

OBEDIENCE TO RULES OF CONDUCT IN THE LEGAL PROFESSION IS THE BEGINNING OF WISDOM

Conversations and discussions about the ethical standard of men and women in the Legal Profession have always generated emotional discourse. As it was many years ago, now it is, if not more passionately. Indeed, in this age of explosion of standards by influence of social media, yearning gaps in the social strata and increasingly lowering of educational standards makes it more demanding.

The issues of failing moral standards in Legal Profession is seen as a must that must be addressed at all levels. There is a belief that it being tackled from the entry-level into the profession, i.e. from law school and before the call to bar may be more impactful. I agree it is

possible at this level for any applicant who finds no comfort, to opt out.

One of the most celebrated jurists this country has ever produced, (who several years after his call to glory is still revered) is Hon Justice Chukuwdifu Oputa, (Retired Justice of the Supreme Court) who wrote in one of his lectures words that capture the objective or direction of this lecture.

In one of his books, he published a Lecture titled "Cleansing our Temple of Justice"¹ he wrote and I seek to quote him elaborately:

"In 1976, I made the following significant observation 'looking back on the legal profession in Nigeria in the forties and fifties and even early sixties one seeks in retrospect a rather dignified, respectable and self-respecting profession – the

¹ Our Temple of Justice, Justice Watch 2014 (Towards Re-Engineering the Nigerian Legal Profession) by Hon Justice Chukwudifu Oputa, CFR

pride of lawyers, the ambition of many and an object of reverence by the generality of our people. Nevertheless, things seem to be falling apart. Nowadays again, one notices a significant shift from the erstwhile awe and reverence with which the profession was once regarded. Could it be that members of the profession are now forgetting some of the qualities and qualifications which earned them and their profession the envy and dignified appellation of 'learned' and 'honourable'? Could it be that we have said goodbye to the sublime objectives of our great profession?

But whatever it is, the fact remains that the present situation demands that something be done to restore the pristine dignity, the splendor and the glory that was the legal profession in our country in years gone by.

In 1984, the Body of Benchers set up the Legal Education Committee prompted by a memorandum dated November 28, 1983 by Alhaji Abdul Razaq, SAN complaining of falling standard in the profession.

“There is the falling of legal and educational standards. That is serious enough, But what is heart rending and tragic is the falling morals ethical standard. The collective voice of many a Nigerian is that the Legal Profession in Nigeria (Bench and Bar) is sick that our Lawyers and Judges have conveniently completely forgotten the sublime objectives of their great profession. That our lawyers and judges, ministers in our temple of justice have thrown to the wind their code of honour and the traditions and so desecrated the temple that in the public mind it is a big joke to refer to the Courts of Justice (Courts of law, probably yes; but Courts of Justice,

definitely no).” please see page 1 to 2 of the book.

These words of the then Cicero of the Supreme Court reverberates loudly even in 2023 (39 year after).

The Courts have been equally concerned about conducts that are at variance with Rules of professional conduct for Legal Practitioners and these are reflected in their decisions. For example, the Courts in *NBA V. ITEOGU*² stated thus:

“What amounts to professional misconduct is not defined in the rules of professional conduct in the legal profession. Any conduct of any legal practitioner in relation to his practice of the profession in relation to his client that runs contrary to rules or any breach of the rules may amount to misconduct. Any conduct that

² (2006) 13 NWLR (PT. 996) 219

constitutes an infraction of acceptable standard of behaviour or ethics of the legal profession or any conduct which connotes conduct so despicable and morally reprehensible as to bring the legal profession into disrepute will amount to misconduct. Any conduct, which is disgraceful, involving serious moral turpitude or such conduct that would shock every right thinking member of the society would qualify as professional misconduct.(P 250, paras. E-H)

Hon. Justice John FABIYI, J.C.A. (As he then was and later retired Justice of the Supreme Court) at page 643, paras F-G³:

"Let me briefly say that the way and manner in which the learned counsel for the appellant addressed the lower Tribunal left much to be

³ USANI V DUKE (2006)17 NWLR (PT. 1009) 610

desired. A counsel should always employ temperate language in addressing judicial officers who are merely discharging their Constitutional functions. There must be mutual respect on both sides of the divide. There should be no rancour or acrimony."

"Per ADEREMI, J.C.A. then but retired as Justice of the Supreme Court at page 647, paras A-D:

"... let no counsel properly so called and who will like to carry the tag of a "VERITABLE OFFICER IN THE CITADEL OF JUSTICE" on his head desecrate the seat of justice by such an abuse of the kind gesture of a judex as was done in the instant case. The legal profession is no doubt the only honourable profession, given its impact on the society of men. Those who are privileged to be admitted to this "EXCLUSIVE CLUB" of gentlemen must not only uphold the ethics laid down for the profession, they must always be seen to be doing so. The scenario

evinced through the proceedings at the lower tribunal is a "SHOW OF SHAME"; no honourable man should be credited with it.

