



FOURTH SESSION

ROLE OF LEGAL ETHICS AND PROFESSIONALISM IN THE PRACTICE OF LAW

FACILITATOR:

PROFESSOR FABIAN AJOGWU, OFR, SAN

Discussions:

Ethics of the Legal Profession and Professionalism

LEGAL PRACTICE AS A SENIOR ADVOCATE OF NIGERIA

Being a talk given by Honourable Justice Abdu Aboki, Presiding Justice, Court of Appeal, Abuja at the Pre-Swearing Induction Programme for New Senior Advocates of Nigeria organised by the Body of Senior Advocates of Nigeria on the 13th of September, 2018.

Let me open my speech by heartily congratulating distinguished gentlemen whom by this eminent occasion, can be said to have attained the enviable peak in the revered legal profession. I must be quick to say that grace and industry are invariably the two factors that make for success at the Bar. By implication, we have gathered here today to celebrate individuals whose outstanding industries in the noble profession have been met with God's blessing in what is styled as grace. I make bold to say that no amount of industry can make any man attain the heights, but for the grace of God. It is grace that comes to play where human efforts fail.

It is important to briefly consider what the rank of a Senior Advocate of Nigeria (SAN) is. It is a title that may be conferred on legal practitioners in Nigeria of not less than ten years' standing and who have distinguished

themselves in the legal profession. It is the equivalent of the rank of Queen's Counsel in the United Kingdom, from which Nigeria became independent in 1960. Section 5(1) and (2) of the Legal Practitioners Act, CAP. L 11, LFN, 2004 provides thus:

5 (1): Subject to subsection (2) of this section, the Legal Practitioners' Privileges Committee established under subsection (3) of this section may by instrument confer on a legal practitioner the rank of Senior Advocate of Nigeria.

(2) A person shall not be conferred with the rank of Senior Advocate of Nigeria unless he has been qualified to practice as a legal practitioner in Nigeria for not less than ten years and has achieved **DISTINCTION** in the legal profession in such manner as the committee may from time to time determine.

The above provisions, as succinct as the contents appear, are pregnant with a lot of demands and requirements a legal practitioner must meet before becoming eligible for consideration for the rank. It is also worthy of note that the rank is not conferred as of right, but as of privilege, and as such, it takes noticeable distinction in practice for a legal practitioner to be considered. What these suggest, is

that the rank of a Senior Advocate is an indication of not just at least, a decade in the practice, but an acknowledgement of class and distinction. The burden placed on a person conferred with the rank of a Senior Advocate of Nigeria is enormous, and it is summarised in the Oath taking, which is reproduced below:

"I.....upon whom the rank of Senior Advocate of Nigeria has been duly conferred declare that I will at all times faithfully serve the interest of the Federal Republic of Nigeria in the capacity of Senior Advocate of Nigeria and to that end will support and uphold the Constitution of the Federal Republic of Nigeria 1999; that I will to the best of my ability assist the courts of justice duly established in the Federal Republic of Nigeria in the performance of their judicial functions; and that I will at all times uphold the dignity of the rank of Senior Advocate of Nigeria."

Without mincing word, a careful consideration of the above Oath reveals that being conferred with the rank of a Senior Advocate of Nigeria is not the end, but a means to the end as far as serving the interest of the Federal

Republic of Nigeria and promotion of the rule of law is concerned. The instrument of conferment reflects that the rank is conferred on the bearer after the Legal Practitioners' Privileges Committee is fully satisfied with the loyalty, integrity and ability of the bearer. The instrument of conferment reads thus:

"Legal Practitioners' Privileges Committee"

Instrument of Conferment of the Rank of Senior
Advocate of Nigeria

TO ALL WHOM THESE PRESENTS SHALL COME,
GREETINGS

WHEREAS, the Legal Practitioners' Privileges Committee is fully satisfied with the loyalty, integrity and ability of, barrister AND Solicitor of the Supreme Court of Nigeria; and

WHEREAS, in consequence of the foregoing, the Legal Practitioners' Privileges Committee has considered it proper to confer on the right and privileges of Senior Advocate of Nigeria.

