or genus are enumerated and are followed by general words, the general words will be construed to be restricted in meaning to the same kind of meaning as the types of

items in the enumerated particulars See *Tiumanns and Co. v. S.S. Knutsford Co.* (1908) 2 K.B. (1908) A.C.1

6. SPECIFIC PROVISIONS OVERRIDE GENERAL PROVISIONS:

Schroeder v. Major (1989) 2 N.W.L.R. (Pt. 101) P. 1

7. Statutes ousting jurisdiction of the court or derogating from individual rights are construed restrictively so as to preserve the jurisdiction of the right. *A.G. Federation v. Sode* (1990) I NWLR (Pt.128) p 500. See also: *Fawehinmi v. Abacha*, *Adisa v. Oyinwola* (2000) 6S.C. (Pt 11) 67;

8. Constitution is interpreted broadly and liberally *Nafiu Rabiu v. The State* (1980) 8 11; SC 130; *Kalu v. Odili* (1992) 6 SCNJ 76 at 104,

9. PURPOSIVE RULE OF INTERPRETATION:

See *PDP v. INEC* (1999) 11 NWLR (Pt 626), at 200 See also *Omoijahe v. Umoru* (1999) 8 NWLR (Pt. 614) 188.

10. THE BLUE PENCIL RULE:

See. *A.G. (Ondo State) v. AG (Federation)* 2002 9 NWLR (Pt. 772) p. 222

MAXIMS USED IN CONSTRUCTION

1. *Utres magi valeat quam pereat:*

“Where alternative constructions are equally open, that alternative is to be chosen which is consistent with the smooth working of the system which the statute purports to be regulating and that alternative is to be rejected which would introduce uncertainty, friction or confusion into the working of the system”: See *Shanon Realties Limited v. Villede St. Michael* (1924) A.C. 185 per Lord Shaw at page 192, 193, this is apparent in the construction of the Constitution - see *Nafiu Rabiu v. The State. (Supra)*

2. *Generalia specialibus non derogant*; A general provision does not derogate from a specific provision. In other words, specific provisions override general provisions. *Shroeder v. Major* (1989) 2 NWLR (Pt 101) 1; *A.G. (Ogun) v. A.G. (Federation)* (2003) FWLR (Pt. 143) 206; *M. v. Panormous Bay Olam (Nig.) Ltd* (2004) 5 NWLR (Pt 865)1

3. *Expression unius est exclusio alterius*: The express mention of one thing is the implied exclusion of that not mentioned See *Ogbuniya v. Okudo* (1976) 6-9 S.C. 32; *PDP V INEC (Supra)*; *Osahon v. FRN* (2003) 16 NWLR (845) 87

4. *Lex Non Cogit Impossibilia*:

A law cannot demand the doing of the impossible. See *Ohuka v. State* (1988) 1 NWLR (Pt. 72)

CHAPTER VII

DUTY OF COUNSEL TO CLIENT

PRIVILEGE AND CONFIDENCE OF THE CLIENT. (Rule 19 RPC).

All oral or written communications made by a client in the normal course of professional employment are privileged and cannot be communicated or revealed to a third party by the legal practitioner.

THE SCOPE

Thus, a legal practitioner may not reveal client's secret or use the confidential information to the dis-advantage of the client. This duty also extends to the employees, associates, and persons whose services are utilized by the legal practitioner.

The lawyer is also under an obligation not to communicate upon the subject of controversy or negotiate or compromise the matter with the other party who is represented by a lawyer: he can only deal with the lawyer to that other party. A legal practitioner is not allowed to use the confidence or secret of his client to the advantage of himself or of a third party.

S. 192 Evidence Act, 2011 also provides for non-disclosure of confidential information relating to communication made to the legal practitioner in the course of briefing, the content of any written document and the advice given to the client. S. 192(3) provides that even after the termination of the relationship, the rule still applies.

S. 193 E.A. provides that the above provisions shall apply to interpreters and the client of the legal practitioner.

EXCEPTIONS

A legal practitioner may reveal such information with the consent of the client after a full disclosure:

1. When it is permitted by the RPC, or when same is required by law or a court order.
2. When the confidence is about the commission of crime and disclosure is necessary to forestall it.
3. A lawyer may reveal such communication when it is necessary to recover his professional fees.
4. He may also reveal when defending himself or associates against an action of wrong conduct or negligence.

LAWYER AS WITNESS FOR A CLIENT.

Rule 20 (1) of RPC provides that a lawyer should not accept to act in any contemplated or pending case if he knows or ought to reasonably know that he or a lawyer in his firm may be called or ought to be called as a witness in the case. However, this rule admits of some exceptions, as follows:

1. If the testimony relates solely to an uncounted matter i.e. non contentious matter.
2. Where the testimony relates solely to a matter of formality and does not require substantial evidence to oppose it e.g. a testimony as to the procedure for tendering document.
3. Where the testimony relates solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client. R.20 (2) RPC.
4. Where it relates to a matter where the refusal will work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as lawyer in that particular case: e.g. in a matter where the character of the client is in issue or it relate to a will where the lawyer happens to be a witness.

R. 20(4) RPC provides that where the counsel already undertakes the case before realizing that he will be called upon to testify, he should withdraw from the case.

If in the course of the trial it becomes apparent that his testimony will be required to uphold the course of justice, if it will not be prejudicial to his client, a lawyer should leave further conduct of the trial to other counsel and testify.

But he may testify where the matter relates to the issues listed under sub-rule 2.

But under sub-rule 5 he can testify for other parties and continue to represent his client except where his testimony will be prejudicial to his client's case.

RESPONSIBILITY FOR LITIGATION

It is the duty of lawyers to decide the case to bring to court for the claimant and the cases he will contest for the defendant.

He will be personally liable if he brings questionable actions or offers questionable defence or advice, he will not be absolved on the basis of following client instruction- R. 24(2) RPC

A lawyer should not conduct or defend a case when he knows that it is calculated to harass or injure the opposite party or to work oppression or wrong- R. 24(3) RPC.

It is a lawyer's duty to take decisions in matters that are incidental and are not affecting the merit of the case. He must not allow his client to propel him to do things that are not proper or professional. R. 24 (4) RPC.

He is at liberty to make decisions on what concession to grant the opposing lawyer in as much as it does not prejudice the right of his client. E.g. agree to adjournment at the instance of the other party- R. 24 (5) RPC.

Incidental matters are time fixed for trial, applying or resisting adjournment- R. 24 (6) RPC.

WITHDRAWAL FROM EMPLOYMENT

It is the duty of a lawyer not to withdraw from employment once assumed except for just cause - R. 21 (1) RPC.

However in the following circumstances he may withdraw from employment.

1. Conflict of interest between lawyer and client.
2. Where the client insists on an unjust or immoral course in the conduct of his case. E.g. he wants the lawyer to bribe a judge.
3. If he persists in pressing a frivolous case against the lawyer's advice.
4. If the client deliberately disregards an agreement or obligation to pay fees or expenses: R. 21 (2) RPC.

A lawyer who is withdrawing from employment should give reasonable notice to the client to enable him get another lawyer: R. 21 (3) RPC.

If the withdrawal occurs after full payment of fees, the lawyer should return the part of the fee that has not been earned- R. 21 (4) RPC.

DEALING WITH CLIENT'S PROPERTY

A lawyer is enjoined not to abuse or take advantage of the confidence reposed in him for his personal gain or benefit- R. 23 (1) RPC.

A lawyer who collects money or manages property for his client should report and account for it promptly- R. 23 (2) RPC.

CALLING AT CLIENT'S PLACE FOR BUSINESS

A lawyer should not call at a client's house or place of business for the purpose of advising or taking instructions - R. 22 RPC.

Exception: special circumstances or urgency.

Examples of such are, extreme old age, infirmity, client is in custody etc.

CHANGE OF COUNSEL BY CLIENT

Rule 29 of R.P.C. gives a client the right to terminate the brief of a lawyer and change his lawyer. After the change the following must be ensured:

1. The new lawyer should give notice to the former lawyer;
2. He should try and ensure the payment of his outstanding professional fees;
3. Both lawyers should give notice to the court.

The duties of lawyer to client when he changes lawyer is as follows:

1. All letters written by the lawyer to other persons at the direction of the client must be handed over to the client;
2. Copies of letters written by the lawyer to other persons at the direction of the client must be handed over to the client;
3. Drafts and copies made in the course of business should also be handed over.

While the lawyer is entitled to

1. All letters written by the client to the lawyer.
2. Copies of letters addressed by the lawyer to the client.
3. A lien on the papers or documents of his client in respect of unpaid fees.

DEDICATION AND DEVOTION TO THE CAUSE OF THE CLIENT

A lawyer is duty bound to devote his attention, energy and expertise to the service of his client and subject to any rule or law to act in a manner consistent with the best interests of the client. Rule 14 (1) RPC.

A lawyer is under an obligation to observe the following:

- a. Consult with his client in all questions that are not within his discretion. e.g. settlement out of court, granting concessions to the opposing party.
- b. Keep the client informed of the progress of the case and important developments.
- c. Warn the client against any particular risk likely to occur in the course of the trial.
- d. Respond as promptly as possible to the requests for information by the client.
- e. Inform the client where he considers his case to be hopeless.

A lawyer is enjoined to be personally present and represent the client throughout the proceedings: R.14 (4) RPC.

Failure to represent client properly may be considered as a misconduct - R. 14 (5) RPC.

However, a lawyer is not under any obligation to carry out all the instructions of the client if it contradicts his professional judgment.

DUTY TO ACCEPT BRIEF

Rule 24 (1) RPC of the provides that lawyers are duty bound to accept brief relating to the area in which they practice, provided the right fee is offered to be paid, except there are exceptional circumstances to the contrary. This is known as the Cab Rank Rule

CONFLICT OF INTEREST

A lawyer while representing his client should not allow his personal, proprietary, financial or business interest to conflict with the interest of his client. R. 17 (2) RPC.

Where there exists such conflict of interest a lawyer is duty bound to disclose such – R. 17 (1) RPC.

A lawyer shall not acquire proprietary interest in the cause of action or subject matter of litigation of litigation which he is conducting for a client. R. 17 (3) RPC.

He may however, acquire a lien granted by law to secure his fees and expenses or contract with a client for a reasonable contingent fee in a civil case.

A lawyer should not accept a brief where the subject matter is likely to affect the interest of an existing client unless the two parties consent- R.17 (4) RPC.

A lawyer shall not appear as counsel for a client in a matter where he himself is a party-R. 17 (5) RPC.

The above rules also extend to the lawyer's associates, partners and affiliates.

REPRESENTING CLIENT WITHIN THE BOUNDS OF LAW

A lawyer's first duty is to uphold the law. This supersedes his duty to his client, therefore he must refuse to participate or aid conducts that are unlawful - R. 15 (1) RPC.

In his representation of his client a lawyer must keep strictly within the law notwithstanding any contrary instruction from the client. Where the client insists on perpetrating illegality, he must withdraw his service - R. 15(1) (a) RPC

The lawyer is duty bound to restrain and prevent his client from committing misconduct or breach of the law with particular reference to judicial officers, litigants and witnesses: R. 15 (2) RPC.

A lawyer shall not agree with his client to carry out any act which may bring disrespect to a judge or compromise any public holder - R.15 (3) (a) RPC.

A lawyer shall not agree to file a suit, assert a position, conduct a defence, delay a trial or take over action which is meant to annoy, harass or maliciously injure another person - R 15 (3) (b) RPC.

He shall not knowingly advance a claim or defence that is unwarranted under existing law, he can only advance such in good faith with evidence and a view to extend, modify or reverse the existing position – R.15 (3) (c) RPC.

A lawyer shall not fail to inform his client about the option of ADR mechanism before resorting to or continuing litigation on behalf of his client R. 15 (3) (d) RPC.

A lawyer shall not:

- a. conceal or knowingly fail to disclose that which is required by law to be disclosed - R. 15 (3) (e) RPC.
- b. knowingly use perjured or false evidence - R. 15 (3) (f) RPC.
- c. knowingly make a false statement of law or fact R.- 15 (3) (g) RPC.

Where a lawyer becomes aware of a fraud perpetrated by his client he is bound to tell the client to rectify it and where the client refuses he shall disclose such to the affected person or Tribunal, except where the information is privileged - R. 15 (4) RPC.

REPRESENTING CLIENT COMPETENTLY

By virtue of Rule 16 of the RPC, a lawyer shall not:

- a. handle a legal matter which he knows or ought to know that he is not competent to handle without associating with a lawyer competent to handle it unless the client objects;
- b. handle a legal matter without adequate preparation;
- c. neglect or abandon a legal matter entrusted to him.

- d. attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.

PROFESSIONAL NEGLIGENCE BY LAWYERS

Section 9 (1) of the Legal Practitioners Act provides that a person shall not be immune from liability for damages attributable to his negligence while acting in his capacity as a legal practitioner. The tort of negligence is therefore applicable to Legal Practitioners in Nigeria.

Nature of Professional Negligence

1. **LEGAL ADVICE:** lawyers are expected to be careful in rendering legal advice to client. A lawyer may be liable in negligence where he proffers advice which turns out to be wrong if while acting on the advice something goes wrong: see *Bello Raji v. X.* - action statute barred.

Searches, preparation of legal documents and other related transactions require extreme caution. See *Midland Bank Trust Co v. Kemp* - where a lawyer failed to insert an option of purchase granted to a second party.

2. **TAKING OUT WRITS IN COURT:** Diligence is required to avoid the case becoming statute barred e.g. Election petitions. *NBA v. Akintokun* failed to carry out the instruction on time.

3. **HANDLING OF CASES BEFORE A COURT:**

A lawyer is exempted from negligence arising from the pursuit of his professional duties as a barrister or advocate before the court- e.g. failure to cross-examine a witness- s. 9(3) LPA

CHAPTER VIII

REGULATORY/CONTROLLING BODIES IN THE LEGAL PROFESSION AND EXCLUSIVE RIGHTS & RESTRICTIONS

THE BODIES:

- (1) Body of Benchers
- (2) Council of Legal Education
- (3) Legal Practitioners Privileges Committee
- (4) Legal Practitioners Disciplinary Committee
- (5) Legal Practitioners Remuneration Committee
- (6) National Judicial Council – N.J.C
- (7) General Council of the Bar
- (8) Nigerian Bar Association

THE BODY OF BENCHERS

This is a body of legal practitioners of the highest distinction in the legal profession in Nigeria.

Legislation: Established by Section 3(1) of the Legal Practitioners' Act (LPA) 1962 (The section was amended by section the Legal Practitioners (Amendment) Decree No. 21 of 1994).

Membership:

- (a) The Chief Justice of Nigeria
- (b) All the Justices of the Supreme Court;
- (c) The Attorney-General of the Federation;
- (d) The President of the Court of Appeal;
- (e) The Presiding Justices of the Court of Appeal Divisions;
- (f) The Chief Judge of each State of the Federation;
- (g) The Attorneys-General of each State in the Federation;
- (h) The Chief Judge of the Federal Capital Territory, Abuja;

- (i) The Chief Judge of the Federal High Court;
- (j) The Chief Judge of the National Industrial Court;
- (k) The Chairman of the Council of Legal Education;
- (l) Thirty (30) Legal Practitioners to be Nominated by the NBA; and
- (m) Such number of persons, not exceeding ten (10), who appear to the Body of Benchers to be eminent members of the legal profession in Nigeria of not less than fifteen (15) years post call standing.
There are life members of the Body of Benchers.
See Section 3 (2) & (5) of the LPA.

Functions: The body is responsible for:

- (1) Formal call to the Nigerian Bar of persons seeking to become legal practitioners
- (2) Issuance of certificates of call to the bar; prescribing dining terms and call fees, etc. See sections 3, 4 and 6 of the LPA.
- (3) Making regulation for the discipline of aspirants to the Bar and legal practitioners; pursuant to which they prescribe for aspirants to the Bar conduct that maintain the traditional values of the profession (fit and proper conduct); Keeping of 3 dinning terms and sponsorship of each aspirant to the Bar by at least 2 of their members.

THE COUNCIL OF LEGAL EDUCATION

Legislation: Established by the Legal Education Act of 1962, now known as the Legal Education (Consolidation) Act, Cap L10, Laws of the Federation of Nigeria, 2004.

Membership:

- (a) A Chairman who shall be appointed by the President of Nigeria on the recommendation of the Attorney-General of the Federation;

- (b) The Attorneys-General of each of the States in the Federation; or a Solicitor-General, where there is no Attorney-General in a state;
- (c) A representative of the Federal Ministry of Justice to be nominated by the Attorney-General of the Federation;
- (d) The Deans of faculties of law of all recognized Nigerian Universities whose course of legal studies is approved by the Council as sufficient qualification for admission to the Nigerian Law School;
- (e) The President of the Nigerian Bar Association;
- (f) Fifteen (15) legal practitioners of not less than ten years' post call standing who shall be nominated by the NBA;
- (g) The Director-General of the Nigerian Law School; and
- (h) Two (2) authors of published learned works in the field of law, to be appointed by the Attorney-General of the Federation.

Functions: The Council shall be responsible for:

- (1) Legal education of persons seeking to become members of the legal profession;
- (2) Issuance of qualifying certificates to persons seeking to become legal practitioners; and
- (3) Continuing legal education of legal practitioners in Nigeria.
See Sections 1, 3 & 5 of the Legal Education (Consolidation) Act.

LEGAL PRACTITIONERS' PRIVILEGES COMMITTEE

Legislation: Established by Section 5(3) of the Legal Practitioners Act 1975.

Membership:

- (a) The Chief Justice of Nigeria, who shall be the Chairman;

- (b) The Attorney-General of the Federation;
- (c) One (1) Justice of the Supreme Court
- (d) The President of the Court of Appeal
- (e) Five (5) Chief Judges of States
- (f) Five (5) Senior Advocates of Nigeria

Functions: The Committee is responsible for:

- (1) The conferment and withdrawal of the rank of Senior Advocate of Nigeria.
- (2) It may also in conjunction with the Body of Benchers make Rules relating as to the obligations and privileges to be conferred on Senior Advocates of Nigeria.

Note: For the procedures of becoming a Senior Advocate of Nigeria, see the Guidelines for the Conferment of Senior Advocate of Nigeria, 2018 as contained in the Federal Government of Nigeria Official Gazette No. 112 Vol. 105 of 31st August, 2018.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE

This is a committee of the Body of Benchers

Legislation: Established by Section 10 of the Legal Practitioners' Act (LPA) of 1975 Cap 207 Laws of the Federation 2004. (Now S 8 & 11 of the Legal Practitioners Amendment Decree No 21 of 1994) See the Legal Practitioners (Disciplinary Committee) Rules of 2006.

Membership: see s.11 (2) LPA 1975

- (a) A chairman who shall neither be the Chief Justice of Nigeria or a Justice of the Supreme Court;
- (b) 2 Justices of the Court of Appeal one of whom shall be the President of the Court of Appeal;
- (c) 2 Chief Judges;
- (d) 2 Attorneys-General, who shall be either the Attorney-General of the Federation and the

- Attorney-General of a State or 2 State Attorneys-General; and
- (e) 4 members of the NBA who are not connected with either the investigation of a complaint or the decision by the association to present a complaint against a legal practitioner for determination by the disciplinary committee.

Functions: (1) The Committee is responsible for consideration of allegation of misconduct against legal practitioners in connection with the practice of law.

(2) Punishing the offence.

Appeals from the decisions of the Committee lie directly to the Supreme Court by virtue of section 12 (7) of the LPA as amended.

LEGAL PRACTITIONERS REMUNERATION COMMITTEE

Legislation: Established by Section 15(1) of the Legal Practitioners' Act (LPA) of 1975. See also the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991.

Membership:

- (a) The Attorney-General of the Federation; who shall be the chairman;
- (b) The Attorneys-General of the States;
- (c) The President of the Nigerian Bar Association; and
- (d) Three Legal Practitioners.

Functions: The Committee is responsible for:

1. Making Orders for regulating generally the charges of legal practitioners; including -

- (a) Regulating the maximum charges which may be charged in respect of any transaction or activity like those specified by the Order.
- (b) The ascertainment of the charges appropriate for any transaction
- (c) Regulating the taking of security by legal practitioners for the payment of their charges; and allowing interest on such security;
- (d) Regulating agreements between legal practitioners and their clients with respect to charges.

NATIONAL JUDICIAL COUNCIL –N.J.C

Legislation: Established by Section 153 (1) (i) of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

Membership: See Paragraphs 20 and 21 of Part I of the 3rd Schedule to the Constitution.

- (a) The Chief Justice of Nigeria, who shall be the chairman;
- (b) The next most senior Justice of the Supreme Court; who shall be the Deputy Chairman;
- (c) The President of the Court of Appeal
- (d) Five (5) retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
- (e) The Chief Judge of the Federal High Court;
- (f) The Chief Judge of the National Industrial Court
- (g) Five (5) Chief Judges of States to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and the FCT, Abuja in rotation to serve for 2 years;
- (h) One Grand Kadi to be appointed by the Chief Justice of Nigeria from among the Kadis of the Shariah Courts of Appeal to serve in rotation for 2 years;

- (i) One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for 2 years;
- (j) Five Members of the NBA who have been qualified to practice for a period of not less than 15 years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian bar Association to serve for two years and subject to re-appointment; and
- (k) Two persons not being legal practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.

Functions: See Third Schedule Part 1 Paragraph 21 CFRN 1999.

The Council is responsible for; the recommendation to the President or Governor as the case may be for the appointment or removal/discipline of judicial officers in Nigeria.

GENERAL COUNCIL OF THE BAR

Legislation: This is one of the Federal Executive bodies created by the Constitution. It was established by Section 1(1) of the Legal Practitioners' Act (LPA) Cap L11 LFN 2004 as amended.

Membership:

- (a) Attorney-General of the Federation who is the President/Chairman of the Council;
- (b) The Attorneys-General of the States; and
- (c) Twenty (20) Legal Practitioners elected by the Nigerian Bar Association, at least seven (7) of whom shall not be less than ten (10) standing at the Bar.

Functions: The Council is responsible for making and revising the Rules of Professional Conduct and Rules of Accounts to be kept by legal practitioners. The Council has made the Legal Practitioners' Accounts Rules of 1964 and the Rules of Professional Conduct (Now, of 2007) - Section 12(4) of the LPA.

NOTE: Although section 1 of the L.P.A gave the Council the power of general management of the affairs of the N.B.A (subject to any limitation for the time being provided by the Constitution of the NBA), this power has since been transferred to the Body of Benchers vide Section 2 of Decree No.21 of 1994. Be that as it may, in practice, any attempt by the Body of Benchers to manage NBA affairs is always being confronted by strong resistance. In any case, the NBA Constitution has greatly limited the powers of the General Council of the Bar in managing the affairs of the NBA.

NIGERIAN BAR ASSOCIATION

This body, unlike the others, is not a creation of statute. However, it is registered and its existence is given recognition by the Legal Practitioners Act in that:

- a. The Association has representatives in most of the bodies created by the Legal Practitioners Act e.g. Council of Legal Education, Body of Benchers;
- b. Its sustenance is provided for by the Legal Practitioners Act which stipulates that a legal practitioner shall pay a practicing fee before he is given a right of audience in any court in Nigeria; and 90% of such fee is paid over to the Nigerian Bar Association - Section 8 (3) (c) of the Legal Practitioners Act.

Legal Status of the Nigerian Bar Association: The Association is a juridical and not a juristic person that can sue or be sued in its own name. However, the trustees of the Association have been registered as “Registered Trustees of Nigerian Bar Association” under the Land (Perpetual Succession) Ordinance 1924, contained in CAP 98, Laws of the Federation of Nigeria and Lagos, 1958 which has now been replaced by the Companies and Allied Matters Act, as it is now Part C of CAMA. By Section 695, CAMA 1990 (now Section 612, Cap C20, LFN, 2004), all previous registration under the Land (Perpetual Succession) Ordinance of 1924 are validated. Therefore, the Association can only sue or be sued in the name of the “Registered Trustees of Nigerian Bar Association”. See *Fawehinmi v NBA (No. 2)* (1989) 2 NSCC 43.

Membership: Membership of the Association is automatic for all persons that have been called to the Nigerian Bar upon enrolment at the Supreme Court of Nigeria. This is because while being enrolled at the Supreme Court, every legal practitioner in Nigeria has to pay practicing fee, a substantial part of which goes to the Association.

Functions: The Association is responsible for the maintenance of the honour and independence of the Bar in its relation with the judiciary and the executive; maintenance of the highest standards of professional conduct, etiquette and discipline; promotion of good relations among members of the Association; promotion of legal education and law reforms etc.

