ETHICS OF THE LEGAL PROFESSION FOR ASPIRANTS TO THE NIGERIAN BAR

By

CHIEF JOE-KYARI GADZAMA, ***OFR, MFR, SAN, FNIALS, FCIArb (UK), C.Arb.***

Of Lincolns Inn, Barrister/Life Bencher/CEDR Accredited Mediator.

BEING THE TEXT OF THE LECTURE DELIVERED
AT THE 1st SPECIAL GUEST LECTURE SERIES OF BAZE UNIVERSITY
ON TUESDAY, SEPTEMBER 25, 2018.
VENUE: AUDITORIUM 'C' LAW FACULTY, BAZE UNIVERSITY, ABUJA, NIGERIA.

(PROTOCOL)

1. INTRODUCTION

I was indeed elated when I received the invitation from the Faculty of Law of this citadel of learning, to speak to the students. This is because I consider every speech made to young people (not just aspirants to the Bar) as an opportunity to contribute positively towards shaping their future. I therefore take such opportunities with all pleasure. I am very grateful to the Vice Chancellor, Professor Tahir Mamman, OON, SAN and the entire management of Baze University for the very positive roles they are playing in the lives of the younger generation. I am particularly grateful to the Dean, Professor Chris Ohuruogu, the management and entire staff of the Faculty of Law of this great institution for the opportunity and rare privilege afforded me to address Nigeria's future leaders and to speak at the 1st Lecture in the series. I must also commend the Dean of the Faculty, for this initiative as it introduces law students to the adjectival aspect of law well ahead of time, as against the substantive aspect, which is what they are primarily used to.

It would be apt to also point out from the onset that, when I made up my mind to accept the invitation, the next puzzle that readily came to my mind was what topic should I speak on? So many topics came to my mind, each as important as the next. The first topic I considered was introduction to Arbitration and ADR. The clincher for me however, was the question I asked myself; how best to prepare aspirants to the Bar for the desired future? After careful thought and brainstorming, I chose the topic 'the ethics of Legal profession for aspirants to the Nigerian Bar' because, I sincerely believe that for a beginner in law, what I describe as a

legal "*foetus*", the foundation is always critical and of essence. The worth, quality, value and durability of a building is determined by the depth and strength of its foundation. If a builder gets it wrong at the foundational level, then everything else will be wrong. If the foundation of a legal career is mired in moral or ethical deficiency from the commencement, then such a person will likely not remain in our profession for long and even if he/she does remain, the person will likely remain a reference point for 'how best not to be a lawyer'.

Ethics is therefore critical in this profession that you all aspire to join. If you get it wrong in ethics, it is only a matter of time for everything else to crumble. Instead of becoming a lawyer (one who lives, does and keeps the law), the reverse may be the case; one may end up as a vagabond, a thug, an area boy or a rip off or a quack.

A lawyer without ethics is an uncouth lawyer, worthless and unfit to put on the toga of the profession. The Legal Profession is a noble one and only noble men should be allowed into the profession. Nobility encapsulates dignity, decency, integrity, goodness, decorum, honesty, veracity, truthfulness, etc, and these constitute the superstructure of the ethics of the profession. No one can be a successful lawyer without a full grasp of, and religious compliance with ethics, as there will be no fulcrum on which to stand. In the case of *Akpene v. Barclays Bank (1977)1 S.C. 47 at 59* the Supreme Court adopted the view of Lord Denning in ***Macfoy v. United African Company Ltd. (1961) 3 W.L.R. (P.C.) 1405 at 1409***, to the effect that: *"You cannot put something on nothing and expect it to stay there. It will collapse." It* is therefore no surprise that the names of so many lawyers have been removed from the roll of legal practitioners in Nigeria. Offenders who have not had their names struck off the roll, have been suspended or have had certain attendant privileges taken away from them. Regrettably, some have even been imprisoned. The latest example of punishment of lawyers is found in a speech delivered by the Honourable Chief Justice of Nigeria, Honourable Justice W. N. Onnonghen, GCON, yesterday[1] where he gave the unfortunate story of the refusal by the Legal Practitioners' Privileges Committee to allow the swearing-in of a recently nominated Senior Advocate of Nigeria, Mr. Ikhide Ehighilua. The Legal Practitioner was among 31 other Legal Practitioners who were nominated for the award of the rank of the

[1] Onnonghen W. S., Speech at the Special Session of the Supreme Court of Nigeria to Mark the Commencement of the 2018/2019 Legal Year and Swearing in of Newly Conferred Senior Advocates of Nigeria, Held at the Main Court of the Supreme Court Complex, (24th September, 2018)15

Senior Advocate of Nigeria (SAN). However, because of a petition written against him, the Legal Practitioners' Privileges Committee withdrew his nomination.

I remember being told about 4 decades ago, while I was still in Form 4 at the Teachers College that "education without manners is like tea without sugar". Even more recently, I have been told "between intellect and character, the latter is more important". What a truism!

It is therefore not surprising that very much like other professions; the legal profession has its guiding behavioural parameters (ethics), which hold lawyers, widely regarded as the learned ones, to a very high moral standard in the discharge of their professional duties, and in their daily interactions with society. However, unlike other professions, the ethics of the legal profession invariably stipulate that a lawyer must be above board in his/her dealings at all times.

Where a non-lawyer fights in public for instance, society views it as just another piece of the puzzle that is everyday life. This is however not the case when a lawyer engages in a physical combat or does one out of a million things that members of other professions might get away with. A non-lawyer might owe his/her landlord a year's rent and thrive on the indulgence of society's understanding, while a lawyer in the same situation will most certainly attract the highest form of opprobrium. It is therefore not enough that one is a brilliant lawyer; the ethics of the profession must also be imbibed for one to be the total package.

