

A Conceptual Analysis of the Discipline of Lawyers in Nigeria: Key to the Development of the Profession

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Abstract: The legal profession is a noble profession. It is highly regulated, as such, there are several mechanisms put in place to ensure discipline in the legal profession. There are several bodies created by the Legal Practitioners Act¹ to ensure discipline in the profession. This paper analyzes the various regulations and disciplinary mechanisms of legal practitioners in Nigeria. This includes, the various regulatory bodies, the conducts that attracts discipline, the disciplinary procedure and the various sanctions that can be imposed upon liability and draw a conclusion that discipline in the legal profession is disjointed and inadequate, aside the inefficiency created because of the overlapping roles of the regulatory bodies. The paper concludes that the present disciplinary mechanisms need overhauling.

Keywords: Analysis, Discipline, Lawyers, Nigeria, Development, Profession.

INTRODUCTION

Discipline can be defined as the control that is gained by requiring that rules or orders be obeyed and punishing bad behavior, a way of behaving that shows a willingness to obey rule or order and behavior that is judged by how well it follows a set of rules [²]. Discipline is important in any organization, group or body, because it regulates the behavior of people, and the fear of sanctions often keep people under control. The importance of discipline cannot be overemphasized as the nature of the profession itself calls for regulation and discipline. The globalization of legal practice with its attendant liberalization has necessitated the need to strengthen discipline in the legal profession in order to maintain the highest standard of legal practice in Nigeria.

In the recent times, the profession has witnessed escalating reports of gross professional misconduct with both the very senior and the younger members of the bar being the culprits. Violation of Rules of Professional Conduct is not restricted to the new entrants alone but involves the very senior members of the Bar as well. According to Ali, the decline in the standard of practice constitutes a threat to the future of legal practice in Nigeria [³]. In this paper, the various mechanisms put in place to ensure discipline is analyzed and the procedure for discipline as well as the effect of the existing mechanism. The paper elucidates on the need to strengthen discipline of lawyers in the legal profession in order to restore investors' and the larger society in the profession.

¹Cap. L11, Laws of the Federation of Nigeria, 2004. The Act is one of the Laws that regulate the Legal Profession in Nigeria. It is an Act of parliament.

² Webster Dictionary.

³ Yusuf Ali (SAN), 'The future of Legal Practice in Nigeria: Regulation and Discipline in the Legal Profession,' being a paper presented at the 8th Annual Business Luncheon of S.P Ajibade & Co., Held in Lagos, on the 26th November, 2015.

BRIEF HISTORY OF LEGAL PROFESSION IN NIGERIA

The legal profession in Nigeria evolved through several processes over the years. We will highlight a brief history of the legal profession in Nigeria. Between the period of 1876 to 1914, in compliance with the Supreme Court Ordinance of 1876 [4], three classes of persons were allowed to practice law in Nigeria namely, the professionally qualified legal practitioners which was made up of those who have been admitted to the Bar or admitted as solicitors in England, Scotland and Ireland and were automatically enrolled in the Supreme Court of Nigeria as legal practitioners in Nigeria; those not professionally qualified, which consisted of those who were admitted as solicitors of the Supreme Court having served five years continuously in the office of a practicing barrister or solicitor residing within jurisdiction of the court and has passed the examination on the principles and practice of law administered by the Chief Justice [5]. The third category were referred to as local attorneys which was made up of persons adjudged to be fit and proper in the society with basic academic qualifications that sat and passed the examination on the general knowledge of law. They were allowed to practice law for an initial period of six months and renewable for another period of six months [6].

The second phase of the development of the legal profession in Nigeria saw legal practice being restricted to the professionally qualified lawyers. This was under the period 1914 to 1962. The professionally qualified lawyers were categorized into two, namely Barristers and Solicitors. The Barristers were those who had joined one of the four Inns of Court in England, which were, Middle Temple, Inner Temple, Lincoln's inn and Gray's inn. These four inns constitute the English Council of Legal Education and arranged lectures for students who had to also keep 12 dining terms. It was not compulsory to be a graduate however those who had law degrees with 2nd class honours were exempted from taking the Bar Part One Examination. In Nigeria, those who fall into this category were called graduate barristers and earned enhanced salaries [7].

The solicitors on the other were required to be articulated to a firm of solicitors in England for a minimum

period of four years. Educational qualifications was West African School Certificate, during the period of article a candidate must pass the Solicitors' Part One and Solicitors' Final examinations organised by the Law Society which is the governing body for solicitors. A Law Degree was also not a requirement, however, those with law degree, spent two years under articleship instead of four years and also earned enhanced salaries like graduate barristers [8].

It was not long before it became apparent that there were lots of problems associated with the legal practice in Nigeria as most lawyers practicing then were not law graduates but had only West African School Certificates before being called to bar and were ill prepared for the challenges associated with the legal practice. Another challenge is that most lawyers practicing in Nigeria were trained either as Solicitors or Barristers but practiced as both because of the fused nature of legal practice in Nigeria.

This situation necessitated a review of the legal practice system in Nigeria. In furtherance of the above, a committee was set up and named the Unsworth's Committee in April 1959 which was chaired by the then Attorney-General of the Federation by name E.I.G Unsworth, the term of reference of the committee was to consider and make recommendations for the future of legal education and admission to practice law, the right of audience before the courts and making of reciprocal arrangement. The committee's report was published in October that same year and most of the recommendations of the committee were implemented particularly that of establishing a system of legal education for Nigeria. This led to the enactments of two legislations on legal education and practice of law; the Legal Education Act, 1962 and Legal Practitioners Act, 1962. The Nigerian Law School was established under the Legal Education Act in 1962.

Under the Legal Practitioners' Act 1962 the following persons were entitled to practice law in Nigeria. Those entitled to practice generally [9] made up of those whose name is on the Roll of legal practitioners kept by the Chief Registrar of the Supreme court of Nigeria having being called to the Bar by the body of Benchers [10] and has produced a certificate of call to the Bar to the Registrar of the Supreme Court [11]. Those entitled to practice by virtue of office [12], which

⁴ This was the first statute which regularized the legal profession in Nigeria. This statute stated the qualifications of legal practitioners in Nigeria and fused the legal profession in Nigeria.