**EXCLUSIVE RIGHTS AND RESTRICTIONS OF A
LEGAL PRACTITIONER**
RIGHTS OF A LEGAL PRACTITIONER
**(a) Representation of litigants in any proceedings
and preparation of documents relating to proceedings in**

court. Sect. 22(d) Legal Practitioners Act Cap 206, LFN, 1990; Cap L 11, LFN, 2004)

Although by section 8(1) of the legal Practitioners Act, a legal practitioner has the right to represent another and shall have the right of audience in all the courts of law sitting in Nigeria, this right can only be exercised whilst it is available and not when it is in abeyance i.e. whilst a legal practitioner is also a litigant before the court. In his role as a litigant, he is not appearing in court as a legal practitioner. He therefore cannot exercise the right of audience and the right to represent a co-defendant in an action. See *Fawehinmi v. N. B. A.* (1989) 2. N. S. C. C. I.

The exclusive right of a legal practitioner to represent a litigant extends to all courts of law in Nigeria (including Customary or Area Courts) Section 36 (6) (d) 1999 Constitution as amended. *Uzodima v. Police* 1982 (1) NCR 27; Section 8 (1) Legal Practitioners Act.

However, please note Rule 45 (2) (b) &(c) new RPC 2007 which provides:

“A lawyer shall not wear the Barrister’s or Senior Advocate’s robe when conducting his own case as a party to a legal proceeding in court or giving evidence in a legal proceeding in Court.” See also *Newton v. Chaplin* (1850) 19 L.F. CP. 374- if he defends himself in a criminal charge, he must be in the dock to conduct his defence.

(b) Preparation of documents relating to proceedings in court

A legal practitioner also prepares all documents relating to proceedings in court such as pleadings, motions, written or final addresses, affidavits etc. The documents must bear the legal practitioner’s name, signature, designation, address and also state the party he is representing. S. 22(1)(d) & 4 (c) LPA.

The legal practitioner's NBA Stamp and Seal must also be affixed to the documents before filing - R. 10 RPC.

(c) Company Formations— Section 35 (3) Companies and Allied Matters Decree 1990 (now CAP C20, VOL III, LFN 2004).

A statutory declaration by legal practitioner engaged in the formation of a company or by a person named in the article as director or secretary of the company shall be produced before a company can be incorporated.

(d) Conveyancing – Section 22 (d) Legal Practitioners Act.Land Instruments Registration Law 1959 (W. N.) SS.2 and 4.

No person other than a Legal Practitioner shall either directly or indirectly for or in expectation of any fee, gain or reward, draw or prepare any instrument. Penalty: N100 fine. Instrument means any document conferring, transferring, limiting, charging or extinguishing any right, title or interest in land but does not include a Will.

(e) Preparation of documents for probate or letter of Administration— Section 22 (d) Legal Practitioners Act. Only a legal practitioner can prepare documents for probate or letters of administration.

(f) Only a legal practitioner can be appointed as a Judge to a superior court with the exception of Sharia Court of Appeal and Customary Court of Appeal.

(g) Only a legal practitioner can be appointed an Attorney General and Minister of Justice and has a preserved place in any Government.

(h) Appointment as a notary public: It is a legal practitioner called to the Nigerian Bar, who has paid

his practicing fees as at when due, for at least 7 consecutive years and is declared or shown to be ‘fit and proper’ by a Judge within the jurisdiction where the legal practitioner practices, that is qualified for appointment as a Notary Public by the Chief Justice of Nigeria. S. 2 Notaries Public Act.

IMPERSONATING A LEGAL PRACTITIONER OR DOING THE WORK OF A LEGAL PRACTITIONER

Section 22, Legal Practitioners Act:

- “(1) Subject to the provisions of this section, if any person other than a legal practitioner:-
- (a) Practices, or holds himself out to practice, as a legal practitioner or
 - (b) Takes or uses the title of legal practitioner, or
 - (c) Willfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner or is qualified or recognized by law to act as legal practitioner or
 - (d) Prepares for or in expectation of reward, any instrument relating to immovable property relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria.

Such a person shall be guilty of an offence and liable, in the case of any offence under paragraph (a) of this subsection or a second or subsequent offence under paragraph (d) of this subsection, to a fine of an amount not exceeding ₦200 or imprisonment for a term not exceeding two years or both such fine and imprisonment, and in any other case to a fine of an amount not exceeding N100.

- (2) In subsection (1) of this section “instrument”, in relation to immovable property, means any document which confers, transfers, limits, charges or extinguishes any interest in property or which purports so to do and “immovable property” includes un-extracted minerals.
- (3) Nothing in the subsection (1) of this section shall prevent a person from being dealt with for contempt of court, but no proceedings for an offence under this section shall be brought or continued against a person in respect of any act if he has been dealt with for contempt of court in respect of that act.”

RESTRICTIONS ON THE RIGHTS OF A LEGAL PRACTITONER TO PRACTICE

1. NON-PAYMENT OF PRACTICING FEE-

SECTION 8(2) Legal Practitioners Act; Rule 9 RPC 2007; Article 19 NBA Constitution 2001.

A legal practitioner must pay an annual practicing fee to be “accorded the right of audience in any court in Nigeria”.

The fee is now as follows:

Senior Advocates of Nigeria and Honourable Benchers

₦50, 000.00

Legal Practitioners of 15 years or more standing post-call

₦25, 000.00

Legal Practitioners of 10 years or more standing but less than 15 years post-call ₦17, 000.00

Legal Practitioners of 5 years or more standing but less than 10 years post-call ₦10, 000.00

Legal Practitioners of less than 5 years standing post-call

₦5, 000.00

See the Schedule to Legal Practitioners (Bar Practicing fees) Notice (S.I. 5 of 2002), contained in CAP L11, LFN 2004.

The fee is payable to the Registrar of the Supreme Court who shall issue a receipt in respect of the payments and publish the list of such payments from time to time. Nine-tenths of the money collected shall be paid to the Nigerian Bar Association.

Non-payment is a breach of Rules of Professional Conduct. The fee must be paid before March 31st each year and in the case of a new lawyer within a month of enrolment- Rule 9 RPC 2007.

Branches of NBA also have the power to impose levies or subscriptions to defray the expenses for running its affairs, and a member in default shall be subjected to the same sanction as his failure to pay practicing fee. Section 14(i) and section 2(2)(a)(ii) NBA Constitution.

II. SALARIED EMPLOYMENT- Rule 8 RPC 2007

A member of the Bar, whilst a servant or in salaried employment of any kind, shall not appear as advocate in the court. Only a lawyer who is employed as a legal officer in a Government Department is exempted.

A legal practitioner who is a salaried employee is however allowed to represent the employer as an officer or agent of the employer when a case is called, in court. R. 8(4) RPC

NOTE- a legal practitioner who is a Director of any Company is disqualified from representing such Company

as an advocate – immaterial that it is pro bono - R. 8(3) RPC.

A legal practitioner who is a salaried employee is however allowed to represent the employer as an officer or agent of the employer when a case is called, in court - R. 8(4) RPC

NOTE- a legal practitioner who is a Director of any Company is disqualified from representing such company as an advocate – immaterial that it is pro bono- R. 8(3) RPC.

III. PUBLIC OFFICE AND PRIVATE PRACTICE

Previously, the position of a legal practitioner who is a public officer from 12th December 1984 vis-á-vis private practice was governed by Section 1 Regulated and Other Professions (Private Practice Prohibition) Decree 1984. With some exceptions the Decree prohibited private practice for legal practitioners who were public officers. It provided as follows:

“For the purpose of this Decree but subject as herein after provided, private practice in relation to any scheduled profession includes rendering of or render to any other person (not being the employer or any other person normally entitled in the course of his official duties to receive such service) of any service relative to the profession concerned whether or not after his normal hours of work or on work free days for money’s worth or for any other valuable consideration and, without prejudice to the generality of the foregoing includes in particular:

- (a) The performances of all description relating to the profession concerned including the rendering of advice or provision of consultant

- service connected with or relating to the profession concerned; or
- (b) The issue of certificate, the certification of documents or any other matter concerned with the issue or certification of documents connected with or relating to any of the aforementioned services; or
- (c) The establishment of any undertaking either by professional concerned or in Partnership, or in any form of association with any other person (whether or not himself A public officer) for the provision of any of the service or matters referred to in this subsection.

(3) Notwithstanding any provision of this section, it shall be lawful for the professional concerned, apart from during the course of his normal official duties to render any of the services rendered to in subsection (2) of this section.-

- (a) To himself.
- (b) To any person in any emergency.
- (c) To any person (whether corporate or incorporate) authorised either generally or specifically by the Government to receive the services of that professional for the time being or, where a period is specified, for that specified period;
- (d) Where such services are rendered free of charge to any of the following, that is:-
- (i) Any member of the family of that professional;

- (ii) Any charitable organization or another person on purely humanitarian grounds; and
- (iii) Any professional association to which he belongs.

Section 2 of the Act provided for penalties

1st offender -₦2, 000.00 fine or 1 year imprisonment;

2nd ”- ₦5, 000 or 2 years imprisonment;

3rd ” – 3 years imprisonment without option of fine.

In addition, the Legal Practitioner shall have his name struck off the roll. The offender shall be tried in the Federal or State High Court. There is no appeal. Certified copy shall be sent to the President within 15 days of judgment for confirmation or otherwise.

In 1992, an exemption was made for law lecturers vide the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) (No. 2) Order of 14. 9. 92. Full time lecturers were exempted from the application of the 1984 Decree.

However in 1999, the Decree of 1984 (together with its Exemption Order of 1992) was repealed by the Constitution of the Federal Republic of Nigeria (Certain Consequential Repeals) Decree No. 63 of 1999.

In effect, the current position of the law is as stated in S. I (PART 1) of the 5th schedule of the 1999 Constitution. It provides that:

“A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities”.

S. 2(b) provides that a public officer shall not “except where he is not employed on full time basis, engage or participate in the management or running of any private business, profession or trade but nothing in this subparagraph shall prevent a public officer from engaging in farming.

S. 15, Part II of the 5th schedule of the Constitution lists public officers as including “all staff of Universities, Colleges and Institutions owned and financed by the Federal, State Government or Local Government Councils”.

IV. SENIOR ADVOCATE OF NIGERIA

(1) Subject to the Rules made by the Legal Practitioners Privileges Committee with approval of the Federal Executive Council, a Senior Advocate of Nigeria shall not be entitled to engage in practice as a member of the legal profession, other than as a Barrister, unless in Partnership with a legal practitioner- who is not a Senior Advocate of Nigeria. Sec. 5(8) Legal Practitioners Act.

(2) A Senior Advocate of Nigeria shall not appear as counsel in any civil case before any superior court of record except with a junior or another Senior Advocate of Nigeria. Rule 2(1) Senior Advocate of Nigeria (privileges and functions) Rules 1979.

V. ENGAGING IN BUSINESS- RULE 7 RPC 2007

(1) A legal practitioner shall not practice at the bar and simultaneously practice any other profession without the authority of the General Council of the Bar.

(2) No legal practitioner may practice as a lawyer and engage in any trade or business declared by the Bar Council to be incompatible with practice as a lawyer or which tends to undermine the high standing of the profession.

The “other profession” referred to in Rule 7(1) RPC has been declared by the General Council of Bar to be all forms of trading including all forms of or participation in any trade or business with the following exceptions:

- (a) Membership of a board of directors of any company which does not involve executive, administrative or clerical function.
- (b) Secretary of a board of directors of a company or a general meeting of a company.
- (c) Being a shareholder in a company.

He is specifically barred from engaging in the sale or purchase of commodities personally, or as commission agent. Rule 7(2)(a) and (b) RPC.

VI. RETIRED JUDICIAL OFFICER

Sect. 292(2) CFRN 1999 as amended, “Any person who has held judicial office shall not on ceasing to be a judicial officer for any reason whatsoever thereafter appear or act as a legal practitioner before any court of law or tribunal in Nigeria.” See *Atake v. Afejuku (1994) 12 SCNJ 1*. By virtue of Section 318 (1) CFR 1999, “Judicial Officers” means Judges of the High Court, Court of Appeal, Supreme Court of Nigeria, Grand Kadi, Kadi of Sharia Court of Appeal, President or Judge of the Customary Court of Appeal. It will also include Judges of National Industrial Court (NIC) in view of the Third Alteration Act 2010 which has elevated the NIC to the

status of a superior court of record at par with the High Court.

See other restrictions on retired judicial officers and retired lawyer as stated by Rules 6(1)(2)(3)(4) of the RPC which provides that:

- (1) A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity. (This provision is not limited to judicial officers as defined above).
- (2) A lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection with any matter which he has advised on or dealt with while in such office or employment.
- (3) A judicial officer who has retired shall not practice in Nigeria as an advocate in any court of law or judicial tribunal in Nigeria.
- (4) A judicial officer who has retired shall not sign any pleading in any court.

NOTE THAT by virtue of Rule 6(5) of the RPC, a judicial officer who has retired may continue to use the word “Justice” as part of his name.

VII. NON COMPLIANCE WITH MANDATORY CONTINUED PROFESSIONAL DEVELOPMENT (CPD), Rule 11 and Rule 12 of the RPC 2007.

The NBA shall publish a list (Annual Practicing List) of legal practitioners who have complied with the

requirements of the CPD programme (in addition to payment of practicing fees) and are therefore entitled to practice as legal practitioners in that year. Unless a lawyer holds an Annual Practicing Certificate issued by NBA certifying that he has fulfilled the approved CPD programme he is prohibited from carrying on legal practice- Rule 12(3) of the RPC. This provision is however yet to be implemented.

VIII. NBA STAMP AND SEAL, RULE 10 RPC

A lawyer acting in his capacity as a legal practitioner, legal office or adviser of any Governmental department or Ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association. Legal documents include pleadings, affidavits, depositions, applications, instruments, agreements, deeds letters, memoranda, reports, legal opinions or any similar documents.

A document signed or filed without compliance means the document has not been properly signed or filed. In *APC v. General Bello Sarki Yaki, Sc/772/15*, the Supreme Court, per Ngwuta JSC, delivering the lead judgment held that a legal document signed and filed without the NBA stamp and seal as required by Rule 10(1) RPC 2007 is not proper in law. It renders it irregular or voidable. The document will become valid when counsel affixes the stamp and seal. See the earlier decision of the apex court on the same issue in *MPP v INEC SC/655/2015.; Wayo v Nduul* (2019) 4 NWLR (Pt. 1661) 60 (SC). Where such legal document is not regularized by affixation of the stamp and seal before

the court takes a decision such document will be rendered void. If such legal document is an originating process, the entire action will be liable to be struck out. *Wayo v Nduul (supra)*

The position of the law with respect to a legal practitioner who paid for the Stamp and Seal but has not been given by the NBA is not yet settled. The decision of the court in **Adewale & Anor v Solomon O Adeola & Ors** (2015) LPELR – 30085 (CA) is still subject to interpretation by the Supreme Court.

IX. NOTIFICATION OF LEGAL PRACTICE

Rule 13(1) RPC 2007 provides that after setting up his law office, either alone or in association or in partnership with another or others, the person shall, not later than 30 days after the commencement of such practice deliver to the Branch of the NBA in the jurisdiction a Notice in the prescribed form stating:

- i. Name of the legal practitioner:
- ii. Address of the law office:
- iii. Date of call of the legal practitioner:
- iv. Date of entry of his name in the Roll of Legal Practitioners in Nigeria.

The Branch of the NBA is to enter the particulars in the Notice in a Register or Database kept for the purpose.

If the legal practitioner changes his name or address, he should notify the Branch of such changes. Rule 13(4) RPC, 2007.

X. ASSOCIATION FOR LEGAL PRACTICE

Rule 5(5) RPC 2007 prohibits a lawyer from practicing the legal profession as a corporation. A legal practitioner is also not to enter into partnership with a non-lawyer for the purpose of practicing legal profession. Rule 5(1) RPC. A sole practitioner shall not use a firm name with the addition of “AND CO” or such other name capable of holding out his practice as a partnership. Rule 5(4) RPC. A legal practitioner who is elevated to the Bench as a judge shall not continue to have his name as part of a partnership name. Rule 5(3) RPC. But, the name of a deceased or former partner may be retained in the firm name, provided it does not lead to misrepresentation or deception. Rule 5(2) RPC.

XI LEGAL PRACTITIONER AS PARTY IN A CASE

R. 17(5) RPC. A legal practitioner who is a party in a case is not allowed to represent any other party in the same matter whether for a fee or *pro bono* (not even family members who may also be parties in that case).

CHAPTER IX

DUTY OF COUNSEL TO COURT

1. Must be punctual to court.

Counsel should aim to get to court about 30 minutes before court sits to enable him to have composed himself and seen and possibly rehearse with his witnesses who should also be advised to come early to court.

The Court may strike out or adjourn a case with costs or proceed with hearing it without counsel where counsel and/or his witnesses are not punctual.

Where counsel for unavoidable reason cannot be punctual, he should write to court and the opposite counsel requesting that the case be stood down or adjourned to a reasonable time when he is sure he would be in court. It is the discretion of court to grant the application.

2. Must attend all sittings of court unless he had obtained leave of court to be absent. *Okonofua v. State* (1981) Vol.12 NSCC 233; (1981) 6-7 SC 1; *FRN v. Abiola* [1997] 2NWLR (Pt. 488) 444 at 467

- Same consequences for absences as for lateness. Where counsel informs court of absence or lateness, he must inform the counsel to all the parties in the case. Rule 31(5) RPC; *Shemfe v. Police* (1962) I ALL NLR 811. *Awolowo v. Suleman Takuma LD/223/80 Decided 19/10/1982, Takuma v. Awolowo FCA/L/149/82 Decided 25/1/1983*

Persistent absence of counsel from court without leave could be treated as interference with the course of justice and held to be contempt of court. *McKeown v. R* (1971) 15 DLR 390.

Absence of counsel on date of judgment is not necessarily contempt of court, however it is disrespectful for counsel to be absent on date of judgment.

See *Izuora v. R* (1953) AC 327; 13 WACA 314, where it was held that mere courtesy to court is not necessarily contempt of court.

3. Must be properly dressed to court. See rule 36 of the RPC.

Counsel should always be attired in a proper and dignified manner and abstain from any apparel or ornament calculated to attract attention to himself. At the Superior Courts (i.e. High Courts, Court of appeal and Supreme Court), counsel must dress in dark suits, robed in their wigs and gowns.

MEN: Black or blue-black or charcoal grey two piece or three-piece suit, white collarless shirt, white wing collar (size: should be one size “bigger than shirt neck size, two studs required to hold collar to shirt) white band, black shoes.

ALTERNATIVES

- (i) White shirt with wing collar attached in lieu of collarless shirt detachable wing collar.
- (ii) Black and grey striped trousers in lieu of suit trousers.
- (iii) Sleeved vest in lieu of coat

WOMEN: Black, blue-black or charcoal grey straight dress, skirt and blouse, or skirt and jacket with white blouse. If the front is open, white camisole, collarets or ladies white band, black shoes. Dress must have long or three quarters sleeves and skirt should at least be knee length.

4. Must know the correct mode of addressing the judge and professional colleagues -

Justices of the Court of Appeal and Supreme Court My Lords
High Court Judge (Male) - My Lord/Your Lordship.

High Court Judge (Female) - My Lady / Your Ladyship.
Magistrate (Male and Female) Your Worship.

(Note that Magistrates in Lagos state are addresses as “your honour”. S. 352 ACJL & S. 8 Magistrates' Courts Law of Lagos State 2011)

Customary Court Judge - Your Honour

Tribunals - Your Lordship (or ladyship/lordship if female)

Legal Practitioner - My Learned Friend

5. Must know and maintain the correct decorum in Court - Rule 36 RPC provides that:

- (a) A Lawyer should rise when addressing or being addressed by the judge. See Rule 36(c) RPC 2007.
- (b) He should remain silent and attentive when the Judge is speaking
- (c) While the court is in session, he should not assume an undignified posture. See Discipline of Law pg. 8 where Lord Denning stated thus:

“Whatever the tribunal, you must give good impression. Your appearance means a lot. Dress neatly, not slovenly. Be well-groomed. Your voice must be pleasing, not harsh or discordant. Pitch it so that all can hear without strain. Pronounce your consonants. Do not slur your words. Speak not too fast but yet nor too slow...”

- (d) He must not engage in any banter, arguments or controversy with the opposing party. Rule 36(d). He is to channel these to the courts.

Note that the patience of the court is not inexhaustible: See Hon. Justice Oputa: Modern Bar Advocacy pg. 220; see also *ESSO West Africa Inc. v. Alli (1968) 1.NMLR.414*

Listed below are deeds expected of a lawyer when he is appearing before a judge.

- (i) Stand up when court orderly bangs the door and remain standing until the judge has sat down.
- (ii) Stand up whenever the judge addresses you.
- (iii) Seek the judge's permission for almost everything you want to do in court;
 - (a) To announce yourself,
 - (b) To call and examine your witnesses,
 - (c) To refer to authorities and read passages from Law Reports.

In drawing the attention of the Judge to some authority, you may say "May I refer your Lordship to ..."

Thank the judge for everything he says in favour of your case or to compliment you. i.e."Most grateful to your Lordship"

- (d) Do not talk when another counsel is addressing the court, unless to enter an objection in the latter case.
- (e) Do not read magazines, chew anything or make use of mobile phones in the view of Court.

6. Must maintain a respectful attitude to the court in words and deed - by Rule 31(1) RPC a lawyer shall always treat the court with respect dignity and honour. If he has a proper ground for complaint against a judicial officer, he shall make the complaint to the appropriate authorities. Rule 31(2) RPC. See also Rule 35 of the RPC which enjoins lawyers before a judicial tribunal to accord it due respect, courtesy, and dignity.

Counsel owes the duty to show respect for the Court and enhance the smooth administration of justice- See

Fawehinmi v. State (1990) 5. N.W.L.R. (Pt. 1488) 42.and *Nwafor Orizu v. Anyaegbunam* (1973) 11 N.S.C.C. 280. (For further discussion on this, refer infra to the topic of Contempt of Court.) also see *R. v. Jordan* (I888)36 W.R.797 where a legal practitioner interrupted a court during the course of judgement with the words “This is a most unjust remark” he was held to have committed contempt. See *Atake v The A.G. Federation and Another* (1982) II SC. I53.

7. Counsel must be fully prepared to go on with the case and not seek unnecessary adjournment thereby wasting the court’s time -

Court may refuse application for adjournment and proceed with the case. See *Awolowo v. Takuma FCA/L149/82.*

8. Must conduct his case in logical sequence thereby assisting the court to follow the case with ease -

In Civil cases, Plaintiff should give evidence first, then witnesses. Defendant should lead defence witnesses. In criminal cases, complainant shall lead the prosecution witnesses while accused, if giving evidence, would lead defence witnesses.

Note: Justice Maule’s observations to Counsel: See Oputa: modern Bar Advocacy pg. 15. Also Orojo: Conduct and Etiquette in the Legal Profession at pg. 65.

“Mr. Smith, do you think that by introducing a little order into your narrative you might possibly render yourself a trifle more intelligible? It may be my fault that I cannot follow you, but I should like to stipulate for some sort of order. There are plenty of them. There is the chronological, the botanical, the metaphysical, the geographical, why, even the alphabetical order would be better than no order at all.”

9. Must be candid and fair - Rule 32 RPC 2007.

Counsel is regarded as an officer of the court and has a duty to uphold and observe the rule of law. See rules 30 and 31. The court is entitled to rely upon him for assistance in ascertaining the truth, *veritatem justitiae mater*. Counsel must make the fullest disclosure of evidence to the Court whether for or against his case and must not knowingly suppress a material fact. He must also not fail to cite a decided case that is against him although he is entitled to distinguish such case.

He must not knowingly mislead the court. He must also not stand by and allow the court to be misled. Rule 32 RPC 2007 *Re-certain Legal Practitioners (1960)* 5 F.S.C. 233; *Glebe Sugar Refining Co. Ltd v. Greenock Port & Harbour Trustees (1921)* AC. 66.

In the case of *Linwoddy. Andrew (1988)* 5 8LT 612 for instance, a Barrister permitted affidavits which contained matter amounting to chicanery to be used. On a motion to commit him for contempt of court, it was argued that all he had been guilty of was not having thrown up his brief. It was held that it was his duty to disclose to the Court that the affidavits were untrue and that his fault did not consist of not throwing up his brief but having made' himself a party to fraud whose aim was to delude the court.

For other conducts that a lawyer is precluded from engaging in while handling the case of a client, see Rule 32(a-k) of the RPC.

10. Counsel should avoid trial publicity - Rule 33 of the RPC provides that a lawyer is precluded from making extra-judicial statements that are likely to interfere with or prejudice the fair trial or outcome in a matter which is still before the court. This refers to both criminal and civil trials.

11. Relation with Judges - by Rule 34 of the RPC, a lawyer shall not do 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. A lawyer must display the utmost degree of discretion in his relationship with the judge.

CHAPTER X

DUTY OF COURT TO COUNSEL

Just as a lawyer owes several duties to the Court, so also does the court have its responsibilities towards a lawyer.