Nigerian lawyers, as a necessary consequence, must therefore live by the ethics of the profession as contained in the extant Rules of Professional Conduct for Legal Practitioners, Since the profession is that which involves so much trust and access to privileged information, so that they can stand toe-to-toe with their colleagues anywhere in the world. Ethics must always be on the front burner. This underscores the special importance of Ethics in the legal profession. The preliminary basic question then is, what is ethics and what is ethics of the legal profession?

2. THE ORIGIN AND MEANING OF ETHICS IN LAW

The legal profession is an inherited profession. It originated from the ancient Greece and

Rome. In its modern form, it is British.[2] It comprises the lawyers and judges (Bar and Bench) and the two are generally regarded as instruments of justice, as well as two sides of the same coin.

It was the Honourable Justice Kayode Esso[3], who said

> ***"Ethics commenced with creation. That man was given leave to dwell; for his life only, to die in it was ordained for him; he must, and so was he meant to be in the theological Garden of Eden for that life. He was given dominium over everything - Animals, Vegetables, and Minerals therein, with only one obligation on his part, and that was to refrain from eating fruits from just one tree. Ethics[4] demanded that Adam should keep his own part of the bargain. He did not; that was unethical, and that was his fall. Ethics demanded the best of man, that is, obedience and decency and that, having been given free sojourn in the Garden of Eden, he should leave by the tenets and conditions as enunciated by his creator. Man failed and that was the first known breach of ethics. Man was thereby ejected from the cherished garden for not keeping to the ethics attendant thereto, and that to his chagrin. This constitutes the first sanction for failure of ethics."***

The source of the rules of Professional Etiquette and Conduct, were self-imposed by the Bar in England way back in the 6th century and were developed as good manners among gentlemen. This was to correct the imbalance in relation to the profession and the client. They were meant to stop abuse hence the establishment of code of conduct In relation to the legal profession,

Legal ethics is defined as:

[2]Akinjide R. (SAN), Advocacy, Ethics and the Bar, (J. Olakanni & Co (Lawyers handbook) Law lords Publication, 2007) 87.
[3]Kayode Esso, Ethics in Business and Profession: Yesterday, Today and Tomorrow, In Further Thought on Law and Jurisprudence, (Spectrum law publishing, 2003) 3.
[4] In this regard; regarded as common sense morality.

> ***"the minimum standards of appropriate conduct within the legal profession, involving the duties that its members owe one another, their clients and the courts"***[5]

Legal ethics is one of the professional demands of the legal profession, which lays down certain duties for observance by its members, which they owe to the society, to the court, to the profession, to their clients and to themselves.

According to the 7th Edition of the Oxford Advanced Learner's Dictionary (International Student's Edition), the word 'ethics' means;

> ***"The moral principles that control or influence a person's behavior: professional/business/medical ethics."***

It has also been defined by the Business Dictionary (10th Edition) as;

> ***"the basic concepts and fundamental principles of decent human conduct. It includes study of universal values such as the essential equality of all men and women, human or natural rights, obedience to the law of land, concern for health and safety and, increasingly, also for the natural environment".***

The English Cambridge Dictionary also defines ethics as:

> ***the study of what is morally right and wrong, or a set of beliefs about what is morally right and wrong***.

Taking these three definitions into consideration, among others, it is clear that the ethics of any profession constitute its driving force. Without ethics, members of a profession or group will certainly lack vision, direction, purpose and a basic understanding of what that profession or group stands for. This explains why ethics was incorporated into the Nigerian Law School (NLS) programme for aspirants to the Bar.

[5]Black's Law Dictionary, 10thEd.

Having defined ethics, one can say that "ethics of the legal profession" refer to the professional rules that guide the profession and ensure the highest standard of professionalism of its members.

3. OVERVIEW OF RELEVANT PROVISIONS OF THE RULES OF PROFESSIONAL CONDUCT FOR LAWYERS 2007

It must be noted at this point that the legal profession is ideally not open to all manner of persons. The profession is a noble and conservative one. The Supreme Court of Nigeria has held that:

> ***"Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country[6]"***

In Nigeria today, the ethics of the legal profession has been codified as the Rules of Professional Conduct for Legal Practitioners, 2007 (RPC) pursuant to the provisions of the Legal Practitioners Act[7].

Legal practitioners are expected to have a copy of these Rules and apply the provisions of same in their daily lives and activities. As stated in the introduction to this paper, a Legal Practitioner is expected to live above board not even only professionally (in the discharge of legal instructions), but also privately.

The RPC has therefore set standards expected of a legal practitioner on issues which include mode of dressing, dedication and devotion to client's brief, mode of addressing the court, dealing with clients' funds, conduct in court, responsibility for litigation, representation of client and engagement in business.

In a nutshell, the Rules encapsulate the ethics of the legal profession, which must be taken

[6] N.B.A vs. Ohioma (2010) 14 N.W.L.R (PT. 1231) 641 at 680
[7] Cap L11, LFN, 2004

very seriously by every legal practitioner. While I understand that some universities have incorporated ethics into their scheme of work for law undergraduates, it is my recommendation that ethics be made compulsory at the university level, even if it is as a component of one of the courses. Our younger ones who will eventually become the lawyers of tomorrow must begin to appreciate the importance of ethics at a very early stage. They must at an early age, appreciate the magnitude of the responsibility that their young shoulders must eventually bear upon their admission into the legal profession.

