LAW IN PRACTICE

(ETHICS & SKILLS)

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(Week 3)

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OVERVIEW OF PROFESSIONAL ETHICS AND SKILLS COURSE

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There are two modules presented under Law in Practice comprising skills subjects and ethics and professional responsibility. The titles of these two modules are:

1. Communication and ADR Skills (skills) and
2. Professional Responsibility (ethics).

II. Goals of Professional Ethics and Responsibility

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.

III. Goals of Skills

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HISTORY OF THE LEGAL PROFESSION

I. Introduction

In ***August 1860*****,** Lagos was ceded to the Queen of England. As a result of that, Lagos became a British colony. Therefore, all laws applicable in England became applicable to Lagos, and in ***1863*** the Supreme Court Ordinance was promulgated to the colony. The problem of this legal system was that, there was shortage of qualified personnel to man the court and shortage of court facilities which led to the employment of lay-men without the knowledge of the law to man the legal process.

As at ***1862***, there were 7 Magistrates – 3 were barristers, 2 were writing clerks, 1 was a merchant and 1 was a commander of the West Indian Garrison in Lagos. To solve this problem, the ***Supreme Court Ordinance of 1876*** was promulgated for the admission of persons to practice as legal practitioners in Nigeria. The history of the Legal profession is divided into 3 stages as follows:

II. First Phase (1876-1914)

In this stage, those entitled to practice were:

1. Professionally qualified legal practitioners abroad who were automatically enrolled to practice in Nigeria.
2. Those who served Articles as Solicitors of the Supreme Court (***Section 73 of the Supreme Court Ordinance 1876***)
3. Local Attorneys given license to practice for 6 months, and it is renewable (***Section 73 of the Supreme Court Ordinance 1876***)

The local attorneys were the worst of them all. They only have minimum level of education. They were allowed because of paucity of lawyers hence the need to encourage many people. From ***1908***, no local attorney was accepted. ***Osho Davies*** was the last applicant.

III. Second Phase (1914-1962)

In this stage, those entitled to practice were only qualified professionals from Britain who are:

1. Barristers
2. Graduate Barristers
3. Solicitors

The deficiencies of English trained lawyers practicing in Nigeria was that they:

1. Had no knowledge of the Nigerian customary law
2. Had no knowledge of our Nigerian land law
3. Possessed no university degree, and
4. Have no post-call experience nor were they attached to law offices.

In ***April 1959***, the ***Unsworth Committee*** was set up to re-examine the practice of law in Nigeria. The committee was set up due to the fact that those that were trained in England had no idea of the indigenous customary law in Nigeria. They were trained under a different system, hence the need to localise the Nigerian lawyer. The committee made quite a number of recommendations. The following are inclusive.

1. To have a Nigerian legal education system;
2. A Council of Legal Education to be set up;
3. Faculty of Law in Nigerian universities starting with University of Ibadan;
4. A law school to be known as the Nigerian Law School. Qualification for admission into the law school would be by obtaining law degree from universities recognised by the Council of Legal Education and the vocational courts prescribed or else take further exams.

These recommendations gave birth to two laws:

1. The Legal Education Act 1962, now Legal Education (Consolidation) Act.
2. The Legal Practitioners Act 1962

The Council of Legal Education has a corporate personality while the Nigerian Law School does not.

IV. Third Phase (1962-Date)

A. Those Entitled to Practice Law in Nigeria

1. **Those Entitled to Practice Generally (Whose Names are on The Roll):** ***Section 2 LPA*** provides that a person shall be entitled to have his name on the roll if –
   (a) He has been called to the Nigerian Bar by the Body of Benchers
   (b) He produces a certificate of call to bar to the Registrar of the Supreme Court
   (c) Payment of practising fee – ***Section 8(2) LPA***.

   Section 4(1) LPA provides the conditions for call to the Nigerian Bar as follows –
   (a) Being a citizen of Nigeria
   (b) Producing a qualifying certificate to the Body of Benchers; and
   (c) Satisfying the Body of Benchers that he is of good character

   It is worthy of note that by virtue of ***Decree No 9 of 1992*****,** non-Nigerians may now also be called to the bar if they satisfy conditions (b) and (c). The qualifying certificate for Call is issued by the Council of Legal Education, while the call to bar certificate is issue by the Benchers (See ***Section 4(2) & (3) of the LPA***)
2. **Those Entitled to Practice by Warrant for Particular Proceedings** – i.e. applying to the Chief Justice of the Federation for a warrant to enable the applicant to practise as a barrister for the particular proceedings. ***Section 2(2) LPA*** provides that if an application is made to the Chief Justice of Nigeria by a person or on his behalf and he appears to the Chief Justice 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 practise as a barrister for the purpose of the proceeding prescribed in the application. He may by warrant authorise that person on payment to the Registrar of such fees not exceeding N500 to practice as barrister for the purpose of those proceeding. See also ***Awolowo v Minister***

of Internal Affairs.[1]

3. **Those Entitled to Practice by Virtue of Their Office:** Law officers such as the Attorney General, Solicitor General, Director of Public Prosecution of the Federation/State, and other officers in the public service of the Federation/State as the AG Federation/State may by order specify to be entitled to practice for the purpose of that office. See ***Section 2(3) of the LPA***. Pursuant to this provision, some offices have been so delegated by the ***Legal Practitioners Act (Entitlement to Practice as Barristers and Solicitors) Federal Office Order 1963***.

B. Exemption from Attendance of the Nigerian Law School

1. Partial Exemption

Graduate of Law from Common Law jurisdiction teaching Law in Nigerian universities for a period of 5 years or 10 years if he studied in a non-common law jurisdiction, are exempted from the Bar Part I programme of the Nigerian Law School. See ***Section 2(a) & (b) of the Legal Education (Consolidation) Act 1976***.

2. Full Exemption

Here, a person is not to attend the Law School provided he is:

1. A Nigerian citizen.
2. Qualified to be admitted to the Nigerian Law School i.e. fulfilled all requirements for qualifying subjects for admission into the Law School.
3. At the time he was qualified to attend the Law School or so soon thereafter, he lost the opportunity for reasons beyond his control.
4. At the time of the application for exemption he satisfies the Council that he has acquired knowledge and experience over a period of at least 5 years, fitting him for enrolment and that it will be unreasonable, having regard to all circumstances to require him to go through the Law School.

C. Right of Non-Nigerians to Practise in Nigeria

Non-Nigerians may be called to the Nigerian Bar in the following cases:

1. **Requirement under the LPA:** ***Section 1(b) LPA*** provides that if such non-Nigerian citizen produces a qualifying certificate the Body of Benchers and shows that he is of good character, he may be called to the Nigerian Bar.
2. **Grant of Dispensation by the Council of Legal Education:** this occurs where the Council of Legal Education grants dispensation by virtue of the ***Professional Bodies (Special Provisions) Act 1992*** and the ***Professional Bodies (Legal Profession) Exemption Order 1973***.
3. **Regulation by the Attorney General:** this occurs where the Attorney General of the Federation after consultation with the Bar Council and the Body of Benchers has made regulations providing for enrolment of Non-Nigerians who satisfies the following –
   (a) They are authorised to practise law in their own country
   (b) Their country accords the same privilege to Nigerians.
   The regulation may require the passing of prescribed examinations. See ***Section 7(2) LPA***.

OVERVIEW OF THE ADR PROCESSES

I. Concept

ADR simply means Alternative Dispute Resolution. It is the method by which parties to a dispute reach an amicable resolution of the dispute without the need to resort to Court or litigation. ADR could be court connected or non-court connected. It is the former when where the matter was already in court and the parties agreed on an out of court settlement, while it is the latter where the parties mutually reach an acceptable agreement without recourse to

[1] (1962) NLR 177

Court.

Litigation is the traditional method of dispute resolution. Any form of dispute resolution other than litigation is an alternative dispute resolution method. ADR and litigation cannot run together, it has to be one at a time. Ideally, ADR is usually resorted to prior to instituting an action but subject to the circumstances of each case, it can be resorted to before judgment is given. Thus, pendency of litigation does not stop ADR as ADR must not necessarily precede litigation. If litigation is pending and the parties go into ADR, the terms of settlement reached by the parties would be brought to court and the court will enter and deliver it as a consent judgment. The following are ADR mechanisms:

1. **Negotiation:** between two parties. This entails the parties discussing and agreeing to terms or reaching mutually acceptable resolution without the aid or intervention of a 3rd party.
2. **Mediation**: involving a neutral third party.
3. **Conciliation:** involving a neutral third party who can give an opinion or suggestion.
4. **Arbitration**: involving a neutral third party(s) called the arbitrator(s) who can give an award which is enforceable.
5. **Hybrid Processes:** The notable hybrid ADR processes are ARB-MED, MED-ARB, NEG-MED, and CON-ARB. The fact that the parties have resorted to litigation or any of the ADR processes does not preclude them from adopting other ADR processes to resolve the dispute. The hybrid process allows the parties to commence the settlement of their dispute with one ADR process, then subsequently have recourse to another method in the course of the settlement of the dispute. The major advantage of the hybrid process is that it allows the parties the time to explore an ADR process to settle their dispute until they discover that a particular problem requires some other ADR process. Parties are therefore not restricted to one ADR process at a time in order to settle their dispute.
6. **Expert Appraisal:**
7. **Settlement Conference:**
8. **Private Judging**: parties hire a private judge.
9. **Early Neutral Evaluation**: involving third party (a lawyer or a retired judge experienced in the area of dispute) who would evaluate the dispute, evaluate the relative strengths and weaknesses of each party's case, the probable outcome of litigation and advices the parties. His opinion is not binding, but it may lead to an amicable resolution of the dispute. All documents, records and statements made in the process are confidential and cannot be admissible as evidence.
10. **Mini-Trial**: just like court trial in absence of live evidence.
11. **Multi-Door Court House:** this is not an ADR mechanism but a place or forum where ADR mechanisms can be exploited. The Lagos State High Court and High Court of FCT now have a multi-door court house. In Lagos, it is statutory. Approaching the multi-door court house could be court connected like in Lagos state or independent court. There are also Citizens' Mediation Centres as in tenancy cases.

II. Crime and ADR

Ordinarily, it would be thought that ADR only applies to civil cases. ADR applies to some crimes. For instance, compoundable offences under Criminal Procedure Code, parties can agree to settle and come back to court. Traffic accidents involving repair of vehicles. Plea bargaining involves negotiation between the prosecution and defendant. See ***Section 75 & 76 Administration of Criminal Justice Law of Lagos***. Plea bargaining under the ***ACJL*** is not limited to any offence.

III. Advantages of ADR Processes over Litigation

1. **Cheaper than Litigation:** In short term, ADR can be more expensive than litigation but in long term it is cheaper than litigation. In ADR, all the expenses are borne by the parties while in litigation; some of the expenses are not borne by the parties.

2. **Faster than Litigation:** In litigation, there is competition but in ADR, the parties' case is likely to be the only one. It takes less time than litigation as there would not be long and unnecessary adjournments, which is usually associated with the judicial process.
3. **Preservation of Pre-Dispute Relationship between the Parties:** Most ADR has a win-win situation on both sides, although arbitration is now similar to litigation as it is governed by stringent rules where there is a winner and loser. Strictly in litigation, it is a win-lose situation. Thus, ADR preserves the pre-dispute relationship between the parties.
4. **Privacy of the Parties and Confidentiality of the Proceedings:** ADR helps preserve the privacy of the parties. In litigation, the process must be held in public except under certain conditions thus in private. Again, most parties to litigation do not return as friends even in matrimonial proceedings. And in commercial area of law, ADR is most relevant as there might still be need to continue business relationship.
5. **Less Formal and Less Rigid than Litigation:** The court room where litigation is carried out is usually tense. For the lawyers, it is difficult, there are a lot of rules and procedures which must be followed and also for the layman, and it is extremely difficult. In ADR session, it is more of business meeting where coffee can even be served. Hence, the layman is likely to prefer such environment.
6. **Parties can determine the Coram**: parties determine the mediator or arbitrator or conciliator. That is, they choose the persons who will preside over their case.
7. **Parties can determine the Venue**: Parties choose a venue which is convenient for them.

IV. Disadvantages of ADR

1. **Lack of Protection against Hostility:** In arbitration, the arbitrator is not protected against hostility while in litigation; the judge can give judgment without fear or favour.
2. **Hindrance to Development of Case Law:** ADR hinders the development of case law. This is however seen as a positive limitation and not a negative one as case law is not an end in itself but a means to an end.
3. **Lack of Binding Force:** ADR processes usually lack binding force except arbitration as the ***Arbitration and Conciliation Act*** provides for its bendiness. However, for the others that have no binding force, the parties can and usually make an effort to reduce the decision reached in the ADR process into a binding agreement. In other words, by their own nature, most are not binding but there are means to making them binding.
4. **Expensive in the Long Run:** ADR is more expensive in the long run.
5. **Difficulty in finding Qualified Personnel:** there is difficulty in finding the qualified personnel under ADR.
6. **Lack of Legal Framework:** The other methods have no legal framework. Only arbitration and conciliation have binding force under ACA.

V. Cases where ADR is not useful

1. **Criminal Cases:** In criminal cases generally, ADR is not used but there are exceptions. For instance, plea bargaining in its effect involve some ADR issues as it is give and take position; negotiation of plea of guilty.
2. **Election Petition:** Election petition being matter of public policy cannot be resolved through ADR.
3. **Matrimonial Causes:** In matrimonial causes, ADR is only relevant in certain ancillary matters and not in issue of dissolution of marriage as it is only the court that can decree a Decree Absolute.
4. **Certain Matters that Require Evidence to be proved**: For instance, a declaratory relief being sought must be proved by evidence.
5. **Dispute Relating to Binding Interpretation of Law, Statute or Document**: The court is the only institution that can do so.
6. **Cases of Urgency**: in immediate help like seeking an injunction, ADR will not be

necessary.

VI. Advising on ADR

1. **Rules of Court:** ***Order 25 Rule 1(2) (C) of the High Court Civil Procedure Rules of Lagos State*** makes provision for the promotion of amicable settlement of cases or adoption of alternative dispute resolution. See also ***Section 24 HCL 2004***. ***Order 17 Rule 1 of the High Court of the FCT, Abuja Civil Procedure Rules 2004*** states that a Court or Judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either – (a) Arbitration; (b) Conciliation; (c) Mediation; or (d) any lawfully recognised method of dispute resolution.
2. **Rules of Professional Conduct 2007:** See ***Section 15(3) (d) RPC 2007***.

OVERVIEW OF THE RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS

A. Practice as Legal Practitioner

Rule 1: General Responsibility of a lawyer.
Rule 2: Duty as to admission into the legal profession.
Rule 3: Aiding the unauthorized practice of the law.
Rule 4: Avoidance of intermediary in the practice of the law.
Rule 5: Association for legal practice.
Rule 6: Retirement from judicial position or public employment.
Rule 7: Engagement in business.
Rule 8: Lawyers in salaried employment.
Rule 9: Practicing fees.
Rule 10: Seal and stamp.
Rule 11: Mandatory continuing legal education.
Rule 12: Practising certificate.
Rule 13: Notification of legal practice.

B. Relation with Clients

Rule 14: Dedication and devotion to the cause of the client.
Rule 15: Representing client within the bound of the law.
Rule 16: Representing client competently.
Rule 17: Conflict of interest.
Rule 18: Agreement with client.
Rule 19: Privilege and confidence of a client.
Rule 20: Lawyer as witness for client.
Rule 21: Withdrawal from employment.
Rule 22: Calling at client's house or place of business.
Rule 23: Dealing with client's property.
Rule 24: Responsibility for litigation.
Rule 25: Investigation of facts and production of witness.

C. Relations with Other Lawyers

Rule 26: Fellowship and precedence.
Rule 27: Good faith and fairness among lawyers.
Rule 28: Associating in a matter.
Rule 29: Change of lawyer.

D. Relation with the Court

Rule 30: Lawyer as officer of court.
Rule 31: Duty and conduct of lawyer to court.
Rule 32: Candid and fair dealing.
Rule 33: Trial Publicity.
Rule 34: Relation with Judges.

Rule 35: Lawyer and Tribunal.
Rule 36: Courtroom decorum.
Rule 37: Employment in criminal cases.
Rule 38: Lawyer for indigent accused.

E. Improper Attraction of Business

Rule 39: Advertising and soliciting.
Rule 40: Notepaper, envelopes and visiting cards.
Rule 41: Signs and notices.
Rule 42: Books and articles.
Rule 43: Change of address.
Rule 44: Associate and Consultant.
Rule 45: Barrister's and Senior Advocate's robes.
Rule 46: Press, Radio and Television.
Rule 47: Instigating controversy and litigation.

F. Remuneration and Fee

Rule 48: fees for legal service
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G. Miscellaneous

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(Week 4)

REGULATORY BODIES IN THE LEGAL PROFESSION

BODY OF BENCHERS

I. Establishment and Composition

Section 3(1) of LPA establishes the Body of Benchers as a body of legal practitioners of the highest distinction in the legal profession in Nigeria with the responsibility for the formal call to the Bar of persons seeking to become legal practitioners. The Body is a body corporate with perpetual succession and a common seal. (***Section 3(2) of the LPA***). It consists of:

1. Chief Justice of Nigeria and all Justices of the Supreme Court;
2. President of the Court of Appeal;
3. Attorney-General of the Federation;
4. Presiding Justices of Court of Appeal Divisions;
5. Chief Judge of the Federal High Court;
6. Chief Judge of the High Court of the Federal Capital Territory (NB: this is like a State High Court);
7. Chief Judges of the States of the Federation;
8. Attorneys-General of the all the States of the Federation;
9. President of the Nigerian Bar Association;
10. Chairman of the Council of Legal Education;
11. 30 legal practitioners nominated by the Nigerian Bar Association; and
12. 10 members seen by the Body to be eminent members of the legal profession in Nigeria of not less than 15 years at the Bar.

A person may leave the Body if he or she resigns voluntarily or if he ceases to hold the office by virtue of which he was appointed or if removed for misconduct or other sufficient ground. (***Section 3(3) & (6) of the LPA***). The quorum for meeting of the Body shall be 10 members. (***Section 3(8) of the LPA*****).**

II. Life Benchers

A. Types of Life Benchers

1. Statutory Life Benchers – Automatic for Chief Justice of Nigeria (even after the CJN retires) (***Section 3(4) of the LPA***).
2. Appointment by the Body of Benchers from among themselves.

B. Rights and Privileges of Life Benchers

1. Exclusive right to sit in Inner Bar (in some Courts, there is a specific place carved out as the Inner Bar, usually in front and in other Courts, the first few rows are reserved)
2. Right to mention any motion or cause slated for mention only and not hearing out of turn on Cause List. NB: this right has caused a lot of confusion because it is only for mention of motions or cause (i.e. when matters are first brought to the Court) – ***Section 6 LPA*****.**

III. Functions of the Body of Benchers

The functions of the Body of Benchers is a provided under ***Section 10 LPA*** viz:

1. Disciplinary jurisdiction over members of the legal profession.
2. Formal Call to Bar of persons seeking to become Legal Practitioners.
3. Issuance of certificate of call to bar to new wigs – ***Section 4(4) of the LPA*****.**
4. Prescribing number of dinning terms.
5. Sponsoring aspirants if satisfied that aspirants are of good character. Aspirants must be sponsored by 2.
6. Disciplinary jurisdictions over students seeking to become members of the legal profession. Function has been delegated to Council of Legal Education (See ***Section 19(2) Body of Benchers Regulations***)

7. Prescription of call fees to be paid by aspirants to the bar. It was previously responsible for the prescription of practising fees but the duty is now performed by Attorney General of the Federation as the Chair of the General Council of the Bar.
8. Taking all measures, whether by way of regulations or otherwise, which appear to the Body, necessary or expedient for maintaining at all times the traditional values of the profession.
9. Appointment of Caretaker Committee to run affairs of the NBA where circumstances demand.
10. Maintaining the traditional values of the profession.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE
(Committee of the Body of Benchers)

I. Establishment

The committee was established by ***Section 11 (1) of the Legal Practitioners Act Cap L11, LFN 2004***. It is the committee of Benchers who have the responsibility to determine and consider charges brought against legal practitioners in Nigeria who have misbehaved.

II. Membership

1. Chairman who is not the CJN or a Justice of the Supreme Court,
2. President of the Court of Appeal and one Justice of the Court of Appeal,
3. Two Chief Judges,
4. Two AGs one of whom may be the AG Federation, and
5. Four members of the Nigerian Bar Association who are not concerned with the investigation of a complaint or a decision by the Association to lay a complaint against a legal practitioner before the Committee – ***Section 11(2) LPA*****.**

II. Functions

1. Consideration and determination of complaints brought against legal practitioners e.g. lawyer converting client's money for personal needs; use of certificate of occupancy in their possession for their own personal needs – ***Section 12 LPA***
2. Gives directions to the Registrar of the Supreme Court as to the punishment to be given to a legal practitioner who has been found guilty of misconduct e.g. one of the punishment is the striking of the names of such legal practitioner or suspension – ***Section 12 LPA*****.** Appeal against the direction given by the LPDC shall lie to directly to the Supreme Court.
3. Restoration of names which have been struck off (in rear circumstances where the person has shown remorse and lived a clean life for many years), or cancellation of a suspension of practice – ***Section 14(1) (b) LPA***.

COUNCIL OF LEGAL EDUCATION

I. Establishment and Tenure of Office

The Council of Legal Education is the body primarily responsible for the education of persons aspiring to the legal profession in Nigeria i.e. the proprietor of the Nigerian Law School. It was established under ***Section 1 of the Legal Education (Consolidation, Etc.) Act*** as a body corporate with perpetual succession and a common seal.

The Chairman of the council stays in office for 4 years and can be reappointed for another 4 years. The same condition applies to all other members of the office.

II. Composition

The Council consists of:

1. A Chairman appointed by the President on the recommendation of the Attorney-General of the Federation;
2. Attorneys-General of States or the Solicitor General where no AG;
3. A representative of the Federal Ministry of Justice to be appointed by AG Federation;
4. President of the Nigerian Bar Association;

5. The head of faculty of law of any recognised university in Nigeria whose course of legal studies is approved by the Council as sufficient for admission to the Nigerian Law School;
6. 15 legal practitioners not less than 10 years post call nominated by the NBA;
7. The Director-General of the Nigerian Law School; and
8. 2 authors of published learned works in the field of law, to be appointed by the Attorney-General of the Federation – ***Section 2 LEA*****.**

III. Functions

1. **Responsibility for Legal Education** – professional training of aspirants to the bar and discipline of aspirants. Includes accreditation of law faculties and training at Nigerian Law School. Now a joint team between the NUC (Nigerian Universities Commission) and CLE is to issue accreditation – ***Section 1(2) LEA*****.**
2. **Issuance of Qualifying Certificate**: The Council is vested with a statutory duty of issuing a qualifying certificate to any Nigerian that successfully completes an academic year of practical training in the Nigerian Law School – ***Section 5 LEA*****.**
3. **Responsible for Continuing Legal Education:** this function is provided under ***Section 3 LEA*****.** (note: NBA is also responsible for this). See ***Rule 11 of the Rules of Professional Conduct***. This is mandatory for law professionals e.g. workshops/sessions at the NBA Conference. ***Rule 11(4) RPC*** provides the required credit hours for every year are: 24 hours for LPs of up to 5 years post call; 18 hours for LPs of not up to 10 years but more than 5 years post-call; and 12 hours for LPs of above 10 years post call.
4. **Incidental Powers to Do Such Other Things** – for purposes of performing its functions e.g. prescribing good conduct for aspirants to the NLS, conditions for admission into the law school. See ***Okonjo v CLE***.

IV. Appointment as DG of NLS

1. He must be a holder or a former holder of the office of a professor in a faculty of law in a Nigerian University; or
2. He is qualified for appointment as a professor in a faculty of law at a Nigerian University; and
3. He is a legal practitioner who has on or before the date of his application been in active practice for not less than 10 years.

Note: the Attorney General of the Federation has overriding supervisory power over the CLE. The Federal Ministry of Justice is the supervisory body for the CLE – gives directives of a general character.

LEGAL PRACTITIONERS PRIVILEGES COMMITTEE

I. Establishment and Composition

This was established by the ***Section 5(3) Legal Practitioners Act (As Amended)***. Members include

1. Chief Justice of Nigeria who shall be the Chairman,
2. AG of the Federation,
3. One Justice of the Supreme Court,
4. President of the Court of Appeal,
5. Five Chief Judges of States,
6. Chief Judge of the Federal High Court, and
7. Five Legal Practitioners who are Senior Advocates of Nigeria.

II. Functions

1. Confers the rank of Senior Advocate of Nigeria on deserving legal practitioners in Nigeria – ***Paragraph 3, 2018 Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria; Section 5(1) LPA*****.**
2. Makes rules relating to Senior Advocates of Nigeria, with the approval of the Body of Benchers with respect to – ***Section 5(7) LPA***:

(a) restrictions on the rights of Senior Advocates of Nigeria to practice;
(b) the privileges to be accorded to the SAN;
(c) ensuring the dignity of the rank of the SAN; and
(d) mode of appearance before the Courts by Senior Advocates of Nigeria.

3. May withdraw the rank of SAN from holder either absolutely or for a short period of time – ***Paragraph 26, 2018 Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria.***

III. Conditions for the Conferment of the Rank of SAN

Note: this conditions is based on the ***2018 Guidelines for Conferment of the Rank of SAN*** which replaced the 2017 guidelines.

A. Requirement Advocates

1. **Payment of Processing Fee and Conferment Fee:** all applicants are to pay a non-refundable processing fee of ₦600, 000 and all successful candidates are to pay a processing conferment fee of ₦200, 000 – ***Para. 9(3) & (4) 2018 GCRS.***
2. **Reference by Justices/Judges and Legal Practitioners:** each applicant shall provide a list of 10 Judges of superior courts of record before whom he had appeared in contested cases and a list of 6 legal practitioners by whom the applicant appeared with or against in contested cases. 3 of the Judges out of the 10 and 3 of the legal practitioners out of the 6 will be selected by the LPPC to give confidential reference about the applicant – ***Para 13 2018 GCRS.***
3. **Particulars of Contested Cases:** all applicant shall provide particulars of contested cases which he conducted as lead counsel and also considers to be of particular significance to the evaluation of his competence in legal practice and his contribution to the development of the law. The applicant shall attach a certified true copy of all the judgments if unreported or citations and copies of the law reports if reported. The particulars of cases are as follows:
   (a) High Court/Superior Court of Records - 20 final judgments of cases the applicant conducted from trial to judgment stage.
   (b) Court of Appeal – 5 final judgments of briefs duly settled and argued by the applicant.
   (c) Supreme Court – 4 final judgments of briefs duly settled and argued by the applicant. However, 3 final judgments will suffice where the applicant conducted the cases himself from the High Court to the Supreme Court.

   Final judgment does not include Bench rulings, consent judgments, default judgments and judgments under undefended list. In providing particulars of contested cases, applicants shall provide particulars of recent cases decided within 10 (Ten) years preceding the date of application and which demonstrate that the applicant is: (a) currently engaged in fulltime legal practice; and (b) abreast with current developments in the field of law. Applicants can be blacklisted from applying and prosecuted where false information is given. See ***Paragraph 14, 2018 Guidelines for the Conferment of the Rank of SAN.***
4. **Evidence of Tax Payments:** applicants must present evidence of income tax payment (PAYE) and evidence of tax on income of partnership for a period of 3 years preceding application – ***Para 15(1) & (2), 2018 GCRS.***
5. **Law Office Requirement:** a candidate shall have or be a partner in chambers considered by the LPPC to have the following requirements –
   (a) Up to date facilities including quality law library with good working environment - text books, statutes, law reports, computers, fax machines, internet facilities, file cabinets, firefighting equipment, generator, television set, CCTV, fridge, scanners, photocopiers, intercom, motor vehicle, etc.

(b) At least 5 full time legal practitioners and other para-legal staff in full time salaried employment – ***Para 17(2), 2018 GCRS.***

In determining whether an applicant qualifies as a partner, such applicant shall forward to the LPPC an evidence of a valid partnership deed and deed of the assets and infrastructure of the partnership stamped and seal by the partners and which has been in place for at least 5 years prior to the application. A candidate and the partners may be barred from applying for a period of 10 years if found that the deed was made for purpose of the applicant's application – ***Para 16, 2018 GCRS.***

6. **Eligibility Criteria:**
   (a) Legal Practitioner of Ten Years Post Call: an applicant must have been actively practising as an advocate in Nigeria for 10 years before application. In determining 'active current legal practice' in addition to such inquiry it considers necessary, the LPPC may consult the Chief Judge of the State and local branch of the Nigerian Bar Association where the candidate has his main law office. See ***Rule 22(1), 2018 GCRS; Section 5(2) LPA.***
   (b) Good Character: The candidate must be of good character and must have no pending disciplinary case or complaint relating to professional misconduct against him. A candidate shall be considered ineligible if in the opinion of the Legal Practitioners Privileges Committee the candidate is adjudged to be of the following disposition:
      i. Bad behaviour, whether in or out of court; poor temperament or propensity to insult or assault people or cause them harm or put them in state of fear of bodily harm;
      ii. Indulgence in drug, alcoholic or other similar substances of addiction;
      iii. Evidence of moral depravity or other socially unacceptable behaviour;
      iv. Abuse of legal trust such as embezzlement or mismanagement of client's funds;
      v. Indulgence in blatant self-seeking praise or advertisement through sponsored (directly or indirectly) songs by musicians, records or tapes or other media such as print or electronic media; and
      vi. Touting for briefs or engaging in any form of canvassing for cases. See ***Paragraph 22(2) 2018 GCRS.***
7. **Professional Competence:** A candidate must:
   (a) Be honest and straightforward in all his professional/personal dealings;
   (b) Be of good character and reputation;
   (c) Be candid with clients and professional colleagues;
   (d) Be involved in the provision of at least 3 pro bono cases;
   (e) Demonstrate high professional and personal integrity;
   (f) Demonstrate high level of understanding of cultural and social diversity characteristic of the Nigerian society;
   (g) Demonstrate tangible contribution to the development of the law through case law, publications or scholarly presentations;
   (h) Demonstrate clear qualities of leadership and loyalty to the legal profession;
   (i) Have duly and consistently paid his practising and membership due to the local branch for the last 10 years preceding his application;
   (j) Have sound knowledge of the law and demonstrable excellence in skills as an advocate; and
   (k) Show observance of the Code of Conduct and Etiquette at the Bar. See ***Para 23, 2018 GCRS.***

B. Requirements for Academics

The Legal Practitioners Privileges Committee may in appropriate circumstances, appoint an

academic as a SAN. To be appointed, such academic must have satisfied the following requirements in accordance to ***Para 18, 2018 GCRS***:

1. Distinguished himself and has made substantial contribution to legal scholarship and jurisprudence through teaching, research and published works in any Nigerian University, Research Institute, Nigerian Law School and other recognised institutions;
2. Furnish at least 15 copies of his published works to the LPPC. Such works or books must have been published by a reputable publisher;
3. Evidence of supervision of students, mentorship and leadership qualities;
4. Evidence of duly and consistent payment of practising fee and local bar dues in the 5 years preceding application;
5. References from at least 3 professors of law resident in Nigeria with not less than 10 years' experience as professor;
6. Evidence of tax payment (PAYE) for a period of 3 years preceding application – ***Para 15(3) 2018 GCRS.***
7. Payment of non-refundable processing fee of N600, 000 and processing conferment fee of N200, 000 – ***Para. 9(3) & (4) 2018 GCRS***
8. Legal practitioner of at least 10 years post-call with a good character **-** ***Rule 22, 2018 GCRS; Section 5 LPA.***

IV. Procedure for Appointment

1. **Call for Applications by LPPC:** the LPPC shall call for applications by publication in the media – ***Para 9(1) 2018 GCRS.***
2. **Return of Applications to the Secretariat of the LPPC:** all applications must be returned to the Secretariat of the LPPC in the Supreme Court with all relevant information or requirements provided under the guidelines and upon payment of the non-refundable processing fee of ₦600, 000 – ***Para 9(2) & (3), 2018 GCRS.***
3. **First Filter for Advocates by the Secretariat of the LPPC:** all applications received will be filtered by the Secretariat. Applications that did not prima facie meet the conditions would be rejected – ***Para 10, 2018 GCRS.***
4. **Second Filter for Advocates by the LPPC & Notification of Decision:** the list of applications shall be forwarded to the LPPC which shall meet to review the first filter. All unsuccessful candidates at this stage shall be notified in writing of the decision of the LPPC – ***Para 11, 2018 GCRS.***
5. **Academic Pre-Qualification Filter:** all application forms received under the academic category shall be forwarded to the Academic Sub-Committee which shall meet to conduct a pre-qualification filter before review of qualified applicant's published works or books – ***Para 19 2018 GCRS.***
6. **Publication of Names of Shortlisted Candidates:** the list of academics that have scaled the pre-qualification filter and advocates that have scaled the first and second filters shall be published – ***Para 20, 2018 GCRS.*** The number of shortlisted candidates shall not be more than three times the required number expected to be appointed.
7. **Comments and Complaints on Shortlisted Advocates:** a list of advocates that have been shortlisted shall be forwarded to the CJN; Justices of SC; President of CA; AGF; CJs of HC of States and FHC; other Heads of Superior Court of Records; and National Secretariat of NBA or Candidate's local branch of NBA who shall comment confidentially on the integrity, competence and repatriation of the candidates. Complaints/petitions about the shortlisted candidates shall be forwarded in writing to the Chairman of LPPC (CJN) within 21 days after publication of the list of shortlisted candidates. The candidate shall file a reply within 7 days which the LPPC will then make a decision whether to proceed or not with the consideration of the application – ***Para 12 2018 GCRS.***

8. **Law Office Inspection:** the LPPC shall conduct a physical inspection of the chambers of all candidates that have made the final qualification list in order to evaluate the level and quality of the facilities of the chambers taking into account the size and quality of library; quality of office space and other facility equipment; number of counsel or partners; number and quality of supporting staff; and maintenance proper books of accounts. Where the quality of the chamber is below the required standard, the LPPC shall automatically drop the candidate from the list – ***Para 17(1) & (4) 2018 GCRS.***
9. **Oral Interview for Shortlisted Candidates by Sub-Committees of the LPPC –** there shall be an oral interview and grading of shortlisted candidates by the Sub-Committees of 3 members each constituted by the LPPC. The interview is to verify the information provided in the application forms and ascertain the candidate's eligibility criteria and professional competence. The interview is done in reference to the application forms, references, particulars of cases, and reports of chambers inspection. – ***Para 5 & 24(1) (2) (5), 2018 GCRS.***
10. **Review of Report of Sub-Committees by Full Panel of the LPPC and Drawing of Final List:** the full panel of the LPPC shall meet to consider and review the report of each sub-committee. The LPPC shall then draw up a final list of successful candidates taking into account the need for merit, gender representation and geographical spread – ***Para 24(6) & (7), 2018 GCRS.***
11. **Payment of Processing Conferment Fee:** every successful candidate shall pay a processing conferment fee of ₦200, 000 – ***Para 9(4), 2018 GCRS.***

V. Procedure for Complaint on Selection Process and Disqualification

1. **Complaints about the Operation of the Selection Process:** complaints about the operation of the selection process for both advocates and academics shall be determined by an Independent Appeals Committee appointed by the Chairman of LPPC (CJN) – ***Para 21(1), 2018 GCRS.***
2. **Complaints about Disqualification:** complaints filed by candidates against their disqualification after the first and second filtration for advocates or pre-qualification filtration for academics shall be heard before the Independent Appeal Committee – ***Para 21(2), 2018 GCRS.***
3. **Speedy Hearing of Complaints and Communication of Results to the LPPC:** complaints presented to the IAC shall be heard speedily and results communicated to the LPPC – ***Para 21(3), 2018 GCRS.***
4. **Review of Cases by the LPPC:** the LPPC would review the cases in the light of the finding of the IAC and take appropriate action on a case by case basis – ***Para 21(4), 2018 GCRS.***
5. **Appeal against Decisions/Actions of the LPPC:** where a candidate is not satisfied with the decision, action or step taking by the LPPC, such aggrieved candidate can make an appeal in the High Court of a State for judicial review – ***BEI Nwofor v. LPPC; Section 272 CFRN 1999.***

VI. Privileges of SAN

These are contained in ***Rule 1 Senior Advocates of Nigeria (Privileges and Functions) Rules 1979*** viz:

1. The exclusive right to sit in the Inner Bar or where there are no faculties for the Inner Bar on the first row of the seats available for legal practitioners.
2. The right to mention any cause or matter listed for mention and not for hearing, and any motion in which he is appearing, out of its turn on the cause list for the day.
3. The privileges of wearing silk gowns.

VII. Restrictions on SAN

1. He cannot appear as counsel in any civil matter before any superior court of record

without another junior or a fellow SAN except when appearing in the judges' Chambers. He can appear in criminal cases alone - ***Rule 2 Senior Advocates of Nigeria (Privileges and Functions) Rules 1979.***

2. SANs shall not engage in, or agree to be engaged in drafting any instrument where the appropriate or prescribed fees are less than ₦400. They can do so gratuitously or if the instruments are connected with parliamentary processes - ***Rule 5 Senior Advocates of Nigeria (Privileges and Functions) Rules 1979***
3. SAN shall not appear or settle documents before an inferior court. See Court of Appeal decision in ***ECWA v Ijesha***.[2] This is contrary to ***Section 36(6) (c) CFRN 1999*** – right to legal practitioner of one's choice when charged with a criminal offence. However, the case was not taken to the Supreme Court.

VIII. Sanctions and Withdrawal of Rank

A. Forms of Sanctions: the sanctions that can be imposed by the LPPC on SANs by virtue of ***Para 25, 2018 GCRS*** are:

1. Withdrawal of the rank of SAN;
2. Suspension of the rank of SAN for a period not less than 6 months;
3. Issuance of letter of reprimand;
4. Payment of costs; or
5. Restitution

B. Grounds for Withdrawal: the grounds for withdrawal of rank by virtue of ***Para 26(1), 2018 GCRS*** are:

1. Conducting oneself in a manner incompatible with the dignity and honour of the rank of SAN;
2. Found guilty of professional misconduct by the LPDC or any other professional body in or outside Nigeria;
3. Convicted by a court of law for an offence such as breach of trust, theft or other criminal offences considered incompatible with dignity and honour of the rank of SAN;
4. Striking off name from the roll of legal practitioners in or outside Nigeria;
5. Bankruptcy or insanity; or
6. Concealing material information in the award process for the award of the rank of SAN.

C. Investigation and Recommendation by Sub-Committee: a fact finding sub-committee set up by the LPPC shall investigate and make recommendations pertaining to allegations of misconducts against such SAN. The sub-committee shall not be bound by the rules of courts or laws of evidence but shall be guided by the rules and principles of fair hearing - ***Para 26(3), 2018 GCRS.***

D. Review of Suspension or Withdrawal by LPPC: by virtue of ***Para 27, 2018 GCRS,*** the LPPC have power to review cases of suspension or withdrawal of the rank of SAN upon application by the applicant determinable within 3 years. The applicant must show evidence of genuine reformation of character and provide 10 character references endorsing substantial and satisfactory conduct or remorsefulness during period of suspension or withdrawal.

E. Appeal against Decision of the LPPC: where a candidate is not satisfied with the decision, action or step taking by the LPPC in the suspension or withdrawal of the rank of SAN, such aggrieved candidate can make an appeal in the High Court of a State for judicial review – ***BEI Nwofor v. LPPC; Section 272 CFRN 1999.***

[2] (1999) 13 NWLR (Pt 653) 368

THE NIGERIA BAR ASSOCIATION

1. Establishment and Membership

Membership is automatic upon enrolment at the Supreme Court. Practicing fees must be paid latest by 31st March each year. The amount to be paid depends on years at the Bar. If called to Bar after this date (31st March), you must pay practising fee within one month. A lawyer must notify the local NBA when he opens a legal practice. You cannot be in partnership with non-lawyers for the purposes of practising law. NBA is an interest group not created by any statute but recognised by various statutes. The body enjoys perpetual succession. In the case of ***Fawehinmi v Nigerian Bar Association***[3] it was said that the Nigerian Bar Association is only a juridical entity but without juristic personality.

2. Objectives

The objects of the association as contained in ***Clause 2 of the Constitution of the Nigerian Bar Association*** are:

1. Maintenance of an independent and honourable bar and its integrity;
2. Promoting good relations among members of the bar;
3. Promotion of legal education;
4. Better administration of justice;
5. Promotion of law reform;
6. Maintenance of the highest standards of professional conduct, etiquette and discipline;
7. Encouragement and protection of the public right of access to the courts;
8. Promotion of the rule of law;
9. Protection of fundamental liberties and the independence of the judiciary; and
10. Promotion and aiding of both newly qualified and incapacitated and aged members of the Association.
11. Keeping a database of lawyers and law offices;
12. Investigating complaints against legal practitioners and send to LPDC if satisfied that a prima facie case has been established; and
13. Performance of various advisory function.

3. Management

The Association's day-to-day affairs are managed by the National Executive Committee (made up of elected officials and local representatives) supported by other standing and ad-hoc committees while the General Conference exercises over-riding powers. The local branches of the Association cater for the immediate interests of members at the local level and represent them at the National Executive Committee. The NBA has representatives in all other governing bodies of the legal profession and actively participates in decision-making. Every enrolled legal practitioner is qualified to be a member. However, membership is not compulsory.

The substance of the body is provided for by the LPA which stipulates that a legal practitioner shall pay a practicing fee before being given a right of audience in court. Practicing fees shall be paid over to the association. See ***Section 8(2) LPA. Rule 10 RPC*** also provides that all legal documents signed by legal practitioners are to have seal and stamp of NBA.

GENERAL COUNCIL OF THE BAR

Created by ***Section 1 (1) of the Legal Practitioners Act***. The membership consists of the Attorney-General of the Federation who is the President of the Council, the AGs of the States, 20 legal practitioners nominated by the Nigerian Bar Association, seven of whom shall not be less than 10 years standing at the bar. The quorum for the meeting of the council shall be 8 members. The functions of this body are:

1. Making and reviewing of the Rules of Professional Conduct.

[3] (No. 2) [2002] (S.C.)

2. Making Rules of Accounts to be kept by legal practitioners with the approval of the Attorney-General of the Federation – ***Section 20(1) & (2) LPA*.**

LEGAL PRACTITIONERS REMUNERATION COMMITTEE

I. Establishment

The Legal Practitioners' Remuneration Committee is established by ***Section 15(1) LPA***. The committee has made the ***Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991***.

II. Composition

1. The Attorney-General of the federation, who shall be the chairman of the committee
2. The Attorney-General of the state; and
3. The president of the NBA; and
4. Three others members of the NBA

III. Quorum

The quorum is three, one of whom shall be the chairman. See ***Section 15(2) LPA***.

IV. Functions

The committee has power to make orders regulating generally the charges of legal practitioners; such power may include the following:

1. Charges or remuneration of legal practitioners. Legal Practitioners (Remuneration for Legal Documentation & Other Land Matters Order, 1991) - See ***Section 15(3) LPA***;
2. The maximum charges which may be made in respect of any transaction or activity of a description specified by the order.
3. The ascertainment of the charges appropriate for any transaction or activity by reference to such consideration as may be so specified.
4. The taking by practitioners of security for the payment of their charges and the allowance of interest with respect to the security; and
5. Agreements between practitioners and clients with respect to charges.

NATIONAL JUDICIAL COUNCIL

I. Establishment

Section 153 CFRN 1999 establishes the National Judicial Council as a federal body.

I. Membership

1. Chief Justice of Nigeria as Chairman;
2. Next most senior Justice of the Supreme Court as Deputy Chairman;
3. President of the Court of Appeal;
4. 5 retired Justices of the Supreme Court or Court of Appeal selected by the Chief Justice;
5. Chief Judge of the Federal High Court;
6. President of the National Industrial Court;
7. 5 Chief Judges of States to be appointed by the CJN in rotation to serve for 2yrs;
8. 1 Grand Kadi to be appointed by CJN to serve in rotation for 2yrs;
9. 1 president of the Customary Court of Appeal to be appointed by CJN to serve in rotation for 2 years;
10. 5 members of the NBA of not less than 15 years post call and at least 1 of them must be a SAN; and
11. 2 persons who in the opinion of the CJN are of unquestionable integrity (must not necessarily be legal professionals) – ***Part I of the Third Schedule CFRN 1999*.**

II. Functions

1. Recommendation of persons for appointment as judicial officers;
2. Recommendation of persons for removal as judicial officers;
3. Exercising disciplinary powers e.g. for misconduct; and
4. Control general policy and administration - ***Part I of the Third Schedule CFRN 1999*.**

ORDER OF PRECEDENCE IN COURT

Section 8(4) LPA makes provision for the order of precedence in court viz:

1. AG Federation as chief law officer.
2. AG of State only in that State (but only in courts of that state)
3. SAN in order of seniority.
4. Persons authorised to practice for purposes of their office e.g. Law Officers
5. Persons whose names are on the roll by order of seniority.
6. Persons authorised to practice by warrant of Chief Justice of Nigeria.

LPA does not say anything about the body of benchers so where do they fit in into the list. Body of benchers should come after SANs.

RIGHTS OF A LEGAL PRACTITIONER

EXCLUSIVE RIGHTS OF A LEGAL PRACTITIONER

Exclusive rights of legal practitioners are rights that cannot be exercised by any other person except the legal practitioner. The legal practitioner here is the legal practitioner defined according to the LPA (on the roll of legal practitioners) and not those whose names have been struck off. These rights are:

1. **Appointment as Attorney-General of the Federation or State**: Only a legal practitioner who is at least 10 years post-called has the exclusive right to be appointed as the AG Federation/State. See ***Section 150 and 195 CFRN, 1999*** respectively. The Federal AG is the chief law officer of the federation while the state AG is the chief law officer of the state.
2. **Appointment as Judicial Officers**: Only a legal practitioner who is at least 15 years (Supreme Court), 12 years (Court of Appeal) or 10 years (other superior courts) post call can be appointed as a judicial officer (a judge of superior court of record). However, a person who is not a legal practitioner can be appointed as the Grand Kadi or Kadi of the Sharia Court of Appeal under ***Section 261(3)(b) CFRN 1999***, and President or Judge of the Customary Court of Appeal under ***Section 266(3)(b) CFRN 1999***.
3. **Conferment of the Rank of Senior Advocate of Nigeria**: A legal practitioner of 10 years post call has a right to be appointed or conferred the rank of SAN upon fulfilling all condition precedents. See ***Section 5(1) & (2) LPA***.
4. **Right of Audience in Court (Legal Representation)**: A legal practitioner has a right of audience before all courts of law sitting in Nigeria as stated under ***Section 8(1) LPA*** provided he suffers no disability i.e. paid practising fee, properly dressed, etc.) The right to legal representation is as provided under ***Section 36(6) (c) CFRN 1999*** which includes right to appear before any court (Customary and Area Courts inclusive)**.** In the case of ***Uzodinma v Commissioner of Police*****,** the court held that the sole warrant of the constitutional provision in relation to legal representation is to safeguard the interest of a litigant. The appellant was charged in the Grade I Area Court, Otukpo with theft contrary to Section 287 of the Penal Code. The appellant engaged a counsel to represent him at the trial court. The court declined the counsel the right of audience in accordance with Section 390 of the Criminal Procedure Code. The appellant was convicted and sentenced to 2 years imprisonment. On appeal, the appellate court upheld his claim that his fundamental right to legal representation under Section 36(6) (c) CFRN 1999 (as amended) was breached.
5. **Preparation of Documents to obtain Probate or Letters of Administration:** ***Section 22(1) (d) LPA*** provides that if any person other than a legal practitioner prepares for or in expectation of reward any instrument relating to immovable property, or 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 is guilty of an offence. He shall be guilty of an offence and liable to a fine of an amount not exceeding ₦ 200 or imprisonment for a term not exceeding two years or both.
6. **Preparation of Land Instruments for a Fee:** see ***Section 22(1) (d) LPA*** above. ***Section 4 of Land Instruments Preparation Laws of the Western Region of Nigeria (LIPL) 1959*** states that 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. ***Section 5(1) LIPL*** went further to state that an agreement entered into after the commencement of this Law to pay a fee or reward to any person, other than a legal practitioner, in consideration of such person drawing or preparing any instrument is void. Under no circumstances should a legal practitioner succumb to the practice of rubber stamping landed documents prepared by a non-lawyer for any reward. See ***Rule 3(1) and (2) RPC 2007***. ***Rule 10(3) RPC 2007*** went further to state that any document signed or filed by a legal practitioner

without compliance with the requirement of the rule is not properly signed or filed.

7. **Formation of a Company:** To satisfy the requirement for the formation of a company under CAMA, a legal practitioner is expected to comply with a statutory declaration. ***Section 35(3) CAMA*** provides that a legal practitioner must statutorily declare in the prescribed form that all the requirements of the Act have been complied with before the documents can be accepted for registration. Thus, 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.
8. **Appointment as a Notary Public**: Only a legal practitioner can be appointed as a Notary Public. ***Section 2(2) Notaries Public Act*** stipulates that the Chief Justice of Nigeria may admit any legal practitioner considered as fit as notary. The criteria for fitness are not specified. Typically in practice, these requirements for admission must be complied with:
   (a) Application to the Chief Justice of Nigeria with a detailed Curriculum Vitae accompanied with all credentials;
   (b) Payment of practising fees for a period of 7 uninterrupted years within the time specified for payment of practising fees; and
   (c) Attestation of applicant by the Chief Judge of the State where he practises.
9. **Preparation of Documents Relating to Court Proceedings:** a legal practitioner has the right to prepare documents relating to proceedings in court. See ***Section 22(1) (d) LPA*****.** A litigant is however entitle to prepare the document if he is representing himself in court.

RESTRICTIONS ON A LEGAL PRACTITIONER

I. Non Payment of Practising Fees

Non-payment of practising fees means no right of audience in courts. See ***Section 8(2) LPA; Rule 9 RPC and Article 19 Constitution of the NBA***. Practising fees is graded from SAN and members of the Body of Benchers (₦50, 000); Legal Practitioners of 15 years or more post call standing (₦25, 000); Legal Practitioners of 10 years or more but less than 15 years (₦17, 000); Legal Practitioners of 5 years or more but less than 10 years (₦10, 000); Legal Practitioners of less than 5 years (₦5, 000). All payments are to be made to the Registrar of the Supreme Court who issues a receipt. Nine-tenths of the monies collected is remitted to the NBA as part of running costs of the Association. ***Rule 9 RPC*** states that non-payment of practising fees is an infraction.

II. Salaried Employment

Rule 8(1) RPC states that a lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a court or judicial tribunal for his employer except where the lawyer is employed as a legal officer in a Government department. ***Rule 8(2) RPC*** provides that a lawyer, whilst a servant or in a salaried employment, shall not prepare, sign, or file pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinion or similar instruments or processes or file any such document for his employer. Also, by virtue of ***Section 8(3) RPC*** where a legal practitioner is a director of a duly registered company, he is prohibited from appearing as an advocate in court or judicial tribunal on behalf of his employer/company.

Rule 8(4) RPC gives an exception to the general rule of salaried employment that a lawyer in a full-time salaried employment may represent his employer as an officer or agent in cases where the employer is permitted by law to appear by an officer or agent, and in such cases, the lawyer shall not wear robes.

III. Public Officers and Private Practice

Previously, the position of a legal practitioner who is a public officer 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. In 1992, an exemption was made for law lecturers in universities and law school vide the ***Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) (N0. 2) Order of 14th September 19992***. 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 ***Section 1 Part I 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. Section 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 sub-paragraph shall prevent a public officer from engaging in farming.

Section 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

The Legal Practitioner Privileges Committee is empowered to make rules regulating SAN. The following are some of the rules restricting SAN:

1. He cannot appear as counsel in any civil matter before any superior court of record without another junior or a fellow SAN except when appearing in the judges' Chambers. He can appear in criminal cases alone - ***Rule 2 Senior Advocates of Nigeria (Privileges and Functions) Rules 1979*.**
2. SANs shall not engage in, or agree to be engaged in drafting any instrument where the appropriate or prescribed fees are less than ~~₦~~400. They can do so gratuitously or if the instruments are connected with parliamentary processes - ***Rule 5 Senior Advocates of Nigeria (Privileges and Functions) Rules 1979***
3. SAN shall not appear or settle documents before an inferior court. See Court of Appeal decision in ***ECWA v Ijesha***.[4] This is contrary to ***Section 36(6) (c) CFRN 1999*** – right to legal practitioner of one's choice when charged with a criminal offence. However, the case was not taken to the Supreme Court.
4. 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 - ***Section 5(8) Legal Practitioners Act***.

V. Engaging in Business

Rule 7(1) RPC states that unless permitted by the General Council of the Bar (Bar Council), a lawyer shall not practice as a legal practitioner at the same time as he practices any other profession. ***Rule 7(2) RPC*** states that a lawyer shall not practice as a legal practitioner while personally engaged in –

1. The business of buying and selling commodities;
2. The business of a commission agent;
3. Such other trade or business which the Bar Council may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession.

[4] (1999) 13 NWLR (Pt 653) 368

Rule 7(3) RPC went further to define 'trade or business' as follows: for the purpose of this law, "trade or business" includes all forms of participation in any trade or business but does not include –

1. Membership of the Board of Directors of a company which does not involve either executive, administrative or clerical functions;
2. Being Secretary of a company; or
3. Being a shareholder in a company.

VI. Retired Judicial Officers

Retired judicial officers don't have right of audience in any court or tribunal both during and after their appointment. See ***Section 292(2) CFRN 1999*** and ***Rule 6(3) RPC***. However, a Magistrate can still practice after retirement because the definition of 'judicial officer' under ***Section 318(1) CFRN 1999*** does not include a Magistrate. A retired judicial officer may appear to personally represent himself if he has no other disability. See ***Hon Justice Atake v Afejuku***[5]

After retirement, a judicial officer must not sign pleadings but can practice as a solicitor or legal consultant. See ***Rule 6(4) RPC***. A retired judicial officer can still be addressed as Justice as provided under ***Rule 6(5) RPC***. He cannot however take up employment in any matter that he has decided on.

VII. Mandatory Continued Professional Development (CPD) & Annual Practicing Certificate

Rule 11 RPC**-** 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) RPC***. This provision is however yet to be implemented.

VIII. Improper Dressing

The right of audience of a legal practitioner can be limited due to improper dressing as provided under ***Rule 36(a) Rules of Professional Conduct***. In High Court, a legal practitioner is expected to be properly dressed with wig and gown. This is not applicable in Magistrate Court. Also, according to ***Rule 36(f) RPC*** a legal practitioner is not expected to wear wig and gown when conducting cases where he is a party or giving evidence e.g. lawyer giving evidence cannot enter the witness box with the wig and gown. See ***Fawehinmi v NBA***;[6] ***Uzodima v Police; Rule 45(2) (b) RPC;*** and ***Rule 36(1) RPC***.

IX. Legal Practitioner as Litigant

Where a legal practitioner is in court as a litigant, he cannot appear both as a party and as a counsel for himself. An advocate cannot appear for another party in the same suit where he is a litigant irrespective of the relationship that exists between them. Where the legal practitioner is a litigant in a civil case, though he may be permitted to speak from the Bar, he is disallowed from robing as a barrister and in criminal case, he can only conduct his case from the dock. A legal practitioner who is a litigant cannot be said to represent himself in court but only conducts his case in person just like any other litigant. See ***Fawehinmi v NBA***.

X. 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. A document signed or filed without compliance means the

[5] (1994) 12 SCNJ 1
[6] (1989) 2 NSCC 1

document has not been properly signed or filed. In ***APC v. General Bello Sarki Yaki***,[7] the Supreme Court 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. Thus, the right of audience of such legal practitioner can be limited pending compliance.

XI. Association for Legal Practice

A legal practitioner is not to enter into partnership with a non-lawyer for the purpose of practicing legal profession - ***Rule 5(1) 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. 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) & (3) 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 lawyer cannot practice the legal profession as a corporation - ***Rule 5(5) RPC 2007***.

XII. Employment in Previous Matters

A lawyer shall not accept employment as an advocate in any matter upon the merits of which he had previously acted in a judicial capacity. See ***Rule 6(1) RPC***. Also, a lawyer having once held public office or having been in the public office shall not after his retirement, accept employment in connection with a matter in respect of which he had previously acted in a judicial capacity or on the merit of which he had advised or dealt with in such office or employment. See ***Rule 6(2) RPC***.

XIII. Foreign Counsel

A foreign legal practitioner has no right of audience in Nigerian courts except he has been granted warrant by the Chief Justice of the Federation. Through the combined effect of ***Section 24 LPA*** which provides for entitlement to practise for the purpose of any particular proceedings and ***Section 2(2) LPA*** which empowers the Chief Justice to grant a warrant to an applicant upon fulfilment of the requirement, a foreign legal practitioner engaged by a client in Nigeria is given right of audience in the court before which his client is appearing. Failure of such foreign legal practitioner to comply with the relevant immigration laws may impede this right regardless of the warrant granted by the CJ. See ***Awolowo v FRN***.

The right of audience of a legal practitioner is no longer an exclusive right as held in ***Osahon v Federal Republic of Nigeria***. The Supreme Court held that the Nigerian Police can prosecute in any court but advised that the Police who wants to prosecute at the Supreme Court should be called to the Nigerian Bar. Academics argue that this second phrase is only obiter (but obiter from the Supreme Court is very persuasive).

Also, under ***Section 36(6) (c) CFRN 1999***, one can appear to represent himself as an accused person. The issue is that a lay litigant cannot understand the technicalities of court such as how to cite cases, lead witnesses, swear affidavits, etc.

XIV. Notary Public

A notary public is precluded from exercising his duties and functions in any proceedings or matter when he has an interest. See ***Section 19 NPA 2010***.

IMPERSONATING A LEGAL PRACTITIONER

This involves persons who are not legal practitioners acting as a legal practitioners. Inclusive of this is a legal practitioner whose name has been struck off the roll of legal practitioners for misconduct. A person found liable can be imprisoned for a term not exceeding two years. Such person if relating to proceeding in court can be charged for contempt.

Section 22(1) (a) – (d) LPA provides that any person who is not a legal practitioner but:

(a) Practices or holds out as a legal practitioner;

[7] SC/772/15

(b) Takes or uses title Legal Practitioner;
(c) Wilfully takes or uses any name, title, addition, description falsely implying or pretends he is a Legal Practitioner; or
(d) Prepares any instrument related to immovable property, probate, letters of administration or connected to proceedings in any court of record in Nigeria

is guilty of an offence and liable, in the case of an 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, and in any other case to a fine of an amount not exceeding ₦100.