The court has the Constitutional obligation to grant fair hearing to both parties. Counsel must be allowed to conduct case in the way he thinks best and the court should not interfere.

- Counsel are entitled to be accorded right of audience. See *Salim v. Ifenkwu & Ors* (1996) 5 N.W.L.R. (Pt. 450), 564.
- Court is expected to respect counsel. See *Ezeogu v. Onwuchekwa* (1997) NWLR. (Pt 502)
- Where the court unduly interferes in the conduct of a counsel's case, the judgment may be set aside. On this, see the following case- *R. v. Clewere*(1953) 37, CR App Rep.37

Jones v. National Coal Board 1957 2 QB 55.(the Hippy Hallet Case)

Okorie v. Police 1966 LLR 134. See also *Oteju & Ors v. Ologunna & Ors.* (1992) 8 NWLR (Pt. 262) 752; *Akinfe v. The State* (1988) 3 N W.L.R. (Pt. 85) 79; *Uso v. Police* (1972) NSCC 37

In *Okoduwa&Ors v State* (1988) 3.S.C.NJ. 110, a court refused a reasonable request for adjournment and proceeded with the case without counsel. In such an instance, the court may breach the constitutional provision of "fair hearing". So also would be the case where the court does not allow counsel to call his witnesses or to make address.

A Judge should be impartial and observe rules of Natural justice. *State v. Oyenubi* (1973) 3 . U.I.L.R. Pt.1, 156

Note that the party that suffers when a judgment is set aside when there has been no fair hearing is the litigant and not

the judge. See *Innocent Madufor Ozims v. Edwards Anoruo* (1991) 3 NWLR (Pt. 181) p. 571

In summary, a judge is to be impartial but he is also not to sit unconcerned where counsel's incompetence is likely to cause injustice. See *Alhaji Musa Omo Eleja v. Bangudu* (1994) 3 N.W.L.R. (Pt.334)534

LEARNING THE PSYCHOLOGY OF THE COURT

Know your Court

- (i) Climatic condition - some have effective air-condition system in which case warm clothing like a three-piece suit, sleeved vest, or thick material gown may be ideal. Others have no functional air-conditioning with poor ventilation system. In such instances, light material clothing may be more suitable to wear to court.
- (ii) Check whether facilities for robing exist in court. Otherwise alternative arrangements should be made.
- (iii) Check whether facilities for car parking exist. Note that parking on call-over (or Motion) days in some jurisdictions may be problematic due to the large number of lawyers present on such days.

2. Know your Judge

- (i) Note the punctuality of Judge to sit, habit of rising during hearing and time of rising for the day.
- (ii) Attempt to study the peculiarities of Judge in the instances listed below:
 - (a) Preference for large or small font documents
 - (b) Fast or slow writing judges
 - (c) Loquacious Judge
 - (d) Awkward Judge
 - (e) Judges who prefer to take down all submissions or write down so little

3. Where to sit in Court

- Select a seat that reflects your standing at the Bar. Give up seat for elders. (It has rewards in the form of assistance and co-operation - the one good turn deserves another principle).
- Avoid the front row which is reserved.
- Avoid the seats meant for the men of the press. The Judge may refuse you audience.
- Do not cross your legs while seated in court.

CHAPTER XI

DUTY OF COUNSEL IN SPECIAL CIRCUMSTANCES

I. (a) DUTY TO FELLOW ADVOCATE

(i) ***To treat with respect, fairness, consideration and dignity***- Rule 26(1) RPC 2007.

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 (and even towards the opposing clients).

In ***Re Johnson (1887) 20 QBD 68*** it was held to be contempt for a solicitor to abuse and threaten an opposing counsel while on his way along the passages from the judge's chambers after an application therein.

He should endeavour as far as possible to accommodate the convenience of fellow counsel when the interests of his client or the cause of justice will not be injured by so doing. It is particularly improper for counsel to criticize another or impugn his motives for taking a weak case or seeking an adjournment. See ***Iso v. Eno (1992) 2 N.W.L.R (pt. 590) 204 at pp 217-218*** per TOBI J.C.A. (as he then was). See also ***Military Governor of Lagos state v Adeyiga (2003) 1 NWLR (Pt. 802) 589***

Rule 27 also enjoins lawyers to maintain good faith and fairness between each other.

(ii) ***To keep Promises - Rule 27(2)(a) (b)RPC 2007.***

A lawyer should adhere strictly to all express promises to and agreements with opposing counsel, whether oral or writing, and should adhere in good faith to all agreements implied by the circumstances or by local customs. ***United Mining Co. v. Becher (1910) 2 KB 296; Ex P Hales (1970)***

2KB 539; *Re Hull Country Bank* (1879) 13 Ch. 261.

(iii) **To Avoid Sharp Practices** - See generally Rule 27(2)(c) 2007.

When a lawyer knows the identity of a lawyer representing an opposing party, he should not take advantage of the lawyer by causing any default or dismissal to be entered without first inquiring about the opposing lawyer's intention to proceed. In the trial of a cause it is unethical to allude to the personal colloquies between counsel which cause delay and promote unseemly client wrangling. Ludwig felt that 2 causes contribute to sharp practices:

- (1) the desire to please a revengeful client and
- (2) the desire to manufacture costs.

See *Densa Engineering Works Ltd v. U.B.N. PLC* (1991) 1 N.W.L.R. (pt. 585) 162 at 171 per Salami J.C.A., *Kwaptoe v. Isenyi* (1990) 4 N.W.L.R. (pt. 600) 571 at 571.

(iv) **Equality of Members** – Rule 26(2) RPC 2007.

Subject to the rules of precedence all members of the Bar are equal. This principle involves the explanation that no member of the Bar irrespective of his rank or title shall regard himself as superior or inferior to any other member of the Bar. Denigration of the members of the profession may amount to infamous conduct. *Allinson v. General Medical Council*.

(v) **Duty not to Covet Clients**

Rule 27(4) RPC provides that when a member of the bar is aware that a person is already represented by another member of the Bar in a particular matter, he shall not have any dealing with that person in the same matter without giving prior notice to the other member of the Bar. The member of the Bar accepting instructions in such circumstances shall use his best endeavours to ensure that

all the fees due to the other member of the Bar in the matter are paid.

(b) DUTY TO OPPONENTS

Duty to be fair and avoid unjustifiable litigation

“The lawyer must decline to conduct a civil cause or to make a defence when convinced that it is intended merely to harass or injure the opposite party or to work oppression or wrong.” Rule 24(3) RPC 2007.

In Re Cooke (1889) 5 TLR 407 Lord Esher said:

“If a solicitor were instructed by his client to take certain proceedings which could legally be taken but which would, to the knowledge of the solicitor, injure his antagonist unnecessarily, but the client nevertheless instructed him to go on in order to gratify his anger then, if the solicitor knew all this, he would be unfair and wrong if he took those proceedings, although he was acting on instruction in so doing”.

A lawyer is not to take, unreasonable or oppressive proceedings in order to gratify a malicious client. Legal Ethics P. 135. - Counsel should refrain from using abusive words even against his opponent. If he does, the court ought to stop him. “*Eloquent Cogniturus male decdendisubile*” (it is dog’s eloquence to undertake the task of abusing one’s opponent).

II. DUTY TO THE STATE

(i) Duty to uphold the Law (General Responsibility of a Lawyer).

Rule 1 RPC 2007.

A lawyer has a special duty to uphold the law and promote the cause of justice because he occupies a quasi-official position. In the words of Justice Yales in *Mayor of Norwich*

v. Berry 1767 BURR 2109 at p.2115. “The court must have Ministers; the Attorneys are its Ministers”.

In the U.S. case of ***Re-summers 1945 325 US 561*** the decision by the Bar of Illinois to refuse admission to a conscientious objector to National service on the ground that he would be unable to subscribe to the oath to support the constitution of the State of Illinois was upheld by the Supreme Court.

Note the rule that “Any misconduct by a lawyer which would if committed before he was a lawyer have been sufficient to prevent him from being admitted as a lawyer will be sufficient to warrant his being struck off the roll or suspended from practice- ***Re Hill 1868 LR 30B 545.***

See *Waziri v. State (1997) 3 N.W.L.R. (Pt. 496) 689. See also Okaro V State (1990) 1 N.W.L.R. (Pt. 125) 128 at 136* where it was held that a Counsel in court in a capital trial has a very important and sacred duty to perform. He owes that duty to not only his client and the court but also to society at large. It is of the very essence of that duty that he should promptly take objection to every irregularity at the trial, be that an irregularity relating to procedure or to evidence called at the trial.

DUTY IN SPECIAL CIRCUMSTANCES CORRUPTION AND ECONOMIC CRIMES AND THE LAWYERS’ ROLE;

**Duty to represent clients within the bounds of Law -
Rule 15 (1) (2) & (3) RPC**

Lawyer as witness for client. Rule 20 RPC Section 175
Evidence Act 2011

Duty not to Advise or Assist in Violation of the Law

Goodenough v. Spencer: 1874 46 How. Pr. 347 (Howard's New York Practice Reports) at pp.350-351:

"No attorney or counsel has right in discharge of his professional duties to involve his client by his advice in a violation of the laws of the State, and when he does so, he becomes implicated in the client's guilt if, when by following the advice, a crime against the laws of the State is committed. The fact that he acts in the capacity and under the privilege of counsel does not exonerate him from the well-founded legal principles which render all persons who advise and direct the commission of crime guilty of the crime committed by compliance with the advice".

See *Myers v. Elman* 1940 AC 282- where a testator instructed his lawyer to prepare certain conveyance with intent to evade payment of duty which the solicitor carried out. An order to the solicitor to produce the instructions cannot be resisted as privileged communication.

Duty to represent client competently Rule 16 RPC

Legal practitioners should not aid and abet corruption specifically by way of laundering money for clients.

- Where in the opinion of a legal practitioner, a client's transaction is suspicious, the legal practitioner shall extract information from the client as to the source of such funds and the beneficiary of such fund - Section 6 Money Laundering (Prohibition) Act 2011 (as amended).
- The legal practitioner shall immediately report any suspicious transaction of his client to the EFCC. Section 6(2) (a) & (c) Money Laundering (Prohibition) Act 2011 (as amended)
- Failure to report to the EFCC is an offence- Section 6 (9) Money Laundering (Prohibition) Act 2011 (as amended).

- Lawyers are to keep the records of clients' identity for a period of not less than 5 years after the relationship has ended- Section 7 Money Laundering (Prohibition) Act 2011.
- A lawyer is bound to transmit the records on demand to the Central Bank of Nigeria or the National Drug Law Enforcement Agency- Section 8 Money Laundering (Prohibition) Act 2011.
- The Federal High Court has held in the case of NBA v AG Federation & Central Bank of Nigeria that section 25 Money Laundering (Prohibition) Act 2011 does not apply to lawyers.

III. DUTY TO THE PROFESSION Rules 1, 2, 3 & 4 RPC 2007.

General responsibility of a lawyer– Rule 1

Rule 1 provides that “a lawyer shall uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.”

Duty as to the admission into the legal profession – Rule 2

Rule 2 of the new Rules provides that- “A lawyer shall not knowingly do any act or make any omission or engage in any conduct designed to lead to the admission into the legal profession of a person who is unsuitable for admission by reason of his moral character or insufficient qualification or any other reasons.”

Aiding un-authorized practice of the law – Rule 2

Rule 3 RPC provides that “a lawyer shall not aid a non-lawyer in the un-authorized practice of the law” or share his legal fees with a non-lawyer except as provided in Rule 53. He shall also not write or sign his name on a document

prepared by a non-lawyer, for a fee, as though such a document were prepared by him.

Avoidance of intermediary in the practice of law – Rule 4

Rule 4 – He shall not permit his professional services to be controlled or exploited by any lay agency which intervenes between him and the client. Charitable societies or institutions rendering aid to the indigent are not deemed as such intermediaries.

Instigating Litigation or controversy. - Rule 47 RPC 2007

(a) It is unprofessional conduct for a lawyer to proffer advice to bring a lawsuit, except in rare cases where ties of blood relationship or trust may render it necessary. Fomenting strife or instigating litigation is unprofessional conduct.

(b) Other objectionable matters to be avoided by lawyers include –

- (i) Searching of land titles for defects in title with a view to employment in litigation.
- (ii) Seeking claimants or their in respect of personal injuries and other causes of action as possible with a view to being engaged as clients to such persons.
- (iii) Engaging agents and others to follow up on accidents with a view to employment in legal capacity by next-of-kin and others.
- (iv) Offering reward to persons likely by reason of their own employment to be able to influence legal work in favour of a particular lawyer.

It is in the interest of the profession generally that any such case should be reported to the Bar council for disciplinary action. See Rule 55 (2) RPC 2007

MISCELLANEOUS DUTIES

Duty to take notes. Counsel should take his own personal notes of the evidence, submissions and rulings in the case in which he is counsel.

- (1) He will need to know what one witness said so that he can “put” his evidence to the witness for opposite party when necessary.
- (2) He will need the note of a witness’ evidence during his examination in chief for purposes of cross-examination of that witness and/or other witness.
- (3) He will need to be able to review all the evidence that has been given in his final submission.
- (4) He will need the notes of evidence to determine the accuracy of record of proceedings made by the judge for the purpose of appeal.

CHAPTER XII

CONTEMPT OF COURT BY LAWYERS

Part of the occupational hazards of lawyers is their susceptibility to be cited for contempt by an irritable judge.

(1) **Definition:** The word “Contempt” is defined in Collins English Dictionary as the attitude or feeling of a person towards a person or thing that he considers worthless or despicable scorn. - Willful disregard of or disrespect for the authority of a court of law or legislative body.

IN *Franklin O. Atake v. Attorney General of the Federation & Anor (1982) 11 S.C at page 175*. IDIGBE JSC has this to say on the definition of contempt of court. “It is indeed difficult to give exact definition of contempt of court and this is because it is so manifold in aspects but generally it may be described as any conduct which tend to bring into disrespect, scorn or disrepute the authority and administration of the law or which tends to interfere with and or prejudice litigants and/or their witnesses in the course of litigation.”

Also in *Theophilus Adetola Awobokun &, Anor. v. Toun Adeyemi (1968) NMLR. Page 289*. The Court defined contempt of court as follows “The essence of contempt is action or inaction amounting to an interference with or obstruction or having a tendency to interfere with or obstruct due administration of justice.”

(2) **PURPOSE:** In *Parashuram Detaram Shamdasani v. King Emperor (1945) A.C. at page 268*. The court said, “The purpose of the discipline enforced by the court in the case of contempt is the need to project the dignity of the court to the person of the Judge and to prevent undue

interference with the administration of Justice but not to bolster up the power and dignity of the Judge as an individual. The importance of this is that of all the places where law and order is maintained, it is in the courts the course of justice must not be deflected or interfered with. Those who strike at it strike at the very foundations of the society. To maintain law and order judges have and must have power at once to deal with those who offend against it".

(3) TYPES OF CONTEMPT

There are two types of contempt:

Criminal and Non-Criminal Contempt, i.e. Civil contempt.

CRIMINAL CONTEMPT: This consists of words or acts which obstruct or tend to obstruct or interfere with the administration of justice. To call a judge a liar, Ravel 1917, to allege he is partial, *Vidyasagara v. The Queen 1963 AC 589* to say in the course of judgment, "That is a most unjust remark" Stafford County Judge 1888-57 LTQB 483, JORDAN 36 WR 289.

CIVIL CONTEMPT: This is contempt in procedure consisting of disobedience to the judgments, orders or other process of court and involving a private injury. See *Obiekwe Aniweta v. The State FSA/E/47/78 delivered on 16/8/78*. *Awobukun v. Adeyemi (1968) N.M.L.R. 289 at 294*, *Afe Babalola v. Federal Electoral Commission & Chief Adegboroye: SUIT NO. AK/MA/77 OF 21/2/78* delivered by T.A. AGUDA CJ ONDO STATE.

(4). CONDUCT OR ACTS THAT AMOUNT TO CONTEMPT: It is not possible to particularize the acts which can or cannot constitute contempt of court - see *Agbachom v. The State (1970) I ALL N.L.R. Page 69*.

It is not every act of courtesy to the court by counsel that amounts to contempt, nor does conduct which involve a breach by counsel of his duty to his clients necessarily amount to contempt: See *Izuora v. Queen* 13 WACA Page 313.

Nevertheless, the following acts or conduct have been held to constitute contempt of court: language or behaviour which is outrageous or scandalous or which is deliberately insulting to the court; comments whether oral or written scandalizing the court is contemptuous, publication in a newspaper or article containing scurrilous personal abuse of a judge, with reference to his conduct as a judge in a judicial proceeding which has terminated is a contempt of court.

Allegations of partiality made against the judge which are probably the most common way in which the court has been held to be scandalized, are treated very seriously as contempt because they tend to undermine confidence in the basic function of a judge. An article or publication in a newspaper that scandalizes or is calculated to bring the court into disrepute amounts to contempt. See *R v. Thomas Horatius Jackson* 6 NLR & 46-55, *Obiekwe Aniweta v. The State* (Supra). Any publication in a newspaper misrepresenting proceedings of a court is contempt under section 133 (4) of Criminal Code. Every private communication to a judge for the purpose of influencing his decision upon a pending matter and whether or not accompanied by the offer of a bribe or by personal abuse is a contempt of court as tending to interfere with the cause of justice: See *Awobokun v. Adeyemi* (1968) NMLR 289.

A fair and civil criticism made against court, may not amount to contempt. See *Okoduwa v. State* (1988) 3 S.C.N.J. 110. *Maharaj v. A.G. Trinidad and Tobago* (1978) 2 AER. 670.

Contempt could either be in the face of the court (in facie curiae) or outside the court (ex facie curiae). Contempt in facie curiae has no closed category and examples in such instance are many. But broadly it is word spoken or act done within the precincts of the court which obstructs or interferes with due administration of justice or is calculated to do so. Contempt ex-facie curiae may be described as words spoken or otherwise published or act done outside court which are intended or likely to interfere with or obstruct the fair administration of justice: see *RE: Dr Olu Onagoruwa: FCA/E/117/79 NO 5/2/80*.

(5). PROOF OF CONTEMPT

Since a contempt of court is an offence of a criminal character, it must be proved beyond reasonable doubt; See *Agbachom v. The State (1970) I ALL N.L.R. Page 69.* *Awobokun v. Adeyemi 1968) NMLR Page 289.*

A Civil contempt arising from a breach of an order of injunction must nonetheless be proved beyond all reasonable doubt as in a criminal proceeding. See *American Int. Security & Telecommunications Systems (Nig.) Ltd v. Elugene Peterson & Anor Suit No. FRC/L/1077 of 27/10/78.*

(6). PROCEDURE

In initiating proceedings of this nature, the guiding principle is as set out in OSWARD on Contempt committal and Attachment at P. 17. No person shall be punished for contempt of court which is a criminal offence unless the specific offence charged against him be distinctly stated and an opportunity of answering it given to him. See *Obiekwe Aniweta v. The State (Supra).* A court can deal summarily with cases of contempt in the face of the court and by the very judicial officer in whose presence the offence was committed. In cases of contempt committed in the face of the court, the court has two options: firstly, there

may be cases where the offence should be dealt with summarily but such hearing must be conducted in accordance with cardinal principle of fair hearing and the case must be one in which the facts surrounding the alleged contempt are so notorious as to be virtually incontestable. Secondly in most cases, the proper procedure of apprehension or arrest, charge, prosecution etc. must be followed: See *Boyo v. The Attorney-General Of Mid-West State* (1971) *I ALL NLR* 342 see also *Oku v. The State* (1970) *I ALL N.L.R. P.* 60. *Maharaj v. A.G. Trinidad & Tobago* (1977) *I ALL NLR* 411.

When a contempt is not committed in the face of the court, a judge who has been personally attacked should not as far as possible hear the case. See *Awobokun v. Adeyemi* (supra).

If a trial court wishes to deal with a case of contempt in the face of the court summarily, he should put the accused not in the witness box but into the dock and ask him to show cause. He should not be compulsorily put into the witness box as that offends section 36(11) of the 1999 constitution which reads "No person who is tried for a criminal offence shall be compelled to give evidence at the trial. See *Deduwa v. The State* (1975) *I ALL NLR Pages* 1 - 17, *Agbachom v. The State* (1970) *I ALL N.L.R. Page* 69. See also proviso to Section 160 of the Evidence Act which buttresses Section 36(11) of the 1999 Constitution.

Natural justice demands that before anyone is committed for contempt, he must be informed of the details of the contempt and must be given an opportunity to make an answer and defence- See *Re: Olu Onagoruwa FCA/E 117/79* delivered on 5/2/80.

7. JURISDICTION OF COURT TO PUNISH FOR CONTEMPT:

The High court has inherent jurisdiction to punish criminal contempt summarily but the power should be exercised with the greatest caution. See *Awobokun v Adeyemi* (1968) *NMLR* 289.

The inherent power to fine and imprisonment for contempt is not retained for the personal aggrandizement of a judge or whoever mans the court. The power is created and maintained for the purpose of preserving the honour of the court. See *Obiekwe Aniweta v. The State* See *Deduwa v. Okorodudu* (1975) 2 SC p.37. See the provisions of section 133 of the Criminal Code.

8 PUNISHMENT FOR CONTEMPT

A charge of contempt of court is a serious one and it is necessary not only for the protection of the courts of justice, but also for the preservation of justice and the administration of it. In this country, acts or conducts which tend to invade these concepts should be very sternly dealt with and in a good time as well. See *In Re Boyo* (1970) I *ALL NLR* 116.

The court will pardon a contemnor whose conduct is unintentional and who purges his contempt by a sincere apology and credible explanation. Court will pardon and discharge a contemnor if he acts unintentionally and from a mistaken belief or misconception of the laws thereby flouting a court's order - See *The State v. Hon. Justice A.A.M. Ekundayo & Anor KWS/I06/77 of 2/9/77*.

Contempt committed under section 133 of the Criminal Code carries a maximum imprisonment of THREE MONTHS. See *Okoma v. Udo* (2002) I *NWLR* (Pt.748) 438.

According to Halsbury's Laws the punishment permissible by law in the case of civil contempt is six months. See *Afe*

Babalola v. FEDECO & Anor AK/ML/77 of 21/2/78 at pages 17-23.

A contemnor can be ordered to be kept in prison until he purges his contempt *Ikabala v. Ojosipe Suit No. LD/967/71 of 30/3/72.*

A judge can commit another judge for contempt.

Where a legal practitioner interrupted a court during the course of his judgment with the words: “This is a most unjust remark” he was held to have committed contempt. *R v. Jordan* (1888) 36 W.R. 797. *R V Stafford County Court Judge* (1888) 57 L.J. AB 485.

See also *Atake v. The AG. Federation &Anor* (1982) Il SC. 153.

To accuse a judge of un-judicial conduct in appropriate cases may not amount to contempt of court. *Maharaj v. AG. Trinidad and Tobago* (1978) 2 All E.R. 670

CHAPTER XIII

IMPROPER ATTRACTION OF BUSINESS

The conduct of legal practice by legal practitioners should be such that the dignity and respect of the profession is preserved. To that end, legal practitioners are expected to act with decorum at all times upholding the values of the profession as well as the Rules of Professional Conduct in the profession. They are therefore required by the rules to desist from solicitation and to only advertise their practice in the limited concessions provided by the RPC. Below are the outlines of the provisions of the RPC in that regards.

INSTIGATING LITIGATION OR CONTROVERSY

Rule 47 RPC 2007 provides as follows:

- (a) It is unprofessional conduct for a lawyer to proffer advice to bring a lawsuit, except where ties of blood relationship or trust may render it necessary. Fomenting strife or instigating litigation is unprofessional conduct.
- (b) Other objectionable conducts to be avoided by lawyers include -
 - (i) Searching of land registries for defects in title with a view to gaining employment or litigation.
 - (ii) Seeking out claimants in respect of personal injuries and other causes of action with a view of being employed by such prospective clients.
 - (iii) Engaging agents and others to follow up on accidents with a view to being employed in legal capacity by next-of-kin and others.
 - (iv) Offering reward to persons likely by reason of their own employment by corporate bodies, Government agencies etc. to be able to influence legal work in favour of a particular lawyer.