The RPC is divided into seven (7) segments as follows:

A - Practice as a Legal Practitioner

B - Relation with Clients

C - Relation with other lawyers

D - Relation with the Court

E - Improper attraction of business

F - Remuneration and fees

G - Miscellaneous

The foregoing segments of the Rules of Professional Conduct are further sub-divided into 57 rules. Parts A and B of the rules are particularly attractive for our purpose. Some of the provisions are briefly discussed below:

General responsibility of a lawyer (Rule 1)

A lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct, which is unbecoming of a legal practitioner.[8]

[8]Rule 1, Rules of Professional Conduct for lawyers

Aiding the unauthorized practice of the law. (Rule 3)

A lawyer shall not aid a non-lawyer in the unauthorized practice of the law; permit his professional services or his name to be used in aid of, or to make possible, the unauthorized practice of law by any person not qualified to practice or disqualified from practice; share legal fees with a non-lawyer except as provided in rule 53.

A lawyer shall not, in return for a fee, write or sign his name or permit his name to be written or signed on a document prepared by a non-lawyer as if prepared by him.[9]

Engagement in business (Rule 7)

Unless permitted by the General Council of the Bar (hereinafter referred to as the "Bar Council"), a lawyer shall not practice as a legal practitioner at the same time as he practices any other profession.

A lawyer shall not practice as a legal practitioner while personally engaged in –the business of buying and selling commodities; the business of a commission agent; 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.

For the purpose of the rule, "trade or business" include all forms of participation in any trade or business, but does not include- membership of the Board of Directors of a company, which does not involve either executive, administrative or clerical functions; being Secretary of a company; or being a shareholder in a company.[10]

Lawyers in salaried employment (Rule 8)

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.

[9] Rule 3 (1) and (2) *Ibid*.
[10] Rule 7 (1) (2) (3) *ibid.*

A lawyer whilst a servant or in a salaried employment, shall not prepare, sign, or frank pleadings, applications, instrument, agreement, contract, deed, letters, memorandum, report, legal opinion or similar instrument or process or file any such document for his employer.

A director of a registered company shall not appear as an advocate in court or judicial tribunal for his company.

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.

An officer in the Armed Forces who is a lawyer may discharge any duties devolving on him as such officer and may appear at a Court Martial as long as he does so in his capacity as an officer and not as a lawyer. [11]

Practicing Fees (Rule 9)

A lawyer shall pay his Annual Practicing Fees not later than 31st March in every year. In the case of lawyers who are enrolled during the year, the fees shall be paid within one month of the enrolment.

A lawyer shall not claim in any court or before a judicial tribunal that he has paid his Annual Practicing Fee when he is, in fact, in default.

A lawyer shall not sign documents, pleadings, affidavits, depositions, applications, instruments, agreements, letters, deeds, letters memorandum, reports, legal opinions or similar documents or processes or file such documents as a legal practitioner, legal officer or adviser of any Governmental department or Ministry or any corporation when he is in default of payment of his Annual Practicing Fees. [12]

Seal and Stamp (Rule 10)

A lawyer acting in his capacity as a legal practitioner, legal office or adviser of any

[11] Rule 8 (1)(2)(3)(4)(5) *ibid.*
[12] Rule 9 (1)(2)(3) *ibid.*

Governmental department or Ministry of 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.

For the purpose of this rule, "Legal documents" shall include pleadings, affidavits, depositions, applications, instruments, agreements, deed letters, memoranda, report, legal opinions or any similar documents.

If without complying with the requirements of this rule, a lawyer signs or files any legal documents as defined in sub-rule (2) of this rule, and in any of the capacities mentioned in sub-rule(1), the document so signed or filed shall be deemed not to have been properly signed or filed.[13]

Mandatory Continued Professional Development (CPD) (Rule 11)

A lawyer who wishes to carry on practice as a legal practitioner shall participate in and satisfy the requirements of the mandatory Continuing Professional Development (CPD) Programme operated by the Nigerian Bar Association. [14]

Notification of legal practice (Rule 13)

Every person who set up private legal practice either alone or in association or partnership with another or others shall, not later than thirty days after commencement of such legal practice and if he continues to carry the practice, deliver a Notice in the prescribed form to the Branch of the Nigerian Bar Association within whose jurisdiction the law office is situated.

The Notice referred to in sub-section (1) of this rule shall state- the name of the legal practitioner; the address where the legal practice is carried on; the date when the legal practitioner was called to the Bar in Nigeria; and the date when his name was entered in the Roll of Legal Practitioners in Nigeria. [15]

[13] Rule 10 (1)(2)(3) *ibid*
[14] Rule 11 (1) *ibid*
[15] Rule 10 (1) and (2) *ibid*

Dedication and devotion to the cause of the client (Rule 14)

It is the duty of a lawyer to devote his attention, energy and expertise to the service of his client and, subject to any rule of law, to act in a manner consistent with the best interest of the client.[16]

Representing client within the bounds of the law (Rule 15)

In his representation of a client, a lawyer may refuse to aid or participate in conduct that he believes to be unlawful even though there is some support for an argument that the conduct is legal. In his representation of his client, a lawyer shall: keep strictly within the law notwithstanding any contrary instruction by his client and, if the client insists on a breach of the law, the lawyer shall withdraw his service; use his best endeavors to restrain and prevent his client from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if the client persists in his action or conduct, the lawyer shall terminate their relations.[17]

Representing client competently (Rule 16)

A lawyer shall not handle a legal matter which he knows or ought to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects; handle a legal matter without adequate preparation; neglect a legal matter entrusted to him; or attempt to exonerate himself from or limit his liability of his client for his personal malpractice or professional misconduct.[18]

Lawyer as officer of court (Rule 30)

A lawyer is an officer of the Court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.[19]

[16] Rule 14(1), ibid
[17] Rule 15 (1)(2) ibid
[18] Rule 16(1)(a)(b)(c) and (d)
[19] Rule 30, ibid

