

Courts as Managers of Ethical Professional Conduct for Lawyers in Nigeria: The Lagos State High Court Civil Procedure Rules 2019 as a Model

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Abstract: In discourses on ethical standards, common terms or phrases that come to fore include norms, morals, values, acceptable conducts, perceptions of right against wrong, duties, obligations, and so on. For legal ethics however, it is of a higher benchmark. This is due to the standing accorded the legal profession. The custodians of the profession, the bar and bench, have an obligation to uphold legal ethics, much of which appears to be on a constant decline, contrary to what the legal profession should represent. Legal codes on ethics for lawyers prescribe standards by which lawyers are expected to conform, when faced with ethical challenges arising at the instance of professional dealings with clients, colleagues and the courts.

This paper explores the prospects of courts in enforcing ethical standards amongst lawyers, via its rules of practice and procedure. It does this by examining the provisions of the recently reviewed Lagos State High Court Civil Procedure Rules (LSHCCPR) 2019 and advances the position that the new rules of court places it in good stead for enforcing ethical compliance amongst lawyers appearing before it. The paper also suggests that the promotion of a harmonious bar and bench is key to this end.

Keywords: Courts, Ethics, Judiciary, Lawyer, Nigeria.

1. Introduction

Ethics, as a term, is of a philosophical background that characterizes acceptable standards in interpersonal dealings or inter-relations.³ It sets out the nature of duties and responsibilities between or amongst persons in the course of relationships.⁴ It also extends to business relations.⁵ For legal ethics, the standard is higher. The standard of ethics observed in the legal profession is an offshoot of the nobility ascribed to the profession itself. From the inception of the profession, there were no codes of ethical conduct for members of the profession.⁶ There was no need for it. Lawyers in the course of running their practices could independently and

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³ Legal Ethics, Further Readings <<https://law.jrank.org/pages/6593/Ethics-Legal.html>> accessed on May 15, 2021.

⁴ *ibid.*

⁵ *ibid.*

⁶ Louis Parley, A Brief History of Legal Ethics, (1999) 33 *FLQ* 637.

conscientiously regulate their actions and ensure that they did not fall in breach.⁷ As time went by however, it became necessary to draw up a set of ethical rules to control the rising misconducts that soon became prevalent amongst lawyers towards those they owed responsibilities. Up until now, rules of ethics have remained with the profession worldwide. Nigeria is not an exception.

The thrust of this paper, therefore, is to ascertain how the courts, by virtue of its rules, ensure that lawyers, to a great extent, operate within the rules of professional standards set out for them.

1.1 Background on Rules of Professional Ethics in Nigeria.

Years after the legal profession was introduced to Nigeria,⁸ and law practice began to take shape along the lines of the jurisdiction which it was modelled after,⁹ legal practitioners began to fall in breach of perceived ethical standards, thus making it expedient to formulate rules on professional conduct, to control and regulate legal practice.¹⁰

The first Rules of Professional Conduct (RPC) operative in Nigeria came on the heels of the Legal Practitioners Act (LPA) of 1962.¹¹ The Act established a body called the General Council of the Bar (GCB)¹² which it charged with the responsibility of the general management of the affairs of the Nigerian Bar Association.¹³ In December 1967, the GCB formulated its first set of rules on professional conduct for lawyers in Nigeria, which was later amended in 1979.¹⁴ According to the GCB, the rules of professional conduct were designed for the “... maintenance of the highest standards of professional conduct, etiquette and discipline...” for lawyers.¹⁵ The rules, containing 52 provisions, featured extensive coverage of legal practice, stipulating ethical codes for lawyers in relation to their duties towards the court, to their clients and to their colleagues. The RPC of 1979 was in operation for close to 30 years until it was amended by the Rules of Professional Conduct for Legal Practitioners, 2007¹⁶. The rules were amended in exercise of the powers conferred on the former Attorney-General and Minister of Justice, and by virtue of his office as the chairman of the GCB, under section 12(4) of the Legal Practitioners Act (as amended)¹⁷. According to the section, it provides:

It shall be the duty of the Bar Council to prepare, and from time to time revise, a statement as to the kind of conduct which the Council considers to be infamous conduct in a professional respect, and the Registrar shall send to each person whose name is on the roll and whose address is shown in the records of the Supreme Court relating to legal practitioners, by post to the address, a copy of the statement as for the time being revised; but the fact that any matters are not mentioned in such a statement shall not preclude the Supreme Court or the Disciplinary Committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters.

For the prior rules, that is, before the introduction of the 2007 rules, amendments were made in accordance with the provisions of section 1 of the LPA which provides for the establishment of the Bar Council as well as the constitution of its membership.¹⁸ It is these members that are responsible for drafting rules of professional conduct.

It is however noteworthy to mention that an attempt was recently made at a review of the 2007 rules in 2020 but no effect has been accorded the said review, as the circumstances under which it was introduced remains

⁷ *ibid.*

⁸ T. O. Elias, “Legal Education in Nigeria”, (1962) 6 JAL 117.

⁹ *ibid.*

¹⁰ See O. Adewoye, *The Legal Profession* as cited in A. Obi Okoye, *Law in Practice in Nigeria* (2nd edn, Snaap Press Ltd. 2015) 23.

¹¹ < <https://gazettes.africa/archive/ng/1962/ng-government-gazette-supplement-dated-1962-12-31-no-106-part-a.pdf>> accessed on 11 June 2021.

¹² Also referred to as the ‘Bar Council’.

¹³ See s. 1.

¹⁴ Legal Practitioners Decree 1975 (1975 No. 15).

¹⁵ See long title in Federal Republic of Nigeria Official Gazette, No. 5, Vol. 67, 18th January 1980 < <https://gazettes.africa/archive/ng/1980/ng-government-gazette-dated-1980-01-18-no-5.pdf>> accessed 01 June 2021.