It is in the interest of the profession generally that any such case should be reported to the Bar Council for disciplinary action. See Rule 55 (2) RPC 2007

ADVERTISING AND SOLICITING RULE 39 RPC 2007

The 2007 Rules permit advertising to the extent that they are reasonable and sombre. Rule 39 of the 2007 Rules deals extensively with advertisement and soliciting. It provides as follows:

- (1) Subject to paragraphs (2) and (3) of this rule, a lawyer may engage in any advertising or promotion in connection with his practice of the law provided:
 - (a) It is fair and proper in all the circumstances.
 - (b) It complies with the provisions of these Rules.
- (2) A lawyer shall not engage or be involved in any advertising or promotion of his practice of the law which -
 - (a) is inaccurate or likely to mislead;
 - (b) is likely to diminish public confidence in the legal profession, or the Administration of Justice, or otherwise bring the legal profession into disrepute;
 - (c) makes comparison with or criticizes other lawyers or other professions or professionals;
 - (d) includes statement about the quality of the lawyers work, the size of success of his practice or his success rate or;
 - (e) is as frequent or obstructive as to cause annoyance to those to whom it is directed.
- (3) Notwithstanding the provisions of paragraph (1), a lawyer shall not solicit professional employment either directly or indirectly:

- (a) By circulars, handbills, advertisement, through touts or by personal communication or interview.
 - (b) By furnishing, permitting or inspiring newspaper, radio or television comments in relation to his practice of the law;
 - (c) By procuring his photograph to be published in connection with matters in which he has been or is engaged, or concerning the manners of their conduct, the magnitude of the interest involved or the importance of the lawyers position;
 - (d) By permitting or inspiring sound recordings in relation to his practice of law; or
 - (e) By such similar self-aggrandisement.
- (4) Nothing in this rule shall preclude a lawyer from publishing in a reputable law list or law Directory, a brief biographical or informative data of himself including all or any of the following matters:
- (a) His name or names of his professional association.
 - (b) His address, telephone number, telex number, e-mail address etc.
 - (c) The school, colleges or other institutions attended with dates of graduation, degree and other educational or academic qualifications or distinctions;
 - (d) Date and place of birth and admission to practice law;
 - (e) Any public or quasi-public office, post of honour, legal authorship etc.
 - (f) Any legal teaching position;
 - (g) Any national honours;
 - (h) Membership and office in the Bar Association and duties thereon; and
 - (i) Any position held in legal scientific societies.

Additionally, the following rules have also highlighted other circumstances where a lawyer may be permitted to advertise his practice:

Rule 40 permits legal practitioner's name and address on note papers, envelopes and visiting cards.

Rule 41 permits legal practitioner's name and address on signs and notices.

Rule 42 permits legal practitioner's name and qualifications in an article or book for publication.

Rule 43 permits notice of change of address sent to clients. Where a lawyer changes his place of business, it is only expedient that his clients should be put on notice. Thus, the Rules permit notifying clients of any such changes.

Rule 44 permits a lawyer to send to other lawyers in his locality and also publish in his local journal, a brief and dignified announcement of his availability to serve other lawyers as associates and consultants.

Rule 46 (1) permits a lawyer to write articles for publication, or participate in radio and television programmes in which he gives information on the law, but shall not accept employment from any such publication or programme to advise on inquiries in respect of their individual rights.

(2) A lawyer shall not –

- (a) insert in any newspaper, periodical or any other publications, an advertisement offering as a lawyer, to undertake confidential enquiries;
- (b) write for publication or otherwise cause or permit to be published except in a legal periodical, any particulars of his practice or earnings in the courts or cases where the time for appeal has not expired on any matter in which he has been engaged as a lawyer; and

- (c) take steps to procure the publication of his photo-graph as a lawyer in the press or any periodical.
- (3) Where a lawyer is instructed by a client to publish an advertisement or notice the lawyer may put his name address and his academic professional qualifications.

CHAPTER XIV

PROFESSIONAL DISCIPLINE OF LEGAL PRACTITIONER

There are four professional offences provided for by Section 12 Legal Practitioners Act as amended for which a Legal Practitioner may be punished by the Legal Practitioners Disciplinary Committee (LPDC). These are:-

(1) INFAMOUS CONDUCT IN A PROFESSIONAL RESPECT: There is an identical provision in the Medical & Dental Practitioners Act which defines what constitutes “Infamous conduct”. A definition is provided in the English case of *Allison v. General Medical Council* [1894] 1 QB 750 at 760

“Where a medical man in the pursuit of his profession has done something with regard to which it would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency.”

The definition adopted for an identical provision in the English case of *Solicitor Ex-parte Law Society* (1912) 1 KB 301 (311) was applied by the Privy Council in the case of *Grahame v Attorney General of Fiji* (1936) ALL ER 992 (1000).

For other illustration see *Re Gray Ex Parte Incorporated Law Society* (1869) 20 LT 730. In that case a Solicitor acted willfully without client’s authority.

Re Davies 1898 14 LTR 332.

Solicitors concealed a will on his client’s instruction.

Re Lowe & Le Richie 1978 LT JO 226. Conclusively obtaining a secret commission out of purchase money payable by his client.

Re: A Solicitor Ex parte Incorporated Law Society 1894 1QB 254. In *M.D.P.T. v Okonkwo* (2001) 7 NWLR (Pt

711) 206, the court held that a charge of infamous conduct must be of a serious infraction of acceptable standard of behaviour, or ethics of the profession.

In the Nigerian case of *NBA v Mabawonku* (2013) 15 NWLR (Pt 1378) 603 LPDC, infamous conduct in a professional respect was defined as '*an act or omission, which in the opinion of the disciplinary committee is such that will bring the profession into disrepute.*'

NOTE 1: What constitutes "infamous conduct" may depend upon the norms of each profession and the facts of each case should be considered accordingly. Some facts would apply to all professions e.g. Allinson's case. Some would not e.g. 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 any money or property which may come to the lawyer on the client's behalf. See *Onitiri v Fadipe* Charge No LPDC/IP/82 where misappropriation of client's money was held to be infamous conduct by a legal practitioner. This offence may not be taken that seriously if the offender were a medical doctor whose nature of professional work does not involve handling money for patients. Conversely, adulterous relationship between a doctor and patients is regarded as serious act of infamous conduct since female patients are expected to surrender their person to examination and treatment by their doctor either in the privacy of the patient's home or the doctor's clinic

NOTE 2: Where the facts constituting infamous conduct also constitute a criminal offence, it may not be allowed to institute professional disciplinary procedure against the offender unless criminal prosecution has been brought against him.

Denloye v Medical and Dental Practitioners Disciplinary Committee 1968 1 All NLR 306; *Garba v University Of Maiduguri* (1986)1 NWLR (Pt 18) 550

Note *Akintemi & Ors. v Prof. Onwumechili*(1985) 1 NSCC 46.

NOTE - *RE HILL 1868 LR 3QB 545.*

But this case can be contrasted with the English decision in *RE HILL 1868 LR 3QB 545.*

NOTE 3: Breach of any of the Rules of Professional Conduct in the Legal Profession could be held to constitute infamous conduct in a professional respect. See Onitiri Fadipe Charge No. LPDC/IP/82 decided by LPDC in 1991.

NOTE 4: Where an infamous act was not committed in a professional respect it would not come within the provision of S. 11(1) (a) LPA, but it may come within s. 11(2) Legal Practitioners Act as conduct incompatible with the status of a legal practitioner.

Re. Idowu Legal Practitioner (1971) 1 ALL NLR 126,
In the matter of *Thomas James Wallace* 1886 16 ER 26.

NOTE 5: Where a person who had been convicted of an offence which also constituted infamous conduct in a professional respect has that conviction reversed on appeal purely on technical ground, he could still be proceeded against professionally for infamous conduct in a professional respect. See *Re King*1845 8QB 129 15 ER.

**(2) CONVICTION BY ANY COURT IN NIGERIA
HAVING POWER TO AWARD IMPRISONMENT
OF AN OFFENCE WHICH IS INCOMPATIBLE
WITH THE STATUS OF A LEGAL
PRACTITIONER.**

1. Offences involving financial dishonesty have always been regarded as incompatible with the status of a legal practitioner.
Sagoe v R 1963 1 ALL NLR 290 (293).R v.Abuah 1962 1 ALL NLR 279
2. Offences which endanger the welfare of human beings or society generally would come within the provision e.g. possession, distribution, importation or exportation of Indian hemp or cocaine. Political offences e.g. treason, treasonable felony or sedition would not come within the provision. Marriage offences would be similarly regarded.
3. It is not necessarily the seriousness of the offence that is material but whether a person who commits the offence should remain a member of a learned profession ***Re Weare 1893 2 QB 290*** (Maintaining brothel).
4. The offence need not be committed in a professional respect to come under this provision. In ***Re Weare 1893 2QB 290*** the legal practitioner who allowed his house to be used as a brothel was convicted and his name was struck off the roll. ***Re Valance 1889 24 LJ 638***assisting a prisoner to escape from the country.
5. The conviction must be by a court in Nigeria as provided by the statute.

QUERY: Whether this is not too restrictive in this globalized age? Where the facts giving rise to the conviction above also constitute infamous conduct in a professional respect Section 11 (l) (a) or 11(2) could be invoked.

6. No appeal must be pending against conviction and the time of appeal must have passed for this provision to be invoked.

(3) OBTAINING ENROLMENT BY FRAUD: SECTION 12(1) [c]

Where a person obtained enrolment by a misrepresentation of facts and if the true facts had been known he would not have been enrolled. This would cover any of the conditions that must be fulfilled to be called to the Bar. Sections 4(1) and 7(1) LPA. These are:

- (i) Citizenship - No longer essential.
See Legal Education (Consolidation etc) (Amendment) Decree No 9 of 1992
- (ii) Possession of a qualifying certificate from the Nigerian Law School
- (iii) Good Character
It would also cover fraudulent misrepresentation of facts by an alien who succeeded in obtaining enrolment under the Regulations made by the Attorney General of the Federation to practice in Nigeria. This Provision should 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) CONDUCTS INCOMPATIBLE WITH THE STATUS OF LEGAL PRACTITIONERS- Section 12 (2) of LPA 2004 as amended.

This is an omnibus ground and it covers all residual cases where 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.

PROCEDURE BEFORE LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE

1. A written complaint against a legal practitioner shall be forwarded by complainant or a person aggrieved to any of the following persons:

- (a) The Chief Justice of Nigeria.
 - (b) The Attorney-General of the Federation.
 - (c) President, Court of Appeal or any 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 Federal Capital Territory.
 - (e) The Attorney General of a State.
 - (f) Chairman, Body of Benches; and
 - (g) President, Nigerian Bar Association or Chairman of a branch of Nigerian Bar Association.
- See Rule 3(1) LPDC Rules 2006.

2. Any of the above persons who receive a complaint against any legal practitioner shall forward the complaint to the NBA which shall cause the complaint to be investigated. See Rule 3(2) LPDC Rules 2006. If after such investigation, the NBA is of the opinion that a *prima facie* case has been made, it 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 to the LPDC. Rule 4 LPDC Rules 2006.

The NBA shall appoint a legal practitioner to present the case before the Committee- Rule 6 LPDC Rules 2006. Every party to the case shall be heard personally or through a lawyer of his own choice.

On the direction of the Chairman of the Disciplinary Committee, the Secretary shall fix a day for hearing and serve hearing notices on the parties to the proceedings (either personal service, registered post, e-mail etc) Rule 7(1) and (2) LPDC Rules 2006.

There shall be at least 15 days between the service of hearing notice and the date of hearing. See Rule 7 (4) LPC Rules 2006.

Except where service is by publication in the newspaper, the secretary is to serve on parties, other than the complainant, both the hearing notice and copies of the report and the complaint prepared by the NBA. See Rule 7(5) LPDC Rules 2006.

Upon proof of service, the Committee may proceed to hear and determine the case in the absence of counsel. Rule 8 LPDC Rules 2006. An absent party/counsel may within 30 days from date of pronouncement of findings and direction of the Committee apply for a re-hearing. Rule 9 (1) LPDC Rules 2006.

If the Committee is satisfied that it is just to re-hear the case, it may grant the application upon such terms as to costs or otherwise. Rule 9 (2) LPDC Rules 2006.

The Committee shall hear witnesses and receive documentary evidence such as would assist it in coming to its conclusion regarding the truth or otherwise of the allegations. See Rule 10(1).

The provisions of the Evidence Act 2011 apply to the committee's proceedings. See Rule 10(2). *Denloye v. Medical And Dental Practitioners Disciplinary Committee* (1968) 1 ALL NLR306. See *In Re G Idowu (A legal practitioner)* (1971) 7 NSCC 147.

At the conclusion of hearing, the committee may call for written addresses. Rule 15(1) LPDC Rules 2006.

The Proceedings and announcement of the committee's decisions shall be held in public. Rule 13 LPDC Rules 2006. If the Committee finds that the allegations have not been proved, it shall record its finding- Rule 16.

If it finds that the allegations are proved, it may give direction:

- (a) ordering the Registrar to strike the legal practitioner's name from off the roll.
- (b) suspending the legal practitioner from practice for a certain period.
- (c) ordering the legal practitioner to refund money or hand over documents in his possession.
- (d) admonishing the legal practitioner. See Rule 17 (a – b)

Directions made by the committee are to be gazette- Rule 20.

Please note that proceedings before the Committee shall comply with the rules of natural justice. *LPDC v Fawehinmi* (1985) NWLR (Pt 7) 300; (1985) 2 NSCC 998.

APPEALS

Appeals lie from the decision of the Legal Practitioner's Disciplinary Committee to the Supreme Court by virtue of section 12 (7) of the LPA 2004 as amended.

OTHER DISCIPLINARY AUTHORITIES

- (a) **The Supreme Court - Section 13 (1) Legal Practitioners Act.**

Where it appears to the Supreme Court that a person whose name is on the roll has been guilty of infamous conduct in any professional respect with regard to any matter of which the court or any other court of record in Nigeria is or has been seized, the Supreme Court may if it thinks fit, after hearing any representations made and evidence adduced by or on behalf of that persons and such other person as the court considers appropriate, give such a directions as is

mentioned in subsection (1) of section 11, and the directions shall take effect forthwith; except in the case of an admonition; the court shall cause notice of the direction to be published in the Gazette. NWALUTU V NBA (2019)8 NWLR (Pt. 1673) 174

(b) **The Chief Justice of Nigeria - Section 13 (2) Legal Practitioners Act.**

Where it appears to the Chief Justice that a legal practitioner should be suspended from practice, either with a view to the institution against him of proceedings under this Decree before the Disciplinary Committee or while any such proceedings are pending the Chief Justice may if thinks fit, after affording the legal practitioner in question an opportunity of making representation in the matter give such a direction as is authorised by paragraph (ii) of subsection 11; and in deciding whether to give such a direction in consequence of the conviction of a legal practitioner the Chief Justice shall be entitled to disregard the provision of subsection (5) of that section.

RESTORATION OF NAME TO THE ROLL

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 the suspension be cancelled. An application for this purpose is usually made to the Disciplinary Committee but if the striking off or suspension was ordered by the Chief Justice of Nigeria or the Supreme Court then the application should be made to the Supreme Court. S. 14 LPA. See *R v. Abuah* (1962) 1 ALL NLR 279. 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 court is satisfied that the applicant has in the intervening years become a fit and proper person to be re-integrated as a member of the legal profession.

Re A.B. Abua (1973) II SC 41 at 43 and See also *Adesanya v AG (Federation)* unreported Suit No. SC 130/1964.

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

CHAPTER XV

APPOINTMENT AND DISCIPLINE OF JUDICIAL OFFICERS IN NIGERIA

WHO ARE JUDICIAL OFFICERS?

Judicial officers are Judges who preside over superior courts of record. They are Justices of the Supreme Court, Justices of the Court of Appeal, Judges of the Federal High Court, High Court of Federal Capital Territory, High Court of the States, National Industrial Court, Kadis of the Sharia Court of Appeal of the Federal Capital Territory and the States and Judges of the Customary Court of Appeal of the Federal Capital Territory and the States- **Section 292 (1) CFRN, 1999.**

APPOINTMENT OF JUDICIAL OFFICERS

QUALIFICATIONS: It is noteworthy that different qualifications are required for the different appointment of judicial officers depending on the Court.

For the appointment of Judges of the High Court of the States and the Federal Capital Territory, the Federal High Court, the qualification is 10 years post call experience.- See sections 250 (3), 256 (3), 271 (3). The Sharia Court of Appeal of the States and Federal Capital Territory, where a legal practitioner is to be appointed a Kadi, he must possess at least 10 years post call qualification- See section 261 (3) (a) Constitution of the Federal Republic of Nigeria. In addition, he shall also possess a recognized qualification in Islamic law from any acceptable institution by the National Judicial Council. A non-legal practitioner may also be appointed Kadi where he has a recognized qualification in Islamic law from an institution approved by the National Judicial Council and has been so qualified for not less than 12 years. Also, he must have considerable experience in the practice of Islamic law or he is a distinguished scholar of Islamic law.

For the appointment of the Judges of the Customary Court of Appeal of the Federal Capital Territory and the States, the legal practitioners must possess not less than 10 years post call experience. In addition, such legal practitioner must have considerable knowledge and experience in the practice of Customary law- See section 266 (3) CFRN, 1999.

The Court of Appeal Justices must possess not be less than 12 years post call experience- Section 238 (3) CFRN, 1999 and the Supreme Court Justices should possess not less than 15 years post call experience- Section 231(3) CFRN, 1999.

BODIES RESPONSIBLE FOR APPOINTMNT OF JUDICIAL OFFICERS

1. Federal Judicial Service Commission advises the National Judicial Council (NJC) in nominating persons for appointment for offices of Chief Justice of Nigeria, Justices of the Supreme Court, President of the Court of Appeal, the Justices of the Court of Appeal. Chief Judge of Federal High Court, Judge of the Federal High Court, Chairman & members of the Code of Conduct Tribunal. It also recommends to the National Judicial Council, removal from office of all the above. THIRD SCHEDULE PART 1, ITEM 13, CFRN (AMENDED)

2. State Judicial Service Commission: advises the NJC in nominating persons for appointment for offices of a state Chief Judge, Judges of a State High Court, the Grand Kadi and Kadis of a State Sharia Court of Appeal and the President and Judges of a State Customary Court of Appeal.

3. NATIONAL JUDICIAL COUNCIL

The National Judicial Council is the body responsible for the coordination of all judicial appointments, discipline and removal in all the superior courts of record in Nigeria.

:

FUNCTIONS

- (a) The National Judicial Council recommends for appointment to the President from among the list submitted to it by;
 - (i) Federal Judicial Service Commission, persons for appointment to the offices of the Chief Justice of Nigeria, the Justices of the Supreme Court, the President and Justices of the Court of Appeal, the Chief Judge and Judges of the Federal High Court, and
 - (ii) the Judicial Service Committee of the Federal Capital Territory, Abuja, persons for appointment to the offices of the Chief Judge and Judges of the High Court of the Federal Capital Territory, Abuja, the Grand Kadi and Kadis of the Sharia Court of Appeal of the Federal Capital Territory, Abuja and the President and Judges of the Customary Court of Appeal of the Federal Capital Territory, Abuja;
- (b) To recommend to the President the removal and discipline of such judicial officers.
- (c) To recommend to the Governor of the States person for appointment from the list submitted by the State Judicial Service Commission.
- (d) To recommend to the Governor removal of judicial officers and exercise disciplinary control over them.
- (e) To collect, control & disburse money, capital or recurrent for the judiciary & for services of the National Judicial Council.

- (f) To advise the President and the Governor on any matter pertaining to the judiciary as may be referred to the Council by the President or the Governor.
- (g) To appoint, dismiss and exercise disciplinary control over members & staff of the Council.
- (h) To handle broad issues of policy & administration.
See the 3rd Schedule, Part 1, Item 21 of the 1999 CFRN

THE COMPOSITION OF THE NATIONAL JUDICIAL COUNCIL

The National Judicial Council shall comprise the following members -

- (a) The Chief Justice of Nigeria who shall be the Chairman;
- (b) The next most senior Justice of the Supreme Court who shall be the Deputy Chairman;
- (c) The President of the Court of Appeal;
- (d) Five retired Justices selected by the Chief Justice of Nigeria from the Supreme Court or the Court of Appeal;
- (e) Chief Judge of the Federal High Court;
- (f) Five Chief Judges of States to be appointed by the Chief Justice of Nigeria from among the Chief Judges of the States and of the High Court of the Federal Capital Territory, Abuja in rotation to serve for two years;
- (g) One Grand Kadi to be appointed by the Chief Justice of Nigeria from among Grand Kadis of the Sharia Courts of Appeal to serve in rotation for two years;
- (h) One President of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Courts of Appeal to serve in rotation for two years;
- (i) Five members of the Nigerian Bar Association who have been qualified to practice for a period of not

- less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment. Provided that the five members shall sit in the Council only for the purposes of considering the names of persons for appointment to the superior courts of record; and
- (j) Two persons not being legal practitioners, who in the opinion of the Chief Justice of Nigeria, are of unquestionable integrity.

The Secretary of the Council shall be appointed by the National Judicial Council on the recommendation of the Federal Judicial Service Commission and shall be a legal practitioner.

**FEDERAL JUDICIAL SERVICE COMMISSION, 1999
CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA**

The appointment of Judicial Officers provided for under the constitution is as follows:

The appointment of the Chief Justice of Nigeria and Justices of the Supreme Court is by the President upon the recommendation of the National Judicial Council and subject to confirmation by the Senate in the case of the Chief Justice of Nigeria. Requisite qualification for appointment is 15 years post call experience. Section 231 (1) (2) & (3) 1999 CFRN.

PRESIDENT OF THE COURT OF APPEAL AND OTHER JUSTICES OF THE COURT OF APPEAL

The appointment of the President of the Court of Appeal and the Justices of the Court of Appeal is by the President upon the recommendation of the National Judicial Council and subject to confirmation by the senate in the case of the President. Requisite qualification is 12 years post call experience. Section 238(1) (2) & (3) 1999 CFRN.

CHIEF JUDGE AND OTHER JUDGES OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY BY THE FEDERAL JUDICIAL SERVICE COMMITTEE

The appointment of the Chief Judge and the Judges of the High Court of the Federal Capital Territory is by the President upon the recommendation of the National Judicial Council subject to the confirmation of the Senate in the case of the Chief Judge. Requisite qualification is 10 year post call experience. 256 (2) & (3) 1999 CFRN.

CHIEF JUDGE OF THE FEDERAL HIGH COURT AND OTHER JUDGES

The appointment of the Chief Judge and the Judges of the Federal High Court is by the President upon the recommendation of National Judicial Council subject to confirmation by the senate in the case of the Chief Justice. Requisite qualification is 10 years post call experience. Section 250 (1) (2) & (3) 1999 CFRN.

GRAND KADI AND KADIS OF THE SHARIA COURT OF APPEAL OF THE FEDERAL CAPITAL TERRITORY

The appointment of the Grand Kadi and Kadis of the Sharia Court of Appeal of the Federal Capital Territory is by the President upon recommendation of the National Judicial Council subject to confirmation by the Senate in the case of the Grand Kadi. Requisite qualifications are 10 years post call experience and qualification in Islamic law from a

school recognized by National Judicial Council or 12 years qualification from an Islamic School recognized by the National Judicial Council- Section 261 (1) (2) & (3) 1999 CFRN. In addition, a considerable experience in the practice of Islamic law or he should be a distinguished scholar of Islamic law.

PRESIDENT AND JUDGES OF THE CUSTOMARY COURT OF APPEAL OF THE FEDERAL CAPITAL TERRITORY

The appointment of the President and Judges of the Customary Court of Appeal of the Federal Capital Territory is by the President upon the recommendation by the National Judicial Council subject to confirmation by the Senate in the case of the President. Requisite qualification is 10 years post call experience and considerable experience and knowledge of Customary law or in the opinion of National Judicial Council, has considerable experience in customary law- Section 266 (1) (2) & (3) 1999 CFRN.

CHIEF JUDGE AND OTHER JUDGES OF THE HIGH COURT OF A STATE

The appointment of the Chief Judge and the Judges of the High Court of a State is by the Governor upon the recommendation of the National Judicial Council subject to the confirmation of the House of Assembly in the case of the Chief Judge. Requisite qualification is 10 year post call experience- Section 271 (1) (2) & (3) 1999 CFRN.

GRAND KADI AND OTHER KADIS OF THE SHARIA COURT OF APPEAL OF A STATE

The appointment is of the Grand Kadi and Kadis of the Sharia Court of Appeal of a State is by the Governor upon recommendation of the National Judicial Council subject to confirmation by the House of Assembly in the case of the

Grand Kadi. Requisite qualifications are 10 years post call experience and qualification in Islamic law from a school recognized by National Judicial Council or 12 years qualification from an Islamic School recognized by the National Judicial Council- Section 276 (1) (2) & (3) 1999 CFRN. In addition, a considerable experience in the practice of Islamic law or he should be a distinguished scholar of Islamic law.

PRESIDENT AND JUDGES OF THE CUSTOMARY COURT OF APPEAL OF A STATE

The appointment of the President and Judges of the Customary Court of Appeal of a State is by the Governor upon the recommendation by the National Judicial Council subject to confirmation by the House of Assembly in the case of the President. Requisite qualification is 10 years post call experience and considerable experience and knowledge of Customary law or in the opinion of National Judicial Council, has considerable experience in Customary law-Section 281(1) (2) & (3) 1999 CFRN.

