



THIRD SESSION

ACCOUNTABILITY AND DISCIPLINE OF SENIOR ADVOCATES OF NIGERIA

FACILITATORS:

MR. LOUIS MBANEFO, SAN
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Discussions:

- *The Duty of Senior Advocates to the Society.*
- *Professional Misconduct and Discipline of Senior Advocates of Nigeria.*
- *Accountability, Discipline, Leadership, and Regulation of Senior Advocates of Nigeria.*
- *Advocacy through Legal Research.*

LEGAL ETHICS AND PROFESSIONALISM IN THE PRACTICE OF LAW – ACCOUNTABILITY; LEADERSHIP; DISCIPLINE AND REGULATION OF SENIOR ADVOCATES OF NIGERIA: AN ADDRESS PRESENTED AT THE PRE-SWEARING IN INDUCTION PROGRAMME FOR NEW SENIOR ADVOCATES OF NIGERIA ON WEDNESDAY NOVEMBER 22ND, 2023 BY DELE ADESINA SAN, LL.M, FCI Arb.¹

INTRODUCTION

I consider it a great honour and privilege to be asked to address you on this very important subject and at this very important program put together by the **Body of Senior Advocates of Nigeria**. I am fascinated by the objective of the program which is “designed to orientate the new Senior Advocates of Nigeria on their leadership role in the Profession, Professional Ethics and Conduct expected of them in the discharge of their duties to Clients, the Court and the Society with special focus on accountability and discipline of the Senior Advocate of Nigeria.”²

This is a great and worthy program by the Body of Senior Advocates of Nigeria hereinafter referred to as (BOSAN). It is my prayer that the program will translate into a seed in our hearts, germinate and produce fruits after its own kind. Somebody says that ***“Legacy is not leaving something FOR people. It is in leaving something IN people.”*** This induction program is in addition to other programs of the Body including but not limited to the **Annual BOSAN Scholarship Award**. BOSAN, concerned

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² Body of Senior Advocates of Nigeria – Letter of November 10, 2023

about the falling standard of practice and motivated by the desire to arrest the trend, instituted the Scholarship Scheme to produce **BOSAN Scholars** believing that the problem of falling standard of practice can be addressed at the University as well as the Nigerian Law School levels by setting targets that will motivate Law Students to aspire to scholarly excellence and positively impact on the standard and quality of legal education on a sustainable basis. These programs emphasize the relevance and impact of the Body of Senior Advocates of Nigeria on the Profession. It is said that *“think for the now and you loose; but think for the next generation and you win.”*

CONGRATULATIONS

With a heart of gratitude, I congratulate our distinguished Colleagues on your well-deserved elevation to the rank of Senior Advocate of Nigeria. My felicitation is to you all, the members of your families and your associates. This elevation is not just a mark of professional excellence but most importantly, it bestows on you the position of leadership and inspiration in the Legal Profession and as the saying goes, leadership is responsibility. As Senior Advocates of Nigeria, I believe we possess the power to inspire not just other members of the Profession but the Society at large.

HISTORY OF THE RANK

The conferment of the rank of Senior Advocate of Nigeria started in 1975 when it was conferred on Chief F.R.A. Williams SAN and Dr. Graham Douglas SAN pursuant to the Legal Practitioners Amendment Act, No. 25 of 1975. These two great gentlemen wore the rank between 1975 and 1978 by which time the rank was conferred on another set of thirteen Legal Practitioners including Chief Obafemi Awolowo SAN and Prof. Ben Nwabueze SAN. Others were Dr. Mudiaga Odje SAN, Chief Kehinde Sofola SAN, Chief R.O.A Akinjide SAN, Chief G.O.K. Ajayi SAN, Chief Olisa Chukura SAN, Dr. Nwabama Okoro SAN,

Profession have all gone with the last being Prof. Ben Nwabueze SAN who departed on Sunday, October 29, 2023 at the ripe age of 94.

The inspiration for the award of the rank of Senior Advocate of Nigeria came from the award of Queen's Counsel (QC) and Kings' Counsel (KC) depending on whether the Sovereign in England is a Queen or King respectively. **The first QC was one Sir Francis Bacon who was given the patent given him precedence at the Bar in 1597.** The QC system was later to become part of our system in 1958 upon the passing into law of a Bill to create QCs among Nigerian Lawyers. Upon the enactment of **QCs ordinance No. 54 of 1958, Chief H. O. Davies SAN and Chief F.R.A. Williams SAN were appointed QCs in 1959.** However, the rank of QCs in Nigeria was short lived as it was abolished in 1964 via the **Queen Counsel (Abolition) Act No. 12 of 1964** consequent upon the Nation's attainment of Republican status in 1963. **With the abolition of the rank of QCs in Nigeria came the replacement rank of Senior Advocates of Nigeria through the platform of the Legal Practitioners Act of No. 25 of 1975.**

Distinguished ladies and gentlemen, we are talking here about a tradition that dates back to **1597**, about four (4) centuries and twenty-five (25) years. It is with this recognition that I congratulate you once again for attaining this well-deserved Professional distinction and excellence.

THE RULES AND REGULATIONS

I will take it for granted that we are all familiar with the provisions of the **Legal Practitioners Act cap L11 Laws of the Federation** which unfortunately we have been trying to amend unsuccessfully since 2002 in order to accommodate societal changes and bring it to be in tune with modern realities. I believe we are also familiar with **the Rules of Professional Conduct for the Legal Practitioners, 2007.** As members of the inner Bar, you have a greater responsibility to work within the Code and the Rules.

Rule 1 of the Rules of Professional Conduct provides that ***“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.”*** The purpose and relevance of this code was stated in the case of ***Ikeme Vs. Anakwe***³ by the Court of Appeal that ***“The rules of conduct in the Legal Profession are designed to protect and preserve the high standard of professional ethics at the Bar.”***

Within the Body of Senior Advocates of Nigeria, I am aware that a deliberate attempt is in progress to giving to ourselves a ***“Code of Conduct of Senior Advocates of Nigeria”*** pursuant to Section 5 of the Legal Practitioners Act. The Code is expected to compliment the Rules of Professional Ethics in the Legal Profession. It is also expected to be ***“observed by all Senior Advocates of Nigeria regardless of the area or branch of law they are involved in and whether or not in active legal practice.”*** It sets out the minimum standard of conduct that is to be observed by the Senior Advocate. The Code is to compliment the Rules of Professional Ethics. Some of the outstanding provisions of the Code state that:

- 1.1 “A member shall adhere to and observe all the rules of professional ethics in the legal profession, all subsidiary legislation made under the LPA and this code.***
- 1.2 A member shall not act in any manner prejudicial to the ethics, ethos and conventions of the legal profession.***
- 2.0 All members shall observe at all official functions, in courts and other places, the rules of seniores priores and shall as between themselves accord priority of position to seniority at the inner bar.***

³ (2003) 10 NWLR 548 C.A

- 2.1 *It shall be the duty of any member to ensure that members of the outer bar also observe the age long tradition of seniority at all official functions that has to do with the profession.*
- 3.0 *All members when they appear before any court, tribunal, administrative body or quasi-judicial body shall accord the greatest respect to those presiding and shall not in words, deed or behaviour do anything to diminish the dignity of any adjudicatory body.*
- 3.1 *Any member that appears as counsel in any matter before any court, tribunal, administrative body or quasi-judicial bodies shall provide leadership in terms of decorum, comportment, language and learning.*
- 4.0 *Any member of the Body who contests and win election into a political office at any level or accepts any political appointment or office shall at all times as a representative of the Body ensure that he discharges his function with the rules of best practises.*
- 4.1 *Any member of the Body who becomes the Attorney General of the Federation or of a State in Nigeria shall endeavour at all times to confer with the Body on the initiation of any major legislation that could impact the profession in Nigeria.*
- 5.0 *All members shall in all circumstances shun corruption, abuse of office and shall maintain the highest standard of integrity in all circumstances.*
- 5.1 *All members of the Body shall not knowingly do or engage in doing anything that will undermine the ethics of the Legal Profession and the esteem with which the members of the public hold the Profession.*

- 6.0 *A member who is engaged in a professional sense in any matter or undertaking, shall use his best professional endeavours, prepare well, exercise diligence and act fairly at all times.*
- 6.1 *Any member involved in any matter shall avoid conflict of interest or any conduct that will jeopardize the interest of his Clients.*
- 7.0 *A member engaged in the professional sense in any matter shall be faithful, observe the relationship of trust that exists between him and his clients and shall disclose any conflict of interest to his clients.*
- 7.1 *Any member engaged in such professional sense shall not use any information acquired in such position in any manner as to injure the interest of his Clients except as may be permitted by law.*
- 8.0 *Any member that is involved in the prosecution of any matter before any Court shall ensure that where the Counsel on the other side is a member of the outer Bar, he extends all courtesies to him and does not do anything to him that may be interpreted as oppressive in his language, words and conduct.*
- 8.1 *Where a member is briefed to lead a member of the outer Bar, he shall ensure that he fulfils all obligations and agreement that form the basis of the discharge of the instructions.*
- 8.2 *A member of the Body shall not take undue advantage of any member or members of the outer bar in any matter in which the member is involved.*
- 9.0 *A member that is involved in the prosecution of any matter before a Court shall not before, during or after the conclusion of the matter write or say anything derogatory of the judex or the proceedings. And in particular shall not issue any press release or authorize such to be issued or grant an interview to any media that*

tends to ridicule, undermine or in any other manner assail the integrity of the bench or the judicial process.