¹⁶ S. I. 6 of 2007 B 57. Legal Practitioners Act (LPA) 1974 Cap L11 2004.

¹⁷ LPA Cap. 20 LFN 1990.

¹⁸ LPA 2004, s. 1(2) (a-c).

controversial. Consequently, the RPC 2007 remains recognised as the extant rules of professional conduct for lawyers in Nigeria.¹⁹

The RPC of 2007 contain 55 provisions broken into seven parts which arrangement is as follows: (i) practice as a legal practitioner (ii) relations with clients (iii) relations with other lawyers (iv) relations with court (v) improper attraction of business (vi) remuneration and fees and (vii) miscellaneous provisions.

1.2 The Lagos State High Court Civil Procedure Rules 2019 – The New Rules

Civil procedure rules are methods, procedures and practices adopted by civil law courts in the resolution of civil matters over which they preside.²⁰ The action could either be between individuals or a class of individuals.²¹ These are either enacted by the legislature or by the courts themselves. The Lagos State Judiciary, in its advancement of administration of civil justice delivery, established the Lagos State High Court Civil Procedure Rules (LSHCCPR) 2019. The rules of court replace those of 2012. The latest rules which came into effect on the 31st of January 2019, are a set of rules that adopt strategies in ensuring a speedy dispensation of justice and efficient resolution of matters that come before the civil courts.²² Distinguished from its 2012 predecessor, it was created to cure excessive delays synonymous with civil procedure matters in the State and also to create a strategy of ensuring that matters are dealt with and disposed of in a timely manner. The overriding objectives are set out under order 2(1), and according to this order, it provides as follows:

- a. To deal with every civil proceeding in ways that are proportionate, considering the nature and importance of the case, complexity of the issues, the amount of money involved and the financial position of each party.
- b. To allot to every civil proceeding an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.
- c. The Court shall further the overriding objectives by actively managing cases and active case management includes:
 - i. Mandating the parties to use an Alternative Dispute Resolution (ADR) mechanism where the Court considers it appropriate and facilitating the use of such procedure.
 - ii. Assisting the parties to settle the whole or part of the case.
 - iii. Fixing timetables or otherwise controlling the progress of the case.
 - iv. Giving directions to ensure that the trial of the case proceeds quickly and efficiently.
 - v. Requiring the Claimant and his Legal Practitioner, to cooperate with the Court to further the overriding objectives by complying with the requirement of the Pre-Action Protocol to wit:
 - a. That he has made attempts at amicable resolution of the dispute through mediation, conciliation, arbitration or other dispute resolution options.
 - b. That the dispute resolution was unsuccessful and that by a written memorandum to the Defendants, he set out his claim and options for settlement;
and
 - c. That he has complied as far as practicable, with the duty of full and frank disclosure of all information relevant to the issues in dispute.

¹⁹ See s.12(4) LPA 2004. See also Alex Enumah, "NBA to Tackle Malami on Amended Rules of Professional Conduct". <https://www.thisdaylive.com/index.php/2020/09/14/nba-to-tackle-malami-on-amended-rules-of-professional-conduct/> This day (Nigeria, 14 September, 2020) accessed on 27 May 2021; Alfred Olufemi, "Amendment of Lawyers' Rules: Former NBA VP sues Malami" <https://www.premiumtimesng.com/news/more-news/415150-amendment-of-lawyers-rules-former-nba-vp-sues-malami.html> The Times (Nigeria, September 17 2020) accessed 27 May 2021; Eniola Akinkuotu and Oladimeji Rahman, "Malami Can't Single-Handedly Amend Lawyers' Professional Conduct Rules – Akpata" <https://punchng.com/malami-cant-single-handedly-amend-lawyers-professional-conduct-rules-akpata/> The Punch (Nigeria, 14 September, 2020) accessed on 27 May 2021; Law Forte "Amendment of the Rules of Professional Conduct in the Legal Profession in Nigeria: Myths and realities" <https://lawforteng.com/2020/09/16/amendment-of-the-rules-of-professional-conduct-in-the-legal-profession-in-nigeria-myths-and-realities/> (Nigeria, 16 September, 2020) accessed on 27 May 2021; Lukman Olabiyi, "Controversy Trails Malami's Amendment of Professional Conduct for Legal Practitioners" The Sun (Nigeria, 16 September, 2020) accessed 27 May 2021.

²⁰ Cornell Law School Legal Information Institute, Civil Procedure https://www.law.cornell.edu/wex/civil_procedure accessed 10 June 2021.

²¹ *ibid.*

²² As stated in the preamble to the Rules.

- d. The Court may impose appropriate sanctions if party does not comply with these Rules or an Order of the Court.

1.1.1 Practice Direction 1 – Backlog Elimination Programme (BEP).

Introduced together with the rules, are practice directions to assist the court in achieving its mandate. Provided for in the preamble of the Practice Direction for the Backlog Elimination Programme²³, is the commitment of the Court towards dealing with backlog of cases in an efficient and effective way.²⁴ The Court indicates via its Practice Directions No. 1, its resolve to circumvent factors responsible for undue delays, expense and technicality and facilitating the purpose of the Rules.²⁵ In the conduct of cases generally, there is an implied undertaking by a party to the Court and to the other party to proceed in an expeditious way.²⁶ As part of the objectives as laid out under this Practice Directions, the Court is poised to facilitate the just and timely disposition of proceedings with the least possible resources expended by it as well as by litigants, by monitoring the progress of cases against predetermined deadlines and intervening where it is observed that proceedings are not progressing satisfactorily.²⁷ The Court with reference to the provision of the Rules shall ensure procedures end early which it intends to achieve through what it refers to as ‘active interventions’. Such active interventions the Court shall apply are, the dismissal of the suit for lack of diligent prosecution²⁸ and dismissal for abuse of Court processes.²⁹ The Practice Direction is founded on a fundamental and incontestable idea that civil proceedings are brought for the purpose of securing resolution to genuine disputes timeously and in the most effective and efficient manner; that any other purpose would raise suspicion that the Court process is set to be abused.³⁰