NATIONAL JUDICIAL COUNCIL GUIDELINES

The guidelines are designed to ensure the following:

1. Transparency in the selection process.
2. The independence of the Federal/State Judicial Service Commissions and the Judicial Service Committee of the Federal Capital Territory.
3. Exclusion of lobbying by applicants.
4. Avoidance of imposition of any candidate on any of the appointing authorities; the National Judicial Council, the Federal Judicial Service Commission, Judicial Service Committee and the State Judicial Service Commission.
5. Only candidates with high integrity, good reputation, track record of intellectual capacity, hard

work and industry are submitted to the National Judicial Council.

PROCEDURE

- i. A request is made to the Governor seeking the appointment of a specified number of Judges by the State Judicial Service Commission.
- ii. A copy of the request letter is sent to the Secretary of the National Judicial Council.
- iii. A copy of the Governor's response is also sent to the National Judicial Council.
- iv. Upon the Governor's consent, the head of the court concerned will request for nominations from every judicial officer in the State.
- v. The candidates nominated shall be shortlisted by the head of the court. The shortlisted candidates shall be double the required number of judicial officers sought to be appointed.
- vi. The names of the shortlisted candidates will then be circulated to all the judicial officers in the State and the NBA branches requesting for their comments on the suitability or otherwise of the candidates.
- vii. The comments on and the names of the shortlisted candidates will be forwarded to the chairman of the State Judicial Service Commission who will forward the shortlisted candidates to the National Judicial Council for 'Form A'.
- viii. The completed NJC form A shall be submitted to State Judicial Service Commission along with the necessary supporting documents.
- ix. The State Judicial Service Commission will then consider the shortlisted candidates, their documents and then decide on the names to forward to the National Judicial Council.
- x. In doing so, it shall ensure that only the names of candidates who are morally above board are

- forwarded. The Chairman of the State Judicial Service Commission shall then send a written request to the National Judicial Council for the recommendation of the selected candidates.
- xii. The request shall be accompanied by an undertaking that the National Judicial Council guidelines have been complied with and with the following documents:
 - a. Letter of intention alongside the Governor's approval is forwarded to the Secretary of the Council.
 - b. Minutes of the meeting of the Federal Judicial Service Commission, State Judicial Service Commission or Judicial Service Committee as the case may be for the nomination of the candidates for appointment must be forwarded in 30 copies to the National Judicial Council addressed to the Secretary.
 - c. Candidates' Curriculum Vitae must be attached along with their Bio-data (NJC Form A)
 - d. Each candidate shall submit ten (10) judgments, obtained or delivered in contested cases in the past two years.
 - e. Candidates whose names are forwarded must undergo medical tests and attach the evidence of the result of such test.
 - f. A copy of the legislation establishing the court (only when the court is newly established)
 - g. Proof of availability of accommodation, court rooms, cars and other necessary facilities.

DISCIPLINE OF JUDICIAL OFFICERS SECTION 292 (1) 1999 CFRN

CODE OF CONDUCT FOR JUDICIAL OFFICERS:

Code of Conduct for Judicial officers was promulgated by the guidelines of the National Judicial Council. In

accordance with the provisions of the CFRN, a judicial officer remains in office until the prescribed retirement age. However, he may be removed under the constitutional age for his retirement through the following procedure:

1. The heads of the Federal Courts: by the President on the recommendation of the National Judicial Council acting on an address supported by the two-thirds majority of the Senate. Section 292 (1) (a) (i) 1999 CFRN.
2. The other Justices or Judges of the Federal Court- by the President upon recommendation of the National Judicial Council- Section 292 (1) (b) 1999 CFRN
3. The heads of State Courts; by the Governor acting on an address supported by the two-thirds majority the House of Assembly of the State. Section 292 (1) (a) (ii) 1999 CFRN.
4. The other Judges of the State, by the Governor upon the recommendation of the National Judicial Council- Section 292 (1) (b) 1999 CFRN.

GROUNDS FOR REMOVAL OF JUDICIAL OFFICERS

- Misconduct
- Breach of Code of Conduct.
- Inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or body).

The removal of heads of the State courts is by the Governor acting on an address by the two-thirds majority of the House of Assembly.

Other Judges, by the Governor upon the recommendation of National Judicial Council- Section 292 (1) (a) 1999 CFRN.

CHAPTER XVI

LEGAL SKILL

LEGAL RESEARCH

INTRODUCTION

A legal practitioner can only exhibit knowledge and skill in a legal matter if he or she possesses research skills and this is necessary in order to carry out effective legal practice. It is the fact of the matter that will form the basis of legal research. After establishing the facts of the matter, the legal practitioner must classify the matter into a legal category. The legal practitioner must sift the facts to compress them into specifics to aid the research process.

NIGERIAN LAW AND LEGAL LITERATURE

To find the law applicable to a matter, a legal practitioner must know the sources of the law. If Nigerian Law, it is one or more of these sources of law that will govern a matter. The sources of Nigerian law are as follows

- (a) Received English Law;
- (b) Nigerian Legislation;
- (c) Nigerian Case Law;
- (d) Customary law; and
- (e) Islamic Law.

Having made certain the Nigerian Law applicable to the matter, the law must be found and examined. Where are Nigerian Laws to be found? Nigerian laws are contained in legal literature and they can be classified as follows:

- (1) Primary sources
- (2) Secondary sources; and
- (3) Tertiary sources.

1. Primary sources are: (i) books of law such as statute books (Laws of the Federation of Nigeria 2004; Laws of various States of the Federation/Gazettes, etc). (ii) Law reports such as the Nigerian Weekly Law Reports, Nigerian Supreme Court cases etc. The Quran is also a primary source of law.
2. Nigerian law can also be found in secondary sources of law. These are books about law rather than books of law. These books explain the law and they are the author's understanding and interpretation of the law. Unlike primary sources of law, they are not binding on courts, but provide a guidance to practitioner on the area of law.
3. Finally, Nigerian law can be found in tertiary sources of law. These are books about law; but unlike secondary sources, they do not explain the law. Instead they direct the practitioner on where to find the law. Therefore, they are sometimes referred to as 'finding tools. e.g. indexes.

The legal practitioner must learn how to use legal literature. This entails understanding their form, especially those of primary sources. Where the applicable law on a matter is unwritten Customary Law, it may be necessary to ascertain the rule of Customary law. This can be done by calling witnesses to testify on the point of Customary Law.

HINTS ON LEGAL RESEARCH

Legal research should be planned and meticulously carried out. The legal practitioner should follow these hints to carry out legal research effectively.

- (a) A legal practitioner should possess good dictionaries that must include: English dictionaries, dictionaries of Latin words and phrases, Law dictionaries particularly the latest edition of Black's Law dictionary.

- (b) A legal practitioner must take notes while doing research. The notes must include the date, place and time of the research. He must also remember to keep citable records of the sources of his information; authors of books, writers of and sources of articles.
- (c) The sources of documents photocopied where information or the exact words of documents are required must be noted on such copies.
- (d) Colleagues with vast knowledge in specific area of law should be consulted for guidance on research. Also administrative and court officials may be consulted on subject matters they are very conversant with for guidance on matters within their knowledge.

Legal research may also be viewed as seeking information concerning legal matters. The following are some highlights on effective legal research:

- There is need to identify applicable Laws, relevant case law, etc applicable to specific cases
- Sometimes research is assigned to junior in chambers, research assistant or any Counsel
- Every lawyer should always research, especially in novel areas of law or knowledge generally.

FUNCTIONS OF LEGAL RESEARCH

- Legal research before a client interview helps legal practitioners acquaint themselves with the position of the law on the subject matter.
- It determines if a client has a legal case.
- It helps in preparation for ADR or preparation for trial.
- It gives a lawyer an overview of applicable law and it charts out the course of action to take.
- It helps the lawyer to think on his feet;
- Before a legal research, a lawyer must analyze the legal problem to ascertain the type of law applicable

- to a given problem e.g. Statutory, Customary, Islamic Law, etc.
- Legal research could be manual or electronic research.
- Indexes are useful tools in legal research.

CHAPTER XVII

ADVOCACY

INTRODUCTION:

Advocacy refers to pleading a case in a court or tribunal. A Practitioner possesses advocacy skills to plead a case effectively in court. He or she must be guided by the rules, conventions and practices governing advocacy- (See Professional Ethics Manual).

A practitioner must prepare for a case before its presentation in court-Rules 14 & 16 (1) (b) of the Rules of Professional Conduct for Legal Practitioners provide essentially that a lawyer must make every reasonable effort to prepare himself fully, prior to court appearances. Preparation for a case entails ascertainment, of the facts of the case by interviewing clients and witnesses and examining documents and physical items. It also entails a detailed study of pleadings, charges, proof of evidence and briefs of argument served on the practitioner. Having ascertained the facts of the case and studied all courts processes, the practitioner must then decide on the strategy to adopt in the case.

Writers have identified the following strategies for preparation of a case:

- (i) Ideal closing speech;
- (ii) Appreciation of the situation;
- (iii) Theory of the case; and
- (iv) A story

Each of these strategies will be considered:

PROSECUTION OF ACTION

Counsel may represent a client at pre-trial, trial or on appeal. At any stage at which a client is represented,

counsel must prepare for the case. Pre-trial hearings are usually for applications preceding the trial of the case. For example, motion for: substituted service of process of court, for interim injunction, to amend pleadings and so on. Most of these applications are heard and determined on affidavit evidence and addresses by counsel, after which a ruling is delivered.

Trial of a case civil or criminal involves calling of witnesses and adducing documentary and physical evidence to prove or disprove the case.

EXAMINATION OF WITNESSES

Method of putting questions to witnesses with a view to obtaining material evidence from them to support one's case is referred to as Examination-in-chief. It is conducted by the party calling the witness. S. 214(1) Evidence Act, 2011.

Purpose is to elicit admissible, material & favourable evidence. It takes the form of responses to questions which eventually provide a story line. It is usually commenced by introductory questions before main questions.

Counsel should guide witness to tell court only story that is relevant, in an orderly, sequential and easy to follow manner. Pre-trial interview is necessary to prepare the witness.

Leading questions are generally not allowed during examination-in-chief. Ss. 221(1) and (2) Evidence Act.

Leading question is defined under S. 221 as questions suggesting the answer which the person putting it wishes or expects to receive.

Exceptions are; Introductory matters; Undisputed facts; Matters, which in the opinion of the court have already been sufficiently proved before the court- S. 221(3) E.A.

Open ended questions starting with “who”, “why”, “what”, “where”, “when”, “how”, “describe”, “explain” etc should be adopted to avoid leading questions.

As a general rule, examination-in-chief of any witness in a civil trial is now reduced to the identification and adoption by such witness of his written statement on oath. In exception to the general rule:

- witness may be led in evidence to lay the appropriate foundation for the admissibility of any document which parties did not agree to admit at the pre-trial or case management conference: O.36, r. 4 (Lagos);
- to admit real evidence- O. 36, r. 3(Lagos)
- a witness that has been compelled to attend court by subpoena- O. 36, r. 4 (Lagos)

Hostile Witness - Who is a hostile witness? A hostile witness in the opinion of the court, is a witness who is biased against the party who calls him, and who is unwilling to testify to the truth. He is a witness who supports the other party or has been compromised. See *Esan v. State*.

This is a witness who bears hostile animus to the party calling him and is unwilling to testify or tell the truth. *Esan v. State*

Party calling witness is deemed to be holding out such witness as witness of truth. *Babatunde v. State*. Therefore, as a general rule, a party calling a witness cannot discredit him by general evidence of bad character except where the court declares him hostile. S. 230 E.A.

Upon oral application by the party and court satisfying itself, it can declare a witness hostile. S. 230 E. A. – the witness may then be cross-examined. *Iluonu v Chiekwu; Gaji v. State.*

CROSS EXAMINATION

The examination of witnesses by a party other than the party who calls him is known as cross-examination. S. 214 (2) E.A.

Even though the law allows cross-examination, where a witness fails to testify on material point during the examination-in-chief and the silence is not to the advantage of the opposing party, cross examination may not be necessary.

- Not limited to facts elicited in examination-in-chief. S. 215(2) E.A.
- Cross-examination is not mandatory, but can be crucial.
Kpokpo v. Uko

Note a co-accused can cross-examine witnesses of other accused persons before cross-examination by prosecution. Ss. 216, 217 E.A.

Person summoned merely to produce documents and not to testify cannot be cross-examination. See Ss. 218, 219 E.A.

PURPOSE OF CROSS-EXAMINATION

To contradict, destroy, discredit and weaken the case of the opponent.

When cross-examining, a counsel can ask questions which are not direct facts in issue, however they must be relevant S. 215(2).

Under cross examination the following questions may be asked:

- To test his accuracy, veracity or credibility.
- Discover who he is and what is his position in life.
- Shake his credit by injuring his character. S. 223 E.A.

LIMITATONS IN CROSS-EXAMINATION

- Questions relating to credit but are not relevant or too remote to the proceedings may be disallowed by the court. The court is under an obligation to warn the witness that he is not obliged to answer. S. 224 E.A.
- Indecent or scandalous questions S. 227 E.A.
- Questions intended to annoy or to insult or needlessly offensive S. 228 E.A.
- Under S. 226 E.A., the judge is empowered to report a counsel who ask baseless or questions adjudged to be without reasonable cause to the Attorney-General of the Federation or any other authority to which the legal practitioner is subject.

Leading questions may be asked in cross-examination.

Contradiction of a witness statement by previous evidence- Section 232 E.A

The Statement made earlier by the witness in writing may be brought to his attention for the purpose of contradicting him. Where a witness made a statement before the trial and the statement is found to be inconsistent with his testimony, his testimony should be seen as unreliable and the previous statement should not be acted upon by the court. This however does not apply to an accused person.

Cross-Examination Techniques

- (1) Confrontation Technique
- (2) Probing Technique
- (3) Insinuation Technique

RE-EXAMINATION- s. 215 (3) EA

Re-examination is the act of putting question to the witness by a party calling him in other to clear ambiguities which arose during cross-examination.

Aims of re-examination

The only aim of re-examining a witness must be with a view to clear ambiguities and no more. It is an opportunity for an explanation of any matter referred to in the cross examination.

The position of leading questions in re-examination

Leading questions are not allowed in re-examination. When new issues are raised during re-examination with the leave of court, the witness will be cross-examined again on the issues raised.

FINAL ADDRESS

At the end of these witnesses' examination, the parties may address the court. Counsel for each party has a right to address the court, and the court cannot deny the right to address. However, a party may waive the right of address. The purpose of an address is to apply the law (statutory provisions and judicial decisions) to the evidence established at the trial and to urge the court to deliver judgment in favour of the party addressing it. A structured address is more effective and it should be presented in the following order, issue(s), facts, argument and prayer. Each of these components of a structured address will be considered.

APPEAL

If a party to a proceeding is dissatisfied by the decision of a court whether at pre-trial or trial, he or she may appeal to a higher court. The procedure for appeal to the higher court must be followed. In the Court of Appeal and Supreme Court, the hearing of an appeal must be preceded (except with leave of court) by the filing of briefs.

POST-PRESENTATION PROCEDURES

At the end of every proceeding, counsel must immediately meet their clients and explain the outcome of the proceedings. The informal briefing must be followed by a formal briefing. A letter should be sent to the client stating the outcome of case, and the steps available to him or her, if dissatisfied with the decision of the court.

CHAPTER XVIII

ALTERNATIVE DISPUTE RESOLUTION

Alternative dispute Resolution involves the resolution of disputes by a neutral third party outside the formal court system. ADR processes differ, varying from those who leave the process in the hands of the decision-maker and the outcome in the hands of the parties to processes that leave both the control of the process as well as the outcome in the hands of the facilitator.

ADR now occupies an important place in the Nigerian civil justice system. For instance, every civil action filed in either the High Court of the Federal Capital Territory, Abuja, or the High Court of Lagos State is automatically screened for its suitability for ADR. Any action so found suitable may be referred by the court *suo motu* to the relevant Multi Door Court House, any other appropriate ADR institution or practitioner.

– see O. 2, r. 7 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018; O. 5, r. 8 High Court of Lagos State (Civil Procedure) Rules 2019.

Also the Rules now contain provisions on the mode of referrals to the ADR mechanism and the subsequent enforcement of arbitral awards and enrolment of any terms of settlement or decision reached at the Multi Door Court Houses as consent judgment: see O. 19 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 & O. 28 High Court of Lagos State (Civil Procedure) Rules 2019

MULTI DOOR COURT HOUSE

The Multi Door Court House could be said to be the official assimilation of Alternative Dispute Resolution mechanisms into the adjudicatory process. It provides for

other avenues of dispute resolution outside litigation which disputants could opt for even after the commencement of action in court. Various jurisdictions in the country have adopted the multi door court house concept, among which are the Abuja Multi-Door Court House. The Lagos Multi-Door Court House blazed the trail in the country.

In *Mrs Angela Omolara Branco v. Wemabod Estates Ltd* (2011) Court of Appeal (Law Pavilion Reports), which is decision on a dispute as to whether the respondent fulfilled the conditions precedent for the renewal of a lease. At the pre-trial conference, the pre-trial judge, with the consent of the parties referred the following questions to the Multi-Door Court House. It was held by the court per John Inyang Okoro JCA that:

"As was rightly pointed out in his brief by the learned senior counsel, the practice of referring by the judge of issues, inquiries and accounts to an official Referee for Inquiry and report back is not new. For example, it was part of the PRACTICE OF THE SUPREME COURT OF ENGLAND (1964 Edition) under order 33 thereof. See *Graham v. Skipper* 29 Ch.D; 566. Similar provisions have been in force in Nigeria since colonial days and an example is ORDER XLIII of the Supreme Court (Civil Procedure) Rules at pp.71-72 of volume X of the Revised Law of Nigeria 1948 Edition. As was said earlier, this practice is not entirely new to our laws and procedure. Thus Order 27 of the High Court of Lagos State (Civil Procedure) Rules 2004 provides for ISSUES, INQUIRIES, ACCOUNTS AND REFERENCES TO REFEREES. Rule 2 of the said order provides:- "IN any legal proceedings, the judge may at any time order the whole cause or matter or any question or issue of facts arising therein, to be tried before an official Referee or Officer of the Court, notwithstanding that it may appear that there is a special or other relief

sought or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner”

See O. 30, Rules 6(1), (2) & (3) of the High Court of Lagos State High Court (Civil Procedure) Rules, 2019:

MEDIATION.

Mediation is an informal, private voluntary method of non binding dispute resolution mechanism involving a neutral (impartial) third party (mediator), who facilitates communication, promotes understanding, focuses the parties on their interest and uses creative problem-solving techniques to enable the disputing parties to promote and achieve reconciliation through a negotiated settlement- a mutually agreeable solution. It is also termed case evaluation or facilitated negotiation.

ARBITRATION.

This is a method of dispute resolution involving one or more neutral third parties who are usually agreed to by the disputing parties and whose decision is binding.

It is a method of submission of a dispute between two or more parties (disputants) for hearing and decision by a third party of their own choice and whose decision is binding on the disputants.

BCC Tropical Nig. Ltd v. The Govt of Yobe State of Nig & Anor, COURT OF APPEAL (2011), Law Pavilion Reports, is an appeal against the ruling of the Yobe State High Court delivered on 12th July, 2010 in Motion No. YBS/DT/82M/2009, seeking *inter alia* the appointment of an arbitrator for the respondents. Therein, Uzo. I. Ndukwe-Anyanwu, JCA, opined *inter-alia*:

“An arbitration clause is a clause inserted in a contract providing for compulsory arbitration in case of dispute as

to rights and liabilities under such contract. The purpose of that clause is to avoid having to litigate disputes that might arise. See the case of *M.V. Lupex v. N.O.C & Son Ltd (2003) 15 NWLR (pt.844) pg.469*. The Rule is that the arbitration clause and the contract which incorporated it are two distinct contracts. The arbitration clause contains the parties agreement to resolve present and future disputes by arbitration. The contract which incorporates the arbitration clause by reference is the underlying contract. An arbitration agreement within a contract is thus separate from the contract. Consequently, where the underlying contract is void for illegality, the arbitration clause could still survive as the illegality of the underlying contract would not impeach the arbitration agreement. The arbitration agreement and the underlying contract need not arise and fall together. It is trite that an arbitration agreement is not terminated by a breach of the underlying contract. *Heyman v. Darwin Ltd (1942) AC pg. 356*. It is only where a contract is void *ab initio* because one of the parties is a minor, then this ground would also affect the arbitration clause. It is not every dispute or difference that can be referred to arbitration. Disputes that can be referred must be justiciable issues which can be tried as civil matters. These should include all matters in dispute about any real or personal property, disputes as to whether a contract has been breached by either party thereto, or whether one or both parties have discharged from performance thereof. By virtue of section 2 of the Arbitration and Conciliation Act, 1988, an arbitration agreement shall be irrevocable except by agreement of the parties, or by leave of court, or a judge. However, the right to go for arbitration is a personal right. It is not a constitutional right. Therefore, it can be waived by either of the parties to the agreement expressly or by contract. See *Kurubo v. Zach-motison (Nig.) Ltd (1992) 5 NWLR (pt.239) p.102*. See also the case of *Nig. LNG Ltd v. African*

Development Insurance Co. Ltd (1995) 8 NWLR (pt.416) p.677 per Uwaifo JCA, who listed conditions for a resort to arbitration. These are:

- (a) That there is an agreement between the parties thereto or a statutory provision which compels arbitration in such matters.
- (b) That the parties before the court are parties to the agreement or the transaction which compels arbitration;
- (c) That the arbitration sought is within the contemplation of the arbitration agreement or circumstances calling it;
- (d) That there is no sufficient reason why reference to arbitration should not be made; and
- (e) That the application for stay of proceedings pending arbitration was made in time as envisaged under section 5 of the Arbitration Act.”

CONCILIATION

Conciliation is a formal method of dispute resolution because the process is regulated by the Arbitration and Conciliation Act (see sections 39-42 and schedule III of the Act). Conciliation is often resorted to when negotiation fails. It is the adjustment and settlement of disputes in a friendly, non-antagonistic manner. This is a settlement of a dispute in an agreeable manner. It is a process in which a neutral person meets with the parties to a dispute and explores how the dispute might be resolved. It is a relatively unstructured method of dispute resolution in which a third party facilitates communication between parties in an attempt to help them settle their differences.

(V) NEGOTIATING

INTRODUCTION

Negotiation is a method by which two or more parties reach an agreement on a matter or matters that require decision by them. The decision on the subject matter of the negotiation is taken by the two parties themselves and not by a third party. It is this feature of negotiation that distinguishes it from other methods of decision-making such as adjudication, arbitration and mediation. These latter methods involve a third party making a decision for the parties.

TYPES OF NEGOTIATIONS

Negotiation may involve settlement of disputes. It may involve making decision in: domestic transactions, commercial or property transaction, as banking etc. Negotiations may also involve international transaction in such businesses as; crude oil and agricultural exports, imports of industrial goods and technologies.

Whatever the type of negotiation, a practitioner must prepare for negotiation. Negotiation must not be seen as an easy option to litigation. The practitioner must prepare for negotiation in the same way he or she must prepare for litigation. To prepare for negotiation the facts of the matter must be ascertained and the objective which the client intends to achieve must be ascertained. The law applicable to the matter must also be considered. The Best Alternative to Negotiated Agreement (BATNA) and Worst Alternative to Negotiated Agreement (WATNA) on the matter must be considered before deciding whether the matter is best resolved by negotiation or other means.

NEGOTIATING STRATEGIES STYLES AND TACTICS

Negotiating strategies are the methods which a negotiator uses to achieve his or her real objective in order to reach an agreement on the matter under negotiation. There are two types of negotiating strategies:-

- (a) Competitive or Positional (otherwise known as win/lose)
- (b) Co-operative or Problem-solving (otherwise known as win/win)

Negotiators also have distinctive negotiating styles. Each negotiator's style is influenced by his individual personality, the strategy he intends to adopt and his objective. Negotiating styles have been classified into three: Soft, Hard and Firm.

Negotiators also use tactics, to achieve their objective. Many tactics are used by negotiators and there are as many tactics as there are negotiators. The commonly used tactics includes the following: control of agenda, contextual manipulation; overwhelming numerical strength; puffs; threats; take it or leave it; piecemeal; package; nibble; limited authority; lack of authority; behavioural; and psychological tactics.

STAGES OF NEGOTIATION

Negotiation is a process that goes through several stages. The stages of negotiation identified vary from three to eight. The number of stages through which a negotiation is processed is divided, though important, is a matter of individual classification preference. More important is what takes place during the negotiation process. As negotiation is a process, it passes from one stage to another, and may or may not lead to an agreement. In analyzing the negotiation process, four stages are identified:

- (a) Opening;

- (b) Bargaining;
- (c) Closing; and
- (d) Execution.