⁵ Orojo J.O., *Professional Conduct of Legal Practitioners in Nigeria* (2008) 10-11

⁶ Sections 71-74 of the Supreme Court Ordinance, 1876

⁷ Adegoke et.al, *Professional Responsibilities and Lawyering Skills in Nigeria* (University of Jos Press, 2014) 18

⁸ Nigerian Law School Course Handbook on Professional Ethics, 2007/2008 Edition

⁹ Section 24 of the Legal Practitioners' Act 1962, later Cap 207, Laws of the Federation of Nigeria, now Cap L11 vol. 8 LFN, 2004.

¹⁰ Section 2(1) of the Legal Practitioners Act 2004

¹¹ Section 7(1) of the Legal practitioners' Act 2004

¹² *Ibid*

include persons whose office requires them to practice the legal profession, for instance, the Attorney- General, Solicitor- General, Director of Public Prosecutions [13]. Lastly, those entitled to practice in particular proceedings, i.e. by warrant. This category of persons falls under those whom upon application and approval of the Chief Justice of Nigeria are granted warrant to practice in Nigerian courts. For a person to be qualified he must show that he is from a jurisdiction whose legal system is similar to that of Nigeria, but they can only be permitted to practice for the purpose of a particular proceeding and not generally [14].

REGULATORY BODIES IN THE LEGAL PROFESSION

Discipline cannot be discussed without mentioning regulation, regulations give birth to discipline it is the violation of regulations rules or laws that often lead to discipline. Under this sub-heading, the writer shall do an overview of the regulatory bodies of the legal profession in Nigeria.

There are several bodies established to control and regulate the legal profession in Nigeria, we cannot discuss the regulation of legal profession in Nigeria without taking a cursory look at these bodies and their regulatory roles.

Council of Legal Education

This body is saddled with the responsibility of training aspirants to the Nigerian Bar both in learning, character and in relation to the culture of the profession. This task is carried out through the Nigerian Law School, which is the institution established to train aspirants to the bar. The Council of Legal Education is also responsible for the continuing education of lawyers [15].

Body of Benchers

This is the highest body in the legal profession in Nigeria. The body is saddled with the responsibility of maintaining the traditional values of the profession. They prescribed the keeping of 3 dining terms, impeccable character and the sponsorship of the aspirants to the Nigerian Bar by two members of the body, who usually seize the opportunity to interact with them and also tutor them on the values of the profession. Members of the body of benchers also attend dinners organised by aspirants to the bar and speak to them on the need to uphold the high standard in the legal profession [16].

Legal Practitioners' Privileges Committee

This committee confers the privilege of the rank of Senior Advocate of Nigeria on deserving legal practitioners who must have achieved distinction in the legal profession through learning, practice of law and character. The committee also prescribes rules guiding the conferment of the prestigious title of Senior Advocate of Nigeria [17].

Legal Practitioners' Remuneration Committee

This committee is responsible for the general regulation of charges of legal practitioners in Nigeria. They also prescribe rules and regulations relating to charges of legal practitioners in Nigeria [18].

Legal Practitioners' Disciplinary Committee

This committee is charged with the duty of looking into alleged misconduct of legal practitioners in Nigeria and prescribing the necessary punishment where the legal practitioner in question is found liable [19]. It is one of the major disciplinary organs of the legal profession in Nigeria [20]. The Legal Practitioners' Disciplinary Committee is made of the following persons:

- a) a Chairman who shall not be either the Chief Justice of Nigeria or a Justice of the Supreme Court;
- b) two Justices of the Court of appeal, one of whom shall be the President of the Court of Appeal;
- c) two Chief Judges;
- d) two Attorneys-General, who shall be either the Attorney – General of the Federation and the Attorney-General of a State or two State Attorneys-General;
- e) four members of, the association who are not connected with either the investigation of a complaint or the decision by the association to present a complaint against a legal practitioner for determination by the disciplinary committee.

Legal practitioners and punishment thereof saddle the committee of Legal Practitioners Disciplinary Committee with the responsibility of considering alleged misbehavior affecting the legal profession [21].

Section 10 of the Legal Practitioners Act establishes the LPDC. The major role of the LPDC is to consider and determine cases where it is alleged that a

¹³ See generally, the Legal Practitioners' Act (Entitlement to practice as Barristers and Solicitors) Federal Officers Order 1992.

¹⁴Op. cit.

¹⁵Legal Education (Consolidation) Act 1962, Now Cap L10 LFN 2004

¹⁶Generally, Section 3(1) Legal Practitioners' Act, 2004

¹⁷ Section 5 of the Legal Practitioners' Act

¹⁸ The Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1990.

¹⁹Section 11 Legal Practitioners' Act.

²⁰ Akinola, O.B., Principles of Law in Practice (Professional Ethics & Skills) 2nd Edition (St. Paul's Publishing House, Ibadan, Oyo State) 39.

²¹ Ibid. at p 40

person whose name is on the Roll has misconducted himself in a professional respect as such or should for any other reason be the subject of the proceedings under the Act [22].

The LPDC is a very vital body considering the role it plays in ensuring the discipline of erring legal practitioners in Nigeria. Whether the Committee has been able to effectively discharge this duty is one of the points for discussion in this paper.

General Council of the Bar [23]

This body is saddled with the responsibility of managing the affairs of the Nigerian Bar Association. This is done through the making and revision of rules to regulate the conduct of Legal practitioners in Nigeria.

Nigerian Bar Association

This is the umbrella body of all the lawyers in Nigeria. It is saddled with the responsibility of maintaining the honour and independence of the Bar and the defence of the Bar in relation to the Judiciary and other arms of government. It is responsible for the maintenance of the highest standards of professional conduct, etiquette and discipline, promotion of good relations among members, the promotion of legal education and development of the society. The body also serves as a pressure group [24].