1.1.2 Practice Direction 2 - Pre-Action Protocol.

Alongside the BEP is the Practice Direction as relates to Pre-Action Protocol.³¹ The document which applies to all actions instituted at the Lagos State High Court explains the conduct and sets out the steps that parties are required to take prior to the commencement of proceedings to which the new rules apply.³² Before proceedings commence, it is expected of parties to take steps at attempting to resolve their issues. The Court provides the parties the liberty to deliberate over a possible form or forms of ADR mechanisms that would assist in the settlement of disputes, and in addition, find means of reducing costs and delays associated with dispute resolution.³³

It is apparent from the tone of the new rules and its accompanying documents, that the Court intends for matters coming before it to be dealt with as expeditiously as practicable, yet handled with high levels of competence, by those, in whose hands it is to ensure that justice is served. This raises the issues of whom the custodians of justice are and the means through which the Court can achieve the desired proficiency and promptness in its civil justice delivery.

2.1 The “Ethical” Lawyer.

A lawyer is a person trained in the theory and practice of law.³⁴ He³⁵ is one that is qualified to offer legal services to persons seeking legal assistance and he carries out this service mostly for a fee.³⁶ He is at other times referred to as a barrister, advocate, counsel or solicitor.³⁷

²³ No. 1 of 2019.

²⁴ Clause 2.2.

²⁵ Clause 2.3 (ii).

²⁶ Clause 2.3 (iii).

²⁷ Clause 3.1.

²⁸ Clause 3.2(iii).

²⁹ See clause 3.2 (iv)

³⁰ Clause 3.3.

³¹ No. 2 of 2019.

³² See Clause 2 of Preamble.

³³ See Clause 3 (d) and (f) of Preamble.

³⁴ <https://www.businessdictionary.com> accessed 01st June 2021.

³⁵ See infra (n 39).

³⁶ Law Dictionary, <http://thelawdictionary.org> accessed 01st July 2019.

³⁷ The practice of the legal profession in Nigeria is a fused one unlike what is obtainable in the United Kingdom, the jurisdiction from where the profession was embraced. Upon call to the Nigerian Bar, a lawyer qualifies to practice both as a barrister and solicitor.

From the inception of the legal profession, lawyers have been referred to as gentlemen. The term 'gentleman' suggests one who is honest, civilized, good mannered, sensitive, and of good family breeding.³⁸ The term gentleman is also a polite and formal way of referring to a man.³⁹ This is the standard expected of a lawyer in his actions and words. The description is reflected in the way he eats, dresses and his general comportment. The standard becomes higher in his dealings before his clients.

Lawyers play various significant roles in the society, depending on what his jobs specifications entail. A lawyer may be one or any of the following:⁴⁰ An advisor providing his client with informed understanding of his legal rights and obligations as well as pointing out to him any possible implications; an advocate representing his client in court in a quest for adversarial resolution of issues; a negotiator bidding for favourable outcomes on behalf of his client; a mediator, conciliator or a lawyer involved in other dispute resolution approaches to assist his client achieve reconciliation. He may be an evaluator, evaluating the legal affairs of his clients that have been placed in his care. He may also as a solicitor, be engaged in the preparation and drafting of legal documents for the benefit of his client.⁴¹ In whichever role that the lawyer finds himself, he must portray high levels of diligence, commitment, promptness and sense of responsibility always. A lawyer must remember that he is a gentleman.

2.2 The Ethical Code of a Lawyer

From history, it has been established that the legal profession is one predicated on basic ethical rules that have remained unchanged for, at least, two centuries.⁴² The profession is centred around three values, namely, loyalty, confidentiality and candour to courts⁴³. While the former two legalize the representation of clients, the latter legitimizes the bar's relations with the bench.⁴⁴ According to Robert Bell and Caroline Abela,⁴⁵ they succinctly classify the duties of a lawyer into three. In their words: "to use tactics that are legal, honest and respectful to courts and tribunals; to act with integrity and professionalism while maintaining his or her overarching responsibly to ensure civil conduct; and to educate clients about the court processes in the interest of promoting the public's confidence in the administration of justice."⁴⁶ Unlike countries like the United States of America where the lawyer's foremost duty lies to his client, the position is different in the case of the United Kingdom. In this jurisdiction, the lawyer owes his foremost duties to the courts. Law practice in Nigeria was predominantly shaped after that of the United Kingdom and thus, the same is the case in Nigeria. Lawyers have a code of conduct setting out minimum standards as to expected conduct.⁴⁷ The ethical compass of a lawyer is not only measured by his actions or inactions in the course of his professional duties. It extends also, to his comportment in his everyday concerns.⁴⁸ The legal profession is deemed as honourable and so is everything it represents or represented by it. Thus, the need for a lawyer to pass the fitness test.⁴⁹

In referring to the legal profession as a distinguished one, Oputa JSC had the following to say:

...The cooperation the bench expects from the bar is for the bar to discharge its various duties steadfastly and punctually; to discharge them with the refinement and grace ... and to bring to bear on every aspect of the discharge of those duties an ever-present awareness of, and a voluntary obedience to, that code of behaviour and etiquette which alone would justify the bar in proudly proclaiming itself an honourable profession, which indeed it is.⁵⁰

Presently however, the code of conduct for lawyers is embodied the Rules of Professional Conduct for Legal Practitioners (RPC) 2007. These Rules guide the conduct of lawyers in their professional dealings whether

³⁸Cambridge Dictionary, <http://Dictionary.cambridge.org> accessed 01st June 2021.

³⁹ In the legal profession, before the Nigerian Courts, the female gender is not recognized at the Bar. Lawyers, male and female, are generally referred to as gentlemen, hence the adoption of the masculine pronoun throughout the paper.