Now, by the terms of **THESE PRESENTS**, the Legal Practitioners' Privileges Committee, in exercise of the

— powers conferred on it under section 5(1) of The Legal Practitioners' Act, do **HEREBY** confer on the rank and dignity of Senior Advocate Of Nigeria, to hold and enjoy ALL and SINGULAR Rights, Allowances, Privileges and Pre-eminences belonging to or appertaining to the rank of Senior Advocate of Nigeria on as full and ample a manner as the Legal Practitioners' Privileges Committee may, from time to time, determine AND ALSO the liberty of sitting and practicing within the Inner Bar of the Courts of Justice in Nigeria.

— IN WITNESS WHEREOF I have set my hand and caused the Seal of the Legal Practitioners' Privileges Committee to be affixed to these Presents, at the Supreme Court of Nigeria, Abuja, this day of, in the year ..."

In his book, Justice for all and by all, Per Ephraim Akpata, JSC (Rtd) was of the view that the unsuccessful lawyer is not necessarily a mediocre. He could be a first class brain with all attributes that make for success at the Bar. But success eludes him either because he is unlucky to get good briefs that could project him to limelight or because he could not get into a good chambers where he

would be exposed to good practice. Invariably, gentlemen, you have recorded this success because you had the grace of God reflecting on the attributes that make for success at the Bar from the inception of your practice or at one point or the other.

Distinguished conferees, members of the Bar, well wishers, and pressmen, let it be noted that the general impression of lawyers in the minds of average men is not so flattering. By your calling and the nature of the profession that makes it cut across all spheres of life, no stage or success is the end; rather, it will always be a means to the end. This in my view is one of the reasons cases diligently contested and won speak for great lawyers long after they are gone in what we call judicial precedents. Who then is a lawyer? Who is this man or woman, whom by his calling can live forever in the book of history for good or bad by virtue of the type of practice he adopts as a member of the great Bar? The definition that strikes me as close to accurate was given by Judge J.W. Donovan in his book, *Tact in Court*. It is a long one, but it is worth an appraisal. He defined lawyers thus:

“Lawyers, the most trusted and distrusted: the men who make contracts and unmake them; who give

advice and sell counsel; who make money out of trouble and make trouble out of money; who create estates and distribute them-legally; who live by loaning money, and often subsist on borrowed capital; who hear and conceal marriage secrets, and drag out faded letters in bitter divorces; who please and persuade when they are lucky, but often go out of Court branded and dispraised by the side defeated-and with one side always the loser: what wonder that the slurs of character fall to the common lot of the lawyer!—Without the smiles of the merchant's customer, he meets the frowns of business men in trouble. No time is to be lost, no delay for fees. He must win a victory or bear the blame for ever. Unlike the builder, who knows that, be it ever so perfect, the elaborate house he has finished can never suit the proprietor; unlike the machinist, he controls not his own enginery; carrying the double burden of care for self and client; invited to win what others have failed in; urged to mend the broken pieces of an ill-made contract; bound to account for unreasonable confessions, blunders, and letters; asked to replevin goods already secreted, to attach the

effects of a malicious merchant, to unearth fraudulent elections, to reclaim vast estates from costly lax titles, to keep one for years in plenty by restored possession and broken wills, often on doubtful evidence, by a lawyer's art and eloquence—what a happy condition! Fated from the start by uncertainty, where clients exact no less than absolute victory, they long to call reasonable what they know is only probable. By logic and argument on the theory of their client, with the facts only partially stated, and that part deeply shaded, they are often surprised by the other side and called to explain away their defeat in the end by a tirade on the perjury of witnesses and the depravity of human nature. The happy lawyers! The men who live so easily, flourish so long on the bounty of a grateful people, make the laws and settle the titles, defend the weak and protect the wealthy, enjoy the rich fruit of the world's praises and abuse, mingled and commingled in such rare harmony that none can define where censure ends and approval commences! Who would not be a lawyer?"