DIFFERENCES BETWEEN CONCILIATION AND MEDIATION.

1. Conciliation is regulated by law while mediation is not.
2. In Lagos state, the agreement on conciliation is binding while mediation is not.
3. In Conciliation, it is the Conciliator that draws up the terms of settlement and if the parties agree, they would adopt same, while that is not case in mediation.

CHAPTER XIX

REMUNERATION OF LEGAL PRACTITIONERS, DUTIES OF LAWYERS ON CHARGING OF CLIENTS

There is a brief discussion on the Legal Practitioners Remuneration Committee on page 10 of the Hand Book (Hard Copy).

The Rules of Professional Conduct for Legal Practitioners (RPC), 2007, makes copious provisions for the remuneration and fees of legal practitioners. It provides that a lawyer is entitled to be paid adequate remuneration for his service to the client and he shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee. Rule 48 RPC. A retainer is defined in the rules as an agreement by a lawyer to give his service to a client. Rule 49 (4). While a general retainer means a retainer which covers his client's work generally; a special retainer is a retainer which covers a particular matter of the client.

Where a lawyer accepts a retainer in respect of litigation, he shall be separately instructed and separately remunerated by fees for each piece of work and accordingly, a lawyer shall not represent or undertake to represent a client for all his litigation or a part of it on an agreed lump sum over a period of time; or accept instructions from a client on terms that a particular class of court cases shall be done at a fixed fee in each case irrespective of the circumstances of each case- Rule 49(2). A lawyer who accepts a retainer shall not in the case of a general retainer, advise on, or appeal in any proceeding detrimental to the interest of the client paying the retainer during the period of the retainer, or in the case of a special

retainer, accept instruction in any matter forming the subject matter of the retainer which involve advising or arguing against the interest of the client paying the retainer.

Under the RPC, a contingent fee is paid or agreed to be paid for the lawyer's services under an arrangement whereby compensation, contingent in whole or in part upon the successful accomplishment or deposition of the subject matter of the agreement, is to be an amount which is either fixed or is to be determined under a formula.

Sequel to the foregoing, a lawyer may enter into a contract with his client in civil matters undertaken or to be undertaken for a client whether contentious or non-contentious, provided, first, that the contract is reasonable in all circumstances of the case including the risk and uncertainty of the compensation. Secondly, the contract is not vitiated by fraud, mistake or undue influence, or is contrary to public policy; and if the employment involves litigation, it is reasonably obvious that there is a bonafide cause of action- Rule 51(1).

A lawyer shall not enter into an arrangement to charge or collect a contingent fee for representing a defendant to a criminal case- Rule 51(2). Except as discussed above, a lawyer shall not purchase or otherwise acquire directly an interest in the subject matter of the litigation which he or his firm is conducting; but he may acquire a lien granted by law to secure his fees and expenses- Rule 51(3). A lawyer shall not enter into a contingent fee arrangement without first having advised the client of the effect of the arrangement and afforded the client an opportunity to retain him under an arrangement whereby he would be compensated on the basis of a reasonable value of his service- Rule 51(4).

The Rules also make provision for payment of the expenses of litigation and fixing the amount of fee. In respect of the latter, it is provided that the professional fee charged by a lawyer for his services shall be reasonable and commensurate with the service rendered. Accordingly, the lawyer shall not charge fees which are excessive or so low as to amount to undercutting. Provided that a reduced fee or no fee at all may be charged on the ground of the special relationship or indigence of a client. In determining the amount of fee, the Rules also provide for the factors a lawyer may take into account in ascertaining the value of the service rendered- Rule 52(1) and (2).

The Rules also provide for the conditions for the division of fees with another lawyer and prohibits a lawyer from accepting any compensation, rebate, commission, gift or other advantage from or on behalf of the opposing party except with the full knowledge and consent of his client after full disclosure- Rule 53 and 54.

Likewise, the Legal Practitioners Act makes provisions for the remuneration of legal practitioners. It provides for scale of charges, recovery of charges, application for taxation of charges, taxation of fees and supplementary provisions on remuneration. Also relevant to the present subject is the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991. (Discussed in detail in Property Law Practice Module)

In *Guaranty Trust Bank Plc & Anor v. Udoka Anyanwu* (2011) Court Appeal, Law Pavilion Reports, The facts of which are that, he Respondent, a legal practitioner, filed an action at the High Court, Enugu, wherein he claimed the sum of N12.5 Million naira representing his professional fees and consultancy fees for securing the financing of a proposed Enugu International Market Project for the 1st

Appellant. It was held per Augie JCA at pp.24-25 Par. A-B, that:

“A legal practitioner has a right to be remunerated for his services, he can either be paid in advance upon named fees or rely on the terms of any agreement reached for his fees. However, if he has not received his fees and no agreement was reached as to what they would be, he must submit his bill of charges. See *Oyo v. Merchantile Bank (Nig.) Ltd* (1989) 3 NWLR (pt 108) 213. All the relevant authorities say that reasonable remuneration must be given for the actual work or service rendered by a claimant on *quantum meruit*, which is Latin for ‘as much as he deserved’. See *SBN Ltd v. Opanubi* (2004) 15 NWLR (Pt. 896) 437 SC. In effect, when the bill of charges or fees (as they are called) are properly brought by the legal practitioner in compliance with the provision of the LPA, the court will normally give judgment for the amount of fees so claimed unless there are other factors preventing it from doing so, such as the absence or non existence of any agreement for the payment of the fees by the client or an attempt by the legal practitioner to illegally enrich himself at the expense of his client (by way of champarty). See *Oyo v. Merchantile Bank (Nig.) Ltd* (supra) and *Akingbehin v. Thompson* (2008) 6 NWLR (pt.1083) 270, where Adamu, JCA added as follows- “In some cases, even where charges or fees were not agreed upon or fixed by contract between the parties, the court can award a reasonable fee or remuneration to the legal practitioner for his services actually rendered by him at the request or instruction of his client on the basis of *quantum meruit* or quasi-contract”.

Other types/modes of charging fees

1. Scale Fee

This type of fee is charged in a non-contentious work. It is a prescribed fee, which may be charged, in a given transaction by a legal practitioner. The essence of scale fee is to serve as a guide to avoid undercharging or overcharging of professional fee by legal practitioners. An example of scale fee is the Legal Practitioner (Remuneration for Legal Documentation and Other Land Matters) Order 1991, which has scales to be used in calculating charges on certain land matters. Examples of different fees chargeable as a scale fee is contained in Scales I and II of the Order.

2. Fixed Fee

Fixed fees may be charged by legal practitioners based on rate fixed for specific transactions after taking into consideration some factors. For instance, where a legal matter is a simple and well-defined – e.g drafting of wills, non-contentious matters, appearance fee, uncontested matrimonial causes, simple tenancy matter filings and writing of legal letters on behalf of clients- lawyers typically charge a fixed fee. Also, in some law office a fixed consultation fee is charged separately from the professional charges.

3. Appearance Fee

This type of fee is charged periodically by legal practitioners each time the legal practitioner appears in court or continues to appear in a proceeding on behalf of a client. Appearance fee covers the transport, feeding, lodging expenses (where the matter is to come up in other

jurisdiction different from where the lawyer is based) and any other incidental expenditure relating to putting up an appearance in court on behalf of the client. The legal practitioner charges appearance fee in addition to the professional fees for a litigation matter or transaction, he may however, charge it together with his professional fees depending on the agreement between the legal practitioner and the client. The amount charged as appearance fees differs from one legal practitioner to the other.

4. Hourly Fee

Hourly fees are charged for every hour (or portion of an hour) a legal practitioner spent on a particular matter for which his services were retained. The charges usually include the time spent within and outside the law firm on a particular transaction. It is commonly charged during rendering of consultation service.

5. Percentage Fee

Percentage fee is charged at a given percentage based on the consideration attached to a particular transaction. It is payable on an agreed percentage. It is commonly charged in conveyancing transactions or recovery of debt. A legal practitioner may charge within the range of 5% to 15% of the amount involved in a particular transaction. The percentage to be charged depends on how high or how low the amount involved in a transaction is, where the consideration is very high, the percentage to be charged by the legal practitioner may be low.

Overcharging of Professional Fees

It is provided in the Rules that the professional fee charged by a lawyer for his services shall be reasonable and commensurate with the service rendered. Accordingly, the lawyer shall not charge fees, which are excessive. By the provision of the Rules, legal practitioners are prohibited from entering an agreement for, charge or collect an illegal or clearly excessive fee R. 48(2) RPC. In other to tackle this menace of overcharging, s. 17 Legal Practitioner's Act provides for taxation so as to arrive at a fair remuneration of services rendered by legal practitioners.

Undercharging of Professional Fees

Legal practitioners should not charge reduced fees to attract more clients – R. 52(1) RPC. The Legal Practitioners (Remuneration for Legal Documentation and Other Land Matters) Order prescribed fees to be chargeable for certain matters in the Scales set out in the Schedule to the Order which are to be adhered to strictly- R. 7(1) RPC. The non compliance with the scheduled fee is guilty of professional misconduct that may be sanctioned by the Legal Practitioner Disciplinary Committee.

CHAPTER XX

LAW OFFICE MANAGEMENT

INTRODUCTION

Law Office Management is the study of the organization and methods employed in the law office and the relationship between members of staff of that office on one hand and their relationship with members of the public with whom they are in contact. It is also concerned with the development of human, capital and other resources in a law office.

TOPIC 1: ESTABLISHMENT OF A LAW FIRM

THE NEED TO ESTABLISH LAW FIRM

It is unprofessional for a Legal Practitioner except in some special cases to give legal advice or take instructions from a client at the client's house or place of business. Rule 22 RPC. Therefore, a Legal Practitioner should give legal advice and take instructions from the law office which invariably requires him to establish a law firm. Thus the unprofessional Practice known as "Charge and Bail" whereby legal practitioners hang around courts to take instructions for representation of accused persons in bail applications constitutes a breach of the rules of professional conduct.

REASONS WHY PRACTITIONERS ESTABLISH LAW FIRMS

There are various options to a legal practitioner after being called to the Nigerian Bar; one of such options is to establish a law firm to engage in private practice. Legal Practitioners opt for private practice for many reasons. Some of these reasons are:

- (a) Necessity,
- (b) Need to be independent,

- (c) Realization of ambition,
- (d) Profitability of the profession etc.

PERSONAL QUALITIES OF SUCCESSFUL PRACTITIONERS

For whatever reason a legal practitioner has for establishing a law firm, it is establishing a business organization. Therefore, for the business to succeed, he must possess the following qualities:-

- (i) Honesty and Integrity:** Rules 1, 23, and 54 RPC 2007.

See *Adewumi v. Plastex (Nig) Ltd.* (1986) 17 NSCC 852; *SAGOE v R 1963* 1 ALL NLR 290 (293).; *Onagoruwa v. State* (1993) 7 NWLR (pg. 303) 49.

- (ii) Hard work, Determination and Commitment:** will sharpen the lawyer's knowledge and skills as well as create a client ready attitude. Lack of determination and commitment undermine the success and performance of a practitioner. See *Adewumi v. Plastex (Nig) Ltd.* (1986) 17 NSCC 852

REQUISITES FOR ESTABLISHING A LAW FIRM

- (i) Knowledge:** Knowledge entails both legal and non-legal knowledge and every Practitioner is presumed to have both, thus lawyers are described as learned.
- (ii) Skill:** Next to knowledge is skill, which is the ability to apply legal principles and practice to solving legal problems. It is technically known as "know how". A combination of the two will be required to render good legal services otherwise a practitioner may be liable in negligence that may incur damages. See *Bello Rajiv: X. A legal practitioner* (1946) 18 NLR 74

FINANCING A LAW FIRM

To establish a law firm, a legal practitioner must provide enough capital to meet the cost of establishing it. This capital includes both start-up capital and working capital.

The major sources of finance are:-

- (a) Personal / owner's funds.
- (b) Loans and overdrafts from banks and other financial institutions or persons.
- (c) Monies from relatives and friends

BUSINESS PLAN

A business plan is a document containing information about a proposed firm, its goals and the financial projections for it. The contents of a business plan are:-

1. Name(s) of the practitioner
2. Name of the firm
3. Business Address
4. Business Start date
5. Types of firm
6. Goals of the firm
7. Segmentation of the market
8. Market competitors
9. Capital requirement
10. Borrowing requirement
11. Security to be provided
12. Use of funds
13. Employment of staff
14. Management system

CLIENTELE

A legal practitioner must ensure that market exists for his service otherwise the purpose of establishing a law firm will be defeated. Potential clients therefore include the following:-

- (a) Banks and other financial institutions.
- (b) Companies

- (c) Large statutory bodies
- (d) Legal Aid Council
- (e) Individuals
- (f) Government establishments.

Therefore, a practitioner should map out strategies for winning clients subject to strict observance of Rules of Professional Conduct.

TOPIC 2: CLASSIFICATION AND ORGANIZATION OF LAW FIRMS:

CLASSIFICATION

(1) Small (2) Medium (3) Large

Many criteria have been used to classify law firms. Some of them are:-

- (a) Facilities
- (b) Status of lawyers in the firm
- (c) Number of lawyers
- (d) Location
- (e) Clients

ORGANIZATION OF LAW FIRM

1. Sole Practitioner: This is a unit of practice involving a practitioner practicing alone, he employs support staff such as; secretary, clerk, dispatch clerk office assistant etc. to assist him. He provides the capital of the firm and manages the firm. He does the legal work alone. This is the smallest unit of organization and the commonest in Nigeria as more than 70% of law firms in the country are Sole Practitionership.

2. Sole Proprietorship: This is a unit of practice involving a legal practitioner who establishes a law firm, works there and employs other legal practitioners to work in the firm. The relationship between the practitioner-owner and employed practitioners is that of employer and

employees and their relationship is governed by contract of employment with terms and conditions.

3. Associateship: This is a unit of practice whereby two or more practitioners come together to contribute the capital to provide facilities required for a law firm. All the practitioners occupy the same premises and share office facilities, they equally contribute to wages and salaries of supporting staff but each remains a sole proprietor because each owns independent practice and separate clients within the associateship.

4. Partnership: This is a unit of practice where two or more legal practitioners wishing to establish a law firm contribute capital to form a partnership. Where a partnership is formed, all legal practitioners involved are owners and the relationship between them is that of joint owners. They are agents of one another and they owe a fiduciary duty to one another.

A partnership may be formed orally or in writing and it may be by deed. To avoid misunderstanding, a written agreement should be entered into. Such agreement should contain all the terms governing the partnership.

Note that one of the greatest setbacks in the legal profession in Nigeria is the reluctance or apathy to form partnerships and where they are formed, they are often weak and fragile. The few that are formed have a high degree of failure because of distrust, fear, greed, indiscipline, ego, impatience and incompatibility.

Restriction on Law Partnership

Although, the Rules of Professional Conduct and the profession itself allow the setting up of law partnership, RPC places certain restrictions on the formation of partnership by legal practitioners. See Rule 5 (1) (2) (3) (4) and (5) RPC 2007.

The above units of practice have advantages as well as disadvantages.

TOPIC 3: LAW OFFICE

Description of Premises

The premises where a law firm operates is popularly called “Chambers” in Nigeria. This is not appropriate because of the fused nature of legal practice in the country. The proper name should be “Law Office” as it is called in the United States of America where the profession is also fused.

Finding of Premises

A legal practitioner must decide whether to rent an office or buy land to build the office. The general trend is many legal practitioners rent their offices.

Information about availability of office can be obtained orally from associates, newspaper or from estate agents and other practitioners in the estate business. Where the office space is part of other business premises, the legal practitioner must ensure that the other businesses on the premises are compatible with legal practice.

Factors to consider in establishing a law office include:

1. Location
2. Capital
3. Clientele, etc.

Types of Premises

There are 3 types of premises that can be used for office accommodation. They are:

1. *Purpose built office accommodation:* This is a building purposely built for use as office accommodation. It is often open space requiring to

- be partitioned by the practitioner according to his needs.
2. *Existing building*: this is an existing building that is converted into a law office with or without modifications. This is because such building is initially designed for residential use.
 3. Office in the home: A law office could be located at home whereby a legal practitioner operates from his home. Management theorists have warned against locating a law office in the home this is because the business ambience is distracted from by the home environment. It is also restrictive of the growth of the law practice as a business concern

LAW OFFICE LAYOUT

The layout of the Law Office should be properly and carefully designed. In the planning stage, several factors should be taken into account. Such factors include; the number of staff, future expansion, equipment and furniture etc. A good law office must have the following as basic accommodation requirement:

- (a) Reception Room
- (b) Practitioners' Room
- (c) Supporting Staff Room
- (d) Library / conference
- (e) Toilet, etc.

Please note however, that the most basic room requirements in the law office include (a)(b)(c) and (e) above.

Law Office Security and Insurance

Security must be maintained in the Law Office. That entails both physical protection of the properties against destruction, theft and damage as well as the mechanical protection of the stored information, files and original

document. Effective security could be maintained by employing security guards and by insuring the office contents; electronic security of office documents and the office itself is advised.

TOPIC 4 - LAW OFFICE STAFF

Legal work in the Law Office is carried out by 2 classes of staff: fee earners and supporting staff.

1. **Fee Earners:** These are the legal practitioners who do legal work and earn fees for the firm. The number of legal practitioners depends on the size and type of office.
2. **Supporting Staff:** These are the members of staff that provide non-legal services in the office.
Practitioners require the assistance of support staff to carry out non-legal work in the office. The number and type of support staff depend on the size of the practice, nature of I.T and equipment employed in the office, environment and available space. The basic supporting staff members are: receptionist, office manager, accountants, secretary, librarian, driver, security guards and litigation clerk, office assistant (used to be called messenger).

Methods of attracting and Selection of Staff

From time to time, law offices need both fee earners and supporting staff to meet the increasing services offered to clients. Thus, there are various methods of attracting these staff. These methods include:

- (a) Advertising in the Newspapers and lawyers' publications;
- (b) Introduction by existing or former staff;
- (c) Recommendation by the existing and former staff;
- (d) Inviting applicants from previous advert;
- (e) Recommendation by agencies and consultants;

- (f) By on-line invitation;
- (g) Leaving call for application in Lawyers' room notice board and notice boards in court.

After the advertisement or recommendation as the case may be, the law firm establishes procedures for selection of staff for the job. The selection procedures differ from office to office but the basic selection procedure is test, interview and qualifications.

Induction of Staff

After the employment of a new staff, the staff needs to be integrated into the working system of the law firm. The purpose is to inform the new staff about the nature of his employment, the organogram of the firm and culture of the office. The new staff should know the following as an induction programme:-

- (a) History of the firm;
- (b) Staff hierarchy
- (c) Administrative procedures;
- (d) Know the existing staff
- (e) Nature of his job and how he is expected to perform it.

Disciplinary and Grievance Procedure

A law office establishes disciplinary procedures for breach of rules governing the conduct of staff in respect of their duties and at work. These procedures and rules are stated in the office manual.

The disciplinary procedures include: verbal admonitions, queries, warnings, formal written warning, suspension, pay cuts and lastly dismissal from employment for gross misconduct.

TOPIC 5: LAW OFFICE EQUIPMENT, MACHINES AND SUPPLIES

To start a Law Office will require machines, equipment and supplies to carry out effective legal work. Thus the practitioner should determine the equipment, machines and supplies needed. They are regarded as an investment as they are expected to last for several years, thus they must have maintenance back-up.

Acquiring Equipment and machines

There are essentially 2 realistic methods of acquiring equipment and machines. These are either by leasing or purchasing.

By equipment leasing: many companies and shops engage in equipment leasing, these could be motor vehicles and machines. A lease of equipment or machines may be granted to a law office upon application by the operator(s) of the firm. Where such a lease is granted, the law office pays a periodic rent for their use upon agreed term. The lease agreement may provide for a buy-back in which case upon the conclusion of the lease period the lessee is given the option to buy the equipment at a considerably reduced price. Many firms actually favour this method of equipping their firms as it frees resources for other needs of the office that must be met.

By purchase: machines and equipment can be acquired by outright purchase. Where they are purchased, the law office becomes the owner. Except the practitioner is very rich, this method constrain the growth of the office.

Note that each method has its own advantages and disadvantages.

Law Office Machines

Machines are technologies which enable equipment to function and facilitate efficient performance of other functions,

These technologies are:

(a) **Electricity Generator:** Due to unreliable and inadequate supply of electricity, many law offices in Nigeria resort to the use of generators. There are low capacity and high capacity generators. The type and size a law firm acquires depends on the capability of each law office.

(b) **Vehicles:** Vehicles are essential in a law office. They facilitate movement in the office.

Others are refrigerator, television, DVD player, coffee maker, electric kettle.

Law Office Equipment

The equipment needed by a law office includes the following:-

1. Computers
2. Photocopying machine
3. Printer
4. Dictating Machine
5. Rubber Stamps
6. Calculator/Adding machine
7. Telephones for intercom
9. Projector and projector Screen
10. Paper shredder,
11. Binding machine
12. Label makers
13. Answering Machine
14. Telex Machine
15. Facsimile Machine
16. Desk top computer

17. Scanner
18. Internet enabling devices e.g. router, internet modems etc
19. Camera
20. External hard drive
21. Mobile telephones
22. Laminating machine
23. Finger print identifying door lock

Television, video player, close circuit television, CD, DVD and DVD player.

Note that proper record of these should be kept by the law office. Again these equipments should be maintained and serviced by the law office to prevent sudden breakdown.

Law Office Supplies

A law office requires the following supplies as well to function effectively.

They are:

1. Letterhead
2. Continuation Sheet
3. Compliment Slips
4. Business Cards
5. Invoice books
6. Receipt booklets

File Jackets, Office Forms, Legal Forms, sealing wax, office pins Other stationeries e.g. ribbons, envelopes, staples pins, paper clips, cellotape etc.

The minimum and maximum level of supplies required must be ascertained and controlled. This can be accomplished by using stock book to monitor supplies.

TOPIC 6 - LAW OFFICE ADMINISTRATION

A law office needs proper administration and management if it is to function well. To achieve proper administration and management, it must establish systems and procedures to regulate work and performance of tasks. These should be contained in the office manual to be available to all staff. The systems and procedures should not be static. It should be amenable to changes from time to time as may be occasioned by changes in size of office or working methods of the office.

The contents of an office manual include:

1. Working hours
2. Attendance Register
3. Confidentiality of Work
4. Salary advances
5. Bonus provision
6. Assignment of staff
7. Absence and lateness
8. Overtime work
9. Holidays
10. Salary Increment
11. Annual Leave
12. maternity leave
13. Reporting Structure
14. File Management
15. Provision of Office supplies
16. Method of answering the telephone
17. Procedure on receiving facsimile message
18. Procedure for dealing with correspondence
19. Procedure for borrowing or removing office books
20. Disciplinary Procedure
21. Grievance procedure

Time Management

Time is a valuable resource to legal practitioners; hence it must be well managed. He needs to plan how to spend time to cover all tasks required to be carried out within the time available. This can be done by making a list of “things to do” and prioritizing the work according to criteria of urgency and importance.

Therefore, a reminder system must be devised. Practitioners should devise a personal reminder system; the most effective of which is the use of diaries both for personal and office use.

Filing System

Law offices produce a lot of documents which should be filed in paper form or electronically. Most law offices file documents in both formats, either using an alphabetical or non-alphabetical filing system. Whichever system of filing used, an indexing system is useful and cross-references must be compiled for easy retrieval of documents. The law office must decide whether to adopt a centralized or decentralized filing policy. The policy to be adopted will depend on the organization and size of the firm.

The movement of files must be controlled and procedure devised for requesting/collection and returning of files. At the conclusion of a matter, the file should be closed and the office must decide whether to hand over the file to the client or retain it. If the file is retained, the firm will incur cost in storing it. Therefore, it must be moved to low - cost storage. The office must also devise a retention schedule rate stating the length of time the file will be retained before it is considered for destruction.

Law Office Records

Information required for administering the office in the short and long run should be collated, and a record of them

provided for use in the office. The purpose of such records is to enhance the efficient administration of the office by providing records from which information can be readily obtained.

The records that will be required in a law office include:

1. Office Manual
2. Staff Register
3. Equipment and Machine Register
4. Book & Periodicals Register
5. Master File Register
6. Closed File Register
7. File movement Register
8. Referral Register
9. Internal Telephone Directory
10. Income and Outgoing Correspondence
11. Incoming & Outgoing Telephone Call Book
12. Visitors' Book, etc.
13. Accounts books

CHAPTER XXI

INFORMATION TECHNOLOGY IN LAW OFFICE MANAGEMENT

THE ROLE AND IMPACT OF INFORMATION TECHNOLOGY ON EFFECTIVE LAW OFFICE MANAGEMENT

Information Technology (IT) is the branch of engineering that deals with the use of computers and telecommunications to store, transmit and retrieve information. Many packages have been developed to aid performance of tasks more quickly, efficiently at less cost. Irrespective of the nature or size of a law office, the Practitioner must invest in and use Information Communication Technology to reduce work load in the office, cut cost, increase capacity and achieve efficiency in service delivery.