⁴⁰Virginia State Bar, Professional Guidelines < <https://www.vsb.org/pro-guidelines/index.php/rules/preamble/>> accessed 01st June 2021.

⁴¹ *ibid.*

⁴² Geoffrey C. Hazard Jr., The Future of Legal Ethics (1991) *Yale Law Journal*, (100) (5)1239 – 1280, 1246.

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ A Lawyer's Duty to the Court https://www.weirfoulds.com/assets/uploads/11024_10167_CEA-A-Lawyers-Duty-to-the-Court.pdf accessed 05 June 2021.

⁴⁶ *ibid* p 5.

⁴⁷ See n. 14.

⁴⁸ S 12(2) LPA 2004.

⁴⁹ See s. 4 (c) LPA 2004.

⁵⁰ C. A. Oputa, *Modern Bar Advocacy*, (Lagos, Justice Watch, 2014) 251.

towards the courts, to clients and to other lawyers. Emphasizing the ethical benchmark of a lawyer, is found in the opening rule of the RPC. It spells out a lawyer's general responsibility. According to the rule⁵¹ it provides that 'a lawyer shall uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner'. By this opening provision, it places several duties on a lawyer in his dealings with the court, which are capable of assisting the courts in achieving its set objectives. In support therefore, the Court is capable of playing a supervisory role in ensuring that the rules are complied with, within the boundaries of the powers allotted to it under the new rules, that is, by applying the active interventions as earlier stated, particularly those leading to the dismissal of actions for both lack of diligent prosecution and the abuse of court processes. These are poised towards the Court achieving an efficient justice delivery system. The discussions following are ethical expectations required of lawyers in the discharge of their duties in handling court briefs for clients.

2.3 Ethical Expectations of Lawyers in Handling Clients' Court Briefs.

2.3.1 Duty of the Lawyer to Prepare for Cases.

A lawyer must be adequately prepared for cases he intends to pursue before the Courts.⁵² He shall not take up a matter that he is incompetent to handle or handle alone.⁵³ By holding himself out as a lawyer to his client, it is implied that the lawyer shall acquaint himself with as much knowledge that is required to carry him through the matter and possibly have the matter resolved in favour of his client. A lawyer shall not neglect a legal matter entrusted to him to handle, such as absenting himself from court on days which such matters have been scheduled to hold.⁵⁴ A lawyer who is not prepared is of little or no assistance to neither his client nor the court. An unprepared lawyer complicates the job of the court, ending up wasting its time where more could have been achieved. The High Court however, through its active intervention under the Practice Directions, has powers to dismiss a matter for lack of diligent prosecution.⁵⁵

A lawyer must ensure he takes adequate instructions from his clients that would assist in the preparation of his case. He may do this by conducting client interviews with a view to extracting information from the client that would help in strengthening his case. In the course of meetings or interviews with clients, the lawyer must ensure he has a recall mechanism in place in order to remember his client's instructions to him.⁵⁶ It is important that lawyers are involved in some form of notetaking.⁵⁷ In doing so, a lawyer must be able to strike a balance between making jottings of his client's brief and portraying a body language that depicts empathy to the challenges of the client.⁵⁸ 'The faintest ink is more powerful than the strongest memory,' say the Chinese. In preparing for the case of the client, it is important that the client be represented within the bounds of the law.⁵⁹ As a lawyer, he must avoid matters that he believes to be unlawful in spite of any support of an argument backing the conduct.⁶⁰ He is also precluded from giving assurances that are not along the lines of the provisions of the law.⁶¹ This does not prevent the lawyer however, from rendering a fair analysis of the strength of available evidence upon which he intends to rely on behalf of the client.⁶² Giving assurances to the client, may cause desperation on the part of the lawyer, finding means to be successful at all cost.

In the course of being briefed, a lawyer must be able to advise clients in relation to matters that are better off being resolved using Alternative Dispute Resolution (ADR) mechanisms. This gives support to the expectations of the court as stated within its objectives.⁶³ The RPC makes it mandatory for lawyers to inform parties on the

⁵¹ r 1 RPC 2007.

⁵² r16(1)(b) RPC.

⁵³ r 16.

⁵⁴ See r 16 (1) (c).

⁵⁵ Clause 3.2 (iii).

⁵⁶ Avrom Sherr, "Lawyer and Clients: The First Meeting *Modern Law Review*" (1986) 49(3) MLR 323, 337.

⁵⁷ *ibid.*

⁵⁸ Bloomberg Law, "McGhan was Right, Real Lawyers Take Notes (1)" (19 April, 2019) <https://news.bloomberglaw.com/business-and-practice/mcgahn-was-right-real-lawyers-take-notes> accessed on 07 June 2021.

⁵⁹ r 15(2)(a) RPC.

⁶⁰ r 15(1).

⁶¹ r 15(5).

⁶² *ibid.*

⁶³ See or 2(1) (c) (i) LSHCCPR 2019.

options of ADR in the resolution of disputes.⁶⁴ He should be able to also spot matters that are non-justiciable. It behoves on a lawyer to carefully identify circumstances where the client seeks to take out actions without merit or those which are calculated to merely harass or intimidate the opposing lawyer.⁶⁵

As part of a lawyer's duty in his case preparations, he must be conscious of the sort of matters accepted from clients. While it is not good practice for lawyers to reject the briefs of clients,⁶⁶ he must ensure that the sort of matters he accepts is not one where the former ends up testifying on the merits of the case he is handling, or where the lawyer is bound to be joined as a party in a case he is handling for his client.⁶⁷ Such issues are likely to lead to delay in justice dispensation. A lawyer who is holding the brief of another, shall ensure he is briefed by the colleague, handing over to him, within a reasonable time. This gives the latter ample time to have a good grasp of the matter before appearing in court.⁶⁸

The need for adequate preparations cannot be emphasized enough as the lack of such may lead to adjournments, all to the detriment of the court and the client.