- 9.1 *All members shall use their best endeavours to promote the Rule of Law, the cause of justice, promotion of constitutionalism and good governance."*

FEW CHALLENGES

Our society is getting impatient with our justice administration which many have contended to be ineffective, inefficient and dysfunctional to meet the needs, aspirations and expectations of the people. That is why in recent times you hear literate and illiterate, learned and unlearned men and women freely discussing and rendering "legal opinions" on matters that are pending before the Courts including what should be the decision of the Court on that matter. When the decision of the Court goes contrary to the opinion expressed earlier in the public space, to them, the Judge has being compromised. The Body of Senior Advocates of Nigeria is beginning to take proactive steps to address this issue as can be seen from the draft Code.

The following additional challenges some of which I believe are responsible for the gradual loss of confidence in our Judiciary - an institution that has no alternative I submit, must also be dealt with speedily and with concentrated attention.

1. Delay in the administration of justice.
2. Congestion in our Courts.
3. Poor remuneration and welfare of judicial officers
4. Generalization of corruption in the Nation's Judiciary.
5. Inadequate funding.
6. Attitude of the practitioners such as
 - i. Endless preliminary objections,
 - ii. Frivolous appeals,
 - iii. Frivolous adjournments,

7. Frivolous petitions against Judges
8. Frivolous petition against opposing Counsel.

MAINTAINING HIGH PROFESSIONAL STANDARD

Some of us though wrongly, believe that our skill can only be determined by the protracted arguments we make and the delay and procrastination we cause particularly when our Clients' cases are bad. For others, the side they represent as Counsel determines how fast or how slow the proceedings must run. All these and many more are contributing to the dysfunctional administration of justice in our Country. The day we take the liberty to do the right thing professionally, with the right attitude even at the expense of financial loss to us as Practitioners is the day we will begin to have a speedy administration of justice and enhancement of the public trust and confidence in our profession.

In a paper titled *Towards a better administration of justice in Nigeria, case for systemic, structural and attitudinal transformation delivered on the 11th of July 2019*⁴ I stated that "we must recognise that a fair characterisation of a Legal Practitioners' responsibility is the fact that he stands as a shield in defence of a right and stands to ward off wrong. In a profession charged with such responsibilities, there must be exerted those qualities of truth speaking, of a high sense of honour and of a strictest observance of fiduciary responsibility."⁵ Let me cite some pronouncements of our Courts on issues bothering on our duties as Counsel.

- i. In the case of *Metroline Nigeria Limited & Ors Vs. Alhaji Mohammed Dikko*⁶ the Supreme Court per Hon. Justice Rhodes-Vivour JSC had this to say about the duty of Counsel "*I intend to comment on the disturbing trend where all manner of appeals are filed against awards... It is the duty of Counsel to explain the*

⁴ To Members of the Nigerian Bar Association Ijebu-Ode,

⁵ *NBA v. Monyel* (2013) 8 NWLR Part 1386 page 454

⁶ (2021) 2 NWLR Pt. 1761 Page 422 at Page 445

nature of Arbitration Agreements and not encourage their Clients to disregard them when they get unfavorable awards...The unfortunate trend in which Litigants with the assistance of Counsel who fail to appreciate their duties as officers of the court all in a bid to win their Clients case by all means bring unsubstantiated and spurious challenges against otherwise good arbitration ... ought to be frowned upon and discouraged. The Courts should not allow itself to be used as a tool to set aside otherwise good awards or frustrate legitimate arbitration awards.”

Evident from the above is that as Senior Counsel, we must be able to give quality and objective advise to Clients on the merits and the demerits of their cases. We must desist from using the Courts as a tool.

- ii. In **Economic and Financial Crimes Commission Vs. Dr. Thomas**⁷ the Court of Appeal had this to say while castigating a Counsel for wrong approach during trial. *“I find the submission that the Respondent was exporting the money from Lagos to Abuja laughable and preposterous. It should attract no comment because it is sad that such submission could come from a Counsel, a person fit and proper that was called to the Bar. Very sad indeed. Courts have overtime admonished Counsel to guide and assist the court to see and know the truth and to do pure and undiluted justice, by placing all facts on the table even where the facts disclosed may not favour or work in the interest of his party. Colouring or shielding the truth by making it difficult to understand submissions of Counsel is contrary to the role of a Counsel before the court. The matter is not a matter of life and death that could tempt a person to stray away in an effort to save life. This is not the duty of Counsel.”*

⁷ (2018) LPELR – 45547 CA

Arising from the above quotation and I say this with authoritative firmness is that a Counsel should not see himself as the mouth piece of his Client to say only what the Client wants to hear. No! A Counsel should stand on the side of justice and fair play at all times.

- iii. Also, in the case of *Chachangi Airlines V. AP Plc*⁸ the Court of Appeal had this to say; *“I think Counsel for the Appellant at the lower court and on appeal should bear responsibility for this charade and clear attempt by the Appellant to seek the cover of illegality of contract to defraud the Respondent or to frustrate the recovery of the money outstanding on the aviation fuel supplied to the Appellant. No counsel should aid or assist a client to pursue ignoble or fraudulent cause.”*

- iv. In the case of *NBA Vs. Monyel*⁹ the Supreme Court said inter alia *“which of the above qualities can the Respondent, given the litany of his tendentious, shameless, unabashed contrivance said to possess? He is neither a shield in the defence of right nor with this kind of character ward off any wrong. With a man of this kind of sly character like the Respondent, where lies the quality of truth in him? Is the word “honour” not a strange bed fellow with the Respondent?... Can anyone credit him with an iota of fiduciary responsibility of fidelity?”*

My prayer is that this shall not be said of any of us.

- v. Finally, for a good measure, let me also recall the words of admonition by Hon. Justice Idigbe J.S.C. in *Atake V. Attorney General of Federation & Anor*¹⁰ to the effect that *“any conduct which tends to bring into disrespect, scorn or disrepute the authority and administration of the law or which tends to interfere*

⁸ (2018) 4 NWLR Part 1449 page 256 at 275,

⁹ 2013) 8 NWLR Pt. 1386 Page 454 at 466

¹⁰ (1972) 11 SC 175

with and or prejudice litigants and or their witnesses in the course of their litigation is punishable.”

We must strive at all times to take deliberate step to create good and positive impression first about ourselves and then about the profession.

Learned gentlemen of the inner bar, let me affirm once again that the role of a Lawyer in any democratic setting is to consistently defend the truth and justice and some of us have dedicated ourselves to this noble course particularly in view of the nature of our people in Nigeria. Like a public commentator once said, *“in a country where noise is more important than reason, where allegations are packaged as truths and villains behave like Victims, the Legal Profession should always seek to remain the voice of reason, truth, justice, equity and good conscience.”*¹¹

As Senior Advocates of Nigeria, you have a greater responsibility to see to the achievement and actualisation of this critical statement of truth. This leads me to the issue of the Senior Advocate and Leadership.