THE USE OF INFORMATION COMMUNICATION TECHNOLOGY FOR LAW OFFICE ADMINISTRATION:

The use of computer helps to create systems in the law office thereby increasing productivity, efficiency and saving time. The machine is used to: create, modify, vary, track, store and retrieve documents in the law office. There are several packages called software which are written programs, procedures or rules and associated documentation pertaining to the operation of computer systems that are stored in read or write memory. For example, the Nigerian Law School E-handbook was created using Information Technology. It is easily amended, reviewed, undated etc. using I.T.

Management information system is used to store, track, manipulate and distribute information to colleagues in the firm, clients and outsiders. The firm will thereby be able to

streamline its operations and reduce the number of staff that would have been employed making the firm reduce the cost of its operations while increasing efficiency, its reputation and business capacity

The Internet has bridged distance and time. The use of e-mails enables law offices communicate more fluidly, more efficiently at less cost in terms of time, man hour and financial outlay. The legal practitioner can receive, compose, reply, attach, store and send documents within seconds no matter the distance or time of day through text messages or e-mail and receive instant reply. The internet gives a legal practitioner almost all, if not all he is looking for by way of information by making use of search engines like Google, Yahoo, AOL etc. The internet system makes it easier for the legal practitioner to function in the global market place for goods and services. He may conduct research, register organizations or partake in legal forums on line. Most organizations in Nigeria e.g. Corporate Affairs Commission (C. A. C), Federal Inland and States' Internal Revenue Services etc., have made it possible for people to access their services from anywhere in the world using ICT.

USE OF INFORMATION TECHNOLOGY IN SOLICITOR'S FINANCIAL TRANSACTIONS

A solicitor can use I.T to record all his financial transactions. This is made possible by the use of data base like Microsoft Excel or tables in Microsoft Word, or other accounting packages and software.

THE USE OF ACCOUNTING SOFTWARE

The best accounting software is known as Microsoft Excel. This enables an easy way of calculation, sorting and good enough, charts can be created in Microsoft excel.

THE MEANING OF E-LIBRARY OR VIRTUAL LIBRARY

E-library means electronic library. It entails the use of electronic or on-line library. The advantages of this are immense.

THE USEFULNESS OF E-LIBRARY OR VIRTUAL LIBRARY TO LEGAL RESEARCH

It is used for legal research on the internet. It is also quicker and easier to use because of its virtual nature, ease of access, very low cost which will help a legal practitioner to search for a book or article faster online without going through stress. The Practitioner could download and store data as well as share research findings.

USING INFORMATION TECHNOLOGY FOR EFFECTIVE CASE MANAGEMENT

This is the use of *note taker* which aids judges in writing their judgments in a way that it will convert their hand written notes to a typed text on the note taker.

There is also *automated sound recording system* which aids a court to record all proceedings.

IT FACILITIES USED IN MODERN LAW OFFICE

1. Television
2. Digital Camera
3. Desktop/Laptop Computer
4. Printer
5. Photocopying machine
6. Scanner
7. Internet/ modem
8. Telephone
9. Recorder
10. DVD Player, etc

CHALLENGES TO THE USE OF ICT IN LAW OFFICE MANAGEMENT

1. Poor/ low quality internet access
2. Effect of weather condition
3. Cost of acquiring and maintaining ICT facilities
4. Cyber crime/theft
5. File corrupted or lost cannot be retrieved
6. Computer illiteracy among many lawyer, etc

DISADVANTAGES

The main disadvantages are;

1. Job loss particularly for middle to low class workers.
2. It increases competitiveness among practitioner across the globe as a practitioner can function from anywhere in the world which may be unfair competition for lawyers in emerging economies with no strong national Institutions.
3. An office privacy and system may get compromised by internet phishing, malware introduction to office computer systems.
4. The sophisticated phone with critical data and information may have its signals intercepted or even stolen.
5. The technology keeps changing at very rapid pace making it expensive and troublesome keeping pace with changing equipment to new ones compatible with the ever changing technology.
6. For the I.T. staff, and practitioners, they have to keep in a constant learning mode as equipment go into obsolescence ever so quickly. This makes job security for the I.T. staff dicey.

CHAPTER XXII

OPENING AND CLOSING OF CASE FILES

MATTERS TO BE DEALT WITH WHEN CLOSING A FILE

Fees, custody of documents, right of client to original documents given to lawyer and documents created for use in his case, photocopies, length of period for keeping files, self-assessment/audit should be properly defined.

THE ACT OF CLOSING A FILE

Once a case or transaction is concluded, the legal practitioner should close the file in respect of that case or transaction. Note that the file meant to be closed here is the file opened for a particular case or transaction i.e. brief handled for a client by the lawyer and not the client's own file with the firm or the lawyer. The client's own file is a file usually opened by the lawyer or firm in the name of individual or corporate client particularly where client is a retainer client and it generally remains open until the retainer is terminated.

This client's personal file generally remains open even when the file in respect of a particular case, transaction or brief handled for that client has been closed. A file is usually closed only when the case or other brief in respect of which the file was opened has been concluded, or brief is otherwise brought to an end.

When a file is closed, two parallel lines will be drawn across the face of the file and the word "CLOSED" in upper case letters written in between the parallel lines. The file is then tied up with ribbons and placed in file case. Case file would usually have the suit number and name of parties to the suit or the subject matter of the file written on its spine for easy future identification and retrieval. Such a

file is then filed on the shelf or is kept in the cabinet or a separate room (if any) meant for closed files otherwise called archive, and in that case the file would be said to have been archived. It is usual for the lawyer or law firm to keep an index or register of closed files.

At the conclusion of a matter, the solicitor normally writes a letter to the client informing him of the closing of his file and demand for the firm's outstanding fees, if any. Such letters are usually accompanied with a bill of charges for any outstanding fees, or a receipt for payments already made as the case may be.

CUSTODY OF DOCUMENTS

The case file and documents are generally the property of the client and may be surrendered to the client whether or not he demands for them. In practice, however, the files and documents are retained by the lawyer or law firm on behalf of the client and the file or any document therein will be made available to the client whenever the need arises. It is noteworthy that the original copies of documents given to the lawyer or law firm should be returned to the client and acknowledgement of receipt of them obtained and retained by the lawyer. It is however good practice for the lawyer to make and retain photocopies before returning the originals to the client.

LENGTH OF PERIOD FOR KEEPING CLOSED FILES

There is no statutorily prescribed requirement for the length of time within which a file or document(s) should be kept by a lawyer or law firm before they are destroyed. However, files and documents are usually kept for such length of time as the storage capacity and facilities available to counsel or firm can accommodate. It has been suggested that the length of time should be at least a year

longer than limitation period for particular type of action or subject matter. Time for appeals should be noted. After retaining a file for a reasonable length of time and after notice to the client, file may be destroyed by shredding or burning. Some files may however, be worth keeping original and important documents are not to be destroyed.

ACTIVITY: Draft a letter to a client for closing his case file.

CHAPTER XXIII

LEGAL PRACTITIONERS ACCOUNT

INTRODUCTION

1.1 Because of the enormous amount of money which Legal practitioners in Nigeria are daily responsible for handling and disposing on behalf of their clients, the Legal Practitioners' Act 1962 provides that all Legal Practitioners shall keep proper books of account in relation to their practices. What the yearly total sum is, countrywide is anyone's guess, but it could be in the region far exceeding N1 trillion. It can therefore be understood why the General Council of the Bar has taken so much care to ensure that the handling of clients' money is not abused.

1.2 To this effect, the Legal Practitioners Accounts Rules 1964 were made by the General Council of the Bar and approved by the Attorney-General of the Federation as required under the Section 15(2) of the repealed Legal Practitioners Act. Nevertheless, the Rules made under the repealed law remain in force as provided by Section 20(2) of the Legal Practitioners Act 1975.

1.3 Neither the Legal Practitioners Act nor the Legal Practitioners Accounts Rules 1964 intend to make accountants out of lawyers, and neither of them provides or stipulates that legal practitioners must be accountants or book-keepers. Rather both enactments enjoin legal practitioners to keep separate records of moneys received or paid on behalf of their clients.

1.4 The Legal Practitioners Accounts Rules 1964 which shall be considered in details later, enjoin every Legal Practitioner to keep separate accounts of:

- a. Their personal money;

- b. Their clients' money, and
 - c. Trust money
- 1.5 Neither the Act nor the 1964 Rules state that the legal practitioner shall personally keep the accounts. And in the absence of such compulsion, it is submitted that the legal practitioner may employ an accounts officer or accounts clerk to keep such books of accounts as may be required to be kept in compliance with the provisions of the enactments.
- 1.6 Rule 3 provides for the keeping of client account (s), while Rule 13 deals with the keeping of trust account. According to Rule 3
- 1.7. The Legal Practitioners Accounts Rules 1964 can be divided into five parts

OBLIGATORY ACCOUNTS:

A legal practitioner is required under the Rules to keep three obligatory books of Account:

- a. Client account; and
- b. Trust account; and by necessary implication from Rules 10 and 20
- c. A personal, individual or partnership account

The reasons for keeping the various books of accounts should be studied.

DEFINITIONS OF TERMS

Read up the Definition of the terms from the Legal Practitioners Account 1964 Rules

- a. Client
- b. Clients' Money
- c. Client's Account
- d. Trust Money

- e. Trust Bank Account
- f. Solicitor-Trustee
- g. Controlled Trust
- h. Designated Account

The Rules:

The Legal Practitioners Account Rules 1964 provide for:

- a. The maintenance of a client bank account separate from the legal practitioners own bank account(s) and for the banking of clients money.
- b. The keeping of accounts containing particulars of amount received, held and paid on behalf of clients; and for
- c. The General Council of the Bar to ascertain whether or not the rules have been complied with.

The 1964 Rules make similar provision with regards to “trust money” but only with regard to money comprised in trusts of which the Legal Practitioner is a sole trustee or co-trustee with one or more of his partners or employee (otherwise known as “controlled trust”).

The Interpretation Act shall apply to these Rules in the same manner as it applies to the Act of parliament.

Read up exemptions to rule 9 and from the electronic handbook

Rules 19 also relieves a legal practitioner from any obligation to pay into a Trust Bank account money held or received by him which is:

- a. Subject to a trust of which he is a Solicitor trustee; or
- b. In form of cash which is without delay paid out to a third party in cash in the execution of the trust; or
- c. In form of cheque or bank draft which is without delay endorsed over to third party in the execution of the trust.

Rule 12 preserves the legal practitioner's recourse or right, whether by way of lien, setoff, counter-claim, charge or otherwise, against moneys standing to the credit of a client account.

Rule 20 (2) enjoined every legal practitioner to preserve all his record or accounts in relation to trusts of which he is a Solicitor-trustee for a minimum period of six years from the date of the last entry in such books of accounts. There is no similar express provision in relation to client's account, but it is suggested that records relating to any client's account should be preserved for a minimum period of six years before they are destroyed.

CLIENT'S MONEY

The sources of clients' money are varied but will include among others:

- a. Conveyancing
- b. Executorship and Trusts
- c. Investment Management
- d. Agency Work
- e. Fees on Account

Client's money is protected in the following ways:

- a. The Legal Practitioner Accounts Rules lay down stringent regulations for the handling of client's money, for keeping it in a separate bank account and maintaining adequate records of client money transactions.
- b. The provision that the Bar Council whether acting on their own motion or on the written statement or request transmitted to them by or on behalf of any branch of the Nigeria Bar Association or on a written complaint lodged with them by a third-party, may request a legal practitioner to produce at a time and place to be fixed by the Bar Council,

- his books of account, bank pass books, loose leaf bank statements, statements of account, voucher and any of the necessary documents for the inspection of an Accountant appointed by the Bar Council. The complaint must be in writing and the Council will require *prima facie* evidence that grounds for the complaint exist;
- c. The Accountants report may be used as basis for proceedings under the Legal Practitioners Act.

The client's specific instructions as to the holding and disposition of funds are paramount, taking precedence over the Legal Practitioners Account Rules.

Clients money' received must be banked without delay, unless dealt with as explained below. In general, only client's money maybe paid into a client's account, but there are few exceptions:

- a. Trust money,
- b. A nominal sum belonging to the legal practitioner that is required for – the opening or maintaining the account.
- c. Money which is required to be split as between the clients and trust accounts or between other accounts; and
- d. Money which was inadvertently or accidentally withdrawn from the account.

Thus, if a cheque received includes client's money or trust money, it may be split and paid into its relevant account. If the cheque is not split and includes client's money it must be paid into client account in the first instance, but any amount which cannot be properly treated as client's money must be transferred out.

Similarly, money inadvertently paid into a client account can be withdrawn immediately on discovery. This also extends to interest on a general client deposit account

which the bank contrary to instructions, has credited to a client account.

Client's money received in the form of cash (or a cheque) may be paid (or endorsed over) to a client or on his behalf to a third party.

Circumstances under which money may be drawn from a client account

Trust money is expressly excluded from the definition of client's money but it may nevertheless be paid into a client account. If it is paid into a client account it immediately comes within the scope of part IV of the Legal Practitioner' Accounts Rules, (Rules 21 A and 22) which deals with the inspection and enforcement of the rule by the Bar Council against erring Legal Practitioners.

Only money subject to a "controlled trust" may be paid into a "trust bank account".

Apart from the above, the bank immediately debits the client bank account; but no disposal takes place while the draft remains in the possession of the legal practitioner (or his firm). However, as soon as the draft is endorsed over or released to a third party, there is a disposal of client's money and the client's ledger account must be debited immediately.

The Rules preserve the legal practitioner's right whether by way of lien, set-off, counter- claim, charge or otherwise, against moneys standing to the credit of a client account.

Money drawn on a client account should be drawn except by:

- a. A cheque drawn in favour of the legal practitioner;
or
- b. A transfer to a bank account in the name of the legal practitioner not being a client account.

These will make 'tracing' possible, where necessary

TRUST MONEY:

The rules of handling trust money are largely the same as for handling of client's money but there are some important differences.

- a. A separate trust bank account must be opened for each trust. By definition, there cannot be a general trust bank account as is possible for client's money;
- b. If trust money is put in a deposit account and the legal practitioner is the trustee, he must account to the trust for any interest earned;

There may be paid into a trust bank account:

- a. Money subject to the particular trust
- b. Money belonging to the solicitor-trustee which is necessary for the opening of the trust bank account;
- c. Money which is required to be split between a trust account and another account; and
- d. Money received as a replacement for money mistakenly or accidentally withdrawn from the account.

No other money except these specified above may be paid into a trust bank account.

Rule 13 provides that “Subject to the provisions of Rule 19 of these Rules, every solicitor-trustee who holds or receives money subject to a trust of which he is solicitor-trustee, other than money which is paid into a client account as permitted by these Rules, shall without delay pay such money into the client's account as permitted by these Rules, shall without delay pay such money into the bank account of the particular trust.”

“Without delay” means the day of receipt of the money or the next working day if the money is received after banking hours or a weekend or on a public holiday.

Circumstances under which money may be drawn from a trust bank account

Every Solicitor-trustee shall at all times keep proper books and accounts as may be necessary.

Every solicitor-trustee shall preserve for at least six years from the date of the last entry therein all books and accounts kept by him.

- (a) Trust money may be invested in all securities created either by the federal or state governments or securities created or issue by companies or corporation, incorporated directly under any Act of parliament of the Federal Legislature or the State Law. The trustee power of investment shall be subject to any consent or direction required to the investment of the trust funds.
- (b) A trustee shall not be liable for breach of trust by reason only of his continuing to hold an investment which as at any time ceased to be an investment authorized by the provisions of the Government and other securities (Local/ trustees powers) Act (Cap. 78),
- (c) Under the Government and the Securities (Local Trustees Power) Act a trustee may invest trust money in any of the stock issued by the following corporations:
 - i. Nigerian Coal Corporation.
 - ii. National Electric Power Authority
 - iii. Nigerian Ports Authority and
 - iv. Nigeria Railway Corporation (the above list may have become otiose)

BOOKS OF ACCOUNTS

The provisions of the Rules require legal practitioners to keep books of accounts, to wit:

- (a) Cash Book
- (b) Ledger Account
- (c) Records of bills of costs and notices
- (d) Journal

METHODS OF RECORDING TRANSACTIONS:

The art of recording pecuniary or business transactions in a regular and systematic manner is generally referred to as book-keeping. However, the term as understood by the practical business man involves much more than the simple recording of transactions in a systematic manner. It presupposes that such record shall be in a permanent form and that the details concerning the transactions shall be arranged in such a way that the monetary aspect of:

- a. each separate transaction;
- b. each group of similar transactions;
- c. the whole of the transactions entered into during a given period of time, may be ascertained with minimum trouble and delay.

The main purpose of book- keeping therefore is to give the businessman or legal practitioner, reliable information about his practice i.e.

- i. Money received or expended by the practice;
- ii. The debtors and creditors to the practice;
- iii. The assets and liabilities of the practice;
- iv. The profit and loss of the practice

The main purpose of the Legal Practitioner Accounts Rules 1964 is to ensure that legal practitioners keep all moneys had and received or expended on behalf of their clients (including trustee money) separate from his personal or partnership money, both of which must be recorded in

order to obtain the financial information which practical business demands.

EXAMPLE

JIDE sells a book to FATIMA for N10 and FATIMA pays the N10 immediately. JIDE must show in his books;

- a. That he has books to the value of N10 less than he had before and
- b. That he has N10 more in cash than he had before.

FATIMA must show in her books:

- i. That she has books to the value of N10 more than she had before and
- ii. That she has N10 less in cash than she had before.

From the above example, it will be seen that every transaction has two aspects in each party's books- **known as DOUBLE ENTRY BOOK-KEEPING**

The system which is believed to have originated with the Venetian Merchants of the 11th century is the only system fulfilling the two-fold requirement that “for every **DEBIT** there must be a corresponding **CREDIT**, and vice versa”.

In technical language, these words express the fact that in recording a transaction in accordance with the principle of double-entry book keeping.

- a. The RECEIVER is DEBITED with the money value of what he receives.
- b. While the GIVER is CREDITED with the money value of what he gives.

BOOK REQUIRED FOR RECORDING TRANSACTIONS:

Theoretically, the ONE essential book of accounts is the LEDGER. The double entry can be completed therein, and consequently it is, in theory, possible to carry out a

complete system of book keeping by using such one book. In actual business, however, the use of such a single book has been found to be totally impracticable.

Therefore, in the simplest form of book-keeping at least two books are used viz:

- i. The Journal and
- ii. The Ledger
- i. JUDE'S JOURNAL
- ii. FATIMA'S JOURNAL

DATE	PARTICULARS	DR	CR
		₦	₦
21.1.84	TO: CASH BY: Books		

Being cost of book
sold to Fatima

The Journal

The Journal or Day-book was originally a daily record into which all transactions were entered and classified. It is then posted or entered into the ledger accounts.

EXAMPLE 2 JOURNAL ENTRY:

A. The example given in paragraph 1.15 can be passed through the Journal (or can be journalized) in the following manner assuming the transaction occurred on 2nd January, 1984. The short narration at the bottom of the journal is an explanation of the nature of the transaction which should always be given before a journal is closed.

As a legal practitioner you may not be involved in the use of Journals. The Ledger Book and the Cash books are the most likely books which may be involved in recording our business transactions.

CASH BOOK: Is a ledger account, being nothing more than the cash and bank account taken out of the Ledger and bound separately for the sake of greater convenience.

(a) Treatment of the Cash Book:

- i. When you receive money from your clients, you should DEBIT the cash book with the value of amount received.
 - ii. When you buy stationeries or postage stamps, you should CREDIT the cash book with value of the goods bought.
- (b). If a lawyer pays all moneys received into a bank, he would need to have a Bank Cash Account and where cash is kept for office use, he would need to keep a petty cash account.

CAPITAL:

It is perhaps needless to say that when or before you set out to practice, you need some capital, however small it may be. You require such items as: office tables (at least two-one for yourself and the other for your clerk/ office assistant) you need office chairs, desktop computer, books, letter head and other stationeries. You also require a car to facilitate your movements. Whatever amount you have when you started constitutes your CAPITAL. The furniture, desktop computer and stationeries will constitute you ASSETS. The total amount (capital and assets) put together, including cash in your hand or at the Bank) is the VALUE of your business or practice. The cash in your hand or at the bank at the start of the business is your WORKING CAPITAL. The total value of your assets including the cash in hand or at the bank constitutes your CAPITAL in the practice.

The Ledger

A ledger enables the legal practitioner to know the state of each item in the cash book over a given period of time. It

records in permanent form all the legal practitioner's transactions after classification into separate or suitable groups e.g. those affecting cash, goods, or persons. All items in the Cash Book (except balances) are posted into the CREDIT side of the ledger accounts affected. While all payments on the credit side of the Cash Book are posted to the DEBIT side of the ledger accounts concerned.

Classification of Transaction

Accounts which stand in the name of individuals, partnership, or companies are called PERSONAL ACCOUNTS; all the others are called IMPERSONAL ACCOUNTS.

Impersonal Accounts may be further sub-divided into two classes viz:

- a. **REAL ACCOUNTS** record transactions in property and materials objects (Assets) and
 - b. **NOMINAL ACCOUNTS** record items of expenses incurred and income received, losses made and gains effected.
-
- a. See Examples of personal Account in the Electronic Handbook.
 - b. See Examples of Impersonal Account In the Electronic Handbook.

METHOD OF ENTRIES IN THE BOOK

- i. **Cash Account**

- Debit: Receipts

- Credit: Payments

- ii. **Personal Accounts**

- Debit: Receiver

- Credit: Giver

- iii. **Real Accounts**

- Debit: Property Purchased or Acquired and

Credit: Property Sold or Realized.

iv. Nominal Accounts

Debit: Expenses/Losses

Credit: Incomes / Gains

EXAMPLE OF CASH BOOK AND LEDGER:

Miss FATIMA was enrolled as a Solicitor of the Supreme Court of Nigeria on 31st August, 2008. On the 1st day of September, 2010 her parent gave her N2,000,000 cash to enable her set up private legal practice in Lagos. On 2nd September 2010, Fatima paid N200,000 being a year's rent for office accommodation to one Mr. John, the landlord of the premises. On 3rd of September, 2010 she bought office furniture worth N150,000.00. She also bought a Laptop computer for N100,000.00. She bought stationeries worth N80,000 and practice books to the value of N50,000.00 all items were paid for in cash. On 4th September, 2010 she opened a current account with the New Nigeria Bank Ltd with the sum of N100,000.00. On 5th September, 2010 she bought a second hand Peugeot 406 SR at a cost of N500,000.00 to facilitate her movement during the course of her practice, and paid Insurance premium of N10,000 for comprehensive insurance to the Great Nigeria Insurance Co. Ltd; she kept the sum of N30,000.00 in her office safe for petty Cash disbursements. FATIMA's Cash Account and the opening balances in her ledger Book will be as follows:

FATIMA'S CASH BOOK ACCOUNT

DATE	PARTICULARS	DR	CR
1-9-10	Capital	2,000,000	
2-9-10	Rent		200,000
3-9-10	Office Furniture		150,000
3-9-10	Laptop Computer		100,000
3-9-10	Stationeries		80,000
3-9-10	Practice Books		50,000
4-9-10	Current Account		100,000
5-9-10	Peugeot 406 Car		500,000
5-9-10	Insurance		10,000
5-9-10	Premium		
5-9-10	Imprest Account		30,000
30-9-10	Balance c/d	-	780,000
30-9-10	Balance d/b	N2,000,000	N2,000,000

If you pause for a moment and have another look at the Cash Book Account you will discover that all payments made by Fatima were credited in the Account while the amount she received from her parents was debited in the same Account.

Before you proceed further take another look at paragraph 1.27 (1) headed "Cash Account" there you were directed to Debit receipts and Credit payments.

You will see from the above entries in the Cash Book Account that directive was complied with.