Note that there is a time bar of three years beginning from the date of the offence. See ***Section 22(6) LPA***. Also note that money received from persons is to be returned and agreement with such person is to be declared void. See ***Section 22(7) LPA***.

(Week 5)

JUDICIAL OFFICERS (APPOINTMENT & DISCIPLINE) AND DISCIPLINE OF LEGAL PRACTITIONERS

INTRODUCTION

I. Meaning of Judicial Officers

Judicial officers are the officers presiding over the superior courts of record. Superior courts of record are creation of the constitution. See ***Section 318 CFRN, 1999***. ***Section 6(5) (a)-(j) of the CFRN***, provides for the following as superior courts of record: Supreme Court, Court of Appeal, Federal High Court, High Court of FCT, High Court of a State, Sharia Court of Appeal of the FCT, Sharia Court of Appeal of a State, Customary Court of Appeal of FCT, Customary Court of Appeal of a State; and National Industrial Court. Note that Magistrate, District, Area, and Customary Courts are not superior courts, thus the others presiding over them for this purpose are not regarded as judicial officers. They are under the supervision of the High Courts and employed by the state Judicial Service Commission.

II. Historical Antecedent

1. **1960 Independence Constitution:** Judges of the High Court of the regions or the Federal Supreme Court: 10 years post call experience, appointment by the Judicial Service Commission of the Federal or State as the case may be except the Chief Justice of the Federation, Chief Justice of the Regional High Court and that of Lagos. They are appointed by the Prime Minister, Premier of the Region, Governor-General respectively.
2. **1963 Constitution**: Judicial Service Commission was abolished and appointment was by the President and the Governors acting on the advice of the Prime Minister and the Premiers respectively. There was a brief interlude of military rule, where a body similar to the Judicial Service Commission called the Advisory Judicial Committee was introduced (advised on the appointment).
3. **1979 Constitution**: appointment of Chief Justice of the Federation was by the President subject to confirmation by simple majority of the Senate. Other Justices were appointed by the Federal Service Commission subject to the confirmation of the Senate. Also the appointment of the President of the Court of Appeal. For other justices of the Court of Appeal, the Chief Judge of Federal High Court and other judges, no requirement for the approval by the Senate. For the Chief Judge of the states, Grand Khadi of the Sharia Court of Appeal and President of the Customary Court of Appeal, appointment by Governor subject to confirmation by the State House of Assembly. Other judges are appointed without the confirmation by the House of Assembly.

APPOINTMENT OF JUDICIAL OFFICERS

I. Qualification for Appointment

Before any person can be appointed judicial officer to any of the superior courts, there are certain qualification which such individual must have.

1. **Supreme Court:** A person to be appointed must be qualified to practice law and have been in practice for at least 15 years. Practice could be private practice, ministry of justice or corporate practice. See ***Section 231(3) CFRN***.
2. **Court of Appeal:** A person qualified to practice law as a legal practitioner and has been so qualified for a period of at least 12 years. See ***Section 238(3) CFRN***.
3. **High Court (**Federal High Court, High Court of the FCT, and State High Court**)**: A person to be appointed must have been qualified for a period not less than 10 years. See ***Sections 250(3), 256(3), 271(3) CFRN*** respectively.

4. **Sharia Court of Appeal (**Sharia Court of Appeal of the FCT and Sharia Court of Appeal of a State**)**: Such person must have been qualified to practice law for at least 10 years and has obtained a recognised qualification in Islamic law from institution acceptable to the National Judicial Council. See ***Section 261(3) (a) CFRN***. Also, a person who merely obtained a recognised qualification in Islamic law from an institution approved by NJC and has been so qualified for at least 12 years (non-lawyer) is qualified to be appointed. See ***Section 261(3) (b) CFRN***.
5. **Customary Court of Appeal (**Customary Court of Appeal of the FCT and Court of Appeal of a State**)**: A lawyer who has been qualified for at least 10 years and has considerable knowledge and experience in practice of customary law. See ***Section 266(3) (a) CFRN***. Also, a non-lawyer who in the opinion of NJC has considerable knowledge of and experience in the practice of customary law. See ***Section 266(3) (b) CFRN***.
6. **National Industrial Court:** A person qualified to practice law for at least 10 years and has considerable knowledge and experience in the law and practice of industrial relations and employment conditions in Nigeria. See ***Section 254(B) (3) CFRN*** (3rd alteration).

Note that there is no requirement in the constitution that states that promotion to Court of Appeal or Supreme Court must be from the court below. Thus, if a legal practitioner has practiced for at least 15 years in Nigeria and has never been appointed to the judiciary, he can on the strength of ***Section 231(3) CFRN*** be appointed to the Supreme Court.

II. Procedure for Appointment of New Judicial Officers

The ***Revised NJC Guidelines and Procedural Rules for the Appointment of Judicial Officers 2014*** regulates the procedure for the appointment of judicial officers of all superior courts of record in Nigeria. According to ***Rule 1, Revised NJC GPR 2014***, the Federal Judicial Service Commission (FJSC), State Judicial Service Commission (SJSC), and the Judicial Service Committee (JSC) of FCT must comply with the rules in their advice to the National Judicial Council (NJC) for nominations or recommendations of persons for appointment as judicial officers of superior courts of record under the CFRN 1999.

The procedures are as follows:

1. **Notice to the Governor/Chairman FJSC/Chairman NJC:** for the appointment of judicial officers of a state, the Chairman SJSC shall give notice to the Governor of that state of the intention to appoint a specific number of judicial officers of the State – ***Rule 2(1) Revised NJC GPR 2014*****.** For the appointment of judicial officers of federal courts, the Head of a Federal Court concern shall give notice to the Chairman FJSC (CJN) of the intention to appoint a specific number of judicial officers of the Federal Court concern. For the appointment of judicial officers of the FCT, the Chairman of JSC of FCT shall give notice to the Chairman NJC (CJN), of the intention to appoint a specific number of judicial officers of the FCT – ***Rule 2(2) (a) & (b) Revised NJC GPR 2014*****.** In all cases, the specific number of judicial officers intended to be appointed must be stated in the notice.
2. **Notice to the Secretary of NJC & Advice to Chairman NJC:** A copy of the notice sent to the Governor or as the case may be Chairman FJSC/NJC (CJN) will also be sent at the same time to the Secretary NJC. See ***Rule 2(3) Revised NJC GPR 2014***. The Secretary NJC shall upon receipt of the notice, advice the Chairman NJC in regard to the number of judicial officers that can be appointed pursuant to the notice, having regard to relevant budgetary provision in the budget of the Council for the year – ***Rule 2(4) Revised NJC GPR 2014*****.**
3. **Consent/Response of Chairman NJC:** upon consideration of the advice, the Chairman NJC (CJN) shall notify the Chairman SJSC/Head of the Federal Court/Chairman JSC of FCT, as the case may be, that the exercise may:
   (a) Be proceeded with;

(b) Not proceeded with; or
(c) May be proceeded with, but with a specified reduction in the number of judicial officers proposed to be appointed.

The decision of the Chairman NJC shall be communicated to the relevant authority in writing and such decision shall be final unless sufficient grounds has be forwarded as to why it should be reviewed - ***Rule 2(4) & (5) Revised NJC GPR 2014.***

4. **Service of Notice & Governor's Response to Judicial Service Commission/Committee Members:** in respect to notice sent to the Governor by the Chairman SJSC, relating to appointment of State judicial officers, a copy of the said notice and the Governor' response thereto shall be served on each member of the Judicial Service Commission/Committee concern - ***Rule 2(6) Revised NJC GPR 2014.***
5. **Call for Expression of Interest & Nomination of Candidates:** where the appointment is to be proceeded with, the relevant Judicial Service Commission/Committee shall:
   (a) Call for expression of interests by candidates by way of public notice placed on the website of the Judicial Service Commission/Committee concerned, notice boards of the courts and notice boards of the NBA branches;
   (b) Write to every head of superior courts of record and every judicial officer of the court concern asking for nomination of suitable candidates; and
   (c) Write to President NBA or Chairman of NBA branch of the state concern in case of appointment to federal courts and state courts respectively, calling for nomination of suitable candidates.

   In the case of appointment for Court of Appeal and Supreme Court, the President of the CA or CJN as the case may be, write to heads of courts, serving justices of CA or SC and President of NBA asking for nomination of suitable candidates for appointment as Justice of CA or SC as the case may be - ***Rule 3(1) Revised NJC GPR 2014.***
6. **Nomination of Suitable Candidates:** Any person nominating a candidate must do so in writing indicating that he has sufficient personal and professional knowledge of the candidate's requisite attributes for a reasonable period of time and that the candidate possesses the qualities set out in Rule 4(4)(1) - ***Rule 3(2) Revised NJC GPR 2014.*** The qualities are
   (a) Good character and reputation, diligence and hard work, honesty, integrity, sound knowledge of law and consistent adherence to professional ethics;
   (b) Active successful practice at the Bar including satisfactory presentation of cases in court as a legal practitioner either in private practice or as a legal officer in any public service;
   (c) Credible record of teaching law, legal research in reputable university and publication of legal works (where applicable); and in addition to any or all of the above
   (d) Knowledge of Arabic language and grammar in case of appointment to the office of Kadi of Sharia Court of Appeal.
7. **Closing Date for Receipt of Applications or Nominations:** the Judicial Service Commission/Committee shall specify the closing date for the receipt of applications or nominations – ***Rule 3(3) Revised NJC GPR 2014.***
8. **Shortlisting of Names by Chairman Judicial Service Commission/Committee & Approval:** At the end of the time specified for nominations, the Chairman Judicial Service Commission/Committee concerned shall make a provisional shortlist not less than double the number of judicial officers intended to be appointed. For instance if the intention is to appoint three (3) judicial officers, then at least six (6) nominees must be shortlisted - ***Rule 3(4) Revised NJC GPR 2014***. The Chairman Judicial Service Commission/Committee concerned shall place the provisional shortlist before the

Judicial Service Commission/Committee for approval which shall then become final – ***Rule 3(5) Revised NJC GPR 2014.*** In carrying out the shortlisting exercise, Chairman JSC/C concerned shall, as much as possible, take into consideration professional expertise; sound knowledge of law; seniority at the bar or bench; and federal character or geographical spread. But he should not compromise the independence of the judiciary, or allow politics to permeate or influence the appointment, and should not recommend whose reputation has been tarnished. See ***Rule 3(6) & (7) Revised NJC GPR 2014***.

9. **Comments on Suitability of Shortlisted Candidates:** The names of the short listed candidates are to be sent to the following persons asking for comments on the suitability or otherwise of each of the shortlisted candidates:
   (a) All serving and retired judicial officers of the court concerned for appointment other than Head of a Court.
   (b) All serving and retired Heads of the relevant court for appointment of a Head of Court.
   (c) President of NBA for appointment to Federal Court and Chairman of NBA branch concerned for appointment to State Court.
   (d) All members of the Judicial Service Commission/Committee concerned - ***Rule 3(4) Revised NJC GPR 2014.***
10. **Filling of NJC's Form A by Shortlisted Candidates:** The chairman of the Judicial Service Committee/Commission concerned shall forward NJC's FORM A, which is like a bio data form, to all the shortlisted candidates. They are to complete the Form and return it to the chairman together with any necessary attachments. See ***Rule 4(1) Revised NJC GPR 2014***.
11. **Forwarding Names and Documents to Judicial Service Committee/Commission:** Upon receipt of the completed form, the chairman shall table before the members of the Judicial Service Committee/Commission concerned, names of each shortlisted candidates together with the following documents for its consideration:
   (a) The completed NJC Form A and the attachments thereto, if any.
   (b) The comments received from the serving judicial officers as specified under Rule 3(2) with respect to the suitability or otherwise of each shortlisted candidate.
   (c) Any petition or protest against a shortlisted candidate together with the candidate's response, if any.
   (d) Detailed medical certificate of fitness issued by a Government hospital or medical institution.
   (e) Report by department of SSS on the suitability of the candidate for appointment and stating clearly whether the department kept a file on the candidate, and if so, whether the file contains reports adverse to the candidate being appointed as judicial officer.

   See ***Rule 4(2) Revised NJC GPR 2014***.
12. **Considerations by the Judicial Service Committee/Commission:** In considering the short listed candidates, the JSC concerned shall take into account the fact that judicial officers hold high offices of the State with enormous powers and authority and so must possess the following qualities as essential requirements:
   (a) Good character and reputation, diligence and hard work, honesty, integrity, sound knowledge of law and consistent adherence to professional ethics (in all cases);
   (b) Successful practice at the Bar and satisfactory presentation of cases in court as a legal practitioner both in private practice and as legal officer in any public service (as may be applicable);
   (c) Satisfactory and consistent display of sound and mature judgment in the office as a Chief Registrar of Chief Magistrate (as may be applicable);
   (d) Credible record of teaching law, legal research in a reputable university and

publication of legal works; and in addition to any or all of the above

(e) Knowledge of Arabic language and grammar, in case of appointment to office of Kadi of a Sharia Court of Appeal.

See ***Rule 4(4) Revised NJC GPR 2014***.

13. **Authentication of Decision of Judicial Service Commission/Committee:** The decision of the JSC concerned in respect of the nomination and their recommendation in respect of the appointment of judicial officers shall be authenticated by an adopted minutes of the JSC meeting, duly signed by the Chairman and the secretary.
14. **Memorandum to the National Judicial Council:** The chairman of the commission/committee shall advise, or as the case may be, recommend to the NJC by a Memorandum concluding with a clear declaration that the NJC Rules have been fully complied with (***Rule 5(1)***) and stating whether any of the shortlisted candidates had on any previous occasion been presented to the Council for recommendation for appointment (***Rule 5(2)***). The Memorandum shall be addressed to the Chairman or Secretary of the Council and delivered to the Headquarters of the Council in Abuja – ***(Rule 5(3)).*** The Memorandum (request) shall contain justification for the number of judicial officers sought to be appointed and it is to be accompanied by the following documents:
    (a) Minutes of the meeting of the JSC concerned at where nomination of candidates was considered and decision taken.
    (b) Copies of all the materials and documents placed before the JSC concerned as required by Rule 4(2) in respect of each of the nominated candidates.
    (c) Copy of legislation establishing the particular court for which appointment is sought.
    (d) Proof of adequate capital vote provision in the current approved budget of the court. That is, ability to pay the judges to be appointed.
    (e) Proof of availability of accommodation, court hall, car, library, and other facilities for the judicial officers to be appointed.
    (f) A chart of the essential particulars of the candidates shortlisted.

    See ***Rule 5(4) Revised NJC GPR 2014***.
15. **Interview by the National Judicial Council:** the NJC shall interview each candidate in order to ascertain the suitability of such candidate for the judicial office sought – ***Rule 6(1) Revised NJC GPR 2014.***
16. **Recommendation to the President/Governor:** The NJC, when it is satisfied that there has been compliance with the rules in the guidelines and upon successful interview of candidates, then it will recommend the appointment of such persons to the Governor or President as the case may be. A candidate who was not successful at the interview will not be recommended – ***Rule 6(4) Revised NJC GPR 2014.***
17. **Appointment by the President/Governor:** The Governor or President as the case may be, appoints the judicial officer.
18. **Confirmation of the Senate/State House of Assembly:** After the appointment by the President or Governor as the case may be, the appointment is confirmed by the Senate or State House of Assembly, where such confirmation is required. (Note: the instances where confirmation by Senate or House of Assembly would be required is the appointment of Chief Justice and Justices of the SC, President of the CA, Chief Judges of the FHC, HC of FCT and SHC, Grand Kadis of SCA of FCT and SCA of States, and President of CCA of FCT and CCA of States.

III. Procedure for Appointment to Fill Vacancy in Offices of Heads of Courts

Where the office of the Head of a Superior Court is vacant or if the person holding the office is for any reason unable to perform the functions of the office, then until a person has been appointed to and has assumed the functions of that office, or until the person holding the office has resumed those functions, the President/Governor shall appoint the most senior

Justice/Judge/Kadi of the Court as the case may be, to perform those functions for a period of 3 months. See for instance ***Sections 231(4) & 271(4) CFRN*** for that of Supreme Court and High Court of a State respectively. The President/Governor cannot reappoint a person whose appointment has lapsed except with the recommendation of the NJC. It must be noted that this kind of appointment does not follow the procedure above as the procedure above is for the appointment of new judicial officers. This kind of appointment is only for the purpose of filing a temporary vacancy and the person so appointed holds the office in an "Acting" capacity only.

DISCIPLINE OF JUDICIAL OFFICERS

I. Concept

The organs responsible for appointment of judicial officers are also responsible for their discipline.

II. Forms of Discipline

A. Suspension from Office

A judicial officer can be disciplined through suspension from office. This will be for a temporary period.

B. Removal from Office

1. Concept: Generally, judicial officers are not removed before their age of retirement except on grounds specified above, particularly on grounds of misconduct. Thus, a judicial officer cannot be removed from office before the age of his retirement except on grounds of misconduct and inability to perform the functions of his office. See ***Section 292 CFRN***.

2. Grounds for Removal

(a) **Inability to Discharge Functions -** the inability of a judicial officer to discharge functions of his office or appointment arising from infirmity of the mind or body or misconduct may lead to his removal from office.

(b) **Breach/Contravention of the Code of Conduct**

(c) **Misconduct -** this may include abuse of office or recklessness in the use of his judicial powers etc. - See ***Section 292(1) (a) CFRN***.

3. Mode of Removal

(a) **Removal of Heads of Federal Courts -** Removal of CJN, President of Court of Appeal, CJ of Federal High Court and High Court, FCT, Grand Kadi of Sharia Court of Appeal and President of Customary Court of Appeal are upon the recommendation of the NJC, by the President of the Federal Republic of Nigeria acting on an address supported by 2/3 majority of the Senate. See ***Section 292(1) CFRN***.

(b) **Removal of Heads of State Courts -** Removal of CJ of a State High Court, Grand Kadi of Sharia Court of Appeal of a state, President of Customary Court of Appeal of a state on recommendation of NJC, by the Governor acting on an address supported by 2/3 majority of House of Assembly of State. See ***Section 292(1) (a) CFRN***.

(c) **Removal of Judicial Officers Other than Head of Courts:** judicial officers other than heads of courts can only be removed on recommendation of the NJC by the President or Governor as the case may be. The legislature is not involved. See ***Section 292(1) (b) CFRN.***

Note that the NJC cannot remove a judicial officer but can recommend such removal and suspend the judicial officer. See ***Hon. Justice Ayo Salami's Case***. However, the recommendation of the NJC is a condition precedent to the removal of judicial officers. In the case of ***Elelu Habeeb v. AG Federation,***[8] the Supreme Court held that the Governor

[8] (2012) 13 NWLR (Pt. 1318) 423

and House of Assembly of Kwara State cannot remove the Chief Judge of Kwara State from office without the participation of the NJC in the exercise.

4. Effect of Removal: The effect of removal of a judicial officer by virtue of ***Section 292(2) of the Constitution***, is that such judicial officer shall not on ceasing to be judicial officer for an reason whatsoever thereafter appear or act as a legal practitioner before any court of law or tribunal in Nigeria.

C. Disciplinary Control other than Removal from Office

Under this heading, a judicial officer may be disciplined by the NJC for any misconduct committed in the exercise of his judicial functions. The disciplinary control exercised by the NJC over judicial officers does not include removal from office. This is because NJC cannot remove a judicial officer from office. It can only recommend such removal.

III. Procedure for Discipline of Judicial Officers

The procedure for the discipline (removal) of judicial officers is a regulated by the ***Judicial Discipline Regulations 2017*** which revoked the ***Judicial Discipline Regulations 2014.*** The procedure for the removal is as follows:

1. **Initiating and Directing Complaint to NJC:** Complaint against a judicial officer is addressed in writing to the Chairman NJC (CJN) and filed at the office of the Secretary NJC, or submitted to the office of the CJN or Head of Court of the judicial officer whom the complaint relates. The recipient of the complaint shall forward the original to the Secretary within 7 days. The Secretary shall cause same to be registered in the complaint register – ***Regulation 15 JDR 2017.*** The complaint must contain a concise statement of facts that details the specific facts on which the claim of misconduct or disability is based; it must be signed by the complainant and accompanied by a verifying affidavit deposed to by the complainant – ***Regulation 14 JDR 2017.*** A complaint must be made within 6 months from the date of the event complained of otherwise it will be dismissed by the Council. However, the Chairman of the Council may extend the time if there is good reason to do so. By virtue of ***Regulation 16 JDR 2017,*** a complainant may withdraw his complaint at anything but the Council may still consider such complaint if satisfied that the allegations are sufficiently serious.
2. **Review of Complaint and Advise by the Chairman NJC or Complaint Assessment Committee:** the Chairman may assess a complaint or may refer it to a Preliminary Complaint Assessment Committee set up by the Council for review. Upon assessment, the Chairman or Committee as the case may be shall advise the Council whether the complaint should be:
   (a) Dismissed;
   (b) Terminated because an intervening event has overtaken the complaint or because remedial action has been taken;
   (c) Referred to an investigation committee for investigation; or
   (d) Referred to subject judicial officer for his response - ***Regulation 17 JDR 2017.***
3. **Reference to Investigation Committee for Investigation and Recommendations to Council:** The NJC is to set up an investigation committee to investigate the complaint and to report and make recommendations to the Council - ***Regulation 19 JDR 2017.***
4. **Notification of Allegation to Judicial Officer and Hearing (Investigation):** The judicial officer against whom the allegation is made will be notified in writing of the allegations against him and will be given reasonable time to reply to the allegation which shall be served on the complainant. On the date of hearing, the complainant and the subject judicial officer shall make representations before the Investigation Committee by leading evidence and examining witnesses. - ***Regulation 23 JDR 2017.*** The Committee shall submit to the Council a comprehensive report of its investigation, including findings and recommendation for council's action. Disciplinary proceedings including investigation

shall not be terminated because the subject judicial officer ceases to hold office.

5. **Interim Suspension by NJC Pending Final Decision:** prior to taking the final decision, the Council may suspend the subject judicial officer from performing judicial functions - ***Regulation 24 JDR 2017.***
6. **Final Decision and Sanction by NJC:** upon consideration of the report of the Investigation Committee, the Council may:
   (a) Dismiss the case;
   (b) Direct that the case be dealt with informally by the Chairman of the Council where the misconduct is not grave;
   (c) Reprimand the subject judicial officer;
   (d) Suspend the subject judicial officer;
   (e) Direct that the subject judicial officer be put on the watch list to be monitored;
   (f) Prohibit the nomination of the subject judicial officer for a specified period or permanently; or
   (g) Recommend the removal of the subject judicial officer - ***Regulation 25 JDR 2017.***
7. **Notification and Publication of Final Decision:** the decision taken by the Council shall be notified in writing to the subject of decision, complainant, and the relevant Head of Court. The Council may publish the information about the disciplinary proceedings or the final decision of the Council - ***Regulation 27 JDR 2017.***
8. **Removal by the President/Governor:** where the Council recommended the removal of a judicial officer, such removal shall be made by the President or Governor as the case may – ***Section 292(1) CFRN.***
9. **Confirmation of the Senate/House of Assembly:** where the erring judicial officer is a Head of any Superior Court in Nigeria, then the President or Governor, as the case may be cannot remove him except on an address of the Senate or House of Assembly of the State concerned with at least two-thirds majority votes of the members. See ***Section 292(1) (a) of the CFRN***.

IV. Options Open to Any Lawyer Aggrieved By Misconduct of a Judicial Officer

A lawyer who is aggrieved by any judicial misconduct by a judicial officer can take any of the following steps. That is where the lawyer has a proper ground for complaint, he has the following four options:

1. **Application to Judicial Officer to Disqualify Himself:** Application to the judicial officer to disqualify himself from the case on the grounds that you have lost confidence in his ability to impartially dispense justice in the case. Application is by Motion on Notice, supported by affidavit and written address. See ***R v University Of Cambridge*** and ***Ex Parte Dr. Bentley***.
2. **Application to Chief Judge for Reassignment of Case:** Application, by way of a letter (petition), to the chief judge for the case to be reassigned to another judge.
3. **Ground of Appeal:** Keep quiet and continue the proceedings till judgment, then make the misconduct of the judge a ground of appeal. See ***Samuel Okoduwa v State***.
4. **Petition to NJC:** Write a petition against the Judge and send it to the NJC.

CODE OF CONDUCT FOR JUDICIAL OFFICERS

There are two codes of conducts, one for judicial officers including Magistrate, District, judges of Area and Customary courts; and another for all public servants. The codes are as follows:

1. **Respect and Compliance with Laws:** A judicial officer in the performance of his duties should respect and comply with the laws of land.
2. **Belonging to Organisation Incompatible with Judicial Function:** A judicial officer should not belong to any organisation whose objectives are incompatible with his function as a judge.

3. **Communication with a Party in the Absence of the Other Party:** He should discourage communication with a party to a case before him in absence of or without notice to the other party.
4. **Disqualifying Self from Proceeding due to Likelihood of Bias:** Where the impartiality of a judicial officer may likely be questioned, he should disqualify himself from the proceeding.
5. **Conflicting Social Functions with Judicial Functions:** He should not allow social functions to conflict with his judicial function.
6. **Accepting Gifts and Favour for Discharge of Functions:** He and members of his family should neither ask for nor accept gifts, request, favour or loan on account or anything done or omitted to be done by him in the discharge of his office.
7. **Chieftaincy Title:** A judicial officer should not accept any chieftaincy title rule in office.

ORGANS RESPONSIBLE FOR APPOINTMENT OF JUDICIAL OFFICERS

I. State Judicial Service Commission

A. Establishment: SJSC is established pursuant to ***Section 197(1) (4) of the CFRN***.

B. Composition: See ***Part II of the 3rd Scheduled to the CFRN 1999*** -

1. Chief Judge of the state who shall be the chairman;
2. Attorney-General of the state;
3. Grand Kadi of the Sharia Court of Appeal of the State, if any;
4. President of the Customary Court of Appeal of the State, if any;
5. Two members, who are legal practitioners, and who have been qualified to practice as legal practitioner in Nigeria for not less than ten years; and
6. Two other persons, not being legal practitioners, who in the opinion the Governor are of unquestionable integrity.

C. Powers: See ***Part II of the 3rd Scheduled to the CFRN 1999*** -

1. Advise the NJC on suitable persons for nomination of the office of:
   (a) Chief Judge of the State;
   (b) Grand Kadi of the Sharia Court of Appeal of the State, if any;
   (c) President of the Customary Court of Appeal of the State, if any;
   (d) Judge of the High Court of the State;
   (e) Kadis of Sharia Court of Appeal of the State, if any; and
   (f) Judges of the Customary Court of Appeal of the State if any.
2. Subject to the provisions of the constitution to recommend to the NJC the removal from office of the judicial officers specified in subparagraph (a) i.e. (1) above.
3. Appoint, dismiss and exercise disciplinary control over the chief registrar and deputy chief registrar of the High Court, the chief registrar of the Sharia Court of Appeal and Customary Court of Appeal, Magistrates, Judges, and members of Area Courts and Customary Courts and all other members of the staff of the judicial service of the state not otherwise specified in this constitution.

II. Federal Judicial Service Commission

A. Establishment: The FJSC is established pursuant to ***Section 153(1) (e) CFRN***.

B. Composition: See ***Part I of the 3rd Schedule to the CFRN1999*** -

1. Chief Justice of Nigeria, who shall be the chairman;
2. Attorney-General of the Federation;
3. President of the Court of Appeal;
4. Chief Judge of the Federal High Court;
5. Two persons, each of whom has been qualified to practice as a legal practitioner in Nigeria for a period of not less than 15 years, from a list of not less than 4 persons so qualified recommended by the Nigerian Bar Association and;
6. Two other persons, not being legal practitioners who in the opinion of the President

are of unquestionable integrity.

C. Powers: See ***Part I of the 3rd Schedule to the CFRN1999*** -

1. Advise the NJC in nominating persons for appointment, in respect of appointments to the office of
   (a) Chief Justice of Nigeria
   (b) Justice of the Supreme Court
   (c) President of the Court of Appeal
   (d) Justice of the Court of Appeal
   (e) Chief Judge of the Federal High Court
   (f) Judge of the Federal High Court, and
   (g) Chairman and members of the Code of Conduct Tribunal.
2. Recommend to the NJC, the removal from office of the judicial officers specified in subparagraph (a) i.e. (1) above.
3. Appoint, dismiss, and exercise disciplinary control over the chief registrars and deputy chief registrar of the Supreme Court, the Court of Appeal, the Federal High Court and all other members of the staff of the judicial service of the federation not otherwise specified in this constitution and of the Federal Judicial Service.

I want to believe that its powers extend to the National Industrial Court created in ***Section 254, CFRN (3rd Alteration)***.

III. Judicial Service Committee of FCT, Abuja

A. Establishment: The JSC of FCT, Abuja is established pursuant to ***Section 304, CFRN***.

B. Composition: See ***Part III of the 3rd Schedule to the CFRN*** **-**

1. Chief Judge of the High Court, FCT;
2. Attorney-General of the Federation;
3. Grand Kadi of Sharia Court of Appeal of the FCT;
4. President of Customary Court of Appeal of the FCT;
5. A legal practitioner with 12 years post call; and
6. A non-lawyer who is in the opinion of the President, a person of unquestionable integrity.

C. Powers: See ***Part III of the 3rd Schedule to the CFRN1999*** -

1. Advise the NJC in nominating persons for appointment, in respect of appointments to the office of
   (a) Chief Judge of High Court of the FCT
   (b) Judge of High Court of the FCT
   (c) Grand Kadi of Sharia Court of Appeal of the FCT
   (d) Kadis of Sharia Court of Appeal of the FCT
   (e) President of Customary Court of Appeal of the FCT
   (f) Judges of Customary Court of Appeal of the FCT
2. Recommend to the NJC, the removal from office of the judicial officers specified in subparagraph (a) i.e. (1) above.
3. Appoint, dismiss and exercise disciplinary control over the chief registrar and deputy chief registrar of the High Court of FCT, the chief registrar of the Sharia Court of Appeal of FCT and Customary Court of Appeal of FCT, Magistrates, Judges, and members of Area Courts and all other members of the staff of the judicial service of the FCT not otherwise specified in this constitution.

IV. National Judicial Council

A. Establishment: The NJC is established in ***Section 153(1) (i) of the CFRN***.

B. Composition: See ***Part I of the 3rd schedule to the CFRN*** **-**

1. Chief Justice of Nigeria who shall be the chairman;
2. Next most senior Justice of the Supreme Court who shall be the deputy chairman;

3. President of the Court of Appeal;
4. Five retired justice selected by the Chief Justice of Nigeria from the Supreme Court or Court of Appeal;
5. Chief Judge of the Federal High Court;
6. 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 FCT, Abuja in rotation to serve for two years.
7. 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.
8. One president of the Customary Court of Appeal to be appointed by the Chief Justice of Nigeria from among the Presidents of the Customary Court of Appeal to serve in rotation for two years.
9. 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 recommendations of the NEC of the NBA to serve for two years and subject to reappointment. Note that they only sit for the purpose of considering the names of persons for appointment to superior courts of records; and
10. Two persons not being legal practitioners, who in the opinion of the CJN are of unquestionable integrity.

C. Powers: See ***Part I of the 3rd schedule to the CFRN*** **-**

1. Makes recommendations to the President or Governor on appointment of all the judicial officers.
2. Makes recommendations to the President or Governor on removal of all the judicial officers.
3. Collect, control and disburse all moneys, capital and recurrent for the judiciary.
4. Advice the President and Governors on any matter pertaining to the judiciary as may be referred to the council by the President or the Governors.
5. Appoint, dismiss, and exercise disciplinary control over members and staff of the council inter alia.

V. President and Governors

The office of the President of the Federal Republic of Nigeria is established under ***Section 130 CFRN***, while that of the Governor is ***Section 176 CFRN***. The President of the FRN and Governors of States have been vested with the powers of appointment and removal of judicial officers.

PROFESSIONAL DISCIPLINE OF LEGAL PRACTITIONERS

I. Concept

One of the numerous functions and responsibilities of the Body of Benchers (BOB) is the exercise of disciplinary control over legal practitioners and aspirants to the Nigerian Bar. The BOB effectively discharges this duty through the Legal Practitioners Disciplinary Committee (LPDC), which is established as a committee of the BOB. The foundation of the discipline of legal practitioner is ***Rule 1 of RPC*** which provides that a lawyer shall:

1. Uphold and observe the rule of law. This is the first duty of a lawyer.
2. Promote and foster the course of justice. This include lawyers not delaying proceedings and not bringing frivolous applications.
3. Maintaining a high standard of professional conduct; and
4. Shall not engage in any conduct which is unbecoming of a legal practitioner.

II. Professional Offences

The ***LPA*** as amended, vide ***Section 12(1),*** provides for four (4) professional offences, which are:

A. Infamous Conduct in a Professional Respect

See ***Section 12(1) (a) LPA*** as amended: Infamous conduct is a conduct which will be regarded as reasonably disgraceful and dishonourable by other members of the legal profession or which will bring the legal profession into disrespect. See ***Allinson v General Council of Medical Education and Registration; Ndukwe v LPDC;***[9] ***Charles Okike v LPDC***.[10] To be liable for infamous conduct, the following conditions must be satisfied:

1. The conduct must be of a serious nature.
2. The conduct must have been committed in the course of his practice of the legal profession. That is, a legal practitioner can only be held liable for infamous conduct where he was representing or acting for a client or himself in a professional capacity when the misconduct occurred. Thus, where the misconduct complained of took place in any other circumstance other than in the course of his professional employment, a charge of infamous conduct will fail. See ***Re Idowu; NBA v. EDU***.[11]

In some instances, the infamous conduct complained of may amount to a crime. In such a case, the LPDC should stay action until the person has been tried for the offence by a competent court of law. See ***MDPDT v Okonkwo***;[12] and ***Denloye v MDPDC***. The rationale for such trial of the crime before a court are:

1. To allow the crime to be proved beyond reasonable doubt,
2. To prevent a conflict of decisions between the court and the LPDC.

For the rule above to apply, the erring legal practitioner must, first of all, have denied the allegations made against him. See ***Dongtoe v CSC Plateau State***. Thus, where he denies the allegations made against him, then the LPDC must wait for the outcome of the criminal trial. However, where the erring legal practitioner admits the allegations made against him, then there would be no need for the LPDC to wait for the outcome of the criminal trial before commencing disciplinary proceedings against him. See ***Dongtoe v Civil Service Commission Plateau State***.[13]

However, where allegation of misconduct ordinarily amounts to a crime, but the charge before the LPDC is couched in a manner that it does not disclose any criminal element but only discloses breaches of the RPC, then in such a situation, the LPDC may try the misconduct as charged without necessarily waiting for the criminal trial of the erring legal practitioner; here, it is immaterial whether the legal practitioner denies the offence or not. See ***Ndukwe v LPDC***.[14]

In all other instances of infamous conduct in a professional respect which do not amount to crime, the LPDC can commence disciplinary proceedings without waiting for any court or any denial or admission of the allegations. Examples of infamous conduct may include:

1. Misappropriation of client's money.
2. Not opening a client account and depositing client's money into it. See ***Onitiri v Fadipe***.
3. Converting client's property.
4. Manufacturing non-existing cases in court.
5. Breach of any of the RPC in the legal profession.
6. Defamation of brother legal practitioners. See ***Allison's Case***.
7. Acting wilfully without client's authority. See ***Re Gray Exparte Incorporated Law Society***.

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[9] (2007) 5 NWLR [Pt. 1026] 1
[10] (2006) 15 NWLR [Pt. 949] 471
[11] (2006) 14 NWLR [Pt. 1000] 827
[12] (2001) 7 NWLR [Pt. 711] 206
[13] (2001) 4 SC [Pt. 1] 43
[14] (2007) 5 NWLR [Pt. 1026] 1

8. Obtaining secret commission out of purchase money payable by a client. See ***Re Lowe v Richie***.
9. Concealing a will on client instructions. See ***Re Davies***.
10. Refusal to pay client part of judgment debt recovered for him. See ***Ndukwe v LDPC***.
11. Failure to inform the client about money received on his behalf and appropriating same to personal use. See ***NBA v EDU*** and ***NBA v Alabi***.

Note: where a person has been convicted of an offence, which also constituted infamous conduct in a professional respect, has that conviction reversed on appeal purely on technical grounds, he could still be proceeded against professionally for infamous conduct in a professional respect.

B. Conviction by Any Court in Nigeria for an Offence which is Incompatible with the Status of a Legal Practitioner

This professional offence is regulated by ***Section 12(1) (b) LPA***. This offence is quite different from the others in the sense that it is the only one that requires conviction as a pre-condition before a charge can be brought before LPDC. The conditions are:

1. The conviction must have taken place in Nigeria by a Nigerian Court of competent jurisdiction.
2. The offence for which he was convicted must be one which is incompatible with the status of a legal practitioner. See ***Abuah v LPDC***.
3. No appeal must be pending against the conviction and the time within which to appeal against the conviction must have elapsed. See ***Section 12(5) LPA*** which provides that for this purpose, a person shall not be deemed to have been convicted unless that conviction stands at a time when no appeal or further appeal is pending or may be brought against the conviction.

It must be noted that a conviction does not automatically make a legal practitioner liable to LPDC's sanctions under this offence as the LPDC will consider the nature of the offence and whether it is one which is incompatible with the status of a legal practitioner. The offences ranges from financial dishonesty (***Re Abuah's Case***), political offences, election fraud, treason, sedition, marriage offences. Some offences are however excluded such as traffic offences.

For the purpose of this professional offence, the conviction of a legal practitioner for a criminal offence in this context is not restricted to offences committed while acting in his capacity as a legal practitioner. See ***Re Weare*** and ***Re Abuah***. Even where the case in court is struck out on technical grounds, the LPDC can still sanction the erring legal practitioner. See ***Re King***.

Query: Does a sanction under this offence amount to double jeopardy against section 36(9) CFRN as amended? The answer is in the negative. Subsequent sanctions by LPDC for conviction of an incompatible offence does not amount to double jeopardy. This is because LPDC tries professional misconducts by legal practitioners with the sole aim of maintaining professional discipline in the legal profession. Trials before the LPDC are not trials for criminal offences and do not lead to the imposition of any of the conventional penal sanctions for criminal offences. See ***Re Abuah*** and ***Law Society v Gilbert***.

C. Obtaining Enrolment by Fraud

This is where a person obtain enrolment by a misrepresentation of facts which would not have entitled him to enrolment if they had not been misrepresented. Enrolment at the SC is the final act that confers the status of a legal practitioner on a person. An enrolment will be said to have been fraudulently procured where a fraudulent act or misrepresentation of material facts by any person to any authority concerning himself, ultimately enabled him to secure enrolment at the SC.

The materiality of the fact misrepresented is what determines whether enrolment was obtained

by fraud or not. Thus, where the fact misrepresented is of little value in the sense that it would not have affected the status of the person, had the true facts been stated, an enrolment obtained in such circumstances may not be deemed to have been fraudulent. The guiding question is whether such person would have been enrolled if the truth of the facts misrepresented were known before the enrolment? Accordingly, a mistaken belief on the part of the person making the representation may not ground this offence.

A person who relied on a fraudulently misrepresented fact to secure enrolment is guilty of professional misconduct notwithstanding the fact that the fact subsequently turned out to be true. The state of that fact at the date of the misrepresentation is what determines the culpability or otherwise of the person involved.

Note that where the misrepresentation amounts to a crime like forgery of certificates, the criminal action must be concluded first before the disciplinary action. (See similar rules under infamous conduct).

In cross referencing this offence with the duty of a lawyer to the legal profession under ***Rule 2 RPC***, 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 into the legal profession by reason of his moral character or insufficient qualification or for any other reason. Examples here could include falsification of personal data or academic qualifications, forgery of certificates (including WAEC to get admissions etc.).

D. Misconduct, Which Though Not Amounting To Infamous Conduct, Is In the Opinion of the LPDC, Incompatible with the Status of Legal Practitioners

This is an omnibus ground and covers all residual cases where the conduct complained of does not qualify as infamous conduct. Examples are: seduction of a client's wife, habitual drunkenness in the public, use of very foul language in public, participating in street brawls, etc. The distinguishing feature between this offence and infamous conduct is that infamous conduct must be committed in the course of acting in his professional capacity, while this offence can be committed whether in the course of professional employment or not.

III. Organs Responsible For the Discipline of a Legal Practitioner

The Body of Benchers is responsible for the discipline of lawyers. The Legal Practitioner Disciplinary Committee is set up by the Body of Benchers. The regulatory laws are: the LPDC Act 2004 and the Rules 2006, the Legal Practitioners (Amendment) Act 1994. Apart from the BOB, the Supreme Court of Nigeria and the Chief Justice of Nigeria also have powers to discipline legal practitioners.

A. Legal Practitioners Disciplinary Committee

1. Procedure for Discipline

(a) A written complaint against a legal practitioner shall be forwarded by complainant or person aggrieved to any of the following: CJN, AGF, PCA or presiding Justices of the Court of Appeal Divisions, CJ of FHC, HC of FCT and SHC, AG of a State, Chairman of BOB; and President of NBA or Chairman of a branch of NBA. See ***Rule 3(1) (a)-(g) LPDC Rules***.

(b) The complaint when received by any of the above will be forwarded to the NBA for investigation. See ***Rule 3(2) LPDC Rules***.

(c) The NBA will constitute a committee to investigate the complaint by way of inquiry.

(d) The committee will write to the legal practitioner informing him of the allegations against him and invites him to make written representations.

(e) If after such investigation, NBA is of the opinion that a prima facie case has been made, then NBA shall forward a report of such case to the secretary of the LPDC together with all documents considered by the NBA and a copy of the complaint. See ***Rule 4 LPDC Rules***. The report of the NBA is in the form of a 'charge' against the

legal practitioner. See ***NBA v Odiri***. However, it must be noted that the charge is not a criminal charge. See ***Okike v LPDC***. The documents to be forwarded to LPDC are –

i. Report of the case, which is in the form of a "charge" against the legal practitioner.
ii. Petition or complaint.
iii. Evidence relied on to form opinion whether there is a prima facie case.

(f) The legal practitioner will be tried by the LPDC on the charge brought by the NBA. The quorum is 5 members with at least two Attorneys-General. The parties to the proceedings at the LPDC are the NBA as the complainant and the legal practitioner as Respondent. See ***Rule 5 LDPC Rules***. But note that NBA is not a legal person, it is a juridical body. So it should be "The Registered Trustees of NBA". See ***Fawehinmi v NBA***. By ***Rule 10(2) LPDC Rules***, the provisions of the EA, 2011 are applicable to LPDC. Hearing should be in public with exceptions in few cases. See ***Rule 13 LPDC Rules***. Proceedings before the LPDC is not purely criminal thus, the NBA proves its case on balance of probabilities. Standard of proof is balance of probabilities or preponderance of evidence.

(g) All exhibits and books must be kept by the secretary until the expiration of the time allowed for the entry of an appeal (28 days) or if the appeal was entered within time, then until the appeal is heard or otherwise disposed of. See ***Rule 24 LPDC Rules***.

(h) The notice of decision is to be served on the person to whom it relates, and a copy of the report is submitted to the Body of Benchers.

2. Forms of Punishments/Direction

(a) Striking off the name of the Legal Practitioner from the Roll: That is, an order to the Registrar to strike off his name. This punishment is meant for the most serious misconduct. Grievous misconduct can be: where a legal practitioner seriously and fraudulently abuses the confidence of his client – ***Re Martin***;[15] where the legal practitioner's conduct is such that the public should not be exposed to the risk of dealing with him – ***Re Abuah***;[16] or where his misconduct is personally disgraceful – ***Re Weare***.[17]

In case of conviction for offences involving fraud or other serious misconduct, the committee will be inclined to order the striking off of the name of the practitioner. Also, if a person is fraudulently enrolled, his name shall be struck off. Where the name of a legal practitioner is struck off the roll, his name may be restored to the roll on application to the Disciplinary Committee – ***Section 14(1) of the LPA***.

(b) Suspension for a Specific Period: This will be ordered where the misconduct is not of such a serious nature as to warrant striking off. Where the Committee deems fit, it may suspend any erring legal practitioner from practice for a specified period in the direction – ***Onitiri v Fadipe***. Usually, where striking off is quashed or reversed, it may be substituted with suspension. Also, a person who is suspended from practice may, on application be restored – ***Section 14(1) of the LPA***.

(c) Admonish or Caution the Lawyer: This may be required for offences, which are not serious.

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[15] (1843) 6 Beav. 337, 49 ER 856,
[16] (1962) 1 All NLR 279 at 285,
[17] (1893) 2 QB 439,

(d) Restitution: Direction for refund of money or documents which came into the possession of the lawyer in the course of the transaction. In certain cases, the legal practitioner may be asked to pay costs to his client.

See ***Section 12(1) LPA***, as amended and ***Rule 17 LPDC Rules***.

3. **Appeals:** The appeal used to be to SC in accordance with ***Section 10(e) LP (Amendment) Act*** and ***Section 12(7) LPA*** as amended. However, by the decision in ***Aladejobi v NBA***,[18] the SC maintained unequivocally that appeals must now lie to the Appeal Committee of the Body of Benchers, notwithstanding that this body was repealed by the LP (Amendment) Act. See also ***Chief Andrew Otu v NBA***.[19] The appeal must be filed within *28 days* from the date of service on him of the notice of direction (punishment) of the LPDC. However, in practice, there is no Appeal Committee of the Body of Benchers in existence.

B. Supreme Court

By ***Section 13(1) LPA***, the Supreme Court can also discipline a legal practitioner. The court is conferred with original jurisdiction in this regard.

1. The Supreme Court has the jurisdiction to discipline a legal practitioner where it appears to the court that the legal practitioner has been guilty of infamous conduct in any professional respect.
2. The misconduct must be with regard to matter being handled by the lawyer in any superior court of record in Nigeria. The Magistrate Court and other lower courts are excluded.
3. The Supreme Court only gives its decision/direction after hearing the legal practitioner and such other persons the court considers appropriate.
4. The direction of the Supreme Court is the same as that of the LPDC that is, striking off, suspension from practice for specified period and admonishing that person.
5. The direction of the Supreme Court takes effect immediately.
6. The direction except in the case of an admonition is to be published in the federal gazette.
7. Where the Supreme Court gives punishment, the LPDC cannot proceed on the same misconduct.
8. The punishment by the Supreme Court is final and no appeal lies to any other court.

C. Chief Justice of Nigeria

The CJN also exercise disciplinary measure over legal practitioners. This is where the CJN is of the view that an action should be instituted against the legal practitioner at the LPDC; or while an action against the legal practitioner is pending before the LPDC. The CJN is to afford the legal practitioner opportunity of making representations in the matter. Note that the fact that an appeal is pending against conviction of legal practitioner does not affect the powers given to the CJN. See ***Section 13(2) LPA***.

The direction of the CJN is limited to suspending the legal practitioner. The CJN can only exercise this power where a charge is pending before the LPDC or where there is a likelihood of a charge being brought before the LPDC for professional misconduct. The powers of the CJN in this regard is limited to suspending the legal practitioner pending the determination of the charge by the LPDC

IV. Restoration of Legal Practitioner's Name and the Procedure

A legal practitioner whose name was struck off the roll can be restored back. This is usually upon the application of the legal practitioner to the appropriate body. This application must show genuine remorse. Upon receipt of the application by the Body of Benchers, the Benchers are to consider the following conditions before restoring his name, namely:

(a) Gravity of the offence for which the person's name was struck off or suspended.

(b) Sufficient evidence of genuine remorse between the time of striking off or suspension

[18] (2013) 15 NWLR [Pt. 1376] 66 at 72-73

[19] (2015) LPELR 248/16

and time of application.

(c) Applicant has become a fit and proper person. See ***Re Abuah; Adesanya v AG Federation*****.**

(d) The length of time since suspension/striking off of his name that has lapsed.

Note that the application for restoration must be made to the appropriate body. Thus;

(a) Where the punishment was ordered by the SC or CJN, the application should be made to the SC. See ***Section 14(1) (a) LPA*** as amended.

(b) Where the punishment was ordered by the LPDC, the application should be made to LPDC. See ***Section 14(1) (b) LPA*** as amended.

SAMPLE DRAFTS

I. Letter of Application for Appointment as a Judicial Officer

Killi Nancwat
No 12 Base Street Bariga
Lagos
10 May, 2012

The Chairman
The State Judicial Service Commission
No 13 Base Road
Jos
Plateau State
Dear Sir,

APPLICATION FOR APPOINTMENT AS A JUDGE OF THE HIGH COURT OF PLATEAU STATE

I, Killi Nancwat, hereby apply to be appointed as a Judge of the High Court of Plateau State. I was called to the Nigerian Bar in the year 1992 and was enrolled on the same day.

I have cogent experience in Legal practice as a Principal Partner with Agbaje Daji & Company, a firm of Legal Practitioners and solicitors.

Please find attached copies of my documents for your necessary consideration.
I look forward to your kind consideration of my application.

Yours faithfully,
……...
Killi Nancwat

ENCL:
1. Call to Bar Certificate
2. Receipts of payment of practicing fees
3. Bachelor of Laws (LL.B) Certificate
4. Curriculum vitae.

II. NJC Form A (Bio-Data)

1. Names in Full
2. Date of Birth
3. Place of Birth
4. State of Origin

5. Local Government Area
6. Residential Address
7. Telephone
8. Chambers/Office Address
9. Postal Address
10. Primary Schools attended with dates
11. Colleges attended with dates
12. Certificates awarded on leaving College with dates
13. Subjects offered and passed with grades
14. Universities attended with dates
15. Degrees awarded (showing dates & class)
16. University and Law School Prizes Awarded (if any) with dates
17. (a) Date called to the Bar in Nigeria

(b) Date and place admitted to practise outside Nigeria

(c) Date admitted as a Notary Public (if any)

(d) Date of conferment of the rank as a Senior Advocate of Nigeria

18. Law Practice Experience:

(a) Pupillage in Chambers showing Head of Chambers and dates

(b) Date of setting up own chambers stating -

i. Type of chamber accommodation and address

ii. Names of Partners/Associates

iii. Names of Junior Counsel employed in Chambers indicating dates and duration

iv. Library owned and number of books in the Chamber's library with address

(c) Professional Appointments:

i. In the Ministry of Justice and positions held with dates

ii. In the Judiciary as Magistrate or President of Sharia/Customary Courts, stating positions held with dates.

19. Judgments Obtained/Delivered in Contested Cases:
    (a) Particulars of judgments obtained in contested cases personally conducted in the Supreme Court of Nigeria in the past five years with citation of Law Reports, if any.
    (b) Particulars of judgements obtained in contested cases conducted in the Court of Appeal in the past five years (or before taking up appointment as magistrate, etc.) indicating particulars of Law Report, if reported.
    (c) Particulars of at least ten (10) judgements obtained in contested cases conducted in the High Court in the past five years (or before taking up appointment as magistrate etc.) with copies annexed or cite Law Reports were reported.
    (d) Particulars of selected judgments delivered by the candidates in the past two years as Chief Magistrates, etc. Annex copies of your best judgements.
    (e) Law Publications (including papers delivered at Conferences in the field of Law and Jurisprudence) with copies annexed:
20. International Law Conferences attended (if any)
21. Particulars of Developed properties (if any)
    (a) In home town for own homestead
    (b) In Commercial cities for investment purposes
22. Loyalty to the Legal Profession
    (a) Branch of the Nigerian Bar Association to which the candidates belongs
    (b) Evidence of payment of practising fees. (Annex receipts for past five years)
    (c) Details of Annual Conferences of the Nigerian Bar Association attended in the past five years, stating places and dates.
    (d) Papers delivered by the candidate at Nigerian Bar Association Annual conferences

(if any).

23. Does the candidate consider himself –
    (a) Successful in the Legal profession either as a private legal practitioner, or a legal officer or magistrate.
    (b) Of good character and reputation, honest and of high integrity?
    (c) Garrulous or quarrelsome?

Dated the _____day of _____ 2008

_____
Signature

* Paragraph 19(d) shall now read as follows:
* Particulars of selected judgments delivered by the candidates in the past two years as Chief Magistrates; or in any given past two years before the candidates' present appointments/positions. Annex copies of your best judgments"

NOTE: All judgments obtained or delivered by the candidates vide paragraph 19 above shall be confirmed by the Head of Court/the Chief Judge.

III. Curriculum Vitae

CURRICULUM VITAE OF KILLI NANCWAT

1. PERSONAL BIO-DATA

Surname:
Other names:
Date of birth:
Place of birth:
State of origin:
Local Government Area:
Home town:
Sex:
Marital status:
Address:
Telephone:
Email:

2. SCHOOLS AND INSTITUTION ATTENDED TILL DATE
3. QUALIFICATIONS
4. WORKING EXPERIENCE
5. HOBBIES
6. REFEREES
7. CURRENT CONTACT ADDRESS
8. SIGNATURE AND DATE

(Week 6)

DUTIES OF A LAWYER TO CLIENTS

Rule 1 RPC enjoins lawyers to uphold and observe the rule of law, promote and foster the cause of justice, maintain high standard of professional conduct and should not do anything that will portray the profession in a bad light.

DUTIES OF COUNSEL TO CLIENT

A client could be: a person seeking legal intervention of a lawyer; a person in need of legal services of a lawyer; or anybody that enjoys the services of a lawyer. This is so irrespective of the person paying for such services. The duty of a legal practitioner to his client are:

I. Dedication and Devotion to the Cause of Client

A. Concept

By virtue of ***Rule 14 RPC***, a lawyer has a duty to dedicate and devote to the cause of his client. The lawyer's time must be dedicated towards the performance of the client's brief. The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance and defence of the client's rights and exertion of his utmost learning and ability, to the end that nothing be taken or be withheld from him save by the rules of law legally applied. No fear of judicial disfavour or public unpopularity should restrain him from the full discharge of his duty.

B. Instances

1. A lawyer should take full instructions from the client before advising him.
2. Advice should be based on merit
3. A lawyer should always inform the client concerning the progress of his case
4. Where there is conflict between the client and the lawyer in respect of the exact instructions given to the lawyer, the instruction of the client must prevail. It may be oral or written or both but it is advisable that it should be in writing.
5. A lawyer shall inform the client that his claim or defence is hopeless if he considers it to be so. Where an action is statute-barred and counsel did not advise his client not to take the action, he could be indemnified in costs. See ***Bello Raji v X***.[20]
6. A lawyer must devote his attention, energy and expertise
7. A lawyer must consult his client in question of doubt
8. A lawyer must warn the client against any particular risk
9. A lawyer must respond to request for information from the client promptly
10. A lawyer must represent him throughout the matter.

II. Accepting Brief (Cab Rank Rule)

A. General Rule

A lawyer has a duty to accept brief subject to payment of proper professional fee. See ***Rule 24(1) RPC*** and ***Rondell v Worsley***.[21] This is also known as the Cab Rank Rule.

B. Special Circumstances Justifying Refusal

The rule provides that special circumstances may justify his refusal, at his discretion to accept a brief e.g.

1. Personal interest
2. Conflicting interest
3. Religious grounds
4. When he is likely to appear as a witness
5. Non-payment of professional fee, etc.

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[20] (1946) 18 NLR 74

[21] (1967) 3 All ER 993

Refusal on other grounds may be unprofessional conduct. It is therefore his duty to undertake defence of a crime regardless of the guilt of the crime except those of suspicious circumstances e.g. personal interest, non-payment of fees, etc. see ***Udo v The State;***[22] and ***Udofia v The State.***[23]

III. Avoiding Conflict of Interest

A. General Rule

A lawyer has a duty to avoid conflict of interest. A legal practitioner is to disclose any interest he has in relation to the subject-matter or litigation. This interest could be developing interest for instance, in divorce cases and property acquisition. Where there exists such conflict, a lawyer is duty bound to disclose such as provided under ***Rule 17(1) RPC***.

B. Forms 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. See ***Rule 17(2) RPC***.

C. Instances of Conflict

1. **Acquiring Proprietary Interest in the Cause of Action or Subject Matter of Litigation:** A lawyer shall not acquire proprietary interest in the cause of action or subject matter of litigation which he is conducting for a client. See ***Rule 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. For a lien, it must be a court order to this effect; the lawyer cannot unilaterally have a lien on the client's landed property. This is different from the lien on the client's documents where the lawyer can have a lien unilaterally. ***Section 16 Legal Practitioners Act*** provides procedure (give client a bill of charges, allow a period of 1 month to elapse before instituting an action in court). NB: where it is a contingent fee i.e. when damages are paid in a civil matter, the lawyer will be paid his fees.
2. **Acceptance of a Brief that is Likely to Conflict with the Interest of an Existing Client:** According to ***Rule 17(4) RPC***, 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.
3. **Appearing as a Counsel for a Client in a Matter that He is also a Party:** A lawyer shall not appear as counsel for a client in a matter where he himself is a party. See ***Rule 17(5) RPC***. The above rules also extend to the lawyer's associates, partners and affiliates.

D. Conflicts that may Cause Embarrassment to the Lawyer

The following are conflict of interest which may cause embarrassment to a legal practitioner:

1. Giving evidence in a case which he acts as counsel i.e. the legal practitioner testifying as a witness, the law demands that he steps down as a legal practitioner. See ***Rule 20 RPC***.
2. Swearing affidavit evidence on behalf of a client.
3. Where the lawyer's own professional conduct is likely to be impugned.
4. Standing bail or surety. See ***Rule 31(1) RPC***.
5. Where the lawyer has to act against a close relation.
6. Acting for several accused persons with conflicting interests.
7. New lead counsel replacing existing one. See ***Rule 29 RPC***.
8. Acting for the opposing party in an earlier but related matter.
9. Legal practitioner as a party in an action. Counsel should not represent himself in litigation since objectivity and detachment can hardly be maintained. See ***Egbe v***

[22] (1988) NWLR [Pt. 82] 316
[23] (1988) 2 NEEIII

Adefarasin.[24]

10. A lawyer will not be permitted to act against his former client when he has obtained confidential information while acting for him, which would be improper and prejudicial to use against him in the service of an adversary. Otherwise, there is no rule that a lawyer cannot act against his former client. See ***Onigbongbo Community v Minister of Lagos Affairs & 31 Others*** and ***Re Chief FRA Williams***.[25]
11. Conversely, a judge should not preside over a case in which he had previously served as counsel or rendered legal advice unless he had fully disclosed this to the parties. See ***Olue v Enenwali***.[26]

IV. Representation within Bounds of Law

A. General Rule

A lawyer has a duty to represent the client within the bounds of law. See ***Rule 15 RPC***. A lawyer may refuse to represent a client where he believes his conduct to be unlawful even though it can be argued to be legal. He shall also keep strictly within the law notwithstanding any plea or instruction from the client, and if the client insists on a breach of law, the lawyer shall withdraw his service.