SENIOR ADVOCATE OF NIGERIA – A LEADERSHIP POSITION

The President of Nigerian Bar Association between 2016 and 2018, A. B. Mammud SAN, OON accurately captured this point in his speech at the Legal Year and Conferment of the rank of Senior Advocate of Nigeria of September 19, 2016 at the Supreme Court. The now past President stated as follows *“this is indeed a mark of professional excellence that each and everyone of you richly deserved. You now share with other leaders of the Bar the burden and responsibility for professional leadership that the rank of SAN imposes. By your new position, you are role models for the profession.*

The rank must carry with it some notion of quality assurance... I must therefore remind us on this solemn occasion that there are huge responsibilities that accompany this rank. The responsibility to promote

¹¹ By Dr. Reuben Abati

justice delivery to fellow citizens on the basis of the highest ethical and professional standard... We have a duty to promote the independence and integrity of the Legal Profession. We must recognize that the prosperity of this country depends among everything else, first and foremost, on our ability to promote the rule of law and guarantee justice and fairness to our communities and our fellow citizens.” (Emphasis is mine)

In sharing with other leaders of the Bar the burden and responsibility of leadership that the rank of Senior Advocate of Nigeria imposes on you, let us bear in mind the statement made by one of our members sometimes ago -U.F.O Nnaemeka Esq.¹² that *“history celebrates Leaders who make right decisions. History forgives Leaders who make wrong decisions. But history will not celebrate or forgive a Leader who makes no decision.”* Today’s decisions affect our success and our succession tomorrow.

CONCLUSION

Distinguished ladies and gentlemen, permit me to say that your success and legacy will not be the function of how much you have in the bank but a function of how many you are able to mentor either through direct or indirect mentorship, your commitment to Judicial independence, your commitment to accountability, discipline and integrity in the Profession. We need upright men and women of integrity, sensitivity, honesty and character in the profession in general but more particularly in this rank.

Thomas Jefferson, former President of the United States of America once said that *“every generation needs a new revolution”* We cannot continue to do things in the same way and expect a different result. The Bar is waiting for a new generation of leaders who will be driven by a superior motive to put public interest above self interest in order to

¹² U.F.O Nnaemeka Esq is a former 2nd Assistant Secretary, NBA.

render a selfless service to humanity. A superior motive of honour and integrity over questionable riches and primitive wealth accumulation. My Bible tells me that wealth gotten by vanity shall diminish and drawing inspiration from this biblical passage, I say that wealth without honour and integrity of character is a waste.

We need a new generation of leaders who will accept responsibility to rescue the Bar and who will champion renewal of hope for trust and confidence in our judicial system. Al –Gore was a former Presidential candidate in the United States of America. He lost that election and filed a petition which he prosecuted to the Supreme Court of America and lost. After the judgment of the Supreme Court, this is what Al-Gore said ***“I disagree with the judgment of the Supreme Court of the United States of America but I accept it’s finality.”***

We need a new generation of leaders that will through selfless sacrifice, dedication and commitment institutionalize respect, dignity and honour for our judiciary. We need a new generation of leaders who will not only go beyond being a people’s pleaser to being a God pleaser, but, who will also know that the need for God’s affirmation supersedes the need for the people’s affirmation of their conducts and actions and this is where you come in both jointly and severally.

The Legal Profession needs upright people. People of integrity, sensitivity, honesty and character in their works and I dare say that the Body of Senior Advocates of Nigeria, a Body to which you are now a bonafide member can make a difference in this direction.

At our own individual areas of influence, we can decide here and now to begin to effect a positive change in the practice of law, in the Judiciary and even in the Nation as a whole. After all, every great institution is the lengthen shadow of a single man, his character determines the character of his organization. I recognize that God does not look for masses when He wants to do something. He looks for a leader. In Ezekiel

22 verse 30, God said ***“I sought for a man among them that should make up the hedge and stand in the gap before me for the land.”***

The search for a man remains God’s greatest need in shaping the destiny of Nations. With us, once we are determined to be men and women of appropriate integrity, character and capacity, we can change the face of legal practice in Nigeria.

I think all that is left for me is to once again congratulate you on your well-deserved elevation. I wish you more Grace and more success.

Thank you for listening and God bless you.

Dele Adesina SAN, LLM, FCI Arb
Life Member, Distinguished Body of Benchers and
Past General Secretary, Nigerian Bar Association.

Dated Wednesday, November 22nd 2023

**BODY OF SENIOR ADVOCATES OF NIGERIA
(BOSAN)**

**TOPIC:
LEGAL ETHICS AND PROFESSIONALISM IN THE
PRACTICE OF LAW**

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13TH SEPTEMBER, 2018

LEGAL ETHICS AND PROFESSIONALISM IN THE PRACTICE
OF LAW

PROTOCOL

INTRODUCTION

I wish to place on record my indebtedness to the organizers of this event for extending to me an invitation to serve as a facilitator for the maiden 'pre-swearing in' induction programme for the soon-to-be Senior Advocates of Nigeria. I was very far away from this country when the invitation reached me by Whatsapp message. My first reaction was to inhale and to contemplate whether I would be in a position to prepare a paper soon after undergoing what was a rigorous medical evaluation including a long flight home and I did not see any way out. My conclusion was that, I am obliged to participate and my advice to you today is that, whenever this body (BOSAN) calls on you, do your best to render whatever service is required notwithstanding the inconvenience. As you will soon discover, *unto whom much is given much is expected* and so this profession recognizes 'a pay back time.' Once I came to that conclusion, I also had to come to terms with the nature of the assignment and, on proper reflection, I thought it would serve as a background to acquaint you with, why in my view, I have been invited to this event.

In that connection, a week before I travelled, my set, that is, the Nigerian Law School Class of 1978, celebrated the 40th Anniversary of our Call to the Nigerian Bar. What this means within the confines of our discussion today, is that I have had the fortune of navigating the Rules of Professional Conduct for the period of

40 years and the presumption must be that I should know a thing or two about the circumference of what is expected of a lawyer in practice. Besides, I was elevated to the Inner Bar in the year 2000 and so, in the past 18 years or thereabout, I have also had the privilege of practicing our coveted profession as a Senior Advocate of Nigeria, and the other inevitable presumption is that I also ought to know the inevitability of a person of that rank demonstrating his/her understanding of legal ethics and professionalism both in theory and in practice. Many occasions will arise when you will instantly need to assert your appreciation of the demands of being a seasoned and ethical professional. It is probably for these reasons that the organizers have asked me to dilate on and to lead the discussion on the topic: **"Excellence and Professionalism in the Practice of Law."**

Quite graciously, the organizers of this event helped me to breakdown this topic into four (4) subtopics namely:

- I. 'The Senior Advocate of Nigeria: A Rebuttable Presumption of Excellence?'
- II. 'Understanding the Culture and Demands of Continuous Excellence.'
- III. 'Scholarship in Legal Practice.'
- IV. 'The Legal Services Revolution.'

Before I dilate on my main topic for today, I need to underpin the fact that this is a one day event and I am one of several speakers, which means that I am not at liberty to roam far and wide but will advisedly keep my speech very short, bearing two specific things in mind. The first is that, none of you is less than 10 years at the

Bar, which is a prerequisite for being admitted to the inner Bar. An inevitable corollary to that fact is that, you have been stewed in not just the dimensions of professional ethics and professionalism but on the imperatives of keeping your practice within bounds. Some of you in fact have spent thirty (30) years and above at the Bar in active practice and our professional demands are very well ingrained in your bones. Accordingly, you have less or little more to learn. In addition, the second point is that, as a member of the Legal Practitioners Privileges Committee (the body saddled with the onerous task of vetting all applicants) one is entitled to the inevitable conclusion that, any person found worthy of donning the silk gown must have demonstrated some modicum of excellence within the profession both in learning and character and both of these ingredients have a bearing on ethics and professionalism. I was involved in that vetting process and I can confirm, that anybody who jumps all the obstacles and becomes eligible to be conferred with the rank of Senior Advocate of Nigeria can beat his or her chest exuberantly. Again, I have known some of you over many years and have come to see the sun in your eyes and I am personally convinced that your light will so shine on our profession so as to leave no one in doubt (including innocent bystanders) that your silk gown will sit on you very prettily.

IS THERE A DIFFERENCE BETWEEN ETHICS AND PROFESSIONALISM?