DR CAPITA ACCOUNT CR

DATE	PARTICULARS	AMOUNT =N=	DATE	PARTICULARS	AMOUNT =N=
			1-9-10	Cash	200,000,000

DR RENT ACCOUNT CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
2:9:10	Cash	200,000			

DR OFFICE FURNITURE ACCTON CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
3:9:10	Cash	150,000			

DR COMPUTER ACCOUNT CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
3:9:10	Cash	100,000			

DR STATIONERY ACCOUNT CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
3:9:10	Cash	80,000			

DR BANK CURRENT ACCOUNT CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
3:9:10	Cash	100,000			

DR MOTOR VEHICLE ACCOUNT CR

DATE	PARTIC ULARS	AMOUNT =N=	DATE	PARTI CULARS	AMOUNT =N=
3:9:10	Cash	500,000			

DR INSURANCE PREMIUM ACCOUNT CR

DATE	PARTICULARS	AMOUNT =N=	DATE	PARTICULARS	AMOUNT =N=
3:9:10	Cash	10,000			

DR PETTY ACCOUNT CASH AT HAND CR

DATE	PARTICULARS	AMOUNT =N=	DATE	PARTICULARS	AMOUNT =N=
3:9:10	Cash	30,000			

(c) If the openings in the Ledger Accounts are correctly stated from the beginning it will facilitate additional entries in the various accounts during the year or accounting period.

PARTNERSHIP ACCOUNTS

The example considered earlier relates to the accounts of a Sole Practitioner and sole trader. The idea is fact gaining ground for two or more Legal Practitioners to join together and form partnership with each other. In such a situation, a partnership deed or agreement is generally drawn up setting out in clear terms, the major terms of the partnership. In the absence of any express agreement on the terms of the partnership, the provisions of the Partnership Act 1980 of the Partnership Law will apply. It is sometimes possible for the partners to contribute capital in equal proportion and therefore share the profit and or loss in equal proportion as well.

DRAWINGS BY PARTNERS

The drawings of a sole practitioner are transferred at the end of the year from the Drawings Account to the Capital Account. In the case of a partnership, drawings are not transferred to Capital Account. There will be a separate Current Account for each partner.

EARNINGS BY PARTNERS

A similar procedure to the one just considered is adopted with the earnings of the partners e.g. net profit. Instead of being credited to Capital account of each partner, net profit is credited to the Current Account of each partner

OTHER EXPENSES/ INCOMES

The daily entries in the accounts of the partnership e.g. payment of expenses, receipt of incomes, are all the same as in the accounts of Sole Proprietor up to and including the preparation of the profit and Loss Account.

PARTNERSHIP SALARIES

Sometimes it may be agreed that the partners are to be paid salaries before any resulting profit or loss is shared between them. If this is so, the entries are:

- a. DEBIT the Profit and Loss Account
- b. CREDIT the Current Account of each partner

INTEREST ON CAPITAL ACCOUNT

It may also be agreed that the partners are to be entitled to interest on the amount standing to the credit of their Capital Account. If this is so, then the relevant entries are:

- a. DEBIT the Profit and Loss Account; and
- b. CREDIT the current Account of each partner

RECORDING OF CLIENTS MONEY

In the recording of monetary transactions on behalf of clients, the Legal Practitioner needs:

- a. One Cash Book Account, and
- b. One Personal Account in respect of each client.

Debit Cash Account (Client Account) which is not the same as the one used for your personal or office money; and Credit ledger account of client.

Sometimes, the same legal practitioner will act for both vendor and purchaser instead of each party engaging the

services of different lawyers. It is not uncommon for a purchaser to make a deposit against the purchase price with his Solicitor on or before the exchange of contracts, sometimes such deposits are made to the estate agent who negotiated the sale, but more often than not, it is paid to one of legal practitioners acting for the parties. The entries you will make in your books will depend on whether you are holding the deposit as-

- a. an agent for the vendor; or
- b. As stake-holder

AGENT for the Vendor: in this case the money belongs to the Vendor immediately and the entries are:-

CREDIT the Ledger Account of the Vendor – **CLIENT ACCOUNT**

DEBIT Cash Account - **CLIENT ACCOUNT**

Acting as Sake- holder: In this case the money is temporarily neither that of the Vendor nor that of the Purchaser until the relevant matter is completed when the money automatically becomes that of the Vendor. In the recording of the transaction an account is opened in the Client's Ledger called Stake-holder Account and the entries will be:

CREDIT Stakeholder **CLIENT ACCOUNT**

DEBIT cash **CLIENT ACCOUNT**

On the completion of the transaction a Ledger Transfer must be made from the Stakeholder Account to the account of the Vendor i.e. **DEBIT** Stakeholder account **CLIENT ACCOUNT**; **CREDIT** the Ledger Account of the Vendor **CLIENT ACCOUNT**.

The word **CLIENT ACCOUNT** has been continuously attached to the title of accounts discussed in this chapter in order to distinguish them from the Legal Practitioners' own business money and those that belong to his Client.

RECORDING OF TRUST MONEY

The Trust Account is analogous to the Client Account. More often than not, a legal practitioner will be asked to act as a trustee to a trust and in such case will, from time to time, receive money belonging to that trust. It should be noted however that where the legal practitioner is not a Solicitor for a trust himself but only acting for trustees, (i.e. they are his clients) then any money received on behalf of that trust and the trustees, is CLIENT MONEY.

We have seen earlier that the provisions of the Legal Practitioner Account Rule 1964 enjoin any Legal Practitioner who is a trustee to keep proper, faithful and accurate accounts for the trust and that such account(s) must be kept separately from all other accounts. Failure to comply with those requirements may render the legal practitioner (as a trustee) liable to an action by a beneficiary for breach of trust.

Furthermore, a Legal Practitioner who fails to comply with the 1994 rules be equally or additionally liable to disciplinary proceeding, particularly if he is a “Solicitor-trustee”.

Consequently, whether a legal practitioner is a solicitor-trustee (i.e. a sole trustee) or an ordinary trustee (e.g. a trustee jointly with a layman who is not an employee in his Chambers or firm) he will need to keep separate records and books of account for each trust of which he is a trustee. In the recording of the transactions, the legal practitioner should have separate bank account for each trust so as to avoid the problem of mixing up moneys belonging to different trusts.

Withdrawals:

- (i) When withdrawals are made out of money held in a firm's CLIENT ACCOUNT
 - a. DEBIT the ledger account kept for the particular trust in CLIENTS
 - b. CREDIT Cash Account CLIENT ACCOUNT;
- (ii) When withdrawals are made out of money held in the Trust Bank account, the withdrawals should be recorded in the books of the trust, but no entries should be made in firm's books

A legal Practitioner is not interested in any cumbersome methods of book-keeping. The use of Journals Day Books or other like them is not useful to a Legal Practitioner. In a Solicitor client relationship, the fees payable by the client are known quite in advance and agreement reached on payment. A legal practitioner is entitled to demand payment of his fees before the beginning of completion of a client's work, because of the provision of Section 16 (2) of the Legal Practitioner Act, prohibiting the legal practitioner from taking or commencing any legal action to recover his charges, unless certain conditions are fulfilled.

See *D.A.S Olorunfemi, S.F. Ogbe v. N.N. P.C. (1980) 4-7/ CCHC/93*. The provision of section 16 of the Legal Practitioner Act 1975 enjoined a Legal Practitioner to issue out to his client(s) a Bill of Charge" (See Appendix "B") for the work done or to be done on behalf of the client and the type books of account will be maintained by the legal practitioner in compliance with Legal Practitioners account Rules of 1964. Where the use of Bills of Charge "or" Bill of Costs" is fully operational in chamber, then the legal practitioner (s) may only require the use of the LOOSE-LEAF LEDGERS for the recording of all monetary transaction between him and his clients.

CARD LEDGERS

The following disadvantages may be stated against the use of loose-leaves and card ledger:-

- i. The cards or leaves may be accidentally or willfully lost or destroyed particularly when they are kept by staff (and not by the legal practitioner himself).
- ii. In the same way, fresh cards or leaves may be fraudulently substituted for others in order to commit or conceal fraud.

SLIP” SYSTEM

The “SLIP” system is really a reintroduction of the earliest methods of “book keeping without books” that is, a recording on loose sheets of paper of translation usually entered in subsidiary books. In its widest sense the term “Slip system” includes both the loose- leaf and card ledgers.

The object of the slip system is to do away with the constant re-copying by making the original record serve all the purpose of book keeping.

The slip system is suitable in business or chambers where the numbers of clients are chance and not regular ones. Except in “retainership”, most clients are chance clients whose files will normally be closed at the end of each transaction or case, and may never be looked –up again except for reference purposes.

INSPECTION AND ENFORCEMENT

Rule 21 of the 1964 Rules provides that:

1. In order to ascertain whether the Rules have been complied with, the Bar Council, acting either:
 - a. on their own motion; or
 - b. on a written statement on request transmitted to them by or on behalf of any Branch of the Nigerian Bar Association; or

- c. on a written complaint lodged with them by a third party may require any legal practitioner to produce at a time and place to be fixed by the Bar Council, his books of account, bank pass books, looseleaf bank statements of account, vouchers and any other necessary documents for the inspection of an accountant appointed by the Bar Council, and report on the result of such inspection. Such report may be used as a basis for proceedings under the Legal Practitioners Act 1975.
2. Upon being required so to do, a legal practitioner shall produce such books of account, bank passbooks, loose-leaf bank statements, at the time and place fixed."

It is expedient that before instituting an inspection of a legal Practitioner's account on a written complaint of a third party, the Bar Council shall require *prima facie* evidence that a ground for complaint exists. To this effect, it may require the payment by the third party to the council of reasonable sum to be fixed by the Council to cover the cost of:

- a. The inspection and
- b. The cost of the legal practitioner against whom the complaints is made. The Bar Council has power to deal with any sum so paid in such manner as they think fit. R 21(4)

As an alternative to the above, the Bar Council may, in their discretion, require any legal practitioner to deliver to the Council within a specified time, a Certificate by an Accountant in a prescribed form similar to the schedule to the Rules. In such a case the examination of the legal practitioner's books of account shall be carried out by an accountant nominated by the legal practitioner himself in

accordance with written instruction given to the Council to the accountant or failing such nomination within a time fixed by the Council, an Accountant may be appointed by the council to carry out the report- R. 21A

All requests by the Bar council to a legal practitioner shall be made in writing under the hand of the secretary and sent by registered post to the last address of the legal practitioner appearing on the roll or in the list kept by Registrar under section 7 (4) Legal Practitioner Act 1975. A letter sent by registered post shall for the purpose of these Rules be deemed to have been received by the legal practitioner on the tenth day after posting- R. 22

PROFESSIONAL ETHICS AND SKILLS SCENERIOS WEEK 3: HISTORY OF THE LEGAL PROFESSION

Scenario 1

I practice as a law officer in the Ministry of Justice, Cross River State. I have a degree in Law from Ahmadu Bello University, Zaria in 1973 but was not opportune to go to the Nigerian Law School. Is it right that I have a right of audience in Court?

Scenario 2

I studied in England and was called to the English Bar in 1969 and have been practicing there till date. I was recently invited to handle a matter that involves a sensitive public interest in Nigeria in a Nigerian court. Do I have a right of appearance in a Nigerian Court?

Scenario 3

I am a Nigerian. I studied Law at a university in London and I want to Practice Law in Nigeria. What should I do to achieve this?

What happens if I go ahead to practice law in Nigeria in my current situation?

Role Play on interviewing

IN THE LAW OFFICE OF ABAJE & CO;

In the office of the principal, the principal is seated in his office with the client seated in the chair in front of him; both looking seriously engaged in a discussion.

Principal: (*Looking distracted and appears to be listening for something, suddenly gets up and says*) ‘Please excuse, it seems the front door to the office just opened. I need to find out if a prospective client has just walked in’

Principal: (*Comes back looking very ruffled*) ‘Eh! Eh! continue what you were saying’ (*As the client continues, he abruptly gets up again and walking out of the office to the front door, repeats again*) ‘Continue what you were saying. I don’t have a receptionist so I have to mind the door (*The client is looking harassed when the principal returns*)

Principal: (*In a very off hand manner states*) “Please can you continue what you were saying? Do you think I have the whole day for you? Even from what you have said so far I suspect you are at fault! (*The client gets up from his seat looking shocked, walks out*). ”

General Drafting Exercises in Legal Matters.

Scenario

ABC Limited had a contract with ROCK CONTRACTORS LIMITED where the former agreed to supply the later one thousand bags of cement. ABC Limited supplied the cement but ROCKCONTRACTORS Limited has refused to pay for the value claiming that half of the consignment was bad.

Minutes of meeting

As a Lawyer in the Chambers of Okeke & Co, a firm of Legal Practitioners, located at No.51 Ozumba Mbadiwe Street, Victoria Island, Lagos, you have been instructed to take and produce the Minutes of the quarterly Meetings of the Firm. The meeting scheduled to assess the firm's 1st Quarter's Activities for the year 2010 took place on the 1st of November 2009. The External Training Consultant, Prof. Richard Grimes of the Oxford University, London is in attendance for purposes of ensuring compliance with all the training modules to which lawyers in the firm had been exposed in the last two years. The Meeting was presided over by the Head of Chambers.

Using the following Guidelines of a Minutes, develop the appropriate body of the Minutes to be assessed.

1. Heading; (Minutes of ... state nature of, place, date, time)
2. Present (List of Members present);
3. In attendance (List of those in Attendance);
4. List of those Absent (if practicable);
5. Opening Remarks/Prayers
6. Adoption of Agenda
7. Adoption of the Minutes of the last meeting;
8. Matters Arising;
9. Issues discussed following the Agenda;
10. Reports
11. Resolutions
12. General issues
13. Conclusion
14. Adjournment and Closing Remark/Prayer (if any);
15. Signatories.

GUIDELINES TO CREATING A CURRICULUM VITAE

NAME:

ADDRESS: including e-mail and telephone number.

State of origin:

Schools attended:

Educational qualification:

Area of specialization:

Employment record:

Present position:

Summary of present job schedule:

Cognate experience:

Referees:

Signature and date

Uche, is a lawyer in the Law firm of Adaobi & Co. He took up the employment immediately after his NYSC and has been there for six years. Recently he has experienced job dissatisfaction and desires to explore other areas of legal practice. SPDC has advertised the position of a legal officer. Draft the guidelines that Uche would adopt to prepare his Curriculum Vitae.

DUTIES OF COUNSEL TO COURT AND STATE

SCENARIO

Chinedu is a legal practitioner representing Henry Alli in the case between Henry Alli and the EFCC. It was Chinedu who approached Henry Alli after his arraignment to represent him and Henry alli consented. Chinedu also advised Henry to stay away from court in order to avoid tendering a document in court on the next adjournment. On the 17th of June, 2009, Chinedu arrived in court at 10 am by which time the judge was sitting. Chinedu quickly puts on his wig and gown and asked for permission to announce his appearance. The judge ordered him to sit down but he

retorted that his case was the first on the cause list and consequently he must be heard. The judge was very angry and asked him to enter the dock and show cause why he should not be committed for contempt.

Contempt of Court: Scenario One

Registrar: Suit No. HC/C/0110/2008. Between Maria Ade v. George Bada

Alex Victor: May it please this Hon. Court, Alex Victor appears for the Plaintiff.

Francis Ibe: May it please my lord, Francis Ibe for the Defendant.

Justice Boniface: Yes counsel.

Alex Victor: My lord, since the Ruling of this Hon. Court ordering the defendant to remove his earth-moving equipment (Caterpillar) from the premises pending the determination of this substantive Suit, the defendant has refused to comply with the order of this court. My Lord, my Client is apprehensive that the continued stay of this equipment may result in the eventual demolition being threatened. We seek that his Lordship orders the enforcement of his earlier ruling.

Justice Boniface: Is that the position, Counsel?

Francis Ibe: (stammering) ye..yes, to some extent my lord. Since the equipment and the premises are properties of my client I don't think it matters if it remains on the premises.

Justice Boniface: Are you demeaning the authority of this honourable Court, or you are trying to subject my order to your own personal interpretation?

Francis Ibe: My lord, we have filed a Motion to have our claim proved within the shortest time possible.

Justice Boniface: In spite of whatever steps the defendant intends to take, the Ruling of this Court must first be complied with and must be so done before the next adjourned date.

Scenario Two

Justice Randy: So my dear New wig, what can I do for you?

Miss Eko: (*With her right hand on her waist, looking elsewhere*). My lord, I take serious exception to being addressed as “my dear new wig”; I am two years at the Bar and besides, if you look at your records, my name is Angela Eko (Miss) and not “my dear”.

Justice Randy: Oh well, your point is noted. Can you now tell this Hon. Court what the matter is for, my d..., sorry, Miss Eko.

Miss Eko: The matter is for report of service. All the defendants in this Suit have been adequately served and we shall be asking for a date for mention.

Justice Randy: See me in Chambers for a convenient date for this matter.

Miss Eko: I will do no such thing my lord. Dates are supposed to be given in open courts; and it is against the ethics of my religion to be caught behind close-doors with one of the opposite sex. (*She packs her books and storms out of court*)

LETTER WRITING S KILLS

Mr. Chukwu, lawyer to the vendor (Chief Agba) has concluded negotiations for the sale of Plot 2311 Ahmadu Bello Way, Central Business District, Abuja for the sum of N10 million and requires confirmation of instructions to proceed to execution.

LEGAL PRACTITIONERS ACCOUNTS

Mr. Chukwu has received a deposit of N5m pending the completion of contract on behalf of his client Chief Agba. Mr. Chukwu also has incurred some costs relating to

courier services, secretarial and legal expenses at the rates of ₦20,000; ₦10,000 and ₦50,000 respectively. He has also lodged the deposit in his firm's account from which he draws for personal and chambers expenses.

Advise Mr. Chukwu as to the type of accounts to be kept as a Legal Practitioner.

Draft a Cash / Ledger Book Account.

ADVOCACY SKILLS

In a criminal trial for murder, the following was the opening address made by Mr. Oko Inyang, the Prosecuting Counsel. "My lord, we have brought before you a watertight case against the accused which I am sure will convince the court to convict and sentence him to death. The case was well reported in all the national dailies which we intend to rely on for the proof of the murder against the accused. All persons who heard about the crime out-rightly condemned the perpetrators of it and no doubt his lordship will agree with me that the accused person cannot go unpunished for his action. The prosecution is ready to show that the accused is not remorseful ever since he was arrested and has often boasted of his Constitutional rights even while in Police detention. The case offends the laws of not only the Federal and State Governments but also that of the Local Government and even all other constituted authorities and right thinking members of the public."

REMUNERATION OF LEGAL PRACTITIONERS

Mr. Chukwuma Obilewa who acted for both the mortgagor and the mortgagee in a property worth N150 million located at Awolowo Road, Ikoyi – Lagos has drawn his bills of professional charges at the rate of 5% to each party; asking them to settle same within 10 days failing which he intends to recover these in a law suit.

1. Discuss the rules and principles applicable to Legal Practitioner's Remuneration;
2. Itemize processes for the recovery of the Legal Practitioner's Charges;
3. Draw a Bill of Charges;
4. Draft a Statement of Claim for the recovery of Charges.

Mediation

Scenario 1

Mr. & Mrs. Lele Dim have been married for about 5 years and have 2 children (a boy of 4 years and a girl of 2years). About 2 years ago, after the birth of their second child, his company desirous of expanding, decided that Mr. Lele Dim should relocate from Lagos to Abuja to head the newly opened branch office there. He was happy, but his wife gave different reasons why the whole family could not relocate at that time; he went back to Abuja alone. He returned home on weekends, however, this became a source of friction in the home. About a month ago, the wife paid an unscheduled visit to Abuja and met a lady called Miss Cecilia Yahat in his Apartment. All hell has been let loose since. She is bent on a divorce although her husband insists that it was all her fault. He said her refusal to relocate from Lagos amounted to her placing him lower than her job and family. She claimed that the baby was too young to be moved about. In any case, Mr. Dim is indifferent about the divorce option. However, after much persuasion from family members, they have agreed to accept mediation in the matter.

SCENARIO 2

Mr. Okon Samuel was allotted Plot 1268 Maitama Cadastral District by FCDA Abuja on 20th January, 1990. In 1995, he carried out a survey of 'his' property and

commenced the development of a 6-storey office complex. He was on the fourth floor when Mr. Sule Onigbanjo went to court to obtain an injunction restraining him from continuing the development on his (Mr. Onigbanjo's) land. On inspection of the cadastral survey map of Maitama, it was discovered that the plot Mr. Okon had been developing was the adjacent plot 1266.

The parties have agreed to submit their dispute to mediation at the instance of the District Governor of Rotary International District 9130 under which is their club, the Rotary Club of Maitama. Both of them are Rotarians. The parties have agreed to respond to mediation by Chief Oloro.

DISCIPLINE OF LAWYERS

Quiz

1. State the laws regulating the discipline of lawyers in Nigeria
2. What rule or rules are applicable to the discipline of lawyers in Nigeria?
3. What are the conducts for which a legal practitioner may be disciplined?
4. State the organs for discipline of legal practitioners as contained in the Legal Practitioners' Act
2. What is "a direction" under the discipline of lawyers?
3. To whom does a complainant make his complaint?
4. What is the composition of the LPDC?
5. How many members of the Committee can form a quorum for the purpose of hearing a complaint?
6. On whom are the documents laying the complaint against a legal practitioner served?
7. What is the duty of the NBA Disciplinary Committee when it receives a complaint? State the

- organs for discipline of legal practitioners as contained in the Legal Practitioners' Act
8. What is the direction under the discipline of lawyers?
 9. To whom does a complainant make his complaint?

What is the composition of the LPDC?

10. How many members of the Committee can form a quorum for the purpose of hearing a complaint?
11. On whom are the documents laying the complaint against a legal practitioner served?
12. What is the duty of the NBA Disciplinary Committee when it?
13. Hearing of the LPDC is always in private. True or False?
14. State the directions that the LPDC can make.
15. When does such directions become effective?

SCENARIO 1

Mr. Olorioko Bale the family head of Ijogbon family sold a piece of family land sometime in April 2007 to Mr. Jeje Nuhu for the sum of =₦=1.5m and issued him a purchase receipt to that effect. He later sold the same piece of land in August 2008 to Mr. Chukwuma Salami for the sum of =₦=3.5M and he executed a deed of assignment in his favour. Mr. Chukwuma through his lawyer Mr. Kunle Taiwo registered same at the lands registry Ikeja. Mr. Kunle Taiwo has been the Ijogbon family's solicitor in respect all land transactions since 1988.

LEGISLATIVE DRAFTING

Scenario 1

Omitowoju Local government area of Osun State is known to be very rich in gold and tantalite. Since 2004 when the Federal Government shifted development emphasis in mining to solid minerals there has been an upsurge in the

mining of gold and tantalite in the area in a very indiscriminate and unregulated manner. These mining activities have started to have harmful environmental impact. There is strong gully erosion as a result. The Governor of Osun State, after many deliberations with the senators from the State has agreed that there is an urgent need for a Law regulating mining and prohibiting the mining of these minerals without a government mining license, and for penalties to be imposed on offenders who violate the proposed Lawt - The Law will be retroactive.

Draft:

- e) The commencement;
- f) Short Title;
- g) Long Title; and
- h) Enacting Clause

ROLE PLAY ON CLOSING FILES

Barrister: (*Briskly walks into his office with his brief case and says to his secretary*) Good Morning Miss Oche. Please can I see you in my office?

Miss Oche: Good Morning Sir. Right away Sir (*She follows him to his office*).

Barrister: I wanted to discuss an issue concerning an appointment I have slated for 12.00 noon this afternoon. But first I am concerned that our records room is full and I will want you to get rid of the irrelevant files right away.

Miss Oche: I wouldn't know which ones are irrelevant Sir and how do I get rid of them?

Barrister: Well the matters we concluded and have obtained judgments on; the two matters I had to withdraw my services from last month because the clients were trying to take advantage of me; and of course the file we opened

for that client from Taraba State who never showed up to complete his instructions even though he left his documents with us. You may burn the files. Better still give them to the Akara seller across the street to be in her good will.

Miss Oche: I will do that right away sir.

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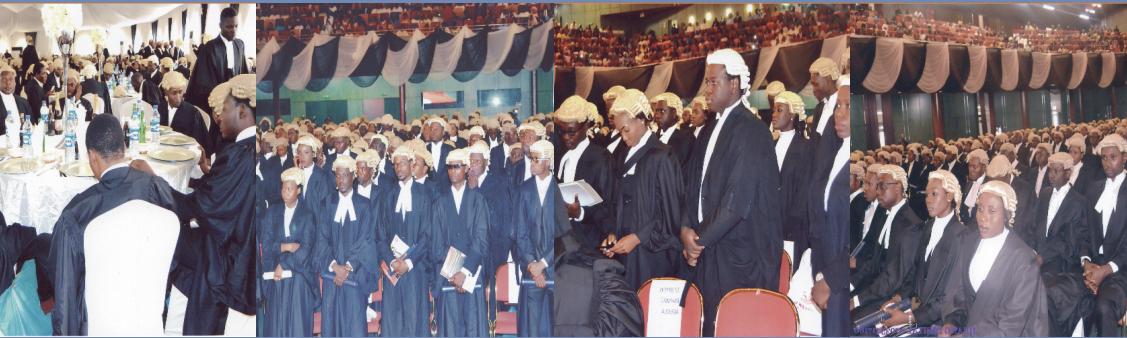
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