2.3.2 Duty to treat the Courts with Dignity and Honour.

As a minister in the temple of justice, a lawyer has the a primary responsibility to treat the court with dignity and honour.⁶⁹ The Supreme Court of Nigeria has pronounced on a number of occasions that a legal practitioner has a paramount duty to the court to protect and foster the course of justice.⁷⁰ As such, an advocate must desist from doing any act or carrying out any conduct in any manner that may obstruct, delay or adversely affect the administration of justice.⁷¹ He is bound to fulfil all undertaken given by him or on behalf of the his client towards the judge. He shall also refrain from discussing pending cases with the judge presiding over the matter in which he is involved except the discussions take place in the presence of the opposing lawyer.⁷² In the same vein, a lawyer is precluded from delivering any correspondence to the judge without concurrently delivering a copy to the opposing lawyer.⁷³

When dealing with a judge, a lawyer shall always exhibit, candour and fairness. In presenting his matter before the court, he shall disclose any legal authority known to him to be directly averse to the position of his client and which is not disclosed by the opposing lawyer.⁷⁴ A lawyer shall not amongst other things, state or allude to a matter which he has no reasonable basis to believe is relevant to a case or admissible in evidence.⁷⁵ He shall not ask any question irrelevant to a matter where such a question is merely to degrade a witness or other person.⁷⁶ He shall not assert his personal knowledge of the facts in issue except when testifying as a witness, or assert his personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or as to the guilt or innocence of an accused person.⁷⁷ This does not however preclude him from arguing, on the analysis of the evidence, for any position or conclusion with respect to these matters.⁷⁸ Other areas from which a lawyer must desist are: intentionally and habitually violating rules or procedures of evidence,⁷⁹ knowingly misquoting the content of a document, the testimony of a witness, the statement made by the opposing counsel or the language of a decision or a textbook.⁸⁰ He must also not intentionally cite authorities that have been overruled or a repealed statute;⁸¹ produce evidence which he knows the court

⁶⁴ r 15(3)(d) RPC.

⁶⁵ r 15(3)(c); r 24(3).

⁶⁶ r 24.

⁶⁷ r 20.

⁶⁸ r 27(3).

⁶⁹ R 31 (1).

⁷⁰ *Fawehinmi V Nigerian Bar Association & Ors* (No. 1) [1989] 2 NWLR (Pt. 105) 494; *Eranem & Ors v. Akan & Ors* [1998] 8 NWLR (Pt. 211) 616; *Shahimi v. Akinola* [1995] 5 NWLR 9Pt. 294) 434.

⁷¹ r 30 RPC 2007

⁷² r 31 (4).

⁷³ r 31 (5).

⁷⁴ r 32(2)(a).

⁷⁵ r 32(3).

⁷⁶ r 32(3)(b).

⁷⁷ r 32 (3) (c).

⁷⁸ *ibid.*

⁷⁹ R 32 (3) (f)

⁸⁰ r 32 (3) (f).

⁸¹ r 32 (3) (g).

should reject nor should he promote a case which he knows is false.⁸² A lawyer must abstain from conducts which would amount to an abuse of court process or engage in acts that are dishonourable or unworthy of an officer of the court.⁸³ Where a lawyer is found engaging in acts of abuse of court process, the court shall, on its own, dismiss the suit by virtue of the powers conferred on it under its Practice Direction.⁸⁴ This is in line with the High Court's mandate to facilitate the just and timely disposition of proceedings as earlier discussed.⁸⁵ A lawyer associated in an action shall not while litigation is anticipated or pending get involved in extra-judicial statements that is calculated to prejudice or interfere with or is capable of prejudicing or interfering with the fair trial of the matter or judgement.⁸⁶ In a lawyer's dealing with judges, he shall not conduct himself in a way, creating the impression, of gaining special personal consideration or favour from the judge.⁸⁷ In a lawyer's professional dealings, it must always resonate with him that he is an officer of the court charged with the duty of aiding the administration of justice.⁸⁸

2.3.3 Duty to Maintain Courtroom Composure/Decorum

A lawyer has a duty to conduct himself with decency and decorum, and must observe the customs, code of conduct of behaviour of the court and customs of practice at the bar, particularly in relation to appearance, dressing, manners and courtesy.⁸⁹ A lawyer must desist from assuming an undignified posture neither shall he display discourteous conduct which is degrading to the court.⁹⁰ When conducting his matter before the courts, he shall address his objections, requests, argument and observations to the judge and shall not engage in the exchange of banter, personality display, arguments or controversy with the opposing lawyer.⁹¹ For instance, it is most courteous for the lawyer to rise when addressing the judge. Where a lawyer, after his matter, observes that he is the last in court with the Judge, he shall wait until the court rises. He shall not undress the court.

2.3.4 Manner of Dressing Before the Courts

One of the attractions of the legal profession is the dress code for lawyers when they appear before the courts. By virtue of the conservative nature of the profession, the dressing of lawyers appearing before the courts are of calm and sober colour and design, depicting the sobriety of the profession. Dressing must be formal, unobtrusive and be compatible with the wearing of the robes.⁹² According to the RPC, a lawyer when in the courtroom, shall be attired in a proper or dignified manner and shall not wear any apparel or ornament calculated to attract attention to himself.⁹³ The regulation colours for legal practitioners appearing before superior courts of record in Nigeria remain black and white. However, variants of black such as charcoal-grey and blue-black may be permissible but on the condition that it would be difficult to distinguish the varying shade from black - The white is a constant. It has no variant.