Very often, a lot of persons within and without different professional organizations consider ethics to mean the same thing as being demonstrably a seasoned professional. My feeble

research has led me to the conclusion that both do not mean exactly the same thing and whenever I am in doubt or unsure of any legal position, I visit the Black's Law Dictionary. The Tenth Edition of that dictionary refers to the word 'ethics' as "a system of moral tenets or principles; the collective doctrines relating to the ideals of human conduct and character." The Dictionary emphasizes that:

*"...Ethics refers to imperatives regarding the welfare of others that are recognized as binding upon a persons conduct in some more immediate and binding sense than law and in some more general and impersonal sense than morals. This definition is narrower than those of the Philosophers..."*¹

On the other hand, the same dictionary refers to 'professionalism' as:

*"The characteristics, ideas, and ideals of those who belong to a professional calling; specifically, the practice of a learned art in characteristically, methodical, courteous and ethical manner."*²

The Authors of the dictionary have taken extraordinary steps to give an inkling of the need to define professionalism. My humbly held view is that, things concerning morality dwell more in the realm of natural law while professionalism arises more or less from the stipulations in the professional code of a given profession. You may therefore wish to refer to our very well known Rules of Professional Conduct for your continuing guidance.

¹ The Black's Law Dictionary, Bryan A. Garner, 10th Edition,

² Supra note 1

Thus, 'Legal Ethics' is a term used to describe a code of conduct governing proper professional behavior as arising from moral tenets and principles, which establishes the nature of obligations owed by lawyers and the legal profession to individuals and to society.

Several common law jurisdictions, including Nigeria's, discern some distinction between the two topics. A former Chief Justice of the State of Georgia in the United States, Harold Clarke, described the distinction between ethics and professionalism as:

“... the idea that ethics is a minimum standard which is required of all lawyers while professionalism is a higher standard expected of all lawyers.”

The Georgia Chief Justice's Commission on Professionalism states that, “*the term ethics, commonly is understood in the CLE context to mean ‘the law of lawyering’ and the rules by which lawyers must abide in order to remain in good standing before the bar.*”³

Further, A. McArthur Irvin, an American practitioner, in referring to the distinction, is quoted as saying that:

Professionalism, on the other hand, appears to harken back to the traditional meaning of ethics, i.e., one who would rise above the minimal standard would be described as ethical. But the

³ Georgia State Professionalism CLE Guidelines

*passage of precise rules setting out a minimal threshold of legally permissible conduct in specific situations may have altered our understanding of professionalism. Most lawyers would not describe mere adherence to such rules of minimal behavior as professional conduct. It would seem clear that professionalism must rise to a higher level than the mere minimum standard for preserving the right to practice law.*⁴

Both ethics and professional discussions tend to focus on misconduct -- the undesirable elements of lawyering. An instance of an unacceptable conduct of a legal practitioner can be seen in the recent case of *N.B.A v. Ofomata* (2017) where it was directed that, the issuance of a dud cheque will amount to an infamous conduct thus, no legal practitioner should engage in such behavior.⁵ An infamous conduct was elucidated in *Umazi Ndukwe v. The Legal Practitioners Disciplinary Committee* (2007), which stated that:

"It is an infamous conduct in a professional respect for a legal practitioner to hold on to a client's money without justification after a demand for the money by the client. All right-thinking members of the Legal Profession must view such a misconduct with great concern not only for the protection of

⁴ "Ethics and Professionalism: A Distinction with a Difference?" Paper delivered by A. McArthur Irvin to the American Bar Association Section on Employment Law Midwinter meeting 2012.

⁵ *N.B.A v. Afam Ofomata* (2017) 5 NWLR (Pt. 1557) 144

the public but also for the protection and preservation of the legal profession.”⁶

Moving beyond mere adherence to minimum expected conduct, the Georgia Commission declared that “professionalism is meant to address the aspirations of the profession and how we as lawyers should behave.”

According to the Commission: “Professionalism is a wide umbrella of values encompassing competence, civility, legal ethics, integrity, commitment to the rule of law, to justice and to the public good. Professionalism calls us to be mindful of the lawyer's roles as officer of the court, advocate, counselor, negotiator, and problem solver.” Professionalism asks us to commit to improvement of the law, the legal system, and access to that system. These are the values that make us a profession enlisted in the service not only of the client but of the public good as well. While none of us achieves perfection in serving these values, it is the consistent aspiration toward them that defines a professional. The Commission encourages thought not only about the lawyer-client relationship central to the practice of law but also about how the legal profession can shape us as a people and a society.

At this juncture, let me draw your attention to a challenge (which I believe is at the epicenter of our discussion today) thrown to the Nigerian lawyer by the Late Dr. Olawale Elias (former Dean of Law of the Faculty of Law, University of Lagos, later Attorney General of the Federation and Minister of Justice, and thereafter Chief

⁶ Umazi Ndukwe v. The Legal Practitioners Disciplinary Committee (2007) 5 NWLR (Pt. 1026)

Justice of Nigeria) who threw his very heavy intellectual weight on illuminating even obscure areas of Nigerian law. He said:

“Never before in the long history of human thought has law had to face a more challenging situation than that in contemporary Nigeria. The prevailing social and economic forces call for a type of lawyer who is at once a social engineer and an analyst, a pericles and a plumber, capable of appreciating the values of existing institutions and mores and yet ever ready to make a dynamic contribution to maintenance of a proper balance between the claims of the state and those of the individual. Law and society should engage in a continuous dialogue both as to the choice of means, and as to the end in view. If Nigerian Law can fulfill the role of stimulating economic growth and social well being, elevate the moral tone of the community, foster a spirit of unity among the diverse ethnic groups and become a common law for the country under which no man is oppressed, it will have made an important contribution in the world of ideas for the cause of human betterment.”⁷

I have brought up this challenge at this point particularly because at this stage of our national life, the vagaries of our economy, the uncertainty in our politics and the noticeable insecurity in our daily existence and our general well-being as Nigerians, the Nigerian lawyer and particularly, the Body of Senior Advocates (BOSAN)

⁷ 'Law in a Developing Society', T. O. Elias at p. 140 to 141

must determine the boundaries of our legal ethics and the confines of professionalism. This is because we have outsiders snooping for the fees that lawyers are paid without a corresponding examination of the quantum of work that may or may not have been done (as well as increasing risks in executing our instructions or briefs); we have anxiety in some quarters because we have been told that the Rule of Law will be subordinated to the inscrutable dimensions of national security; lawyers have been denounced for allegedly defending persons suspected or charged with corruption in different Courts; some have become afraid of speaking out lest they be hounded as enemies of persons in authority at different strata. Would a lawyer be professional when he runs away preemptively before examining a brief he has been given? Would the lawyer be professional by reducing his fees lest he be admonished for charging too much money? Would a lawyer be acting unethically if he gives a client what we call 'his day' in Court? Would he be professional if he navigates within the Rules of Criminal Procedure, Civil Procedure and Arbitral Proceedings in order to get the best of legal options for a person who has given him a brief? We live in challenging times and the lawyer is at a crossroad of deciding whether to go right or left on our road to professionalism and ethical conduct.

It is my belief that what the great but Late Lord Denning said in the celebrated case of *Rondel v Worsley* as far back as 1967 is still instructive in our prevailing circumstances and I crave your indulgence to repeat it here:

"As an advocate, he is a Minister of justice equally with the Judge. He has a monopoly of audience in

the higher courts. No one save he can address the JUDGE, unless it be a litigant in person. This carries with it a corresponding responsibility. He must accept that brief and do all he honourably can on behalf of his client. I say 'all he honourably can' because his duty is not only to his client. He has a duty to the court, which is paramount. It is a mistake to suppose that he is the mouth piece of his client to say what he wants or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice. He must not consciously misstate the facts. He must not knowingly conceal the truth. He must not unjustly make a charge of fraud, that is, without evidence to support it. He must see that his client discloses, if ordered, the relevant documents, even those that are fatal to his case. He must disregard the most specific instructions of his client if they conflict with his duty to the court. The code which requires a barrister to do all these is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline. But he cannot be sued in a court of law, such being his duty to the court. This is a conflict often difficult to resolve and he should not be under pressure to decide wrongly if a barrister is to be able to do his duty fearlessly and

*independently, he must not be subject to the threat of an action for negligence.*⁸

I am aware that Lord Denning's decision has been followed and adopted in this Country in *T. Oseni v. Brossetee Nig. Ltd.* (1981) Jan/March CCRCJ 310-320, *The Shell Petroleum Development Company of Nig. Ltd v. Chief George Uzoaru & 3 Ors* (For themselves and as representing the UMUNNAKA UKWU Village of OGUTA) (1994) 9 NWLR (Pt. 366) page 51. I have to acknowledge that *Rondel v Worsley* has its critics and its descendants but time will not permit me to dwell on the dimensions of the criticism that has trailed Lord Denning's epochal words. The important question that arises from Denning's vigorous reasoning is, if we remain immune to suit, can we be pulverized verbally in the press by the dogged opponents of this profession? Tentatively, my answer would be that we will remain relevant and central to what will happen and will continue to happen, both within our profession and within Nigeria. We need to remain vigilant and circumspect, guided by the long-standing and cherished traditions of one of the oldest professions in the world.