B. Instances

Thus, a lawyer must:

1. Keep strictly within the law.
2. Restrain his client from misconduct or breach.
3. Not give service or advice which is capable of causing disloyalty, breach of law or disrespect to judicial officer such as explicitly or implicitly advising client to give bribes to judicial officer, collecting the bribe meant for the judicial officer and keeping it for himself. See ***Rule 15(3) (a) RPC***.
4. Not file suit, assert a position or delay trial or take actions that are meant to harass the opponent or are malicious. See ***Rule 15(3) (b) RPC***.
5. Not advance a claim unwarranted under the existing law e.g. no law supporting the claim except within the law.
6. Not fail or neglect to inform the client of ADR [***Rule 15(3) (d) RPC***] or fail to disclose what he is required by law to reveal.
7. Not use false evidence.
8. Not make false statement of fact or law.
9. Not create and preserve false evidence.
10. Not assist in conduct that is illegal or fraudulent.
11. Not do any conduct contrary to any of the rules.

V. Representing Client Competently

A. General Rule

A lawyer shall not handle a legal matter, which he is not competent to handle without associating a lawyer with him who is competent except the client objects or neglect a matter entrusted on him or handle a legal matter without adequate preparation. See ***Rule 16 RPC***. It is opined that the exception means that the client objects to the skilled lawyer chosen (Mr A) and not that the client objects to having any skilled lawyer because if the client does so, the lawyer should reject the brief.

B. Instances

1. A lawyer should not handle a legal matter without adequate preparation
2. A lawyer should not neglect or abandon a legal matter entrusted to him

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[24] (1987) 1 NWLR [Pt. 47]
[25] (1972) 2 UILR 235 (SC)
[26] (1976) 2 SC 23

3. A lawyer should not attempt to exonerate himself from or limit his liability to his client from his personal misconduct.

C. Exhibiting Care & Skill in Handling Clients Matters

There is a required standard of skill and care in handling a client's matter. If there is an impression that the legal practitioner is skilled in that area, then the duty of skill and care in such case is that of professional standard higher than the regular duty. The duty extend to avoiding delay, advising client, having control of the litigation. See ***Rule 24(2) RPC***. In ***Adewunmi v Plastex (Nig) Ltd*** the Supreme Court stated that "when the counsel has satisfied himself that he has no argument to offer in support of his own case, it is duty at once to say so, and to withdraw altogether. The counsel is the master of the argument and of the case in court and should at once retire if he finds it wholly unsustainable, unless indeed he has express instructions to the contrary. When a legal practitioner breaches his duties, he shall be liable for negligence. See ***Section 9 Legal Practitioner Act***. The exceptions are: (a) in pro bono services. See ***Section 9(2) LPA***; and (b) in litigation. See ***Section 9(3) LPA*** and ***Randel v Wosley***.

VI. Professional Negligence

A. General Rule

A legal practitioner owes his client a general duty of care and diligence. Damages arising from a lawyer's negligent conduct will make him liable. ***Section 9(1) LPA*** provides that a lawyer shall not be immune from negligence while acting in his capacity as a legal practitioner.

B. Exceptions

The exceptions to this rule are as provided under ***Section 9(2) & (3) LPA*** as follows:

1. **Pro Bono Services:** where a lawyer gives his services gratuitously and without consideration, the law protects him from liability resulting from his actions or inaction.
2. **While acting as an Advocate or Barrister before a Court or Tribunal:** this immunity given to legal practitioners here only protects him against any action in court. If his negligence even in conducting proceedings in the face of the court amounts to unprofessional conduct, the legal practitioner may be dealt with accordingly by the Legal Practitioners Disciplinary Committee.

VII. Privilege and Confidence of a Client (Professional Secrecy)

A. General Rule

A lawyer must preserve his client's confidence in the performance of his duty and must not disclose any information without his client's consent. ***Rule 19 RPC*** provides that a legal practitioner is not to reveal secret or confidence of his client, use secret or confidence of his client to his client's disadvantage, use client's secret and confidence to his advantage or that of a third party, unless with client's consent after full disclosure.

In the case of ***R v Egbuabor***[27] where original and translated version of statement of accused to the police was being produced and read in court, accused denied that it is correct. He said what he told the police was that he was sick and could not get up. Defence Counsel then said "I do not object to the statement being tendered. My original instruction was that accused went to tap palm wine on the day 'in question". It was held in fairness to counsel it should be said that apart from this lapse, he seems to have done his best for the appellant, and we do not suggest that he was guilty of any conscious dereliction of his duty to his client. That cannot alter the fact that by his unauthorised disclosure and his abstention from cross-examination, he implied that he himself doubted if the evidence to be given by his client was to be relied on, and it was a miscarriage of justice, as understood in this country that he should have

[27] (1962) 1 All NLR 287

continued to represent the appellant without the appellant's being aware that the counsel to whom he looked to present his case had, from his point of view, gone over to the enemy. In the circumstances we consider that the conviction must be set aside, but there was a substantial case against the appellant, and the order we make is that the conviction is quashed and the appellant is to be retried before another Judge of the Western Region High Court.

B. Professional Communication

Section 192(1) of the Evidence Act has to do with professional communication. It provides that "no legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment; provided that nothing in this section shall protect from disclosure – (a) any such communication made in furtherance of any illegal purpose; (b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment."

C. Application of Rule after Termination of Relationship

Section 192(3) EA went further to state that: even after the termination of the relationship, the rule still applies – this is even more onerous than the RPC. ***Section 193 EA*** also provides that the above provisions shall apply to interpreters and the clerks of the legal practitioners.

D. Exceptions

The exceptions to this rule are:

1. It does not extend to suppression of a crime or fraud. See ***Annesley v Earl of Anglesea***.[28] ***Rule 15(4) RPC***: where the information relates to the perpetuation of fraud and he has warned the client to desist or rectify it and he refuses, then he is under an obligation to reveal the fraud to the affected person or tribunal, except the communication is privileged. This provision makes it seems that where such information is privileged that the lawyer is not under an obligation to reveal. Rule 15(4) must be read in conjunction with the exceptions created under Rule 19(3) (c) i.e. where the information is to as to the commission of crime, the legal practitioner can reveal the information even though privileged. NB: this covers where the crime is committed or still being committed. Also, if the client in murder trial admits that he is guilty, the counsel cannot reveal this and cannot canvass a defence based on his innocence. He can however use mitigating factors such as involuntary intoxication, etc.
2. If the information is not a confidential one in nature (notorious facts).
3. He may reveal with the consent of the client after a full disclosure.
4. If it is meant to be communicated to a 3rd party.
5. If a legal practitioner is accused of wrongful conduct by his client or in order to collect his professional fees.
6. If the communication is of an illegal purpose.
7. By order of court or where the rules or law permits e.g. ***Money Laundering Prohibition Act*** – reveal communication if it amounts to money laundering. ***Section 6*** provides that financial institutions are under the obligation to report suspicious transactions to the appropriate authorities and to keep surveillance on them. ***Section 7***: such record are to be kept for a period of 5yrs even after the serving relationship with the customer. See ***Section 4***: non-financial institutions including lawyers are under obligations to report suspicious transactions e.g. where large sums of money is involved and the source of the money

[28] (1743) LRQB 317

cannot be verified. ***Section 8***: The records referred to in section 7 of this Act shall be communicated on demand to the Central Bank of Nigeria, or the National Drug Law Enforcement Agency and such other regulatory authorities, judicial persons as the Commission may, from time to time, by order published in the gazette, specify. However, the court in ***NBA v. AG Federation***, held that the provisions of Section 5 and 6 of the Money Laundering (Prohibition) Act are inconsistent with the provisions of Rule 19 of the RPC and Section 192 of the Evidence Act, which thereby becomes null and void as to the extent of its inconsistency. Thus, there is no longer mandatory requirement for lawyers to annually file reports about the clients to the designated authorities.

VIII. Appearing as a Witness for Client

A. General Rule

Rule 20 (1) 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 witness in the case.

B. Exceptions

However, the rule admits some exceptions, which are as follows (***Rule 20(2) RPC***):

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.
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 relates to a will where the lawyer happens to be a witness – because no other person to testify to the matter.

C. Withdrawal at the Course of Undertaking the Case & Allowing Other Counsel to Represent His Client

Rule 20(4) RPC provides that where the counsel already undertakes the case before realising that he will be called upon to testify, he should withdraw from the case. ***Rule 20(5) RPC***: If in the course of the trial, it becomes apparent that his testimony will be required to uphold the course of justice, it will not be prejudicial to his client, he may leave further conduct of the trial to other counsel and testify. But under Rule 20(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 – this is strange since there are rare cases where the testimony will not be prejudicial to the client. ***Rule 20(6) RPC***: the counsel should allow other persons to represent the client where he is about to testify or believes he will testify but where impossible to get other counsel, he may testify and continue to represent the client but he must not try to show the veracity of his testimony.

XI. Responsibility for Litigation

1. **Deciding the Case to bring for the Plaintiff and Cases to Contest for the Defendant:** It is the duty of a lawyer to decide the case to bring to court for the plaintiff 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
2. **Not being a Puppet in the Hands of the Client:** ***Rule 24(2) RPC*** – lawyer not expected to be a puppet in the hands of the client, he must advice the client and lead the client.
3. **Not Conducting a Case calculated to Injure to Injure or Harass the Opposing Party:** ***Rule 24(3) RPC*** provides that 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.

4. **Not allowing Client to Propel Him into doing what is Unprofessional:** It is a lawyer's duty to take decisions in matters that are incidental and are not affecting the merits of the case. He must not allow his client to propel him to do things that are not proper or professional. See ***Rule 24(4) RPC***.
5. **Decisions on Concessions to grant to the Opposing Party:** He is at liberty to make decisions on what concessions to grant to 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. See ***Rule 24(5) RPC***.
6. **Incidental Control of Trials:** A lawyer is expected to control the incidental matters such as time fixed for trial, applying or resisting adjournment and other matters that may come up in court. See ***Rule 24(6) RPC***. In the absence of express limitation, an instruction to a lawyer confers upon him the power to do all such things as he considers necessary within the scope of his instructions to obtain the most favourable result for the client. See ***Adewunmi v Plastex (Nig) Ltd***. Thus, he can:
   (a) Compromise a suit or withdraw an appeal without further reference to his client.
   (b) Determine what accommodations to be granted to the opposing lawyer to the exclusion of his client, provided the merits of the case are unaffected and the client is not prejudiced.

   The basis of the counsel's right (not duty) to control incidents of trial is the presumption of the client's confidence in the counsel. See ***Edozien v Edozien***.[29]

X. Withdrawal from Employment

A. General Rule

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

B. Exceptions

However, in the following circumstances as stated under ***Rule 21(2) RPC***, he may withdraw from employment:

1. Conflict of interest between lawyer and client e.g. lawyer is suing (on behalf of the client) for recovery of contract sum and the company sued and discovers that the company belongs to another long-standing client of the lawyer.
2. Where the client insists on an unjust or immoral course of 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.

C. Notice of Withdrawal & Return of Fee not earned to Client

A lawyer who is withdrawing from employment should give reasonable notice to the client to enable him get another lawyer. See ***Rule 21(3) RPC***. If the withdrawal occurs after full payment of fees, the lawyer should return the part of the fees that has not been earned. See ***Rule 21(4) RPC***.

XI. Dealing with Clients Property (Account & Report)

1. A lawyer is enjoined not to abuse or take advantage of the confidence reposed in him for his personal gain or benefit. See ***Rule 23(1) RPC***.
2. A lawyer has a duty to account and report promptly when dealing with client's property. See ***Rule 23(2) RPC*** and ***NBA v Akintokun***.

[29] (1993) 1 NWLR [Pt. 272] 678 at 693

3. The legal practitioner must duly account for money received on behalf of his client.
4. The legal practitioner must not mix such money or property with his. A legal practitioner in this regard is expected to open three separate accounts; personal account, trust account, and client's account. Money belonging to the client should be paid into client's account.
5. Where the opposing party want to offer the lawyer money, the consent of the client must be obtained and this is to avoid a situation of conflict of interest. In this regard, ***Rule 54 RPC*** provides that a lawyer shall not accept any compensation, rebate, commission, gift or other advantages from or on behalf of the opposing party except with the full knowledge and consent of his client after full disclosure. If not disclosed, it will amount to secret profit and upon revelation, would be forfeited.

XII. 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. The exception is special circumstances or urgency. Examples of such (though not expressly provided for by the rules) are:

1. Extreme old age
2. Infirmity of the mind or body
3. Client is in custody

XIII. Change of Counsel by Client

A. General Rule

Rule 29 RPC gives the client the right to terminate the brief of a lawyer and change his lawyer.

B. Things to Observe after Change

After the change, the following must be ensured:

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

C. Things the Old Lawyer must Handover to the New Lawyer

The old lawyer must handover to the client the following:

1. All letters written by the lawyer to other persons at the discretion of the client e.g. case file, exhibits.
2. Copies of letters written by the lawyer to other persons at the discretion of the client.
3. Drafts and copies made in the course of business.

D. Things the Old Lawyer is Entitle to

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.

XIV. General Duties of Lawyers to Clients

The general duties of a client are:

1. Devotion and dedication to cause of his client
2. Fiduciary duty
3. Opening of client's account

OTHER DUTIES OF LAWYERS TO CLIENTS

1. **Advising Client honestly and candidly:** a lawyer has a duty to advise client honestly and candidly and a duty not to file frivolous and malicious suit. See ***Rule 15(13) (b) and (d) RPC***.
2. **Acting for Parties with Opposing Interest:** a lawyer has a duty not to act for two or more clients with opposing interest at the same time. See ***Rule 17(1) and (4) RPC***. He cannot represent client when he is a party. In litigation, there is no way a legal practitioner

can appear for both parties but in conveyancing, he can (***Smith v Mansi***) under certain circumstances. A legal practitioner can appear against a client whom he has handled his case previously in a different case with different subject-matter. A previous client can be represented over and over again. In ***Onyeke v Harridem Nig Ltd***, the Court of Appeal stated the following: "the court frowns upon the idea of a counsel appearing for one party, say the plaintiff, at the early stage of a transaction and then turning around at a later stage of the same transaction to appear for his opponent. But, where the transactions are different, the court will not restrain a counsel from changing sides".

3. **Agreement with Client:** a lawyer has a duty not to breach agreement with client. See ***Rule 18 RPC***. On the other hand, a client has freedom of choice of legal practitioner. A Client may terminate his brief to counsel at any time when he no longer has confidence in him. A client can change his lawyer whether for good cause or not. It does not absolve the client of any fees he incurred to the lawyer before termination. Where a counsel is debriefed, he owes the court a duty to make a final appearance before the court for a formal withdrawal of his representation. See ***Egharegbarni v Julius Berger (Nig) Ltd***.[30] Lawyer should have agreement with client in writing and even if the agreement is oral, the lawyer is bound by the agreement.
4. **Investigation of Facts and Production of Witness, Etc:** ***Rule 25 RPC*** provides that a lawyer has a duty to thoroughly investigate and marshal out facts stated by client including interview of potential witnesses for his client or for the opposing side. It is not inadvisable that counsel should meet his client's witnesses for the first time in court.
5. **Purchase of Property from Client:** a lawyer has a duty not to purchase property from client due to the existence of fiduciary relationship. However, purchase can be done upon fulfilment of certain conditions. The conditions were stated in ***Williams v Franklin***[31] as follows:
   (a) The client was fully informed (the lawyer discloses fully his interest to the client);
   (b) The client had competent independent legal advice, and
   (c) The price paid was a fair one.
6. **Beneficiary of Will:** a lawyer has a duty not to receive legally from a client. A legal practitioner who prepares a will is not expected to be beneficiary under such will. However, if the benefit or gift coming to him is not much, then such gift can stand. ***Farelly v Conigan***.[32]
7. **Acting as Both an Executor/Administrator/Trustee and a Solicitor:** a lawyer has a duty not to act as an executor/administrator/trustee and a solicitor at the same time. When a legal practitioner is an executor of a property, the law states that he cannot act as solicitor in respect of the same property. See ***NBA v Koku***.[33]
8. **Accountability and Costs/Charges:** A Lawyer has the duty to open a separate Bank account for the keeping of money received on behalf of a client and should make no withdrawal from it unless permitted by the Rules. A lawyer who breaches this provision could have his name struck off the roll even though there has been no criminal trial or conviction. In ***Re a Solicitor***,[34] the court held that a bank cannot have recourse to the Legal Practitioners client's account to recover any indebtedness of the legal practitioner to the bank unless the indebtedness arose in connection with the account. See also ***Section***

[30] (1995) 5 NWLR [Pt. 398] 679 at 699
[31] (1961) ALL NLR 218
[32] (1899) AC
[33] (1991)
[34] 121 Sol. J0376. Decided 25th May 1977

20(1) of Legal Practitioners Act.

The Legal Practitioners' Remuneration Committee is empowered under ***Section 15 of the LPA*** to make orders regulating fees of legal practitioners. Charges means any charges (whether by way of fees, disbursements, expenses or otherwise) in respect of anything done by a legal practitioner in his capacity as a legal practitioner. See ***Section 19 of the LPA***. It should be noted that where a lawyer collects money for his client, or is in position to deliver property on behalf of his client, he shall promptly report and account for it and shall not mix such money or property with or use it as his own. See ***Rule 23(2) of RPC***.

A lawyer is entitled to be paid adequate remuneration for his service to his client. See ***Rule 48(1) RPC***. But he shall not collect any illegal or excessive fee (***Rule 48(2) RPC***). The professional fee charged by a lawyer for his services shall be reasonable and commensurate for his services. Accordingly, a lawyer should not charge fees, which are excessively high or too low to amount to understanding except where the low fee is based on a special relationship or indigence of a client. See ***Rule 52(1) RPC***. A lawyer shall not share the fees of his legal services except with another lawyer based upon the division of service or responsibility. See ***Rule 53 RPC***.

9. **Acted previously as a Judge:** a lawyer has a duty not to act as a legal practitioner when he had previously acted as a judge over the matter. See ***Rule 6(1) RPC*** and ***NBA v Fawehinmi***.

(Week 7)

PROPER AND IMPROPER ATTRACTION OF BUSINESS AND CORRUPTION ISSUES

INTRODUCTION

Improper attraction of business includes all acts, which give an unfair advantage to a lawyer thus lowering the prestige of the profession. It also causes unhealthy reputation, misrepresentations, insinuations of incompetence, and it is unethical. Improper attraction of business is not permitted in the legal profession.

There are two ways in which lawyers can improperly attract business. They are advertising and soliciting. Advertising is provided for under ***Rule 39(1) RPC*** which permits some form of advertising provided it is fair and proper in all circumstances and complies with the provisions of RPC. The kinds of advertisements which a lawyer can engage is however made subject to ***Rules 39(2) & (3) RPC***. Soliciting on the other hand is provided for under ***Rule 39(3) RPC*** and unlike advertisement, it is absolutely prohibited by RPC. Soliciting refers to any statement or conduct by a lawyer which is calculated to lure a particular person or group of persons to give a brief to the lawyer. Soliciting involves directly or indirectly seeking for employment by a lawyer. This could be achieved by directly asking a possible client to employ the lawyer. It may also be done indirectly through suggestive handbills, circulars or even through third parties who tout for the lawyer with his knowledge. Unlike advertising, soliciting is absolutely prohibited by the RPC. A lawyer should therefore not solicit for employment from the public whether directly or indirectly.

ADVERTISEMENT

I. General Rule

Under the RPC, advertisement is allowed to an extent. Accordingly, ***Rule 39(1) RPC*** provides that subject to ***Rules 39(2) & (3) RPC***, a lawyer may engage in any advertising or promotion in connection with his practice of the law provided it is fair and proper in all the circumstances and complies with the provisions of the RPC. The most infamous reported case on improper attraction of business, albeit not in the legal profession was the locus classicus case of ***Allison v General Council of Medical Education and Registration***.[35] In that case, the Plaintiff, a medical practitioner published a great number of advertisements in several newspapers which contained reflections upon his medical colleagues generally and their methods of treating their patients, the plaintiff after castigating them, advised the public to have nothing to do with his colleagues and their drugs. The advertisements also recommended to the public to apply to the plaintiff for medical advice and stated his address and the amount of fees, which he charged. The General Council found him guilty of infamous misconduct in a professional respect and directed that his name be erased from the register of medical practitioners and his challenge of that decision was dismissed.

Before the making of the Legal Practitioner's Rules 1964, advertising was generally prohibited in the legal profession under Rule 33 of the Old Rules. In ***LPDC v Gani Fawehinmi***,[36] the Late Chief Gani Fawehinmi after editing a book, advertised it in a newspaper known as 'West Africa' in the following words, "*A New Book on Nigerian Constitutional Law titled Nigerian Constitutional Law Reports 1981 Vol One Edited by Chief Gani Fawehinmi the famous, reputable and controversial Nigerian Lawyer.*" The office of the Attorney General of the Federation brought a two count charge of professional misconduct against Chief Fawehinmi on the grounds of contravention of the rules of advertisement under

[35] (1894) 1 QB 750

[36] (1985) 2 NSCC 998

Rules 33 and 34 of the RPC 1979. The matter was however struck out but on the successful challenge of the composition of the tribunal, which had offended the rule of natural justice and fair hearing.

II. Conditions for Advertising

The conditions for advertisement are:

1. It must be fair and proper in all the circumstances.
2. It must comply with the provisions of RPC. See ***Rule 39(1) (a) & (b) RPC***.

III. Unfair and Improper Forms of Advertisement

By ***Rule 39(2) RPC***, a lawyer shall not however engage or be involved in any advertisement or promotion of his practice of the law which:

1. Is inaccurate or likely to mislead;
2. Is likely to diminish public confidence in the legal profession or the administration of justice or otherwise bring the legal profession into disrepute;
3. Makes comparison with or criticizes other lawyers or other professionals or professions;
4. Includes any statement about the quality of the lawyer's work, the size or success rate of his practice; or
5. Is as frequent or obstructive as to cause annoyance to those to whom it is directed.

IV. Permitted Forms of Advertisement and Its Restrictions

A. Law List and Law Directory: By ***Rule 39(4) RPC***, a lawyer is permitted to publish his particulars in a reputable law list or law directory. It provides that nothing in Rule 39 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:

1. Name or names of his professional association;
2. Address, telephone number, telex number, email addresses, etc;
3. School, colleges, or other institutions attended with dates of graduation, degree and other educational or academic qualifications or distinctions;
4. Date and place of birth and admission to practice law;
5. Public or quasi-public office, post of honour, legal authority, etc;
6. Legal teaching position;
7. National honours;
8. Membership and office in the NBA and duties thereon; and
9. Position held in legal scientific societies.

B. Note-Papers, Envelopes and Visiting Cards: By ***Rule 40 of RPC***, a lawyer may cause to be printed on his note-papers, envelopes and visiting cards -

1. His name and address;
2. His academic and professional qualifications and title including the words "Barrister-at-Law", "Barrister and Solicitor", "Solicitor and Advocate", Legal Practitioner" "Attorney-at-Law", and
3. Any National Honours.

C. Signs and Notices: ***By Rule 41 of RPC***, a lawyer or a firm may display at the entrance of or outside any buildings or offices in which he or it carries on practice, a sign or notice, containing his or its name and professional qualifications. The sign or notice shall be of reasonable size and sober design.

D. Books and Articles: By ***Rule 42 of RPC***, where a lawyer writes a book or an article for publication in which he gives information on the law, he may add his professional qualification after his name.

E. Change of Address: By ***Rule 43 of RPC***, on a change of address, telephone number or other circumstances relating to his practice, a lawyer may send to his client, a notice of a change and may insert an advertisement of such change in a newspaper or journal.

F. Associate and Consultant: By ***Rule 44 of RPC***, where a lawyer is available to act as an

associate of other lawyers, either generally or in a particular branch of the law or legal service, he may send to lawyers in his locality only and publish in his local journal, if any, a brief and dignified announcement of his availability to serve other lawyers in that connection as long as the announcement is not designed to attract business improperly.

G. Lawyer's Robes: ***Rule 45 RPC*** provides that except with the permission of the Court, a lawyer appearing before a High court, the Court of Appeal or the Supreme Court shall do so in his robes. Also, a lawyer shall not wear the Barrister's or Senior Advocate's robe - (a) On any occasion other than in Court except as may be directed or permitted by the Bar Council; or (b) When conducting his own case as party to a legal proceeding in Court; or (c) Giving evidence in a legal proceeding in Court.

H. Press, Radio and Television: ***Rule 46 RPC*** provides as follows:

1. A lawyer may write articles for publications, or participate in radio and television programmes in which he gives information on the law, but he shall not accept employment from any such publication or programme to advice on inquires in respect of their individual rights.
2. A lawyer shall not -
   (a) Insert in any newspaper, periodical or any other publication, 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 photograph 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.

SOLICITING

I. Forms of Soliciting

Even though advertising is allowed to some extent, with respect to soliciting, ***Rule 39(3) RPC*** provides that notwithstanding Rule 39(1) RPC, a lawyer shall not solicit professional employment either directly or indirectly by:

1. Circulars, handbills, advertisement, through touts or by personal communication or interview;
2. Furnishing, permitting or inspiring newspaper, radio or television comments in relation to his practice of the law;
3. Procuring his photograph to be published in connection with matters in which he has been or is engaged, or concerning the manner of their conduct, the magnitude of the interest involved or the importance of the lawyer's positions;
4. Permitting or inspiring sound recording in relation to his practice of law; or
5. Such similar self-aggrandisement.

II. Other Forms of Soliciting

1. Solicitation for employment in Court premises.
2. Solicitation for conveyancing business.
3. Instigating litigation.
4. Ambulance chasing.
5. Under association. This is an indirect form of touting; and could also be referred to as "class touting".
6. It is desirable for a legal practitioner to meet with people in clubs, restaurants and other social gatherings, but not where the aim of such gathering is for a legal practitioner to associate unduly with other persons who are in a special position to assist him to obtain

employment.

7. It is very dishonourable for a legal practitioner to distribute his cards in social gatherings to gain employment. This is very degrading and unethical.

INSTIGATING LITIGATION

I. General

Every lawyer has an ethical duty not to instigate controversy or litigation. In this regards, ***Rule 47(1) RPC*** provides that a lawyer shall not foment strife or instigate litigation and, except in the case of close relations or of trust, he shall not, without being consulted, proffer advice or bring a law suit. Further, by ***Rule 47(2) RPC***, a lawyer shall not do the following:

1. A lawyer shall not search the land registry or other registries for defects with a view to employment or litigation.
2. A lawyer shall not seek out claimants in respect of personal injuries or any other cause of action with a view to being employed by the prospective client.
3. A lawyer shall not engage, aid or encourage an agent or any other person to follow up on accidents with a view to employment as a lawyer in respect of any claims arising therefrom.
4. A lawyer shall not offer or agree to offer rewards to any person who by reason of his own employment is likely to be able to influence legal work in favour of the lawyer.

EFFECT OF BREACHING THE RULE OF ADVERTISEMENT

1. Where there is a breach of advertisement, the noble and sober nature of the profession will not be maintained since success now depends on effective advertisement and not on competence.
2. Adverts tend to berate or belittle other members of the profession. It creates unfair attraction of business. Briefs will now depend on the financial capability of the lawyer to engage the best form of advert.
3. Unhealthy competition and rivalry will be created and dignity of the profession would be eroded by such practice.

WHETHER THERE IS ANY DIFFERENCE BETWEEN ADVERTISEMENT AND SOLICITING

I. Lack of Difference

1. Soliciting is done through advertisement
2. Both can be made to individuals and public
3. Both can be aim at getting business or employment
4. Both diminishes the prestige of the legal profession
5. Both enhance rivalry and competition amongst members of the legal profession
6. Both berates and belittle other members of the profession

II. Existence of Difference

1. Advertisement is to raise awareness while soliciting is seeking for employment
2. Soliciting is done directly while advertisement is done indirectly
3. There are permissible circumstances under advertisement while soliciting can lead to commission of crime
4. Soliciting encourage litigation while advertisement may not directly encourage litigation
5. Advertisement may not necessarily be to seek for business e.g. change of address while soliciting is basically to ask for business
6. The word “advert” was used to describe solicitation while solicitation was not use to describe advert

CORRUPTION BY LAWYERS

A. Definition

Corruption simply means an undue advantage, abuse of office, undeserved favour obtained through manipulation of rules or status: any untoward conduct occasioned by graft or promise of same. ***Section 15(5) CFRN 1999*** provides that the state shall abolish all corrupt practices and abuse of power. In ***AG Ondo State v. AG Federation***[37] the court held that the Independent Corrupt Practices and other Related Offences Act 2000 is applicable to every facet of the Nigerian society without any exception.

B. Applicable Statutes in Curbing Corruption

1. Penal Code
2. Criminal Code
3. Economic and Financial Crimes Commission Act 2004
4. Independent Corrupt Practices and Other Related Offences Act 2000
5. Money Laundering Prohibition Act

C. Corruption Issues/Cases

1. Bribery and corruption
2. Nepotism and favouritism e.g. in conferment of the rank of SAN
3. Official gratification
4. Contract inflation and bid rigging
5. Money laundering
6. Cyber crimes
7. Exam malpractice
8. Leakage of court judgments before delivery
9. Judicial corruption (NJC in 2013 suspended Abubakar Mahmud Talba of the FCT High Court for failure to exercise discretion judicially and judiciously as seen in ***FRN v. Esai Dangabar***)

D. Causes of Corruption

1. Favouritism
2. Greed and self-aggrandizement
3. Obsolete laws
4. Abuse of the use of prerogative of mercy
5. Non-enforcement of laws
6. Lack of independence of judiciary
7. Inadequate funding
8. Delay in adjudication of cases
9. Irregularity in the appointment of judicial officers

E. Effect of Corruption

1. Decreases image of the legal profession
2. Decay in infrastructure
3. Unemployment
4. Lack of trust
5. Inadequacy of foreign investment due to lack of confidence in the judicial process
6. Miscarriage of justice
7. Anarchy

F. Way Forward

1. Re-orientation of the populace
2. Punitive measures
3. Adherence to rule of law

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[37] (2002) 9 NWLR [Pt. 772] 306

4. Reward mechanism or system
5. Capital punishment
6. Expeditious judicial system
7. Institutional checks for public complaint processes
8. Reform of the NJC
9. Supremacy of the Constitution
10. Amendment of obsolete laws
11. Judicial reforms
12. Development of our value system
13. Independence of the judiciary

(Week 8)

DUTY OF LAWYER TO STATE, COURT, COLLEAGUES AND THE PROFESSION

DUTIES OF LAWYER TO COURT

1. **Punctual to Court:** recommended 30minutes before the court sits, which is normally 9am.
2. **Duty to Observe the Rule of Law**: a lawyer has a duty to observe the rule of law, promote the course of justice and maintain high standard of professional conduct. See ***Rule 1 RPC***. This duty include not going outside or giving advice contrary to the provision of the law.
3. **Properly Dressed in Professional Attire**: black and white. See ***Rule 36(a) RPC***.
4. **Proper Way of Addressing the Court:** the proper way of addressing the court, depending on the court the lawyer is appearing before, are as follows:
   (a) Magistrate Court - Your Worship.
   (b) Customary Court - Your Honour.
   (c) High Court - My Lord/Your Lordship.
   (d) Court of Appeal and Supreme Court - My Lord.
   (e) Legal practitioner - My Learned Friend
5. **Courtroom Decorum:** the following are the court decorum a lawyer is expected to observe:
   (a) Conduct case with decency, decorum, custom and code of behaviour of the court, custom of practice at the bar, appearances, dressing, manner and courtesy. See ***Rule 36(b) RPC***.
   (b) Rise while addressing the court or being addressed by the court. See ***Rule 36(c) RPC***.
   (c) Address objections, requests, arguments and observations to the judge. Non-engagement in banter, personality display, argument or controversy with opposing lawyer. See ***Rule 36(d) RPC***.
   (d) Non-engagement in undignified or discourteous conduct degrading to a court or tribunal. See ***Rule 36(e) RPC***.
   (e) Not remain in the bar or wear lawyer's robe when conducting a case in his own cause or giving evidence. ***Rule 36(f) RPC***.
   (f) Mandatory court attendance unless leave obtained. Must write an adjournment letter to the court and opposing lawyer requesting the trial be adjourned giving good reasons – adjournment is at the discretion of the court. Failure to do so may lead to striking off the case for lack of diligent prosecution. Where the lawyer is defence, default judgment. See ***Okonofua v State***[38] and ***FRN v Abiola***.[39]
   (g) Respect to the court in words and deeds. See ***Rule 31(1) and Rule 35 RPC*** (Tribunal). A lawyer has a duty to treat the court with respect, dignity and honour. In this regard the following are disallowed in court: using of telephone in court (SMS, calling, receiving phone calls), reading of newspapers in court, chewing of gums in court, distracting the court with your movement in court, discussing loudly in court (most times in communication, lawyers passes to each other, short notes), sitting carelessly and crossing your legs.
   Importantly, every complaint against judicial authority is to be made to appropriate authority. See ***Rule 31(2) RPC***. Also, lawyers are to fulfil undertaking made to court else it becomes a professional misconduct. See ***Rule 31(3) RPC***.

[38] (1981) NSCC 233
[39] (1997) NWLR [Pt. 488] 444 at 467

(h) No unnecessary adjournments

6. **Conducting the Case:**
   (a) The lawyer must conduct case in logical sequence – in civil, the plaintiff first then his witness. In criminal, complainant first then prosecution witness, defendant leads the defence and then witnesses.
   (b) The lawyer must be candid and fair to the court. See ***Rules 30 and 32 RPC***.
   (c) The lawyer must not obstruct justice e.g. by advising client not to tender certain documents. Lawyer is an officer of court. See ***Rule 30 RPC***. A lawyer being an officer of the court is not expected to do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice. Lord Denning in ***Rondel v Worsely*** stated that a lawyer as an advocate for an individual is retained and recommended for his services, yet he has a prior and perpetual retainer on behalf of truth and justice.
6. **Trial Publicity**: a lawyer should not engage in trial publicity. A lawyer should not comment on pending cases (might lead to judicial or public bias). See ***Rule 33 RPC***.
7. **Relation with Judges**: justice must not always be done but must be seen to be done. A lawyer must be careful with relationship with judges.
   (a) A lawyer should not do anything that is calculated to gain or has the appearance of gaining special personal consideration of favour from a judge. See ***Rule 34 RPC***.
   (b) Avoid having private discuss with judge in absence of opposing counsel. See ***Rule 31(4) RPC***.
   (c) No written communication should be delivered to the judge until read by the opposing counsel. See ***Rule 31(5) RPC***.
8. **Upholding Justice**:
   (a) Guide the court in doing justice
   (b) Citing legal authorities to assist the court even where it is adverse to his case
   (c) The prosecution in criminal trials has a duty to prosecute not to persecute – ***Rule 37 RPC***.

DUTIES OF LAWYER TO THE STATE

A. General Duty

The general duty of a lawyer as stated under ***Rule 1 RPC*** is to uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and should not engage in any conduct which is unbecoming of a legal practitioner.

B. Other Duties

The following are some of the duties of a lawyer to the state:

1. Promote the law and the course of justice.
2. Non-involvement in anything that will bring overthrow of government except through democratic means.
3. If the law is being tested, lawyer as a social agent should spearhead such testing of the law.
4. A lawyer should not advice or assist in violation of the law.
5. A lawyer should not cite wrong authorities/precedent/ratio.
6. Lawyers must disclose acts of clients where such would constitute a crime. Even in cases of privileged communication, a lawyer has power to divulge such communication where it may lead to a crime. It must be noted that lawyer does not become liable where client goes on to commit the crime even after being advised otherwise by the lawyer.
7. Advice against corruption – ***Rule 15(3) (a) RPC***.

DUTIES OF LAWYER TO COLLEAGUES

1. **Treatment:**
   (a) Colleagues must be treated with utmost courtesy and respect. See ***Rule 26(1) RPC***.
   (b) A lawyer could be liable for contempt where he threatens a fellow colleague on account of his client's case. See ***Re Johnson***.
   (c) A lawyer must be detached from cases that he handles.
   (d) A counsel must respect opposing counsel and must not bring a case or defence merely to harass or to injure or to oppress or to work hardship on the opposing counsel.
   (e) Actions brought by counsel must be justifiable.
   (f) Counsel must avoid use of abusive words or statements against opponents in or out of court.
   (g) Counsel must not be used as a tool to assuage the emotions of a disgruntled client. If the client is always insisting on suing, advise him on ADR in accordance with ***Rule 15(3) (d) RPC***.
2. **Keeping Promises**:
   (a) A lawyer must always act in good faith when dealing with clients, and
   (b) Stand by undertakings given, whether reduced into writing or not. See ***Rule 27(2) RPC***.
3. **Sharp Practices:** a lawyer must avoid sharp practices such as acts or conducts calculated to gain undue advantage against an opposing counsel/client or taking undue advantage of an opposing counsel's predicament or misfortune. See ***Rule 27(2) (c) RPC***. A lawyer should apply well known customs or practice at the Bar. Counsel must inform opposing counsel in time in events where the law states otherwise. Some examples of sharp practices includes:
   (a) deliberately filing frivolous and irregular applications;
   (b) seeking leave of court to strike out a matter in spite of the previous knowledge of opponent's absence;
   (c) Where counsel plays to the gallery in general. In ***Kwaptoe v Tsenyil***, counsel waited till one day to expiration of time to file notice of appeal.
4. **Coveting Client:**
   (a) A counsel must not covet the client or take over the employment of a colleague at the Bar. However, counsel can proffer advice to persons who are displeased with the services of their counsel.
   (b) If client drops a colleague and then engages you, try to help your colleague recover the fees due to him.
   (c) Where a lawyer is employed by a client to join the original lawyer, the later lawyer shall decline if it is objectionable to the original lawyer, but if the original lawyer is relieved of his retainer by the client or he withdraws, the later lawyer may come into the matter, and in that case he shall use his best endeavour to ensure that all the fees due to the other lawyer in the matter are paid. See ***Rule 27(4) RPC***.
   (d) A counsel must not communicate with client of his colleague in the absence of the colleague. See ***Rule 27(5) (a) RPC***.
   (e) A counsel must not give advice to a party not represented by him. See ***Rule 27(5) (b) RPC***.
5. **Observing Order of Precedence and Equality at the Bar:** Lawyers shall observe among one another the rules of precedence as laid down by the law, and subject to this, all lawyers

are to be treated on the basis of equality of status. See ***Rule 26(2) RPC***. The order of precedence is: AGF; AG of states in order of seniority as SAN and thereafter in order of seniority of enrolment; SAN in order of seniority; persons authorised to practice as legal practitioners by virtue of ***Section 2(3) (b) RPC***; persons whose names are on the roll in order of seniority or enrolment; and persons authorised to practise by warrant.

DUTIES OF LAWYER TO THE PROFESSION

1. Upholding the rule of law. See ***Rule 1 RPC***.
2. Promoting and fostering the course of justice.
3. Maintaining an honourable standard of professional conduct; do not behave in any conduct unbecoming of a lawyer. See ***Rule 1 RPC***.
4. Prevent persons not qualified and unfit for call to the bar from being called to the bar – ***Rule 2 RPC***.
5. Not aid unauthorised practice of law – ***Rule 3 RPC***.
6. Not sign documents prepared by a non-lawyer
7. Not share professional fee with a non-lawyer except as provided under ***Rule 53 RPC***.
8. Not allow professional services to be exploited by a lay agency, personal or corporate by standing as an intermediary between him and his client. However, this does not include charitable associations sponsoring indigent person.
9. Not partner with a non-lawyer for the purpose of practice
10. Not use the name of "Partners" or "& Co" if he is practising alone; not hold self as practising with others.
11. Payment of annual practising fee – ***Rule 9 RPC***.
12. Affixing stamp and seal on legal documents prepared – ***Rule 10 RPC***.
13. Participating in continuing professional development – ***Rule 11 RPC***.
14. Obtaining annual practising certificate – ***Rule 12 RPC***.
15. Notification of legal practice and change of address – ***Rule 13 RPC***.

CONTEMPT OF COURT

MEANING AND NATURE

Contempt of court is any conduct or speech that may bring the authority and administration of the court into disrespect, scorn or disrepute or any act done or writing published calculated to bring a court or judge into disrepute or lower his authority. Further, any act done or writing published which has the effect or obstructing or interfering with the due course of justice or the lawful process of the court. Summarily, *contempt* therefore means any wilful disobedience to, or disregard of, a court order or any misconduct in the presence of a court; any action that interferes with a judge's ability to administer justice or that insults the dignity of the court. See ***Atake v AG Federation***;[40] ***Agbachom v State***; and ***Awobokun v Adeyemi***. It must be noted that the rules regulating contempt of court apply both to lawyers and non-lawyers alike, though with much higher strictness to lawyers.

Rule 33 RPC forbids a lawyer or a law firm involved in a suit, whether civil or criminal, which is still pending or anticipated in court, to make any extra-judicial statement likely to prejudice or interfere with the fair trial of the matter (subjudice). Also, by ***Rule 31 (2) RPC***, any lawyer who has a proper ground for complaint against a judicial officer shall make his complaint to the appropriate authorities. Such complaints are made to NJC, the Chief Judge of the State or as a ground of appeal to the appellate court; making the complaint to the press constitutes contempt of the court, more so when it comes from lawyers. However, it is not necessarily every act of discourtesy to the court by counsel or litigant that amounts to

[40] (1982) 11 SC 175

contempt. See ***Izuora v Queen***;[41] and ***Okoduwa v State***.[42] Yet it has been held that to call a judge a liar or to allege he is partial is contemptuous. See ***Vidyasagara v The Queen***.[43]
Contempt is punishable with fine or imprisonment or both. There are both civil and criminal contempt; the distinction is however often unclear. Direct contempt or contempt *in facie curiae* (that is, contempt committed in the face of the court or that took place within the court`s precincts or relates to a case that is currently pending before the court) may be punished by the presiding judicial officer himself. There is no doubt therefore that in most cases where contempt is committed in the face of the court (*in facie curiae),* the presiding judge or magistrate can summarily try and punish the contemnor. The difficult question, however, is whether the presiding judicial officer can try and punish the contemnor where the contempt is committed outside the court room but in relation to a matter still pending in court and against the person of the presiding officer?
In answering this question, it was held in ***Dibia v Ezigwe***[44] that while a presiding judicial officer can deal summarily with contempt in facie curiae, in cases of contempt committed outside the court (ex facie curiae), the proper procedure of apprehension or arrest, charge and prosecution must be applied and followed. Additionally, and more importantly, in such a situation, the case should and must be tried by another judge otherwise the accused/contemnor cannot be said to have received a fair trial, with the result that the trial and conviction are a nullity. If it is tried by the same court, it would amount to a violation of the hallowed principle of *nemo judex in causa sua*. See ***Agbachom v State*** and ***Boyo v AG Mid-Western State***.
The Supreme Court has warned that courts should use its powers to punish for contempt sparingly. See ***Agbachom v State*** and ***Boyo v AG Mid-Western State***. It has also been stated by the SC that the power to cite and commit for contempt is not retained for the personal benefit or aggrandisement of a judge. The powers are created, maintained and retained for the purposes of preserving the honour and dignity of the court and so, the judge hold the power on behalf of the court and by the tradition of his office, he should eschew any type of temperamental outburst as would let him lose his own control of the situation and his own appreciation of the correct method of procedure. See ***Deduwa v State***.
The rationale for the punishment of contempt of court is based on the fact that if everybody is allowed to do whatever he likes, the society will not stick together and the court maintains the divinity of the society. Contempt is a wilful act, omission capable of bringing judicial authority into disrepute or interferes or obstructs the due administration of justice. See ***Awobokun v Toun Adeyemi***, (inaction or action), ***Alake v AG Federation & Anor*** (Idigbe JSC). Note that the law of contempt is not for the personality of the judges but for the institution they represent and for the maintenance of respect for and confidence in the judicial office.

PURPOSES OF CONTEMPT

1. To protect the dignity of and confidence in the authority of the court and judges in the line of duty.
2. To prevent undue interference with the administration of justice.
3. Not to bolster the power of the judge as an individual. Thus, not for personal benefit of the judge as a person. See ***Shamdansani v King Emperor*.**
4. To instil discipline.
5. To ensure sanctity of court and protection of the court system.

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[41] 13 WACA 313
[42] (1988) 3 SCNJ 110
[43] (1963) AC 589
[44] (1998) 9 NWLR [Pt. 564] 78

TYPES OF CONTEMPT OF COURT

The type of contempt determines the procedure to be followed in punishing the contemnor. There are two (2) types of contempt of court namely: criminal contempt and civil contempt.

I. Criminal Contempt

A. Meaning

This includes any act or conducts which obstruct or interferes with the administration of justice or bringing the dignity of the judge into disrepute.

B. Examples

Examples would include the following:

1. Prejudicing a fair trial. There is the *subjudice* rule which is to the effect that when a matter is pending before the court, no one (lawyer, litigant, or public is allowed to comment on it).
2. Parading an accused person after arraignment before the court.
3. Calling a judge a liar or incompetent; to allege that he is incompetent.
4. Publications in newspaper attacking the judge.
5. Private communication with the judge intended to influence him in performance of his duties in respect of a matter pending before him.
6. Frivolous allegations of partiality against a judge in a judicial proceeding.
7. Going to court with the press men.
8. Failure to obey subpoena.

Note that there is room for fair, civil, and accurate criticism of judge which will not amount to contempt. See ***Okoduma v State***. The criticism should also be made *bona fide*.

C. Types

1. **In Facie Curiae**: this is a criminal contempt committed in the face of court. When a contempt is committed in the face of the court, example of which include, making noise in the court and attacking the judge in the court, the judge has two options namely:
   (a) summary trial; or
   (b) dealing with the contempt like any other criminal matter.
   In summary trial, before the court can proceed with it, the act/conduct making up the contempt must be so notorious without the need of conflict of evidence. If the act or conduct is not so notorious, another judge should proceed with the trial. Thus, summary trial for contempt is restricted to only cases where the matters are so notorious. In practice, the judges are actually discouraged from trying contempt in facie curiae summarily. Note that all courts in Nigeria have the power to punish contempt in the face of court. This is by virtue of ***Section 6(6) (a) CFRN***. In facie curiae contempt, the summary trial involves putting the contemnor in the dock, informing him of the act of contempt; asking him as to why he should not be convicted for contempt; and delivery of judgement. The hearing should be in accordance with cardinal principles of fair hearing. Note that the contemnor is asked to show cause in the dock and not the witness box because compelling him to show cause in the witness box will amount to a violation of his constitutional right under ***Section 36(11) CFRN*** as he cannot be compelled to give evidence at his own trial.
2. **Ex Facie Curiae:** The procedure for punishing contempt committed outside the court is like that of any criminal matter. Thus, referring the facts constituting the contempt to the police for investigation; the arrest of such person; proffering a charge against him; arraignment/prosecution; and trial. This means that all the rights available to an accused person in criminal proceeding will avail the contemnor. Thus, the contemnor must be given fair hearing, being put in dock as to guarantee his right to remain silent during the proceeding. See ***Section 36 CFRN***. Note that the court to commence contempt trial other than summary trial is the High Court. A private individual can bring an application to enforce contempt ex facie if the judge did not take steps. This can be done via Motion on

Notice.

II. Civil Contempt

A. Meaning

Civil contempt is generally the disobedience to courts orders, judgements or processes of court, involving a private injury. See ***Awobokun v Adeyemi***.

B. Procedure

The ***Sheriff and Civil Process Act*** made provisions for the punishment of civil contempt. Essentially, two forms are used in the first schedule to the Act. ***Form 48*** – Notice of consequences of disobedience to order of court. ***Form 49*** – Notice to show cause why the order of contempt should not be made. A party who intends to seek punishment for civil contempt will have to follow the following procedure:

1. Application via motion on notice supported by an affidavit and a written address.
2. Filing of Form 48 to be served on the contemnor if he was not in court. However, for practical, always serve Form 48.
3. The Form 48 notifies the contemnor the consequences likely to be suffered if the order of court is disobeyed.
4. The order of court has to be endorsed on the Form 48 by the Registrar.
5. Service is then effected by process server either personally or by substituted means with the leave of the court.
6. 48 hours will be given to the contemnor to desist from his act.
7. If after 48 hours, there is no compliance, Form 49 which is notice to show cause why order of contempt should not be made will be served on him. A day will be fixed for the contemnor to come to court and explain why he should not be committed to prison.
8. The forms are signed by the Registrar.
9. If the contemnor did not come to court, warrant of arrest can be issued against him – bench warrant.

C. Forms

Sample Draft of FORM 48

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

Charge No_____

NOTICE OF CONSEQUENCES OF DISOBEDIENCE TO ORDER OF COURT

To: ADEKUNLE GOLD of No. 139 B Mission Road Hwolshe, Ikeja, Lagos State

Take notice that unless you obey the directions contained in this order, you will be guilty of contempt of court and will be liable to be committed to prison.

Dated this 13th day of February, 2019

_____
Registrar

Sample Draft of FORM 49

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICIAL DIVISION
HOLDEN AT IKEJA

Charge No_____

NOTICE TO SHOW CAUSE WHY THE ORDER OF CONTEMPT SHOULD NOT BE MADE

TAKE NOTICE that Killi Nancwat will on Wednesday the 20th day of February, 2019, at the hour of 9:00 in the forenoon, apply to this court for an order for your committal to prison for having disobeyed the order of this court made on the 13th day of February, 2019, requiring you to remove your earth moving equipment.
AND FURTHER TAKE NOTICE that you are hereby required to attend the court on the first mentioned day to show cause why an order for your committal should not be made.

Dated this 16th day of February, 2019

_____
Registrar

PROOF

The proof of contempt generally, whether criminal or civil, is beyond reasonable doubt because the outcome of contempt is penal in nature. See ***Agbachom v State*** and ***Awobokun v Adeyemi***. Note that a contempt is an independent proceedings even if it occurs during the pendency of a matter.

JURISDICTION

The court vested with jurisdiction to entertain contempt cases is the High court. Note that in addition to the High Court, every court has inherent power to punish for contempt committed before it. See ***Section 6(6) (a) CFRN***.

PARDON AND PUNISHMENT

I. Pardon

The court can pardon a contemnor whose conduct is unintentional and who has purged his contempt by a sincere apology and credible explanation. Also, when he acts from a mistaken belief or misconception of laws thereby flaunting courts order, the court can pardon him. See ***State v Hon Justice AA Ekundayo & Anor***.

II. Punishment

1. In case of civil contempt, imprisonment is 6 months. See ***Afe Babalola v FEDECO & Anor***. It can also be an order to be kept in prison until he purges himself of his contempt. See ***Ikabada v Ojosipe***.
2. In case of criminal contempt, ***Section 133 of the Criminal Code*** provides for 3 months for criminal contempt.

(Week 9)

PRINCIPLES AND STAGES OF LEGAL DRAFTING

INTRODUCTION

I. Meaning of Legal Drafting

Legal drafting is communication in permanent form which must be clear, unambiguous because it is not spoken. Legal drafting is the art of legal writing, thus a skill that needs to be learned. One of the reasons why every lawyer must learn legal drafting is because of the saying that "lawyers have two failings; first is that they do not write well and the second is that they think they do. Documents are drafted in English language, because it is the language of the law in Nigeria. Standard British English, and plain English, should be used in drafting documents. Some of the documents drafted by the lawyer includes pleadings; agreements; reports; letters; legal opinion; memorandum; etc.

There is a need to adequately represent the intention of the clients in drafting documents. The reason is that most clients are illiterates and do not know how to go about drafting document or documents, as such they acquire the services of legal practitioners to assist them in drafting good documents. The legal practitioner on the other hand is to get a checklist from the client as regards to what the draft shall curtail. The legal practitioner however, must not allow the client to stipulate the type of document to be drafted. No matter how experienced in legal transactions the client is, he or she does not know the law. The knowledge of the law is the preserve of the legal practitioner. Thus, it is the legal practitioner's knowledge and expertise that should be exercised in deciding which document can appropriately embody the transaction.

Oral and documentary details of the transaction must be provided by the client, and in some cases, the legal practitioner must visit the subject matter of the transaction, if necessary, to gain a better understanding of the transaction and to enable the legal practitioner draft an appropriate document.

II. Aim of a Legal Draftsman

A legal draftsman's aim includes the following:

1. **Conciseness:** The fact that drafting should be concise does not mean that material facts should be left out.
2. **Comprehensibility:** This would involve the draftsman putting his thoughts together before drafting.
3. **Clarity:** It involves one point leading to the other. Draft should be logical and chronological.

III. Basic Tool in Drafting

The basic tool in drafting involves a good command of English language (simple and correct English). If there is a long word and there is a shorter one, choose the shorter one. When receiving instruction from a client at a client interview, the following are important. Have the right attitude at the interview. For instance in receiving instruction for drafting a will and the testator stated that he has 10 wives and 5 concubines, who gave him 10 children; the legal practitioner is not expected to laugh at such rather he is expected to absorb the information like an ordinary information.

Be courteous, patient but firm, tactful, and relate legal knowledge to the instruction given. For instance, where a client being the landlord instructs a lawyer to recover a yearly tenancy within a week or a month, the lawyer should be able to relate that with law before proceeding

with drafting a notice to quit – "can a week's notice quit a yearly tenant?". The answer is capital NO.

IV. Fundamental Rules of Legal Drafting

Importantly, every draft should cover the instruction given:

1. Accurately
2. Completely
3. Precisely
4. Clearly
5. In contemporary English, this does not include the use of slang and jargons.
6. Short and simple words/sentences. See ***Ogbonna v. AG Imo State***.[45]

AIDS TO CLARITY AND ACCURACY IN DRAFTING

The following aids clarity and accuracy in drafting:

1. **Definition or Descriptive Words**: Example "Mr. Emeka Danladi Adisa (the lessor). When words are used in drafting a document, it is advisable for a legal practitioner to define words, which he believes will not be understood by a client. For example, when a legal practitioner uses words like *"lessor", "lessee", mortgagor, etc.,* he should define such words to give its original meaning.
2. **Punctuation Marks:** A legal composition must be properly punctuated. Punctuation aids clarity and enables the sentence to convey the intended meaning. Punctuation marks must be used correctly, if they are to serve a useful purpose. The use of proper punctuation marks is an essential part of good drafting. The punctuation marks that may be used are – full stop, comma, colon, semi-colon, brackets, question mark, exclamation mark, quotation marks, hyphen and apostrophe. ***Section 3 of the Interpretation Act 1964*** states that punctuation forms part of an enactment and is taken into account in construing it. See ***Houston v Burns***;[46] and ***Shell BP v FBIR***.[47]
3. **Interpretation Clause:** This is the act of interpreting something as expressed in an artistic performance. When this is done, the legal document will convey a great meaning making it clear and accurate. In this Act, unless the context otherwise requires, association means the Nigerian Bar Association; Attorney-General means the Attorney-General of the Federation. Interpretation clause can:
   (a) Delimit – nothing should be added.
   (b) Extend – beyond the ordinary meaning.
   (c) Narrow – narrow beyond its ordinary word.
4. **Means and Includes** – the use of 'means' shows that it is limited to those stated, while the use of 'includes' shows that it is not limited to those stated. Use either of them but never use means and includes together.
5. **Brackets:** These are in pairs: open and closed brackets. They are also called parenthesis. Generally, they are used to enclose an aside or afterthought, which further clarifies a sentence. Brackets are used in legal documents to enclose nicknames given to parties to a transaction e.g. (the seller), (the buyer), etc. They are also used to enclose abbreviations or equivalence of figures in words. There are two types of brackets namely round ( ), and square [ ]. Square brackets are used in quotations where words which do not belong to

[45] [1992] 1 NWLR (Pt. 220) 647 at 672
[46] (1981)
[47] (1976)

the quotation are inserted in the quotation for sake of clarity while round brackets are used in all other situations except in citations of certain journals and law reports.

6. **Marginal Notes** – by the side of a provision. Is summarises the meaning of the entire provision so that at a glance, the reader will have an idea of what the provision means. It also serves as a guide in interpretation of such provision.
7. **Schedules:** This is an annex or appendix to a statute or other document which aids clarity. Thus, they are part of enactment – ***AG v. Lamplough***.[48] This makes the document easier to read, details are banished to the schedule so that the reader is not distracted from the points of the document.
8. **Repetition of Preposition:** This should be done in a logical manner in order to convey the essence of the legal document. That is, prepositions should be repeated where and when necessary for sake of clarity.
9. **Enumerating Particulars:** A legal practitioner has to determine the number of particulars by mentioning them one after the other and avoid the use of *"ejusdem generis rule"* which means *"of or as the same kind"*. Because, this might lead to ambiguity – ***Cotman v. Brougham*.**[49] The ejusdem generis rule should only be use when you cannot foresee all the foreseeable.

HABITS TO AVOID BY A DRAFTSMAN

1. **Long, Uncommon Words and Technical Terms** – a draftsman should avoid the use of uncommon and long words. Slangs, Pidgin English, and jargons should be avoided. However, it is permissible to use technical terms and terms of art where they are understood in the trade or profession, when the document is intended for persons engaged in that trade or profession.
2. **Intricate Expression** – For example, instead of 'it shall be lawful for a tenant", it is clear to say "the tenant shall…"
3. **Verbose Style and Excessive use of Words** – A legal practitioner should avoid using statements that contains more words than are needed and should also refrain from using excessive words in order for the document to convey a simple meaning. A large number of verbose examples are found in old legal documents. Some of the words used in these documents are repetitive and this type of drafting should be avoided. For example, "buys, purchases, sells, alienate and takes legal interest in land situate and located at….", "Null and void and of no effect" (repetitive).
4. **Archaic Words and Expressions** - Note that some archaic words like whereas, aforesaid, herein, hereof, here in after, witnesseth, subject to, etc. should be avoided. See ***NDIC v. Okem Enterprises Ltd***.[50] These should only be used where they are absolutely necessary. Also avoid technical terms and abbreviations. It is unnecessary to repeat the word 'whereas' to introduce every document.
5. **Inconsistency** - a draftsman should never change his words if he does not want to change the meaning. Thus, if there is a change in word, then there is a change in meaning. For example, in drafting a tenancy agreement, if landlord/tenant is used, do not change to lessor/lessee. This is because they connotes different thing. Thus, maintain consistency in drafting.