Supreme Court of Nigeria

Another regulatory body vested with the disciplinary responsibility in Nigeria is the Supreme Court. Section 13 of the Legal Practitioners Act, provides that where it appears to it that that a person whose name is on the roll has been guilty of infamous conduct in any respect with regards to any matter of which the court or any profession body or other court of Nigeria has been seized, it may if it thinks fit, after hearing such other person as the court considers appropriate, direct appropriate disciplinary measures as contained in section 22 of the Act, and cause the notice to be published in a federal gazette [25].

²² Asein, J.O., *Introduction to Legal System*, 2nd Edition (Ababa Press Ltd, Surulere, 2005) 207.

²³ The Rules of professional Conduct, 2007 was made by the General Council of the Bar to regulate the conduct of lawyers in Nigeria.

²⁴ The Nigerian Bar Association is not a creation of statute unlike other regulatory bodies, however the body is registered as a trustee under Part C of the Companies and Allied Matters Act, 2004. It is a juristic personality.

²⁵ Ogwezzy, M.C., 'The Legal Practitioners Act: A Code for Regulating the Conduct of Lawyers in Nigeria', *AGORA International Journal of Juridical Sciences*, www.juridicaljournal.univagora.ro. accessed on 24th May, 2017.

LEGAL FRAMEWORK FOR THE LEGAL PROFESSION IN NIGERIA

Various laws, rules and subsidiary legislations also regulate the Legal profession. This paper will however, focus on two major laws namely, the Legal Practitioners' Act 2004 and the Rules of Professional Conduct, 2007.

The Legal Practitioners' Act, 2004

This Act was enacted as part of the implementation of the recommendations of the Unsworth Committee of 1959. It came into operation in 1962, and was later renamed the Legal practitioners' Act, Cap 207, Laws of the Federation of Nigeria, 1999 and currently Cap L11 Vol. 8 LFN, 2004. The Act is made up of a total of 24 Sections dealing with different aspects of the legal profession. The Legal practitioner Act Provides specifically for the Establishment of the Legal Practitioners Disciplinary Committee charged with the responsibility of discipline erring members of the profession.

Rules of Professional Conduct for Legal Practitioners 2007 [26]

One of the recommendations of the Unsworth Committee was that Rules should be made to regulate the legal profession in Nigeria. Pursuant to that, on 25 December, 1967, the General Council of the Bar made rules for Legal Practitioners in Nigeria. The General Council of the Bar is made up of the Attorney – General of the Federation and some members of the Bar.

In 1979 the rule was amended and in 2007 the current Rule was released by the General Council of the Bar under the chairmanship of Chief Bayo Ojo, the then Attorney General of the Federation. The provisions in the older versions of the Rules and the Current one are similar except for some differences. For instance, rules on advertising and soliciting.

It consists of a total of seven parts and fifty-seven rules. The Rules provides for wide range of issues ranging from the duties of Lawyers in Nigeria to their clients, the profession, the state and the court. The Rules also provides for conducts, which Legal Practitioners are prohibited from engaging in.

The Legal Status of the Rules of Professional Conduct

The fact that it is not an Act of the National Assembly often raises issues as to its legal status. It is worthy to note that even though it is not an enactment of the National Assembly the RPC is a subsidiary legislation, made pursuant to Section 12(4) of the LPA

²⁶ Rules of professional Conduct for Legal practitioners, 2007.

[²⁷]. Although, the main law is the Legal Practitioners Act, both laws are enforceable and are binding on all legal practitioners in Nigeria [²⁸].

In addition to the two main regulatory laws already highlighted above, there are other laws and rules which regulate the legal profession in Nigeria, for instance, The Legal Practitioners Account Rules of 1964, Legal Practitioners Disciplinary Rules 2006 e.t.c.

DUTIES IMPOSED ON LEGAL PRACTITIONERS IN NIGERIA.

There is no way we can talk about professional discipline without discussing the various professional duties that are imposed by the Rules of professional conduct 2007 and the Legal practitioners Act [²⁹]. The duties are numerous and the violation of any of the duty amount to professional misconduct [³⁰], which is a misconduct that is for trial before the Legal Practitioners Disciplinary Committee.

Duties of a Lawyer to the Court

The lawyer is regarded first and foremost as an officer in the temple of justice before being an advocate representing his client. The importance of the duty of Lawyers to the court, as an officer in the temple of justice, is made clearer by the fact that it is set out by the rule in the RPC, which imposes on a lawyer, the duty to maintain towards the Court respectful attitude at all times. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar [³¹].

Accordingly, a lawyer should always maintain a respectful attitude to the court in words and deed [³²]. Respect entails courtroom decorum, obedience and honour, humility and courtesy to the court [³³]. A Lawyer must be properly dressed and maintain the correct decorum in Court [³⁴] and refrain from doing anything, or conducting himself in such a way as to give the impression that his act or conduct is calculated to gain or has the appearance of gaining special personal consideration or favour from a judge [³⁵].

Likewise, the conduct of a lawyer before the Court should be characterized by candour and fairness

no matter the situation [³⁶]. A lawyer should inform the presiding judge of subsisting decided cases even where the decision is against his client. The lawyer is however entitled to distinguish any such case. A lawyer should not offer evidence that he knows the court would reject, nor should he promote a cause, or file a pleading or other document, which to his knowledge is false, or which is intended to delay the trial [³⁷].

In the same vein, the primary duty of a prosecutor is not to secure a conviction at all costs but to see that justice is done [³⁸]. Hence, a prosecutor must not suppress facts or witnesses capable of establishing the innocence of the accused [³⁹]. He shall make timely disclosure to the defendant or his counsel, of the existence of evidence or authorities, that may negate the guilt of the accused, mitigate the degree of the offence, or reduce the punishment. He shall not institute a criminal charge, if he knows it is not supported by probable evidence [⁴⁰]. A prosecuting counsel should not be a persecutor but a prosecutor; he should not go to any length to secure conviction at all cost but to present his case truthfully and candidly. Where a lawyer undertakes to defend a person accused of a crime, he shall exert himself, by all fair and honourable means, to put before the court, all matters that are necessary in the interest of justice. A confidential disclosure of guilt alone does not require a withdrawal from the case. But if the accused that has confessed, insists that he shall give evidence (of innocence) or call positive evidence to establish, falsely, his innocence, the lawyer must refuse to represent him [⁴¹]. However, there is no impropriety in fighting to show that the prosecution's evidence has fallen short of proof [⁴²].