It is not my intention here to evaluate the image of the Bar as a whole, but a close examination of the above reveals the swinging perception of a lawyer. My purpose in delving into that description is to pin-point the varying perception of lawyers. When one does not have a settled image, he must keep working, and that is the fate your calling has vested on you. How much more a Senior Advocate? This has informed the need for me to say that becoming a Senior Advocate is not the end; it is a means to the end. The task has just begun, and the expectation on you is doubled by virtue of your new status.

This talk, which characteristically shall be a form of admonishment, is tailored towards what the legal profession expects from Senior Advocates. Choosing this topic for this occasion becomes essential given that Senior Advocates are at the vanguard of maintaining an ideal Bar and riding it of whatever rot threatens its existence and integrity. Where the Bar is stripped of its integrity, the rule of law is non-existent, and lawyers have no temple to apply the law. Being conferred with the honour of a Senior Advocate of Nigeria is a calling, and the inner Bar should not mirror or reflect the attitude and practices it has been called upon to condemn and correct. In the light of this, the expectation of the Country, the Courts, and the

legal profession from Senior Advocates of Nigeria shall be considered below.

PROTECTION OF THE CONSTITUTION

The Constitution is the grundnorm (Supreme law), upon which the state runs and other laws derive their validity/legitimacy. Constitutionalism refers to the whole process of governance based on the Constitution of a given State. It informs a government as instituted by Constitution with clear organs of government and functions of such organs of government clearly spelt out. It ensures obedience to the rule of law by people put in positions of authority other than rule arbitrarily. The true concept of constitutionalism envisages the supremacy of law. This supremacy of the Constitution is the case of Nigeria. To buttress this point, the Constitution of Federal Republic of Nigeria 1999 (as amended) provides in Sections 1 (1, 2, and 3) thus:

“This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria”.

“The Federal Republic of Nigeria shall not be governed, nor shall a person or group of persons

take control of government of Nigeria or any part thereof, except in accordance with the provisions of this Constitution."

"If any other law is inconsistent with the provisions of this constitution, the constitution shall prevail and that other law shall be the extent of the inconsistency by null and void."

The 1999 Constitution of Nigeria is the grundnorm. It is the supreme law to which all other legal norms must conform. Where there is any inconsistency between the constitution and such other law, that other law to the extent of its inconsistency is null and void and of no effect whatsoever. Thus, it establishes the Nigerian democracy where the rule of law will prevail as held in A.G. FED. v. ABUBAKAR¹ and FRN v. IFEGWU.² Senior Advocates must be the chief mechanics of the legal system. They must drive and help fine-tune the engine, knowing that if it is not in working condition, it will not reach its destination. Lawyers are specially trained in the legal system's goals and have the greatest expertise about its operation. As Senior Advocates, this commitment to the protection of the Constitution must be

¹ (2007) ALL FWLR (Pt. 37) p.1264

² (2003) FWLR (Pt.167) p.703

taken a step higher, because to whom much is given, much is expected. In protecting the Constitution, Senior Advocates must be proactive and not given to fear or be subdued by any form of gains to watch the Constitution being disregarded. Without concerted efforts by legal practitioners, particularly the Senior Advocates, to protect the Constitution, the rule of law will suffer, and the nation will be thrown into anarchy and chaos.

RELATIONSHIP WITH THE COURT

Every Court of law in Nigeria owes Senior Advocates the duty of preference. This duty of preference is as to respectful treatment of Senior Advocates, in a manner that recognises their distinction in practice. Sitting in the inner Bar or in the front row is also one of the privileges that come with the rank of a Senior Advocate. In turn, it is the duty of Senior Advocates to maintain towards the Court respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Senior Advocates against unjust criticism and clamour. Where there is proper ground for serious

complaint of a judicial officer, it is the right and duty of a Senior Advocate to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected.³ In recent time, reports about the attitude of senior lawyers, particularly Senior Advocates towards the Court are becoming unbecoming, and Senior Advocates have a great role to play in addressing the rot. Senior Advocates must exude the finesse expected of their status in appearance, words and action. They owe the legal practice the duty to be dignifying in conduct, and in the discharge of their duties.