Duty of Lawyers to Court and Conduct in Court (Rule 31)

A lawyer shall always treat the Court with respect, dignity and honour. Where the lawyer has a proper ground for complaint against a judicial officer, he shall make his complaint to the appropriate authorities. A lawyer who fails to comply either with any undertaking given by him personally or on behalf of his client to a court is *prima facie* guilty of professional misconduct. Except where the opposing lawyer fails or refuses to attend and the Judge is advised of the circumstances, a lawyer shall not discuss a pending case with a Judge trying the case unless the opposing lawyer is present. Except provided by a rule or order of court, a lawyer shall not deliver to the Judge any letter, memorandum, brief or other written communication without concurrently delivering a copy to the opposing lawyer.[20]

Employment in Criminal Cases (Rule 37)

For a member of the bar who is employed in, or briefed to handle criminal cases particularly when it involves handling corruption cases Rule 37 becomes apposite, It says:

Where a lawyer undertakes the defence of 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, but he shall not stand bail for a person for whom he or a person in his law firm is appearing.

Where the lawyer accepts a brief for the defence in a murder trial, he shall be deemed to have given a solemn undertaking, subject to any sufficient unforeseen circumstances, that he will personally conduct the defence provided his fee is paid.

Where an accused person discloses facts which clearly and credibly show his guilt, the lawyer shall not present any evidence inconsistent with those facts and shall not offer any testimony which he knows to be false.

(4) The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done.

[20] Rule 31(1)(2)(3)(c) and (d

(5) A public prosecutor shall not institute or cause to be instituted a criminal charge if he knows or ought reasonably to know that the charge is not supported by the probable evidence.

(6) A lawyer engaged in public prosecution shall not suppress facts or secrete witnesses capable of establishing the innocence of the accused person, but he think make timely disclosure to the lawyer for the defendant, or to the defendant if he has no counsel, of the existence of evidence known to the prosecution or other government lawyer that tends to negate the guilt of the accused, mitigate the degree of the offence or reduce the punishment.[21]

We must always bear in mind that all Legal Practitioners practicing in Nigeria are bound by the RPC, which we have identified to be a codification of the ethics of legal profession. To further underscore this point, it is important to make reference to **Rule 55 (1) of the RPC** which provides as follows:

> ***"If a lawyer acts in contravention of any of the rules in these Rules or fails to perform any of the duties imposed by the Rules, he shall be guilty of a professional misconduct and liable to punishment as provided in Legal Practitioners Act, 1975."***

See also the case of Iteaogu v. LPC (2009) 17 NWLR(PT 1171) pg 614@ 620 where it was held thus

> ***"...any conduct that constitutes an infraction of acceptable standard or behaviour or ethics of legal profession, of any conduct which connotes conduct despicable and morally reprehensible as to bring the legal professional into disrepute if condoned or unpunished, will amount to misconduct."***

In the case of ETIM VS OBOT[22] the Court of Appeal deprecated counsel's use of the words 'strange' and 'mysterious' in describing the judgment of the lower court as not only

[21] Rule 37 (1)(2)(3)(4) (5) and (6)
[22] (2010) 12 N.W.L.R (PT 1207) 108.

inappropriate but also inconsistent with high ethical standard of the profession.[23]

Unfortunately, some legal practitioners do not know that the duty of a legal practitioner under the RPC does not end at complying with the Rules but also extends to reporting the breach by other legal practitioners. **Rule 55 (2) of RPC,** which provides as follows, is apt on this point:

> ***" It is the duty of every lawyer to report any breach of any of these rules that comes to his knowledge to the appropriate authorities for necessary disciplinary action."***

It is an open secret that some members of the legal profession have conducted themselves in flagrant disregard of the ethics of the profession. The recent Directions issued by the Legal Practitioners Disciplinary Committee (LPDC) clearly show an upsurge in the number of violations.

These recent Directions have shown that legal practitioners now indulge in questionable professional conduct ranging from conversion of clients' funds, to lack of dedication in handling client's briefs, conflict of interest and many others. These were acts which were hitherto considered a grave sacrilege, but which now seem to have become the norm for those who perpetrate them.

The rise in professional misconduct and indiscipline in the legal profession has resulted in the increasing number of petitions written against lawyers on a regular basis. This is very disheartening and puts all of us at risk. We must all rise up to the occasion before it is too late. All hands must be on deck to ensure that the trust and high regards which other members of the public have for us as legal practitioners are not completely eroded.

As earlier stated, the RPC and society hold a legal practitioner to an almost stratospheric moral standard. Legal Practitioners occupy a notable status in society at all times by their mere membership the legal profession, whether they are acting in their capacity as legal practitioners or not. The LPDC in **NBA V. Lawall shaq (BB/LPDC/150/14)** reported in

[23]Amaechi vs Omehia (2013) 16 NWLR (PT 1381) 417at 434.

Directions & Rulings of the LPDC (May 2014 – April 2017) volume three, agreed with this assertion when it stated thus:

> ***"A legal practitioner whether acting by virtue of office or not is in the eyes of the society an Honourable man with whom a by-stander can leave his valuables and proceed on a journey and return to meet his property intact. Such was how a legal practitioner was highly viewed in those days. Thus, a lawyer possesses the unenviable duty to be civil, honest and decorous at all times."***

4. EASILY IDENTIFIABLE AND NOT SO EASILY IDENTIFIABLE BREACHES OF THE RULES OF PROFESSIONAL CONDUCT

There are actions and inactions of lawyers, which can be easily identified as having breached the provisions of the RPC. A Legal Practitioner will obviously be in breach of the regulations if he/she:

(a) Insults a judge (either in open court or outside court). See Rules 30 and 31.
(b) dresses inappropriately to court. See Rule 36.
(c) arrives court stark drunk. See Rule 36.
(d) fights in open court. See Rule 36.
(e) instigates a client to sue. See Rule 47.