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[48] (1878) 3 EXD 214
[49] (1981) A 514
[50] (2004) 4 SC

6. **Latin Words and Phrases –** In drafting, sentences should be written in plain English devoid of Latin words and phrases. The use of Latin words and phrases should be avoided when drafting documents for a client because not all clients understand its meaning. For example, rather than writing the Latin word or phrase: *"et in terra paxhominibusbonaevoluntatis",* the English phrase "and peace to his people on earth" should be written. Use plain, everyday language that can be understood by both lawyers and non-lawyers
7. **Abbreviations:** Do not use abbreviation (e.g. FCT should be Federal Capital Territory).
8. **Pronouns and Adverbs:** To avoid pitfalls in drafting, nouns should be preferred to pronouns even at the cost of repetition. Verbs should be used instead of adverbs. Adjectives and adverbs should also be used carefully because their meanings are less clearly fixed than that of nouns.
9. **Improper use of Words –** A legal practitioner should avoid improper use of words. Words like may, shall, will, when, where, etc. should be used at the appropriate places. In ordinary usage, 'will' used in the first person implies a wish or intention. Ensure that the intention of your client is properly reflected. Will or may give some kind of discretion but for an obligation, use the word 'may'. In ***Ogwuche v Mba***[51] the court advocated that 'must' is more compelling and obligatory than 'shall'. In respect to the words 'and', 'or', they are used in the conjunctive and disjunctive sense respectively. See ***Ezekwesili v Onwuagbu***.[52]

SENTENCE AND PARAGRAPHS

I. Sentence

A. Concept

A sentence must begin with a capital letter and may end with a full stop, exclamation mark or question mark. Sentences should be written in plain English.

B. Elements of a Legal Sentence

The elements of a legal sentence are:

1. **Legal Subject:** Where a right is conferred, the legal subject must be a person. The legal subject is the person conferred with a power, privilege, and right. A legal subject cannot be a thing because it is only a person that can be conferred with rights, powers, privileges etc.
2. **Legal Action:** Legal action is the right, privilege, power required of the legal subject. Legal subject and action are linked by using a connective like shall, shall not, may or may not. The connective would depend on if the legal action is mandatory, prohibitory or permissive. If it is a mandatory action, then a connective expression as "shall" would be used; if prohibitory, "shall not" would be used; and if permissive "may" or "may not" would be used.
3. **The Case:** Cases are the circumstances in which the legal action will be invoked. The words like when, where, in case are used.
4. **The Conditions:** Conditions involve the conditions to be satisfied before the legal action can be taken by the legal subject. It uses the words, unless, until. Note that it is not in all cases that the conditions are clear.

The order of arrangement is: **case-condition-legal subjects-legal action**. Note this example: Where any person has obtained a degree in law (case) if he applies to the law school

[51] (1994)
[52] (1998)

(condition), the Council of Legal Education (legal subject) may admit him to the law school (legal action). Note that **the subject – verb – object** is a simpler order.

1. **Subject:** The subject being the actor, that is, a person empowered to do or refrain from doing an act.
2. **Verb:** The verb states what is to be done or not to be done.
3. **Object:** The object on the other hand, is the thing or person being acted upon.

In using the above format to prepare a good draft, the legal practitioner should state precisely in a clear manner what ought to be done by the person or thing involved in the body of the draft and should also go an extra mile to state what the person or thing should refrain from doing, and the person or thing in which the essence of the draft is to be acted upon.

C. Lengths of Sentences

Long sentences should be avoided at all cost, instead such a sentence should be redrafted into series of sentences. The length of a sentence depends on the idea in the sentence. Several scholars have given different ranges of words that should be contained in a sentence but a lot of them have agreed on a maximum of twenty eight (28) words while others ranges from twenty (20) words to twenty five (25) words. Thus, a sentence must neither be too long nor too short. So it should be short but must convey the meaning of actions to be taken or message to be conveyed.

D. Use of Active Words and Not a Passive Voice

Short, familiar words should be used instead of long unfamiliar words. Concrete words should be preferred to abstract. Words giving the same meaning should be consistently used. Technical words should be used sparingly. E.g. Fejiro broke the glass (active) and not the glass was broken by Fejiro (passive).

II. Paragraphs

A. Concept

Sentences must be arranged in paragraphs, each paragraph consisting of a thing, idea or argument. The division of a text into paragraphs makes for easy reading.

B. Paragraphing Technique

The two types of paragraphing techniques are:

1. Two layered text which is divided into -
   (a) Introductory statement, and
   (b) Numbered paragraphs

   The treasurer shall vacate office if he
   (a) has completed three years in office;
   (b) becomes bankrupt; or
   (c) dies.
2. Three layered text which is divided into -
   (a) Introductory statement,
   (b) Independent paragraphs, and
   (c) Concluding statement.

   If an applicant
   (a) has attained the age of 21 years
   (b) has completed six months service
   (c) agrees to be bound by this Trust Deed,
   he may be accepted as a member.

C. Lengths of Paragraphs

Suggestions have been given about the right length of a paragraph, ranging from five (5) sentences to six (6) sentences. In some cases, they may be drafted in clauses and sub-clauses duly numbered e.g. affidavits should be numbered.

D. Numbering and Indentation in Paragraph

This is necessary in order to make clarifications in a legal document. A paragraph is numbered (a) - small alphabet. A sub-paragraph is numbered (i) - Roman numeral. A sub sub-paragraph is numbered (A) – capital letter. Thus, it is section 120 sub-section (4) paragraph (a) and sub-paragraph (ii), sub sub-paragraph (A).

PUNCTUATIONS AND CAPITALISATION

I. Punctuation Marks

Punctuations are marks, signs or symbols use in written communication to aid clarity and understanding. ***Section 3(1) Interpretation Act*** provides that punctuation form part of an enactment and must be taken into consideration when construing it. A legal document must be properly punctuated. This will assist in giving meaning to the intent of the draftsman and avoid ambiguity.

1. **Comma (,)**
   (a) Use after Yes or No – *Yes, I like reading my books; No, I hate lies*.
   (b) Introduce quotation – *Mr Killi said, "Nigeria won the football match."*
   (c) Separate items in a list – *I went to the shop and bought butter, sugar, bread and milk.*
   (d) Mark phrases – *The secretary, although far from well, worked until late into the night.*
   (e) Mark nouns and pronouns in apposition – *Killi, the legal luminary, has arrived.*
   (f) Separate items in a date or letter address – *2nd March, 2019*
   (g) Mark off transitional words – *Therefore, However, For instance, Notwithstanding,*
2. **Semi-Colon (;)**
   (a) Joined closely related independent clauses not joined by a conjunction – *I was called to the Nigerian Bar in 1990; I have since then been paying my practising fee.*
   (b) Replace commas when items separated have commas – *Mr Killi teaches legal drafting, corporate law practice, and criminal litigation; while Mrs Adebola teaches professional ethics, civil litigation, and law of evidence.*
3. **Colon (:)**
   (a) Introduce a list: *Every lawyer must buy: a wig, gown, collar and tie.*
   (b) Use in between two sentences instead of a full stop where the second sentence explains more about the first sentence – *Killi is a good advocate: he speaks well, neat and smart.*
   (c) Introduce quotation – *Mr Killi, the Professional Ethics lecturer, said: "It is not my fault that the student is a truant."*
   (d) Biblical references, ratios, clock time – *(John 3:16) (2:1) (8:00am)*
4. **Full Stop/Period (.)**
   (a) End a complete sentence – *Killi went to school yesterday.*
   (b) Mark abbreviations – *(LL.B) (Ltd.) (Mon.)*
   (c) Mark decimals – *(₦10.00) (1.26)*
5. **Apostrophe (')**
   (a) Show possession – *Killi's law school note.*
   (b) Contraction of words – *I'm meaning I am; don't meaning do not, etc.*

(c) Show plurality of number and letters – *There are two M's and C's in the word accommodation.*

6. **Quotation Mark/Inverted Commas (" ") or (' ')**
   (a) Use at the beginning and end of quotation – *"Humility is next to godliness."*
   (b) Use in reported speech - *Mr Killi said, "Non-violence is the first article of my faith."*
   (c) Indicate use of slang, pidgin or colloquial words – *"Hanky panky" "Papa" "Naija"*
7. **Question Mark (?)**
   (a) Use only in direct speech – *Where have you been?*
   (b) Not use in reported speech or indirect question – *I asked him where he has been.*
8. **Exclamation Mark (!)**
   (a) Shows and emphatic command – *Come here!*
   (b) Shows a vehement wish – *Help!*
   (c) Indicates strong feelings – *What a miscarriage of justice!*
   (d) Indicates an exclamatory statement – *Wow!*
9. **Hyphen (-)**
   (a) Join two words to form a compound word – *Afro-American, Mother-In-Law, etc.*
   (b) Separate syllabus in a word – *In-ter-pre-ta-tion, At-mos-phere, etc.*
10. **Dash (–)**
    (a) Use in place of comma or colon - *Killi is a good advocate – he speaks well, neat and smart.*
    (b) Use in parenthesis – *Mr Killi – the legal luminary – has arrived.*
11. **Brackets/Parentheses (( )) or ([ ])**
    (a) Enclose additional information – *Men and women (so I am told) are seldom true companions.*
    (b) Mark optional or alternative material – *Issue(s)*
    (c) Separate number or symbol from surrounding text – *I don't like Katherine, (a) because she is pugnacious, and (b) because she is supercilious.*
    (d) Square Brackets are used when somebody else add something to what the original author had written.
12. **Ellipsis (…)**
    (a) Omission of words – *(When sorrows come, they come… in battalions) (When sorrows comes, they come not in single spies, but in battalions)*
    (b) Where four dots are used, it shows that it is the end of the sentence
13. **Caret (^)**
    Use in inserting words or letters mistakenly omitted
14. **Asterisk (*)**
    Use to mark unrecorded, wrong or ungrammatical words or letters – *The pimp f****d one of his client yesterday.*
15. **Slash/Virgule (/)**
    (a) Shows alternatives – *Every student should bring his/her pencil*
    (b) Stand for per – *2 miles/min*
    (c) Shows fraction – *40/20*
    (d) Indicates To or Between – *2018/2019 Session*
    (e) Use in separating date – *1/03/2019*
    (f) Use in abbreviations – *C/o*

II. Capitalisation

Every English alphabet is represented in both capital letters (upper case) and small letters (lower case). Capital letters is used in the following cases:

1. Beginning of sentence – *The book is mine.*
2. Names of persons – *Bola, Killi, Joel, Kate, etc.*
3. Names of places like countries, states, towns, streets – *Nigeria, Plateau State, Kashim Ibrahim Street, etc.*
4. Names of newspapers and textbooks – *The Vanguard, The Punch, Professional Ethics and Skills.*
5. Names of statutes – *Legal Practitioners Act, Childs Right Act*
6. Days of the week and months – *Monday, April*
7. Titles of exalted positions – *President, Governor, Ooni of Ife, Sultan of Sokoto*
8. Subject head of letter writing – *Application for Admission or APPLICATION FOR ADMISSION*
9. Cover and title page of legal documents
10. Differentiating the sense in which a word is used – *The budget presents to true state of affairs of every State in the country.* The word "State" is used in two different senses.

EXPRESSIONS AS TO TIME

In computation of time, there is the problem of whether to reckon exclusively or inclusively the stated date or dates in legal document.

1. **On**: when used it is interpreted as *inclusive* of the stated date. E.g. on 10th November, 2018 includes the stated date. It means the whole day.
2. **From:** When used the stated date is construed *exclusively*. E.g. from 10th November, 2018. It excludes the 10th and starts running on the following day 11th November, 2018. See ***Cartwright v. Mc Cormick***[53] and ***Stewart v Chapman***.[54]
3. **At:** This is used where it is intended to take into account fraction (hours) of the day. E.g. "commences at 10.00am". The interpretation is that parties intend to reckon with fractions of day.
4. **After**: When an event is stated to take place after a named date the date of the event is to be excluded. E.g. "This agreement commences after the payment of the sum of 1 million naira". See ***Brown v. Black***.[55]
5. **To:** If a legal document expresses "from 10th November to 15th November, 2011. Because of the use of "from", 10th is excluded but it is not clear whether 15th is included because of the use of "to". To avoid ambiguity it is better to add "both dates inclusive" or "the 15th day inclusive".
6. **Till/Until**: This does not give clear indication of inclusiveness or exclusiveness. To avoid ambiguity use "till and including" or "till but excluding" e.g. "till but excluding 10th November …" or "till and including 10th November …".
7. **At The Expiration of**: It may mean - *not later than* the expiration of, or - *at or after* the expiration of. If within a reasonable time is intended, it should be so stated. See ***The Good of Ruddy***.[56]
8. **Day:** This means the period of 24 hours starting at a midnight and ending on the following midnight. Generally, it is used to mean the whole day. But where fractions,

[53] (1963) I WLR, 187
[54] (1951) LKB, 796
[55] (1912) I KB, 316
[56] (1972) LR, 2P and D 330

that is, commencing at a particular hour of the day is intended, it should be clearly stated by using the word "at". See ***Belfied v. Belfied***.

9. **Working Day**: This means Monday to Friday excluding public holiday, Saturday and Sunday. See ***Essien v. Essien***.[57] The Court of Appeal took judicial notice of Saturday as a work free day. An act to be done on public holiday shall be deemed duly done if done on the next day. See ***Section 15(3) Of Interpretation Act*****.** However, where the act is to be done within a particular period not exceeding six days, holiday shall be left out of account in computing the period.
10. **Week:** This is a seven (7) clear days starting midnight of Saturday to the midnight of the next Saturday. However parties can state in their agreement that the period begins at midnight of any particular day of the week to the midnight of the corresponding day in the next week. E.g. "Midnight Monday to midnight Monday".
11. **Month**: Generally, month can be lunar or calendar month. In Nigeria, a month is referred to as a calendar month. On the meaning of calendar month, ***Section 18 of the Interpretation Act*** defines it thus: "A calendar month ends upon the day in the next ensuing month having same number as that on which the computation began. But if the next ensuing month has not the same number as that on which the computation began, then the calendar month on the last day of the next ensuing month. E.g. calendar month from 28th March expires on 27th April; 29th January expires on 28th February; and 31st August expires on 30th September. See ***Doods v.Walker***[58] and ***Akeredolu v. Akinremi***.[59] The calendar month is calculated according to the Gregorian calendar.
12. **Year**: A year is a period of 12 months usually calculated from 1st January to 31st December. When a contrary intention is intended, it should be clearly and expressly stated.
13. **Within a Reasonable Time/As Soon as Possible**: "Within a reasonable time" is common in commercial documents and in some cases implied. The phrase should be avoided as it is difficult for two persons to agree on what is a reasonable time. Where possible, specify the time frame. "As soon as possible" means shortest possible time or within a practicable time. It is imprecise, unspecific and its construction depends on circumstances of each case. Both phrases should be avoided as much as possible. However, where there is uncertainty or the performance of act or obligation depends on prevailing circumstance their use become inevitable.
14. **Not Later Than/Not Earlier Than**: In both cases the stated date is *inclusive* in constructing the period of time.
15. **Forthwith/Immediately**: Both words means prompt or without delay. They are imprecise and their meaning depends on the circumstance of each case. "Forthwith" is archaic and should be replaced with immediately.
16. **Will, Shall, May**: The word WILL and MAY suggest what it is not mandatory, thus discretionary. The word SHALL and MUST suggest obligation and mandatory. See ***Maiwade v. FBN Plc***,[60] and ***Bamaiyi v. AG Fed & 5 Ors***.[61]

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[57] (2009)
[58] (1981) WLR 1027
[59] (1985) 2NWLR (pL10) p 787
[60] (1997) 4 NWLR (Pt. 500) 497
[61] (2001) 7 SC, 77

17. **And & Either/Or:** The word 'AND' suggest a conjunctive interpretation and thus can never be a disjunctive interpretation. The words EITHER, OR suggest a disjunctive interpretation. Importantly, never use AND/OR. See the following cases ***Federal Steam Navigation Co Ltd v. Dept. of Trade & Industry***,[62] and ***Ndoma-Egba v. Chukwuogor***.[63]

STAGES OF LEGAL DRAFTING

I. Taking and Understanding of Instruction

1. **Conducting Interview:** this is the first point of contact with the client and from the onset the lawyer should win the client's confidence, particularly if the client is engaging the lawyer's service for the first time. The lawyer must prima facie appear to be efficient; action speaks louder than voice. The lawyer should be control throughout the period of the interview; he should feel and identify himself with the mood of the client and tries to avoid distractions. The office environment should be very conducive.
   When taking instruction from the client, the lawyer must ensure that the mood and office environment is right. For instance, when taking instructions to draft a will, a high level of attention and seriousness is required but not a mournful mood because of the sensitive nature of the job. The lawyer must also dress professionally and avoid all irritating mannerism, such as picking his nose, throughout the duration of the interview.
   The advantage of skilful client interview is that, a lawyer who is easy and pleasant to talk to will have happier clients. Also, if interactions with clients are handled well, there is evidence that the result will be effective handling of cases, more cooperative and competent client (who pay their bill) and less time wasting.
2. **The use of Checklist:** a checklist is a list of recommended clauses to be contained in a legal document. Some law offices have instruction form. These forms contain checklist of matters on which instruction should be taken.
   The two main advantages of using a checklist is: firstly, it serves as a guide to help you remember all relevant issues that are necessary for you to carry out the client's instructions; secondly, it will help the lawyer to present the draft in an orderly manner without missing out anything. However, the lawyer can go outside the checklist to take relevant instructions. What is required will always depend on the facts of each case. It may even be necessary that the lawyer skip some items on the checklist. The checklist should be flexible and constantly updated to incorporate recent developments.
3. **Listening and Questioning Clients:** a lawyer must be a good listener. Listening is one way of winning a client's confidence. Active listening is communicated to the client in various forms of body language. Unless the lawyer listens attentively, he cannot understand and his lack of understanding will manifest itself when he ask questions.
   Questions are the means of obtaining information. A question may be open or closed. An open question is a question that allows the client to narrate the story in the best way he can with little or no interruption. For instance, "why did you refuse to pay the balance of the purchase money?" On the other hand, a closed question is a question that limits the answers expected from the client to "Yes" or "No" or any form of guided answer. For instance, "Have you paid the balance of the purchase money?"
   It is important that the lawyer ask the client good and sometimes, hard questions. Hard questions are to the client. In practice clients are in the practice or habit of presenting

[62] (1994) 2 All ER 97
[63] (2004) 2 SC, 107

facts in a biased language and it is the duty of the lawyer to get out the truth. Eye contact is very essential, the lawyer should look straight at the client but he must not interrupt him unnecessarily.

II. Analysis, Classification and Research

1. **Analysing the Instruction:** the core professional aspect of the lawyer's job starts here. This the stage that the lawyer is expected to carry out research on the law applicable to the facts he obtained during the client interview. The lawyer must be objective and professional in carrying out the research; clients will usually tilt the facts to favour themselves. It is the responsibility of the lawyer to be painstaking in identifying the issues arising from the facts.
2. **Classification:** after analysing the instruction, the lawyer is to classify the issues base on the subject area of law.
3. **Research:** after achieving the proper classification, the next step is to go to the library to assemble research materials. Good research should begin with secondary sources of legal materials such as textbooks, periodical, journals, etc. Good research should also take the lawyer to primary sources of legal materials e.g. statute and law reports.

   Depending on the nature of the instructions, the lawyer may have to consult and obtain advice from other professionals. For instance, a company law practitioner engaged in restructure of a company may have to consult Accountants, Tax Experts, Stock Brokers, etc. A property law lawyer may have to consult Estate Valuers, Surveyors, Town Planners, etc.

   The major challenge with undertaking legal research in Nigeria is the unavailability of standard law library. The lawyer's books are his tools without which he would be unable to meet the needs of his client. **JK Jegede, SAN** stated that: "A lawyer with no library would be sharing the fate of a blind man holding a driving license. However, the availability of standard legal material alone is not sufficient; lawyers must know how to find the law. It is also a fact that it is not possible for any lawyer to have complete and self-fulfilling library. Thus, lawyers should have good relationship with their colleagues so they can use their libraries and if permitted borrow book from one another.

   The modern lawyer cannot ignore the contemporary relevance of the pervading technological and electronic gadgets i.e. the "Information Super Highway". So lawyers must take time out to understand how to use Google and other search engines to search fro legal materials.

III. Designing/Planning the Draft

The lawyer is expected here to plan before he draft, because if he fails to plan, then, he has planned to fail. Better planning results in better drafting. This is the stage that the most appropriate format to use is planned to achieve the desired draft. Different legal documents have different formats; the format of a letter is different from the format of a report or of a deed of assignment or a will or a bill. Proper planning will help the lawyer to order his materials in a logical sequence; related matters should be kept together and unrelated matters should not be grouped under the same head.

There are many issues to consider at the planning stage but the lawyer is to concentrate on the very fundamental issues that will give him direction on the document he is drafting. For instance, a legislative drafter would have to decide whether the Bill should be divided into parts, sections and sub-sections. To avoid clustering the document, he may consider using a

schedule unless the drafter plans how to handle the fundamental issues any change is such issues may cause serious drafting problems.

The planning stage is like performing the role of the architect in a building project. Unless the architectural design is right, the builder labours in vain. Having a good plan starts with having clear thought of what the lawyer want and using his checklist, he can pick the very important issues that should be given a place in the draft. When planning he must carry his client along so he may require further consultation with him to clarify the desired goal.

IV. Composing the Draft

A. Concept

This is the most tasking stage mentally. This is the stage that the lawyer focuses on word choice, sentence structure, paragraphing and grammar. This stage requires a lot of mental discipline; in any case, if the entire process has been followed logically from the beginning the task of composing the draft becomes easier. Legal writing is made easier by using standard precedents.

B. Use of Precedents

A precedent is a similar kind. Precedents may be developed in-house as standard forms or obtained from external sources. The advantages of the use of precedent may include the following:

1. They reflect decades of experience
2. They save much of the time that could have been spent preparing new documents each time a lawyer is drafting.
3. They are useful for learning how to draft documents
4. The use of precedent originating from the same jurisdiction or office ensures consistency in style.

There are challenges with the use of precedents relied on by Nigerian lawyers which include:

1. Some of them are obsolete i.e. the old traditional style of legal drafting.
2. Most of the precedents are foreign
3. Precedent books are very expensive and unaffordable to young lawyers
4. The stagnation of precedents already established. Lawyers can avoid this by periodic review.

Sometimes, the lawyer will have to read several precedents and engage in “cut and paste” to be able to achieve a new draft. Cut and paste must be done in a professional manner. Careless cut and paste from different precedents could lead to style failure.

C. Computers and Drafters

The use of computer and other ICT devices now make drafting of legal documents easier than before. The basic relevance of the computer to drafters is the capacity to move text around, to search and replace words and phrases, to spell-check, to check the occurrence of words and of their use in defined senses. But there are a number of facilities that are not as well-known and not used as much as they might be in drafting.

V. Scrutinizing the Draft

The basis for quality control is that drafting a legal document could be mentally exhausting, usually the writer may have worked under so much pressure that he is now blind to his own shortcomings. There are two stages of editing a document. The first stage is that after writing, the writer leaves the document for a while, depending on the time available, if time permits, for days. When the writer returns to read the same document with fresh eyes he would have

developed fresh ideas to improve on the document. The second stage is to use colleagues, editors and linguistic experts to check on grammar and consistency.

In ***Re Harrock***,[64] it was held that the common errors in legal drafting are the use of jargons, consistency, formatting, spelling, figures, punctuations, capitalisation, typographical and general grammar. Generally, it is important to cross-check the accuracy of the content of the document.

A good lawyer must accept constructive criticism of colleagues (junior or senior) and use these criticisms to polish the document he has prepared. Minor errors, no matter how trivial, casts doubt on the lawyer's professional competence so he must ensure that all documents prepared by him receive editing assistance before sending them out; this can help avoid embarrassments.

AMBIGUITIES AND TECHNIQUES OF DRAFTING

I. Ambiguities

Ambiguities involves a situation where a word have too many meaning. Words that convey one meaning rather than several meanings should be used. Note that there is ambiguity of participle. Note also that ambiguity is not the same thing as vague. See the following cases, ***Oladimeji v. Trans Nig Assurance Co Ltd***; and ***Nubu v. Ogele***.[65] To avoid ambiguity, nouns should be preferred to pronouns even at the cost of repetition. Adjectives and adverbs should also be used carefully because their meanings are less clearly fixed than that of nouns.

A calendar day having 24 hours beginning at 12 midnight and expires the next 12 midnight. A week is 7 clear days beginning 12 midnight Saturday to 12 midnight the next Saturday.

II. Techniques of Drafting

This is the way in which a good draft can be achieved. The technique of drafting includes the following:

1. There should be a sequence in the draft. Thus always put the first, first and not last.
2. Use short sentences with punctuation mark.
3. Use active voice and not passive voice. This is the subject-verb-object. Passive voice – The cheque was authorised and signed by the finance secretary. Active voice – The finance director authorised and signed the cheque. We draft in passive voice because English is not our first language and thus there is a translation from native to English language.
4. The draft must be intelligible.
5. There should be economy of words – language. This involves the non-use of superfluous words. For instance, "I will use the full weight of the law", "I will deal with you to the full extent".
6. There should be directness and not zig zag. Do not write with "on or before" but "on or about".
7. Be familiar with the language used. Thus, do not swap words like advise for advice.
8. Orderliness in drafting – sequence and chronological.
9. The use of paragraph where necessary especially where conditions are to be provided for.

ETHICAL CONSIDERATIONS

1. A lawyer should not sign any document prepared by a non-lawyer
2. A lawyer should not sign any document if he has not paid his practicing fee
3. A lawyer should devote his attention to work of client and work in best interest of his client – ***Rule 14 RPC***.

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[64] (1939) 198

[65] (2003) 12 SC, 32

4. A lawyer should not give advice in breach of law
5. A lawyer should not handle matters which he is not competent to handle without associating with a competent lawyer

(Week 10)

LETTER WRITING, MEMORANDUM, LEGAL OPINION, MINUTES OF MEETINGS, AND CURRICULUM VITAE (EXAMS)

LETTER WRITING

I. Introduction

Practitioners are required to draft letters of various kinds, ranging from a covering letter to a letter before a civil action. In drafting letters, the conventions governing letter writing such as layout, salutation and complimentary close must be adhered to. Letters are very important in legal practice because it is the channel through which advice and instructions are confirmed. As a permanent form of communication, utmost care must be taken during the preparation stage to:

(a) Ascertain the instructions received from the client; and
(b) Fully understand the purpose and nature of the letter to be written.

It helps the lawyer in choosing the appropriate style, layout, tone and vocabulary to use. When acting in a professional capacity, a formal style should be adopted. There are two types of letter: formal and informal letter. Main focus is on formal letter.

II. Aims of Legal Letter Writing

The aims of legal letter writing are:

1. To convey information (including advice or opinion)
2. To persuade
3. To obtain information
4. To create a particular impression
5. To make an offer of settlement
6. To confirm or record
7. To make a demand

III. Consideration in Writing Letters

1. The type of recipient
2. Psychology of recipient
3. Circumstances necessitating the letter
4. Whether there was any previous communication
5. Consideration of any applicable law relating to the subject matter
6. The writer must convey his intention notwithstanding the letter type

IV. Types of Letters

1. **Status Letters:** This refers to letters which lawyers are requested to write in order to give an overview on the current position of a transaction, a court case, or any matter which may be of interest to the recipient. Status letter gives a status report of such matter as may be requested by the client.
2. **Confirming Letters:** This type of letter is written to re-affirm an oral discussion which took place previously between the lawyer and client. Confirming letter is written to a client to confirm a previous discussion had with a lawyer. The purpose is to help in clearing any uncertainty as to what is demanded from the lawyer by the client and what the client is expected to do.
3. **Demand Letters:** This type of letter requests the recipient to perform an obligation it owes to the writer. Such obligation may be statutory, contractual, or it may arise under the custom or trade of the parties. Demand letter mainly relate to payment of debt e.g. letter written by a lawyer to a client demanding his professional fees or a lawyer writing on behalf of a

client to a third party demanding payment of debt.

4. **Opinion Letters:** This type of letter offers legal opinion and advice to a client about the rule of law that applies to a given legal problem.

V. Rules of Letter Writing

1. **Informative:** A letter must pass information; it must be informative. Clearly identify why you are writing the letter and what you want the letter to achieve.
2. **Simplicity:** There should be simplicity in writing. The addressee should be able to understand what was written. It must be succinct and direct; avoid verbosity.
3. **Addressee and Tone:** You must know the addressee and know the right words to use so as to ensure effective communication. Understand who you are dealing with. This would determine the tone of the letter. There is clients, opponents, witnesses (expert, lay witness), court officials, other lawyers, miscellaneous others (titled search officials, government officials, insurance personnel etc.)

   The tone should be polite, humane and firm. Avoid being rude. In ***Weston v Central Criminal Court Administrator***:[66] the client was arraigned for soliciting/street trading, his lawyer wrote to the Court and adjourned to a particular date. A Court official made a mistake and fixed an earlier date than agreed by counsels. The counsel to accused wrote a nasty letter to the Court (saying mindless Court official wrote the wrong date). This was held that this was not in good taste for a legal professional. See also ***Boyo v AG Midwestern State***.[67]
4. **Legal Argument:** Avoid legal argument; avoid citing legal authorities.
5. **Legal Jargons:** Avoid legal jargons.
6. **Repetition:** Avoid repetition e.g. NULL and VOID means the same thing, thus do not use them together.
7. **Shortness:** Avoid lengthy letters; short, simple and direct sentences should be used. Be brief, and as much as possible, restrict your letter to one page.
8. **Paragraphing:** Learn to paragraph adequately. A good letter should have only one paragraph but where several paragraphs are necessary, each paragraph should contain only one idea distinct from other paragraphs.
9. **Pronouns:** Avoid the use of pronoun – I, We, He, She, etc. It does not matter if you have to use a proper noun several times in the letter. However, letters written for a firm should be written in either the first person singular, that is "I" or in the first person plural "We".
10. **Consistency of Names:** Be consistent in using names and descriptions. For instance, if you had stated LESSOR, do not replace it with LANDLORD.
11. **Clarity in Language:** There should be clarity in language used and precision. British English and its style should be used e.g. 11th January, 2013 is for British, while January 11th, 2013 is for America.
12. **Archaic Language:** Do away with archaic language e.g. whereof, here in after, etc.
13. **Threat:** Avoid the use of threat in letter; this is because writing is a very strong evidence in court.
14. **Use of Direct Language:** In your writing, use direct language – SVO - subject, verb, and object.
15. **Drafting in Accordance to Instructions:** Draft letter according to instructions given. That is, you are bound by the particulars given, however, if no particulars are given, you are at liberty to produce same.
16. **Active and Passive Voice:** You must also use the active voice. The active voice is simple

[66] (1977)
[67] (1971)

and easy to read, informative and specific, clear and precise therefore giving rise to short sentences. The passive voice is an official style, verbose, vague, ambiguous and giving rise to long sentences.

17. **Use of Plain English:** Since the practitioner acts on behalf of a client in a professional capacity, the letter should be written in plain English. It should never be conversational; thus, can't, won't, they're, and so on, should not be used. Avoid the use of slangs and abbreviations. Such an informal style of writing is inappropriate. In ***Weston v Central Criminal court, Courts Administrator***,[68] the Court of Appeal observed that the letter was discourteous and rude.

V. Contents of Official/Formal Letter

1. **Letter Head/Sender's Address** - Every formal letter should begin with the sender's address written at the top right-hand corner of the paper. In modern practice, law offices have printed letterhead having the address of the office. A lawyer should not be cosmetic or flamboyant in the design of letterhead and black and white is most preferred. It must be simple and sober. A letterhead may contain the logo of the law firm, the name of the firm, the address of the firm, the telephone number(s) of the firm, the email address and where applicable, the website address. Where the letter is not written on a letter head paper, the sender's address will be situated at the top-left hand corner of the letter.
2. **Reference** – Reference helps in administration for purpose of identifying files. In the past, because letters were printed with analogue typewriters, letterheads had 'Our Ref' and 'Your Ref' printed on them. This method has however become obsolete as letterheads are stored in computers nowadays, consequently leaving the person drafting the letter to insert the reference. Where such references are not utilised, it will be unnecessary to include 'Our Ref' and 'Your Ref'. However, in keeping with the tradition of the legal profession, lawyers are expected to have all their correspondence well referenced e.g. Law/2011/23. Helpful for record purposes such as filing and cross referencing and retrieving such documents.
3. **Date** - In the past, the date was placed immediately below the sender's address with a line spacing in between the address and the date. In modern times, using the block style, the date is written to the left-hand side corner above the addressee's address. However, there are no hard and fast rules as to where the date should be placed. Dates should be written in full e.g. 7th July, 2015 (using the British style) to eliminate doubts as to when a letter was written and it makes for formality and decency. It should include actual date of dispatch (not back date). Be consistent with whichever style you choose.
   An undated document is not worth the paper upon which it is written. Every letter should bear a date. The day should be written in figures, the month in words and the year in figures. The month and year should not be abbreviated but be written in full. Dates should not be punctuated. However, it is permissible to insert a comma after the month. The month should be written out in words, while the day and year should be written in figures.
4. **Status of Letter:** special instructions or markings such as 'Strictly Private and Confidential', 'Confidential', 'Private', 'Private and Confidential', 'Without Prejudice', or 'Subject to Contract' contained in a formal letter are often typed in the upper case and inserted between the date and the addressee's address. However, there is no consensus among authors as to the location of special instructions or markings. Whereas some authors are of the opinion that is should be written immediately after the date or before the date, some state that it can be placed at the right-hand corner above the salutation.

[68] (1977) 1 QB 32 at 39

(a) **Confidential:** where a letter is marked 'Confidential', it means any person deputising for, or the secretary to the addressee may open and read the letter. However, the information should be kept strictly within the law firm, company or institution to which the letter is addressed.

(b) **Private/Private and Confidential:** where marked with these, the implication is that only the addressee should open and read it and no other person. Where any of the above special instructions are used in a formal letter, a corresponding mark should be printed on the envelopes to ensure compliance.

(c) **Without Prejudice:** when used by parties, it means that the parties have negotiated a settlement without implying any admission of liability and thus cannot be given in evidence in trial. Where a letter is marked 'Without Prejudice', it is the intention of the parties (writer and recipient) that the letter cannot be tendered as evidence in any courts without the consent of both parties i.e. it serves as an estoppel to preclude or bar of evidence as to the contents of the letter. The position of the writer is not jeopardised if the terms he proposes are not accepted or where negotiations breaks down between the parties.

(d) **Subject to Contract:** where letter is marked with this, it means that the agreement reached by the parties is not binding on the parties until a formal contract is made. Where a letter of acceptance is marked 'Subject to Contract', such an acceptance is considered invalid. A lawyer should ensure the implication of any of the phrases in formal correspondence sent and received. See ***UBA v Tejumola & Sons Ltd***[69] where the agreement was reached subject to contract which Tejumola did not obviously understand. He demolished the flats to create a banking hall and built a slap for a banking hall. UBA then said that they were no longer interested. The Supreme Court held that since the agreement was made subject to contract, UBA was not bound.

5. **Name and Address of the Recipient/Attention Line -** the name and address of the recipient should be written as it will appear in the envelope. Where the letter is addressed to a particular department, the department and the address should be written.
Example:

Mr Killi Nancwat
M & N Concepts Ltd
General Manager
Plot 72 Cross River Avenue
Area 3
Garki
Abuja

Note: Where a letter is written to a foreign country, the name of the country should be included on the last line of the address. In many foreign countries, postcodes are used. In Nigeria, PO Box or Private Mail Bags (PMB) are used where physical address is not used. In respect to the address, the Indented Style is the old style. For modern purposes, American Style i.e. the block (aligned) style or Modernised British Style: semi-blocked (indented) style). In either one, you can use open or closed punctuation.
Where a formal letter is addressed to a law firm, a company, a government department or an institution, but however intended that a particular person should deal with the subject matter, then attention line is used giving a line spacing with the addressee's address e.g.

[69] (1988)

For the attention of Mr Peter Clark, Chief Accountant.

Johnson & James Ltd
Plot 65 Amada Close
Wuse II
Abuja

6. **Salutation** - Use of name is usually for semiformal letter and for the first address to a person. The salutation is contingent upon the recipient. There should be a line spacing between the recipient's address and the salutation e.g. Dear Sir (Traditional) or Madam, Dear Mr Johnson (less formal modern), Dear Sirs, Dear Madam, Dear Sir. Honorary titles can be used e.g. Dr, Prof, President, Governor, Minister, Ambassador. When Dear Sir is used, probably the first time writing to the person, but where you use Dear Mr Johnson, then you have had interaction with the person for a while. The salutation may be handwritten in simple official letters especially when it is within the organisation (a special touch to this letter).
7. **Heading:** For every formal communication, there must be the head, body, and tail. The heading, if not in capital letters should be underlined. However, it is appropriate to be written in the upper case for prominence. A letter must bear a heading or caption, for example, if a client is being informed about progress in a suit, then the heading of the letter will be the suit number and the parties to the suit. It should present at a glance a summary of the content of the letter. Heading must reflect the subject matter of the letter. Heading may be omitted in simple official letters. The heading is written with a line spacing after the salutation. In litigious matters, the name of the client or the parties must be specified first, followed closely by (at the suit of). "RE:" (with regard to, in respect of) serves as a signpost and it refers to other communication that has gone on in respect of the matter between the parties. Though it may be dispensed with in consonance with plain English.
   Examples of Heading:
   RE: PAYMENT OF CONTRACT SUM
   RE: VAYMOND v DUPE
   APPLLICATION FOR THE POST OF A LAWYER
8. **Body** - Formal letter comprises of three main segments viz:
   (a) Introductory Paragraph - The introductory paragraph (opening paragraph) should briefly explain the basis for the letter and confirm relationship with the client. In a legal letter, the introductory paragraph gives a brief description of the lawyer's relationship with the client. In an application letter, an introductory paragraph establishes the purpose for writing the application letter; it gives an explanation to the job applied for and the source of information of the vacancy. Introduction Example is: "We write as counsel to Mr Killi & Co. with respect to the above subject matter (when referring to other correspondence).
   (b) Main Paragraph: the main paragraph states the reason a lawyer is writing the letter by pinpointing the issues and sequentially presenting them. It contains the actual message(s) to be conveyed, it may be one or more paragraphs. Numbering of paragraphs may be use.
   (c) Concluding Paragraph: The concluding paragraph states what action is to be taken and by whom e.g. stating the action that you expect from recipient or what you intend to do on behalf of your client. Do not make threats that you know you will not carry

out.

9. **Complementary Close** - This is the choice or the mode of salutation. It should be noted that the closure is a determinant factor of the salutation. For example, Dear Sir closes with "Yours faithfully" - 'f' is in small letters; "Dear Mr. ABC" closes with "Yours truly", etc. A closing greeting comes immediately after the last paragraph with a line spacing. It usually comes before the signature. It is a polite way of ending a letter. Avoid flowery or archaic terms (I have the honour to be your most obedient and long-serving servant).
10. **Signature, Name and Designation of Writer** – Unsigned document is not admissible in court. No letter must be dispatched unsigned. A letter must be signed either by the writer or on his behalf. It is advisable to always sign on top of the name. When signing on behalf of someone, you must indicate it by adding the word "for". For example, For: Mr. ABC. However, the expression "pp." is used in some cases. Lawyers must read and scrutinise the letter before appending their signature. Sign on top of the name. The name of the sender is written immediately after signature. The designation of the sender can also be written immediately after the name.
11. **Enclosure –** Where you enclose or attach other documents, you should indicate that fact and you may list or omit the list of the documents. Where there are documents sent together with the letter, it is traditional to indicate this in the body of the letter at the foot below the writer's designation. It is usually abbreviated as 'Encl' or Encls at the bottom left hand corner followed by a list of documents enclosed. It is useful to dictate the number of enclosures e.g. Encls x 2. Some lawyers itemise the documents attached. e.g.

    ENCLS
    (1) A bill of charges
    (2) An invoice
12. **Copies –** This is used where there is need to notify other persons about the message in the letter. It is known as the distribution list. (CC is the short form of Copies). It is also used to notify the recipient that same copy has been sent to other persons. But where a blind copy is to be sent to other persons, nothing should be shown on the letter. Where blind copies are sent, the abbreviation 'BCC' is written on the office copy of the people copied. The addressee's copy will not have any CC. It means that the writer does not want the addressee to be aware that copies are sent to third parties.

    Example:

    "Copy: Daniel Fox, Chief Accountant"

VI. Email

Formal communication can also be electronic, through sending email. However, in sending an email, the language to be used must be formal. There can be an attachment online. For instance, in submitting your curriculum vitae - CV, an email can be sent with the CV as an attachment.

VII. Sample Draft of a Letter

KILLI AND ASSOCIATES
Legal Practitioners, Solicitors & Arbitrators
1 Sanusi Fafunwa Street, Victoria Island, Lagos
07064793812
(Knanchwat2020@yahoo.com)

Our Ref: 2304_____ **Your Ref**: _____

12th January, 2019

Joel Adamu
307 Lekki Drive
Lagos

Dear Sir,

RE: AVAILABILITY, CHECK AND RESERVATION OF THE NAME, JOURNEY MERCIES TRANSPORT

We refer to your instruction on the above. We are glad to inform you that the Journey Mercies Transport Company has been approved by Corporate Affairs Commission.
Please be informed that in other to complete the process of registration, we hereby request the following documents:

1. Two passport photographs of the person applying for the registration;
2. ₦10, 000 (ten thousand naira) being the amount for the filing fees;
3. ₦20, 000 (twenty thousand naira) being the amount for use of certificate;
4. The address of place of business; and
5. Nature of business.

Thank you.

Yours faithfully,

Killi Nancwat
(Principal Partner)
For: Killi & Associates

MEMORANDUM – INTERNAL COMMUNICATION

I. Concept

Memorandum is a Latin word that means 'something to be remembered. Memorandum is an official communication used internally – a way of passing information to staff in the office. Apart from letters, memorandum can be sent out but only internally. Memos do not go outside the organisation (the way it differs from letters). Memorandum is similar to letters in terms of tone but differ in terms of format.
Memorandum popularly called MEMO is usually short, precise, concise, although there are times when memo can be long. If there was a notice before, then "Re" is used. RE is used when there has been a previously discussed issue. E.g. in reporting to a client on a case, in letter, it will be: RE: TITUS V. ADEOLA HC/11/12/10. No need for Dear Sir in memos. The purpose of a memo is to convey information to colleagues or ask them to do something. It should be easy to scan and the stakes/information should be stated clearly.

II. Structure of a Memo

1. **Sender and Recipient: From** - where it is coming from e.g. Deputy- Registrar. **To** - where it is going to e.g. to all academic staff.
2. **Date** – 11th March, 2019.
3. **No Salutation**: salutation such as "Dear Sir", are not used in memos.
4. **Subject** - summary of the message to the recipient (it should not be clumsy). E.g. NOTICE OF MEETING (it has to be in capital letters). Use RE if continuation of previous memo.
5. **Body** - paragraph format (blocked or indented). Style should be formal or personal depending on your relationship with the person. If coming from superior, it has to be formal. If between contemporaries, then it can be informal. But ensure information is brief and concise and straight to the point. The body normally consists of three paragraphs: opening, middle and closing.
   (a) Opening Paragraph: introduces the subject of the memo and provides the reason for the memo. It can be a statement of the problem.
   (b) Middle Paragraph: more details on the subject. It can be a discussion on why the problem exist. Number/bullet system should be used. Move from the major to minor issues.
   (c) Closing Paragraph: desired action from the recipients and a deadline for response. It can also be about the suggestion on course of action and the concluding statement.
6. **No Complementary Close** - just "THANK YOU".
7. **Name, Designation and Signature** – of sender.
8. **Enclosures, Attachments and Distribution Lists:** Enclosures, attachments and distribution lists are included if necessary.

FROM: The Head of Chambers
TO: All legal practitioners
DATE: 5th January 2018
SUBJECT: DIRECTIVES FROM THE PRINCIPAL PARTNER

Dear colleagues

I have been directed to inform you as follows:
1. All lawyers of the firm must specialise in a particular area of law.
2. Attendance at the annual Nigerian Bar Association conference is now compulsory for all lawyers in the firm.
3. That the firm shall see to the effective training of externs from the Nigerian Law School. These changes will be effected on 30th March 2019.

Please forward to me your area of interest for your specialised practice of law and any comments on how to effectively train the externs and the compulsory attendance at the NBA conference by 30th January 2019.

Thank you.
(Signature)
Mr Joel Adamu
Head of Chambers

CC: Mr Killi Nancwat
Principal Partner

LEGAL OPINION

I. Concept

Legal opinion is a letter written by a lawyer to his client, in respect to a subject matter, giving his professional or legal opinion/advice e.g. when a Bill is in formation at the House of Assembly or from the AG's office.

II. Contents of a Legal Opinion

A. General Contents of a Legal Opinion

1. **Introduction:** cite the fact that writer has been authorised/briefed to write a legal opinion on…. The authorising official must be stated and the capacity in which he is authorising the writing of the legal opinion.
2. **Summary of the Facts:** the legal opinion should contain a summary of facts where they are available. Where the facts are vague, writer should ask for clarification from the authorising official e.g. company wishing to merge asks the company secretary for a legal opinion on the merger.
3. **Applicable Laws:** What the applicable law is if one exists e.g. what the law states in relation to the topic. Sometimes, the possible law may be multifaceted. Start with the one that is in the favour of your opinion down to the least favourable.
4. **Application of Law to the Facts:** Apply the law to the facts of the case.
5. **Conclusion**: In certain circumstances where there is more than one conclusion, start with the best conclusion and move down to the options. Conclude by stating what you think should be done based on the facts of the case.
6. **Signature**: Sign the legal opinion.

B. Contents of Legal Opinion under Law of Tort

1. Summary of the facts;
2. Who to sue if identity of parties are unclear;
3. Liabilities of the parties;
4. Remedies to be sought/available to the client;
5. Case law and decisions of the Court in event of litigation of which is the best remedy to be sought by the client;
6. May require further information and documents;
7. Procedure to be followed; and
8. Limitation period (if it is key, then flag it in introduction, if not put it after procedure to be followed).

III. Guidelines to Legal opinion

1. Restrict answer to which opinion is sought. Avoid general discussion.
2. Make the answer clear, simple and comprehensible to the recipient.
3. State the opinions' limitations if any (e.g. you did not have access to all the necessary relevant information/data).
4. Address all sides to the issue in an objective manner and state your opinion (avoid balancing arguments).
5. The opinion should be stated in paragraphs with headings and sub-headings where necessary
6. Checklist: Date, recipient's address, the heading, opening/introduction, facts, the law, my conclusion i.e. state the conclusion (sometimes an executive summary is attached to this memo) and then explain on how I arrived at the conclusion i.e. by merging the facts to the law, closing, name, signature and office address of the writer.

IV. Sample Draft of Legal Opinion and Covering Letter

As a counsel, Chairman of INEC has briefed you to write a legal opinion on the rights of

internally displaced persons (due to floods and insurgency) to vote in the forthcoming general elections in Nigeria.

A. Legal Opinion

Introduction

I, Killi Nancwat of Compos Mentis Chamber, at No 1 Compos Mentis Bouvleard, Warri, Delta State have been engaged by Professor Joel Adamu, the Chairman of the Independent National Electoral Commission to write a legal opinion on the right of internally displaced persons to vote in the 2015 gubernatorial elections.

Summary of Facts

Currently, in Nigeria, there are internally displaced persons due to floods and the activities of insurgents in the North East of the country. Internally displaced persons are persons who are no longer in their normal place of abode and have had to seek refuge elsewhere. For instance, in Borno State, persons have fled due to the activities of Boko Haram to neighbouring states in and outside Nigeria.

Relevant Statutory and Case law

Article 2(1) of the African Union Convention for the Protection and Assistance of Internally Displace Persons in Africa (Kampala Convention) states that all signatory states should 'take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoin their civic and political rights, particularly public participation, the right to vote and to be elected to public office'. Nigeria ratified this Convention in 2012 and therefore, it is bound by this law. Also see ***Elemelu v INEC*** where the court said that prisoners and persons in diaspora are not excluded from voting to vote – note that this case law is not conclusive. The ***Electoral Act 2011*** states that Nigerians above 18 years may register to vote if they are ordinarily resident, originate from or work in any registration area.

Recommendation

Based on the Kampala Convention, INEC has a duty to take all necessary measures to ensure that those within the country are to register and obtain their permanent voters' card in order to vote in the upcoming elections. In addition, the Electoral Act provides some flexibility in the law so that any person resident in Nigeria may register to vote, even those internally displaced. The issue is what necessary measure Nigeria should take even within limited resources.

B. Covering Letter Forwarding the Legal Opinion to the Chairman of INEC

KILLI AND ASSOCIATES
Legal Practitioners, Solicitors and Arbitrators
No 1 Compos Mentis Boulevard, Warri, Delta Nigeria
Phone No: 07031112732
Email: Knanchwat2020@yahoo.com

9th January 2019

For the attention of Professor Joel Adamu
Chairman, Independent National Electoral Commission
436 Zambezi Crescent
Maitama District
Federal Capital Territory
Abuja

The Chairman, Independent National Electoral Commission

LEGAL OPINION ON THE VOTING RIGHTS OF INTERNALLY DISPLACED PERSONS

I am writing with regard to the legal opinion on the right of internally displaced persons to vote you requested on 1st January 2019.

Please find enclosed, the copy of my report on the issue above. Please, do not hesitate to contact me if you have any further queries.

Yours faithfully,

_____

Killi Nancwat

For: Compos Mentis Chambers

Encl

(1) Legal opinion on voting rights of internally displaced persons.

MINUTES OF A MEETING

I. Concept

Minutes is a summarised record or written summary of the points discussed at a meeting, that is, an official written message – attendance of members, discussions, decisions, who is responsible for what, actions/steps to be taken etc. It is important for a lawyer to learn the art of drafting minutes because of the organisation of law firm and most company secretaries are lawyers and it is the duty of the secretary to produce minutes.

II. Tips in Writing Effective Minutes of Meetings

1. **Know the Purpose –** Before writing minutes, you must know the purpose of it. First, a report of meeting minutes is an official record of the meeting (i.e. a legal document). But it is just not the type of record you write, print out, file and then forever forget. It provides a historical account of official business and operational decisions, and involvement of people making the decisions. It is used as a reference, which is periodically, or frequently referred to. Sometimes, minutes of meeting can become a legal document and evidence in court. It also serves as a blueprint for future actions.
2. **Keep It Concise –** Keep the key information in order and make sure you do not miss critical info. You only have certain limited time and it will be impossible to write every single thing discussed during a meeting. So, keep it concise, i.e. compact and short. Take notes of the issues discussed, major points raised and decisions taken. Make sure what you write will be easily understood, and usable in the future. Keep in mind that many of the meetings require the attendees looking back at the previous meeting's minutes. Thus, if people cannot read them, it will amount to a waste of time.
3. **Get the Right Info and Follow the Right Format –** To keep it short, here are list of information that should be in your minutes of meeting: Time, date and venue of meeting; List of attendance (and their position); Agenda of meeting – key agenda, details, and specific action plan, and owner/executor of the plan; and the name of person taking minutes.
4. **Keep a Record –** Normally, after minutes are hand-written, they are transferred into a proper computerised document (e.g. Microsoft Word or Excel), properly restructured, save and printed out. Good and fast typists can immediately record conversation into the computer/laptop, where this requires less time for fine tuning later on. The minutes are then distributed among the attendees of the meeting, or those who will be responsible to take actions as regards to what is discussed during the meeting. It should be noted that minutes are not verbatim of what transpired at a meeting but abstracts of a meeting, therefore, there should be no verbosity, and obiter dictums should be avoided.

III. The Don'ts of Minute Writing

1. Do not editorialise. Be objective and do not offer opinions/commentaries.
2. No blow-by-blow account; no opinion of individuals.
3. No confidential/sensitive matters because the minutes can be called up as evidence in litigation.

IV. Basic Contents of Minutes

1. Heading (minutes of…state nature of, place, date and time of the meeting)
2. Attendance at the meeting (list of those in attendance and those not present, if practicable)
3. Opening remarks/prayers
4. Adoption of agenda
5. Minutes of last meeting, matters arising and adoption of the minutes
6. Agenda of the meeting (discussion of agenda and issues arising there from)
7. Reports
8. Resolutions
9. Any other business (AOB) that is not included in the agenda
10. Conclusion
11. Adjournment and closing remarks/prayers
12. Signatories (Secretary or Chairman and Secretary)

V. Drafting Rules of Minutes

1. It should be a simple language
2. It should be clear
3. It should be precise
4. It should be proof-read.

VI. Sample Draft of Minutes of Meeting

THE MINUTES OF THE 1ST ANNUAL GENERAL MEETING OF BENAKOL NIGERIA PLC HELD AT NO 1 BENAKOL STREET, MAITAMA, ABUJA ON 8TH JANUARY 2019 AT 9AM.

In Attendance:
1. Mr. Mathias Ayuba
2. Barr Adebola Sule

Present:
1. Prof. Joel Adamu
2. Dr. (Mrs) Benjamin
3. Barr. Christy Cirbam
4. Engr. Peter Chuwang
5. Mr. Edward Collins

Absent:
1. Mr Dare Olu

Agenda:
1. Presentation of Certificate of Incorporation
2. Appointment of Chairman
3. Appointment of Secretary
4. Appointment of Banker and Auditor
5. Adoption of Pre-incorporation contract
6. Any other Business

Opening:
The Chairman confirmed that notice of the meeting had been given to all the directors of the Company and that a quorum of the board of director was present at the meeting. The meeting

commenced at 10 am and Prof. Joel Adamu welcomed the members of the Board to the inaugural meeting.

Presentation of Certificate:

The Chairman informed the Board about the successful incorporation of Benakol Nigeria Plc and the Certificate of the Company was presented by Barr. Adebola Sule. The certificate was to be photocopied and placed in conspicuous place at the registered and branch offices of the company.

Appointment of Chairman and Secretary:

Prof. Joel Adamu was appointed the Chairman of the Board and Engr. Peter Chuwang nominated Dr (Mrs) Benjamin as secretary of the Company.

Appointment of Banker and Auditor:

Skye Bank Plc, Bwari, Abuja was appointed as the banker of the company while the firm of Bode & Co. was named as the Auditor of the Company.

Any Other Business:

There being no further business, the meeting was brought to an end at 11am.

Adjournment, Closing Remarks and Prayers:

The meeting adjounrned and a closing prayer was said by Adebola Sule.

_____ _____

Chairman Secretary

CURRICULUM VITAE/RESUME

I. Concept

This is a brief account of a person's qualifications and previous occupations, sent with a job application (personal details, education and work experience: state of origin, date of birth/age). Summary of applicant's qualifications and suitability for the job sought. A targeted marking tool as tailored to particular job.

Vitas and resumes both have similar purposes – as marketing documents that provide key information about your skills, experiences, education, and personal qualities that show you as the ideal candidate. Where a resume and curriculum vitae differ is their use, format, and length.

Curriculum Vitae – often called a CV or Vita – tends to be used more for scientific and teaching positions than a resume. Thus, vitas tend to provide great detail about academic and research experiences. Where resumes tend toward brevity, vitas lean toward completeness.

Unlike resumes, there is no set format to vitas. While vitas do not have the one-page rule of resumes, you need to walk the line between providing a good quality of depth to showcase your qualifications and attract potential employer interest and providing too much information thus appearing verbose and turning off potential employer interest.

II. The Dos and Don'ts

1. Tailor resume to the positions you are applying for.
2. Lawyers should be brief and straight to the point.
3. Information should be arranged in a chronological order (current or most recent position/qualification first).
4. Lead with your strongest suit – usually employment but if fresh graduate or career changer then education.
5. Make your resume easy to scan.
6. Select details that support your goal-duties and achievements that make you shine in that particular job. Focus on achievements and quantify them.
7. Use strong verbs in your job description: instead of responsible for the supervision of 7 staff members, use supervised a staff of 7.
8. Add a volunteer section.
9. Note honours and awards.

10. Be careful about hobbies e.g. extreme sport may be a red flag about risk of injury and missing work.
11. Keep several different resumes for different job positions. Remember a resume is a targeted marketing tool.
12. Don't lie.
13. Don't use tiny fonts and narrow margins to bring in more info on the page.
14. Don't use technical terms or jargons.
15. Don't use unusual formatting – some software screen resume and reject yours.
16. Don't recap your job description in the work experience section.
17. Don't leave gaps in the resume – enrol in education program or training.

III. Contents of a CV

1. Name
2. Address (home or permanent, not P. O. Box)
3. Telephone and e-mail address (if any)
4. State of origin
5. Schools attended (from highest to lowest)
6. Educational qualifications with dates (from highest to lowest)
7. Area of specialisation (tailored to the job you are applying for)
8. Employment record
9. Present position
10. Summary of present job schedule
11. Cognate experience
12. Referees
13. Signature and date

(Week 11)

LEGISLATIVE DRAFTING

INTRODUCTION

I. Concept of Legislative Drafting

Legislation is the making of laws or it could be said to be the process of writing and passing laws. Legislative drafting, however, can be described as the process of drafting bills and other legislative enactments including subsidiary legislations and administrative orders, notices, warrants, permits, and similar documents. Drafting is a skill aimed at constructing a document that achieves a purpose required of it by the client, lawyer and the law. Drafting is the initial preparation of that document. Drafting skill involves the construction of documents, both formal and informal. It necessarily involves the selection of words and expressions. Legislative drafting like any other form of legal drafting is an institutionalised means of communication. The essential distinction is that unlike other forms of legal drafting which may be easily altered or changed, legislative drafting is more of a permanent enactment which stands on its own and speaks for itself without any form of assistance, elucidation or explanation from the drafter or draftsman.

Legislations are made to govern and regulate human conduct within a society. Where a legislation is drafted with clumsy and ambiguous language or phrases, it might cost members of the public on whom the legislation is administered long years of battles and litigations with attendant huge cost. It is imperative that a great deal of care and diligence be exercised in drafting enactments to reduce as much as possible the probable difficulties and confusion that may befall the future administration and interpretation of enactments.

Thus, the legislative drafting process may be said to begin with the receipt of drafting instructions and ends with completion of the draft. For there to be a legislative drafting, there must be a legislative draftsman.