Unfortunately, the legal profession has witnessed greater failure in compliance with the above mentioned rules of ethics in Nigeria. From experience, it is apparent that lawyers, especially those who feel they have a bad case, engage in various unethical conducts in order to win. While some maintain unhealthy social contact with judges in a bid to gain favours, others engage in outright bribery. Others still, resort to filing of frivolous applications and seeking for unnecessary adjournments in a bid to delay the cause of justice, in the hope that the other party will be frustrated and eventually abandon the case. The issue of proper dressing appears to be going towards gradual extinction with the rate of flagrant violations that we witness

²⁷Op.cit

²⁸*Akintokun v. LPDC* (2014) 13 NWLR (Part 1423) 1

²⁹Cap 207, Laws of the Federation of Nigeria, now Cap L11 Vol. 8 LFN, 2004.

³⁰Rule 55 of the Rules of Professional Conduct, 2007.

³¹Rule I of the Rules of Professional Conduct 2007 (hereinafter referred to as the RPC)

³²Rule 31 of the RPC

³³Akinola, *Op.cit.* at page 97

³⁴Rule 36 of the RPC

³⁵Rule 34 of the RPC

³⁶Rule 32 of the RPC

³⁷Rule 4 of the RPC

³⁸Rule 37 (4) of the RPC

³⁹Rule 37 (6) of the RPC

⁴⁰Rule 37 (5)

⁴¹Rule 15 (3) (f)

⁴²Rule 37 (3) of the RPC

nowadays [43].

Duty of Lawyers to the Client

The lawyer has a duty to accept any brief in any area in which he practices subject to payment of proper professional fees. However, counsel is not absolved from bringing questionable actions [44]. Besides, a lawyer shall not do any act whereby for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client [45]. The lawyer is also under obligation to disclose at the time of retainer, conflicting interest, including any interest in or close connection with any person or the subject of retainer, which might influence the client in the selection of counsel. In some cases of conflicting interest; the brief must be refused [46].

Likewise, a lawyer should accept no compensations, commission, rebates or other advantages from a person against whom he has been retained without the knowledge and consent of that person after full disclosure [47]. Where a lawyer collects money for his client, or is in a position to deliver property on behalf of his client, he shall promptly report and account for it and shall not mix such money or property with or use it as his own. He can only deal with such money or property in accordance with his instructions [48].

Furthermore, a lawyer should not buy his client's property and at the same time, act as solicitor in the sale. He should disclose his interest to his client; ask him to retain another solicitor for the transaction and ensure that the price paid is fair. A lawyer must equally maintain separate bank accounts for keeping clients' money [49] and should make no withdrawal from it unless permitted by the Rules [50]. A lawyer who breaches this provision could have his name struck off the roll even though there has been no criminal trial or conviction [51].

⁴³Yusuf Ali SAN, *The Future of Legal Practice in Nigeria: Regulation and Discipline in the Legal Profession*, A paper presented at the 8th Annual Business Luncheon of S.P A Ajibade & co., Held in Lagos, on 26th November, 2015.

⁴⁴See Rule 24 of the RPC

⁴⁵See Rule 23 of the RPC. See also *NBA v. Kalu* BB/LPDC/124 and *NBA v. Ahembe* BB/LPDC/116

⁴⁶See Rule 17 of the RPC

⁴⁷See Rule 54 of the RPC.

⁴⁸See Rule 23 of the RPC. See *NBA v. Eseyin* BB/LPDC/114

⁴⁹Rule 3 of the Legal Practitioners Account Rules, 1964.

⁵⁰Rule 7 of Legal Practitioners Account Rules, 1964

⁵¹See Rule 20 of the RPC

This is one rule that we are yet to give teeth to in the disciplinary machinery of the legal profession in Nigeria. The logic of the Rule under consideration is to ensure the integrity of the lawyer that client's money or property is safe with him. Hence, some may spend the money and ensure that it is refunded when demanded. It is our view that it is not enough to repay clients' money when requested, but you must have the discipline and integrity to properly keep such money. In other climes, spending client's money is a serious act of misconduct. That is the expectation of our Rules, but that is not how we have been implementing it in Nigeria [52].

Relationship with other lawyers

Lawyers are to treat one another with respect, fairness, consideration and dignity and shall not allow any ill feeling between opposing clients to influence their conduct and demeanour towards one another [53]. Lawyers should also adhere strictly to all express promises to and agreements with each other, whether oral, in writing, or implied by the circumstances or local customs, as well as avoid sharp practices [54]. No member of the Bar irrespective of his rank or title shall regard himself as superior or inferior to any other member. Denigration of other members of the profession is infamous conduct, punishable by the LPDC [55].

It is indeed a bounden duty on lawyers to respect each other and not to denigrate themselves in order to achieve any advantage, which appears to be prevalent now.

ACTS CONSIDERED TO BE PROFESSIONAL MISCONDUCT

Misconduct in the legal profession is either statutory misconduct or non-statutory misconduct. Statutory misconduct is a breach of a duty or prohibition imposed by statutes or rules made under authority conferred by statute. Non-statutory misconduct on the other hand, is the conduct which the court or the Disciplinary Committee has held to be conduct unbecoming a solicitor or advocate as an officer of the Supreme Court, and a member of an honourable profession [56].