These are more readily discernible as acts of professional misconduct or unprofessional conduct. There are however some instances of breach that some lawyers are unaware of and it always comes as a rude shock when realisation sets in. A lawyer will be said to have breached these rather salient rules where he/she:

(a) takes briefing from a client in the client's house or even in the client's place of business. See Rule 22.
(b) writes a letter to a judge in respect of a matter before the said judge and does not copy the other party in the letter. See Rule 32.
(c) publicizes a live matter in which he is a counsel on social media. See Rule 33.

(d) accepts gifts from his client's opponent. See Rule 54.

(e) refuses to report a breach of the rules by a colleague. see Rule 55 (2) of RPC

There are several others, but these particular rules are regularly violated by legal practitioners, mostly out of ignorance. It is never a pleasing sight to see a lawyer violate the rules of professional conduct and a lawyer who witnesses it should report such. The resultant effect of a failure to report such incidents is that the society eventually starts to believe that such behaviour is the norm among other lawyers. It is therefore only fitting that it is also an offence not to report a lawyer who violates these rules.

5. THE PRACTICE IN OTHER JURISDICTIONS

United States of America

The Watergate scandal in the early 1970 in United States of America established the foundation of legal ethics education in U.S.; the extent of involvement of lawyers in the scandal eroded the public confidence in the legal profession.[24]

As a response to the societal perception, the American Bar Association (ABA) mandated all accredited law schools to offer legal ethics (otherwise known as Professional Responsibility). Since then, all American law students who intend to practice law are mandated to take a compulsory course in legal ethics which should be followed with Bar Examination. To many, the emphasis on legal ethics was regarded as post-Watergate morality in the legal profession.[25]

United Kingdom

The last four decades saw publication of reports on legal education in United Kingdom. It started with the Ormrod Report,[26] followed by Benson Report [27] and Marre Report [28]later

[24]R. G. Pearce, "Teaching Ethics Seriously: Legal Ethic as the most Important Subject in Law School" Chicago Law Journal, 1998, Vol. 29 at 719. 7

[25]D.R. Rotunda "Teaching Law Ethics a Quarter of a Century after Watergate". Hasting Law Journal, 1999, Vol. 51 at 661

[26]The task force comprises of lawyers, judges, Deans of law schools and law school Professors

[27]MacCrate Report by Task Force on Law Schools and the Profession, American Bar Association, Legal Education and Professional Development – An Educational Continuum (New York: 1992). The report Elaborately sets out the fundamental values of profession, one of which was 'recognising and resolving legal dilemmas'.

Lord Chancellor's Advisory Committee for Education and Conduct First Report on Legal Education and Training (ACLEC) in 1966.[29]Of these reports, only the last two featured topic of legal ethics.[30] The Marre Report [31] identified an 'adequate knowledge of professional ethical standards' as one important skill that law students should acquire at the vocational stage of legal education. The second report, which went further to address issues of legal ethic, is the ACLEC Report.

The report called for the development of what has been termed common professional values. The Report also advocated that legal education should strengthen law students' capacities in five major areas: intellectual integrity and independence of mind, core knowledge, contextual knowledge, legal values and professional skills.[32] The publication of ACLEC Report impelled the Law Society of England and Wales to publish a consultation paper advocating that legal knowledge, skills and ethics represent the core legal education 'from the cradle to the grave'.[33]

The consultation paper was received with applauds, thereby establishing the central role of legal ethics in legal education.[34] However, unlike the U.S. there is no compulsory legal ethics course in the academic law degree, as it is only taught at the vocational stage.

The law practice of law in the UK is such that there are active lines for barristers to contact in the event of such misconduct e.g the Bar Council advice line, operated for the purpose of providing advice to those persons. For other purposes, there are lines such as:

- the Ethical Queries Helpline;
- the Equality and Diversity Helpline;
- the Remuneration Helpline; and
- The Pupilage Helpline.

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[28]Ormrod Report of the Committee on Legal Education, Cmnd, 4595 (London: HMSQ, 1971).

[29]Benson Report. The Royal Committee on Legal Services (Final Report). Cmnd. 7648 (London HMSQ, 1979).

[30]Marre Report. The Committee on the Future of the Legal Profession. A Time for Change. (London: General Council of the Bar and the Law Society, 1988)

[31]ACLEC. Lord Chancellor's Advisory Committee on Education and Conduct (ACLEC) First Report on Legal Education and Training (London: ACLEC: 1966).

[32]Richard Wu, note 30 above at 43

[33]See ACLEC, note 15 above at para 2, 4.

[34]Law Society, Consultation: Training Framework Review; (London: Law Society, 2001). 20 A.Boon, A, & Webb, J. Report to the Law Society of England and Wales on the Consultation and Interim Report on the Training Framework Review. (London: Law Society, 2002).

Meanwhile, to encourage regulated persons or unregistered barristers to contact the helpline when the need arises, Bar Standard Board (BSB) authorised persons appointed by or on behalf of the Bar Council to offer ethical advice to BSB regulated persons through a specified advice service will not be under a duty to report information received by them in confidence from persons seeking such advice, subject only to the requirements of the general law.

Though our RPC in Nigeria does enough to guide our legal practitioners as to their conduct, a more extensive set of guidance may prove useful.