For the male counterparts, is the two or three-piece trouser suit, a white collarless shirt to which a white winged collar is attached using studs, and a white band or elastic bib. Alternatively, along with the suit, he could wear a white wing-collared shirt in place of the collarless shirt and detachable wing-collar. Also, in the alternative, a male lawyer may wear, together with the described options of shirt, collar and bib, a grey pinstriped trouser along with a barrister's jacket. Together with any of the alternatives as described, he wears a pair of black or dark (as described) coloured socks and a pair of black polished formal shoes. He must arrive at the court premises to adorn his wig and gown. This must be done before the court sits and not while the judge is seated.

⁸² r 32 (3) (k).

⁸³ r 32 (3) (k).

⁸⁴ clause 3.2(iv).

⁸⁵ On discussions on Practice Directions, see paragraph 1.1.1., supra.

⁸⁶ r 33

⁸⁷ r 34

⁸⁸ r 1

⁸⁹ r 36(b)

⁹⁰ r 36(e)

⁹¹ r 36(d)

⁹² Afe Babalola, "Key to Success at the Bar, Legal Practice and Skills in Nigeria" in *Essays in Honour of Babatunde Abiodun Iboronke*, Edited by K. N. Nwosu, (2004) 3.

⁹³ r 36 (a).

For ladies, the same colour pattern as their male counterpart is applicable. They may wear black or dark coloured long-sleeved skirt-suit inside of which must be worn a white blouse or shirt⁹⁴ that would tidily accommodate a collarette. In place of the skirt-suit, they may wear a long-sleeved dress-suit or dress. The colour of shoes to be worn to court must be black and must also be formal.⁹⁵ Jewellery and make up shall be used sparingly. The female lawyer's hairdo must be tidy. When adorning her wig and gown, she must avoid the now common practice of placing a wig upon a wig or upon a bulky hairdo. In general, the dress composure of a lawyer must be modest. This, often time, is not the case. Unfortunately, improper dressing on the part of a lawyer before the court is one of the factors that contribute to delay in matters, particularly where the lawyer appears before a judge that insists on proper dressing before audience can be granted.

According to a learned Senior Advocate of Nigeria (SAN), he depicted the deplorable state of dressing by lawyers appearing before the courts in the following words:

... Unfortunately, in this country, many lawyers do not appreciate that it is a convention that must be strictly followed... Lawyers come to court in green, blue or brown khaki trousers and coats of different colours. I will tell you the story of a Lawyer who fell foul of the tradition. There was this handsome, good-looking, well-built, light complexioned lawyer. He came to court ... It was a call over day. There were more than 25 lawyers in court. The presiding judge was a most gifted speaker of the English language. His base voice was distinct and beautiful. He was ever well dressed. This young lawyer came to court very well dressed. But the suit was shining light blue. He took his seat in the 3rd row. When his case was mentioned, he rose up [sic] and announced himself for the plaintiff and said: "I appear for the Plaintiff". The judge said: "You don't appear". The young lawyers looked around and wondered why he said he did not appear. He re-announced himself and said, "My lord, I say I appear for the plaintiff". The Judge said again: "You don't appear". The young lawyer repeated this announcement the 3rd time, and then the judge said: when you have finished your wedding party, you may then appear.⁹⁶

The lawyer got the message and had to leave the court, unfortunately, to the detriment of the client whose matter could not proceed.

Note however, that a lawyer shall not conduct his case in his robes where he is a party or is giving evidence.⁹⁷ He is also not expected to robe where appearing before a judge in chambers, the magistrate courts, tribunals or arbitral panels.

2. Role of the Judge

A judge is a public officer conferred with the powers to adjudicate over matters filed in law courts. Judges, like lawyers, have a code of conduct under which they run their professional affairs.⁹⁸ They have a duty to be unprejudiced. John M. Levy expressed this succinctly when he stated:⁹⁹

As in all humans, some judges are more successful in being impartial than others. It is, however, expected both by the system and by the people within the system that judges will be impartial, and to some extent at least this is a self-fulfilling expectation. By becoming a judge, a lawyer is expected to change. He or she is being paid to make decisions, often hard decisions, concerning people and their actions. It certainly does not seem too much to expect that judges take their separation (elevation) from the bar seriously enough to be able to fulfil their duty to report ethical violations. Until they do

⁹⁴ Decent white vests or camisoles are also permissible in place of shirts or blouses.

⁹⁵ It is noteworthy that the origin of court shoes were shoes that were worn to royal courts.

⁹⁶ *ibid* (n 92).

⁹⁷ r 36 (f).

⁹⁸ See Code of Conduct < <https://njc.gov.ng/code-of-conduct>> accessed on 15 June, 2021 and Judicial Discipline Regulations for Judges, 2017 < <https://njc.gov.ng/judicial-discipline-regulation>> accessed on 15 June 2021.

⁹⁹ John M. Levy, "A Judge's Role in the Enforcement of Ethics – Fear and Learning in the Profession" (1982) (22) Santa Clara Law Rev 95.

so, the lack of judicial action will be the highest level of hypocrisy in the entire self-regulatory system.¹⁰⁰

Under his adjudicative duties, a judicial officer is always enjoined to maintain order and decorum¹⁰¹ He must be patient, dignified and courteous to, amongst other persons, legal practitioners. A judge shall accord persons legally interested in proceedings the right to be heard according to law and shall not condone ex-parte or other communication concerning a pending or impending matter.¹⁰² A judicial officer shall promptly dispose of the business of court.¹⁰³ As such, he is required to devote adequate time to his duties, must be punctual to court sittings and expeditious in bringing matters to an end and determining them under submission.¹⁰⁴ He must maintain official hours of the court except where indisposed.¹⁰⁵ Where a judicial officer suspects that his sense of judgement may be put to question, in matters where he may be biased or prejudiced or involved in a matter which raises a conflict of interest, he must disqualify himself from such proceeding.¹⁰⁶

3. Achieving an Effective and Expeditious Lagos Judiciary - The Need for a Harmonious Work Synergy between the Bar and the Bench.