The Legal Practitioners' Act, 2004 makes

⁵²Yusuf Ali SAN, *Op.cit*

⁵³See Rule 26 of the RPC

⁵⁴See Rule 27 of the RPC

⁵⁵See Rule 38 of the RPC

⁵⁶Sir Thomas-Lund, C.B.E, 'A Guide to the Professional Conduct and Etiquette of Solicitors' (Law Society, 1960) 2. Cited in Hambali, Y.D.U, *Professional Ethics and Discipline at the Bar, Legal Ethics Skills and Ethics in Nigeria* in honour of Chief Babatunde Abiodun Ibronke, SAN. Edited by Kelvin Nwosu, Pg. 194.

copious provisions on conducts that are considered to be professional misconducts. What constitute misconduct in a professional respect will differ from one profession to another and from one circumstance to another. There are four types of professional misconducts for which a Legal Practitioner can be duly punished and sanctioned if found guilty. These are:

Infamous conduct in a professional respect: [57]

What constitutes 'infamous conduct' usually depends upon the norms of each profession and the facts of each case should be considered.

Section 12 (1) of the Legal Practitioners Act provides that "where a person whose name is on the roll is adjudged by the Disciplinary Committee to be guilty of infamous conduct in any professional respect." Accordingly, breach of any of the RPC could be held to constitute infamous conduct in a professional respect [58]. But the infamous conduct must be a serious infraction of acceptable standard of behaviour or ethics of the profession [59]. Where an infamous act is not done in a professional respect, it would not come within the provision of Section 11 (1) (a) LPA. But it may come within the provisions of Section 11(2) [60].

It is worthy of note that Infamous conduct is not defined in the Act, however, under the English case of *Allison v General Council of Medical Education and Registration* [61] the phrase was defined to mean

When a medical man in the pursuit of his profession has done something with regard to which would be reasonably regarded as disgraceful or dishonorable by his professional brethren of good repute and competency, then it is open to the General Medical Council to say he has been guilty of infamous conduct in a professional respect.

What constitute infamous conduct in professional respect depends largely on the profession and its ethics. In the legal profession, embezzling client money for instance is an infamous conduct as well as divulging client information with respect to a brief and then using the information to the advantage of the legal practitioner is infamous conduct [62].

⁵⁷See Section 12 (1) (a) of the LPA

⁵⁸See *Onitiri v. Fadipe* Charge No. LPDC/IP/82 decided by LPDC in 1991

⁵⁹ See *Re: A Solicitor Exparte Incorporated Law Society* (1894) 1QB 254; *M.D.P.T. v. Okonkwo* (2001) 7 NWLR (Pt 711) 206

⁶⁰See *Re. Idowu Legal Practitioner* (1971) 1 ALL NLR 126 and *In the matter of Thomas James Wallace* (1886) 16 ER 26

⁶¹ (1894) 1 Q.B .D 750

⁶² O.B Akinola, op. cit. at 43.

According to Yusuf Ali SAN, there is need to expand this position to accommodate conducts that are becoming more rampant among lawyers. For instance frivolous appeals and applications are being filed on regular basis on settled issues and this will eventually lead to the congestion of our courts. This attitude ought to be regarded as a variant of misconduct, which should be sanctioned with at least warning in the first instance and then stiffer punishment afterwards [63]. Any behavior that is considered unbecoming of a legal practitioner either because it offends a particular law or Rules of the profession or it is connected with the performance of the legal practitioner duties in his professional respect.

Conviction by any court in Nigeria, having power to award imprisonment, for an offence, which is incompatible with the status of a legal practitioner: [64]

The offence in question need not be committed in a professional respect and it need not be a serious offence. For instance, offences involving financial dishonesty [65] and offences, which endanger the welfare of human beings or society generally, have always been regarded as incompatible with the status of a legal practitioner. For this provision to be invoked, the material consideration is whether the person who commits the offence should still remain a member of the learned profession [66], the conviction must be by a Court in Nigeria and no appeal must be pending against the conviction, if there is any appeal, it must have been disposed with and the conviction must have been upheld. It must be an offence that is incompatible with the status a legal practitioner in the opinion of the Legal Practitioner Disciplinary Committee. In *Re, Abuah* [67] the court held that to determine whether an offence for which a legal practitioner has been convicted will lead to striking out of name from the roll depends on whether the offence is a disgraceful offence as such that the legal practitioner cannot practice without loss of self respect in view of the grave responsibilities demanded of a member of the legal profession.

Such offences however need not be committed in a professional respect. Where a person has been convicted for an offence that also amounted to infamous conduct in a professional respect but the conviction is upturned on appeal, disciplinary proceedings can still be sustained against him for infamous conduct in a professional respect [68].

⁶³ Yusuf Ali SAN

⁶⁴See Section 12 (1) (b) of the LPA

⁶⁵See *Sagoe v R* (1963) 1 ALL NLR 290 (293) and *R v. Abuak* (1962) 1 ALL NLR 279

⁶⁶ Yusuf Ali, Op. cit.

⁶⁷(1962) 1 ALL NLR. 279.

⁶⁸Hambali, Y.D.U. Op. cit.

Obtaining enrolment by fraud [69]

This provision may be invoked where a person obtained enrolment by a misrepresentation of facts and if the true facts had been known he would not have been enrolled. This would cover any of the conditions that must be fulfilled to be called to the Bar since this is a precondition to enrolment [70]. It will also cover cases where a person obtained admission to the Nigerian Law School by fraudulent misrepresentation of academic status e.g producing forged Law Degree Certificate or representing that he possessed a Law degree when he did not. A person who has obtained enrolment by fraud or through the back door would certainly face disciplinary procedure and where such is established, would be made to face the consequences.

Conduct incompatible with the status of legal practitioners [71]

This is an omnibus ground and covers all residual cases where conduct complained of could bring the profession into dishonour or dispute. Cases like habitual drunkenness in public, employment of very foul language in public, and taking part in street brawl would appear likely to bring the profession into dishonour or disrepute [72].

This also encompasses a wide range of conduct that will bring to disrepute, the regard with which a legal profession should be held. Such conducts must not have been in a professional respect. Where a legal practitioner misappropriates funds not in the course of professional engagement but as a clerk was held to be conduct incompatible with the status of the legal practitioner [73]. Also, ownership and management of a brothel has been held to fall under this category [74].

Once a complaint is made against a lawyer to the Nigerian Bar Association (NBA), the complaint will be juxtaposed with the rules of professional ethics to see if it amounts to a misconduct, in which case, the lawyer will be brought before the Legal Practitioners' Disciplinary Committee (LPDC) for disciplinary sanctions [75].