Canada

Before the1990s, Canada did not teach legal ethics in its law school curriculum. However, it undertook a review of legal ethics education in its law schools thereafter, which precipitated the Cotter Report and since then, legal ethic education feature prominently in its law schools' curriculum. Although, legal ethics courses are not compulsory in Canadian Universities, law schools like the University of Western Ontario have introduced a mandatory legal ethics course.[35]

Australia

Just like Canada, legal ethics was not part of the undergraduate law degree curriculum in Australia before 1990s. However, in 1992, the Consultative Committee of State and Territorial Law Admitting Authorities included legal ethics as one of eleven core subjects on a list of compulsory law subjects for the academic stage of legal education.[36] By 2000, the Law Admission Consultative Committee (LACC) had recommended that all applicants intending to become legal practitioners in Australia were expected to complete a legal ethics course while studying for their Practical Legal Training (PLT) course.

[35] See S.B. Cotter, Professional Responsibility Instruction in Canada: A Co-ordinated Curriculum for Legal Education, (Montreal: Conception (prepared for the Joint National Committee on Legal Education, 1992).

[36] Centre for Legal Education, "Recommendations of the consultative committee of sate and territorial law Committee admitting authorities (the "Priestley Committee')" Uniform Admission Requirements: Discussion Paper and Recommendations, 1992.

South Africa

In South Africa, the LL.B. degree is essentially a four-year undergraduate program.[37] Practical training is required after the LL.B. degree.[38]In Rhodes University, in South Africa, Ethics and Professional Responsibility is taught as an elective course in the final year of LLB. In South Africa the legal sytem is structured in such a way that Legal ethics (in the broad sense) forms part of both the Attorneys and Advocates Admission Examinations. The Course is therefore aimed at preparing aspiring attorneys to write and pass these examinations.

The course combines both the theory of ethical lawyering and the practice of lawyers governed by the various rules of the law society, general bar and case law. This structure attempts to speak to the two dimensions of legal ethics, that is, to individual and to collective responsibility – both to personal decision making and to professional [39]

Kenya

Qualified lawyers in Kenya are called advocates**. The Advocates Act**, **No. 18 of 1989** of Kenya, defines an advocate as a person holding qualifications under section 13 of the Act. Section 13 provides that a person shall be qualified to be an advocate if he has passed examinations of any recognized University in Kenya and holds a Bachelor Of Law degree (LL.B.), or having passed the relevant examinations of such University as the Council of Legal Education may from time to time approve, he holds or has become eligible for conferment of a Degree in Law in the grant of that University or University College which the Council may approve.

Thereafter, the person must have attended as a pupil and received from an advocate of more than five years standing, instructions in the proper business, practice and employment of an advocate and has attended and passed such examinations as prescribed by the Council Of Legal Education, at the Kenya School of Law.

[37] David Mcquoid-Mason, The New Four Year Undergraduate LL.B. Programme in South Africa: On-Going Challenges, https://olt.qut.edu.au/law/clea/gen/static/news/sp99/LL.B.htm (last visited Mar. 30, 2008)
[38]*Id*.
[39]www.ru.ac.za/media/rhodesuniversity/content/law/documents/2011courseoutlines/Ethics%20and%20Professional%20Responsibility.pdf

Section 13 1(c) further provides that a person shall be duly qualified if he has any other qualifications acceptable to and recognized by the Council of Legal Education. An amendment was introduced vide Act 2 of 2002 adding paragraph (d) to section 13 (1). This provides that a person would be duly qualified if for the time being he is an Advocate of the High Court of Uganda or the High Court of Tanzania.

Advocates Training Program is conducted in 18 months; 12 months in-house and 6 months pupillage. Teaching in the Advocates' Training Programme (the ATP) is conducted on a clinical basis. Like Nigeria, legal ethics is taught at the Kenyan school of law, not at the undergraduate level. It is taught as Professional Ethics.

The Near-by Ghana

Generally, Ghana offers legal education through four routes.[40] These include undergraduate and post-graduate LL.B. programs.[41] Some programs are two years, others are three years, and there are even four-year programs. First, a person may begin formal legal education by enrolling at the University of Ghana's law faculty for a two-year post-first LL.B. degree and thereafter proceed to the Ghana School of Law for the two-year professional law certificate program. Second, one might opt for a similar program at the Kwame Nkrumah University of Science and Technology (KNUST) Law Faculty, where the post-first degree LL.B. program is three years (or four years for part-time students) and then go to the Ghana School of Law. Third, the KNUST Law Faculty offers a four-year undergraduate LL.B. program, after which the students may proceed to the Ghana School of Law. Fourth, the Ghana School of Law offers a Post-Call law course. The Post-Call course is athree-month course designed for qualified lawyers of common law countries outside Ghana. It covers two main subjects: Constitutional Law of Ghana and Ghana Customary Law. Candidates who successfully pass the requisite final examinations are enrolled as lawyers to practice in Ghana.The programs on teaching of legal ethics in Ghana is similar to Nigeria and other African countries.

[40]COMMONWEALTH LEGAL EDUC. ASS'N, DIRECTORY OF COMMONWEALTH LAW SCHOOLS 2003/2004, at 127 (John Hatchard ed., 2003) [hereinafter CLEA DIRECTORY].

[41] See Univ. of Ghana, Courses and Admission: Admission Requirements, http://www.ug.edu.gh/ admission.php (last visited September. 4, 2018)

IBA International Principles on Conduct for the Legal Profession, 2011

This is an inititive by the International Bar Association with the sole aim of promoting and fostering the ideals of the legal profession globally. The principles cover 10 principal areas for the purposes of regulating the conduct of the legal practitioners globally. The areas covered are similar to the provisions of the Rules of Professional conduct for legal practitioners in Nigeria. The major provisions of the said principles are in the following areas:

1. **Independence**

   A lawyer shall maintain independence and be afforded the protection such independence offers in giving clients unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a client, including as to the likelihood of success of the client's case.