II. Legislative Draftsman

A legislative draftsman is a person engaged in the drafting of legislative bills and other instruments at whatever level of government. In Nigeria, the offices of legislative draftsmen are found in various government ministries, parastatals and in all legislative institutions.

III. Sources of Legislative Drafting

This simply means the various sources of instructions from where legislation may be drafted. It includes the following:

1. The manifesto of a political party
2. Results of referendum
3. Government policy
4. Case laws
5. Reports of white paper from Commission of Inquiry
6. Reports of parliamentary committees
7. Inputs from law reform commission
8. Reports or feedbacks from constitutional conferences

ATTRIBUTES AND DUTIES OF A LEGISLATIVE DRAFTSMAN

I. Attributes of a Good Legislative Draftsman

1. He must be a lawyer, who must have undergone training in law, with a basic knowledge; and must have practised as a lawyer with special interest in drafting.

2. He must have a good command of English language so as to make concise and accurate instructions. He should also be able to communicate effectively with precision and in simple, clear and precise English language.
3. He must be patient, meticulous, analytically minded, critically minded, and research driven.
4. He must be familiar with the interrelationships of the various departments of government; and a good knowledge of the political, sociology, psychology and economic system/society of which you are drafting the law.
5. He must develop interest and flare for the subject of legislative drafting and exhibit a high sense of tolerance, commitment and dedication in the drafting process. Thus, he must be ready to carry out researches; and must know where and how to find the law.
6. He must be a very simple and humble person with a good spirit of team workmanship. He must be committed and fully devoted to his work as a legal draftsman.
7. Ability to work under pressure. Have a clear mind and mental capacity to draft laws
8. Work with little supervision.
9. Willingness to accept criticisms in good faith.

III. Duties of Legislative Draftsman

1. Taking instructions/research adequately.
2. Holding consultations and legal advice as and when necessary at any stage of the legislative process.
3. Preparation of Bills.
4. Preparation of subsidiary legislations.
5. Attending of legislative proceedings during passage of Bills.
6. Providing legal advice.

PARTS OF LEGISLATION

A legislation (Bill) is made up of several component parts. The arrangement of the component parts usually follow an established pattern which may vary from one jurisdiction to another. However, it is essential that every legislation must contain and reflect similar features in contents, which are of universal application. Some of these are – Long title; Preamble; Commencement; Enacting formula or clause; Short title; Marginal notes and references; Interpretation section or provision; Sections and subsections; Punctuation; Paragraphs; and Schedules.

I. Long Title

Every legislation (Bill) must contain a long title, which states in clear and concise language the fundamental purpose, which the legislation is to serve. The principal object of the long title is to highlight the object and intendment of the enactment. Thus, it helps to determine the scope of the legislation when it will be considered by a legislative body. The language of the long title depends on whether the statute is a Federal or State statute. If it is Federal, the draftsman should normally place at the top before the main provision the following: "A Bill for an Act to...", but if it is State, he should be "A Bill for a Law to...". However, as soon as the Bill is enacted as law, the word "A Bill for" is dropped from the long title. It is usually written in bold letters or capital letters. For example, the long title to the ***Evidence Act, Cap. E14, LFN 2004*** is captioned thus –

*"*AN ACT TO PROVIDE FOR THE LAW OF EVIDENCE TO BE APPLIED IN ALL JUDICIAL PROCEEDINGS IN OR BEFORE COURTS IN NIGERIA*."*

It cannot affect a clear statutory provision. The long title need not be too long rather it should be comprehensive and less cumbersome as possible to convey the intendment of the enactment. Also, the long title does not form part of the substantive provisions, although it forms an integral part and may serve useful purpose in statutory interpretation of the Bill in that it constitutes a special facility unveiling the legislative spirit and intent. In ***Bello & 13 Ors. v. Attorney-General of Oyo State***[70] the Supreme Court stated thus – "Resort may be had to the long title of an enactment only as an aid to resolve ambiguities that may arise from the plain and ordinary words of a statute."
You must end the long title with the use of 'OTHER MATTERS' or 'FOR THE PURPOSE CONNECTED THEREWITH': See ***Ibrahim v Judicial Service Commission***.

"A BILL FOR AN ACT TO ENSURE FULL COMPLIANCE WITH THE ANTI-TERRORISM TREATY OF ROME, ESTABLISH THE ANTI-PIRACY COMMISSION FOR THE PURPOSE SET OUT IN THE TREATY AND OTHER MATTERS INCIDENTAL THERETO."
OR
"AN ACT TO SAFEGUARD LIVES AND PROPERTIES, TO ESTABLISH THE NATIONAL SECURITY COMMISSION AND FOR CONNECTED MATTERS."

II. Preamble

This is a clause that is usually at the beginning of a Bill or legislative draft of constitutional importance. Generally, a preamble is a declaration by the legislature of the reason for the passage of the statute to which it is affixed. Though, most legislation do not carry preamble, but when used, becomes part of the statute and might be useful as aid in the interpretation of ambiguous provisions in the statute and the object sought to be accomplished, though not to modify a clear provision.
Preambles are commonly used when it would be difficult to know the purpose of the statute unless and until certain facts (the mischief) are disclosed. It cannot affect a clear statutory provision. It is used in constitutions, to ratify international instruments/treaties, ceremonial statutes, laws on peculiar local problems: the preamble narrates the authority to enact the particular law or the reasons why the statute is being enacted.
For example, the preamble of the ***1999 Constitution of the Federal Republic of Nigeria*** is captioned thus –

"WE THE PEOPLE of the Federal Republic of Nigeria having firmly and solemnly resolve, to live in unity and harmony as one indivisible and indissoluble sovereign nation under God, dedicated to the promotion of inter-African solidarity, world peace, international co-operation and understanding… Do hereby make, enact and give to ourselves the following Constitution:-"

III. Commencement

An Act passed today needs not commence on the same day. It commences when it comes into operation – ***Kotoye v. Saraki.****71* The general rule is that it commences either on the date it receives Assent or the date it is published in the Gazette. The draftsman must be very careful about the commencement of the law and should take definite instructions on this. Usually, the law specifies a commencement date. The commencement may be retrospective or fixed on a future date. According to ***Section 36(8) CFRN 1999***: no person shall be convicted on a law

[70] (1986) 5 NWLR (Pt. 45) 828,
[71] (1994) 7-8 SCNJ (Pt. 111) 524

that was not in existence at the time the person committed the offence. Therefore, only beneficial statutes can be made retroactive.

It may have multiple commencement date (not usually used as could lead to confusion). Where no date is provided, it commences on the date it is passed or when published in the gazette (***Section 2 Interpretation Act***). Commencement could also be at the happening of a particular event. For example, the **1999 Constitution of the Federal Republic of Nigeria** is captioned thus (e.g. could be clearly provided in a section of the law)

"The provisions of this Constitution shall come into force on the 30th day of May 1999."

Or

"This law shall commence on 4th July 2014"

Or

"This law shall be deemed to have commenced on the 4th January 2014" (if it is to be retrospective)

Or

"[Commencement] 4th July 2014."

IV. Enacting Formula or Clause

This is also found at the beginning of a legislative or statutory statement. It states the authority by which legislation is made. In ***Joiner v. State*,**[72] the Supreme Court of Georgia held thus – The purpose of an enacting clause is to establish the Act, to give it permanence, uniformity and certainty, to afford evidence of legislative statutory nature, and to secure uniformity of identification and thus prevent inadvertence, possible mistakes, and fraud.

The enacting clause comes immediately after the long title or preamble, and varies from one jurisdiction to another depending on the type of government in place. For example, in military regimes, the enacting formula or clause could be captioned thus –

"The Federal Military Government decrees as follows..."

In civilian administrations, it could be captioned thus –

"ENACTED BY THE NATIONAL ASSEMBLY OF THE FEDERAL REPUBLIC OF NIGERIA as follows:" or

"ENACTED BY THE HOUSE OF ASSEMBLY OF ENUGU STATE OF THE FEDERAL REPUBLIC OF NIGERIA as follows:"

V. Establishment Clause

Only when a statutory body is to be created e.g. there is hereby established a corporation or there shall be established or there shall continue to be established. In respect to Bill setting up a statutory corporation the Establishment Clause will be as follows: "*There is hereby established a body to be known as the Development Monitoring Agency which shall be a body corporate with perpetual succession and a common seal*."

VI. Short Title/Citation

This is for identification purpose. It is the short name by which the statute is to be cited and identified. Unlike the long title, the short title presents very brief information on the subject matter of the Bill. A concise description of the statute mainly used for identification. Used in citing the statute. This is not the same as an acronym. Ends with the year the statute was enacted. For example, the **Criminal Procedure Code, 1960** is captioned thus –

"This Law may be cited as the Criminal Procedure Code Law."

Or where it is amendment legislation, it may be drafted thus:

"This Act may be cited as the Money Laundering Prohibition (Amendment) Act of 2012"

[72] (1967) SCG Ga 367, 155 S. E 526

VII. Application Clause

Usually of general application. Exceptions where there is territorial application e.g. ***Property and Conveyancing Law (1959) (Western States)***. The ***Criminal Procedure Code 1960*** provides that: "*This law shall apply to Northern states in Nigeria*." Specific categories of people: ***Legal Practitioners Act (1975)*** state that "*this law shall apply to legal practitioners in Nigeria*." It can also be applicable to specific things or Federal, State or Local Government.

VIII. Duration

Laws are generally in force until repealed. However, there may provide expiration date or expire by reference to an event or empower an officer to fix an expiration date. May be used to test public reaction to government policy.

"This Act shall continue to be in force until the 31st day of July 2011, and shall then cease to have the force of Law unless otherwise stated by the House through the enactment of another legislation which determines otherwise."

Or

"This Act comes into force on 23rd March, 2016 and continues in force for 4 years after that date."

IX. Marginal Notes and References

It should be noted that marginal notes do not form part of a Bill or legislative enactment. It is usually short and only serves a descriptive purpose to assist in the proper construction of a particular provision contained in the Bill against which the marginal note is provided. They are either on the left or right side of the legislation.

Section 3(3) of the Interpretation Act, Cap. 192 LFN, 1990 provides that – A heading or marginal note does not form part of the enactment and is intended for convenience of reference only. However, courts are not expressly precluded from seeking assistance by reference to marginal notes to resolve contentious issues of law where the provisions of the Act are ambiguous – ***Ondo State University v. Folayan;***[73] and ***Schroder v. Major***.[74]

X. Interpretation Section or Provision/Definition Clause

This is also referred to as "definition clause". It is found either at the beginning or the end of a Bill or legislative draft. In more recent statutes, it comes at the beginning of the legislation. It contains the definitions or meanings of words and expressions used in the statute. E.g. the meaning of woman in a statute may be different from the general meaning of woman. Thus, not mandatory unless when words used in the statute have a particular meaning in the statute. The interpretation clause aids clarity and consistency in drafting. Thus, once a word or expression is defined in the Interpretation Section, the draftsman is free or at liberty to use the word or expression repeatedly without providing the meaning each time such word or expression is used.

As a general rule, where a particular word or expression is not defined in the interpretation section of the statute, the Interpretation Act of the Federation or Interpretation Laws of each State shall be resorted to for the purpose of construction and judicial interpretation. This is the position of the law because the Interpretation Act of the Federation and the Interpretation Laws of each State govern interpretation of statutory enactments and instruments generally. In ***Attah v. The State,***[75] per Karibi Whyte JSC stated thus –

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[73] (1994) 7 NWLR (Pt. 354) 1 at 23

[74] (1989) 2 NWLR (Pt. 101) 1

[75] (1993) 7 NWLR (Pt. 3005) 257 at 286

It is well settled principle in the interpretation of statutes that where it has been defined in a statute, the meaning given to it in the definition must be adhered to in the construction of the provision of the statute unless the contrary intention appears from the particular section or the meaning is repugnant in the context in which the definition is used.
For example, the ***Legal Practitioners Act*** is captioned thus –
"In this Part of this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively:
"Attorney General" *means the Attorney General of the Federation"*
Another drafting method that is commonly used are the words "means" and "includes". The implication is that where the former is used, it follows that the statute does not admit of any other meanings of the word already restrictively defined in the interpretation section (closed). – ***Odu'a Investment Ltd. v. Talabi;***[76] ***Owena Bank Nig. Plc. v. N. S. E. Ltd.;***[77] ***N. E. W Ltd. v. Denap Ltd.***[78] On the other hand, where the latter is used, it follows that the words defined could admit of other extraneous meanings other than in the sense in which they are defined in the interpretation section (open). The word to be defined must be in quotation marks. In this Act "woman" means… Or In this Act "woman" includes…

XI. Schedules

This is used in legislative drafting to supply supplementary details. Schedules exhibit in detail matters or information mentioned or referred to in the principal body of the Bill or legislation. It is used to clear and tidy presentation of detailed information. It is usually numbered paragraphs e.g. First Schedule to CFRN 1999 (***Section 3 of the Constitution***, which provides for the states in the Federation: instead of listing the states and local governments under the states in section 3, this was banished to the First Schedule to the Constitution. There is a cross reference in the section which mentions that the states are mentioned in the First Schedule).
Details of information, statistics, figures, tables, and other special or technical matters highlighted or referred to in the body of an enactment are contained in the schedule. Moreover, what the principal provisions do is to make references to details contained in the schedule to the enactment. However, it is important for the draftsman to remember to indicate on top of the first page of the schedule by way of marginal reference, the main provisions or section(s) by virtue of which and for which purpose a particular schedule is provided. For instance, Section 8(4) LPA provides that:

"Legal Practitioners appearing before any court, tribunal or a person exercising jurisdiction conferred by law to hear and determine any matter (including an arbitrator) shall take precedence among themselves according to the table of precedence set out in the First Schedule to this Act

[First Schedule]"

The schedule referred to is drafted as follows:

"SCHEDULE

FIRST SCHEDULE

[76] (1997) 10 NWLR (Pt. 523) 1
[77] (1997) 8 NWLR (Pt. 515) 1
[78] (1997) 10 NWLR (Pt. 325) 481

[Section 8(4)]

Table of Precedence

1. Attorney General of the Federation.
2. Attorney General of a State but only in state courts
3. Senior Advocates of Nigeria in order of priority
4. ...”

XII. Savings

This is used to preserve or save a law, a right or a privilege which would otherwise be repealed or ceased to have effect. E.g. *“Save and except otherwise stated, Section 17 of this Act shall not be repealed under this amendment.”*

XIII. Repeals/Revoke

This clause terminates the operative force of a particular legislation. This may be stated expressly or by implication. See ***Raleigh Industries (Nig) Ltd v. Nwaiwu***.[79]

“The Legal Education Act 1962 is hereby repealed.”

OR

“The Legal Education Act 1962 is hereby revoked.”

XIV. Punctuations

This is all its various forms like comma, full stop, colons, inverted commas, quotation marks, etc. must be taken into consideration in construing an enactment. The draftsman must make careful use of punctuations in legislative drafting because where it is recklessly used, could defeat the purpose of an enactment. ***Section 3(1) of the Interpretation Act*** provides thus – “Punctuation forms part of an enactment and regard shall be had to it accordingly in construing the enactment.”

STAGES OF DRAFTING LEGISLATION

Previously, only in-house lawyers at the legislature were engaged to draft laws. In recent times, private legal practitioners are also engaged to draft laws. For a draftsman to produce a good draft, he must pass through five identifiable stages. The stages are –

I. Understanding Instructions

A. Concept

Drafting instructions are the instruction emanating from the authority sponsoring the law to the legislative draftsman who is responsible for reflecting policies in laws or statutes. The instructing authority could be anything from the government, a parastatal or other agency of government. The legislative draftsman would, invariably, be a lawyer knowledgeable in the art of drafting laws and could be a legal practitioner commissioned to draft the law.

B. Things to Direct Mind to in Understanding Instructions

It is essential that the draftsman understand fully the instruction received in respect of the law he is going to draft. He should, therefore, direct his mind to one of two things or indeed both, which are –

1. He can make clear to those instructing him the kind of drafting instructions, which is most helpful to him. This can be done on a case by case basis, for example, he can get in touch with the instructing authority, setting out what and what information should be supplied to him or generally as a guide to all authorities who wish to instruct him to draft one law or the other; or/and

[79] (1994) 4 NWLR (Pt. 342) 760

2. He can consult with the instructing office at an early stage after receipt of the preliminary drafting instructions.

C. Essentials in Drafting Instructions

The following are essential in drafting instruction –

1. Sufficient background information to enable the draftsman to see in perspective and in context the facts and the problems, which the legislative proposal is intended to meet.
2. The principal objectives of the legislation must be clearly stated.
3. The means whereby the principal objectives are to be achieved should be stated.
4. All known implications, difficulties whether legal, social or administrative associated or contemplated by the proposals should be stated.

E.g. the New Sexual Offences Bill (before the National Assembly) widens the definition of rape, increases the punishment for rape and imposes harsher offences for raping children.

II. Analysis

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

1. **Existing Law** – There is no Bill that is not related remotely or otherwise to any existing law. Be that as it may, it is the duty of the draftsman to study in great detail all existing laws within the spheres of the legislative proposal. The major advantage of doing this is to avoid drafting a law that duplicates or impliedly repeals existing laws on the subject matter. This does not mean that a law may not, on the face of it, purport to amend any existing law.
2. **Potential Danger Areas –** It is generally agreed that the duty of the draftsman is to put legislative proposals in draft form for passage into laws, and not to concern himself with formulation of the policies which give rise to the legislative proposals. But in practical terms, it is difficult to insulate the draftsman completely from having a say in determining the shape, contents, and policy-related issues concerning the proposed legislation because by virtue of the position of the draftsman, he is presumed and in fact, expected to be familiar with the law on a wide range of issues which puts him in a vantage position to see a legislative proposal in a wider and more balanced perspective than is possible for those who instructed him e.g. not to draft a law that would lead to inter-state or tribal conflicts or war.
3. **Practicability –** This is similar to potential danger areas. It deals with enforcement of legislative enactments. It is common to find that sponsors of legislative proposals seem more interested in pushing for rapid legislation without considering the capacity of the proposed legislation to be administered effectively and without difficulty e.g. if a law is drafted that in Akwa Ibom that all the women should use hijab, it would not be practicable or all men should no longer wear trousers but to wear skirt, it would not be practicable.

III. Design

A. Concept

After gaining thorough understanding of the proposals and assessing same in relation to existing law, the draftsman now reaches the design or planning stage. This is the outline or framework prepared by the draftsman that assists him in visualising the shape or broad content of the enactment.

B. Considerations and Steps

At this stage, the draftsman is to do the following:

1. Make a precise outline of the objectives and principles to be contained in the legislation.
2. Make a statement of the principal means of attaining the objectives and principles.

3. Design the structure of the draft statute, e.g. the substantive provisions and the administrative provisions of the bill. Look at existing statutes to see what the structure is in that jurisdiction.
4. Have a pre-prepared checklist to serve as a guide.
5. Know the conventional practice in that area, the socio-political realities in that area and the adequacy/inadequacy of existing laws.

IV. Composition

Composing a statute entails a lot of mental discipline. The person drafting will, invariably, rely on some aids to compose. These aids include precedents, statutes on similar subjects or related subjects, both local and other jurisdiction. Proper use of precedents may constitute *a source of ideas on content*, in addition to being helpful in the actual drafting i.e. *a guide on the structure of the bill into parts, sections*. Use of precedents *saves time* and using precedents from the same jurisdiction may contribute in no small way to *consistency of approach/with jurisdiction*, which, in turn, will contribute to statute law, becoming a coherent body rather than a patchwork. Precedents must not be adopted slavishly i.e. *correct mistakes made in precedents*. However, precedents must be carefully used in the context of Nigeria. Formulation or construction of the content of each section so that the meaning of the statute is clear so that it reflects the intention of the draftsman and sponsor of the bill

V. Scrutinising the Draft

This is the last stage of drafting. Under this stage, the draftsman is expected to have checked and re-checked the drafts in previous stages, and must have had series of conferences and meetings, both formal and informal, with those sponsoring the statute. Errors or mistakes, especially of substance and against the general intendments of the statute must have been detected, corrected and put in place. At this stage however, one should ask *an independent eye*, preferably a legal practitioner, to have another critical look at the draft (for example, checking the punctuation marks, spelling, marginal notes, grammatical errors, etc., for someone who has been involved as the draftsman may not spot drafting and other clerical errors. There should be coherence and logical sequential presentation of the law. Are the provisions in a particular section detailed enough to convey the meaning of the section. Reference and terminology, punctuation, spellings.

FORMALITIES IN LEGISLATIVE DRAFTING

I. Arrangement into Parts

Clarity of presentation and ease of reference. Numbered in capital roman numbers. Each part is denoted by descriptive headings e.g. Under Chapter V of the Constitution, Part I deals with National Assembly. The division is determined after composition of the draft. Applied to distinct categories/subject matters. E.g. CAMA is divided into Three Main Parts with sections, In the 1999 Constitution Chapter I is subdivided into parts; Chapter II is divided into sections etc.

II. Arrangement in Segments

Segments are broader and larger than parts. Under segments, you have chapters and parts.

1. **Preliminary Segment:** long title, commencement, preamble, enacting clause, short title, interpretation, and application.
2. **Principal Segment:** the substantive provisions which creates new rights and duties, administrative provisions: implementing agency, administrative procedures etc.
3. **Miscellaneous Segment:** offences, penalties, supplemental provisions such as power to make subsidiary legislation, links with existing legislation.

4. **Final Segment:** savings (a provision to save an existing Act), transitional provisions, repeals, consequential amendments, schedules.

III. Paragraphing Techniques

1. Sections are in Arabic numerals: 1
2. Subsections (Arabic numerals in brackets): (1)
3. Paragraphs (English alphabets [lower case]): (a)
4. Sub-paragraphs (small Roman numeral): (i)
5. Sub sub-paragraph (English alphabets [upper case]): (A)

For example: Section 1(1) (a) (i) (A)

IV. Checklist/Guidelines on Principles of Drafting Standard Legislation

1. Must be sequential in arrangement so reader can understand the legislation.
2. Use of good sentence structure.
3. Application of paragraphing techniques.
4. Use of punctuation marks – must be regular and in keeping with what is obtainable in that jurisdiction.
5. Preferable to use the active voice instead of the passive voice.
6. Draft must be intelligible, precise and unambiguous (e.g. Section 8 and 9 of the Constitution are ambiguous)
7. Modification of precedents to suit the particular circumstances. Must not be copied slavishly.
8. Use of section and sub-sections
9. Use of schedules
10. Taking note of existing legislations to avoid repetitive legislation
11. Practicability of the law as the law does not compel the doing of the impossible

V. Legislative Terminologies

1. **Bill:** proposed law or proposal to the legislative houses
2. **Act:** bill passed by the National Assembly
3. **Law:** bill passed by the States Houses of Assembly
4. **Rules/Order:** made by an authority empowered to make rules to regulate an aspect under an Act/Law. For instance, Companies Regulations 2012 is made by the Corporate Affairs Commission pursuant to the Companies and Allied Matters Act 2004.
5. **Bye-Law:** bill passed by the Local Government Councils and atimes; it may be made by associations or pressure groups.
6. **Decree:** made by the federal military government.
7. **Edict:** made by the state military government.

LEGISLATIVE PROCESS

I. Concept

The processes a bill must pass through to become law are as stated under ***Section 58 CFRN 1999***.

1. Bill originates in Senate or House of Representative.
2. Passed where it originates.
3. Passed in the other House.
4. President assents in 30 days.

II. Stages of Legislative Process

1. **First Reading**: This is where the bill is read for the first time by the bill sponsor and the leaflets of the bill are circulated for the legislators to take home and study.

2. **Second Reading**: Here, the bill's sponsor would explain the bill to the house who would debate on it and pass a resolution. This is the stage where members of the legislative house deliberate on the merits and the demerits of the bill. If a simple majority pass a resolution to refer it to one of its committees then it scales to the next stage, if not, then it dies a natural death here.
3. **Committee Stage**: Here, the committee of the house in charge of the said bill would meet to have a detailed examination and debate on the bill after which amendments are made. All amendments made are done to reflect the collective decision of the house, arrived at the second reading.
4. **Report Stage**: Here, the bill, along with its amendments is tendered by the house committee, to the house, where it would be read for the third time.
5. **Third Reading**: Here, the bill is read for the third time, thereafter, the house is heard to vote on the bill. Once the Bill is passed by the house in which it was introduced, it would be referred to the House's legal draftsman to prepare the "Clean Copy".
6. **Clean Copy Stage**: Here, a clean printed copy of the bill containing the amendments is signed by the clerk of the House and endorsed by the Speaker or Senate President. The copy is then forwarded to the clerk of the other house (where applicable).
7. **Assent Stage:** Here, the President or Governor would assent to the bill within 30 days, whereupon it becomes Law and where the President or Governor withholds assent to same, the National Assembly or House of Assembly can proceed to veto override by two-third majority: ***Section 58(5) and Section100(5) CFRN 1999*** respectively.

III. Differences between Legislative Process and Legislative Drafting

1. Legislative process is the process where laws are made while drafting process is the process whereby client's instruction is reduced in draft form.
2. Legislative process is the responsibility of the legislature or lawmakers while the drafting process is the responsibility of the draftsman.
3. The stages of the legislative and drafting process are different. The legislative process includes process of bill reading while the drafting process commences with taking instructions and ends with scrutinising the draft.
4. Legislative drafting is a precursor to legislative process, because legislative process refers to proceedings on an already prepared legislative draft.
5. The outcome of a "legislative draft" is a "BILL" whereas, the outcome of a legislative process, where successfully completed is an "ACT" or "LAW" as the case may be.

PUNCTUATION

1. **Full Stop (.) -** ends the statement except where it is in the form of exclamation or question, in which case exclamation mark or question mark will be used. It can be used at the end of an abbreviated work e.g. Dr.
2. **Column (:)** - used to introduce a list.
3. **Semi-Column (;)** - used to separate related sentences. It is inserted instead of use of a conjunctive word like 'and'.
4. **Comma (,)** - to separate one group of words from another. The proper use of comma gives the sentence clarity.
5. **Question Mark (?)** - used immediately after a direct question and not an indirect question.
6. **Quotation marks ("")** - used to enclose exact words spoken by a person or enclose words when drafting the definition section e.g. "woman" means.
7. **Exclamation Mark (!)**: used to convey an exclamation.

8. **Bracket ( )** - to enclose after thoughts and used after figures in documents. There a two types: rounded bracket and the square brackets. No difference btw the two and more of convention to use the square bracket in the commencement in legislative drafting.
9. **Apostrophe (‘)** - it is placed before the section. It is used to show possession e.g Ijeoma’s house.

CLASS EXERCISE

Omitowoju Local government area of Osun State is known to be very rich in gold and tantalite. Since 2004, when the Federal Government shifted the development 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 are beginning to have harmful impact on the environment and there is strong erosion as a result in the area.

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 licence and for penalties to be imposed on offenders who violate the proposed legislation. It will commence as determined by the Minister for Solid Mineral. The law will also provide for a Solid Minerals Extraction Commission.

The order will be: Long title, Preamble, Commencement, Enacting Clause, Establishment Clause, Interpretation Clause, Short title (LPCEEIS)

Draft the following clauses in their appropriate order:

1. **Long Title:** A BILL FOR AN ACT TO REGULATE THE MINING OF SOLID MINERALS, PROHIBIT MINING OF SOLID MINERALS WITHOUT A GOVERNMENT LICENCE, PROVIDE FOR SOLID MINERALS EXTRACTION COMMISSION AND FOR THE PURPOSE CONNECTED THEREWITH
2. **Preamble:** This bill is enacted by the National Assembly of the Federal Republic of Nigeria to establish the Solid Minerals Extraction Commission which will regulate mining of solid minerals and prosecute offenders who mine solid minerals without government license thereby preventing the indiscriminate and unregulated mining activities causing erosion and other harm on the environment.
3. **Commencement:** The Act shall commence on a date to be determined by the Minister for Solid Minerals.
4. **Enacting Clause:** ENACTED by the National Assembly of the Federal Republic of Nigeria as follows:
5. **Establishment Clause:** There shall be established a body to be known as the Solid Minerals Extraction Commission which shall be a body corporate with perpetual succession and a common seal with its headquarters at No 30 Maitama Way, Maitama, Abuja.
6. **Interpretation Clause:** “Minerals” means gold and tantalite
7. **Short Title:** The Solid Minerals Mining Act 2015

ETHICAL ISSUES IN LEGISLATIVE DRAFTING

1. Devotion and Dedication to the cause of the client (***Rule 14 RPC 2007***): the draftsman is expected to commit himself towards ensuring that he comes up with a productive bill.
2. Duty to represent client competently: (***Rule 16 RPC***).
3. Duty to keep the client informed of the progress and any important development in the course or matter as may be reasonably necessary: (***Rule 14 (2) (b) RPC***).

4. Duty to respond promptly as reasonably possible to request for information by the client: (***Rule 14(2) (d) RPC***).
5. Duty to consult with his client in all questions of doubt which do not fall within his discretion (***Rule 14 (2) (a) RPC***).

(Week 12)

RULES OF INTERPRETING STATUTES

INTRODUCTION

The main reason for interpretation is to know the intention of the law maker. Under the CFRN 1999, there are three arms of government: legislature – law making; executive – enforcement of law; and the judiciary – interpretation. See ***Section 4, 5 & 6 CFRN***. The judiciary interprets the constitution and the statutes. The function of judiciary is exercised by the courts in Nigeria. See ***Section 6(5) CFRN***. The interpretation of statutes and documents is one of the most important functions of the courts. In interpreting statutes and documents, the courts usually use the tools of interpretation, namely: decision of superior courts, punctuations, interpretation act, rules of interpretation of statutes, law dictionaries, text books (legal text), definition clauses, marginal notes, schedules, preambles and long title, interpretation sections, recitals, thesaurus, and case law. In addition, the courts have laid down certain rules as guiding principles in interpreting statutes and documents.

RULES OF INTERPRETATION

I. Literal Rule

This is the first rule of interpretation developed and it involves the interpretation of a particular provision as it is literally speaking. Thus, when the words of the statute are plain and unambiguous, its ordinary meaning should be adhered to. See ***Ojukwu v Obasanjo, Awolowo v Shagari, Akintola v Adegbenro, Ekeogu v Atiri,*** and ***Idehen v Idehen***. It came to a point where the strict adherence to the literal rule occasioned injustice. The case of ***R v Banganza***, brought about the golden rule of interpretation or the purposive rule of interpretation. Thus, the need to develop another rule.

II. Golden Rule

It is an offshoot of the literal rule in that after interpretation of a statute using the literal rule and it leads to absurdity, then the words of the legislation will be modified to give effect to the position of the statute. Thus, the Golden rule will be used when the ordinary meaning of the statute would lead to absurdity. See ***Lee v Knapp, Bronik Motors v Wema Bank Plc, Onyewu v KSM, and Ademolakun v Council of University of Ibadan***. The rule allows for modification of the words used in the statute in order to know the intention of the law makers. The rule says the literal rule should first be used and when absurdity arises, then modify it. Hence, it provides opportunity to the courts to fill in gaps in legislation. It is in the above regard that the Golden rule was criticized, because the function of the court is to interpret the law and not to expand it. This very gap is to be filled by the legislature. Golden rule is important because it averts absurdity, injustice or thwarting the legislative intention. However, it offends separation of powers and foster judicial arbitrariness because in an attempt to vary the words used in a statute, the courts may arrive at divergent conclusions, which will introduce inconsistency and lack of uniformity in the judicial process.

III. Mischief Rule

The criticism surrounding the Golden rule gave rise to the Mischief rule. The rule says that in construction of the provisions of a statute, the history of the legislation that is the circumstances surrounding the making of the law should be considered. The rule was developed in ***Heydon's Case*** and the court laid down four principles as a guide.

1. What was the position of the law before the statute was enacted?
2. What was the defect or mischief which the old law did not provide for?
3. What was the remedy proposed by the new statute?
4. What was the true reason for the remedy?

The rule was applied in the following cases: ***Smith v Hughes, Savannah Bank v Ajilo,***

President v National Assembly, **and** ***Abioye v Yakubu***.

IV. Ejusdem Generis Rule

This rule states that where particular words of the same kind or class are followed by a general word (a generis), the meaning of the general word will be limited to the things similar to the class of things earlier enumerated. E.g. 'All students should not eat cornflakes, golden morn and other cereal' - cereals will be interpreted in the class of cornflakes, golden morn. In other, to exclude the ejusdem generis rule, the following devices can be adopted: 'Including but not limited to' or 'without prejudice to the generality of the following'. The rule was applied in the following cases: ***Ojukwu v Obasanjo, Jammal Steel Structure v ACB,*** **and** ***FRN v. Ilegwu***.

INTERPRETATION OF THE CONSTITUTION

In interpreting the Constitution, the literal and liberal approaches of interpretation are used. See ***Onuoha v State***.[80] This principle was reinstated in the case of ***PDP v INEC***:[81] where the court held that in interpreting the provisions of the statute or the constitution, such provisions should not be read in isolation of other parts. The statute or constitution should be read as a whole in order to know the intention of the legislature. The Court must be purposive in its construction of the Constitution. Where the Constitution gives a right but does not expressly state how the right is lost or denied, the Court has the right to ensure that the right is not taken by a restrictive rule. Also, the Court are to protect constitutional rights by providing a remedy for redress of this right.

OTHER PRINCIPLES AND MAXIMS OF INTERPRETATION (CONSTRUCTION OF STATUTES & DOCUMENTS)

1. **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. Accordingly, a statute requiring that public house must be dosed at certain hours on Sunday should not be so construed as to extend it to Christmas Day – ***Forsdike v. Colquhoun***.[82] The argument was that a statute required a public house to be closed at certain hours on Sunday. It was sought to be stressed to include Christmas day. The Court refused this. See ***Savannah Bank v. Ajilo***.
2. **Purposive Rule:** This approach is developed from the use of the "purpose clause" and commonly found in statutes. The purpose clause may help the reader interpret the statute in case of any uncertainty in the statute – ***PDP v. INEC;***[83] ***Pepper (Inspector of Taxes) v. Hart;***[84] ***Omoijahe v. Umoru.***[85]
3. **Ut Res Magis Valeat Quam Pereat:** In circumstances where alternative constructions are equally open, that alternative which is consistent with the smooth working of the system is to be chosen 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.***[86] This is apparent in the construction of the constitution**.** The court in ***Nafiu Rabiu v. The State***[87] held that the courts should apply an interpretation that will give effect to a statutory provision rather than one which will not. Also, in ***Yagube v COP***, Supreme Court held that where a word in a statute has two

[80] (1998) 12 NCLJ
[81] (1999) 11 NWLR [Pt. 626] 201
[82] (1883) 112 BD 71
[83] (1999) 11 NWLR [Pt. 626] 200
[84] (1993) All ER 42
[85] (1999) 8 NWLR [Pt. 614] 188
[86] (1924) AC 185
[87] (1980)

meanings, the court should adopt meaning that will not defeat intention of the legislature.

4. **Generalibus Specialia Derogant/Generalia Specialibus Non Derogant:** This is one of the exceptions to the *ejusdem generis* rule. It means a word that has a general meaning cannot derogate from a specific provision meaning i.e. the special provision prevails over the general provision. See ***Shroeder v. Major;***[88] and ***AG Ondo State v. AG Federation.***[89]
5. **Expressio Unius Est Exclusio Alterius:** What is stated in statute expressly excludes that which is not stated in statute. Therefore, one does not import into a statute that which it is not meant to govern. ***AG Federation v. Aideyan; Ogbuniya v. Okudo*** and ***PDP v INEC***.
6. **Lex Non Cogit Impossibilia:** This legal maxim means that the law does not command the doing of the impossible. See ***Ohuka v. State***[90] where the court held that Section 31 of the Supreme Court Act 1960 stated that a convicted person is to give notice of appeal within a prescribed period from the date of judgment. The day that judgment was given, convict was not taken to Court and months passed before it came to the convict's notice that he had been convicted. Therefore, the time of notice cannot run until the appellant became aware of the judgment and not on the date judgment was given.
7. **Contra Proferentum:** This means against the offeror. It is the doctrine that, in interpreting documents, ambiguities are to be construed unfavourably. Thus, it is where a particular contract is construed strictly against the interest maker of the particular provision in that document and in favour of the other party.
8. **Ouster Clause:** These are statutes, which have the effect of encroaching or derogating from vested rights of people. They are constructed strictly e.g. ***AG Federation v Sode***;[91] and ***Fawehinmi v Abacha***.
9. **Lex Cogit:** A law cannot the demand the doing of the impossibility. See ***Ohuka v. State***.[92]
10. **Contra Proferentem Rule**: documents and instruments are construed against the maker where the document is capable of more than one interpretations.
11. **Implement and not Defeat Legislative Intention:** It is better for a thing to have effect than to be made void. This rule portends that the legislature itself intends the interpreter of an enactment to construe the enactment in such a way as to implement rather than defeat the legislative intention. See ***Nafiu Rabiu v. State*** and ***Tukur v. Gongola State***.
12. **The Express Mention of One Thing is to the Exclusion of Others**: Where an enactment enumerates the thing upon which to operate, everything else (not enumerated) must necessarily and by implication be excluded from its operation and effect. See ***AG Bendel State v. Afolayan***.[93]

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[88] (1989) 2 NWLR (Pt. 101) 1
[89] (2002) 9 NWLR (Pt. 772) 222
[90] (1988) 1 NWLR (Pt. 72) 1
[91] (1999) 1 NWLR (Pt. 128) 500
[92] (1988)
[93] (1989) 11 NWLR 187

(Week 13)

ADVOCACY PRACTICE; LEGAL RESEARCH AND CLOSING OF FILES

ADVOCACY PRACTICE

I. Concept

Advocacy practice for the bar finals is compulsory. It can come out in either law in practice, civil litigation or criminal litigation. When discussing advocacy practice, the provisions of the ***Evidence Act – Sections 214, 215, 221*** among others must be made reference to.

Advocacy is a Latin word gotten from "*advocare*" which means "to speak out". Advocacy refers to the process of pleading the cause of others or handling a client's case. It is the art of persuading others (court) to believe in your client's version of events. Advocacy is pleading the cause of another. Also, it connotes speaking out in defense or in aid of a cause or interest of another. There are different forms of advocacy among which is trial advocacy. Trial advocacy deals with the vocal skills which a lawyer uses in proceedings before the court or other bodies in the cause of handling matters for his client. Note that trial advocacy does not start at the court room but from a legal practitioner's law firm. The trial advocacy requires a legal practitioner which does not have any special disqualification unlike other forms of advocacy where no special qualification is required.

A legal practitioner without adequate knowledge of the law is not different from persons who are not lawyers. In addition is the skill which basically is the application of the knowledge so obtained. Thus, knowledge of the law and skill goes together especially in the era of frontloading.

II. Why Trial

Note that the whole essence of trial is for the court to resolve the dispute or disagreement between parties and answer certain questions. Only disputed issues go to court and not academic issues. Academic issues are not a life issue and it does not involve dispute between two or more persons. In other words, they are pronouncement which is not for the benefit of any party before the court.

III. Main Effect of Advocacy

The main effect of advocacy is for communication, that is, to communicate clearly and persuasively. By this, one could infer three (3) things, which are –

1. Ability to speak with clear voice;
2. Listen carefully and adequately noting the language indicators (that is, speech, intonation, speed, hesitation, attitude, body posture, facial expression, etc.); and
3. Ability to question effectively.

ESSENTIAL QUALITIES OF GOOD ADVOCATE AND HABITS TO AVOID

I. Essential Qualities of Good Advocate

1. A good voice
2. Command of words
3. Confidence
4. Persistence
5. Practical judgment
6. Knowledge of mankind and of affairs
7. Honesty

8. Industry or Hard work
9. Eloquence
10. Quick wit, and
11. Spirit of fellowship

II. Habits to Avoid As an Advocate

An advocate should avoid the following –

1. Rude language.
2. Hiding under the cover of immunity to ridicule the character of opponents.
3. Being dishonest.
4. Being Hot-tempered.
5. Being timid.
6. Being over sensitive.

SKILLS AND TECHNIQUES OF A GOOD ADVOCATE

I. Skills to Possess as a Good Advocate

There are various forms of skill: legal research skill, drafting skill, writing skill, advocacy skill, negotiation skill, verbal communication skill, management skill. They are all forms of skill based on knowledge.

Skills to possess as a good advocate:

1. **Mastery of Facts:** When the client has narrated the fact, a legal practitioner should master these facts. A legal practitioner's mastery of facts would show in the pleadings filed by him. Note that if your client interview is defective, you cannot master the facts. Mastery of facts will also assist in cross examination in that irrelevant questions will not be asked. The legal practitioner will be interested in asking questions that would further his case.
2. **Mastery of Law:** This skill cannot be over emphasized. Arguments are based on law. The whole essence is to know the applicable law to the facts. In trial advocacy, the most important thing is having adequate knowledge of the law.
3. **Adequate Preparation:** A legal practitioner who is involved in trial advocacy without preparation has prepared to fail as an advocate.
4. **Good Communication:** Good communication is essential for good advocacy. Oratory skill even though important is not mandatory for good advocacy. In communication, strive to be eloquent and communicate fluently. Note that some are meant for the court room. In this like, there are two ways of communicating, verbal and non-verbal. In verbal communication, strive to be heard and be eloquent in your speech. Some non-verbal communications which can hinder your case include the following:
   (a) Pointing at the judge
   (b) Putting hands in your pocket which could signify arrogance or nervousness.
   (c) When a lawyer is not standing erect, this could mean that the lawyer lacks confidence (body language). Note that in delivery of plea of allocutus, a lawyer should control his facial expression.
   (d) Dressing

   An advocate must have the ability to efficiently conduct oral examination in court; and Mastery of the proper approach to present final or closing address, including the ability to effectively canvass an *allocutus* or plea in mitigation.
5. **Examination of Witnesses:** Ability to conduct examination of witnesses in Court.
6. **Drafting Skill:** Especially in civil proceedings, where a lot of documents are frontloaded, acquisition of good drafting skill is important.

II. Essential Techniques of Trial Advocacy

1. Speak slowly and be heard
2. Maintain eye contact with the judge
3. Be attentive to personal appearance and behaviour
4. Avoid raising manifold issues in making submissions
5. Clearly identify the theory of the case
6. Lead the judge
7. Use transitional devices like topic transition and topic label. Example is: My Lord, I will like to proceed to my next point on ambiguity of the charge.
8. Keep your focus on facts
9. Use the provisions of the Law appropriately by not citing a decision that has been overruled or not binding on the jurisdiction.
10. Establish a positive relationship with the judge by handling the Judge's intervention effectively; avoiding contentiousness; and preparing for the worst from any Judge.

PERSUASIVE STORY

I. Characteristics

In preparing a persuasive story, the lawyer is under a duty to be bound by the truth under the rules of ethics and the Rules of Professional Conduct. In establishing a story through witnesses, the following are important in order to prove an affirmative case:

1. Direct Evidence: Person directly involved in the case should be called. Not hearsay evidence except following under the exceptions.
2. Explain all relevant facts and details. These persons are expected to explain all the relevant facts and details
3. The persons should be credible witnesses
4. The story of the witness must accord with common story/sense (not incredible story)
5. Sequence of the story. When a witness is to speak, there must be sequence – open question would help.

II. Stages for Preparing a Persuasive Story

The following are vital in preparing a persuasive case.

1. **Theory of the Case** – line of argument
2. **Preparing a Trial Plan** - The graphical representation of the line of argument.
3. **Plan an Opening Address** - Only common in criminal cases as the CPA and ACJL provides for it. It is rarely used in civil litigation.
4. **Planning Final Argument** - Ordinarily it would seem impossible to have at the commencement of a case a final address/argument. However it is not impossible as having a final address would help you in working towards that address. For instance, all questions in an examination would be geared towards the final address. Note that address is marrying the law to the established facts/conclusion to be drawn on law is what you address to the court.
5. **Opening Statement/Address -** should be short, direct and moderate. Always avoid personal opinion as witnesses have not been taken.
6. **Structure -** It must have structure. The essence is to get the judge to understand the case to be presented. It includes facts, law, burden and standard of proof.

CASE THEORY AND CASE PLAN

I. Case Theory

A. Concept

The theory of the case is the starting point of preparation before going to Court. It is the story a party wants to tell the Court convincingly to be able to get judgment in his favour.

B. Methods of Developing a Case Theory

1. **Traditional/Linear Approach:** This is a situation where the Lawyer sticks to the facts, which he was briefed of by the client without more. The disadvantages of the linear approach is that it stifles one's ability to imagine:
   (a) The other possibilities that might arise,
   (b) Other information, and
   (c) Other approaches to case preparation and delivery.
2. **Circles Method:** This method develops a story by relying on both mental and visual flexibility. The concepts are linked together in a visual rather than linear way. The advantage of the circles method is that it frees your mind to associate information. The circles method is use by:
   1. Painting the picture to the Judge through the combination of witnesses' testimonies, exhibits tendered etc.
   2. Control the witnesses by putting him at ease. A witness who is not credible may destroy a party's case, especially in cross-examination, his credit will be impeached or he may become inconsistent in his testimony.

II. Case/Trial Plan

A. Concept

The case plan is a graphical chart on how a Lawyer intends to handle a matter from its institution to conclusion. It may be a composite case plan containing a game plan of the Lawyer and an anticipation of the possible approach of the adverse Counsel (the devil's advocate).

B. Obvious Tasks in Preparing a Case Plan

The obvious tasks in preparing a case plan are:

1. Identify the witnesses to be called in prove of the case.
2. Identify the relevant documents to be tendered in Court in prove of the case and the necessary foundation to make for their admissibility in evidence.
3. Take their stories and investigate them in order to prevent new facts coming up that may likely affect the theory of your case.
4. Know the relevant provisions and exceptions if possible of the Law on that matter.
5. Ask them relevant questions in Court to confirm or corroborate your story you want the Court to believe.
6. Make submissions in the above light.
7. If it is in a composite case plan, identify the possible things the opposing Counsel would do from 1-6 above. Find the appropriate ways or Laws to counter them so that one will not be taken by surprise.

Without a case plan or a game plan, there would be no ability to respond to changes or to measure the progress arising from witnesses testimonies or the documents tendered.

PRE-TRIAL BRIEFING OF WITNESSES

Meet your prospective witness to make a statement for him. Let him know you before he meets you in court.

1. **Relevance of Evidence and Credibility of Witnesses:** Determine the relevance of his evidence and determine whether he is a credible witness. Both will determine your decision to call him a witness.
2. **Dressing to Court:** Discuss with your witness how to dress to court to make a favourable impression.
3. **Politeness in Giving Evidence:** Discuss with him how to give evidence in court. Advise him to avoid being insolent, insulting or truculent. Should answer questions politely and courteously. Should not be unbalanced or exhibit temperament in the face of fiery cross-examination.
4. **Rehearsal of Evidence:** Rehearse his evidence with him a day or two before the court hearing to refresh his memory about an event, which might have occurred years before.
5. **Explanation of Proceedings:** Explain the proceedings in court to the witness e.g. (i) that he would be sworn before he gives evidence (enquire how he would like to be sworn) and (ii) that he would be required to leave the court i.e. out of court and out of hearing. Agree with him where he would be during the period and how to fetch him when he is wanted in court.
6. **Minimum Time in Court by Witness:** Ensure that witness spend minimum time in court, particularly busy witnesses. Where court has to adjourn before a witness testifies, counsel should inform him of adjourned date. Most witnesses sitting in the well of the court do not hear what goes on between the bench, bar and court clerk.
7. **Witness Allowance for Transportation, Accommodation and Loss Suffered:** Arrange payment of reasonable allowance to your witness to compensate for his travelling expenses and the loss suffered by leaving his business to come to court. Remember your case will be determined on the strength of evidence given by your witness.

TRIAL PROCEDURE

I. Opening Address/Statement in Trials

This is mostly done in criminal trials and rarely in civil trials. Rarely done in Nigeria in general. Generally, it is an outline of a party's story. The opening speech must be short, direct, and moderate, excluding reference to inadmissible evidence, avoiding personal opinion adverse to the facts or the likely credibility of a witness. The speech must have a structure because it is the means of getting the Judge to understand the case a party is about to present. In criminal trials, the opening address is made after the plea has been taken. See ***Section 240 -241 of the CPA; Section 192 of the CPC;*** and ***Section 272 of the ACJL***.

II. Examination-In-Chief

A. Concept

Section 214 (1) of Evidence Act provides that the examination of a witness by the party who calls him shall be called examination in-chief. The purpose is to elicit information/facts from the witness (you call yourself) in support of a party's case and to give an opportunity to deny any evidence to be given by the other party. It is also sometimes used to shield and insulate the witness from potential weaknesses in his evidence.

It is only in Criminal trial that witnesses must be led in examination-in chief. In FCT, Lagos, Enugu and some States: the frontloading rule is contained in the ***High Court (Civil Procedure) Rules*** where the Witnesses Statements on Oath are filed along with the originating process so there is no need to lead witnesses in evidence-in-chief but only to adopt the Witness statements on oath. In Kano State, Counsels still lead witnesses in chief. All undisputed documents can be tendered from the bar.

B. Procedure

1. The witness enters the witness box and takes the oath or affirms to tell the truth.
2. The witness is guided by counsel to tell the court his name, address, and occupation.
3. Thereafter, he begins to tell the court the whole story by identifying the parties involved in the case and how he came to know them, specifically, in regard to the events, which led to the proceedings in court.
4. The witness is also guided to tell the court the story that is relevant, and in an orderly and easy manner to follow.
5. The witness may thereafter be cross-examined and re-examined before leaving the witness box.

C. Techniques in Examination-In-Chief

1. **Use Open Questions:** open questions like *why*, *how*, *when*, *where*, *whom*, and *what* to enable the witness tell his story not leaving out important points.
2. **Avoid Leading Questions:** Leading questions that tend to suggest the answers to a witness are not allowed but this is permitted on introductory matters or facts that are not in issue or with the permission of the Court. See ***Section 221(1)-(3) Evidence Act***.
3. **Use Closed Questions:** Closed questions may be used when desirable especially if the witness is not been specific in his story telling.
4. **Physical Description of Things and Direction:** The witness should establish a base point, which is the physical description of things and direction.
5. **Repeating Important Points:** Repeat important points, repeat them, restate them, repeat them again and think of ways to re-state them again.
6. **Avoid Repetition of Less Important Points:** Conversely, less important points should not be repeated.

D. Skills of Examination in Chief

1. **Simple Questions**
   (a) Be logical: (i) Identify the evidence and sequence; (ii) start at the beginning and consider whether to elicit background information.
   (b) Break down the evidence: (i) break down the subject areas of the witness evidence into smaller pieces.
   (c) Use transitional questions.
   (d) Focus on short and simple questions: (i) Ask a single fact; (ii) Ask non-leading questions. The non-leading question usually start by asking who, what, where, when, why, how; (iii) You may ask leading questions of non-disputed facts.
2. **Piggy Backing Questions:** are questions that you need to carry your witness along to get the answer/facts you are wishing to elicit e.g. what did John do when he saw you? He attacked me with a hammer. When he attacked you with the hammer, what did you do?
3. **Insulating the Witness:** when there are weaknesses in the case, the advocate has to insulate the witness. This may be where:
   (a) Evident weakness in your case;
   (b) Weakness is subtle;
   (c) There is a weakness and the witness is absolutely dreadful and incomprehensible.
4. **Inflection, Volume and Rate of Speech:**
   (a) Try to avoid sounding like a lawyer
   (b) Be interested in the witness's answer

5. **Listening:**
   (a) Never assume you know the answer of a question you asked; and
   (b) Never focus on your next question until the witness has given a complete answer to the question that has just been asked.
6. **Body Language:**
   (a) Eye contact and confidence can reassure a hesitant witness;
   (b) Avoid moving around the courtroom too much.

But before all these you should -
   (a) Know the witness you are calling i.e. their personality (shy, hot temper, nervous, respectful, defensive, temperamental).
   (b) Make him understand your case (i.e. this is what the lawyer needs to prove and the witnesses' evidence is required to move such and such fact).
   (c) Drop him if you think he/she is a bad witness.

III. Cross-Examination

A. Concept

It is the interrogation of a witness called by one's opponent in a Court trial. Leading questions and closed questions can be asked which are even more effective. According to ***Section 221(4) of the Evidence Act*****:** Leading questions may be asked in cross-examination. It is a right of fair hearing to cross-examine opposing witnesses. See ***Section 36(6) (d) of the CFRN 1999*** **and** ***Onwuka v Owolewo***.

In some jurisdictions, advocates are not permitted to ask questions that do not pertain to the testimony offered during direct examination. But in most jurisdictions, advocates are allowed to cross-examine to exceed the scope of direct examination. In Nigeria, a counsel can cross-examine on all relevant facts (Evidence Act on relevancy). Any testimony from evidence-in-chief not put to the witness as being false, is taken to be conceded.

B. Objectives of Cross-Examination

1. Impeach the credibility of the witness (es) called by the adverse party.
2. Discredit the opponent's testimony.
3. Contradict the evidence already given by a party.
4. Get evidence or materials favourable to one's case and for use in the final address.
5. To systematically build the argument of your case to be used in address. See ***Section 223 and 233 EA***.

C. Scope of Cross-Examination

1. It has a wide latitude as the questions cannot be restricted to only the facts in issue or the evidence given under examination-in-chief.
2. Leading questions are allowed. See ***Section 221(4) of the Evidence Act***.
3. Do not try to extract new information in cross-examination.
4. Effective cross-examination always succeed by asking questions by implication.
5. There is no restriction on facts sought to be questioned on.
6. It is an avenue for the test of accuracy, veracity and credibility of witnesses.
7. Can show previous inconsistent statements made by a witness.

D. Ingredients of Cross-Examination

1. **Control:** keep the witness tight and control his direction. Ask questions with speed
2. **Speed:** If a witness is not telling the truth, he needs time to think. Do not allow him that time

3. **Memory:** You must know facts and information with minimal reference to paper if you must
4. **Precision:** question must be formulated swiftly and with care. It must be clear, simple and not objectionable to get a precise answer
5. **Logic:** questions asked should be logical with the aim at the end to show that the witness is not logical
6. **Timing:** once a witness is put into a corner, then finish him
7. **Manner:** your manner and behaviour should be appropriate to the circumstances and the witness (e.g. an elderly woman who is ill, arrogant, and high tempered).
8. **Termination:** you must know when to quit.

E. Three Rules of Cross-Examination

1. **Rule One:** Do not cross-examine e.g. when the witness has done no damage to your case, when no facts can be elicited to help your case.
2. **Rule Two:** Do not ask questions that you don't know the answer. Question: *is it not true that you were furious at the victim for being unfaithful because he was your lover?* Answer: *No, he was not my lover, he was my father*.
3. **Rule Three:** Do not ask questions that are open – those that begin with: what, when, who, where, how.

F. Phases of Cross-Examination

1. **Phase One: Extraction** – get some useful information from the witness which is favourable to your case.
2. **Phase Two: Closing** – close all doors and windows and make the witness to make commitment on some facts before attacking him or else he will escape e.g. dates.
3. **Phase Three: Impeachment** - before you proceed to do this, you must have asked yourself whether the witness has really hurt your case.

G. Ten Commandments of Cross Examination

1. Be brief
2. Ask short questions
3. Use plain words
4. Ask leading questions
5. Do not allow the witness to repeat examination in chief
6. Ask only questions to which you know the answer
7. Do not let the witness to explain
8. Do not quarrel with the witness
9. Avoid one question too many times
10. Listen to the witness answer and save argument for final address.

H. Restrictions in Cross-Examination of Witnesses

1. Argumentative questions
2. Intimidating behaviour
3. Unfair characterisations of the witness
4. Assuming facts not in evidence
5. Asking compound and defective questions

I. Prohibited Questions in Cross-Examination

1. **Questions not Relevant to Proceedings:** According to ***Section 224(1) EA*****,** if any question permitted to be asked under Section 223 of this Act relates to a matter not relevant to the proceeding, except in so far as it affects the credit of the of the witness by injuring his

character, the court shall decide whether or not the witness shall be compelled to answer it, and may, if it thinks fit, warn the witness that he is not obliged to answer it.

2. **Indecent or Scandalous Questions:** According to ***Section 227 EA***, the court may forbid any question or inquiry which it regards as indecent or scandalous although such questions or inquiries may have some bearing on the questions before the court, unless they relate to facts in issue or to matters necessary to be known in order to determine whether or not the facts in issue existed.
3. **Insulting or Annoying Questions:** According to ***Section 228 EA***, the court shall forbid any question which appears to it to be intended to insult or annoy, or which, though proper in itself, appears to the court needlessly offensive in form.

J. Techniques of Cross-Examination

*** General Techniques**

1. Control the witness
2. Ask questions that will tell your client's story
3. Determine the flow of information
4. Save the best for the last
5. Use of sequenced questions which are logical.

*** Delivery Techniques**

1. Do not read or memorise the proposed questions to aid your flexibility in doing so
2. Use body and hand movement
3. Verbal pacing so that the Court will record while the witness understands the questions
4. Use of visuals
5. Use of headlines
6. Use of simple, active language.

*** Munkman's Techniques**

1. **Confrontational Technique** – This involves using the previous inconsistent statement of a witness to discredit him.
2. **Probing Technique -** Questioning on the evidence given under examination-in-chief.
3. **Insinuation –** It involves presenting your case or facts to the witness, which tend to add, alter or modify the evidence already given and which are favourable to your case. Examples of such are questions asked like these: 'It is true that…..', 'Will I be correct to say….?', 'I put it to you that…..' etc.
4. **Undermining:** Here you use questions that will reduce the qualification or experience of the witness and is directed to the person and not the testimony of the witness. Example where it is a vital tool is when cross-examining an expert witness.

IV. Re-Examination

The aim is to clear any ambiguity arising from a witness' cross-examination but it is not to supply omitted or new facts to a party's case. See ***Section 214 (3) of the Evidence Act***.

V. Final Addresses

It is a constitutional right to be allowed to address the Court after the close of evidence. See ***Section 294(1) of the CFRN 1999***. The purposes of final addresses are as follows:

1. To apply the Law to the evidence already adduced in trial.
2. To urge the Court to deliver judgment in one's favour.

POST-TRIAL/PRESENTATION ACTIVITIES

1. Notify the client of what has happened during trial in Court.
2. Inform the client of what is expected to happen in the matter.

3. Write to inform, confirm instructions or remind the Client of what he is expected to do.
4. Advice clients on the options available after judgment.