Distinguished Ladies and Gentlemen, that was a diversion but in Nigeria, the Rules of Professional Conduct establish minimal standards adopted to govern the conduct of legal practitioners; for example, the standard to which a lawyer must adhere in order to maintain a license to practice. One would hardly describe a lawyer as ethical, merely because the minimal standards of the profession are satisfied. One is not ethical, in the traditional sense, because

⁸ *Rondel v. Worsley* (1967) 2 WLR 1666

he or she acts lawfully or even within the bounds of an official code of ethics. The term 'professional' generally is applied to the three earliest professions of law, medicine, and ministry. The term profession evolved to describe occupations that required new entrants to take an oath acknowledging their commitment to the ideals and practices associated with a calling that required education. Dean Roscoe Pound of Harvard Law School once described a professional as follows:

"The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service, no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose."⁹

The 1996 Report of the Professionalism Committee of the American Bar Association, Section of Legal Education and Admissions to the Bar, Teaching and Learning Professionalism, extends and particularizes the definition to the practice of law:

"A professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and public good."

⁹ "The Lawyer from Antiquity to Modern Times" Roscoe Pound, 1953

Justice Sandra Day O'Connor set forth a description of professionalism. She said:

"To me, the essence of professionalism is a commitment to develop one's skills to the fullest and to apply that responsibly to the problems at hand. Professionalism requires adherence to the highest ethical standards of conduct and a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. At the same time, lawyers must temper bold advocacy for their clients with a sense of responsibility to the larger legal system which strives, however imperfectly, to provide justice for all."¹⁰

For you to make up your minds about the challenges you have faced so far, and the challenges that remain, I must draw your attention to excerpts from speeches by Pan Africanists of note and from voices beyond.

- Kwame Nkrumah, erstwhile President of Ghana, on the 4th of January, 1962 stated that: *"In a developing country, the first priority is not for lawyers trained to conduct*

¹⁰ Court of Appeals of Maryland Professionalism Course, "Professionalism Above and Beyond Ethics."

litigation between wealthy individuals... The lawyers needed in a developing state are, in the first place, those trained to assist the ordinary men and women in their everyday legal problems and particularly in the new problems likely to arise through industrialization... Secondly, and perhaps most important of all, we need lawyers in the service of the state, to deal with treaties and commercial agreements and with questions of private and public international law..."

- President Kaunda (of Zambia) in an Address to the Law Society of Zambia said: *"The lawyer in a developing society must be something more than a practicing professional man; he must be more even than a champion of the fundamental rights and freedoms of the individual. He must be, in the fullest sense, a part of the society in which he lives and he must understand that society if he is to be able to participate in its development and the advancement of the economic and social well-being of its members. The lawyer must go out beyond the narrow limits of the law, because... while the law is the instrument through which society is preserved, in its shape and character, it is the reflection of the society."*
- Again, Professor L.C.B. Gower (former Dean of Law at the University of Lagos), a jurist and well-known legal educator stated that: *"They need commercial, corporation, and property lawyers if they are to achieve an economic take-off. They need bilingual, international, comparative, and constitutional lawyers if they are to survive states*

and to enter into large unions which Pan-African sentiment and economic development demand... They need courageous lawyers with the highest ethical standards if the atrophy of the rule of law and of personal and academic freedom and the corrosive growth of corruption, nepotism, and elitism are to be arrested, and if military and police power is to be kept within bounds. Most of all, perhaps, they need constitutional lawyers sophisticated in other disciplines if they are to find a viable substitute for the Westminster Parliamentary Democracy."

- More recently, a Code of Conduct of Lawyers in the European Community was formulated. It states as follows: "In a society founded on respect for the rule of law, the lawyer fulfills a special role. His duties do not begin and end with faithful performance of what he is instructed to do so far as the law permits. A lawyer must serve the interests of the just as well as those whose rights and liberties he is trusted to assert and defend; it is his duty not only to plead the client's cause but to be his adviser. A lawyer's function, therefore, lays on him a variety of legal and moral obligations (sometimes appearing to be in conflict with each other) towards the client, the courts and other authorities before whom the lawyer pleads his client's cause or acts on his behalf; the legal profession in general and each fellow member of it, in particular, owes a duty to the public for whom the existence of a free and independent profession, bound together by respect for rules made by the profession itself, as an

essential means of safeguarding human rights in the face of the power of the state and other interests in society."

See Professional Conduct of Legal Practitioners in Nigeria by J. Olakunle Orojo, 3rd Edition.

I am convinced that because of your station in life, you must be aware of the implications of these strident but diverse calls from acknowledged statesmen from different parts of Africa. In sum, the voices of Kenneth Kaunda, Kwame Nkrumah, L.C.B. Gower and other voices too many to reproduce, is that a lawyer in Nigeria has as much to do in terms of adherence to our ethics and professional calling just as another lawyer in any other corner of the world. Many lawyers have in the past emigrated from our shores to distant places and reports indicate that their training here, with further training in the place they presently find themselves, have served them well. It is now time to dilate on the first of our subtopics.

THE SENIOR ADVOCATE OF NIGERIA: A REBUTTABLE PRESUMPTION OF EXCELLENCE?

In our Law of Evidence as well as areas of substantive law, there is always one form of presumption or the other subdivided into rebuttable and irrebuttable. In the Law of Evidence for instance, it is taken for granted that children are playful and are accordingly not as careful as adults and this imposes a higher duty on the standard of care on those who are in charge of them than when dealing with adults and the presumption is irrebuttable. On the

other hand, a person not seen for seven (7) years is presumed to be dead, unless the contrary is shown. This makes that presumption rebuttable. When two (2) persons die at the same time, say in an accident, the older person is presumed to have died first but again, that is a rebuttable presumption. Guided by these examples, can it be said that wearing the badge of Senior Advocate means that the person is excellent without equivocation? The answer is a simple one and in terms of presumptions, the Senior Advocate rebuttably must be excellent in learning as well as in professionalism. This conclusion is inescapable, bearing in mind the guidelines for the conferment of Senior Advocate of Nigeria, 2017 (See Federal Republic of Nigeria Official Gazette Vol. 104, 13th October 2017) pursuant to which you will be adorned with that rank on the 24th of September 2018. The guidelines require you to submit an application together with specified documentation, which ordinarily will indicate the cases you have conducted at the High court level (High Court of different states as may be warranted, the Federal High Court, the National Industrial Court and other courts of equivalent jurisdiction), the Court of Appeal and the Supreme Court. By the guidelines, each one of you must have conducted a stipulated number of pro bono cases. You would have paid your practicing fees, local and national for an unbroken period of ten (10) years. You will show efforts you have made either at Bar level or at Community level to show your usefulness to society. There will be recommendations from Legal Practitioners as well as Judicial Officers to indicate that you are a dependable person. Your credentials will pass first screening at secretarial level; second screening at Legal Practitioners' Privileges Committee level; your office must have been inspected; your tax must have

been paid as and when due and you must have attended an oral interview where your knowledge of the law, your body language and your carriage is assessed and evaluated, etc. These milestones are to indicate to the Legal Practitioners' Disciplinary Committee, that you have sufficiently met the three (3) general principles namely: that you are in full time legal practice; have distinguished yourselves as Advocates and have made significant contribution to the development of the Legal Profession in Nigeria. The vetting process in my view is rigorous and stringent enough to raise a presumption of excellence. Whether that presumption becomes rebuttable at any stage will depend on individual Senior Advocates. A designer will make a shirt, a tie, a suit, a pair of shoes and so on, but it must fit the wearer in a consistent manner because you cannot wear a size 13 pair of shoes today and a size 15 the next day. In other words, consistency is the hallmark of a Senior Advocate of Nigeria. The approach is for each Senior Advocate to defend the rank at every stage - in or out of court; in church or a mosque; in a restaurant; in the market place; in your town hall; or even in a bus. You are not permitted to be loquacious in a beer parlor. You may not even be allowed to sit in a pub or 'viewing center' shouting GOOOOOOOOOOOOOOOOOAAAAAALLLLLLLLLLLLLLLLLL when your favourite football team has scored a goal. You are forbidden from munching groundnuts or puff-puff while walking on the streets. You can not urinate openly, etc. I am only citing everyday examples to indicate that the presumption of excellence is not limited to your knowledge of the law, of procedure or any professional undertaking. It is all encompassing. The summary of this subhead is that, any conduct, which may be deemed

infamous, is sufficient to nullify the presumption of excellence, which the rank of Senior Advocate of Nigeria confers. Recently, as you all may be aware, the Legal Practitioners' Privileges Committee has had to dish out very harsh punishments to those who wittingly or unwittingly took active steps to diminish the rank.