Judicial officers as members of the bench must exert a conscious effort at promoting a harmonious relationship between the bar and the bench. They must realize that without lawyers, there would be no courts. They must also recall that they were first lawyers before becoming judges, and for that reason, should to a reasonable extent, perceive issues through the lawyer's lens. Likewise, lawyers must realize that the primary responsibility of judges is to preside over matters between or amongst parties made up of clients; clients being the ones who employ the services of lawyers to get their jobs done, most times for a fee. Where the court is poised to deliver on its objectives of an efficient and expeditious justice delivery system, the bar must work to promote its facilitation. In other words, the bench counts on the support of the bar, enabling it to efficiently carry out its adjudicatory role. The status of the lawyer may, therefore, be likened to that of a middleman standing in between the judge and the client; assisting the client to sort his affairs through interactions between the lawyer and the judge. In executing this dual role, the lawyer must do what is ethically necessary, ensuring that he preserves the relationship between himself and the client and more importantly, himself and the bench.¹⁰⁷ Both must find means of cooperating and must avoid situations that would occasion frictions between the bar and the bench, if the objectives as laid down by the new rules must be realized.

It has, however, been opined that the bench while dispensing its ethical supervision towards lawyers must do so with reasonable caution. According to Levy, he states:¹⁰⁸

If judges become more active in enforcing ethical rules there is a danger that advocacy before them will be compromised. There are instances of courts, usually in league with others, using disciplinary procedures against lawyers who are representing unpopular clients and causes. If more judges saw their roles as ethical activists, there would be a greater likelihood of blatant political use of the process. A general chilling of zealous advocacy before courts might also be a side effect of having lawyers know that both they and their clients are being "judged".

...Nevertheless, no matter how sensitive courts are in enforcing ethical conduct, there will inevitably be actions which a lawyer will not take due to fear of having his or her own ethics publicly questioned.¹⁰⁹

¹⁰⁰ *ibid*, p. 106.

¹⁰¹ r 2 (A) (3).

¹⁰² r 2 (A) (5) (i). See also RPC, r 31 (4) and (5).

¹⁰³ r 2 (A) (6).

¹⁰⁴ *ibid*.

¹⁰⁵ *ibid*.

¹⁰⁶ rule 2 © (1).

¹⁰⁷ r 1 RPC.

¹⁰⁸ *ibid* (n 99).

¹⁰⁹ *ibid* p 107.

Where a lawyer has any ground for complaint against a judicial officer, he is not expected to take the law into his hands. He shall address this before the appropriate authority.¹¹⁰ Likewise, a judicial officer on becoming aware of any unethical or unprofessional conduct by a legal practitioner, shall take prompt steps to report to the appropriate disciplinary body to deal with the situation.¹¹¹ This does not however preclude the court from exercising its powers by imposing appropriate sanctions where a lawyer is in disobedience or fails to comply with the rules of court or an order of court.¹¹² A judge may exercise its powers of citing a lawyer for contempt of court.¹¹³

4.1 Factors Capable of Fostering a Harmonious Bench and Bar Relationship

Below are conducts on the part of bar and bar identified to promote the smooth administration of justice delivery.¹¹⁴

1. **Honesty:** The actions of the bench must portray honesty. Its members must desist from any actions that give rise to suspicion on the part of judges. Judges must be forthright and abstain from any act that would bring disrepute to the glorified seat of justice. Judges are not expected to receive gifts or bribes from parties, their lawyers or persons that would be affected by the outcome of their judgements.¹¹⁵ Lawyers are also not expected to offer handouts to judges.
2. **Intelligence and Wisdom:** It is recommended that a judge must always keep himself abreast of the law. As a judge, he has chosen a laborious career path that constantly keeps him reading. It is assumed that he is a storehouse of knowledge and knows the law or at least, knows where to find it. A judge who does not keep himself abreast is faced with the risk of mischievous advocates misleading him on the position of the law. This will not augur well for justice administration.
3. **Hard Work and Dedication:** Judges and lawyers must portray a positive attitude to work. They manifest this through hard work and dedication to work. As earlier stated, a lawyer has a duty to prepare for his case before appearing in court. Likewise, it is expected of a judge to prepare for matters before the adjourned date. The combination of hard work and dedication largely contribute to speedy resolution of cases and invariably assist in decongesting the courts of its tons of cases.
4. **Patience and Tolerance:** Judges must possess traits of patience and tolerance if they must excel in their careers. In the course of judges presiding over matters, there are several instances where they must exercise self-restraint whether with a lawyer or with parties or even with other court officials like clerks, registrars or bailiffs, especially where the judge is new to the job. Patience and tolerance can extract what impatience and intolerance would overlook.
5. **Firmness and Sympathy:** A judge may display sympathy towards matters before him and yet be firm. Being human, he may exhibit a show of compassion towards the parties but in dispensing justice, he must not be swayed by the display of unwarranted emotion by the lawyer or his clients. He must be impartial as depicted by the blindfolded goddess holding the sword in one hand and the scale in the other, in his dispensation of justice not minding the position/standing of those involved.
6. **Alertness:** A Judge must be physically and mentally alert in the course of handling proceedings in court. He must have the presence of mind while parties conduct their cases before it to prevent undue testimony within its records. In listening to the presentation of a client's case, the judge must display rapt attention, as no fact presented by the parties must escape it, so that there are no gaps for the courts to fill in preparing its judgement. An alert mind shall provide a clear understanding of the position of parties, likely leading the judge to the insight he requires to resolve the case before it.

¹¹⁰ r 31(2).

¹¹¹ r 2 (B) (3) *cf* r 31(2) RPC. Appropriate bodies in the case of a Judicial Officer would be the National Judicial Council (NJC), a Body that has powers to appoint as well as discipline an erring judge. In the case of a lawyer, it is the Legal Practitioners Disciplinary Committee that has the powers to discipline. See s. 9 of the Legal Practitioners (Amendment) Act 1994. The Supreme Court as well as the Chief Justice of Nigeria also have disciplinary powers over erring lawyers.