OTHER CONSIDERATIONS

I. Trial Publicity or the Sub Judice Rule

The general rule is that a Lawyer or a Law Firm engaged in or associated with the prosecution or defence of any trial anticipated or pending in a Court shall not make any statement or participate in making extra judicial statement calculated to prejudice or interfere with the fair trial of a matter/judgment or sentence. See ***Rule 33 of the RPC*****.** An exception is where the statement made is a fair comment.

II. Options Open to the Lawyer When the Judge Is Bias

When a judge is perceived to be bias, the legal practitioner can do either of the following:

1. Do nothing
2. Make the complaint a ground of appeal
3. Bring an application of Motion on Notice for the judge to disqualify himself.
4. Write a letter to the chief judge of the state
5. Petition the NJC (in extreme cases)

III. Ethical Consideration

Rules 1, 14 **and** ***32 of RPC***

1. Duty to justice
2. Duty not to mislead the court
3. Duty in criminal cases. See ***Rule 37(4) & (5) RPC***.
4. Duty in murder trials. See ***Udoha v. State***.
5. Duty to maintain decorum and language in the court.

In the case of ***Iwika v. SCOA (Nig) Ltd***, Ogundare JSC noted the following, "it may be that the plaintiff is an intelligent and able medical practitioner. One thing is clear to me, he is not wise in the nuances of the legal profession. It is not enough to read up cases in the law reports and to cram up rules and legal principles read in the books, the correct application of these cases, rules and principles to given situation is what makes the difference between the legal practitioner and the able medical practitioner.

LEGAL RESEARCH, OPENING AND CLOSING FILES

I. Objectives of Legal Research

1. To seek information concerning legal matters.
2. Need to identify relevant case law, statutes etc. applicable to a specific case.
3. Sometimes research assigned to junior in chambers, research assistant or any counsel.
4. Every lawyer should always research, especially on novel cases.

II. Functions of Legal Research

1. Before client interview, helps acquaint with position of law on subject matter.
2. Determine if the client has a case.
3. Helps in preparation for ADR or preparation for trial e.g. know how strong your case is so you know what position to take in Negotiation etc.
4. Gives lawyer an overview of applicable law and decide on what action to take.
5. Helps to think on your feet e.g. so that the lawyer can adequately answer questions asked by a judge.
6. Particular applications of law to particular case/facts.
7. Before research, lawyer must analyse the legal problem to ascertain type of law applicable to the problem e.g. common, statutory, customary, Islamic law.

8. Also establish facts and circumstances of each case to help narrow down the research.
9. Could be manual or electronic research.
10. Index useful in manual research.

III. Sources of Material

1. **Primary Sources** – generated by governmental bodies/agencies e.g. statutes, case law, regulations, bye-laws, rules, guidelines, law reports etc. These sources are mandatory and binding. If case law, hierarchy of court. Decision of courts of coordinate jurisdiction is only persuasive on each other (FHC, SHC, National Industrial Court)
2. **Secondary Sources** – these do not emanate from government bodies. Analysis of laws and legal problems by learned authors or commentaries by experts e.g. textbooks. They are not binding, only persuasive
3. **Tertiary Sources** – provide information on where to locate the primary and secondary sources, which must have been identified e.g. index of cases. These are not to be cited.
4. **Hybrid Sources** - is referred to in some textbooks but not discussed in class.

IV. Opening Case Files

1. When law firms are briefed to handle any case, file is to be opened.
2. Contains file number and particulars of the client.
3. A new file must be opened for each case.
4. Full Name of the client, address, other contact information, occupation, date file is opened, name of court, professional fees, copies of all communication btw lawyer and clients, all processes filed in court etc.
5. Should be updated with progress on the case and filed in a manner that will ensure easy access or retrieval by colleagues in firm e.g. endorsed with adjournment dates and what happened in court on each day.
6. Every instruction received from client should be confirmed in writing to avoid ambiguity and file all correspondence.
7. Essential that even paperless law firms should also have paper backup.
8. Note different filing systems that may be adopted.
9. Examples of filing systems are alphabetical, topical (subject matter), numerical (per year), geographical (where the court is, type of court) etc.

V. Closing a File

A. Act of Closing a File

1. Once a case/transaction is concluded, the legal practitioner should close the file in respect of that case/transaction.
2. 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. If client has a retainership file, the retainership file is also separate.
3. Client's own file is a file usually opened by the lawyer/firm in the name of the individual/corporate client particularly where client is a retainer client and it generally remains open until the retainership is terminated.
4. A file is usually closed only when the case or other brief in respect of which the file was opened has been concluded, completed or brief is otherwise brought to an end.
5. 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 said parallel lines.

6. The file is then tied up with ribbons and placed in the file case. Case file would usually have the suit number and name of the parties to the suit or the subject matter of the file written on its spine for easy future identification and retrievals.
7. Such a file is then filed on the shelve or is kept in the cabinet or a separate room (if any) meant for closed files otherwise called archive.
8. It is usual for the lawyer or law firm to keep an index or register of closed files.

B. Matters to Be Dealt With When Closing a File

1. **Fee:** how much the client has paid and how much is outstanding. At the closing of a file, the solicitor usually writes a letter to the client informing him of closing of his file and demand for his 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.
2. **Custody of Documents:** which document for lawyer to keep and which documents should be returned to the client. 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 e.g. original certificate of occupancy, marriage certificate. 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. Note that the original copies of documents given to the lawyer or law firm should be returned to the client and acknowledgment of receipt thereof obtained from the client and retained by the lawyer. It is however good practice for the lawyer to make and retain photocopies before returning originals to the client.
3. **Length of Period for Keeping Closed Files:** There is no statutorily prescribed requirement for the length of time within which a file or document 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. Also allow time for all appeals and extension of time to appeal, case sent back for re-trial after going to the Supreme Court. NB: length of appeal period is vital in answering this question for exams. Also note ***Legal Practitioners Accounts Rules: Rule 10(5)*** – preserve for at least 6yrs from date of last entry. After retaining for a reasonable time and after notice to the client that the lawyer intends to destroy the file, the file may be destroyed by shredding, burning or any other way. Some files may however, by worth keeping but note that original and important documents are not to be destroyed.
4. **Self-assessment/Audit:** how did lawyer fare/do in handling in particular case e.g. by sending questionnaire the client. It is an uncommon but good practice for a lawyer or law firm to do self-assessment or self-audit by sending a form of questionnaire to a client to fill and return. This will usually ask the client questions, the answers would help the lawyer to improve his services in the future.

(Week 14)

ALTERNATIVE DISPUTE RESOLUTION: NEGOTIATION, MEDIATION AND MULTI-DOORCOURT HOUSE

INTRODUCTION

I. Concept

ADR simply means Alternative Dispute Resolution. It is the method by which parties to a dispute reach an amicable resolution of the dispute without the need to resort to Court or litigation. ADR could be court connected or non-court connected. It is the former when where the matter was already in court and the parties agreed on an out of court settlement, while it is the latter where the parties mutually reach an acceptable agreement without recourse to Court.

Litigation is the traditional method of dispute resolution. Any form of dispute resolution other than litigation is an alternative dispute resolution method. ADR and litigation cannot run together, it has to be one at a time. Ideally, ADR is usually resorted to prior to instituting an action but subject to the circumstances of each case, it can be resorted to before judgment is given. Thus, pendency of litigation does not stop ADR as ADR must not necessarily precede litigation. If litigation is pending and the parties go into ADR, the terms of settlement reached by the parties would be brought to court and the court will enter and deliver it as a consent judgment.

II. Forms of ADR Mechanisms

1. **Negotiation:** between two parties. This entails the parties discussing and agreeing to terms or reaching mutually acceptable resolution without the aid or intervention of a 3rd party.
2. **Mediation**: involving a neutral third party.
3. **Conciliation:** involving a neutral third party who can give an opinion or suggestion.
4. **Arbitration**: involving a neutral third party(s) called the arbitrator(s) who can give an award which is enforceable.
5. **Hybrid Processes:** The notable hybrid ADR processes are ARB-MED, MED-ARB, NEG-MED, and CON-ARB. The fact that the parties have resorted to litigation or any of the ADR processes does not preclude them from adopting other ADR processes to resolve the dispute. The hybrid process allows the parties to commence the settlement of their dispute with one ADR process, then subsequently have recourse to another method in the course of the settlement of the dispute. The major advantage of the hybrid process is that it allows the parties the time to explore an ADR process to settle their dispute until they discover that a particular problem requires some other ADR process. Parties are therefore not restricted to one ADR process at a time in order to settle their dispute.
6. **Expert Appraisal:**
7. **Settlement Conference:**
8. **Private Judging**: parties hire a private judge.
9. **Early Neutral Evaluation**: involving third party (a lawyer or a retired judge experienced in the area of dispute) who would evaluate the dispute, evaluate the relative strengths and weaknesses of each party's case, the probable outcome of litigation and advices the parties. His opinion is not binding, but it may lead to an amicable resolution of the dispute. All documents, records and statements made in the process are confidential and cannot be admissible as evidence.
10. **Mini-Trial**: just like court trial in absence of live evidence.
11. **Multi-Door Court House:** this is not an ADR mechanism but a place or forum where ADR mechanisms can be exploited. The Lagos State High Court and High Court of FCT

now have a multi-door court house. In Lagos, it is statutory. Approaching the multi-door court house could be court connected like in Lagos state or independent court. There are also Citizens' Mediation Centers as in tenancy cases.

III. Crime and ADR

Ordinarily, it would be thought that ADR only applies to civil cases. ADR applies to some crimes. For instance, compoundable offences under Criminal Procedure Code, parties can agree to settle and come back to court. Traffic accidents involving repair of vehicles. Plea bargaining involves negotiation between the prosecution and defendant. See ***Section 75 & 76 Administration of Criminal Justice Law of Lagos***. Plea bargaining under the ***ACJL*** is not limited to any offence.

IV. Advantages of ADR Processes over Litigation

1. **Cheaper than Litigation:** In short term, ADR can be more expensive than litigation but in long term it is cheaper than litigation. In ADR, all the expenses are borne by the parties while in litigation; some of the expenses are not borne by the parties.
2. **Faster than Litigation:** In litigation, there is competition but in ADR, the parties' case is likely to be the only one. It takes less time than litigation as there would not be long and unnecessary adjournments, which is usually associated with the judicial process.
3. **Preservation of Pre-Dispute Relationship between the Parties:** Most ADR has a win-win situation on both sides, although arbitration is now similar to litigation as it is governed by stringent rules where there is a winner and loser. Strictly in litigation, it is a win-lose situation. Thus, ADR preserves the pre-dispute relationship between the parties.
4. **Privacy of the Parties and Confidentiality of the Proceedings:** ADR helps preserve the privacy of the parties. In litigation, the process must be held in public except under certain conditions thus in private. Again, most parties to litigation do not return as friends even in matrimonial proceedings. And in commercial area of law, ADR is most relevant as there might still be need to continue business relationship.
5. **Less Formal and Less Rigid than Litigation:** The court room where litigation is carried out is usually tense. For the lawyers, it is difficult, there are a lot of rules and procedures which must be followed and also for the layman, and it is extremely difficult. In ADR session, it is more of business meeting where coffee can even be served. Hence, the layman is likely to prefer such environment.
6. **Parties can determine the Coram**: parties determine the mediator or arbitrator or conciliator. That is, they choose the persons who will preside over their case.
7. **Parties can determine the Venue**: Parties choose a venue which is convenient for them.

V. Disadvantages of ADR

1. **Lack of Protection against Hostility:** In arbitration, the arbitrator is not protected against hostility while in litigation; the judge can give judgment without fear or favour.
2. **Hindrance to Development of Case Law:** ADR hinders the development of case law. This is however seen as a positive limitation and not a negative one as case law is not an end in itself but a means to an end.
3. **Lack of Binding Force:** ADR processes usually lack binding force except arbitration as the ***Arbitration and Conciliation Act*** provides for its bendiness. However, for the others that have no binding force, the parties can and usually make an effort to reduce the decision reached in the ADR process into a binding agreement. In other words, by their own nature, most are not binding but there are means to making them binding.
4. **Expensive in the Long Run:** ADR is more expensive in the long run.
5. **Difficulty in finding Qualified Personnel:** there is difficulty in finding the qualified personnel under ADR.
6. **Lack of Legal Framework:** The other methods have no legal framework. Only arbitration and conciliation have binding force under ACA.

VI. Cases where ADR is not useful

1. **Criminal Cases:** In criminal cases generally, ADR is not used but there are exceptions. For instance, plea bargaining in its effect involve some ADR issues as it is give and take position; negotiation of plea of guilty.
2. **Election Petition:** Election petition being matter of public policy cannot be resolved through ADR.
3. **Matrimonial Causes:** In matrimonial causes, ADR is only relevant in certain ancillary matters and not in issue of dissolution of marriage as it is only the court that can decree a Decree Absolute.
4. **Certain Matters that Require Evidence to be proved**: For instance, a declaratory relief being sought must be proved by evidence.
5. **Dispute Relating to Binding Interpretation of Law, Statute or Document**: The court is the only institution that can do so.
6. **Cases of Urgency**: in immediate help like seeking an injunction, ADR will not be necessary.

VII. Advising on ADR

1. **Rules of Court:** ***Order 25 Rule 1(2) (C) of the High Court Civil Procedure Rules of Lagos State*** makes provision for the promotion of amicable settlement of cases or adoption of alternative dispute resolution. See also ***Section 24 HCL 2004. Order 17 Rule 1 of the High Court of the FCT, Abuja Civil Procedure Rules 2004*** states that a Court or Judge, with the consent of the parties, may encourage settlement of any matter(s) before it, by either – (a) Arbitration; (b) Conciliation; (c) Mediation; or (d) any lawfully recognised method of dispute resolution.
2. **Rules of Professional Conduct 2007:** See ***Section 15(3) (d) RPC 2007***.

NEGOTIATION

I. Concept

Negotiation is a problem-solving process in which the parties to a conflict or an imminent conflict voluntarily come together (either personally or by their representatives) to discuss their differences and attempt to reach a joint decision or resolution of the conflict, on their own and without the involvement of a third party. Negotiation is different from other types of alternative dispute resolution mechanism as no third party is involved. It is probably the most *private ADR technique*. Also, it is less formal and technical since it involves only the parties to the dispute. There is no external interference which could complicate their issues. Again, unlike other alternatives, it can be used in both criminal litigation (plea bargaining) and civil litigation.

It must be noted that negotiation can be done through any of these three (3) modes:

(a) face to face communication
(b) telephone communication
(c) written communication (which should always be marked without prejudice)

It must be noted that where the parties to a dispute have gone to court and while the case is pending, they decide to go into negotiation in a bid to settle out of court; any amicable terms of settlement reached by the parties can be filed in court and the court will enter it and deliver it as consent judgment.

II. The Roles of a Legal Practitioner in Negotiations

Every legal practitioner is expected to cultivate the skill of negotiation. This is because ***Rule 15(3) (d) RPC*** states that every legal practitioner is to advise his client on the options of ADR before resorting to or continuing litigation on behalf of his client. A legal practitioner plays the following roles in negotiation:

1. **Adviser**: The legal practitioner in this like advises his client on options to choose from

when various offers are made to him that is, the client during negotiations. He can also peruse agreement decided on by the parties before executing it.

2. **Evaluator**: The legal practitioner evaluates the situation as a third party by providing some views on the dispute and assisting the negotiating parties in assessing issues raised especially on questions of law.
3. **Negotiator**: A legal practitioner can act as a negotiator for his client while an action is pending or before an action is commenced
4. **Draftsman**: When parties to negotiation have concluded negotiation, the agreement reached would be reduced into writing in the proper form. The services of a lawyer would certainly be needed in the drafting and preparation of the terms of settlement.

It must be noted that a lawyer representing a client in a negotiation process must conduct a client interview to elicit all the important information concerning the dispute from the client before the negotiation. However, where a particular fact emerges in the course of the negotiation which the lawyer does not have adequate information or instruction on, he should contact his client before taking any further step in the process. See ***Rule 14(2) (a) RPC***.

III. Types of Negotiation

There are other types of negotiation, but for this purpose, there are:

1. International negotiation; and
2. Domestic negotiation

Domestic negotiation is divided into civil and criminal negotiation.

IV. Achievable Goals/Objectives in Negotiation

Before negotiating, there must be certain objectives which are:

1. Must achieve objective
2. Intend to achieve objective.
3. Likely to achieve objective.

Always identify your achievable goals and whatever the nature of the negotiation, it is important to have the requisite knowledge of the applicable law. Where the negotiation is based on an area of law where you are not an expert, always seek relevant help/assistance from your colleague or seniors. See ***Rule 16 RPC***.

As a solicitor engaged in negotiations on behalf of your client, you must always bear in mind your achievable goals and the limit to which you can go. Thus, do not demand what the other party may not be able to afford. When considering your limit, bear in mind the two major yardsticks which are:

1. **Your Client's WATNA:** WATNA means Worst Alternative To Negotiated Agreement. This is the last resort the party has if negotiation fails. Usually, the negotiation would have failed utterly and gotten to lose-lose situation before a party considers his WATNA because the WATNA represents the worst course of action which a party may take if negotiation fails and no agreement is reached. For instance, the alternative the client has is to resort to litigation where he may not be too sure of the amount to be given to him in judgment and the time the case will be concluded, it is better to resort to negotiation.
2. **Your Client's BATNA:** BATNA means Best Alternative To Negotiated Agreement. A party's BATNA is his walk away alternative. It is his best course of action for satisfying his interest in the event that negotiation with the other party fails. The BATNA of a party is the best option which he will resort to in the event that nothing comes out of the negotiation. The BATNA should be capable of implementation in the absence of agreement after negotiation. For instance, if a party is negotiating with his employer over increment in his wage package, his BATNA may be to find another job with the prospect of good remuneration. A good negotiator must also find out as far as possible, the BATNA of the other party. This is done by reviewing the other party's interests, powers and rights. The negotiator will then be able to compare his client's BATNA with the BATNA of the other

party. This will help in setting a reasonable bottom line for his client.

The bottom line is minimum amount or benefit which a party is prepared to accept in the negotiation. It is the point beyond which the party cannot go. When this point is reached, a party's only choice is to pursue his BATNA. The BATNA must always be determined first before the bottom line is fixed. It is risky and disadvantageous for a party to first fix a bottom line before he determines his BATNA. Some of the disadvantages include:

(a) The premature setting of the bottom line reduces the potential for using problem-solving strategy in the negotiation. This is because the negotiating parties usually find it hard to abandon their chosen bottom lines in the course of the negotiation.

(b) The premature setting of the bottom line will not adequately cater for possibility of unforeseen solutions that may come up during the negotiation, particularly where such solution is inconsistent with the already set bottom line.

(c) The premature bottom line may either be too unrealistic or too high or too low.

V. Context of Negotiation

Whenever there is a dispute and negotiation is resorted to, the negotiation usually takes place within the context of these three factors: rights of the parties, interests of the parties and powers of the parties.

1. **Rights of the Parties:** these are independent standards that demonstrate the legitimacy or fairness of a party's position in the negotiation process. Such rights may arise from statutes, contracts, case law, treaties, custom and usage of trade, precedents etc. Usually, these rights determine the extent of compromises a negotiating party would be willing to make.
2. **Interests of the Parties:** negotiating parties in a dispute usually have interests to protect. The negotiator must adequately identify these interests in order to obtain the best available bargain for his client. These interests could be financial, psychological, reputational, or other basic human needs.
3. **Power of the Parties:** this refers to the ability of a party to coerce another to do something he would otherwise not do. The power may be political, social, psychological, expertise etc. This power could be asserted through the withholding of benefits accruing to a party or through aggression. The commonest example of the exercise of power through withholding of benefits is the use of industrial action (strike action) by workers. The workers withhold their services to the employer by refusing to work. This puts pressure on the employer during negotiations as he always tries to avoid such an occurrence. It must be noted that the powers available to a negotiating party depends on the position of such a party.

VI. Reasons for Negotiation

1. **Unnecessary Delay in Litigation**: Up until recently, a matter commenced in the Lagos High Court can take as long as 10 years. For instance, the case of ***Rossek v ACB*** took 25 years till it got to the Supreme Court and the court in its decision ordered a retrial. Negotiation is usually for short period within couple of weeks or months.
2. **Inadequate Award of Cost**: Most times the cost usually awarded is very insignificant compare to the amount used in the litigation.
3. **Reluctance of Court to Award Interest on Damages**: See ***Eagle Super Pack v ACB.***[94]
4. **Uncertainty in Litigation**
5. **Litigation is Costly**
6. **Litigation Attracts Unnecessary Publicity**: For instance, the case of ***Jadesimi v Okotie-Ebor***, the deceased had died during the first coup d état in 1966. Yet persons not born at that time have a lot of information about him. This is also increased with online reporting.

[94] (813) 2005

7. **Litigation Discourages Continuity of Relationship**
8. **Litigation is Always Rigid and Inflexible**

VII. Negotiation Strategies

There are two types of negotiation strategies, namely:

1. **Positional Strategy/Win-Lose Strategy:** this is also known as the competitive strategy or adversarial strategy or the zero-sum negotiation. In this strategy, a party to the negotiation has maintained a position and he is not ready to shift. Where parties adopt this, in most cases there is always a deadlock and the parties end up in court. Here, the parties often adopt a win-lose approach with little or no regard for any compromise. At the early part of the negotiation, the parties would make opening offers. The parties would also determine their respective bottom lines. The area between the opening offers made by the parties and their respective bottom lines is known as the bargaining range.

   This strategy of negotiation is often rigid and the parties in the negotiation operate on the basis of lack of trust. There is therefore the deliberate reluctance by the parties in disclosing information relating to the subject matter of the negotiation. This strategy focuses mainly on the power and interests of the parties. The advantages of this strategy include:

   (a) It helps the negotiating parties to determine their bottom lines at an early stage in the negotiation.
   (b) It helps the negotiating parties to place economic value on the item being negotiated.

   The disadvantages of this strategy are:

   (a) It adopts a win-lose negotiation style which leaves the loser in a very vengeful position and destroys any relationship between the parties.
   (b) It is inconsistent with the maintenance of goodwill between the parties after negotiation.
   (c) It is rigid in nature.
   (d) Parties are usually hostile and are reluctant to disclose relevant information on grounds of mistrust.
2. **Co-operative/Problem Solving Strategy**: this strategy seeks to meet the interests of all the parties by resorting to and adopting a win-win style of negotiation. Here, the parties are ready to make compromises on their positions as far as practicable. There is room for trust as the parties openly express their needs and interests. They also bargain for their interests, rather than their positions. This helps the parties to settle their differences amicably and preserve their existing relationships. The proponents of this strategy of negotiation have advocated that for this strategy to work, it must be based on the following criteria or rules:

   (a) Separate the people from the problem so that the problem is considered on its merits.
   (b) Focusing on the interest of the parties and not their positions.
   (c) Inventing other options for mutual settlement.
   (d) Insisting on using objective criteria in inventing the various options.

   At the end both parties are contented. This is the win-win situation.

   The advantages of this strategy include:

   (a) It maintains the pre-dispute relationship and goodwill of the parties after the dispute.
   (b) It leads to creative problem-solving as the parties have to put their heads together to find a solution to their problems.
   (c) It is conciliatory.
   (d) There is room for mutual trust in the negotiation process.
   (e) The process is not hostile.

   The disadvantages of this strategy is that lack of trust by one of the parties will frustrate the process.

   It must be noted that depending on the circumstances, a negotiator may use a combination

of both strategies to achieve his goal.

VIII. Negotiation Style

1. **Hard Style**: maintaining a position; that is, being rigid. This style is not flexible and usually results in deadlock.
2. **Firm Style**: a firm negotiator is a determined one who is neither soft nor hard. He does not trade concessions cheaply or maintain an unyielding position. He is always very fair in approach and ensures that the problem is solved.
3. **Soft Style**: a soft style is when a negotiator trades concessions cheaply and hastily to reach a settlement. It is open to manipulation and exploitation by the other party.

IX. Negotiation Tactics

1. **Control of Agenda**: where the party who is the convener has issues of his own, which he deems important, he can make such issues to be discussed first before any other.
2. **Contextual Manipulation:** useful where a party is the convener. Where the convener knows the strategy usually adopted by the other party, he may create an atmosphere which is not conducive to the other party so as to negatively influence his negotiation power.
3. **Overwhelming Numerical Strength:** useful in voting when there is a deadlock. A party to the negotiation bringing in more persons to the negotiation table.
4. **Puffs**: this involves misleading the other party. Being deceptive about your BATNA.
5. **Threats**: whether to call off the negotiation and result to industrial actions or litigation.
6. **Deadline/Ultimatum:** putting the other party under pressure by giving him a time limit within which to reach a decision.
7. **Lack of Authority:** this is also known as "refer upstairs". Here, the negotiator actively participates in the negotiation process until the parties reach a commitment stage where a binding agreement would be entered. Having reached this stage, the negotiator informs the other party that he does not have the authority to enter into a final binding agreement on behalf of his client or he may reach an agreement but state that the agreement is not binding until his client confirms it. In either case, he would demand to first consult with his client before the agreement becomes binding. The rational of this tactic is that it gives the negotiator time to evaluate and consider the offer before accepting it. Usually, this tactic is used by government agencies particularly in FG/ASUU negotiations.
8. **Limited Authority:** this refers to a situation where one of the negotiators insists that he has authority only in respect of some of the issues in dispute and not on all the issues. He has to contact his client or employer before making any commitment in respect of those issues on which he lacks authority.
9. **Behavioural (unusual behaviour):** this tactic often works where during the bargaining process, a negotiator expresses anger, boredom or lack of interest so as to put the other party under pressure. He may even walk out or cause an uproar feigning that he can call the bluff of the other party.
10. **Flattery (Psychological):** under this tactic, some gimmicks of psychological, emotional or moral appeals are deployed to arouse the other party to sympathy such as flatteries, humour to disperse tension in order to avert a deadlock.
11. **Piecemeal/Nibble:** Negotiating issues one after the other. This refers to a situation where a negotiator decides to have the issues in dispute negotiated one after the other. The issues are not taken together as a whole, but once an agreement is reached on one issue, the parties go to another one until all the issues have been taken care of.
12. **Package Deal:** discussing all components of the dispute. This is the opposite of piecemeal. In order to check the exploitation of the piecemeal tactic, a negotiator may adopt the package deal tactic by insisting that all the issues be taken as a whole. This counteracts the bargain a party would have secured with a piecemeal tactic. The party adopting this package deal tactic makes it clear to the other party that he will not agree

on anything unless all the components of the dispute are discussed fully. A party with a stronger bargaining power will find it easy to adopt this package deal tactic.

13. **Leapfrogging:** this involves jumping from one point to the other during negotiation. It may be used to hide some of the weaknesses in the case of a party or to divert the attention of the other party from such weaknesses. It is often useful when a party's case is suffering some continued setback and coming under heavy attacks.
14. **Take it or Leave it:** this tactic is not compromising at all. The negotiator employing this tactic does not intend to be involved in protracted negotiations with the other party. He makes his one-time offer and states clearly to the other party that has only two options: to either take the offer or to forget about it. This tactic is usually used by employers negotiating salaries with an employee or prospective employee.
15. **Freeze Out:** Suggesting to the other party that he does not know what he is doing. This tactic tends to ridicule the other party by beating him at each point and suggesting to him that he does not know what he is talking about or that you know it better than he does. This is competitive in nature and may weaken the confidence of the other party in the negotiation process. This may lead to a walk out by the other party.
16. **Hit and Run:** No room for discussion, just give in to the demand. Here, negotiator simply tells the other party what his client needs and makes it clear that there is no need discussing the demands of his client. It is therefore open to the other party to either accept it or leave it.
17. **Humour:** Cracking jokes in the course of the negotiation. This tactic helps the negotiator to break deadlocks and to maintain a cordial atmosphere and a rapport between the parties during the negotiation. It is usually used in the problem-solving strategy.
18. **Win-Lose:** adversarial or positional. The negotiator is all out to win the negotiation at all cost and does not care if the other party gets anything at all. This tactic destroys any goodwill existing between the parties and does not restore the pre-dispute relationship of the parties.
19. **Win-Win:** This is the opposite of the win-lose style. The win-lose tactic encourages concessions by the negotiators. It considers the interests and needs of the other party and attempts to make some compromises in order to accommodate the opposing party. This tactic ensures that nobody is an outright loser at the end of the negotiation.
20. **Blackmail:** This tactic is used to demand concessions and are especially effective where the party against whom it is used has an interest to protect and would do anything to avoid a showdown.

X. Stages of Negotiation

There are essentially five stages of negotiation. However, some authors categorised them into five to six stages:

1. **Opening Stage:** In this stage, there is preparation by the parties, and the parties meet.
2. **Agenda Setting Stage:** this stage involves setting out the agenda or issues of the negotiation.
3. **Bargaining Stage**: The parties discuss the items one after the other or issues involved in dispute or anticipated. Here the style, tactics, and strategies are adopted.
4. **Closing Stage**: The parties summarise what they have agreed on and reduce it into writing.
5. **Execution Stage:** This is the stage where the parties sign the binding agreement between them. Where there is an action pending in court, the agreement will be filed in court and consent judgment will be given to it.

If no pending action in court, the parties would accept it as binding agreement.

XI. Factors to Be Taken Into Consideration in Negotiation

1. **Social Background of The Parties:** People come from different social background and their ideas may not be the same. There is need for every negotiator to put this into

consideration.

2. **Cultural Background of The Parties:** The cultural background of a negotiator is a factor to put into consideration. For instance, in eastern Nigeria, women cannot be involved in negotiation over family land. While in the Western Nigeria, if a woman is a principal member of a family, she must be involved in negotiation of family land.
3. **Religious Background of The Parties:** In today's world, where persons of different religion interact, it is pertinent for a negotiator to put into consideration the religious belief of the other party. For instance, Muslim party to the negotiation would want to pray once it is 1:30pm. Also, a Christian would not want to negotiate on Sunday.

XII. Ethical Issues Involve In Negotiation

A legal practitioner acting as a negotiator, should observe the following:

1. He should not make unfair and unrealistic demand.
2. He should not be emotional.
3. He should not be abusive while negotiating.
4. He should not strive to maintain good relationship.
5. He should endeavour to give something in exchange from the party.
6. He should prepare for the negotiation.
7. He should act within the bounds of the law. ***Rule 15(c) RPC***.
8. He should uphold and observe the law. ***Rule 1 RPC***.
9. He should not withdraw or abandon the negotiation except on good cause. ***Rule 21 RPC***.

XIII. Plea Bargaining

This is the form of negotiation that takes place in criminal cases. This is a situation where the prosecutor enters into an agreement with the accused on the sentence he is going to recommend to the court or on the charges he is going to bring against the accused person in court in exchange for a plea of guilty from the accused to save the prosecutor from the stress of a full trial. There are two types of plea bargaining:

1. **Charge Bargaining:** this involves negotiations between the prosecutor and the accused as to the charge the prosecutor would bring or maintain against the accused person in exchange for a plea of guilty by the accused person.
2. **Sentence Bargaining:** this relates to a negotiation by the prosecutor with the accused person on the type of sentence he is going to recommend to court in consideration of a plea of guilty by the accused person.

It must be noted that all the strategies, styles and tactics involved in negotiation in civil cases also apply to plea bargaining. However, one difference is that in plea bargaining the State is always the stronger party and dominates the process.

MEDIATION

I. Concept

Mediation is an offshoot of negotiation. This is because negotiation creates a polarised situation; one on one side and other on the other side. Even when parties are represented in negotiation, the position still does not change. Also, is the fact that negotiation is based on win - lose situation or ends with such. Mediation is triangular in that there are two parties and a third party in the middle. Note, however that for a person to be a good mediator, such person must have excellent skill of negotiation. It is not easy to negotiate a different situation but with a third party, it would be easy for the parties to resolve their dispute. Note that block-communication which is a feature of negotiation does not arise in mediation.

II. Notable Features of Mediation

1. **Consensual and Voluntary:** Mediation is consensual and voluntary in nature.
2. **Party Autonomy:** There is party autonomy as parties still reserves the right to walk away.
3. **Non-Imposition of Third Party:** The third party is not imposed on the parties. This is a remarkable difference between mediation and litigation. The third party in mediation must

be agreed to by the parties and must be respected by the parties. In litigation, the judge is imposed on the parties and even when there is objection on judge hearing a matter, the next judge to be assign to the matter is not determined by the parties. The third party need not be independent of the parties like in litigation. A mediator can be related to either of the parties. However, the rule of impartiality still applies despite the mediator relationship with the parties. Parties can appear for themselves or through representatives especially one that is experienced in the ADR process (a lawyer representing a party who is fully robbed would not be appropriate).

4. **Collaborative**: no participant in mediation can impose anything on anyone, everyone is motivated to work together to solve the issues and reach best agreements.
5. **Control:** Each participant has complete decision-making power and a veto over each and every provision of any mediated agreement. Nothing can be imposed on a party.
6. **Confidential**: Mediation is generally confidential. Mediation discussions and all materials developed for mediation are generally not admissible in any subsequent court or other contested proceeding, except for a finalised and signed mediated agreement.
7. **Legal Expert Information and Advice:** The mediation process offers a full opportunity to obtain and incorporate legal and other expert information and advice. Individual or mutually acceptable experts can be retained.
8. **Impartial, Neutral, Balanced and Safe**: The mediator has an equal and balanced responsibility to assist each mediating party and cannot favour the interests of any one party over another.
9. **Self-Responsible and Satisfying:** Based upon having actively participated in voluntarily resolving issues, participant satisfaction and the likelihood of compliance are found to be elevated through mediation compared to court options.

III. Qualities of Mediation

There are three points which are fundamental to a mediator.

1. **Facilitating Resolution of Disputes:** A mediator facilitates resolution of the dispute by the parties. He is not the one resolving the dispute, he only acts as a facilitator. Thus, he moves parties from an area of dispute to an area of resolution.
2. **Non-Imposition of Decision:** The mediator is not to impose his decision on the parties but help parties reach amicable settlement. No rule says that a mediator cannot influence the reaching of the decision, only that he cannot impose his decision.
3. **Non-Bendiness of Final Resolution:** Final resolution is not binding until it is reduced into formal agreement, with an enforcement clause. Where a party to the agreement did not perform, his part, the other party can commence action in court by originating summons to enforce the agreement.

IV. Why Choose Mediation Instead of Other ADR Mechanism or Litigation

1. **Consensus Building:** Mediation ensures consensus building between disputing parties as relationship is preserved during disputing times. Parties are part of the process – they participate and the final decision is done by the parties.
2. **Enforcement of Agreement:** Also, the agreement is easily enforceable since the decision reached is that of the parties mutually arrived at with the help of the mediator.
3. **Compromise:** Decision is arrived at by compromise in mediation, thus win-win situation and not the winner takes all as in litigation.
4. **Confidence of the Process:** Parties retain confidence of the process as the mediator is mentally respected by the parties.

V. Ethical Standards for Mediator

This involves basic things that a mediator must imbibe and observe:

1. **Knowledge:** A mediator must be knowledgeable. That is, sufficient proficiency on the subject matter. This does not necessarily equate with being practitioner of the subject

matter, but a knowledge which can be acquired.

2. **Honour, Fairness, Candour and Decorum:** A mediator must be honourable and observe fairness, candour, and decorum in order to earn the respect and confidence of the parties. Note that honourable is not just a mere title but a skill and character that must be shown.
3. **Listening and Analytical Skills:** A mediator must be a good listener and have highly analytical skill. This does not mean a mediator should faze out during the proceeding but rather, he should take note of everything that has been said. Note that listening is a skill.
4. **Impartial Facilitation of Dispute Resolution:** A mediator must be an impartial facilitator in that he moves the parties towards amicable resolution of the dispute.
5. **Timely Facilitation of Dispute Resolution:** A mediator should facilitate resolution of dispute timely. Time is of the essence in mediation and no unnecessary adjournments as in litigation.
6. **Confidentiality:** A mediator should ensure confidentiality. Parties are not to be recorded verbatim. This is one way of ensuring confidentiality.
7. **Non-Imposition of Decision:** A mediator is not to impose decision on the parties but he is to adopt technique that will help the parties to arrive at their mutually agreeable solution.
8. **Written Agreement:** Also, he is to ensure that resolution by the parties is reduced into an agreement in writing with all terms/points of resolution clearly spelt out.
9. **Leadership Skills:** More so, he must display leadership skills and control the proceedings. Note that leadership skills help control proceedings.

VI. Role and Functions of Mediators

Mediators can contribute to the settlement of disputes by creating favourable conditions for dealing with them. This can occur through:

1. **Providing an Appropriate Physical Environment –** This is through selection of neutral venues, appropriate seating arrangements, visual aids and security.
2. **Providing a Procedural Framework –** This is through conduct of the various stages of mediation process.
3. **Improving the Emotional Environment –** They can improve the emotional environment through restricting pressure, aggression and intimidation in the conference room by providing a sense of neutrality and by reducing anxiety among parties.

VII. Stages/Steps in Mediation

1. **Introduction Stage**: The mediator introduces himself to the parties and makes opening statement. The parties also introduce themselves. The mediator's opening statement/remark will cover some things like putting the parties at ease and explaining the ground rules and the mediation process. The mediator can also set his ground rules.
2. **Telling the Story Stage**: In this stage, each party tells his story and the basic rule is that no interruption. Even in multi-party mediation each group must present their story**.**
3. **Identifying the Facts and Issues Stage**: After the parties have told their story, the facts that can lead to cause of action are to be drawn out. Thus, the mediator helps identify material facts and relevant issues in dispute.
4. **Alternative Resolutions Stage**: At this stage, each party is to think of a solution and list out the solutions.
5. **Revising and Discussion Stage**: At the stage where parties think of solutions, the parties would have taken a hard line, thus the mediator would help the parties to review the solution. Note that it would not be out of place for mediator to meet with parties individually in order to review the solution. Also subtle black mail can be used. However, a mediator is not to beg parties but make them see reasons why they need to agree on a solution. The solutions reached by parties are then identified.
6. **Agreement Stage**: The agreement reached must be presented to the parties and reduced into writing. There must be an enforcement clause inserted to cover breach by either party.

7. **Closing the Proceeding Stage**: In this stage, parties exchange copies of the agreement. Also, parties share compliments and the mediator ends the proceedings. Note that expert witnesses are allowed in mediation proceedings. Also, everything that happens is admissible in litigation. Note that disputes are part of human existence and even though dispute cannot be resolved it can be managed; and when dispute arises always look for the proper process to resolve the dispute.

VIII. Enforceability of Agreement Made During Mediation

An agreement reached by the parties during mediation is enforceable if the terms of settlement are reduced into writing by the parties and witnessed by their counsel. It is by filing an Originating Summons asking the Court to interpret the agreement and to enforce it. The term of settlement will thereafter be filed in court and made the judgment of the court in form of a consent judgment.

IX. Mediation and Other Forms

A. Mediation and Litigation

1. Mediation is much less costly than litigation.
2. In mediation, parties cannot go on appeal while in litigation they can.

B. Mediation and Arbitration

Advantages

1. Less expensive than arbitration.
2. Mediation results to win/win while arbitration leads to win/lose.
3. Non imposition of settlement.
4. Less formal.
5. More privacy.

Disadvantages

1. Mediators lack power to summon witnesses.
2. No statutory provisions.
3. Parties may resile from agreements.
4. Enforcement is not mandatory.
5. Opinion not binding.

C. Mediation and Conciliation

1. Mediator does not have expert knowledge while conciliator has expert knowledge of the dispute in issue.
2. Conciliation is statutorily recognised.
3. A mediator only makes procedural suggestion on how parties can reach an agreement while a conciliator establishes communication between parties and brings about negotiated settlement.

D. Mediation and Negotiation

Advantages

1. Mediation has the advantage of a neutral 3rd party while negotiation does not.
2. Mediation is enforceable while negotiation is not.
3. Matter ends in a win-win.
4. Mediation is faster as the mediator drives the process.
5. Enforcement of settlement is easier.
6. The presence of a third party in mediation will help the parties to be more committed to the process than when the parties are only discussing with themselves as in negotiation.
7. Enforcement of the agreement reached in mediation is easier as the mediator stands as a witness to the settlement reached by the parties.
8. The expertise of the mediator in dispute resolution is usually of immense value to the parties in reaching a lasting solution to their problems.

Disadvantages

1. Mediation is more expensive.
2. Process may be compromised if mediator is partial.
3. Loss of privacy.
4. Parties may not be at ease to disclose all relevant facts.
5. More time may be wasted if the matter in dispute is a complex one which is not within the expertise of the mediator.

E. Mediation and Early Neutral Evaluation

Mediation makes use of a neutral 3rd party called a mediator while early neutral evaluation makes use of a judge or lawyer.

COURT-CONNECTED ADR CENTRES (MULTI-DOOR COURT HOUSE)

I. Background

There is the Lagos multi-door courthouse 2002-2007; and there is the Abuja multi-door courthouse 2003. In Nigeria, the Multi-Door Court House was first established in Lagos on 11th of June 2002 by the Negotiation and Conflict Management Group in conjunction with the Lagos State Government. It is usually situated in the court premises. In Abuja, the High Court of FCT established its own multi-door court house at Wuse Zone 5, Abuja. The various options available to parties at the MDCH are arbitration; mediation; conciliation; negotiation; and hybrids.

II. Objectives

The major objectives of the MDCH are to:

1. Provide enhanced timely, cost effective access to justice by provision of ADR;
2. Reduce the frustration of litigants' face in court due to long delays;
3. Serve as focal point for promotion of ADR; and
4. Promote effective functioning of ADR

III. Modes of Initiating Matters

Matters can be brought to the multi-door courthouse in any of the following ways:

1. By Court referral i.e. the Court refers the matter to the Multi-Door Court House;
2. By the parties walking into the Multi-Door Court House themselves; or
3. By direct intervention by the workers of the Multi-Door Court House of the Negotiation and Conflict Management Group (NCMG).

IV. Abuja Multi-Door Court House

Situated at the High Court premises Wuse Zone 5. Governed by the ***AMDC Rules 2003*** on procedure for the conduct of mediation and arbitration. Parties may adopt early neutral evaluation and dialogue. Parties may choose to have their case mediated here, upon such agreement, parties are deemed to have adopted rules of procedure.

1. Mediation

(a) Dispute can be brought by agreement of the parties. Once they agree, they would be taken to have adopted the rules and the rules forms part of their agreement. The parties pay all the fees to be incurred.

(b) A party to a dispute may initiate mediation by filing with the centre written request for mediation (where there was no original mediation agreement). The centres contact the other party and persuade him to mediate. See ***Rules 2 & 3 AMDC***. The request will state name, address and phone numbers of parties, and nature of dispute. Where parties agree on ADR process to adopt, a list of mediators would be given to them. See ***Rule 5 (a) & (b) AMDC***. Only one mediator but parties can appoint more than one. Procedure is same as mediation generally.

(c) The centre would be the venue, See ***Rule 8 AMDC***.

(d) Parties, mediator and centre will have to enter an agreement known as mediation agreement. See ***Rule 4 AMDC***. Parties may be represented by a lawyer.
(e) Once an agreement is reached, parties may execute the agreement.
(f) Enforcement of mediation agreement is like the normal process of going to court.

2. Arbitration

Arbitration in this sense would be regarded as institutional arbitration. Parties must agree to arbitrate under the auspices of the centre and may vary the rules.

(a) Where there was a prior agreement (arbitration clause), it is initiated by filing a written notice at the centre addressed to the other party indicating an intention to arbitrate. Notice is to state the nature of dispute, the amount involved, the remedy sought and the venue requested for the arbitral proceedings. Also with the copies of the arbitration agreement.
(b) Respondent has 10 days to file his reply and counter-claim if any.
(c) Where no prior agreement to arbitrate, parties can submit to the centre by filing submission to arbitrate signed by both parties.
(d) Appointment can be by parties or centres after 30 days.
(e) Hearing in presence of both parties except the other party failed to attend after reasonable notice was served to him.
(f) Final award within one or not later than 3 months of conclusion.
(g) No rules for enforcement of award. It has to go through the usual process. Mediation agreement cannot be enforced as judgment of the court but it can serve as evidence of settlement.

V. Lagos Multi-Door Court House

Originally established in 2002 by the Negotiation and Conflict Management Group (NCMG) in collaboration with Lagos High Court. In 2007, it was statutorily established. It is an integral part of the Lagos state judicial system. It contains rules for arbitration, mediation, negotiation, early neutral evaluation (not binding on parties). May refer to the court for settlement. Arbitration Awards are made under the ***Lagos State Arbitration Law 2009***. LMDC has practice direction on mediation which is binding on parties.

The court may refer dispute to it. Dispute may be referred by private persons, institutions, corporations, and courts from other jurisdiction. Agreement or memorandum of understanding duly signed by the parties will be filed at the LMDC and duly registered with all necessary attachments. The settlement once endorsed by the ADR judge or any other person designated by the chief judge of Lagos state, such qualify the agreement as consent judgment of the court under the ***Sheriff and Civil Processes Act***. Arbitration is enforceable under the Lagos state arbitration.

The distinguishing features of Lagos Multi-Door Court House are as follows:

1. More advanced.
2. Has a multi door court house Judge.
3. Has a citizen mediation centre.
4. Award/terms of settlement are enforced by filing it in Court with a covering letter from the Judge. See ***Article 17 LMDC Practice Direction (Mediation) 2008***.
5. Agreement is deemed to be a consent judgment of the high court but parties will be required to appear before court before endorsement as judgment. See ***Section 4 LMDC Law 2007***.

(Week 15)

ARBITRATION AND CONCILIATION

CONCILIATION

I. Concept

Conciliation is a system of ADR where a third party known as the conciliator uses his best endeavours to bring the disputing parties to a voluntary settlement of their dispute. This is the process of settling a dispute in an agreeable manner. It is a method by which a neutral third (3rd) party meets with the parties to a dispute, and explores how the dispute might be resolved. However, he may deliver his opinion as to the merit of the dispute in necessary cases. The conciliator is a neutral person who decides and awards nothing and he is not bound to observe the strict rules of natural justice.

II. Appointment of Conciliator(s)

The parties may appoint one or three conciliators known as the conciliation body to handle the dispute. Where the parties decide to appoint one conciliator, they are to appoint the conciliator jointly. However, where they choose to appoint three conciliators, each party will chose one and both parties will jointly appoint the third conciliator. See ***Section 40 Arbitration & Conciliation Act (ACA)***.

By ***Section 38 of ACA***, a party who wishes to conciliate or initiate conciliation shall send to the other party a written request to conciliate and any request so sent shall contain a brief statement setting out the subject of the dispute. The conciliation is deemed to commence on the date the conciliation request is accepted by the other party. After listening to the parties, the conciliation body will present its terms of settlement. That is, it reaches an agreement for the parties and presents it to them. The parties are free to accept or reject it. See ***Section 42(1) ACA***.

By ***Section 42(2) ACA***, where the parties accept the terms of settlement, the conciliation body will draw up a record of settlement and sign it. If the parties accept the terms of settlement, they become binding and either of them can take an action to enforce it. By ***Section 42(3) ACA*****,** where the parties do not accept the terms of settlement, the conciliation body may recommend that the parties should submit the dispute to arbitration or litigation. Where this is the case, their respective rights should not be affected. See ***Section 42(4) ACA***.

III. Conciliation and Arbitration

Arbitration and Conciliation are regulated by the ***Arbitration and Conciliation Act***, applicable to the whole federation except Lagos state which has its own Arbitration law. The major difference between them is that:

1. An arbitrator makes an award which is binding and enforceable amongst the parties, while a conciliator does not make an award but gives his opinion or suggestion which even if reduced into writing (written agreement between the parties) cannot be enforced on its own unless the process of resolving dispute through litigation is undertaken.
2. Arbitration, though the Evidence Act doesn't apply, arbitrator must have regard to relevancy and admissibility of documents so arbitrator should have an understanding of the Evidence Act.
3. Arbitration is like a private court (points of claim, points of defence) and its decision is enforceable.
4. Conciliation and arbitration are voluntary but certain instances are court ordered but for conciliation, if parties don't agree with the decision, they can jettison the decision. But in arbitration, once parties have submitted to it in a contract (arbitration clause or container

agreement) or in the submission agreement when disputes arise, whatever decision reached except for those grounds stated under the Act, it is binding and final and court will not ordinary tamper with an award made.

5. Conciliator may give an opinion or suggest an agreement for the parties and no prior agreement between the parties.
6. Arbitrator cannot go outside the scope for that which is submitted for arbitration. Relies on evidence from the parties. Aim of conciliation is different and conciliator can make his own suggestions.
7. Arbitration hardly leads to a win-win outcome and relationship between parties is never the same. Conciliation leads to continuance of relationship because the conciliator seeks to maintain the on-going relationship (more win-win situation) e.g. negotiating government policies between trade unions and the government.

IV. Conciliation and Mediation

Conciliation has a lot of similarities with mediation. However, while mediation has no statutory protection, conciliation is statutorily protected and regulated by the ACA. The process of conciliation is much more interventionist than mediation. ***Section 37-42 of ACA*** deals with conciliation in domestic commercial disputes.

ARBITRATION

I. Concept

Arbitration is an ADR mechanism where parties to a dispute submit to an arbitrator(s) to resolve dispute. In other words, arbitration is simply a private litigation. This is because its proceedings are not that formal. Arbitration stands alone in relationship to other ADR thus it is Arbitration and ADR. The governing laws and rules are: ***Arbitration and Conciliation Act***; ***Lagos state Arbitration Law 2009***; ***Convention on the Recognition and Enforcement of Foreign Arbitral Award 1958 (New York Convention)*** – has been ratified into Nigerian law; ***United Nations Commission on International Trade Law 1985***; ***UNCITRL Arbitration Rules***; common law; and doctrine of equity.

Arbitration is based on agreement of the parties before it can arise. When an arbitration clause is provided for in the agreement of the parties; or a subsequent submission agreement. The first envisages dispute between the parties, thus prior to dispute, while the second is agreed on subsequently, after the dispute has arisen. Tortuous claim fall into this class.

II. Methods of Originating an Arbitration Process

A. Arbitration Clause or Separate Arbitration Agreement

An arbitration clause is sometimes found in contractual agreements. The position of the law is that parties to an agreement which contain arbitration clause must first abide by the arbitration clause before going to court. See ***Scott v Avrey***, where the court held that the arbitration clause was valid and constitutes a bar to an action in court until the arbitration is taken. The foregoing is also contained in the Arbitration Act.

When a party to an arbitration clause in an agreement, proceed to court contrary to the arbitration clause, the other party can apply for stay of proceeding and the court, upon fulfilment of the relevant conditions will stay the action. See ***Sections 4 and 5 Arbitration and Conciliation Act***. When there is no prior arbitration clause in agreement between the parties, the parties can still go for arbitration upon a subsequent, separate arbitration agreement. An arbitration clause/agreement in an illegal contract can be enforced. That is, even though contract is illegal, any arbitration clause in it is enforceable notwithstanding the illegality of_the contract. This is because an arbitration agreement is an "independent agreement". Thus, a contract found or tagged to be illegal does not make the arbitration clause in such contract void. See ***Section 12(2) ACA***. An arbitration clause in an agreement is an independent contract which does not derive its life, validity and existence from the agreement. Where, therefore, the agreement containing the arbitration clause is declared a nullity, the

arbitration clause is not affected by such a decision and remains valid. See ***Section 12(2) ACA*** and ***Section 19(2) LSAL 2009***.

By ***Section 6(1) LSAL 2009***, the application by the defendant to resort to arbitration must be made to the court before he takes any step in the proceedings and he must also be ready and willing to conduct the arbitration. See also ***Carlen Nig Ltd v Unijos***. Where he takes any step in the proceeding such as filing his statement of defence, before applying to resort to arbitration, he would be deemed to have waived his right to arbitration. See also ***Section 5(1) ACA***.

All agreements to resort to arbitration must be in writing. See ***Section 3(3) LSAL***. An arbitration clause or agreement cannot be revoked except by express or written agreement of the parties. See ***Section 4 and 5 LSAL***. Thus, even the death of either of the parties will not nullify the arbitration clause or agreement.

There are different types of arbitration clause. They are:

1. **Scott v Avery Clause (The Mandatory Clause):** Where there is a mandatory clause and a party proceeds to court, the other can apply for stay of proceedings and an order of stay of proceedings shall be granted and refer parties to arbitration. See ***Section 4(1) ACA***. In this regard, the case of Scott v. Avery is to the effect that parties to an arbitration proceeding cannot litigate any issue in their dispute until an award is made. The problem that can arise from the above decision is that a party who is not interested in the arbitration proceeding would do everything possible to frustrate the proceeding. The case of ***Atlantic Shipping Club*** ameliorates the problem in Scott v Avery. It provides for a time limit for which an arbitration proceeding will take.
2. **Discretional Clause:** This is an optional arbitration clause. The discretionary clause is subject to the further consent of both parties.
3. **Atlantic Shipping Clause:** it is a hybrid of the above two clauses, that is, mandatory and discretional clauses. It originated from the case of ***Atlantic Shipping Club*** which ameliorated the problem in ***Scott v Avery***. It provides for a time limit within which an arbitration proceeding will take. Thereafter parties can resort to litigation.

Once an arbitration agreement has been entered into by parties, it can only come to an end either by the parties by consensual agreement to terminate or by an order of the court. The functions of an arbitration agreement are:

1. It evidences the agreement of the parties to submit their disputes to arbitration.
2. It establishes the jurisdiction and authority of the arbitral panel over that of the court (***Section 34 ACA*** doesn't oust the jurisdiction of the court).
3. It is the basic source of the power/authority of the arbitral panel.
4. Container agreement and submission agreement.

The content of an arbitration agreement is as follows:

1. It must define the kind of dispute envisaged or to be referred.
2. It must state the number of arbitrators and mode of appointment of such arbitrators.
3. It must state the applicable rules and procedures to be followed in the arbitration.
4. It must state the law applicable in the arbitration.
5. It must state the language to be used in the arbitration and the place of arbitration.

B. Statutory Arbitration Clause

Statutes establishing some bodies stipulate that disputes between the body and another party shall first be referred to arbitration. Such provision serves as a bar on the right of any of the parties to institute any action in court until the arbitration has been taken and concluded

C. Post Dispute Agreement to Refer to Arbitration

Where the parties to the arbitration did not insert an arbitration clause in their original agreement, they may subsequently agree in writing to refer the matter to arbitration after the dispute arose. Where the parties do this and refer their dispute to arbitration, they cannot resort

to court until the arbitration is concluded.

D. Reference by the Court

The court can do this *suo motu* or upon application of a party. Instances where a court would refer parties to arbitration include where a party goes directly to court in breach of the arbitration agreement, or where one of the parties is refusing to enter into arbitration despite the arbitration agreement. See ***Section 7 ACA*** (use statute and put details of court compelling a party to go into arbitration).

III. Types of Arbitration

1. **International Arbitration:** this is where the parties to the arbitration are from different countries or where the dispute arose out of business carried on in different countries by the parties. Such arbitration is usually governed by International conventions and treaties.
2. **Domestic Arbitration:** this type of arbitration is conducted between parties in the same country and in respect of disputes arising within that country. The transaction giving rise to that dispute and the obligations of the parties are all within that country.
3. **Ad Hoc Arbitration:** Where there is dispute parties go to arbitration. The parties are in control. ***Section 63(1) Lagos State Arbitration Law 2009*** defines it as an arbitral proceeding that is not administered by an institution or other body and which requires the parties themselves to make their own arrangements for selection of arbitrators and for designation of rules, applicable law, procedures and administrative support.
4. **Institutional Arbitration:** this refers to arbitrations conducted by arbitral institutions such as the London Court of International Arbitration, Chartered Institute of Arbitrators, American Arbitration Association, Lagos Multi-Door Courthouse, and the Abuja Multi-Door Courthouse. Each of these arbitral institutions has its own regulations which govern any arbitration conducted by the body. These regulations are procedural and are binding on the parties to the arbitration. Once the parties choose to have their arbitration conducted by any of these arbitral bodies, the arbitral regulations and procedures of such institution are deemed to have become part of the agreement of the parties. The arbitral institutions are in control of the arbitration proceedings or Chartered Institute of Arbitrators etc.
5. **Customary Arbitration**: this is not covered by ACA and customary arbitral awards are not enforceable in the same manner as ordinary arbitral awards. Customary arbitration is usually conducted in accordance with the customs, usages, and trade practices of a particular community or group of people. Customary arbitral awards are not readily enforceable because the arbitrators in such cases usually have prior knowledge of the facts and prejudge the issues; and the courts are always wary to hold that a particular customary arbitration has extinguished the rights of the disputing parties to resort to litigation. See ***Ohiaeri v Akabueze***. In ***Agu v Ikewibe***, it was held that for a customary arbitration to be valid and enforceable, the following conjunctive/cumulative conditions must be satisfied:
   (a) That the disputing parties voluntarily submitted the dispute to an arbitrator(s);
   (b) That there was an agreement by the disputing parties, either expressly or by necessary implication, that the customary arbitral award would be accepted as final and binding;
   (c) That the arbitration was conducted in accordance with the custom, usages, or trade practices of the parties or their trade or business;
   (d) That the arbitrator(s) reached a decision and published an award;
   (e) That the decision or award was accepted by the partied at the time it was made.

   See also ***Ohiaeri v Akabueze*** and ***Okereke v Nwankwo***.
6. **Others:**
   (a) Commercial arbitration
   (b) Maritime arbitration
   (c) Trade dispute arbitration

IV. Nature of Arbitration

Arbitration is voluntary, however in Lagos state under the ***Lagos State High Court (Civil Procedure) Rules 2012***, it is compulsory. Notwithstanding, it is still voluntary in that element of voluntariness would play out. For instance, a party who is not interested in ADR (arbitration) will not comply with the proceeding and would do everything to frustrate the arbitration proceedings. Thus, element of force in ADR does not help as the outcome would be ineffective. A subtle approach would serve a better purpose.

Arbitration is binding in that the agreement to arbitrate itself becomes an agreement. For instance, there is agreement between A and B for supply of 10 bags of rice and in that agreement there is arbitration clause. The arbitration clause is an independent agreement independent of the entire agreement. Thus, it is severable or autonomous of the main agreement and in writing. Note that the arbitration agreement can be in an independent document or a clause in the main agreement. The latter is the usual and better practice.

V. Arbitral Matters and Non-Arbitral Matters

A. Arbitral Matters

The following are arbitral matters:

1. Breach of contract.
2. Some aspect of matrimonial causes.
3. Tortuous claim.
4. Compensation for acquisition of land (dispute as to land matters).