What may be said about the two other subtopics namely; 'Understanding the Culture and Demands of Continuous Excellence' and 'Scholarship in Legal Practice' are already woven in the fabric of what has been said above. However, for the purpose of elaboration, it has to be understood that attaining a position or station in life requires nurturing and sustenance. If you plant a seed and it germinates, it will wither away without tender care. Excellence is not temporary and can be made permanent and permanence arises from, caution and discretion in what we say or do. On the other hand, Scholarship in Legal Practice is a demonstration of perfection. This is because, the *New Lexicon Webster's Encyclopedic Dictionary of the English Language (Deluxe Edition)* defines a 'scholar' as a "learned person; a person who has made a thorough study and acquired a wealth of knowledge of a subject."¹¹ Scholarship which is a noun is the "command of learning displayed by a Scholar; the methods by which Scholars work." Guided by these definitions, it is obvious that the Scholarship, which is an index in the presumption of excellence, must relate to legal practice. So if you are a Scholar in the culture of your people or your personal religion or in fashion etc, you are off the mark, having regard to the context of our discussion today. Let it be understood therefore, that the

¹¹ *New Lexicon Webster's Encyclopedic Dictionary of the English Language (Deluxe Edition)*

presumption of excellence which I understand to be rebuttable, must relate to continuity and your scholarship will only serve as a signpost of excellence. A person of high scholarship in legal practice, must therefore be a good Solicitor in the sense of work done in Chambers and in the sense of published works. We must therefore, be diligent and circumspect in what we write, what we publish in learned Journals, Newspapers, and what we disseminate in any form to the general public, especially in these days of social media.

THE LEGAL SERVICES REVOLUTION

In dealing with this subtopic, I need to say that, candour and sincerity are part of the hallmarks of our profession. Consequently, I need to acknowledge that I am not an expert in the nuances of this subtopic. However, I take advantage of the fact, that at the earliest opportunity, I disclosed that the Nigerian Law School Class of 1978 celebrated its 40th Anniversary on the 21st July 2018. A significant part of that celebration was an Anniversary Lecture and the topic for that lecture was 'Advances in Technology: A Sign Post Or Requiem To Legal Practice? The topic was dexterously and competently handled by Honourable Justice Kashim Zannah, Honourable Chief Judge Borno State of Nigeria. I will do no more than to excerpt from that lecture. In his opening remarks, the lecturer underscored the point that:

"We live in the age of disruption. In most professions including the practice of law, technology is enabling levels of performance that

were hitherto inconceivable. Consequently, it is also disrupting settled practices to such an extent and at such a speed that the Planning Committee may justifiably ask, if the disruption is leading up to the destruction of Legal Practice, at least as we know it. The scale and speed are truly outstanding."

Honourable Justice Zannah referred to Stephen T. Maher who wrote in April 1995 and that:

"Technology will transform the practice of law as it transforms the world. Newly available technologies like voice recognition, digital video and high-volume data storage, will create new protocols governing how agreements are formed and monitored and how disputes are resolved. The rise of technology, or more accurately, the unbinding of technology from servant of our wishes to master of our destiny, is about to take place before our eyes. The technology currently making lawyers so much more productive and efficient may soon escape their control, change their routines, challenge the inefficiencies they enjoy and form the foundation of a new practice of law."

Stephen Maher made a prediction in 1995 and Honourable Justice Zannah indicated the nature of what has happened since that prediction was made. He referred to block chain technology, big data, cloud computing, advanced analytics, artificial intelligence (AI) and machine learning (deep learning,

particularly reinforcement learning) and he referred to other factors that are changing our way of doing business. He referred to liberalization which permits 'Setting Up of New Types of Legal Businesses and Cost of Legal Services, Alternative Business Structures (ABSs), so that non-lawyers can own and run legal businesses which in turn facilitates internal investments such as private equity or venture capital to be injected into legal businesses by outside investors and thus, lets non-lawyers become owners of law firms.' He underpinned the fact that technologically driven businesses have affected the cost of legal services, to the extent that 'a combination of three (3) forces, cost of legal services, liberalization and advances in technology combined to disrupt and will continue to destroy the trajectory of legal practice.' The further fallouts from the application of advances in technology to the legal and allied environment which Justice Zannah expertly referred to are: document automation, the rise of Alternative Legal Service Providers (ALSPs); demand legal service providers, virtual law firms, gigging, legal question and answering, chatbots; robot lawyers and legal advise cloud sourcing. In order not to disturb you with technological niceties on which I am not fully authoritative, I will give you the take-away from Justice Kashim Zannah: He said that:

"The legal market place of tomorrow can not be immune from the technology that will permeate the socioeconomic fabric of society. Paper based practices and practitioners will surely be as extinct as dinosaurs are today. Indeed, new services will emerge and for those who prefer for and change with the times, new opportunities."

His Lordship, relying on Richard Susskind said:

“It is often observed, not especially profoundly, that we cannot predict the future. This seems to give licence to the unimaginative, the shortsighted, and the indolent to discard any foresights as pointless speculation. In contrast, I join others who believe that we can anticipate many (but not all) broad trends, if not the specific details of the world yet to me. Given our economic conditions, the shift towards liberalization, the new providers in the marketplace, and the burgeoning, exponential increase in the power and uptake of technology, I find it unimaginable that our current legal institutions and legal profession will remain substantially unchanged over the next decade. Indeed, it seems to me that the least likely future is that little will change in the world of law.”

Distinguished Ladies and Gentlemen, this represents my very feeble appreciation of the new terrain of law and technology. From my personal knowledge and interaction with a good number of you in the not too distant past, I know you to be individually competent in the handling of some tools, gadgets and devices that assist us in the work we do, but I need to say, that the mastery of your laptops, your iPads, your smartphones etc. is not the same as the technologically induced erosion of the perimeters of our professional practice. You may do well to look at Honourable Justice Zannah's expert write-up and if you so demand, I can assist you with copies. There are multiple sources from which you

may protect your practice from the encroachment that is bound to arise in the not too distant future. A stitch in time saves nine.

CONCLUSION

This is a one-day event by the Body of Senior Advocates (BOSAN) designed 'to help orientate the new Senior Advocates of Nigeria on their leadership role in the profession, professional ethics and conduct expected of them in the discharge of their duties to clients, the court and the society.' I am not unmindful of the fact that my colleagues who are from the academia are part of this exercise. To a large extent, and from my rusty academic background, I know that different considerations apply to the Ivory Tower when the issue of ethics and professionalism are upfront, but on account of time constraints, I offer them apologies. They know what they ought not to do and I will not belabor them. My former boss, Honourable Judge Bola Ajibola, SAN, KBE, former Honourable Attorney General of the Federation/Minister of Justice, Former Judge of the International Court of Justice at The Hague, taught me well. He said: "that a good speech should like a lady's skirt, be short but long enough to cover the subject matter."

I do hope ladies and Gentlemen, that I have not deviated from that which I was taught. I thank you all for your attention.

AWA U. KALU (SAN) FNIALS

13th September 2018.