Senior Advocates are in duty bound to uphold the law; and no service or advice ought to be rendered or given by them to clients, corporate or individual, of any description or to any cause whatsoever involving disloyalty to the law or bringing disrespect upon the holder of any judicial office or involving corruption of holders of any public office. Improper service or advice in such circumstances as aforesaid is unethical and merits strong condemnation as unprofessional conduct. On the other hand, service or advice rendered or given that not only accords with the letter of the law but also embraces moral principle cannot

³ Rule 1 9a) Rules of Professional Conduct

be too highly commended. Senior Advocates must also observe and advise their clients to observe the statute law, save that until a statute has been construed and interpreted by competent adjudication, they are free and are entitled to advise as to its validity and as to what they conscientiously believe to be its just meaning and extent. Above all, a Senior Advocate finds his highest honour in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen.⁴

One of the readily proffered reasons by some Senior Advocates for losing a case is that the judge was bribed or must have been bribed. I hold no brief for any judge. An allegation of bribery against a particular judge may be true. However, such must be made at the appropriate quarter. It is a misuse of a Senior Advocate's privileged position for him to tarnish the reputation of an honest judge before his client by making an allegation of corruption against the judge merely to cover up his (lawyer's) incompetence or deficiency for some ulterior motive. A Senior Advocate should realise that because of his position in the society and his function in the administration of justice, one careless adverse remark

⁴ Rule 24, Rules of Professional Conduct

from him to his client or a third party about a judge is sufficient to shake public confidence in the judiciary. As Senior Advocates, you must possess, apart from maintaining a high standard of professional integrity, a deep appreciation of ethical values, including the commandment to refrain from bearing false evidence against your neighbours-the judges. You should not be parties to scandalising the courts. Any adverse comment by a Senior Advocate of happenings in the judiciary is presumed to be authentic and its effect is very destructive of the temple of justice wherein he is regarded as ministers.⁵

There are reports of members of Senior Advocates staging walk out from the Court during proceedings, and even making unsuitable remarks about the Courts within and outside the Court. Practices like this demean the Court, and erode the faith of the common men in the judiciary and the legal profession. It is a bad example for other lawyers who look forward to attaining the prestigious rank. Becoming Senior Advocates is not a licence to treat or address the Court with disdain; it is an opportunity to show other lawyers the proper way to behave before the Court, and outside the Court. Senior Advocates must

⁵ Justice Ephraim Akpata: Mis-use and Abuse of Power by the Bar

exude the humility, candour, decorum, professionalism and respect that made them eligible for the honour more after the conferment. They must lead exemplary lives as lawyers and citizens, and must not allow anybody to question their status at the Bar because of improper conducts. Where the Court is treated with disdain and lack of respect, it affects the trust in the judiciary and paints the Court as an institution that is weak and incompetent. This will in turn invite disregard for Court Orders, and the legal practice as a whole.

RELATIONSHIP WITH OTHER LAWYERS

It is imperative that Senior Advocates respect each other and younger lawyers. Senior Advocates must see respecting other lawyers as a duty they must discharge at every time. The Constitution recognises the dignity of human person and as ministers in the temple of justice, Senior Advocates must know that this provision is breached when they assume a larger than life status and treat other lawyers with contemptible disdain or without courtesy. I reckon that there are privileges that come with the honour of Senior Advocate, however, such privileges must be activated and enjoyed with utmost discretion and

humility. Given, the inner bar and front seats are reserved for Senior Advocates when they are in Court. However, where other lawyers have to stand in Court as a result of space constraint, Senior Advocates should accommodate them in the inner bar. It projects the inner bar in an impressive light and inspires other lawyers to replicate the same.

Outstanding lawyers are not made Senior Advocates to bully other lawyers or oppress them by their status or privilege in the profession. Subject to the rules relating to precedence, all members of the Bar are equal. This principle involves the explanation that no member of the Bar irrespective of his rank or title shall regard himself as superior or inferior to other member of the Bar.⁶ The Silk is not a tool to oppress or stampede other lawyers; it is a sign of grace and eminence in the legal profession. It will defeat the essence if a Senior Advocate behaves in a manner that lacks decorum or refinement that is expected to flow with being a Senior Advocate.