2. **Honesty, integrity and fairness**

   A lawyer shall at all times maintain the highest standards of honesty, integrity and fairness towards the lawyer's clients, the court, colleagues and all those with whom the lawyer comes into professional contact.

3. **Conflicts of interest**

   A lawyer shall not assume a position in which a client's interests conflict with those of the lawyer, another lawyer in the same firm, or another client, unless otherwise permitted by law, applicable rules of professional conduct, or, if permitted, by client's authorisation.

4. **Confidentiality/professional secrecy**

   A lawyer shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients, unless otherwise allowed or required by law and/or applicable rules of professional conduct.

5. **Clients' interest**

   A lawyer shall treat client interests as paramount, subject always to there being no conflict

with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards.

6. **Lawyers' undertaking**

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused.

7. **Clients' freedom**

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

8. **Property of clients and third parties**

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property.

9. **Competence**

A lawyer's work shall be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.

10. **Fees**

Lawyers are entitled to a reasonable fee for their work, and shall not charge an unreasonable fee. A lawyer shall not generate unnecessary work.[42]

6. PROCEDURES FOR THE DISCIPLINE OF LAWYERS IN NIGERIA

The Breach of any of the Rules of Professional Conduct in the legal profession could be held to constitute an infamous conduct in a professional respect.[43] Any aggrieved party can write a written complaint against a legal practitioner to any of the following:

1. The Chief Justice of Nigeria,

[42] IBA International Principles on Conduct for the Legal Profession; Commentary,(2011) 5-9
[43] See OnitiriFadipe, Charge No. LPDC/1P/82 decided by the LPDC in 1991.

2. The Attorney General of the Federation,

3. President, Court of Appeal or presiding Justice of the Court of Appeal,

4. The Chief Judge of the High Court of a State or that of the FCT,

5. The Attorney General of a State,

6. Chairmen, body of Benches and;

7. President or Chairman of a branch of Nigeria Bar Association [44].

The procedures for the discipline of lawyers are summed up as follows:

i. Receipt of a complaint or petition,

ii. Any of the persons authorized to receive the petition or complaint shall forward same to the NBA which shall course the complaint to be investigated[45],

iii. Investigation and if a *prima facie* case is established, Nigeria Bar Association shall forward a report of such acase to the Secretary of the LPDC together and all documents not considered by the NBA and a copy of the complaint[46],

iv. Appointment of a legal practitioner by the NBA to present the case before the committee[47],

v. Hearing of the case of a party either personally or through a counsel of his choice,

vi. On the direction of the Chairman of the Disciplinary Committee, the Secretary shall fix a day of hearing and serve notices to parties (either through personal service registered post or e-mailetc)[48],

vii. There must be at least 15 days between the service of hearing notice and the date of hearing[49],

viii. Except where the service is by publication in the newspaper, the secretary is to serve on parties, other than the complainant, both the hearing notice and copies of the report and the complaint prepared by the NBA[50],

[44] Rule 3(1) LPDC Rules 2006.
[45] Rule 3(2), Ibid.
[46] Rule 4,
[47] Rule 6
[48] Rule 7(1) and 2, Ibid
[49] Rule 7(4), Ibid.

7. SOME REGULATORY BODIES OF THE LEGAL PROFESSION

(a) Council of Legal Education

The Council of Legal Education was set up by the Legal Education Act of 1962 pursuant to the recommendations of the Unsworth Committee. The Council of Legal Education is the body primarily responsible for the education of persons aspiring to the legal profession in Nigeria. It is the Proprietor of the Nigerian Law School. The body sets up and manages the institution. The Chairman of the Council of Legal Education 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.

(b) The Nigerian Institute of Advanced Legal Studies

The Nigerian Institute of Advanced Legal Studies (NIALS) is Nigeria's apex institution for research and advanced studies in law. It was a brainchild of the legal academic community established in March 1979. One of the main ideas in founding the Institute was to establish it as the centre for advanced legal research for all the Nigerian universities with Faculties of Law, so that all postgraduate work could be undertaken there under the joint auspices of the most experienced and learned academic lawyers available in the country, whether indigenous or foreign. The institution is fully incorporated into the Laws of the Federation 2004 as section 4(c), Cap. N112.

(c) General Council of the Bar

The General Council of the Bar is established by section 1 (1) of the Legal Practitioners Act. The body is charged with the following functions:

i. Making and reviewing of the Rules of Professional Conduct and
ii. Making of the Rules of Accounts to be kept by legal practitioners with the approval of the Attorney-General of the Federation – see section 20(1) & (2) of the Legal Practitioners Act

[50] Rule 7(5), Ibid.

(d) Nigerian Bar Assiociation

The Nigerian Bar Association is an association of all legal practitioners in Nigeria, which enjoins perpetual succession; but, is not a juristic personality. Membership is automatic upon enrolment at the Supreme Court of Nigeria, after Call to Bar. each member of the NBA is entitled Practicing fees must be paid latest by 31st of March each year. Amount to be paid depends on the number of years at the Bar. If a person is called to Bar after this date (31st March), then such a person must pay practising fee within one month after Call to Bar.

(e) Body of Benchers

The Body of Benchers is established by section 3(1) of the Legal Practitioners (Amendment) Act 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. Indeed, an aspirant to the Bar must be sponsored by 2 members of the Body of Benchers before such a person can be called to the Nigerian Bar.

The Body of Benchers is a body corporate with perpetual succession and a common seal. It is a juristic person that can sue and be sued in its own name.