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EXCELLENCE AND PROFESSIONALISM IN THE PRACTICE OF LAW
A SENIOR COUNSEL'S ROLE
**BEING A PRESENTATION BY JOSEPH BODUNRIN DAUDU SAN AT THE PRE-
INAUGURATION INDUCTION OF NEW SENIOR ADVOCATES OF NIGERIA AT
THE ORIENTAL HOTEL, VICTORIA ISLAND, LAGOS ON THE 13TH OF SEPTEMBER**
2018

INTRODUCTION

My relief and consolation is that I am addressing a truly learned audience. It absolves and relieves me of any responsibility of breaking down or over-digesting issues relevant to the foregoing discourse to this distinguished audience. This audience comprises of the 26 newly gentlemen appointed or elevated to the coveted rank of Senior Advocate of Nigeria. One of the points to skip is the examination of the statutory requirements for the qualification and appointment procedure of applicants to the rank of SAN. I can safely say that on this point you are qualified to give expert evidence. However, the attainment of the rank is not the end or ultimate in legal practice, it is actually the beginning of hefty responsibilities on their part not only to the legal profession but to the society at large.

I have always been persuaded that the rank of SAN is a leadership position since the day sometime in 1993 when I went to inform Alhaji Abdullahi Ibrahim SAN in his capacity as a father and doyen of the Bar that I had applied to the LPPC for the conferment of the rank of SAN. Before then I had thought that the rank was simply a reward for effective and/or brilliant advocacy. He however took time to school me on the point that it was a leadership position and that from the moment a practitioner is conferred with the rank he automatically becomes a leader in the profession including to those who were called to the Bar long before that practitioner. He said that a senior counsel is a person whom the Bar and members of the Public trust explicitly without equivocation. He was more concerned with the leadership quality and role that a senior counsel will play in the course of his interaction with the Bar and the Public. Since then, I have been an unrepentant convert to the theorem or thesis that a senior counsel SAN is first and foremost a leader of men and repository of good ethics than being an outstanding advocate of the law, even though the two must go together.

This event is novel and distinct in that it is the first time in the annals of Nigerian legal practice that newly elevated senior counsel are being taken through an induction course prior to the swearing-in ceremonies. Some school of thought

think it is unnecessary and overbearing. I do not think so. A clear example is apparent from the following event; About 10 years ago, at the swearing-in of new senior advocates in the ceremonial court room of the Supreme Court was congested, even the inner bar was crowded, and very senior silk had nowhere to sit because the younger SAN's had taken up all the sits in the front row and when asked to vacate their sits for the older SAN's turned deaf ears to every request. We reminded them that even among senior counsel there was priority gained as a result of seniority, but it remained a messy site until they were almost forcefully ejected and sent to their proper positions. The unpleasant situation and many others that I have observed first hand during my 6 – year sojourn in the Legal Practitioners Disciplinary Committee shows that SAN's are not immune from unethical conduct and this could have been averted with such educational interventions such as this event.

It is for the foregoing reason(s) that I subscribed to this programme and will now make some contributions on the following sub-topics;

- i. **The Senior Advocate of Nigeria: A rebuttable presumption of excellence?**
- ii. **Understanding the culture and demands of continuous excellence.**
- iii. **Scholarship in legal practice.**
- iv. **The Legal services revolution**

In conclusion, the future of the rank of Senior Advocate of Nigeria will be examined in juxtaposition with the current legal and political environment.

THE SENIOR ADVOCATE OF NIGERIA: A REBUTTABLE PRESUMPTION OF EXCELLENCE?

For clarity, it is important to take a glance at the identity of a Senior Advocate of Nigeria to understand the danger of a threatened conflict between his obligations to his professional family and the demands of his newly acquired rank. Now it is usually a mistaken impression prevalent among new SAN's that they are under a duty to jack-up their fees in consonance or in harmony with their newly acquired rank. In the past some new silk have been known to return files to clients who were unable to meet up with new table of fees issued

contemporaneously with the attainment of the rank. This is not only wrong but a breach of the existing contract between the SAN and his client. He is not at liberty to act on the Novus actus interveniens of his preferment to obliterate or obfuscate settled agreements. Indeed, the new SAN ought to dutifully use his new rank to the advantage of his old clients by employing the new privileges, particularly, the right to mention his cases out of turn and before other lawyers to speedily conclude the old set of pre-SAN cases. When he has done this then he can graduate to those new cases that he will charge SAN fees.

Secondly, there is consensus among lawyers that owing to the dignified stature of the legal profession in conjunction with the onerous duties and expectations from the legal practitioner, particularly senior counsel, the profession has evolved a set of Rules to guide the conduct of the legal practitioner in the discharge of his duties. These Rules are encapsulated in the **RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS 2007** under the hand of the then Chairman of the General Council of the Bar and Honourable Attorney General of the Federation Chief Bayo Ojo SAN. It must be stated from the outset that the SAN is not immune from observance of the Rules of Professional Conduct or discipline arising from its breach. Indeed, the reckless or careless SAN may in the face of a proven breach of the Rules of Professional Conduct face double jeopardy i.e. lose his silk and lose something greater courtesy of the Legal Practitioners Disciplinary Committee (LPDC).

Some stakeholders have opined that there seem to be a rule for other legal practitioners and a different rule of SAN's. Recently, there have been views expressed that these Rules do not cover emerging and indeed very adverse conduct of some senior advocates. It is now trending that in some extreme situations some senior counsel act in an extremely rude manner to the Court. In some recent instances, some senior counsel have been suspended from the rank because of conduct unbecoming and unbefitting of the rank of SAN. I am of the view that Rule 1 of the Rules of Professional Conduct in the Legal Profession 2007, which provides as follows;

“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 engage in any conduct which is unbecoming of a legal practitioner”.

Needs to be re-examined and made more comprehensive so as to capture and redress the excesses of some of our colleagues.

In the case of Nwankwo v. Ononeze-Madu (2009) All FWLR (Pt. 461) P.995 at 1026 paras H-B, Saulawa JCA expounded the above Rule when he set out the duties and obligations of Legal Practitioners in these words:

“The appellants as legal practitioners have an onerous obligation not only to uphold, but also to observe the rule of Law, promote and foster the cause of Justice, maintain a high standard of professional conduct and to shun any conduct which is unbecoming of a legal practitioner; Rule 1, Rules of Professional Conduct for Legal Practitioners, made pursuant to the provisions of the Legal Practitioners Act Cap 20 LFN 1990. Most undoubtedly, the above provision of Rule 1 was meant to make the noble and learned profession not only a vibrant and honourable profession but also a formidable watchdog of the Public Service in particular and the society in general.”

The 2007 RPC cover subjects like (a) The Practice of Law by a legal practitioner, (b) Relations with clients, (c) Relations with other lawyers, (d) Relations with the Court, (e) Improper attraction of business, (f) Remuneration and fees and (g) Miscellaneous. It is apt to state at this stage that the 57 sections that make up the RPC 2007 do not cover the widespread forms of professional misconduct that are now apparent in the activities of legal practitioners including those wearing the silk. Time and space will not permit a detailed examination of these manifestations of misconduct, but that they are fast becoming normal or even acceptable conduct gives cause for concern. For instance, a lawyer is forbidden from practising law and any other profession simultaneously; he is forbidden from sharing his legal fees with a non-lawyer, he owes his clients a duty to keep proper accounts of their monies, he has a duty to reduce important agreements between him and his clients into writing, he is expected to advise his clients to the best of his knowledge and within the ambits of the law and when his counsel is rejected, it is expected of him to withdraw his services from such client. A legal practitioner including SAN also owes numerous duties to the courts some of which include the duty to be decorous in conduct and language both in and out of the court. A lawyer is expected to hold the proceedings of courts in high esteem and resist the urge of debating pending cases outside the court, he is forbidden from filing frivolous cases/applications or citing authorities which he knows are inapplicable to his case. Suffice to say that **“the Legal Profession is a profession of gentlemen; that is why the lawyer is addressed as “esquire”- whether male or female. The legal profession is not meant for rabble rousers neither is it meant to provide license for extortionists to engage in free for all**

looting spree. That is why only those considered to be fit and proper persons are admitted to the Bar” per J B Daudu SAN NBA v Timipa Okponipere BB/LPDC/102 Directions and Rulings of the Legal Practitioners Disciplinary Committee Vol. 1 Pg 35 at 40.

From the foregoing, it is evident that compliance with the rules of professional conduct in the legal profession is more of abstinence from misconduct and therefore an exclusive preserve of principled gentlemen of esteemed integrity who must not only know the rules of self-discipline but also have a firm understanding of its exceptions. The legal practitioner, particularly the SAN is a professional, a watchdog, a gentleman and above all a role model to his community.