PROCEDURE FOR PROFESSIONAL DISCIPLINE

The Legal Practitioners Act, 2004 [76] provides for the procedure to follow when a legal practitioner is to be disciplined. The Legal Practitioners Disciplinary Committee Rules [77] also provide for rules and procedure in relation to the discipline of a legal practitioner in Nigeria.

According to the 2nd Schedule to the Legal Practitioners Act, the Chief Justice of Nigeria shall make rules for the purposes of any proceeding and as to the procedure to be followed and the rules of evidence to be observed in proceedings before the L.P.D.C. The Rules is to provide for:

Notice of proceedings to be served in the prescribed manner to the person against whom the proceedings is brought, also to determine whether any other person is to be joined in addition to the respondent. How to secure the attendance of persons to be heard in relation to the proceedings, the representation of any party to the proceedings, as to cost of proceedings before the LPDC, as to the record of not guilty where the allegation of infamous conduct in a professional respect is not proved and for the publishing in a Federal Gazette any directive given by the LPDC particularly where a person's name is to be struck off the roll or suspended.

The LPDC's Rules provides for the following procedure under the 2006 Rules, the Complainant shall forward a complaint by any person against a legal practitioner in writing or any person aggrieved to any of the following persons. The Chief Justice of Nigeria, CJN, The Attorney General of the Federation, The president of the Court of Appeal or any presiding Justice of the Court of Appeal, The Chief Judge of the High Court of the state, or the Chief Judge of the Federal High Court or the Chief Judge of the High Court FCT Abuja, The Attorneys General of the states of the Federation, the Chairman Body of Benchers, The president of the Nigerian Bar Association or the Chairman of a branch of the Nigerian Bar Association [78]. Complaint received by any of these bodies or persons mentioned above shall be forwarded to the Nigerian Bar Association, which shall cause the complaint to be investigated [79]. The Nigerian Bar Association, after investigations and is of the opinion that prima facie case of professional misconduct is made against the legal practitioner concerned shall

⁶⁹See Section 12(2) of LPA.

⁷⁰See Section 12 (1) (c) of the LPA

⁷¹See Sections 4 (1) and 7 (1) of the LPA 34; See Section 12 (2) of the LPA

⁷² Nigerian Law School Handbook on Professional Ethics, e.t.c

⁷³ Re: Hill op. cit

⁷⁴See Re Weare (1893) 2 QB 290

⁷⁵ Yusuf Ali, Op. cit

⁷⁶ 2nd Schedule to the Legal Practitioners Act as amended, Cap 207 Laws of the Federation of Nigeria, 2004.

⁷⁷ Legal Practitioners Disciplinary Committee Rules, 2006.

⁷⁸See Rule 3(1) of the Legal Practitioner Disciplinary Committee Rules, 2006.

⁷⁹See Rule 3(2) of the Legal Practitioners Disciplinary Committee Rules 2006.

forward a report to the Secretary of LPDC together with a complaint and the documents considered by it in the cause of its investigations for prosecution of the Legal Practitioner before the LPDC [⁸⁰].

The parties before the LPDC shall be the NBA, the Legal Practitioner concerned and any other person that LPDC may by leave be allowed to be joined. NBA is expected to appoint Legal practitioners to prosecute on its behalf. All the parties before the LPDC shall be entitled to appoint a legal practitioner of their choice or appear in person [⁸¹]. The Nigerian Bar Association shall appoint a Legal practitioner to present the case before the LPDC, however such Legal practitioner must not have participated in the investigation establishing a *prima facie* case against the Respondent [⁸²].

Upon the direction of the Chairman, the secretary shall fix a date for the hearing and serve notice of hearing on the parties. Service may be effected by personal service, registered post, courier service to the last known address of the Legal practitioner, by email, publication in a national newspaper or by service on his Counsel where he is represented [⁸³]. The notice must be served for at least 15 days interval before the hearing date, however upon prove of service, where a party fails to show up, the proceeding shall commence [⁸⁴].

The LPDC is empowered to hear witnesses and also admit documentary evidence that may assist in reaching an informed decision [⁸⁵]. The provision of the Evidence Act is equally applicable to proceedings before the LPDC. The proceedings of the committee and the announcement for its decisions shall be in public [⁸⁶]. Written addresses can be filed and served on parties according to the directives of the LPDC [⁸⁷]. Argument of not more than 10 minutes is allowed on each side.

If the allegation of infamous conduct is not proved against the legal practitioner, a finding of not guilty shall be recorded [⁸⁸]. But where the allegation of infamous conduct in a professional respect is proved, the LPDC shall make any of the following orders.

SANCTIONS

⁸⁰See Rule 4 of the Rules.

⁸¹ Rule 5 LPDC Rules

⁸²Rule 6, LPDC Rules.

⁸³Akinola, op.cit pg. 147

⁸⁴ Rule 8 of LPDC Rules

⁸⁵ Rule 10 of LPDC Rules

⁸⁶ Rule 13 of LPDC Rules

⁸⁷ Rule 15 of LPDC Rules

⁸⁸ Rule 17 of LPDC Rules

Where the allegations against a legal practitioner are proved, the Legal Practitioners Disciplinary committee has the power to make the following orders.

Striking off the name from the roll [⁸⁹]

The LPDC can order the name of the legal practitioner in question to be struck off the roll of legal practitioner in Nigeria by giving a directive to the Registrar of the Supreme Court.

Suspension [⁹⁰]

The legal practitioner can be suspended from practice for a period of time that would be specified by the LPDC in its order. The legal practitioner will not engage in any legal practice during this period.

Refund of money or property [⁹¹]

The LPDC may also order the legal practitioner to refund any money misappropriate to the appropriate owner, he may be ordered to return property or documents to the rightful owner.

Admonition [⁹²]

The legal practitioner may just be admonished and cautioned and allowed to go. Where such is done, the legal practitioner will be under surveillance for a time to make sure he does not commit such act again.