(f) The Legal Practitioners Disciplinary Committee (LPDC) of the Body of Benchers

One cannot talk about ethics of the legal profession without talking about the LPDC of the Body of Benchers.The Committee is established pursuant to Sections 10 and 11 of the Legal Practitioners Act (as Amended), and vested with statutory powers to entertain and determine complaints of professional misconduct against Legal Practitioners in Nigeria. It is vested with the duty of considering and determining any case, where it is alleged that a legal practitioner has mis-conducted himself and should for any reason be the subject of disciplinary proceedings under the Act. This is a kind of self cleansing mechanism for the legal profession.

Appeals from the decisions of the LPDC go directly to the Supreme Court of Nigeria.

(g) The Legal Practitioners Privileges Committee

This Committee is established by Section 5 of the Legal Practitioners Act and it is primarily vested with the power to award deserving legal practitioners with the rank of Senior Advocate of Nigeria. Conversely, it is also empowered to strip a Senior Advocate of Nigeria of the rank where such recipient falls short of acceptable moral or professional standards.

Where a legal practitioner is dissatisfied with their decision, there is no appeal to another body; rather such an aggrieved person will apply to the LPPC for a review of their earlier decision. See **section 27 (1)** of the 2018 Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Partaining to the Rank. The Chief Justice of Nigeria chairs this committee.

(c) **Law Enforcement Agencies**

In the event that a lawyer's violation of the ethics of this profession border on crime, the

law enforcement agencies like the Economic and Financial Crimes Commission (EFCC), the Nigeria Police Force and the Independent Corrupt Practices (and Other Related offences) Commission (ICPC) will invariably step in.

POSSIBLE CONSEQUENCES OF VIOLATION OF ETHICS OF THE LEGAL PROFESSION IN NIGERIA

The penalties for unprofessional conduct are as enshrined in **section 11 of the Legal Practitioners Act.** The LPDC is empowered under the Act to give any of the following directions against a person found liable;:

(i) Ordering the Registrar of the Supreme Court to strike that person's name off the roll (disbarment); or

(ii) suspending that person from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction (debarment); or

(iii) admonishing that person, and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other thing as the circumstances of the case may require.

The Legal Practitioners Privileges Committee similarly, has the power to either suspend the indicted Senior Advocate or totally strip him/her of the privileges associated with the rank.

As stated earlier, we must be conscious of the way we conduct ourselves even in our private lives. This is more so in view of the fact that the LPDC also has the jurisdiction to sanction a lawyer for misconduct not amounting to infamous conduct, which, in the opinion of the

Disciplinary Committee is incompatible with the status of a legal practitioner.

8. RECOMMENDATION

Before I conclude I must recommend that if the commitment of the legal profession and legal academia to producing sound lawyers is genuine, legal ethics must be the most important subject not only in the law school, but in the undergraduate curriculum in the various faculties of law. Properly taught, ethics courses should provide the lens through which students view what it means to be a lawyer and discover how to find meaning in their work. From a pragmatic perspective as well, legal ethics is the only subject in law school "which every student [who becomes a lawyer] will encounter in practice."[51]

This recognition of the significance of teaching legal ethics would require extensive revision of the entire curriculum for teaching law, at both the law school and the various faculties of law in Nigeria. It is recommended that legal ethics should be a compulsory course of at least two credits for the first three years at the undergraduate level. According to a writer, the only reason to teach legal ethics, or professional responsibility, is to try to make the legal profession more worthy of its stated ideals.[52]

[51] Russell G. Pearce, Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School, (29 LOY. U. CHI. L.J. 1998)719, 724-25

[52] MODEL CODE OF PROFESSIONAL RESPONSIBILITY preamble (1980) ("The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. . . . Lawyers, as guardians of the law, play a vital role in the preservation of society.");

The Faculty of law of Baze University must lead in this direction and be the pacesetter in Nigeria, except if the National University Commission kicks against such initiative.

9. CONCLUDING REMARKS

Legal Practitioners must see themselves as a special breed from which the society and the law expect the highest standards of behavior and conduct. In fact, we are the *primus interperes.*

We are however not ignorant of the fact that some members of the profession in their mad rush to hit the jackpot, seem to have forgotten all that was taught to them in the University and at the Law School, and have instead become adherents of the fabled 11th Commandment, ***'Thou shall not be found out'***.

Inevitably, the fabled 11th Commandment turns out to be just what it is (i.e. a fable) and the long arm of the law (which I assure you is no fable at all) does what it does best and catches up with them thus bestowing upon us time and again the painful task of self-cleansing.

Legal practitioners must be guided by the principles of professionalism, integrity, dignity, discipline, uprightness and excellence. We must not be found wanting in any respect, whether professionally or privately.

Kindly, permit me to conclude by adopting the admonition of the LPDC in its direction delivered on the 10th day of May, 2013 in **case no. BB/LPDC/091 – NIGERIA BAR ASSOCIATION V. G.C MONYEI:**

> ***" Any legal practitioner that wants to remain in the fold of men of noble learning must abide by the simple rules of professional ethics and be standard bearers of all that is good, noble and excellent. Those that cannot keep within the rules of professional ethics should voluntarily go and look for other past times to engage in."***

I would at this juncture advise to-be legal practitioners, like you, to do what I do, when you eventually become lawyers. I simply make a copy of the Rules of Professional Conduct handy everywhere I go. I keep a copy in the car, a copy in my court bag, a copy in my office and a copy in the library at home. This is to ensure that I can easily refer to it whenever I am in

doubt. I strongly admonish all others (and students too) to imbibe this principle, as this drastically reduces the possibility of a breach of these rules.

In the end, it is only our strict adherence to the ethics of this profession that can save it from the few deviants who intermittently put us in the news for the wrong reasons. In the same vein, strict compliance protects us from the sword of Damocles that is hanging to crush any miscreant or deviant.

It is vehemently suggested that these rules be better enforced for lawyers to fully appreciate the attendant implications of joining this profession.

Thank you for your attention.

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