There are reports of the degrading treatment of junior lawyers by some senior lawyers, unfavourable work condition, lack of requisite exposure, and unfair

⁶ Rule 38, Rules of Professional Conduct

remuneration are on the rise in the legal profession. Of striking worry is the report that some senior lawyers do not pay the junior lawyers because they consider it a privilege for junior lawyers to be learning in their firm. This must be condemned in clear terms. I admonish Senior Advocates to rise against this treatment. It runs against the grain of the legal profession for people to be treated in such manner, and does not secure the future of the legal practice.

To be in the right frame of mind to protect the future of legal profession, and aspire for a nation that is operated on constitutional tenets, young lawyers have to be adequately compensated and encouraged. The legal profession encourages continuous learning, and pupillage, but that is without prejudice to the fact that legal practice should also open the door for lawyers to earn in any establishment that considers their services necessary. A lawyer who is not paid for his service is dangerous to the profession as he is prone to compromise. Distinguished senior advocates, there is no dignity in a profession that enslaves its younger generations all in the name of learning. I beseech you to address this worrisome development, and secure the future of legal practice with your rank.

ADHERENCE TO THE RULES OF PROFESSIONAL CONDUCT

For any entity to thrive, it must ensure compliance with the rules or laws that regulate its operation and its members. This speech would not have been necessary if legal practitioners comply with the rules of professional conduct. However, the disregard for the provisions of the Rules and selective adherence are rampant as regards the rules.

It is one thing to record success at the Bar; it is another thing for the success to come with the glory that comes with success well obtained. Senior Advocates should know that when the rules of professional conduct is breached, whatever is done outside such rule is unprofessional, and a violation of the dignity of the profession. A lawyer who cannot adhere to the rules that bind the profession is a threat to the rule of law. Senior Advocates are called upon to lead by example in the area of compliance with the Rules of professional conducts and enforcement of its provisions. It is a disgrace to have a Senior Advocate convert client's money. Many Senior Advocates have had their ranks withdrawn and careers cut short for this practice and many more are caught in the

web of breaching the ethics of the profession. I call on Senior Advocates to look into this without creating exception for any lawyer, regardless of his status or other factors. Tyranny begins where law ends, and if the rules of professional conducts cannot be obeyed, the legal practice stands to suffer it all.

RELATIONSHIP WITH CLIENTS

Nothing operates more certainly to create or foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defence of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.

A Senior Advocate should not assert in argument his personal belief in the integrity of his client or of his witnesses or in the justice of his cause, as distinct from a fair analysis of the evidence touching those matters.

A Senior Advocate owes entire devotion to the interest of his client, warm zeal in the maintenance and defence of the client's rights and the exertion of his utmost learning and ability to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavour or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of every remedy and defence that is authorized by the law of the land, and he is also entitled to expect his lawyer to assert every such remedy or defence. It must however be borne in mind that the great trust of the lawyer is to be performed within the bounds of the law. The rank of a Senior Advocate does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.⁷ Some Senior Advocates care too much for victory and too little for justice, and that is dangerous. Most clients will insist on a Senior Advocate handling their matters in Court, hoping that Senior Advocates know the law and the judges. There is a duty on Senior Advocates to set the record straight, and not give an impression that by virtue of being silks,

⁷ Rule 14, Rules of Professional Conduct

the Courts are at their beck and call. Senior Advocates, and in fact all lawyers must know the law and the Court (judge). Putting it in context, knowing the law is being abreast of the relevant laws to each case they handle, and knowing how they apply to the facts of the case. Knowing the judge on the other hand means understanding the Court's atmosphere, the attributes typical of each judge in the lawful discharge of his duty on the Bench, and what the Court expects from every lawyer before it in the lawful discharge of his duty to his clients. Knowing the Court (Judge) does not extend beyond this; it does not suggest a personal affinity or relationship that tends to compromise the Court in the discharge of its duties. The fortune of your practice is likely to change as from this moment because of the perception and expectation of the average man of Senior Advocates. However, let it be engraved in their hearts that Senior Advocates are not miracle workers, but distinguished individuals in legal practice, and that other lawyers deserve as much opportunity to prove their worth as Senior Advocates. When a client approaches a Senior Advocate, one thing should be borne in mind: that another opportunity has presented itself to present the legal practice in a noble light without compromise. Never should it be an avenue

to fight teeth and nail to generate the non-existent and alter the obvious. Senior Advocates should be aware that when the heat of passion is calmed, and the client is relieved of imminent scourge of the law, courtesy of the spirited effort of the lawyers, he (Client) will think about how it all went and will form an impression as to the character of the lawyer. It is often said that where character is lost, the name goes with it. It is a time-honoured truism that a good name is better than a bag of gold and silver.