Appeal on the Decision of the Legal Practitioners Disciplinary Committee Decision. An aggrieved legal practitioner who is dissatisfied with the decision of the LPDC can appeal against such decision. In the past appeals from the decisions of LPDC lies to the Supreme court, however in the recent decisions of the Supreme court in the cases of *Akintokun v LPDC* [⁹³] and *Jide Aladejobi v LPDC* [⁹⁴] appeal lies to the Appeal Committee of the Body of Benchers. The Supreme Court decisions in the two cases above has been criticised as erroneous and not representing the true position of the law. This is because the Appeal Committee of the Body of Benchers was established by Section 11 of the Legal Practitioners Decree of 1975 [⁹⁵] The Decree further provides that appeal from the

⁸⁹ Section 11(1)(c)(i) of the Legal Practitioners Act, 2004.

⁹⁰ Section 11(1)(c)(ii) of the Legal Practitioners Act, 2004.

⁹¹ Section 11(1)(c)(iii) of the Legal Practitioners Act, 2004.

⁹² Section 11(1)(c)(iii) of the Legal Practitioners Act, 2004.

⁹³(2014) 13 NWLR (Part 1423) p.1.

⁹⁴ (2013) 15 NWLR (Part 1376) p.66

⁹⁵Prior to that Decree, the law that was in existence was the Legal Practitioners Act of 1962 and the law made provisions for appeal from the direction of the LPDC to the Federal Supreme Court.

Appeal Committee of the Body of Benchers shall go to the Supreme Court [⁹⁶]. This particular position was maintained in the Legal Practitioners Act of 1990 [⁹⁷].

The issue however became complicate by the promulgation of Decree No. 21 of 1994. This Decree amended the Legal Practitioners Act of 1990 in so many ways, particularly the Section 12 of the Act by expressly repealing the section. We may recall that this is the section that provides for the Appeal Committee of the Body of Benchers. With the repeal of this section, the Appeal Committee no longer exists. After this Decree, the Decree No.43 of 1998 [⁹⁸] expressly repealed the Legal Practitioners (Amendment) Decree No. 21 of 1993 but failed to repeal the 1994 Decree. Consequently, no law has repealed the 1994 Decree till date and the implication is that the Appeal Committee of the Body of Benchers is actually not in existence.

According to Akinola [⁹⁹] “one wonders where the learned lords of the hallowed apex court arrived at the decisions in Aladejobi and Akintokun wherein the Supreme Court referred the case to a non-existent Appeal Committee of the Body of Benchers”. It goes without saying that until the 1994 Decree is repealed it remains the law where the issue of appeal is concerned. However, going by the decision of the Supreme Court in the two cases mentioned above, appeal lies to the Appeal Committee of the Body of Benchers.

THE CHALLENGES IN IMPOSING DISCIPLINE

In the course of this paper we have been able to explain the elaborate regulatory mechanisms as well as the detailed procedure for discipline of a legal practitioner in Nigeria. The question is whether those elaborate provisions has been able to achieve the intended purpose, that is, maintaining a legal profession that is disciplined, regulated and adhere strictly to the rules of professional conduct. The fact is that despite all the disciplinary procedure in place there are still infractions of our rules of professional conduct by lawyers including senior members of the Bar and even Senior advocates of Nigeria. According to Okutepa, J.S. SAN.

Some lawyers are instrument for perversion of justice. They do all manner of dirty jobs just to obstruct the cause of justice and pollute the stream thereof. Indeed those who are in politics show grave disdain for the

rules of professional conduct. They throw ethics overboard and act with reckless abandon. They constantly subject the noble profession to disrepute and contempt in their conduct, character and behaviour. Some lawyers in practice are not faring better either. They file all manner of frivolous applications to obstruct justice contrary to the Rules of Professional Conduct in the legal profession. Some lawyers now even engage in demonstration at NBA functions to press home their demands. Clearly this is unbecoming of members of this noble and Honourable profession. Integrity has taken flight from the sub consciousness of some of our members. Some act as legal touts and conduit pipes for all manner of nefarious activities including accepting bribes and taking bribes for themselves and on behalf of judicial officers, magistrates, area court judges and other personnel involve in administration of justice [¹⁰⁰].

The above statement of the learned Senior Advocate sums up the situation, lawyers in Nigeria behaves in such a way that still leaves a lot to be desired, despite the various monitoring mechanisms in place. So many cases of infractions go unpunished because of so many militating factors that serve as hindrances to the desired discipline at the Bar. Such factors include but not limited to the following:

One of such is the fact that so many cases of misconduct are not reported, either because the victims of such acts do not know how to report such cases or those who hear about it and could have reported covers up the case because the lawyer in question happens to be a friend, a family or person of the same religion. Such lawyers therefore go about free of charge to go on committing more infractions. Another issue is the problem of misplaced values in the larger society. In the olden days people value character rather than money and material things. Integrity is given a place of pride in the society and men and women of integrity are valued, but these days the reverse is the case, people hold rich men in high esteem no matter the source of the wealth. The legal profession is a microcosm of the larger society with the resultant implication of having the prevalent value depreciation replicated in the profession, therefore most lawyers involved in professional misconduct are more focused on their financial and material image than their reputation. There is a general apathy for integrity where money is involved.

The lack of good example from very senior members of the Bar is another factor that affects

⁹⁶S.11 (5) of the Legal Practitioners Decree of 1975.

⁹⁷ By virtue of S. 12 (1) of the Act Appeal from the direction of the LPDC shall lie to the Appeal Committee of the Body of Benchers and a further appeal by virtue of sub-section 5 to the Supreme Court.

⁹⁸ Section 1 of the Legal Practitioners (Amendment)(Repeal) Decree No. 43 of 1998.

⁹⁹Op. cit at p. 156.