¹¹² RPC, r 31 (1)

¹¹³ Practice Direction 1 clause 2.3 (iv); RPC R30.

¹¹⁴ C. A. Oputa, *Modern Bar Advocacy* (n 50)

¹¹⁵ Code of Conduct, r 3(F)

4.2 Factors Capable of Hindering a Harmonious Bar and Bench Relationship

The following have been identified as factors capable of preventing a harmonious co-existence between the bar and the bench and must be avoided.¹¹⁶

1. **Judicial Interruptions:** Ordinarily, a judge is expected to refrain from constantly interjecting in the course of judicial proceedings.¹¹⁷ He should be more of a listener or observer and intervene only where it is necessary. According to Lord Hewart, a Judge is to hold his tongue until the last possible moment and to try to be as wise as he is paid to look.¹¹⁸
2. **Unnecessary Argument with the Bar:** The Judge must be able to comport himself and desist from getting into arguments with lawyers. He must be able to control his Court. He is neither expected to descend into the arena in the conduct of cases before him nor take over proceedings from the one who is paid to conduct an examination.¹¹⁹
3. **Counsel Straying from Material Issues:** Although judges are admonished to show patience in their dealings with lawyers in courts, they are nonetheless human, and their patience is not inexhaustible. Lawyers should therefore remain on course when conducting their cases so that the time of the court is not wasted.
4. **Lack of Orderly Presentation:** This arises in situations where lawyers have poorly prepared for their matters and such unpreparedness many times, cause irritation to judges. One finds lawyers flipping back and forth through case files and unable to exhibit orderliness in the course of presentation of cases, thereby wasting the time of the court.
5. **Injudicious and Vexatious Cross-Examination:** In the course of proceedings, lawyers use the tool of cross-examination to harass and cause undue embarrassment to the witness.¹²⁰ They sometimes probe beyond the scope of the reason for the conduct of the cross-examination and may even go into the private affairs of the witness which have absolutely no bearing on the case at hand. Lawyers must stick to the issues before them and before the courts for consideration.
6. **Lack of Earnestness in Court:** Lawyers, whilst before the judge, may assume undignified postures. Some do so by addressing the judge with hands in their pockets or arms akimbo. Others refer to the judge as 'you'. Some lawyers also brazenly chew gum in open court, while some others are outrightly rude to the judge, like talking back at the Judge or speaking while another lawyer is on his feet. All these create an impression on the mind of the court which may end up not being favourable to the lawyer's case. We must remember that judges are human too and may be reactive.
7. **Irresponsible Behaviour:** We have lawyers who are not punctual to their court appearances as well as those who altogether miss court appearances for no apparent reason. They fail to inform the court before hand and eventually end up having their matters adjourned or dismissed for want of diligent prosecution,¹²¹ invariably wasting the time of the court and the endeavours of the client. Where a lawyer is going to be late or knows that he is unable to make it to a court sitting, it is his responsibility to inform the court before hand of his lateness or absence. Other acts that may constitute irresponsible behaviour are appearing in court without paying practising fees before appearances, video-recording court proceedings, failing to fulfil promises made to the courts, the disobedience of which puts a clog in the wheel of an otherwise efficient court administration.

4. Conclusion

The new rules as well as its accompanying Practice Directions (Nos. 1 and 2) focus on means of achieving an efficient and expeditious civil justice administration delivery system. It sets out, as part of its objectives, methods it adopts in achieving these. The key players that assist the courts in achieving its objectives are the judges as well as lawyers, who appear on behalf of litigants. To achieve its objectives however, the ethical

¹¹⁶ C A Oputa, *Modern Bar Advocacy* (n 50).

¹¹⁷ *Nwafor Ejike v Ihemereme Nwankwocha & Ors* (1984) 12 SC. 301, 311.

¹¹⁸ C A Oputa 260.

¹¹⁹ See per Lord Denning in *Jones v National Coal Board* [1957] 2 Q.B. 55.

¹²⁰ r 24(2) and (3) RPC.

¹²¹ r 14 (4)

conduct of lawyers and judges in the course of carrying out their professional businesses, play a major role. In carrying out their duties, there is a minimal level of ethical professional conduct that must be demonstrated. It is the position of this paper that these parties live up to standards expected of persons of their statuses and in addition, both must create and maintain a synergy that would breed a harmonious work relationship, capable of fostering a civil justice administration delivery system that will build confidence in the members of the public. On the need for cooperation by the bar and the bench in achieving quick dispensation of justice, the words of Oputa JSC are instructive when he stated as follows:

... Justice should also be speedy for justice delayed is justice denied. Experience in our courts shows that some land cases linger on, long after the original parties and witnesses are dead – thanks of course to the rule about transmission of interest on death and substitution. If it takes up to 10 to 15 years to determine finally who owns a piece of land, then there is something radically wrong with our court procedure as well as with the bar and bench cooperation; ... However, with effective bar and bench cooperation, the administration of justice could be speeded up in our courts. In civil cases for instance, if each member of the bar acquires and retains the correct legal pre-action approach and knows that he should do his homework and do it thoroughly well before even filing his writ of summons; (writ filed after such stringent scrutiny will save all the time wasted on motions for amendment) if the pleadings on both sides serve their primary purpose (to narrow the issues in controversy) if the opposing advocates are prepared before coming to court and in court concentrate, as they should do, on substantial matters (and they will achieve that if they know their law and their facts before starting) then and then only will it be reasonable to expect speedier administration of justice in our civil courts...¹²²

And on a final note! In the conduct of duties as judges and lawyers, there is the need to ignite the consciousness within, that the legal profession is ours, as lawyers, to conserve. The judge-lawyer relationship is symbiotic. One must be protective of the other. The ethical driver residing within those on each side, must not be afraid to do what is right - all the time.

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