DUTY TO THE SOCIETY AT LARGE

Senior Advocates are unarguably the greatest ambassadors of the legal practice in Nigeria. They must be the torchbearer of justice and promoters of the rule of law. They owe the country the duty to expose corrupt or dishonest conduct in the profession without fear or favour before the proper tribunals, and should accept without hesitation employment against a member of the Bar who has wronged his client. The counsel upon the trial of a cause in which perjury has been committed owes it to the profession and to the public to bring the matter to the knowledge of the prosecuting authorities. Senior

Advocates should aid in guarding the Bar against the admission to the profession of candidates who are unsuitable by reason of their moral character or insufficient qualification. The lawyer should strive at all time not only to uphold the honour and to maintain the dignity of the profession but also to improve the law and the administration of justice.⁸

Senior Advocates are in duty bound to uphold the law; and no service or advice ought to be rendered or given by them to clients, corporate or individual, of any description or to any cause whatsoever involving disloyalty to the law or bringing disrespect upon the holder of any judicial office or involving corruption of holders of any public office. Improper service or advice in such circumstances as aforesaid is unethical and merits strong condemnation as unprofessional conduct. The point that was made that a Senior Advocate must sound moral principles and represent his client within the bounds of law must be reiterated here. He has a duty to also advise his client to observe all applicable laws in every transaction or relationship. Above all, a Senior Advocate finds his highest honour in a deserved reputation for fidelity to

⁸ Rule 21, Rules of Professional Conduct

private trust and to public duty; as an honest man and as a patriotic and loyal citizen.⁹

Let me quickly address the relationship between the press and the Bar. An effective and efficient press is key in the administration of justice, without it, the administration of justice suffers a great setback. When the press accurately reports the efforts of Senior Advocates in promoting the rule of law and justice, it positively projects the image of the legal profession. However, a regimented press is worse than having none. It is a time bomb that promises disaster. Inaccurate news reports, distortion of facts, and misrepresentation of persons of judicial officers are highlights of what the judiciary suffers in the hands of some news outfits. The development is worrisome; given the manner some senior lawyers find it easy to malign the Courts before the press at any given opportunity. This should not be. The desecration of the Court by any Senior Advocate, by alluding to it as being partial, prejudiced, or corrupt does not only damage the image of the judiciary and erodes public confidence in it, it is an indictment on every well meaning member of the bar who earned his license to practice law on merit. My position is not that Courts should not be criticised, but same must be done

⁹ Rule 24, Rules of Professional Conduct

within the confines of the law, fairly, and at the appropriate quarters. I challenge Senior Advocates to be the keepers of the Courts, and stand against this troubling development. The legal profession and the Bench must not be exposed to ridicule or shame, especially when same is unfounded and ill-motivated.

Let me admonish the young lawyers on whom the burden of sustaining the tenets of the legal profession lies. Very few people consider the step by step processes required in reaching success in law practice. It will not come by accident. It may not come by years of earnest labour. It will most likely come by tact and art, honesty and eloquence. Actors reach their distinction by finding their forte and follow it artfully, but they have a stage and play to enforce attention.¹⁰ The Court of law is the biggest stage for a lawyer to thrive. You must wait like doctors for a first case, and maybe, for a dozen or more. To get in the procession is a great advance for a young lawyer. Once in the line, the rest depends on mettle, gift, grace and industry. I believe that the reward of these is what the gentlemen we are here to celebrate have reaped today, and will continue to reap.

¹⁰ J.W Donovan-To be a lawyer