UNDERSTANDING THE CULTURE AND DEMANDS OF CONTINUOUS EXCELLENCE AND SCHOLARSHIP IN LEGAL PRACTICE

As opposed to Nigeria, in the United Kingdom, a lawyer on graduating from university first has to decide whether to practice as a solicitor or as a barrister. It is based on this decision that the period of training or pupillage will be determined. For a solicitor, it is called a training contract, and this lasts a period of 2 years before he or she can practice solely. For a barrister, it is called pupillage and lasts for a year. The essence of this pupillage is to further expose the pupils to the practical aspects of the profession. Therefore, if this is to be incorporated into the Nigerian legal system, then a law school graduate must undergo 3 years training or pupillage before being fully admitted to practice. This is because in Nigeria, graduates’ practice as both barristers and solicitors.

In Nigeria, the only compulsory pupillage is that done as part of the law school programme and is only for a combined period of 3 months. As the pupils are yet to be called to the bar at this stage, they cannot be said to learn the practical aspects of legal practice since they are not allowed to address the courts unrobed.

Pupillage aids in the maintenance of standards because through it, newly called lawyers can perfect their acquired knowledge before taking on cases on their own. As Mr Emeka Maduewesi said; “Because of their role in society and their close involvement in the administration of law, lawyers are subject to special standards, regulation, and liability. Sometimes called legal ethics, sometimes professional responsibility ...” See *Lawyering: The Practitioners Sacred Duties* - by Emeka Maduewesi.

Now, when a legal practitioner attains the rank of Senior Advocate of Nigeria, does it mean that he now knows it all? That his learning and continuous education is at an end? That he does not need to improve himself or seek excellence as he has reached the apogee of his profession. I think not. The answer is whether in the utter or inner Bar, a lawyer must continuously and ceaselessly strive to improve himself and this can only be achieved by continuous legal education. A lawyer including Senior Counsel's primary research database is his library and the internet, with caution. The information on the internet can only be as accurate as the person who uploaded it into the system, therefore no lawyer, including silk, should be seen to build his work solely on internet-based research. In the present-day computer age where less people engage in reading, all lawyers, particularly SAN are encouraged to read more for themselves and their non-reading clients. This is the reason why they are watchdogs and role models to their society.

A senior lawyer SAN must vouch to plough a substantial portion of his resources to not only his own continuous legal education but to the education of his juniors, associates and Partners. Now is the time to attend strategic and indeed very relevant conferences, acquire new Diploma's and Post-Graduate Degrees, expanding one's horizon or vista, proceeding on sabbaticals, teaching, lecturing or any other activity bordering on giving back to the society. A senior Advocate henceforth should give more than he receives. This is the time to grant scholarships, bursaries and other educational grants to indigent students.

Where the new SAN engages in this activities, he adorns not only the toga of excellence but don's the helmet of good and continuous success.

THE LEGAL SERVICES REVOLUTION

This is a wide issue that requires more than a sub-heading as allotted herein to fully articulate the scope and ramification of the legal services revolution. Because the world' economies are growing at a rapid rate, there is a lot of diversification in the provision of legal practices. Globalisation has induced multi-jurisdictional or cross border practice. The effect is that if left unchecked multi or transnational corporations will bring lawyers from their jurisdictions to provide legal services in emerging economies and jurisdictions such as Nigeria. Their argument when confronted with the existence of local lawyers who are adequately equipped by way of training and experience to provide the same services is usually that local lawyers lack the training and discipline to meet the

needs and aspirations of their clients. This denigrating and indeed sweeping statement is clearly not true. Firstly, local lawyers include learned Senior Advocates of Nigeria, most of whom were trained in foreign jurisdictions and who by continuous legal education have trained themselves to deal with the eventualities described by the said transnational companies

Thirdly, even if areas of the law such as oil and law, communications law, etc are still in their infancy in Nigeria, there are by way of example 2 aspects of legal services that have acquired a trans-national or international flavour. They are; (a) documentation of transactions or legal contracts with international flavour i.e. contracts between multinationals or contracts between commercial entities of two or more nations or any other documentation on trade, industry or other services of an international flavour or character. With regard to these, the current dispensation will not wait for domestic legal systems to dictate the pace. All and sundry have therefore been compelled by GATS to grant market access to out of jurisdiction counsel to draft and frank such documentation in collaboration with or to the exclusion of local counsel. (b) Resolution of disputes arising from such international commercial transactions has also acquired a force of its own by way of international commercial arbitration. This is a branch of legal services whereby counsel from every country who have the requisite qualification can appear either as Arbitrator or counsel in a dispute resolution mechanism usually conducted in private with the express agreement of the contracting parties under a set of rules previously agreed upon or known to all the contracting parties. This process excludes recourse to local national courts except in permissible circumstances known and agreed upon by the parties from the tenor of the contracting document. Thus, by this medium which brings counsel from all parts of the world together, disputes arising from international commercial transactions are decided without exclusive recourse to local legal jurisdiction of the contracting nations.

There are so many other areas of local national economies whereby legal services have inexorably acquired international flavour and there appears to be nothing that domestic legal practitioners or systems can do about it. They include but are not limited to (i) Oil and Gas, (ii) Aviation, (iii) Shipping, (iv) communications, (v) Internationally financed construction, (vi) equipment leasing, (viii) Mining and mineral exploration, (ix) Privatisation by way of mergers, acquisition etc. It must be noted, at this stage, that the excuse for bringing foreign counsel, as stated above, was that local counsel were not equipped technically to deal with the demands of clients in those sectors. But this pretext has waned considerably as (taking Nigeria for example) local counsel

have gone in droves to acquire requisite expertise and experience in the aforementioned areas. However, such recourse to the excuse of lack of local expertise was unnecessary in view of the express provisions of the GATS.

In the long run, indigenous local firms will all but be wiped out just as our factories have been wiped out. But this may not be a correct assumption to make. Our factories have disappeared because other factors namely lack of Government protection and support by way of the provision of basic infrastructure and the debilitating effect of corruption. Of course, the same factors can inure to favour out of jurisdiction counsel in the provision of legal services if we do not straighten our act in this regard. Corruption in arbitral panels by local counsel from a notoriously corrupt nation can scare users from patronising every lawyer from that jurisdiction under the belief or stereotype that all lawyers therefrom are corrupt. The 2nd major ground is the absence of reciprocity from legal jurisdictions abroad. Nigerian lawyers are never allowed in to the 'big league' and the 'high calibre' stuff is reserved for their own citizens even though there are qualified Nigerians who are competent and capable. Our own are limited to acting 'for their own people' in immigration, family law and criminal law. Even in exceptional cases where there is collaboration Nigerian lawyers are relegated to advising on Nigerian law whilst foreign lawyers deal with the heavier stuff. The most annoying aspect is that they then determine fees for everybody even though payment is by the Nigerian client. Thirdly, the champion advocates for liberalisation are nations that have perfected the art of imposing barriers to trade in the form of visa restrictions and other kindred acts.

Thus, the contest between market access and national interest goes on. But for the moment it is not as bad as it seems. Nigerian lawyers have in the past 12 years acquired and or updated specialised skills in the law relating to International finance and commerce, something that they would not have bothered to do were there not calls for liberalisation of legal services on a global scale. Indeed, there is no move to instant liberalisation of legal services; that is not the concept in GATS. Article 19, which calls for a progressive move towards liberalisation is therefore relevant, let individual nations readiness be reviewed as required by the treaty every 5 years and at the next round Nigerian stakeholders such as the NBA and its specialised sections must be ready with facts and figures to justify the state of readiness of Nigeria to liberalise and whether it is indeed feasible owing to the conduct of our partners so to do.

CONCLUSION

In conclusion, the foregoing represent information and action that must be at the behest of all senior advocates. Indeed, our environment which is still largely autocratic in nature does not give room for the imbibing of mandatory and necessary Rule of law attributes. Every SAN must subscribe to a philosophy in life which takes its root in non-aggression and passive resistance. In my view, a non-philosophical SAN is not a leader. Finally, the search for money and money it self is not the common denominator or panacea to all evils. Money is a good reward for hard work and services rendered but when its love gets to the point where ethics, empathy, civility, fear of God, Rule of law, conscientiousness and other noble virtues are thrown overboard then it is time for the person concerned to retrace its steps before he is consumed by the looming danger. Thank you very much.

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