Antics that will lead to delay of justice must be abhorred by officers in the citadel of justice."

Per ADEKEYE, J.C.A. and later Justice of the Supreme Court, at pages 650-651, paras H-C:

"I cannot end this contribution without passing a few remarks about the appellant's brief. I find the brief very incoherent and unintelligible. It is not a clear presentation of the appellant's case. The most striking aspect of the brief is the amount of abusive language used against the tribunal and the other counsel in the petition. Counsel are paid to defend their clients, course, they must exercise decorum in the process. Practice of law where counsel walk out on their clients in court, or where they are highly discourteous to court is a breach of professional ethics - which is the contributory

factor to the falling standard in the practice of this honourable and disciplined profession. All members of the legal profession must rise in defence of their professional ethics - where much attention is paid to mutual respect.

Hon. Justice LOKULO-SODIPE, J.C.A. (of blessed memory) at page 199, paras. D-G⁴: "*I cannot but say that I find the words "strange" and "mysterious" used to describe the finding of the court below in the appellant's brief which was settled by counsel to be most inappropriate and somehow crude as they are definitely not a lawyer's language which is supposed to be professional, temperate and cultured at all times in keeping with the ethics of our honourable profession.*"

⁴ ETIM V OBOT (2010) 12 NWLR (PT. 1207) 108

In 2022, Hon Justice Ejembi EKO, J.S.C. spoke strongly about obedience to the Rules of Conduct in the Legal Profession. He said⁵: *"Let me seize this occasion to comment on one practice that is now gaining ground among legal practitioners. The Rules of professional Conduct for Legal Practitioners, 2007, Rules 20(1) & in particular, provide inter alia 'a lawyer shall not accept to act in any contemplated or pending litigation if he knows or ought reasonably to know that he or a lawyer in his firm may be called or ought to be called as a witness' and that 'if, during the trial, the lawyer discovers that the ends of justice require his testimony, he should from that point on, leave further conduct of the trial to other counsel', and that he 'shall not argue the credibility of own testimony'. At the lower court Mr. Egede Ferdinand was, against these basic rules of ethics, concomitantly both the applicant's*

⁵ .OWNERS THE MT MARIGOLD V. N.N.P.C(2022) 7 NWLR (PT. 1828) 165

counsel and the deponent of the supporting affidavit. The Rules of professional Conduct prohibited Egede Ferdinand, Esq. from acting in both capacities contemporaneously. The application was thus bedeviled and vitiated ab initio by his unethical practice."

The Body of Benchers, the body of men and women of the highest distinction in the Legal Profession and the General Council of the Bar are so concerned that they, in their wisdom, thought that the first thing is to approach this problem of lowering moral and ethical standards through review and re- engineering of the legislation regulating the ethics of the Legal Profession.

On the 15th day of May, 2023 the Honourable Attorney General of the Federation and Minister of Justice, Abubakar Malami, SAN, CON, who was also the President of the Governing Council of the Bar signed the new Rules of Professional Conduct for Legal Practitioners.

The Rules are no doubt a comprehensive one and from a close study shows an updated one that seem to capture areas of critical concern in the Legal Profession. It is coming into force few months after your Call to Bar and enrolment as a Barrister and Solicitor of the Supreme Court of Nigeria. That is effective from 1st day of January, 2024. The new rules as expected revoked the Rules of Professional Conduct for Legal Profession 2007.

Rules 1 to 13 gave full attention and detailed provision to the primary obligation of a lawyer.

In the spirit of the traditional and statutory position of lawyer, every one called to Bar should uphold the Rule of Law, promote and foster the course of justice, maintain a high standard of professional conduct and shall not engage in any conduct which is unbecoming of a legal practitioner.

You may be wondering why you go through screening process by the Body of Benchers. Rule 2 which has always been part of the Rules provides that "A lawyer shall not knowingly do any act or make any omission or engage in any conduct designed to lead to the admission into the Legal Profession of a person who is unsuitable for admission by reason of his moral character or insufficient qualification.

It is a very serious professional misconduct to aid a non lawyer to practice the profession, or permit his professional service or his name to be used in aid of any unqualified person. It is a grave offence to share fees with a non lawyer or sign a document prepared by a non lawyer.

A lawyer who practices on his own shall not hold himself out to the world as a partner.

It is not permitted for any Legal Practitioner to be a lawyer and practice in any other profession.