¹⁰⁰Professional Ethics and Discipline at the Bar: The Role of Nigerian Bar Association, Delivered at the Inauguration of NBA Keffi Branch on the 14th day of May 2014.

discipline at the Bar, the younger lawyers look up to the older ones for guidance and mentorship, some even idolize the senior members of the Bar and see them as second only to God. Where such senior members of the Bar violates rules of professional conduct with reckless abandon, then the younger lawyers looking up to them becomes disillusioned and lose hope in the profession, so you see them also getting involved in professional misconduct of such magnitude that it will appall a right thinking legal practitioner. Where senior lawyers, even senior advocate are involved in corruption, bribing a judicial officer and other violation of the state laws, what do you expect the younger ones to do? [¹⁰¹]

The length of time it takes to investigate the allegations of misconduct by lawyers is another factor that affects discipline at the Bar. Where complaints are referred to the Nigerian Bar Association for investigation in order to establish a *prima facie* case upon which disciplinary procedure could be commenced, the investigations often takes a long time and as a result of that complainants are discouraged and subsequently are not encouraged to bring complaints in the future. Therefore, some misconducts are left unreported and uninvestigated.

According to Okutepe J.S. SAN, The long process of investigation is one of the problems militating against attaining discipline at the Bar, the learned Senior Advocate has the this to say

My experience as one of the prosecutors before the LPDC shows that there are many factors militating against effective prosecution of lawyers who engaged in professional misconduct. First are protracted and cumbersome procedures being employed in investigations? Why should complaint against legal practitioners take long time to be concluded? Why can we have a system where without any complaint the Association can have in built mechanism to deal with erring members? Why can't we for instance have a system that sanctions lawyers that engaged in brazen acts of professional misconduct without the cumbersome procedures of long investigation? [¹⁰²].

¹⁰¹As a professional ethics lecturer at the law school, I've had so many instances in class where you try to teach students the Rules of Professional Conduct and you are told by the student that senior lawyers are acting contrary to the provisions of the RPC. For example, Rule which provides on commenting on the subject matter of litigation, most lawyers violate this rule by going on air to talk openly about a matter that is pending before the court and even going as far as to offer opinions on such and also use the opportunity to openly criticize the Judicial officer presiding over the matter, and at the end of the day nothing is done to the lawyer.

¹⁰²Op. cit

Also, there is the problem of interference with investigations, where lawyers being investigated try to interfere and influence and prevent of proper investigations. They lobby to have the complaint dropped. Some petitions lodged at the branch level are killed there and does not get to the national NBA.

There are also the problems of interference with investigations. Many lawyers go around lobbying for complaints against them to be dropped. Even at the level of prosecution they always try their luck. But they always meet brick wall. At the branch levels, we are equally not faring well. Many petitions do not get to NBA at national level. We play politics with discipline.

The incursion of other profession into the legal profession has been identified to be a serious mitigating factor in the area of discipline in the legal profession. The indirect practice of the profession by entity and persons that are not lawyers, such as accountants, chartered secretaries, surveyors and others is a serious mitigating factor. This is made possible because of the unholy alliance of some of our colleagues with these professionals. Unfortunately, the individuals coming into the legal practice zone are not those who have gone through the same fit and proper test hurdle as lawyers. Aside from draining the limited legal work that is available, this unholy alliance has the tendency of bringing down the already falling standard of the profession [¹⁰³].

Another challenge is that of obsolete laws, our laws are not a match for the challenges of ensuring discipline in the legal profession in the 21st century. For instance, the RPC is presently tailored more in line with the practice of private lawyers in litigation, leaving out to a large extent, the solicitors and lawyers in politics and in government. Likewise, it fails to address some prevalent concepts of legal practice in the 21st century, such as advertising, out-sourcing and Pro-bono services [¹⁰⁴].

The society is dynamic so law must undergo constant change to meet up with the changing needs. The problem of obsolete laws in Nigeria is not limited to the legal profession alone but its one of the major problems on attaining a disciplined legal profession. The two major laws regulating the legal profession are the Rules of Professional Conduct [¹⁰⁵] and the Legal Practitioners Act [¹⁰⁶] these two laws are not current and up to date as to tackle current disciplinary issues.

¹⁰³ Yusuf Ali, SAN. Opp.cit.

¹⁰⁴Fatima Kwaku, 'What is wrong with the Rules of Professional Conduct for Legal Practitioners?' cited in Yusuf Ali SAN, Op. cit.

¹⁰⁵Op.cit

¹⁰⁶Op. cit

The disciplinary process of erring members of the Bar is also another factor leading to the decline in the discipline of the profession; the disciplinary procedure is rather cumbersome and long. The procedure has been highlighted above and there is no need to duplicate here. With the ever-increasing population of those being called to the Nigerian Bar and corresponding high ratio of professional ethics transgressors, the disciplinary proceedings before the LPDC suffered enormous delay until 2013, when the current LPDC came on board. This had the effect of frustrating the complainants to abandon same [¹⁰⁷].

CONCLUSION AND RECOMMENDATIONS

Time within which the lawyer is to respond to the complaint should be abridged to be 14 days instead of 21 days. The reply of the lawyer should also be on oath supported with documents that may exculpate the lawyer. This is because, frontloading the documents to be relied upon by the legal practitioner will enhance the speedy dispensation of the case.

The investigation of the complaint by the Nigerian Bar Association should not only be carried out speedily but also done properly so that only cases that are credible and sustainable are forwarded to the LPDC. Subsequently almost all cases brought before the LPDC will lead to sanction.

Complaint can be filed directly in deserving cases by NBA before LPDC without referring the petitions against the lawyers to Zonal investigations panels as is the case presently if from the facts in the petitions and replies of the lawyers it is necessary to do so. For instance where a lawyer failed to pay his or her practicing fees or a lawyer is caught fighting in the public place or a lawyer is found dead drunk and misbehaves in the most despicable manner. This is to avoid unnecessary delay in dispensing with the case and also to prevent unnecessary interference.

There is a need for lawyers conduct to be above board. In this connection, we suggest that the jurisdiction of LPDC and disciplinary processes be expanded to cover all conduct unbecoming of a lawyer whether or not it was misconduct in or outside professional respect. Once a conduct of a lawyer falls short of the acceptable conduct he or she should face the music. After all a lawyer is like a priest.

¹⁰⁷Yusuf Ali SAN Op. cit.