B. Non-Arbitral Matters

1. Interpretation of the Constitution and other statutes.
2. Criminal Matters.

VI. Commencement of Arbitral Proceedings

Arbitral proceeding must be initiated. Once dispute arises, the party seeking arbitration proceeding has the duty to set it on motion by "Notice of Arbitration" - known as Declaration of a Dispute. Even when an action has been commenced in court, the party interested in arbitral proceeding is to apply for stay of proceeding and issue Notice of Arbitration.

VII. Arbitrators

A. Number and Composition Arbitral Tribunal

The parties to the arbitration proceeding may determine the number of arbitrators and in the absence of agreement, the arbitrators are to be three under ***Section 6 ACA*** and one under ***Section 7(3) LSAL***. The number of arbitrators is to be odd numbers and three is the ideal number.

B. Modes of Appointment of Arbitrators

There are four (4) major ways through which arbitrators can be appointed viz:

1. **Appointment by the Parties**: the arbitration clause may provide the number of arbitrators to be appointed and such number should always be an odd number. Where the parties choose to appoint one or three arbitrators, then in the absence of agreement on a specific procedure by which they would be appointed: in the case of one arbitrator, both parties will jointly appoint him; while in the case of three arbitrators, both parties shall each appoint one then the two arbitrators so appointed will jointly appoint the third arbitrator. See ***Section 7(2) ACA***.
2. **Appointment by the Arbitrators:** this usually occurs where the arbitrators already appointed have to appoint a third arbitrator, known as an umpire. Where the arbitrator are to be two or three, then both parties appoints one each, while the two so appointed will jointly appoint the third arbitrator so as to make the number of arbitrators to be an odd number. It must be noted that the arbitrators may be more than three, but in all cases, they should be in odd numbers so that ties in voting can be broken.

3. **Appointment by an Institution:** the arbitration clause in an agreement may name a third party or an institution as the appointing authority. Such institution would be responsible for appointment of the arbitrator.
4. **Appointment by the Court:** this occurs where a dispute has arisen between the parties and one of the parties refuses to enter into arbitration or neglects to appoint an arbitrator. Upon application by any of the parties to court, they court will appoint an arbitrator and compel the parties to go into arbitration. See ***Section 7(2) ACA*** and ***Section 8(4) LSAL***. In making the appointment, the court should take into consideration the provisions of the arbitration clause on the number and qualifications of prospective arbitrators.

C. Procedure for Appointment of Arbitrators

The parties have the right to stipulate the procedure for the appointment of their arbitrator(s). However, in the absence of express agreement stipulating the procedure for the appointment of arbitrators, the procedure specified in the ACA or LSAL, as the case may be shall be applied. Below are the procedures for appointing one and three arbitrators respectively:

1. **One Arbitrator:** where the parties provide for the appointment of one arbitrator but fail to provide the procedure for appointing such arbitrator, then the parties shall jointly appoint the arbitrator. By ***Section 7(2) (b) ACA*** where the parties fail to agree on one arbitrator, the appointment shall be made by the court on the application of any of the parties and the application must be made within thirty (30) days of the disagreement or dispute. See ***Section 7(2) (b) ACA***.

   In Lagos, under the LSAL, the procedure is different. Where the parties fail to appoint the one arbitrator and where no appointing authority is designated by the parties, then, upon application, the appointment of the arbitrator is to be made by the Lagos Court of Arbitration. See ***Section 8(4) (b) LSAL***.

   However, where an appointing authority is designated by the parties, but no procedure for the appointment is specified, the sole arbitrator may be appointed in the following manner:
   (a) The parties may propose one or more arbitrators to the appointing authority.
   (b) If within thirty (30) days after the first proposal for appointment was delivered by a party, the parties fail to reach an agreement on the arbitrator to be appointed, the appointing authority shall make the appointment. See ***Section 7(3) (a) & (b) LSAL***.
2. **Three Arbitrators:** where the parties provide for the appointment of three arbitrators, but fail to provide the procedure for the appointment of such arbitrators, then each party shall appoint one arbitrator each and the two arbitrators thus appointed shall jointly appoint the third arbitrator. See ***Section 7(2) (a) ACA***. This procedure applies where the number of arbitrators are more than three in number. It must be noted that by ***Section 7(2) (a) (i) & (ii) ACA***, if either of the parties fails to appoint the arbitrator within thirty (30) days of the receipt of request to do so by the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty (30) days, the appointment shall be made by the court on the application of any of the parties to the arbitration agreement. However, by ***Section 7(3) ACA***, the court may not have the power to make such appointment where the parties stipulated other procedures to be followed where there is failure by any of the parties or arbitrators to appoint.

   By ***Section 7(4) ACA***, there is absolutely no right of appeal against a decision of a court appointing an arbitrator for the parties. Finally, by ***Section 7(5) ACA***, in appointing arbitrators for the parties, the court shall have due regards to the qualifications required of an arbitrator by the arbitration agreement and such other factors as are likely to secure the appointment of an impartial and independent arbitrator.

D. Guiding Rules for Accepting Arbitrators

1. **Impartiality and Independence of the Arbitral Tribunal**: An arbitrator is not expected to be related to the parties, however where such relationship exist and it is disclosed and

the parties agreed, then there is no problem.

2. **Qualification**: The law does not provide for qualification of an arbitrator, but if the agreement of the parties provides for qualification, that would be the position. (An experienced arbitrator would be a proper qualification).
3. **Confidentiality**: All ADR are based on confidentiality. An arbitrator is expected to keep quiet about arbitral proceeding.
4. **Competence**: The rule is that the arbitration tribunal is the one that determines its jurisdiction. An exception is that it is not every panel that will enjoy this rule. (The competence rule). See ***Section 12 ACA***.

E. Challenge of Arbitrators

After the appointment of arbitrators, any party can challenge the arbitrator. The grounds for challenging arbitrators are provided for under ***Section 8(3) ACA*** and ***Section 10(3) LSAL*** as follows:

1. If circumstance exist that give rise to justifiable doubts as to his impartiality or independence.
2. If he does not possess the qualifications agreed upon by the parties.
3. If the arbitrator is physically or mentally incapable of conducting the proceedings or there are justifiable doubts as to his capacity to do so.
4. If the arbitrator has refused to use all reasonable dispatch in conducting the proceedings or making an award, and substantial injustice has been or will be caused to the applicant by such conduct of the arbitrator.

By ***Section 9(1) ACA*** and ***Section 11(2) LSAL***, the parties may determine the procedure for challenging arbitrators. However, in the absence of express provision of such procedure, then by ***Section 9(2) ACA***, the party who intends to challenge an arbitrator shall send a written statement of the reasons for the challenge to the arbitral tribunal and this must be done within fifteen (15) days of that party becoming aware of the constitution of the arbitral tribunal or becoming aware of any circumstances mentioned above.

The arbitral tribunal has the power to determine issues of competence of a member or its jurisdiction. Therefore, by ***Section 9(3) ACA***, unless the arbitrator who has been challenged withdraws from office of the other party agrees to the challenge, the arbitral tribunal shall decide on the merit or otherwise of the challenge of the arbitrator by the party. By ***Section 11(4) LSAL***, in Lagos, where an arbitral institution is the appointing authority designated by the parties, the challenge of an arbitrator may be decided by the arbitral tribunal or the arbitral institution as the case may be.

F. Termination/Removal of Arbitrators

The mandate of an arbitrator can be terminated on any of the following grounds:

1. Where he voluntarily withdraws from office. This is may be due to the fact that he has been challenged.
2. Where the parties agree/consent to terminate his appointment by reasons of his inability to perform his functions.
3. Where for any reason, he fails to act without undue delay. That is, he delays unduly in discharging the functions of his office and the applicant suffers or is likely to suffer as a result of the delay.

The foregoing are provided by *Section 10(1) **ACA***:

4. Where circumstances exist showing justifiable grounds as to the arbitrator's impartiality and independence
5. Where the arbitrator does not possess the required qualifications as agreed by the parties before his appointment.
6. Where the arbitrator is considered to be physically or mentally incapable of handling the arbitral proceedings or that there are justifiable doubts as to his capacity to handle such

proceedings.

These last three are not in ACA, but are provided by ***Section 12(1) LSAL***.

An application for the removal of an arbitrator shall be made to court by any of the parties. By ***Section 11 ACA***, upon the termination/removal of an arbitrator, a substitute arbitrator shall be appointed in his place in accordance with the same rules and procedure that applied to the appointment of the arbitrator who is being replaced. See ***Section 11 ACA***.

By ***Section 12(2) LSAL***, where an arbitral tribunal or other institution is empowered by the parties to remove an arbitrator, the court shall not entertain the application for removal of the arbitrator unless it is satisfied that the applicant has exhausted the chances of applying to such institution or tribunal. See ***Section 12(2) LSAL***.

VIII. Persons Allowed in Arbitral Proceedings

The following are the persons allowed in the arbitration proceeding:

1. Parties interested or their representatives/legal practitioner and witnesses.
2. Registrar/administrative secretary.
3. Expert to the tribunal.
4. Pupil/trainee arbitrators and other accredited persons.

IX. Jurisdiction and Powers of Arbitral Tribunal

The source of power of the arbitration is the agreement of the parties. The arbitrators can be given wide or limited powers. The arbitrators can also decide how and where arbitration will take place. See ***Sections 7, 8 and 9 ACA***. First of all, it must be noted that by ***Section 12(1) ACA***, an arbitral tribunal shall be competent to rule on questions pertaining to its own jurisdiction and on any objections with respect to the existence or validity of an arbitration agreement.

The jurisdiction of an arbitral tribunal may be challenged on the following grounds:

1. When the arbitrators exceed their scope of authority: this occurs where the subject matter is generally within the jurisdiction of the arbitral tribunal, but some aspects of the subject matter is not within the scope of the arbitral tribunal to decide.
2. Total lack of jurisdiction.

Where a party challenges the jurisdiction of an arbitral tribunal on the ground that it exceeded its scope of authority, such objection should be raised as soon as the matter alleged to be beyond its scope of authority is raised at the arbitral tribunal. See ***Section 12(3) (b) ACA*** **and** ***Section 19(3) (b) LSAL***. A party challenging the jurisdiction of an arbitral tribunal on the grounds of total lack of jurisdiction should raise such objection not later than the time of the submission of his points/statement of defence or reply/defence to counterclaim; and such party shall not be estopped or precluded from raising such objection on the grounds that he actively participated in appointing any of the arbitrators or that he appointed one himself. See ***Section 12(3) (a) ACA*** and ***Article 21(3) of Arbitration Rules***, made pursuant to ACA.

It must be noted that by ***Section 12(1) ACA***, an arbitral tribunal shall be competent to rule on questions pertaining to its own jurisdiction and on any objections with respect to the existence or validity of an arbitration agreement. The decision of the arbitral tribunal on the issue of jurisdiction is final and binding on the parties. See ***Section 12(4) ACA***. However, where an award is made, a party may challenge the award on the ground that the tribunal exceeded its scope of authority or lacked jurisdiction.

X. Stages of Proceedings

A. Initiating/Commencing the Arbitral Proceedings

For there to be arbitration, there must be a dispute. When a dispute arises in relation to a particular transaction, which the subject of an arbitration agreement, one of the parties has to notify the other in writing. This Notice in Writing is known as the Declaration of Dispute. It serves as a notification of the dispute to the other party as well as a request for the parties to go into arbitration. It must be noted that by ***Section 17 ACA*** and ***Article 3(1) & (2) Arbitration***

Rules, the arbitral proceedings is deemed to commence on the day the notice is received by the other party. See ***Section 17 ACA*** and ***Article 3(1) & (2) Arbitration Rules***.
The Notice of arbitration/declaration of dispute shall contain the following:

1. The fact of the dispute.
2. A demand that the dispute be referred to arbitration.
3. The names and addresses of the parties.
4. A reference to the arbitration clause in the agreement or the independent arbitration agreement.
5. A reference to the contract out of or in relation to which the dispute arose.
6. The general nature of the claim and an indication of the amount involved, if any
7. The relief or remedy sought
8. A proposal as to the number of arbitrators to be appointed, if the parties had not previously agreed on it.

See ***Article 3(3) of the Arbitration Rules***. The foregoing provisions are mandatory and must be contained in the notice.

B. Appointment of Arbitrators

At this stage, the parties appoint the arbitrator(s) in accordance with the procedure they agreed on. Where no procedure was agreed on, then in accordance with the procedure provided by the relevant statute. Where the parties fail to appoint within the specified time, the court shall make the appointment upon application by any of the parties. It must be noted that by ***Section 5(1) LSAL***, the death of a party shall not revoke an arbitration agreement and by ***Section 5(2) LSAL***, the authority of an arbitrator who is already appointed shall not be revoked by the death of the party that appointed him.

C. Preliminary Meeting Stage

In this stage, the following occurs:

1. The parties are invited to a preliminary meeting usually hosted by arbitrator(s).
2. The agenda for the preliminary meeting is provided.
3. Number of witnesses and mode of presenting them.
4. The manner of in which processes would be presented; whether traditional pleading or statement of case. Mode of presentation is determined – whether statements of case of pleadings will be used or only documents. Statement of case is more detailed as it include bundle of document (documents agreed in by the parties and merged as single documents).
5. Fees and deposit of costs; Fees are paid jointly by both parties and claim of the parties determines the fees to be paid. Ordinarily on the short run, arbitration is more expensive, but on the long run, arbitration is cheaper because cost analysis is not about physical money alone. In litigation, cost other than money is involved. These are labour and time – thus, while litigation is long, arbitration is shorter. This is coupled with the fact that in litigation, lawyers own their ultimate duty to the court. Arbitration proceeding does almost everything done in civil litigation that is, interlocutory issues, interim measures of protection, security for costs etc.
6. Applicable rules.
7. Directional orders: This is the order given after the meeting on what has been agreed on.
8. Adjournment.

D. Pre-Hearing Review

Arbitral proceeding will not start until it is determined that it is ripe or due for hearing. The test is as follows:

1. Payment of fees, filing and exchange of statement of case/submission of points (statement of claim and defence), fixing the venue and payment of deposit. The points/statement of claim is submitted by the party that initiated the arbitration and is called the claimant. The points/statement of claim contains a summary of his case and the remedies sought.

Therefore, the points/statement of claim contains:

(a) The facts supporting the claim;
(b) The points at issue;
(c) The reliefs or remedies sought; and
(d) The names and addresses of the parties.

It is to be accompanied by a copy of the contract and the arbitration agreement, if it is not contained in the contract. Also, all documents considered by the claimant to be relevant to establishing his claim and the written statements of the evidence of witnesses should also accompany the points/statement of claim.

The points/statement of defence is submitted by the other party and may contain a counter claim, if necessary. It shall contain the same particulars as the points/statement of claim. Also, all the documents that the other party is seeking to rely should accompany the points/statement of defence.

2. Narrowing and joining issues in dispute.
3. Confirming date, venue, and mode of hearing. If the foregoing has been done then the matter will be said to be ripe for hearing.

E. Hearing

The following procedures are applicable at the hearing stage:

1. The hearing starts based on the mode adopted. It could be documents only or with witness and documents. Note that everything in trial applies only that arbitration proceeding is a private court. Evidence Act does not apply but the rules of evidence applies. No section is mentioned but the fact that an original document is not produced can be objected to.
2. Examination of witnesses – statement of witnesses on oath. Cross examination is allowed but only for 20 or 30 minutes. Re-examination if relevant.
3. Final address by the parties.
4. Adjournment for an award.

Note that there can be proceedings ex-parte. This arises where respondent fails to attend proceedings; or where party withdraws mid-stream. The first could be due to objection on the arbitration panel and the other could be due to the proceeding not going according to expectation of the party. In this like, a pre-emptory notice is sent to the party for the date of hearing. If he does not come, the arbitral tribunal will continue with the proceeding.

F. Award of Arbitral Tribunal

This is the ruling of the arbitral tribunal. It determines the rights of the parties with finality. The award can be:

1. **Interim Award:** This is an award for a short purpose.
2. **Partial Award:** This operates as a final award in different segments of the proceedings. This award has been contested.
3. **Interlocutory Award:** This award on procedural matters. For instance may be a party does not want to use a bundle of document and the arbitral tribunal rules that bundle of document will be used as the documents are not disputed.
4. **Final Award:** This award captures all the issues brought to the panel – arbitral proceedings.
5. **Additional Award:** This is an award that was omitted thus an extra award.

In drafting the content of an award, it must be reasoned and must evaluate proceedings totally which is logically driven. The award shall be in writing and should contain the following:

1. The names of the parties;
2. The reasons for the award, unless the parties earlier agreed that no reason should be given by the arbitrator;
3. The date the award was made;
4. The place where it was made; and

5. The signature of the arbitrator(s) or majority of them.

The award may be delivered in pubic if the parties so agree. After the service of the award on the parties, the arbitral proceedings is deemed to be terminated. See ***Section 27(1) ACA***. It must be noted that where the parties settle some of the issues in the course of the proceedings, the terms of settlement is adopted by the arbitral tribunal as their award. Such award has the same status and effect as any other award made on the merits of the case. See ***Article 25(2) (b) Arbitration Rules***.

G. Recognition and Enforcement of Award

1. Concept

The State and Federal High Court have jurisdiction but it is prudent to go to the court that have jurisdiction over the subject matter. Enforcement is by:

(a) Motion on Notice;
(b) Supported by affidavit;
(c) Written address;
(d) Accompanied by duly authenticated original award or CTC of it; and
(e) The original arbitration agreement or CTC of it.

2. Recognition and Enforcement of Arbitral Awards in Nigeria

By ***Section 31(1) ACA***, an arbitral award is recognised as legally binding on the parties and is enforceable by the court on application. The application is by way of a motion on notice supported by affidavit. By ***Section 31(2) ACA***, the application shall be accompanied by:

(a) The duly authenticated original award or a duly certified copy of it; and
(b) The original arbitration agreement or a duly certified copy of it.

Where these conditions are satisfied, then by leave of court, the award shall be enforceable as a judgment of the court and with same effects. See ***Section 31(3) ACA***.

3. Refusal to Enforce Arbitral Awards Gotten in Nigeria

The court may refuse to enforce an award on any of the following grounds:

(a) Incapacity of any of the parties to the arbitration agreement;
(b) On grounds of public policy;
(c) Where the applicant was not given proper notice of the appointment of an arbitrator, the arbitral proceedings or to present his case before the arbitral tribunal;
(d) The award exceeded the scope of the submission to arbitration;
(e) The composition of the tribunal or its procedure is contrary to the agreement of the parties;
(f) The parties did not observe the provisions of the law in the appointment of the arbitrators where they did not stipulate the procedure for appointment;
(g) The award has not yet become binding on the parties or has been set aside in the jurisdiction where it was obtained;
(h) Where the award is not in writing, or is not signed or dated, or does not contain the reasons for the award; or
(i) Where the subject matter of the arbitral proceedings had become statute-barred before the arbitration.

4. Recognition/Enforcement of International Arbitral Awards

By ***Section 51(1) ACA***, an arbitral award, irrespective of the country in which it was made, be recognised as binding and may be enforced by a court in Nigeria upon application. The application is by way of a motion on notice supported by affidavit. By ***Section 51(2) ACA***, the application shall be accompanied by:

(a) The duly authenticated original award or a duly certified copy of it;
(b) The original arbitration agreement or a duly certified copy of it; and
(c) Where the award or arbitration agreement was not made in English, then a certified translation of it into English Language.

5. Refusal to Enforce International Arbitral Awards

By ***Section 52(2) (a) ACA***, the courts may refuse to enforce an international arbitral award on the following grounds:

(a) That a party to the arbitration agreement was under some legal incapacity;
(b) That the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made;
(c) That he was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise not given enough opportunity to present his case;
(d) That the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration. That is, that the subject matter of the award was not within the terms of submission to arbitration;
(e) That the award contains decisions on matters which are beyond the scope of submission to arbitration, so however that if the decision on matters submitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
(f) That the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties;
(g) Where there is no agreement btw the parties as to the arbitral procedure, that the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place;
(h) That the award has not yet become binding on the parties or has been set aside or suspended by a court in which, or under the law of which, the award was made;
(i) That the award is against the public policy of Nigeria; or
(j) That the dispute was not legally capable of being settled by arbitration under Nigerian Law.

H. Challenge/Impeachment of an Award

An award can be impeached on setting aside or non-recognition of the award. Setting aside involves removing certain items from the award. See ***Mutual Life & General Insurance Ltd v Iheme***.[95] The grounds for setting aside an award outlined under ***Sections 29(2) & 30 ACA*** and ***Baker Marine (Nig) Ltd v Chevron (Nig) Ltd*** are:[96]

1. Decision on matters which are beyond the scope of submission to arbitration.
2. Where an arbitrator has misconducted himself or where the arbitral proceedings or award has been improperly procured.
3. That the arbitral award exceeds the scope of submission to arbitration.
4. Where the arbitral proceeding or award was improperly procured by any of the parties.
5. Where a party to the arbitration agreement is under some incapacity (arbitration is by agreement).
6. The arbitration agreement is not valid under the laws of Nigeria or the law the party chose to govern the proceeding.
7. The composition of the tribunal or the procedure adopted by the tribunal is contrary to the agreement of the parties except where such agreement offends the mandatory provisions of a statute.
8. Where there is no agreement by the parties on the composition of the tribunal and the composition is not in accordance with the relevant statute.
9. The arbitration agreement is invalid, non-existent and ineffective.
10. The subject matter of the arbitration is incapable of being settled by arbitration in Nigeria

[95] (2014) 1 NWLR PT 1389 670
[96] (2000) 12 NWLR (PT 681) CA 393

(Criminal cases or interpretation of statute).

11. The arbitrators or any of them received some improper payment or benefit.
12. Lack of qualification on the part of the arbitrators, where qualification is specified.
13. The award is contrary to public policy.

Where any of the foregoing grounds is established, the court may set aside the award either wholly or in part or remit the award either wholly or in part back to the arbitral tribunal for reconsideration. A court should not completely set aside an award unless it is satisfied that it would be inappropriate to send it back to the arbitrators.

Note: In practice, where an application is made to enforce an award, and another application is made to set aside the award, it is the application to set aside that has priority while that to enforce is stayed.

The application challenging an award should be brought before the High Court:

1. Within three (3) months from the date of making the award. See ***Section 29(1) (a) ACA***.
2. If any of the parties requested for an additional award, then within thirty (30) days from the date the additional award is disposed of by the arbitral tribunal. See ***Section 29(2) (b) ACA*** and ***Section 29(1) ACA***.
3. Where the request was not for an additional award, but for corrections in the original award made, then the time within which to challenge the award is three (3) months from the date of the original award. See ***Vitamalt PLC v Ibrahim Abdullahi***.

The award should be challenged by a motion on notice supported by affidavit stating the grounds for the challenge and a written address. The application be accompanied by the following:

1. A CTC of the award;
2. A copy of the arbitration agreement; and
3. A copy of the contract in respect of which the arbitration was conducted.

Where an award is successfully challenged, the court can make any of the following orders:

1. Where the ground for challenging the award is that it contains matters which are outside the scope of authority of the arbitral tribunal, the court may set side such offending matters and uphold the rest of the award where it is practicable to do so. See ***Section 29(2) ACA***.
2. Where the whole award is challenged on other grounds, the court may set aside the whole award.
3. In Lagos, where necessary, the court may remit the award back to the arbitral tribunal for reconsideration. See ***Section 55(4) LSAL***.

I. Corrections and Interpretation of Awards

After the receipt of the award, a party may request the tribunal to correct any clerical, typographical errors or errors in calculation or to interpret any part of the award. Such application must be made within thirty (30) days after the receipt of the award. The other party should also be notified of the application and such corrections, when made, shall form part of the original award. ***Section 28 ACA***.

XI. Termination of Arbitral Proceedings by the Arbitral Tribunal

The arbitral tribunal may terminate the proceedings before the time of an award in any of the following circumstances:

1. Where the parties consent to terminate the arbitration;
2. Where the claimant withdraws the submission of the dispute; or
3. Where the tribunal discovers that it is unnecessary or impossible to continue with the proceedings.

Where any of these foregoing instances arise, the arbitral tribunal shall issue an order terminating the proceedings. See ***Section 27(1) ACA***. It must be noted that by ***Section 27(3) ACA***, once the arbitral proceeding is terminated either by the arbitrators or upon the announcement of an award, the mandate of the arbitrators comes to an end.

XII. Advantages of Arbitration against Mediation and Negotiation

1. An arbitral award is final and binding on the parties and is not appealable. Negotiation and mediation only produce agreements which the parties can resile from.
2. An arbitral award is enforceable as the judgment of a court, but this is not so with agreements reached in negotiation and mediation.
3. Arbitrators have powers to summon witnesses through the court. Mediators and negotiators cannot do that.
4. Parties in an arbitral proceedings can reach a settlement and it will operate as an award of the arbitral tribunal. While settlements reached in negotiation or mediation remains an ordinary agreement which can only be used as evidence in court.
5. Arbitration is statutorily regulated by the ACA or LSAL, while negotiation and mediation are not.

XIII. Disadvantages of Arbitration over Other ADR Processes

1. Arbitration is too rigid and almost passes as litigation.
2. It is expensive as the arbitrator(s) are paid huge fees. The lawyers representing the parties are also paid as well.
3. In arbitration, parties lose their right of appeal on the merits of the case as they can only challenge the procedure or jurisdiction of the tribunal.
4. Arbitral processes leads to a win-lose result which may not preserve the pre-dispute relationship of the parties.

XIV. Advantages of Arbitration over Litigation

1. Cheaper.
2. Free to choose who will preside over case.
3. Ensures privacy.
4. Less rigid.
5. More flexible.
6. Faster.
7. Parties can choose venue.

XV. Disadvantage of Arbitration over Litigation

1. Not widely recognised.
2. Difficulty in choosing arbitrators.
3. Less lucrative for lawyers.
4. Not private or confidential.
5. Lack of precedent.
6. Not binding.

XVI. Sample Draft

A. Arbitration Clause (Exams)

Nature of business between the parties is the supply of audio-visual aids (DVDs, CDs and other recording and electronic mass storing devices). The parties are ABC Ltd of No 2 Owerri Road, Aba, Abia State and DVD Ventures of Shops 5-10 Wuse ultramodern market, Abuja. Arbitrators from the Abuja Market Guild Society, Abuja. The law is Arbitration and Conciliation Act A18 LFN 2004. Language is English. Draft an arbitration clause.

In the event of any dispute between ABC Limited of No 2 Owerri Road, Aba, Abia State and DVD Ventures of Shop 5-10 Wuse Ultramodern Market, Abuja under the supply agreement for audio-visual aids, the parties shall first submit to arbitration. The arbitration shall be governed by the Arbitration and Conciliation Act A18 LFN 2004, the language of the arbitration proceedings shall be English language and two arbitrators will be appointed by both parties from the Abuja Market Guild Society, Abuja.

B. Submission Clause

A dispute has arisen between ABC Limited and DVD Ventures as to the quality of audio visual aids produced by DVD Ventures and supplied to ABC Ltd which has resulted in refusal by ABC Limited to pay up its outstanding with DVD Ventures and they have agreed to arbitrate. Draft the submission clause.

THIS Submission agreement made this 24th day of July, 2015
BETWEEN
ABC Limited, a duly registered private limited company under the Companies and Allied Matters Act (the purchaser) of No 2 Owerri Road, Aba, Abia State of the first part.
AND
DVD Ventures (the seller) of Shop 5-10 Wuse Ultramodern Market, Abuja of the second part.
WHEREAS a dispute has arisen between the parties under the contract for the supply of audio-visual aids, DVDs, CDs and other record mass storage devices on 20th day of June 2015. And the parties have agreed to submit any dispute to arbitration
NOW IT IS AGREED BY PARTIES AS FOLLOWS:
The arbitration shall be conducted by the two (2) parties appointed by the parties from the Abuja Market Guild Society.
The arbitrators shall determine the following issues:
1. The quality of the items supplied.
2. The arbitration shall take place in Abuja and shall be conducted in English language.
3. The rules of Arbitration and Conciliation Act CAP A18 LFN 2004 shall apply.
4. The award shall be awarded within 6 months of the appointment of arbitrators unless the parties otherwise extend the time.
IN WITNESS OF WHICH the parties have executed this agreement in the manner below the day and year first above written.

The common seal of ABC Ltd is duly affixed in the presence of:

…….. ……..
Director *Secretary*

Signed, sealed and delivered by:
……..
Joel Adamu (in the name and style of DVD Ventures)
In the presence of:
Signature:
Name:
Address:
Occupation:

(Week 16)

LAW OFFICE MANAGEMENT; IT IN LAW OFFICE MANAGEMENT

INTRODUCTION

I. Concept of Law Office Management

Law office management is the study of the organisation 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 and other resources in a law office. The study of law office management is important because the success of a legal practitioner to a large extent depends on his ability to successfully manage his law office rather than on his academic achievements or advocacy or drafting skills.

Usually, the word chambers and law firm are used interchangeably to describe the office of a legal practitioner. However, the word, law firm is a better description because chambers have different connotations. It could mean the office of a judge. As a matter of fact, chambers refer to the office of a judge. Not every person is entitled to open a law firm. Only legal practitioners are entitled to open and operate a law firm. ***Section 24 LPA*** defined a legal practitioner to mean a person entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor generally or for the purpose of any particular office or proceedings.

II. Reasons for Establishing a Law Firm

The following are the reasons for the establishment of law firms:

1. **Statutory Requirement:** Establishment of law firm in accordance with or to fulfil the provisions of ***Rule 22 RPC*** which provide that instructions from client must not be taken at client's house or place of business except in exceptional circumstances. Thus, it must be in a law office.
2. **Necessity:** Out of necessity on account of lack of paid employment.
3. **Self Esteem:** Establishment of law firms because doing so is a realisation of an ambition. When it is said that lawyers are proud even though it could be a cliché, in reality, it is not far from the truth. Some would establish law firm because of self-esteem.
4. **Independence:** Some establish law firm because of the desire to be independent and be their own boss.
5. **Profit Making:** Also, it could be because of opportunity of earning higher professional fees that is, profitability of the profession.

PERSONAL QUALITIES OF A SUCCESSFUL LEGAL PRACTITIONER

If any legal practitioner who intends to establish law office and also want to be successful, the following qualities is sine qua non:

1. **Honesty and Integrity:** This quality cannot be over emphasized. The legal profession is central in the administration of justice and the society look up to the court and lawyers, thus legal practitioner should be honest and have integrity. See ***Adewunmi v Plastex (Nig) Ltd***. These qualities are adequately enshrined in the Rules of Professional Conduct. The honesty and integrity of a lawyer will bring more clients to him and keep him in business. ***Rule 15 RPC*** enjoins the legal practitioner to perform his duty within the law and to obey his conscience and not that of his client. ***Rule 54 RPC***: A lawyer shall not accept 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 23(2) RPC*****:** Where a lawyer collects money for his client, or is in a

position to deliver property on behalf of his client, he shall promptly report, and account for it, and shall not mix such money or property with, or use it as, his own.
See ***Sagoe v R***[97] and ***Onagoruwa v State***.[98]

2. **Hard Work and Organisation:** a legal practitioner must be hardworking and organised.
3. **Determination and Commitment**: a legal practitioner must be determined in achieving great in the profession and must equally be committed to his work.

In addition to the above are the following success recipes:

4. **Knowledge:** A legal practitioner must have knowledge of the law both substantive and procedural aspect of the law.
5. **Skill:** It is not enough to have knowledge of the law, application of the law to factual situation which is skill is important. Thus, knowledge of the law and application goes hand in hand. A combination of the two will be required to render good legal services otherwise a practitioner may be liable for damages. See ***Bello Raji v X. A Legal Practitioner.***
6. **Experience:** The best way to acquire experience is by working for an experienced person for some time that is, working in another well-established law firm or in the Ministry of Justice.

REQUIREMENTS FOR ESTABLISHING A LAW FIRM

I. Qualification and Pupillage

Only legal practitioners are qualified to open a law firm. Under the old position, a legal practitioner must undergo pupillage before they can open a law office. Thus, a lawyer of less than 5 years post call was prohibited from engaging in private practice on his own. However, ***Section 6(2) of Regulated and Other Professions (Private Practice Prohibition) Act, Cap. 390 LFN, 1990*** has been repealed. Thus, the new position is that every legal practitioner can engage in private practice immediately after being called to the bar.

II. Capital - Financing a Law Firm

A legal practitioner intending to establish a law firm needs capital. There are two types of capital needed in establishing a law firm. These are:

1. **Start-Up Capital**: This is the capital needed for commencing the law firm. Example is funds needed to provide facilities like premises, furniture, vehicle, equipment and machines.
2. **Working Capital**: Capital in this like includes funds needed for recurrent expenditures-running of the day to day activities of the law firm e.g. funds for salaries and wages, utility bills and cost of stationeries.

There are various means in which a lawyer can source for the capital needed for establishing and operating the law firm. The methods through which capital can be raised to finance the law office include:

1. Personal savings,
2. Contributions from family and friends, and
3. Loans or overdraft from banks. (borrowing)

III. Business Plan

It is not enough to want to establish a law firm; there is need for a business plan. This is because establishing a law firm is like establishing a business. A business plan is a document containing information about the proposed firm, its goals and the financial projections. It is normally prepared by an accountant for the owner of the proposed business. This can however be done by the legal practitioner. The following are the contents of a business plan.

1. Name of the legal practitioner (owner)
2. Name of the firm

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[97] (1963) 1 ALL NLR 290
[98] (1993) 7 NWLR [Pt. 303] 49

3. Law office address (place of business)
4. Date of commencement (Business start date)
5. Type of firm
6. Goals of the firm
7. Services to be offered
8. Segmentation of the market
9. Market competitors
10. Capital requirement
11. Use of funds
12. Borrowing requirement
13. Security to be provided (insurance)
14. Employment of staff
15. Management system; and
16. Potential clients (clientele). This include banks and other financial institutions, companies, large statutory bodies, legal aid council, individuals, government briefs.

IV. Notification of Legal Practice

See generally ***Rule 13 of RPC***. Note that the notification must be made within 30days of establishment or change of law office and notification is to local branch of NBA where the office is situate. The notice must contain the matters in ***Rule 13(2) RPC*** **(**Name of the lawyer or lawyers; Date of call to bar and enrolment; and Address of the law office). The information is entered into the Register of the NBA**.** Change of information, if any, is communicated to the NBA.

CLASSIFICATION AND GROUPING OF LAW OFFICE

I. Classification of Law Office

1. **Location of a Law Firm:** The location of a law firm would determine whether the law firm is small, medium or large. For instance,
   (a) Firms in large metropolitan cities like Lagos, Port Harcourt, Kano, etc.
   (b) Firms in state capitals like Jos, Kaduna, Markudi, Jalingo, etc.
   (c) Firms in semi-urban or rural towns.
2. **Client Base:** The type of clients that a firm chooses to serve is also used in classifying firms. Generally, a distinction is made between:
   (a) Firms that serve organisations (corporate and governmental bodies) and
   (b) Firm that serve private client, whether fee paying or legally aid.
3. **Available Facilities:** The facilities used by a firm would determine the classification of the firm. A firm using modern technology cannot be in same class with that using outdated technology.
   (a) Modern law firm (with technologically advanced and sophisticated equipment)
   (b) Traditional law firm (with only basic and simple equipment).
4. **Status of Lawyers:** Presently in Nigeria, there is always distinction among legal practitioners. There are those that are Senior Advocate of Nigeria. Also, those that have distinguished their firms cannot be compared with other lawyers.
   (a) SAN Firm
   (b) Non-SAN firm
5. **Number of Lawyers:** The number of lawyers in a law firm can also determine the classification of the law firm. A firm with over 20 lawyers cannot be compared with that having 3 lawyers.
   (a) Small law office (1 – 4 Lawyers)
   (b) Medium law office (5 – 9 Lawyers)
   (c) Large law office (10 lawyers and above)

II. Grouping or Organisation of Firms

Law firms are grouped into the following four (4) groups: Sole Practitionership, Sole Proprietorship, Associateship, and Partnership.

A. Sole Practitionership

1. Concept

This is the smallest unit of law practice in Nigeria and it is the most common. It is the unit of practice involving one legal practitioner practicing alone, but employing supporting staff (non-lawyers) to assist him in the office. He establishes the law firm alone, practices alone, provides capital alone and manages the law firm alone. He does not employ any other lawyer, just non-lawyers as support staff.

2. Features

The features of a sole practitionership are:

(a) He provides the capital of the firm and manages the firm.
(b) He does the legal work since there is no other lawyer to whom work can be delegated.
(c) It is the smallest unit of organisation of a law firm in Nigeria.
(d) It is the commonest one in Nigeria as more than 70% of law firm in Nigeria are sole practitionership.

3. Advantages

(a) It enhances quick decision making as he does not need to consult anybody.
(b) He keeps all the profit realised from the business.
(c) It is easy to set up as there is less financial implication and less administrative procedure to be followed before establishment.
(d) He is always more committed in the sense that he knows that his failure is the failure of the entire business.
(e) He enjoys freedom as he is not under control.
(f) He takes the full credit for the success of the law firm

4. Disadvantages

(a) He bears all the risk and loss alone.
(b) He considers the issues in a brief alone and bears all the legal work alone.
(c) He can only rely on his own understanding of the law as a beginner.
(d) He has a problem of attracting clients as he is alone in the business and so his client base will be small.
(e) He has no time for holiday and relaxation and as such, he is affected generally and health wise.
(f) It does not encourage specialization in comparison with where there are other practitioners.
(g) The practice dies with the sole practitioner.

B. Sole Proprietorship

1. Concept

This has the feature of sole practitionership known in corporate law, however in law firms grouping, it relates to a lawyer who establishes a law firm and employs other legal practitioners to work for him in the firm together with other support staff (non-lawyers). It is usually senior legal practitioners who have capital to establish themselves as sole proprietors. The relationship between the Sole proprietor and the other legal practitioners is that of employer and employee. The relationship is governed by a contract of employment with terms and conditions. Therefore, the other lawyers in the firm are mere employees and do not participate in decision making, neither do they contribute to the financing, setting up or running of the firm.

2. Advantages

(a) It enhances quick decision making as the sole proprietor does not consult anybody.

(b) The sole proprietor keeps all the profits realised.
(c) It is easy to set up as there is less financial implication and less administrative procedure to follow before establishment.
(d) He is always more committed in the sense that he knows that his failure is the failure of the entire business.
(e) He enjoys freedom as there is no boss to control him.
(f) There is division of labour between the owner and other practitioners. He does not consider the brief alone.
(g) It permits specialisation.

3. Disadvantages

(a) He bears all the risk and loss alone.
(b) He is solely responsible for the cost of running the business.
(c) A sole proprietor who is a beginner has problem of attracting clients as he is alone in the business and so he will have a small client base.
(d) He may not have time for holiday and relaxation.
(e) The practice dies with the sole proprietor.

C. Associateship

1. Concept

This is a unit of law practice where two or more lawyers contribute the capital to provide facilities required for a law firm. The capital is used to secure office accommodation and all other facilities. All the associates occupy the premises and share the office facilities, they equally contribute to wages and salaries of supporting staff but each will remain a sole practitioner because he owns an independent practice and separate clients within the associateship. That is, two or more legal practitioners pool resources together to set up a law office. They jointly employ support staff and pay their salaries, equip the law firm and pay rent. HOWEVER, each of them maintains his separate office, keeps his separate clients independent of the others. Essentially, within the associateship, each of the associates operates like a sole practitionership as each has his independent practice and does not consult with the others as far as running his own practice is concerned.

2. Advantages

(a) It enhances quick decision making as each associate takes his decisions on his own.
(b) Each associate keeps all the profits he realises except for contributions he makes for the maintenance of the office and support staff.
(c) It is easy to set up as there is less financial implication and less administrative procedure.
(d) An associate enjoys freedom since there is no boss to control him.
(e) By contributing money, the associates can maintain a large and well organised office which will attract clients.
(f) An associate does not consider issues alone as there are other associates from whom he can seek advice on some legal problems.

3. Disadvantages

(a) The associate bears all the risk and loss alone.
(b) An associate who is a beginner has problem of attracting clients as he is alone in the business.
(c) He has no time for holiday and relaxation.
(d) The practice dies with the death of the associate.

D. Partnership

1. Concept

This is a unit of law office where two or more persons wishing to establish a law firm contribute capital to form a partnership. A partnership can be formed orally or in writing. However, it is advisable to have a partnership agreement in writing in order to prevent

disagreements and problems. The issues, which a partnership agreement should deal with, include the following:

1. Nature and object of the partnership business;
2. Firm name;
3. Location of firm;
4. Capital contributions;
5. Decision of profits and losses;
6. Maintenance of individual income accounts;
7. Management;
8. Devotion of full time to the firm;
9. Expulsion from the firm;
10. Admission of new partners;
11. Retirement, expulsion or death of a partner;
12. Withdrawal of partner due to incapacitation;
13. Annual and maternity leave;
14. Ownership of assets;
15. Restraint of trade;
16. Resolution of disputes; and
17. Termination.

2. Restrictions

There are restrictions to the formation of partnership of lawyers in Nigeria. They are contained in ***Rule 5 RPC***.

(a) Partnership with a Non-Lawyer: The rule prohibits the formation of partnership involving practice of law, by a lawyer and a non-lawyer. See ***Rule 5(1) RPC***. It is also trite that a lawyer must not aid a non-lawyer in an unauthorised practice of the law. See ***Rule 3 (1) (a) RPC 2007***.

(b) Partnership with a Lawyer Not Admitted to Practice in Nigeria: the rule also prohibits the formation of partnership involving the practice of law between a lawyer defined under the LPA and a lawyer not admitted to practice law in Nigeria. ***Rule 5(1) of RPC*** provides that a lawyer shall not form a partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consists of the practice of law.

(c) Imposition or Deception through Name of a Deceased or Former Partner: ***Rule 5(2) RPC*** provides that the name of a deceased or former partner may continue to be used as part of the name of a law firm, provided it does not lead to an imposition or deception through the continued use of the name.

(d) Removal of the Name of a Former Partner Who Became a Judge: The name of former partner who became a judge is to be removed from the partnership name. See ***Rule 5(3) RPC*** which provides that where a member of a law firm becomes a Judge and is hereby precluded from practicing law, his name, if it appears, shall be removed from the partnership name.

(e) Holding Out as Partner when Practising Alone: No lawyer who is practicing alone should hold himself out as a partner by the use of the name A, B & Co. See ***Rule 5(4) RPC***.

(f) Legal Practice as a Corporation: Finally, ***Rule 5(5) RPC*** provides that it shall be unlawful to carry out legal practice as a corporation. That is, it is unlawful to form a company for the purpose of practising law.

(g) Simultaneous Practice with Other Profession or Business: Except with the approval of the Bar Council, a lawyer shall not practice at the bar (own a law firm) and simultaneous practice any other profession or engage in any trade or business, except in

permitted areas. See ***Rule 7 RPC 2007***.

(h) Public Officers: A lawyer who is a public officer must not "engage or participate in the management of any private business, profession or trade" except farming and is therefore barred from setting up or operating a law firm. See ***Section 2 (b) of Part 1 of the 5th Schedule to the 1999 Constitution (Code of Conduct for Public Officers).*** However, law lecturers in the university and law school are allowed to engage in private practice.

3. Advantages

(a) It allows for division of labour.
(b) It creates a good opportunity for specialization.
(c) Risk is shared because more lawyers are involved and this allows for stability of practice.
(d) More heads are always available to discuss briefs from different angles.
(e) It is easier to get client because the professional competence of more people are involved, so they have a large client base.
(f) There is always time for partners to relax and go on holidays because duties can be shared among partners.
(g) Since more people are involved in partnership, it is always more easy to get enough fund or capital to set up the firm.

4. Disadvantages

1. Due to the fact that many people are involved in partnership, there is dishonesty, greed, and fear which will affect level of commitment to practice.
2. Decision taking is always delayed because many people have to be consulted before final decision is made.
3. Procedure for setting up is always detailed and cumbersome. This may prolong the time of commencement of business.
4. Each partner, being an agent or principal of other partners is liable for the act of another done within the partnership businesses. See ***United Bank of Kuwait v Hammond***.[99]

5. Reasons for the Scarcity of Partnerships in Nigeria

In spite of the great advantage of partnership over other grouping of law office, partnership law office is rare in Nigeria. The following are some of the reasons for its scarcity:

1. Lack of trust and confidence in others
2. Fear and greed (fake all attitudes)
3. Generation gap
4. Indiscipline and ego
5. Inferiority/superiority complex
6. Impatience and incompatibility.

PREMISES AND ENVIRONMENT FOR LAW OFFICE

I. Types of Premises for Law Office

There are three types of premises for law office viz:

1. **Purpose Built Office Accommodation:** There are many purpose built office accommodation in metropolitan cities, state capitals and semi-urban areas. They are always expensive and successful lawyers usually take this type. These are buildings purposely built for use as law office.
2. **Existing Building:** A practitioner can convert an existing building into a law office. They may however need considerable modification to meet the requirement of an office because most of them are designed for residential use and are usually not conducive.
3. **Office in the Home:** A law office may be located in the home. There is no practice, convention or rule which prohibits setting up a law office in the home. There are many reasons why a practitioner may locate his office at home, prominent among which is

[99] (1988) 1 WLR 1051

financial constraint. (Law office in the home has been warned against by management theorist).

II. Law Office Environment

The law office is best located in a serene and neat environment. It should be a place that is easily accessible to prospective clients.

III. How to Find a Law Office

A law office can be found through personal search, use of agents, use of friends and colleagues, placing advertisements in newspapers and journals and looking up adverts placed in newspapers.

IV. 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. The proper name should be "Law Office" as is called in United States of America where there is also a fused profession.

V. Factors to Be Considered In Finding a Law Office Premises

1. The location and proximity to the Court
2. Serene and neat environment
3. Accessibility to clients.

LAW OFFICE STAFF

I. Concept

Legal work is carried out in a law office by its staff. Thus, staff are persons employed to work in a law office.

II. Types of Law Office Staff

There are two types of staff and they are:

1. **Fee Earners (Lawyers):** These are practitioners in the law office who earn fees for the firm. The number of practitioners in the law office depends on the size and type of office.
2. **Support Staff:** These are people who assist lawyers in the office. The number and type of supporting staff required in law office depends on the firm and the available infrastructure. E.g. librarian, accountants, secretary, cleaners, receptionist, driver, typist, litigation clerk, security guards etc.

III. Method of Employing and Selecting Staff

Staff can be employed by:

1. Advertising in newspaper.
2. Introduction by existing and former staff (Referrals).
3. Inviting applicants from previous advertisement.
4. Recommendation by agencies and consultancies.
5. Recommendation by the existing and former staff.

IV. Procedure for Selection of Staff

Selection can be made by:

1. Performance tests for typists, clerks etc.
2. Aptitude tests for messengers
3. Personality tests for receptionists and secretaries
4. Interview of persons with credible recognised qualifications such as university or professional qualification
5. Job experience and area of specialisation

V. Contents of Letter of Employment

The following are the contents of a letter of employment:

1. Job title
2. Description/Job description
3. Date of employment
4. Location of staff

5. Working hours
6. Remuneration
7. Gratuity
8. Pension and other entitlement
9. Annual leave
10. Sickness and incapacity
11. Termination of employment
12. Restraint of trade
13. Summary dismissal

VI. Induction of New Staff

New staff needs to be familiar with:

1. History of the firm
2. Existing staff of the firm
3. Administrative procedure
4. Discipline procedure; and
5. Grievance procedure

VII. Disciplinary and Grievance Procedure

A law office establishes disciplinary- procedure for breach of rules governing the conduct of staff at work. These procedures and rules are stated in the office manual. The disciplinary procedures include:

1. Verbal warning,
2. Formal written warning,
3. Final written warning, and
4. Dismissal from employment for gross misconduct.

OFFICE CRITERIA FOR CONFERMENT OF SENIOR ADVOCATE OF NIGERIA

To be confirmed with Senior Advocate of Nigeria, the office of the applicant must meet certain criteria.

1. Good and spacious size
2. Good and quality library
3. Sufficient facilities
4. Sufficient partners or junior counsel
5. Sufficient and efficient numbers of trained support staff.

See ***Paragraph 15(1) of the Guidelines for the Conferment of the Rank of SAN, 2013***.

OFFICE MACHINES, EQUIPMENT AND SUPPLIES

I. Office Machines

Office machines include:

1. Vehicles
2. Generator.

II. Office Equipment

Office equipment includes:

1. Computer
2. Photocopy machines
3. Telephone
4. Facsimile machine
5. Rubber stamp
6. Dictating machine
7. Answering Machine
8. Telex/Typewriter
9. Printer

10. Calculator/Adding machine

III. Office Supplies

Office supplies includes:

1. Letter head
2. File rackets
3. Legal forms
4. Office forms
5. Business cards
6. Stationeries such as ribbons, envelopes, staple pins, paper clips, cello tape, etc.
7. Continuation sheet
8. Compliment slips.

TIME MANAGEMENT, FILING SYSTEM AND OFFICE RECORDS

I. Time Management

Matters are prioritised into "things to do" or 'important' or 'urgent'. Time is -a valuable resource to legal practitioner; hence it must be well managed. This can be done by:

1. **Prioritising of Work:** making a list of "things to do" and prioritising the work according to criteria of urgency and importance. Work is classified into legal (office work and court related work) and non-legal work. The order in which legal work may be prioritised is that urgent legal work should take priority over others and court matters requiring presentation of witness on the next adjourned date.
2. **Having a Reminder System:** The forms of reminder system are diary; notebook; phone; and computer. The types of reminder are:
   (a) **Personal Reminder System** – this include office and firm diary; personal diary; and computer. The office diary is relevant in the sense that it is open for consultation by every lawyer in the law firm and it helps lawyers in deciding dates and times to fix future activities.
   (b) **Firm Wide Reminder System** – this include Card index systems; Pre-printed forms (information in pre-printed form: name of client; legal work; name of lawyer; type of activity; date it was taken; next date it may come up); Tickler slip system; and Office computers.

The most effective reminder system is the use of diaries both for personal use and office use and pre-printed forms/computers.

II. Filing System

Documents are filed either in paper form or electronically. Movement of files must be controlled and they can be controlled through the following means:

1. Registering incoming and outgoing files.
2. Devising methods of requesting and returning files.
3. Determining time and whether or not to dispose files.

The various types of filing system are:

1. Alphabetical System
2. Non-Alphabetical System.

An indexing system is useful and cross-references must be complied for easy retrieval of documents. 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 costs of storing it, therefore, it must be moved to low - cost storage. The office must also devise a retention schedule stating the length of time the file will be retained before it is considered for destruction.

III. 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. Law firms keep various records and they include:

1. Office manual
2. Staff register
3. Title documents register
4. Case files
5. Books, law reports
6. Periodicals register
7. Master file register
8. Closed file register
9. Referral register
10. Internal telephone directory
11. Visitors' Book, etc.

IV. Uses of Office Manual

Office manual helps in administration and management of the following:

1. Working hours
2. Attendance register
3. Confidentiality of work
4. Salary advancement
5. Bonus provision
6. Assignment of staff
7. Holiday/annual leave
8. Lateness and absence
9. Provision for office supplies
10. Method of answering phone calls
11. Procedure on receiving facsimile
12. Procedure of dealing with correspondence
13. Grievance procedure
14. Salary increment
15. Disciplinary procedure
16. File management
17. Overtime work

ICT IN LAW OFFICE (Exams)

I. Uses of ICT in Law Office

1. **Office Administration:** to keep records, files and automated diary, clients file management and automated reminder system
2. **Solicitor's Accounting System and Financial Transactions**: proper records and safeguards; back-up; fees calculation and income and expenditure analysis, using spreadsheets, excel packages and peach tree software.
3. **Law Library:** catalogue management, electronic catalogue to replace paper catalogues, virtual library (online or e-library); electronic access to a physical library; search engine tools to make use of virtual library easy.
4. **Case Management:** recording of cases in court, client interview platform with e-template form; scheduling of cases; assignment of cases to counsel on specialty basis; automated update of pending matters and status

II. Advantages/Benefits of ICT in Law Office Management

1. Effective planning and organisation of office
2. Easy multitasking
3. Reduction/elimination of errors

4. Quick and effective delivery of tasks
5. Provides more office space as there are less files
6. Convenient and trendy
7. E-payment, enhance proper accounting and eliminates or reduces the falsification of accounting records

III. Disadvantages/Challenges of ICT in Law Office Management

1. Lack of requisite IT skills and personnel
2. System damage by virus and inferior software packages
3. Easy manipulation by dishonest administrator
4. Possibility of hackers breaking into the system
5. Erratic and epileptic power supply
6. Constant network failure
7. High incidence of piracy and infringement of intellectual property rights.

IV. Solutions to These Challenges

1. Proper legal framework for the use of ICT products
2. Proper training on IT
3. Use of system back-up
4. Use of effective anti-virus
5. Use of genuine IT equipment and soft wares
6. Regular power supply.

LEGAL SERVICES

I. Types of Legal Services

The various kind of legal services a lawyer/law firm renders to his/its clients includes:

1. Representation in Courts or other tribunal for purposes of litigation
2. Drafting, editing or analysing legal documents
3. Offering legal opinions and advice
4. Representing clients in ADR Processes
5. Conducting investigation and searches (at Land Registries, Probate, CAC, etc.)
6. Representation in (contract) negotiations
7. Management of law firms
8. Settlement of disputes (i.e. acting as Arbitrators/Mediators, etc.)
9. Perfection of titles of clients.

II. Skills a Lawyer/Law Firm Must Possess In Order To Be Able To Render Necessary Legal Services to Client

1. Drafting skills
2. Advocacy skills
3. Negotiation skills
4. Management skills
5. Communication skills
6. Research skills
7. Interviewing skills
8. Adjudication skills (when they act as arbitrators, mediators, or Panel/Committee chairmen/members for settlement of disputes, etc.)

MANAGEMENT STRUCTURES AND FUNCTIONS

I. Management Structures

Type of management structure selected depends on the type of office.

1. Management by a committee of partners
2. Management by all partners (mostly in small partnerships)
3. Management by a sole partner

4. Management by a sole owner (sole practitionership and proprietorship)
5. Management by associates (in an associateship)
6. Management by experts (in an associateship)
7. Management by experts who may or may not be lawyers but are appointed by the owner

II. Management Functions

1. Planning
2. Organising
3. Coordination
   (a) Identify strategies for implementing the plans
   (b) Explain the main resources of a law firm
   (c) Explain how to co-ordinate the work flow of a law firm
   (d) How to implement the well planned areas
   (e) How to organise resources of the firm
   (f) Assignment/ delegation/ harmonisation of work
4. Controlling
5. Evaluating

The management functions should be tailored to meet the vision and mission expectations of the firms.

VISION/MISSION STATEMENTS AND PLANNING

I. Concept of Vision/Mission Statement

The *vision statement* (immediate achievable goals of the firm) of the firm should inform everyone in the firm about the *short term goals* of the firm and thus creates commitment to it. The *mission statement* (core ideals around which the firm is set up) must be drafted by the owners of the firm. It must state concisely the *firm's long-term goals* and should not be written in more than fifty (50) words. An example of a mission/vision statement is:

> *To be a quality firm providing a range of legal services to commercial and property clients profitably and to the highest standard with partners and staff, happy and committed to this ideal and inspiring to continual development in the firm's quality standards*.

An example of a goal of a firm is: *To meet clients' needs with full satisfaction*.

II. Criteria for Setting Goals for a Law Firm

1. **Complimentary –** The goals must be complementary in order for them to be achievable because if they are conflicting, achievement will be difficult. They are said to be complementary because the achievement of one brings to the achievement of others. For example, a good service rendered to a customer will make the customer to tell others about it.
2. **Specific –** It must state precisely what it is expected to achieve so that plans can be formulated for their achievement. For example, a firm should state the actual percentage it intends to achieve annually.
3. **Measurable –** They must be formulated in such a way that it is possible to present evidence of their achievement or otherwise. For example, from evidence available, a firm should be able to tell if what it intends to achieve has actually been met or not.
4. **Timeable –** They must not be open-ended goals. As such, a realistic deadline should be set for the achievement of such goals. For example, a firm should fix a period within which it is to achieve its goals.
5. **Attainable –** The goals should be one that is realistic and attainable with the firm's resources.

III. Items Requiring Planning

1. Finance;
2. Services;

3. Clients;
4. Facilities; and
5. Staff.

IV. Types of Planning

1. Strategic/long term planning
2. Tactical/medium term planning
3. Operational/short term planning.

SAMPLE DRAFT (LETTER FOR NOTIFICATION OF LAW OFFICE)

KILLI NANCWAT & CO
BARRISTERS AND SOLICITORS
NO. 10 ASO DRIVE NYANYA, ABUJA – NIGERIA
Phone: 07031112732 **Email:** Knanchwat2020@yahoo.com

Our Ref: **Date:** 18th September 2014

The Chairman,
Nigerian Bar Association,
Abuja Branch,
High Court Complex, Maitama,
Abuja.

Dear Sir,

NOTIFICATION OF ESTABLISHMENT OF LAW OFFICE

I, Killi Nancwat, a Legal practitioner called to the Nigerian Bar on 20th November, 2015 and enrolled as a Barrister and Solicitor of the Supreme Court of Nigeria, hereby give you notice of the establishment of my law office situated at No. 10 Aso Drive Nyanya, Abuja - Nigeria in compliance with Rule 13 of the RPC 2007.
Please find attached copies of my qualifying certificates and other relevant documents.
Thank you.

Yours faithfully,

Killi Nancwat
(Principal Partner)
KILLI NANCWAT & CO

ENCLS:
1. Call to Bar Certificate
2. Receipt of payment of practicing fee

(Week 17)

REMUNERATION OF LEGAL PRACTITIONERS

LAWYERS FEES

Rule 48(1) RPC provides that a lawyer is entitled to be paid adequate remuneration for his services. Also, a legal practitioner must not charge an apparently excessive fee or a fee which is tainted with illegality. This is because ***Rule 48(2) RPC*** provides that a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee. From the foregoing, a legal practitioner is to be paid for the services rendered; this does not mean that a legal practitioner must be paid every time he renders any legal services. Thus, in pro bono cases, a legal practitioner is not paid. See ***Rule 52(1) RPC***.

It must be noted that as a general rule, a lawyer is not to pay for his client's litigation. In this regards, ***Rule 51 RPC*** provides that a lawyer shall not enter into an agreement to pay for, or bear the expenses of his client's litigation, but the lawyer may, in good faith, advance expenses as a matter of convenience, and subject to reimbursement.