A lawyer whilst a servant or in a salary employment of any kind shall not appear as an advocate in a court or judicial tribunal for his employment except where the lawyer is employed as a legal officer in a Government department.

The payment of annual practising fees not later 31st March in every year is mandatory and it is a misconduct to claim that you paid practising fee when in fact it has not paid.

It is compulsory to affix on documents prepared by Counsel the seal and stamp approved by the Nigerian Bar Association.

The Rule makes participation in Continuing Professional Educative Development Programme mandatory.

A Legal Practitioner who commences private legal practice either alone or as partner with

others must give notice to the Branch of the Bar Association in the locality.

A lawyer is expected to give his best professional ability to any of his briefs and must not compromise the interest of his client.

A lawyer shall at the time of retainer or instruction make full disclosure to avoid conflict of interest or acquire a proprietary interest in a cause of action or subject matter of litigation.

All agreements with clients should be reduced into writing and it shall be a misconduct for a lawyer to refuse to keep to the agreement. A lawyer is prohibited from being a witness to a case in which he is a counsel.

A Counsel is not permitted to have personal or direct communication with the Judge. Where communication is required to be made it must be made to the Court Registrar and concurrently delivered to the opposing counsel.

It is a serious act of misconduct for a Counsel to make extra-judicial statement that is calculated to prejudice or interfere with the fair trial of the matter or judgement. It is no longer allowed that as Counsel you address the Court and move out to address the Press on the subject matter in litigation.

Relationship of a lawyer to the Court is taken very seriously. A lawyer is regarded as a Minister in the temple of justice. Rules 30 to 38 of the new Rules repeated the age long rules of ethics that requires utmost courtesy and conduct expected to facilitate quick and efficient administration of justice.

In dealing with the Court, a lawyer must demonstrate utmost conduct of respect and fairness. He must not misquote content of law reports, legal references or cite as authority or decision that has been overruled or a repealed law.

In Court process, it is unethical to use language that is dishonourable, unworthy and unbecoming of a Legal Practitioner against his colleagues or the Honourable Judge.

Before now, a counsel is prohibited from engaging in advertisement or promotion in connection with his practice of the law. there are now windows for reasonable engagement in advertising or promotion in connection with the practice of law.

The rule now relaxed publication in reputable journals and permissible law forum such materials or publication with a view to advancing knowledge of the law.

The moral standard expected of a lawyer in and outside the Court is not different.

There was recently trending a 'baddest lawyer' who was alleged to expose her body in an indecent manner. It attracted attention because

she was a lawyer There was another who wore her wig and gown while exposing to a video camera her protruding pregnancy. The rules prohibit indecency and publicity likely to bring the profession to disrepute and public opprobrium

The Rule permits lawyers to charge reasonable and commensurate fees for services rendered. There is a Legal Practitioners Remuneration (For Business, Legal Services and Representation) Order 2023, it makes provision for scale of charges for any business of services on few transactions. The new Rules provides for Guidelines and Rules on Anti-Money laundering and combating the financing of terrorism for legal practitioners.

The Nigerian Bar Association is now expected to undertake compliance examination for law firms on a risk-based approach and help with such

examination to the Special Control Unit against money laundering (SCUM).

These provisions are new in the Rules of Professional Conduct for Legal Practitioners and there will be Continuing Legal Education Programme for compliance.

A law firm is expected to put in place external measures to establish with certainty the identity of each client on stated criteria.

A legal practitioner is expected to follow a reporting mechanism for supervision actively and failure to report may amount to a misconduct. Failure of any legal practitioner to conform with Chapter 1 of the Rules shall be deemed a misconduct and hence to be punished as provided in the Legal Practitioners Act.

Corruption as a point of discourse is a very huge issue that cannot be fully interrogated in this brief lecture. Suffice it to say that corruption is

blind, corruption destroys. Corruption is like a leprosy that must be shunned.

Recently, some so called civil society groups have devised an improper method of litigating public interest matters. They procure litigants to file an actions on matters that were personally of their own opinion and use innocent persons to sue. They knew the actions were frivolous and unethical. The Courts have now decided to award huge cost to be paid by Counsel with a view to discouraging abuse of the Court process.

Can we say that this measure of punitive cost have discouraged them? No.

My personal suggestion is that these Counsel be referred to the Legal Practitioners Disciplinary Committee (LPDC) for prosecution of professional misconduct and if found liable, their names be struck off the Roll as Legal Practitioners.

Would you like this to happen to you? If no, obedience to Rules of Professional Conduct in the Legal Profession should be the beginning of wisdom for you.

I wish you well as you aspire to be a honourable, learned and distinguished members of that noble profession of law.

Asiwaju Adegboyega Awomolo,SAN, Life Bencher

Vice Chairman Body of Benchers

5th September, 2023