It must be noted that by ***Rule 53 RPC***, a lawyer shall not share his fees except with another lawyer based on the division of services and responsibility. See also ***Rule 3(1) (c) RPC*** which prohibits sharing of fees with non-lawyers. However, by the ***Proviso to Rule 53 RPC***, the following are permitted:

1. An agreement by a lawyer with his firm, partner or association may provide for the payment of money, over a period of time after his death, to his estate or to one of more persons;
2. A lawyer who undertakes to complete unfinished legal business of a deceased lawyer, that proportion of the total compensation which fairly represents the service rendered by the deceased lawyer; and
3. A law firm may include non-lawyer employees in retirement plan, even though the plan is based on profit-sharing arrangement.

The determinants in charging professional fees are:

1. If it is a contentious work (e.g. litigation) in accordance to ***Rule 52 of the RPC***.
2. If it is a non-contentious work, the fees to be charged will be based on the ***Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991***, which is the scale charges.

TYPES OF FEES

I. Contingent Fee (Success Based Fee)

Contingent fee is covered by Rule 50 RPC and only applicable in civil matters. ***Rule 50(5) RPC*** defines contingent fee as a fee paid or agreed to be paid for the lawyer's legal services under an arrangement whereby compensation is contingent, in whole or in part, upon the successful accomplishment or deposition of the subject matter of the agreement; it may be an amount which is either fixed or is to be determined under a formula. That is, compensation is dependent in whole or in part upon the successful accomplishment of the subject matter. This is why it is called a success based fee. This is fee charged after the success of the action. The solicitor agrees with the client on the amount he will be paid based on the amount they actually recover. Where no such amount is recovered, he may earn nothing.

Rule 50(1) RPC permits a lawyer to enter contingent fee contract with his client in civil matter, whether it is contentious or non-contentious, provided the following conditions are satisfied:

1. the contract is reasonable in all the circumstances of the case including the risk and uncertainty of the compensation;
2. the contract is not vitiated by fraud, mistake or undue influence; or contrary to public

policy; and

3. If the employment involves litigation, it is reasonably obvious that there is a bona fide cause of action.

However, it must be noted that ***Rule 50(4) RPC*** provides that 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 services. Thus, the client must be given adequate opportunity to consider the option of paying the lawyer his professional fees for services rendered.

Contingent fees apply only to civil cases and not to criminal cases. Accordingly, ***Rule 50(2) RPC*** provides that a lawyer shall not enter into an arrangement to charge or collect, a contingent fee for representing a defendant in a criminal case. Contingent fee under common law has being prohibited.

Rule 50(3) RPC provides that except in the case of a contingent fee agreement as in Rule 50(1), a lawyer shall not purchase or otherwise acquire directly or indirectly 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. Thus, where a legal practitioner acquires any interest in the subject matter of litigation by way of a purchase or otherwise, such transaction is unprofessional, unethical and cannot be justified under a contingent fee arrangement.

With regards to the taxation of the fees of legal practitioner, a contingent fee is taxable under ***Sections 17 & 18 of LPA***. Therefore, if upon an application for taxation, it is found not to be commensurate to the work done, it will be reduced accordingly.

II. Hourly Fee

In this regard, fees are charged hourly. It is predominantly in use in UK and USA. There is no provision for it under the Nigerian law, thus it is not applicable in Nigeria. It is determined by the number of hours the lawyer has put into the transaction. The hourly rate is best for solicitor's work.

III. Appearance Fee

This is fee charged by a lawyer upon any appearance he made in court. Usually, an appearance fee covers transportation, feeding, lodging, and other incidental expenses. Appearance fee is usually charged in addition to other professional fees of the legal practitioner. However, it may be built into the professional fees charged by the lawyer depending on the relationship between himself and the client. The distance of the law firm from the court as well as the standing of the legal practitioner at the Bar often determines the fee charged as appearance fee. See ***Okonedo – Egbaregbemi v Julius Berger***. Appearance fee is more common in law firms in rural areas. The legality of appearance fees has been an issue due to the way cases are adjourned in Nigeria (judge not sitting).

IV. Percentage Fee

This is the fee charged depending on the value of the subject matter of the services rendered by legal practitioner. It is usually used in conveyancing e.g. lease, assignment, mortgage, which is usually 10 percent. This is fee charged based on the value of the transaction, the higher the value the more the percentage charged and the lower the value the lower the percentage charged. It is common in property transactions especially the sale of land.

V. Fixed Fee

This type of fee is usually charged for non-contentious matter. For instance, conducting search in Land Registry or at the Corporate Affairs Commission or for drafting a letter or will.

VI. Scale Fee

A. Concept

This stipulate the amount a legal practitioner can charge based on a particular transaction. It is usually fixed and cannot be disputed or varied by the court. ***Legal Practitioner***

(Remuneration for Legal Documentation and Other Land Matters) Order 1991 regulates scale fee, applicable in non-contentious matters.

1. Scale I- Purchase and sale of land, mortgages
2. Scale II- Leases
3. Scale III- Matters not in scale I & II

B. Scale I

It relates to remuneration for services on sale or purchase of land and mortgage transactions. The rules for charging under scale 1 are:

1. **Representing Both the Mortgagor and Mortgagee:** If a Legal practitioner represented both the mortgagor and mortgagee, he is to charge the mortgagee "full" fees and "half" of the mortgagor's legal practitioner's fees. See ***Rule 2 Part III of Scale 1 of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991*****.**
2. **Perusing a Draft for Several Parties with Distinct Interest:** Perusing a draft on behalf of several parties with distinct interest, if the consideration is above ₦100, 000 his fee is ₦2, 500. See ***Rule 3 Part III of Scale 1 of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991***.
3. **Sale by Auction:** In a sale by auction, the legal practitioner to the auctioneer is not allowed to charge any fees where he will be paid a commission. See ***Rule 6 Part III of Scale 1 of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991***.

C. Scale II

It applies to fees to be charged for Leases and agreement to lease. The rules for charging under scale 2 are:

1. **Lawyers for Lessor and Lessee:** The lessee's legal practitioner fee is half the lessor's legal practitioner fees. See ***Rule 2 Part II of Scale II of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters Order 1991***.
2. **Acting for Both Lessor and Lessee:** A Legal practitioner acting for both the Lessor and Lessee is to charge the full fee of the lessor's legal practitioner fee and half of the lessee's legal practitioner's fee. See ***Rule 1 Part III Scale II of the Legal Practitioners (Remuneration for Legal Documentation and Other Land Matters Order 1991***.

D. Scale III

It deals with non-contentious legal work which no scale is provided for in the Order or where legal practitioner elects to charge his fees under Scale III notwithstanding the provisions for the legal work in Scale I and II. Examples are incorporation of companies, searches at Land Registry, bailing of suspects, etc. The principles for assessment under Scale III are:

1. The complexity, novelty and difficulty of the matter;
2. The skill, labour, specialised knowledge, expertise and responsibility involved on the part of the solicitor;
3. Value of the property involved;
4. The number and importance of the documents prepared;
5. The importance attached to the transaction by the client;
6. Places to be visited where the transaction or a part of it will take place;
7. The time expended by the lawyer in the transaction; and
8. Special exertion of devotion towards that transaction e.g. in election petition.

RETAINERSHIP, GEARING, QUATUM MERIUT AND PRO BONO

I. Retainer

This is an agreement by a lawyer to give his services to a client. Under retainer, there is general and special retainer. See ***Rule 49(4) RPC***. General retainer is a retainer which covers the client's work generally (cannot act against the client in any matter). Special retainer is a

retainer which covers a particular matter of the client (can act against the client in matter not contained in the special retainer). Without a retainer, a legal practitioner cannot act for a client. When a lawyer accepts a retainer in respect of litigation, he shall be separately instructed and separately remunerated by fees for each piece of work. ***Rule 49(2) RPC*** provides that where a lawyer accepts a retainer in respect of litigation, he shall be separately remunerated by fees for each piece of work; and accordingly, a lawyer shall not –

1. 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
2. Accept instructions from a client on terms that a particular class of court cases shall be done at affixed fee in each case irrespective of the circumstances of each case.

Rule 49(3) RPC provides the rules guiding retainers. It provides that where a lawyer accepts a retainer, he shall not:

1. In the case of a general retainer, advise on or appear in any proceedings detrimental to the retainer which will involve arguing or advising against the interests of the client paying the retainer.
2. In the case of a special retainer, accept instruction in any matter forming the subject matter of the retainer which will involve advising or arguing against the interests of the client paying the retainer.

II. Gearing

This deals with consultation fee or deposit on account. Thereafter, a Bill of charges for full and final payment will be sent to the client by the parties.

III. Quantum Meruit Fee

Rule 18(1) RPC provides that a client shall be free to choose his lawyer and to dispense with his services as he deems fit provided that nothing in this rule shall absolve the client from fulfilling any agreed or implied obligations to the lawyer including the payment of fees. Thus, once a lawyer has been debriefed, he must be paid according to the services he has performed. Where the lawyer may not have direct instruction from a client but rendered services which ultimately benefited the client, the law may presume a quasi-contractual relationship between the lawyer and the client, which entitles the lawyer to his professional fees and other expenses based on the quantum of legal work he did for the client. See ***Oyo v Mercantile Bank Ltd***. Also, where a lawyer is unable to complete a legal work for his client, owing to no fault of his, he may bring an action for recovery of the professional fees on quantum meruit basis.

IV. Pro Bono

Pro bono is a situation where a lawyer offers legal services to a client without remuneration in return. See ***Section 9(2) LPA and Rule 52(1) RPC***. Pro bono is mandatory for the award of the rank of SAN by the LPPC. Pro bono is usually to family (special relationship/indigent persons). Pro bono services could be in contentious and non-contentious case. The mere fact that the case is pro bono does not take away professional negligence and liability. However, the legal practitioner can exclude, by agreement, professional negligence and liability in respect of pro bono cases.

GUIDELINES FOR FIXING THE AMOUNT OF THE FEE

Rule 52(1) RPC provides that the professional fees charged by a lawyer for his services shall be reasonable and commensurate with the services rendered; and 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.

The fees charged by a legal practitioner will depend on whether it was a contentious work (litigation) or a non-contentious work (legal documentation and land matters). Where the work was the latter, the fees shall be determined in accordance with the Scales provided in

the ***Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991***. These scales are fixed and the stipulate the amount a legal practitioner can charge based on the transaction done. The scales are:

1. Scale I for sale and purchase of land and Mortgages;
2. Scale II for Leases; and
3. Scale III for non-contentious matters not provided for in Scales I & II.

However, where work done is contentious work (litigation), the fees will be determined by the following criteria provided for in ***Rule 52(2) (a) – (g) RPC***. They are:

1. The time and labour required, the novelty and difficulty of the questions involve and the skill required to defend the cause properly.
2. Precluding the legal practitioner accepting briefs that are likely to arise from the transaction.
3. Loss of other employment while employed in the particular case.
4. The customary charges of the bar for similar services. He is not bound to follow this.
5. The amount involved in the controversy and the benefits relating to the client from the service.
6. The contingency or continuity of the compensation; and
7. The character of the employment, whether casual or for an established or constant client.

Note that in determining the amount of the fee, the lawyer may take into account any or all of the aforementioned considerations in ascertaining the value of the service rendered.

RECOVERY OF FEES

There are instances where a client refuse to pay a legal practitioner for the services rendered to such client. The procedure for recovery of charges is adequately spelt out in ***Section 16 LPA***. The procedure was affirmed and explained by the Supreme Court in ***Oyekanmi v NEPA.***[100] ***Section 16(1) LPA*** provides that subject to that section, a legal practitioner shall recover his fees and charges in any court of competent jurisdiction. Accordingly, ***Section 16(2) LPA*** provides the conditions precedent for commencing such action to recover fees by providing that a lawyer shall not be entitled to bring an action to recover his charges unless he satisfies the following three conditions namely:

1. First, he must prepare a bill of charges which must duly particularise the principal items of his claim and it must be duly signed.
2. Second, he must serve his client with the bill of charges either by personal service on him or at his last known address or by post to the last known address.
3. Third, he must allow a period of one month to elapse from the date the bill was served before commencing the action.
4. Where after the expiration of the one (1) month period, the client is still in default of payment, then the lawyer can commence an action for recovery of the fees at the High Court.

See ***Section 16(2) LPA; Bakare v Okenla; Oyekanmi v NEPA***;[101] ***Abubakar v Manulu***; and[102] ***Bakassi Local Gov't Council v Bassey***.[103] These are mandatory conditions and must always be complied with. The relevant court to proceed to upon fulfilment of the conditions is the High Court of a State where the lawyer has his firm. See ***Section 19(1) LPA***.

However, where after the service of the Bill of charges on the client, it appears to the legal practitioner that the client intends to abscond without payment or do any act which would unreasonably delay payment, then the lawyer may do away with the condition of waiting for

[100] (2000) 15 NWLR [Pt. 690] 414
[101] (2000) 12 SCNJ 75
[102] (1998) 10 NWLR [Pt. 568] 41
[103] (2009) ALL FWLR [Pt. 473] 1293

one month by proceeding in accordance with ***Section 16(3) LPA***. In such a situation, the lawyer shall apply to the Court by way of a motion ex parte supported by affidavit which must show the following:

1. That he has delivered a Bill of Charges to the client. He may attach to the affidavit.
2. That on the face of it, the charges appear to be proper in the circumstances.
3. That there are circumstances indicating that the client is about to do some act which would probably prevent or delay the payment to the legal practitioner of the charges.

If the court is satisfied of the above, then it may, notwithstanding that the one (1) month period has not elapsed, direct and authorise the lawyer to commence and prosecute an action to recover the charges unless before judgment in the action, the client gives such security for the payment of the charges as may be specified in the direction.

CONTENT OF BILL OF CHARGES

I. Contents

The LPA seems to be silent on the content of bill of charges, however, the Supreme Court in ***Oyekanmi v NEPA*** made adequate provision on its content. The court stated that Section 16(2) (a) LPA requires that a bill of charges shall contain particulars of the principal items. A general guide as to the form, content, and purpose of a bill of charges would be:

1. **Letter Headed Paper:** It should be on a letter headed paper.
2. **Subject Matter of the Work Performed:** The bill should be headed to reflect the subject matter of the legal work performed by the legal practitioner. If it is in respect of litigation, the court, the cause, and the parties should be stated.
3. **Particulars of Charges, Fees and Professional Disbursement:** The bill should contain particulars of all the charges, fees and professional disbursements for which the legal practitioner claims. Professional disbursement include payment which are necessarily made by the legal practitioner in pursuance of his professional duty such as court fees, witness fees, cost of production of record etc. if paid by him.
4. **Date and Particulars of Principal Items and their Cost:** The bill should contain particulars of the principal items and the charges and fees thereof which must be particularised and dated. This is necessary to give an insight to the client as to what he is being asked to pay for.
5. **Scale used in Calculating the Bill:** It is required to give sufficient information in the bill such as the particular scale used in calculating the Bill if it was legal documentation. This is to enable the client to obtain advice as to its taxation and for the taxing officer to tax it.
6. **Summarised Statement of Legal Work:** It should also contain a summarised statement of the legal work undertaken by the lawyer and where they are of particular novelty or there are peculiarities which may justify the fees charged, they should be clearly stated.
7. **Standing and Rank of the Legal Practitioner:** The standing and rank of the legal practitioner may also be stated where necessary.
8. **Date:** The bill of charges must be dated.
9. **Signature and Particulars of Lawyer/Firm:** It must contain the signature, name and address of the lawyer that prepared it; or in the case of a firm, it should be signed by one of the partners on behalf of the firm.
10. **Client's Name and Address:** It should contain the client's address for service.
11. **Mode of Payment and Warning:** the mode of payment preferred by the legal practitioner should be clearly indicated. It should also be stated that failure to pay on or before the required date, the lawyer will resort to court action.

See ***Section 16(2) (a) LPA; Oyekanmi v NEPA;***[104] ***Re A Solicitor***.

[104] (2000) 12 SCNJ 75

II. Rationale for the Itemisation or Particularisation of a Bill of Charges

The reasons why it is proper and better to itemise or particularise the bill of charges are as follows:

1. Where the bill of charges is itemised or particularised, it affords the client a clear picture of the grounds for the charges, fees and disbursements claimed by the lawyer in the bill.
2. It makes it easier for the client to choose which item of work to acknowledge and consequently admit the bill attached to it.
3. An itemised or particularised bill of charges facilitates the taxation of the bill by the taxing officer in accordance with the LPA.

It is necessary to indicate against each of the particulars given in the bill of charges, a specific amount taking into account, the status and experience of the legal practitioner and the time and efforts involved. Note, ***Rule 21 of RPC***, on duty of a legal practitioner not to withdraw from an employment once assumed, except for good cause such as

1. Conflict of interest between the lawyer and the client.
2. Where the client insists on an unjust or immoral cause, in conduct of his case.
3. If the client persist against the lawyer's advice and remonstrance in pressing frivolous defenses; or
4. If the client deliberately disregards an agreement or obligation as to payments of fees and expenses.
5. When a lawyer is justify to withdraw, he is to notify the client and give him reasonable time to get another lawyer.
6. Also, a lawyer who withdraws and has been paid in full is to refund such part of the fees as has not been clearly earned.

III. Status of a Bill of Charges with Insufficient Particulars

Where a bill of charges has insufficient particulars, it may still be able to ground an action for recovery of fees provided it is not so defective as to be incurably bad. See ***Oyekanmi v NEPA,***[105] where the SC held that where a bill of charges did not contain sufficient particulars of the items of work done, but there were surrounding circumstances which made the bill litigable despite the defect, the Bill of Charges may still ground an action for recovery of fees unless it is so defective as to be incurably bad. See also ***Re A Solicitor***; ***FBN v Ndoma Egba***.[106]

TAXATION OF CHARGES

When a client perceives that the bill of charges presented to him by a legal practitioner is too high or excessive, the client has the option of applying to court for the bill of charges to be taxed. Taxation of bill of charges is a process of assessing the bill of charges by an officer appointed by the court or the court itself. Taxation of bill of charges is covered by ***Sections 17, 18, 19 of LPA***. Under the provision of the LPA, there are three stages in which the bill of charges can be taxed, namely:

1. **After Service of the Bill and Before Expiration of One Month:** this occurs after the service of the bill of charges on the client but before instituting an action to recover the charges by the lawyer. That is, before the expiration of the one (1) month period. According to ***Section 17(1) LPA***, when upon the delivery of the bill of charges to the client and the client within the period of one month apply for the taxation of the bill of charges, then the court shall order that the bill be taxed. No action to recover the charges shall begin until the taxation is completed. Application for taxation within this period can only be done by the client and the court is under a duty to grant an order for taxation; not discretionary. However, an order for taxation shall not be made under Section 17(1) LPA where a

[105] (2000) 12 SCNJ 75
[106] (2006) ALL FWLR [Pt. 307] 1012

direction has been made by the court under ***Section 16(3) LPA*** directing the client to give security and the client has failed to comply with that direction.

2. **After Expiration of One Month and During Pendency of Action**. According to ***Section 17(2) LPA***, upon expiration of the one month, either the client or the legal practitioner can apply for taxation of the bill of charges. This could be done prior to institution of an action by legal practitioner, in which case, no action will be commenced until the completion of the taxation. Also, it could be during an action instituted by a legal practitioner and upon application for taxation, such action shall be stayed. Here, the power of the court to order for taxation is discretionary.
3. **After Judgment Has Been Delivered**. According to ***Section 17(3) (a) LPA***, no order for taxation will be made by the court after the expiration of 12 months from the date on which the bill in question was paid. However on special reasons, the court may make an order of taxation if 12 months have expired since the date of the delivery of the bill of charges or if judgment has been given in an action to recover the charges in question. The last limb seems to reveal that there can still be taxation of bill of charges after a judgment have been delivered with respect to recovery of charges by a lawyer.

Of importance is that taxation can only be carried out upon issuance of a bill of charges and can still be done even after client has paid the charges. Also, taxation only comes up when there is dispute as to payment of legal practitioner's fee and a bill of charges has been served on the client.

The bill of charges is taxed with regard to the skill, labour, and responsibility involved and the circumstances of each case. See ***Section 18(1) LPA***. Taxation is usually done in presence of both the legal practitioner and client. If either is absent, it can be done or an adjournment be made under special reasons. Under ***Section 18(2) LPA***, taxation is done by the taxing officer as appointed. ***Section 18(3) LPA*** is to the effect that in appropriate circumstances, the taxing officer can refer taxation to the court. The court in this like can proceed to tax the bill of charges itself or refer it back to the taxing officer with direction. If any of the parties is not satisfied with taxation of a bill by the taxing officer, such party can within 21 days appeal to the court. See ***Section 18(5) LPA***. Subject to any order made by the court, the legal practitioner will bear the cost of taxing the bill if the amount given by the court or taxing officer is less than that in the bill. If otherwise, the costs is payable by the client. See ***Section 18(7) LPA***. After taxation, certificate of the amount is usually issued, signed by taxing officer. See ***Section 18(4) LPA***. Application for taxation is made to the High Court of a State. See ***Section 19(1) LPA***. It is worthy of note that the application for taxation is made to the court (High Court) in accordance with ***Section 17 LPA*** and not to any other person or body.

SAMPLE DRAFT OF BILL OF CHARGES

I. Sample 1

KILLI NANCWAT & ASSOCIATES
LEGAL PRACTITIONERS AND SOLICITORS
PEOPLES CHAMBERS
NO 5, Kano Crescent, Kano
Email: Knanchwat2020@yahoo.com
Phone: 07064793812

Our Ref: _____ Your Ref:_____

Date: 22nd March, 2019

To:
Mallam Joel Adamu

No. 5 Balarabe Crescent,
Sabon Gari,
Kano.

Dear Sir,

BILL OF CHARGES

This is to notify you of the charges for the representations made on your behalf in the case of Mallam Joel Adamu v First Bank of Nigeria Plc. LD/33133/15. The charges are as follows:

1. Nature of professional service: litigation
2. Name of case: Mallam Joel Adamu v First Bank of Nigeria Plc. LD/33133/15.
3. Particulars of charges:

S/NO	PARTICULARS OF ITEMS/DETAILS OF WORK DONE	DATE	AMOUNT (₦)
1	Drafting and filing of Writ of Summons	3/2/2018	20, 000
2	Drafting and filing of Statement of Claims and Witness Statements on Oath	3/2/2018	20, 000
3	Drafting and filing of motion ex parte for interim injunction	3/2/2018	3, 000
4	Arguments for the motion ex parte for interim injunction	3/2/2018	5, 000
5	Drafting and filing of motion on notice for interlocutory injunction	3/2/2018	6, 000
6	Arguments for the motion on notice for interlocutory injunction	12/3/2018	8, 000
7	Interviewing of six plaintiff/claimant witnesses in chambers at ₦4, 000 per witness	20/1/2018	24, 000
8	Conducting the hearing of the case till judgment	4/4/- 20/11/2018	500, 000
9	Transport costs for 25 appearances at ₦1,000 per appearance	4/4/- 20/11/2018	25, 000
10	Accommodation at Parkview Hotel for 25 nights at ₦10, 000 per night	4/4/- 20/11/2018	250, 000
11	TOTAL		861, 000. 00 (Eight hundred and Sixty One thousand naira only)

Kindly take note that you are expected to make the payment into the firms Account number: 0126651574 with Guarantee Trust Bank Ltd, on or before 21st day of April, 2019

Thank you in anticipation of your usual co-operation.
Yours faithfully,

_____
N E Killi
For: Killi Nancwat & Associates

II. Sample 2

ANOTHER SAMPLE: JUST PUT INTO THE LETTER

1. Nature of professional service: Purchase of property
2. Particulars of charges:

S/NO	DATE	PARTICULARS OF ITEMS	AMOUNT (₦)
1	13/01/2018	Expenses incurred in conducting search on property	15, 000
2	24/01/2018	Fee for negotiating purchase of property	5, 000
3	27/01/2018	Preparation of Contract for sale of land	20, 000
4	3/02/2018	Investigation of title	3, 000
5	4/02/2018	Preparation of deed of assignment	25, 000
6	7/02/2018	Perfection of transfer	10, 000
		Total	78, 000

Note that this Bill of Charges was prepared in accordance with Scale I of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991.

Dated this _____, day of _____, 2018

III. Sample 3

KILLI NANCWAT & CO
BARRISTERS AND SOLICITORS OF THE SUPREME COURT OF NIGERIA
NO 15 VIRBES STREET
MARINA -LAGOS STATE.

Our Reference: _____ **Phone:** _____

Date: 11 May, 2018

To:
Mr Joel Adamu of No 5 North Avenue Apapa, Lagos.

Dear Sir,

RE: NEGOTIATION OF MORTGAGE LOAN
BILL OF CHARGES

Sequel to your instruction to negotiate a mortgage loan on your behalf, we are pleased to inform you of its successful completion.
Find attached our invoice below for your prompt response.

Principal Item		Date	Cost (₦)
1.	Application for Loan	5/04/2012	20,000
2.	Deducing title	6/04/2012	10,000
3.	Postage of application letter	6/04/2012	5,000
4.	Transportation	5-6/04/2012	20, 000

5. Miscellaneous Expenses	,,	10,000
	Amount received as deposit	Nil
	Total	65,000

Kindly pay the sum of sixty-five thousand naira (65,000) into account No. 304070113 belonging to Killi Nancwat & Co at First Bank PLC.
Thank you for the anticipated cooperation.

Yours faithfully,
……
Killi Nancwar Esq.
(Principal Partner)

IV. Sample 4

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

SUIT NO……

BETWEEN:
KILLI NANCWAT……
KABIRU ADAMU…… } PLAINTIFFS
(Carrying on Legal practice under the name and style of Killi Nancwat & Co)
AND
MR JOEL ADAMU……..……...……...DEFENDANT

STATEMENT OF CLAIM

1. The plaintiffs are the principal partners of Killi Nancwat & Co, a firm of Legal Practitioners duly registered as a business name under the Companies and Allied Matters Act 2004 with Registration Number: 545747 and with its registered place of business at No. 15 Broad Street Wuse II Abuja.
2. The Defendant is a business man and supplier of agricultural products of No. 14 Garki II Abuja.
3. The Plaintiffs were briefed by the Defendant on the 10th day of January, 2012 to prosecute an action to recover the balance of ₦7, 000, 000.00 from his business partner Agricultural Bank Plc, the Plaintiff's letter of instruction is hereby pleaded.
4. The Defendant's case was instituted in Court and duly completed on the 20th day of April 2012 as suit No FCT/CV/2012 MR JOEL ADAMU V AGRICULTURAL BANK, the judgment certificate is hereby pleaded.
5. The Defendant paid the sum of ₦200, 000 as deposit to enable the Plaintiffs carry out the instruction.
6. The Plaintiffs aver that they never entered into any contingent fee arrangement with the Defendant.
7. The Plaintiffs have served on the Defendant personally, a Bill of Charges duly signed and dated the 11th day of May, 2012 to pay the balance of ₦410, 000, the Bill of Charges is hereby pleaded.
8. The Defendant has refused to pay after 1 month of its service and a demand letter was sent to the Defendant, the demand letter is hereby pleaded.
9. The Plaintiffs hereby claim against the Defendant as follows:

(a) The payment of the sum of ₦410, 000 balance by the Defendant as contained in the Bill of Charges.
(b) Interest rate of 10 percent from the date of failure to pay after the 1 month grace until judgment is delivered and satisfied.

DATED THE 30th DAY OF MAY 2019

……..
Sandra Okundaye
Counsel to the Plaintiffs
Whose Address for Service is at No. 2
Idowu Taylor Street Wuse Zone 6 Abuja

FOR SERVICE ON:
Mr Joel Adamu
No 3 Imo Close
Jabi, Abuja.

CALCULATION OF CHARGES

I. Scenario

Air Cdr. Yabo Uzezi, public Servant of No 63 Kofar Eyong Road, Jimeta-Yola, is the owner of property at Plot 134 Najiv Avenue, Victoria Island, Lagos with Certificate of Occupancy No 231/LVI/2003. He also owns No. 46 Vitalis Close, Maitama Abuja.
At a **rent of N2m annually**, Yabo **created a term of three years** over the property at Lagos in favour of Engr. Tanko Calista, a Civil Engineer of No. 37 Augie Street, Apapa Lagos.
The three years rent was paid in advance. The agreement was to commence on February 1, 2009.
Later, on February 25, 2019, he used the same property to **secure a loan of N20m** obtained from RitzBank Plc. of No. 56 Ovie Faleti Road Ikoyi, Lagos at annual rate of 15% redeemable within 6 months of commencement.
Yabo was unable to redeem a loan of N25m he obtained from Fidelity Bank Plc in April 2016 within the agreed period; to avoid total loss of the mortgaged property, he contacted Engr. Tanko Calista for the **purchase of the property, which was agreed for N32m**.
You **acted for all the parties** in the negotiation for the **loan of N20m**, and also in negotiation for the sale **on behalf of both parties**. You had earlier **represented both parties** I'm the tenancy agreement.
You later sent a Bill of Charges for your professional services to both clients. The Bank has failed to pay. You filed summary summons at the Chief Magistrate Court, Yaba, Lagos since the amount claimed is just N3.8m.

II. Transactions Identifiable

The transactions identifiable in the scenario are:
1. Mortgage – acted for all the parties in the negotiation for the loan of N20m.
2. Sale of Land – acted for both parties in negotiation for the sale of land worth N32m.
3. Lease - represented both parties in the tenancy agreement of N6m.

III. Rules of Computing Charges/Fee

1. Mortgage (Scale I)

(a) Different Solicitors: where the mortgagor and mortgagee are represented by different solicitors, the mortgagor solicitor will be entitle to full payment and the mortgagee solicitor will equally be entitle to full payment.

(b) One Solicitor: where the mortgagor and the mortgagee are represented by one solicitor, the solicitor will be entitle to half payment of what is due to the mortgagor solicitor and full payment of what is due to mortgagee's solicitor.

2. Sale of Land (Scale I)

(a) Different Solicitors: where the vendor and the purchaser are represented by different solicitors, the vendor solicitor will be entitle to full payment and the purchaser solicitor will also be entitle to full payment.

(b) One Solicitor: where the vendor and the purchaser are represented by one solicitor, the solicitor will be entitle to full payment of what is due to the vendor solicitor and half payment of what is due to the purchaser solicitor.

3. Lease (Scale II)

(a) Different Solicitors: where the lessor and the lessee are represented by different solicitors, the lessor solicitor will be entitle to full payment and the lessee solicitor will be entitle to half payment of what is due to the lessor's solicitor. E.g. if the lessor solicitor is entitle to N10, 000 from the lessor, then lessee solicitor will be entitle to N5, 000 from the lessee.

(b) One Solicitor: where the lessor and the lessee are represented by one solicitor, the solicitor will be entitle to full payment of what is due to the lessor solicitor and half payment of what is due to the lessee solicitor. E.g. if the solicitor is entitle to N10, 000 from the lessor, then the solicitor will be entitle to N2, 500 from the lessee i.e. ½ of the N5, 000.

IV. Scales of Charges

Scale I - Scale of Charges on Sales, Purchase and Mortgages

(1)	(2)	(3)	(4)	(5)
	For the first N1,000 per N100 ₦	For the second and third N1,000 per N100 ₦	For the fourth and each subsequent N1,000 up to N20,000 per N100 ₦	For the reminder without limit per N100 ₦
5. Mortgagor's legal practitioner for negotiating loan…	11. 25	11.25	3.75	2.50
7. Mortgagee's legal practitioner for negotiating loan…	22.50	22.60	7.70	5.00
9. Purchaser's legal practitioner for negotiating a purchase and vendor's legal practitioner for	22.50	3.75	3.62	2.80

negotiating a sale of property by private auction…				

Scale II – Scale of Charges for Leases and Agreement to Lease

(c) Where the rent exceeds N1, 000 –

1. N37.50 in respect of the first N100 of rent
2. N25 in respect of each N100 of rent or part thereof up to N1, 000
3. N12.50 in respect of each subsequent N100 or part thereof

ANSWER

MORTGAGE

Total Value of Transaction – N20, 000, 000

Mortgagor's Solicitor Fee

(Step 1 - For the first N1, 000 per N100 is N11. 25)

1, 000/100 x 11.25/1 = 112.5

(Step 2 - For the second and third N1, 000 per N100 is N11.25)

2, 000/100 x 11.25/1 = 225

(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N3.75)

17, 000/100 x 3.75/1 = 637.5

(Step 4 - For the reminder without limit per N100 is N2.50)

19, 980, 000/100 x 2.50/1 = 499, 500

(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the mortgagor's solicitor)

112.5 + 225 + 637.5 + 499, 500 = 500, 475

(Step 6 – Since the solicitor is entitle to half payment of what is due to the mortgagor's solicitor, the total value of Step 5 will be divided by 2)

500, 475/2 = ~~₦~~250, 237.50k

Mortgagee's Solicitor Fee

(Step 1 - For the first N1, 000 per N100 is N22.50)

1, 000/100 x 22.50/1 = 225

(Step 2 - For the second and third N1, 000 per N100 N22.60)

2, 000/100 x 22.60/1 = 452

(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N7.70)

17, 000/100 x 7.70/1 = 1, 309

(Step 4 - For the reminder without limit per N100 is N5.00)

19, 980, 000/100 x 5.00/1 = 999, 000

(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the mortgagee's solicitor)

225 + 452 + 1, 309 + 999, 000 = ₦1, 000, 986

Final Answer

The total amount due to the solicitor who acted for both the mortgagor and mortgagee will be an addition of the total value gotten under mortgagor's solicitor fee and mortgagee's solicitor's fee as follows:

N250, 237.50k + ₦1, 000, 986 = ₦1, 251, 223.50k

SALE OF LAND

Total Value of Transaction – N32, 000, 000

Vendor's Solicitor Fee

(Step 1 - For the first N1, 000 per N100 is N22.50)

1, 000/100 x 22.50/1 = 225

(Step 2 – For the second and third N1, 000 per N100 is N3.75)
2, 000/100 x 3.75/1 = 75

(Step 3 - For the fourth and each subsequent N1, 000 up to N20, 000 per N100 is N3.62)

17, 000/100 x 3.62 = 615.4

(Step 4 - For the reminder without limit per N100 is N2.80)

31, 980, 000/100 x 2.80/1 = 895, 440

(Step 5 – Addition of the total value of Step 1 – 4 to get what is due to the vendor's solicitor)

225 + 75 + 615.4 + 895, 440 = ₦896, 355.40k

Purchaser's Solicitor Fee

Since the scale for calculating what is due to the purchaser's solicitor is the same with that of the vendor's solicitor, the amount due to the purchaser's solicitor will also be ₦896, 355.40k. But considering the rule of computation, the solicitor will be entitle to only half of what is due to the purchaser's solicitor as follows:

₦896, 355.40k/2 = ₦448, 177.70k

Final Answer

The total amount due to the solicitor who acted for both the vendor and purchaser will be an addition of the total value gotten under vendor's solicitor fee and purchaser's solicitor's fee as follows:

₦896, 355.40k + ₦448, 177.70k = ₦1, 344, 533.10k

LEASE

Total Value of Transaction – N6, 000, 000

Lessor's Solicitor Fee

(Step 1 - Where the rent exceeds N1, 000 – N37.50 in respect of the first N100 of rent)

100/100 x 37.50/1 = 37.5

(Step 2 - Where the rent exceeds N1, 000 – N25 in respect of each N100 of rent or part thereof up to N1, 000)

900/100 x 25/1 = 225

(Step 3 - Where the rent exceeds N1, 000 - N12.50 in respect of each subsequent N100 or part thereof)

5, 999, 000/100 x 12.50/1 = 749, 875

(Step 4 – Addition of the total value of Step 1 – 3 to get what is due to the lessor's solicitor)

37.5 + 225 + 749, 875 = ₦750, 137.50k

Lessee's Solicitor Fee

(Step 1: The lessee's solicitor is entitle to half of what is due to the lessor's solicitor as follows:

₦750, 137.50k/2 = ₦375, 068.75k

(Step 2: However, since the solicitor acted for both lessor and lessee, the solicitor is entitle to half of what is due to the lessee's solicitor as follows:

₦375, 068.75k/2 = ₦187, 534.375k

Or it can be calculated as one-quarter (¼) of what is due to the lessor's solicitor as follows:

₦750, 137.50k/4 = ₦187, 534.375k

Final Answer

The total amount due to the solicitor who acted for both the lessor and lessee will be an addition of the total value gotten under lessor's solicitor fee and lessee's solicitor fee as follows:

₦750, 137.50k + ₦187, 534.375k = 937, 671.875 approximated as ₦937, 671.88k

(Week 18)

LEGAL PRACTITIONERS ACCOUNTS; LEGAL PRACTITIONERS ACCOUNTS RULES

INTRODUCTION

I. Background

The legal practitioners' account is guided/regulated by the *Legal Practitioners' Accounts Rules 1964* (LPAR) made by the General Council of the Bar also called the Bar Council, by virtue of *Section 20 of the Legal Practitioners' Act*. Note that the success or failure of any law firm is premised on a management of resources that comes to the firm. *Rule 23 LPAR* deals with exemption clauses (persons exempted from complying with the provisions of the rules) – persons in the Federal or State employment or in full time employment with statutory or local authorities. The LPAR 1964 provides for three types of accounts a legal practitioner is expected to keep, namely: Personal account, Clients' account, and Trust account. The applicable laws are LPA, LPAR 1964, LP (Remuneration for Legal Documentation and other Land Matters) Order, 1991, RPC, CFRN 1999 as amended, and Case Law.

II. Definition of Terms in the LPAR

Rule 2 LPAR, defines certain terms which include:

1. **Client:** persons on whose account the Legal Practitioner holds or receives client's money.
2. **Client's Money:** includes money held or received by a Legal Practitioner on account of a person for whom he is acting. Client's money shall not include trust money.
3. **Client Account**: a current or deposit account at a bank in the name of the Legal Practitioner, the title of which the word 'client' appears.
4. **Trust Money**: money held or received by Legal Practitioner which is not client money and which is subject to a trust of which the Legal Practitioner is a trustee whether or not he is solicitor trustee of the trust.
5. **Trust Bank Account:** a current or deposit account the title of which the word 'trustee' or 'executor' appears kept at a bank in the name of the trustees of the trust and kept solely for money subject to a particular trust of which the Legal Practitioner is a solicitor trustee (i.e. LP is one of the trustees).
6. **Solicitor Trustee**: a LP who is a sole trustee or who is a co-trustee with his partner, clerk or servant or with more than one of such persons.
7. **Controlled Trust**: a trust in which the LP is a sole trustee or co-trustee with one or more of his partners or his clerk or servant.
8. **Designated Account**: this is a deposit account at a bank in the name of the legal practitioner or his firm in the title of which the word "client" appears and which is designated by reference to the identity of the client or subject matter of the Account. Just like a client account, Section 21 LPA, protects a designated account against any inquiry in respect thereof. It is easier to identify and make claims to a designated account. A major advantage of a designated account over a client's account is that it is easy to apply the equitable doctrine of tracing to it because in addition to the name of the legal practitioner or that of his firm and the word "client", the name of the client or subject matter of the account also appears on the account, thus making identification easier in cases where there are more than one of such accounts.

III. Sources of Client's Money

1. **Litigation** – cost/settlement e.g. LP going to court on behalf of client to recover money owed on behalf of the client.
2. **Conveyancing work** e.g. purchase of land on behalf of client or client gives LP a particular property or estate to sell.
3. **Negotiation for compensation** e.g. compensation for personal injury.
4. **Executorships and trust** e.g. LP made a trustee and trust money may be paid/released to the LP.
5. **Investment management** e.g. buying and selling shares on behalf of their clients.
6. **Agency work** e.g. in FCT, lawyers act as estate agent managing blocks of shops, estates collecting rent from persons occupying the property.
7. **Miscellaneous funds**
8. **Fees on account** - money received in advance of legal work e.g. before carrying out the legal work, the money does not belong to the LP, as it is still regarded as client's money.
9. **Future professional services**

IV. Reasons/Objectives of Solicitors Account

The reasons for keeping the various books of accounts by a legal practitioner are as follows:

1. The necessity to keep client's money separate from the legal practitioner's own money.
2. To enable the legal practitioner assess the value of his practice at any given time.
3. To enable the legal practitioner know his debtors and creditors at a glance.
4. In the case of a Partnership, to enable each partner know the exact financial position of the partnership.
5. It makes it easy to assess the legal practitioner or partnership for taxation at the end of a financial year.

VII. Rules Governing Client's Money and Account

Generally, the Legal Practitioners Accounts Rules 1964 provide for:

1. The maintenance of a client's bank account separate from the legal practitioner's own bank account(s), and for banking of client's money;
2. The keeping of accounts containing particulars of amount received, held and paid on behalf of a client;
3. The keeping of accounts containing particulars of amount received, held and paid in the execution of a trust of which the legal practitioner is a solicitor – trustee; and
4. The General Council of the Bar is mandated to ascertain whether or not the Rules have been complied with.

TYPES OF ACCOUNTS

I. Client Account

A. General Rule

The general rule as found in *Rule 3 of the LPAR* states that all client's money must without delay, be paid into a client's account and must not be mixed with the legal practitioner's own money or paid into his account. Thus, the client's account is expressly different from the personal or office account of the legal practitioner. Note that a legal practitioner can have a minimum of one account as client's account, however if occasion demands, he can have as many client accounts as possible. Client's money is defined in *Rule 2 LPAR*, to exclude trust money and legal practitioner or a member of his firm's money.

B. Monies Payable into Clients Account

The monies payable into client's account are provided for under *Rule 4 LPAR* as follows:

1. Trust money.

2. Money belonging to the legal practitioner as may be necessary for the purpose of opening and maintaining the clients account.
3. Money to replace any money which the legal practitioner mistakenly or accidentally withdrew from the clients account.
4. Money collected by the legal practitioner on behalf of the client.
5. Any cheque or draft containing both client money and trust money which the client did not split, the lawyer can pay the lump sum into the client account pending when he splits it. See *Rule 4 LPAR 1964*.

C. Circumstances Where a Legal Practitioner May Put Non-Client's Money into Client Account

1. Trust money - circumstances where it may be paid into client's account e.g. LP to client A and LP creates a trust for A and assigns a particular amount of money to the trust. Before creating a separate trust account, the LP can pay the money given by A to the client's account. See *Rule 4(a) LPAR*.
2. A nominal sum belonging to the LP, which is required for the opening of or maintaining of the client's account e.g. no money in a particular account but know you will need the account in future, LP can pay his own money into the client account to maintain the account. As soon as money comes into the account from the client, LP should withdraw his own money from the account. See *Rule 4(b) LPAR*.
3. Money accidentally or mistakenly withdrawn from the client's account. See *Rule 4(c) LPAR*.
4. Cheque which includes client money and trust money/personal account. Cheque to be split and paid into the separate accounts. If cheque is/cannot be split, then pay first into client's account and then withdraw the amount for trust money and pay into trust account. See *Rule 4(d) LPAR*.
5. Money required to be split between client and trust account or between other accounts and withdraw the part meant for the trust and pay into trust account.

D. Instances where Clients Money are not payable into the Clients Account

There are exceptions under which the under mentioned monies would not be paid into clients account. They are provided for under *Rule 9 LPAR 1964* as follows:

1. Where the money is received by the legal practitioner in the form of cash, which, in the ordinary course of business, is immediately paid out in cash to the client or a third party.
2. Where the money is received by the legal practitioner in the form of a cheque or draft which, in the ordinary course of business, is endorsed either to the client or to a third party and is not passed to the legal practitioner through a bank account.
3. Money which the legal practitioner pays into a separate banking account opened or to be opened in the name of the client or of some other person nominated by the client.
4. Where the client expressly states, in writing, that it should not be paid into clients account.
5. Where the money received by the legal practitioner for the payment of a debt due to him from the client or for re-imbursement, which debt or re-imbursement the client has acknowledged in writing.

E. Withdrawal from Client Account

By *Rule 7 LPAR*, the following money can be withdrawn:

1. Money properly required for a payment to the client or on his behalf.

2. Money properly required for the payment of a debt due to the legal practitioner from the client or for re-imbursement, which debt or re-imbursement the client has acknowledged in writing.
3. Money withdrawn on client's authority; that is, when the client instructs in writing.
4. Money properly required for the payment of the legal practitioner's costs where a bill of charges has been delivered to the client and the client has been notified in writing that money held for him will be applied towards the satisfaction of such costs.
5. Trust money paid into clients account can be withdrawn and paid into trust account.
6. Money belonging to the legal practitioner which were used to open or maintain the clients account can be withdrawn.
7. Money paid into the clients account accidentally or by mistake can be withdrawn.

Rule 8 LPAR provides the procedure for withdrawing from clients account:

6. By cheque in the name of the legal practitioner.
7. By transfer to a bank account in the name of the legal practitioner.

II. Trust Account

A. General Rule

Rule 13 LPAR provides that all money be held by a legal practitioner as a solicitor-trustee other than money paid into a client account must be paid without delay into the trust bank account of the particular trust. Note that there can be just one client account for all clients of a legal practitioner; however, trust account will be more than one when other trusts are involved. That is, for every money held on trust, it must be in a separate trust account. Client's money should be paid into client account without delay.

B. Monies payable into Trust Account

By *Rule 14 LPAR*, money to be paid into trust account are:

1. Money held by him as solicitor-trustee.
2. Money subject to the particular trust.
3. Money belonging to the solicitor-trustee or co-trustee of his that may be necessary for the purpose of opening or maintaining the account.
4. Money to replace any sum which may have been withdrawn from the account by mistake or accident. See *Rule 14 LPAR*.

Generally, money held for a particular purpose, the deposit paid by purchaser to a vendor, solicitor as a stakeholder may be paid into the trust account. Aside from the money indicated, a legal practitioner is not to pay any other money into the trust account. See *Rule 15 LPA Rules*.

C. Withdrawal from Trust Account

By *Rule 16 LPAR*, the following may be withdrawn from a trust bank account:

1. Money properly required for a payment in the execution of a trust.
2. Money paid by the solicitor-trustee into a trust bank account for the purpose of opening or maintaining the account.
3. Money which may have been paid into the account by mistake or accident, thus it is to be transferred to client account.
4. Any other money authorised by the General Council of Bar (in writing).

Note that withdrawal of money from trust account is either by cheque or electronically.

BOOKS OF ACCOUNT

A. Concept

There are certain books of account which a legal practitioner is expected to keep. The rules provide for the keeping and maintaining of proper books of account to show all dealings with client's money and other moneys which pass through client's account. Importantly, all books, accounts and records which are required to be kept by the LPAR in respect of client's money, trust money and the legal practitioner's own money, must be preserved for at least 6 years from the date of the last entry. See *Rule 10(5) & 20(2) LPAR*. Note that a legal practitioner is expected to keep account book for his personal account, account book for client's money, account book for trust money. There is a difference between books of account and types of account. Book of account goes to the office and types of account go to the bank.

B. Inspection of Account

In order to ensure compliance with the Account Rules, the Bar Council is empowered to order an inspection of the accounts of a legal practitioner. This, it may do either:

1. On its own motion; or
2. On a written statement or request by any branch of NBA; or
3. On a written complaint lodged with the Bar Council by a third party, provided that there is a prima facie ground for complaint. Cost for inspection can be paid by the third party.

The Bar Council can investigate by appointing an accountant or requiring the legal practitioner to deliver to it certificate by an accountant in the prescribed form. When the legal practitioner is asked to submit his accounts to inspection, the following are to be submitted to the accountant appointed by the Bar Council.

1. Bank pass book
2. Statement of account
3. Books of account (cash book, journal, ledger)
4. Loose-leaf bank statements, vouchers.

The Bar Council which has the responsibility of enforcing a legal practitioner account is constituted as follows.

1. Attorney-General of the Federation, president of the Council.
2. Attorney-General of the state; and
3. Twenty members of the Nigerian Bar Association.

C. Reasons for Keeping Books of Accounts

1. The necessity and desirability of keeping client's money separated from the legal practitioner's own money both in bank and books kept by him.
2. It enables the legal practitioner to assess the value of his practice at any given time.
3. It enables him to know his debtors and creditors at a glance.
4. In the case of a partnership, it enables each partner to know the exact financial position of the partnership.
5. It makes for easy assessment of the firm's tax liability at the end of the financial year.
6. It helps the LP to know the amount belonging to a particular client at any given time (keeping proper cash books and ledger relating to dealing with each client since client account will have various clients' money in it)
7. Helps to differentiate between one client's money from another.

D. Double Entry Book Keeping

Book keeping means the receipt of something in monetary value and giving out of something in monetary value. Receiving is debit, giving is credit, assets are debts, liability is credit, debtors are assets (debit), creditors are liability (credit), capital is credit (liability). For every debit there must be a corresponding credit.

E. Classification of Transaction

Generally, entries or collections of transactions of a similar nature are classified together into an account. Transactions are classified as follows:

1. Personal Accounts: this is an account which stands in the name of an individual, partnership or company.
2. Impersonal Accounts:
   (a) Real Accounts – deals with property and material objects such as assets, etc.
   (b) Nominal Accounts – relates to record of items and expenses incurred in addition to income received, losses suffered and gains effected.

F. Types of Books of Account

There are four types of books of accounts and records: cash book, ledger, journal, records of bill of costs and notices sent to client. See *Rule 10(1) LPAR*.

1. Cash Book: The cash book is usually use in every law firm. The cash book may relate to the transaction of the lawyer in his office or it may relate to client account or trust account. There is also what we call the JOURNAL, which contains daily expenses. From journal, items are transferred to cash book and then to ledger. The structure of a cashbook is as follows:

(a) Heading: A cash book must be headed (will show the type of account) e.g. Fatima's cash book
(b) Date Column: The first column of the cash book is the date column – DATE.
(c) Particulars Column: The second column consist of the particulars – PARTICULARS.
(d) Debit Column: The third column is the debit column – DEBIT.
(e) Credit Column: The fourth column is the credit column – CREDIT.

The rules guiding entries into the cash book are as follows:

(a) All monies received must be debited i.e. all incomes.
(b) All expenses are credited i.e. all the money spent or designated to be spent are posted in the credit column.
(c) The balance carried down will be entered under PARTICULARS but its value will be posted under the side with the lesser value.
(d) The balance carried down is the difference between the total sum on the debit side and the total sum on the credit side.
(e) The balance brought down is the last entry in the cash book and it is also written under PARTICULARS but the value is written down under both the debit and credit side.

The figure must be the same. If the figures are different that means the account is not balanced.

JOEL ADAMU CASH BOOK FOR NOVEMBER 2018

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
2-11-2018	Capital	2, 000, 000	
3-11-2018	Capital	450, 000	
5-11-2018	Capital	500, 000	
17-11-2018	Rent		500, 000
17-11-2018	Laws		150, 000
17-11-2018	Furniture		750, 000
17-11-2018	Personal Bank Account		200, 000
17-11-2018	Client Bank Account		200, 000
30-11-2018	Motor Vehicle		900, 000

		2, 950, 000	2, 700, 000
2-12-2018	Bal C/D		250, 000
2-12-2018	Bal B/D	2, 950, 000	2, 950, 000

2. **Ledger:** The ledger contains entries of individual items in a cash book. The legal practitioner's transactions contained in the cash book are categorised into groups and each group of transaction is entered in a separate ledger account. The corresponding book to cash book is the ledger account. In accounting, always start with cash book before ledger. The principle of accounting is still that every debit will have a corresponding credit. Receiving is debit and giving is credit.

   The structure of the ledger is as follows:

   (a) Date Column: The first column of the ledger is the date.
   (b) Particulars Column: The second column is PARTICULARS.
   (c) Debit Column: The third column is Debit.
   (d) Credit Column: The fourth column Credit.

   The rules guiding entries into the ledger are as follows:

   (a) Each transaction has a separate ledger account unlike cashbooks.
   (b) All incoming funds are to be credited i.e. money received.
   (c) All outgoing funds are be debited i.e. money spent.

JOEL ADAMU LEDGER ACCOUNT FOR NOVEMBER 2018

CAPITAL ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
2-11-2018	Cash		2, 000, 000
3-11-2018	Cash		450, 000
5-11-2018	Cash		500, 000
		Bal B/D	2, 950, 000

RENT ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
17-11-2018	Cash	500, 000	

LAWS OF FEDERATION ACCOUNTS

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
17-11-2018	Cash	150, 000	

FURNITURE ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
17-11-2018	Cash	750, 000	

PERSONAL ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
17-11-2018	Cash	200, 000	

CLIENT BANK ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
17-11-2018	Cash	200, 000	

MOTOR VEHICLE ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
30-11-2018	Cash	900, 000	

KILLI AND ASSOCIATES
Legal Practitioners, Solicitors & Arbitrators
1 Sanusi Fafunwa Street, Victoria Island
07064793812
(Knanchwat2020@yahoo.com)

Our Ref: KODO/23/15

The Executive Director,
Credit and Loans,
Zenith Bank Plc,
25, Atim Street,
Victoria Island,
Lagos.

Dear Sir,

APPLICATION FOR LOAN

We refer to the above subject matter. We are the solicitors of Alhaji Otunba of 12, Sabo Crescent Benin City, Edo State (our client).

We are applying on behalf of Alhaji Otunba for the loan of ₦20, 000, 000 (Twenty million naira) from your bank. Alhaji Ozor Otunba intends using a six bedroom bungalow at 34, Yaba Road, Surulere, Lagos valued at ₦39, 000, 000 (Thirty-nine million naira) as security for the loan.

Please, find attached the following documents for further investigation:

1. A copy of land certificate;
2. Letter of consent; and
3. An estate valuer's report.

Thank you.

Yours faithfully,
(Signature)
Killi Nancwat
For: Killi & Associates

BILL OF CHARGES

A legal practitioner has a right to be remunerated for work done/services rendered by him. See *Rule 48 RPC*. However, legal practitioner is enjoined not to charge excessive fees. A bill is clearly excessive after it has been taxed and it turns out that it does not commensurate with work done. Generally in legal practice, there is no uniform way of charging; however legal practice can be divided into three parts.

1. Legal documentation - land matters.
2. Contentious business, litigation, arbitration.
3. Non contentious business corporate practice.

It is only legal documentation that is regulated by *Legal Practitioner (Remuneration for Legal Documentation and Other Land Matters) Order 1991*. The order is divided into Scale I, II, (for non-contentious matters) and III (Contentious matters). For contentious work, the following principles found in Scale III of the order can be a guide.

1. The complexity of the matter or the difficulty or novelty of the question raised.
2. The skill, labour, specialized knowledge and responsibility involved on the part of the legal practitioner.
3. The number and importance of the documents prepared or perused, without regard to length
4. The time expended by the legal practitioner in the business
5. The place where and the circumstances in which the business or a part thereof is transacted
6. The amount of money or value of property involved; and
7. The importance attached to the business by the client.

The conditions to be fulfilled in drafting charges are:

1. It must be in writing
2. Name of the client
3. Subject matter (of litigation, name of parties, and court)
4. Charges and particularisation of charges
5. Date and signature of legal practitioner
6. Date that principal item were incurred
7. Particularisation of principal items.

KILLI AND ASSOCIATES
Legal Practitioners, Solicitors & Arbitrators
1 Sanusi Fafunwa Street, Victoria Island
07064793812
(Knanchwat2020@yahoo.com)

Our Ref: ADC/001 10th March, 2018

Mr Joel Adamu
7, Ikoyi Road,
Ikoyi, Lagos

ATTENTION: MR JOEL ADAMU

BILL OF CHARGES ON MR JOEL ADAMU v. AGRICULTURAL BANK LTD SUIT NO /LSHC/20/2012/7 HIGH COURT OF LAGOS STATE

Nature of professional service: Litigation

Charges and particularisation of charges

Date	Particulars	Amount (₦)
21-03-2017	Drafting and filing processes	100, 000
27-03-2017	Argument against preliminary objections	100, 000
30-03-2017	Interviewing of two witnesses	50, 000
21-02-2017 to 30-02-2017	Appearances at court for 10 times (₦50, 000 per appearance)	500, 000
27-02-2017 to 30-02-2018	Concluding of trial till judgment	700, 000
	TOTAL	1, 450, 000

Dated this _____day of_____2013

Sign_____

Killi Nancwat

For: Killi & Associates

SCENARIO

Miss Bukky's was enrolled as a solicitor of the Supreme Court of Nigeria on 31st August, 2004.

On the 1st day of September, 2004 her parents gave her N38, 000 cash to enable her set up private practice in Lagos. On 2nd September, 2004, Bukky paid N2, 400 being a year's rent for office accommodation to one Mr. John, the Landlord of the Premises. On 3rd September, 2004 she bought office furniture worth N1, 500. She also bought a second hand electric typewriter machine for N5, 000. She bought a stationaries worth N800 and practice books to the value of N5, 000, all items were paid for in cash. On 4th September, 2004 she opened a current account with the New Nigerian Bank Ltd with the sum of N1, 000.

In furtherance of the above, on 5th September, 2004 she bought a brand new Peugeot 505 SR at a cost of N12, 000 to facilitate her movement during the course of her practice, and paid insurance premium of N1, 500 for comprehensive insurance to the Great Nigeria Insurance Co. Ltd; she kept the sum of N3, 000 in her office safe for petty cash disbursements. Draft Bukky's Cashbook Account.

BUKKY'S CASH BOOK FOR SEPTEMBER 2004

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
1-9-2004	Capital	38, 000	
2-9-2004	Rent		2, 400
3-9-2004	Furniture		1, 500
3-9-2004	Typewriter		5, 000
3-9-2004	Stationeries		800
3-9-2004	Practice Books		5, 000
4-9-2004	Current A/c		1, 000
5-9-2004	Peugeot Car		12, 000
5-9-2004	Insurance Premium		900, 000
5-9-2004	Petty Cash		3, 000

		38, 000	32, 200
30-9-2004	Balance C/D		5, 800
30-9-2004	Balance B/D	38, 000	38, 000

BUKKY'S LEDGER ACCOUNT FOR SEPTEMBER, 2004

CAPITAL ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
1-9-2004	Cash		38, 000

RENT ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
2-9-2004	Cash	2, 400	

OFFICE FURNITURE ACCOUNTS

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
3-9-2004	Cash	1, 500	

TYPEWRITER ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
3-9-2004	Cash	5, 000	

STATIONERIES ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
3-9-2004	Cash	800	

PRACTICE BOOKS ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
3-9-2004	Cash	5, 000	

CURRENT BANK ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
4-9-2004	Cash	1, 000	

VEHICLE ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
5-9-2004	Cash	12, 000	

INSURANCE PREMIUM ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
5-9-2004	Cash	1, 500	

IMPREST/PETTY CASH ACCOUNT

DATE	PARTICULARS	AMOUNT DR ₦	AMOUNT CR ₦
5-9-2004	Cash	3, 000	