

## PUBLIC LECTURE

# THAT THIS PROFESSION MAY NOT DIE: THE NEED TO FLUSH OUT MISCREANTS FROM THE NIGERIAN LEGAL PROFESSION

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### ABSTRACT

One of the key hindrances to sustainable development and economic growth in Nigeria is the problem of corruption. For many years, discussions on corruption inevitably focused on political abuse of powers and privileges and wanton disregard of the rule of law. Events of the last decade however sadly reveal that corruption, nepotism, and indiscipline have equally taken prominent places in the Nigerian legal profession, ranging from the bar, bench and the legal academia. Most alarming is the geometric rise in instances of corruption in our higher institutions of learning; ranging from prevalent sharp practices in admissions, examinations, research, teaching, tenure and academic promotions.

This paper examines the challenges of endemic and systemic corruption in the Nigerian legal profession. The paper adopts a crosscutting approach to discuss how perennial instances of corruption threaten the nobility and growth of the Nigerian legal profession. It proposes a holistic purging of the bench, practicing bar, and the legal academia to name, shame and expel miscreants, in order to restore the age long discipline and dignity of the Nigerian legal profession.

**Keywords:** Corruption, legal profession, lawyers, universities, education

### INTRODUCTION

Credit must be given to the Nigerian Association of Law Teachers (NALT) for sustaining this kind of conference over the years. The holding of this conference this year at the College of Law, Afe Babalola University Ado Ekiti (ABUAD), has tremendous significance:

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\* Hon. Justice of the Supreme Court of Nigeria, Ph.D, JSC, CFR, FCI Arb, FNIALS, FCLM. Paper presented at the 48th Annual Conference of the Nigerian Association of Law Teachers (NALT), held at the Afe Babalola University, Ado – Ekiti, Ekiti State (31st May – 5th June, 2015),

- (i) it recognises in a particular way the contribution of one of the pioneer and prominent senior legal practitioners of this country, -Aare Afe Babalola, SAN, OFR, CON, LLD- who, on his own and unilaterally, answered the clarion call by Government that education should not be left to Government alone, there should be private participation;
- (ii) the theme of his years conference, “Mainstreaming Inter-disciplinary Approach to Legal Education: Imperatives for Nigeria’s Development,” is not only apt but properly fits and identifies with the objectives for which ABUAD is established. The Founder of the University though is biased in the field of law, made provisions for other professions such as medicine, engineering, education *etc* to be taught in the University. Graduates of this University certainly, have a lot to offer to the development of the country in several fields; and
- (iii) it is a morale booster not only to the Founder of the College of Law of ABUAD, but will make other similar colleges or faculties to sit tight and work hard in order to gain similar recognition from the NALT.

From the resume of the papers to be presented at this conference, I have no doubt in my mind that Nigerian legal education will improve a lot if all the suggestions put forward by the distinguished academicians are fully adopted and implemented by the stakeholders. The Chief Justice of Nigeria has been invited as a Special Guest of Honour, because, according to the invitation letter, he ‘has been in the vanguard of restructuring and strengthening the justice system, and a strong advocate of the rule of law and respect for the fundamental rights of the citizenry’. It is true that the Chief Justice does not work alone or in isolation. He works with different people and institutions, not necessarily lawyers and judges alone but others whose area of specialization or operation is not law. And, together, all hands are expected to be on deck to see to the development and progress of the country. However, Nigeria as a country, faces its peculiar problems, which require sober reflection for everlasting solutions. I cite only two of such multifarious challenges facing the Nigerian society, one, which is in general and the other, relates directly to the legal profession. In a paper presented at a Conference of this nature, the authors observed, *inter alia*, as follows:

Nigeria is faced with multiple problems and challenges today. These problems include the following: corruption is endemic and systemic in the country. Our elections are not free and fair. There is grave economic inequality in the country. The rate of poverty in the land is alarming. The value system in the society has almost collapsed. There is religious intolerance in the country, leading to violent conflict in which many innocent persons are wantonly killed with impunity. The level of criminality in the society is so high that many people now survive by accident. Morality is on serious decline in the society. Many wrongs of yesterday have become rights today. Access to courts is inhibited by high cost of filing and of hiring a lawyer. Human rights and the rule of law are observed in the breach.<sup>1</sup>

Our Universities have generally, been referred to as “intellectual factory for moulding of minds and character.” Ogbu has rightly described a University to be:

A meeting place for great minds, of people who are passionate about knowledge, in other words, of scholarly people; a place for critical and rational inquiry, that is research, an intimate community where the moulding of minds and character is a priority; a human centred institution without any bias for race or creed; a centre that is universal in outlook without neglecting its immediate society’s aspirations; a centre for free thinking and free pursuit of research and teaching; an atmosphere that is conducive to learning.<sup>2</sup>

That of course is what an ideal University should be. Unfortunately, the situation is a little different in Nigeria. Insiders from some of the universities and other strong sources, reveal horrific situations in many of our Nigerian Universities and other tertiary institutions. It is further stated that:

Today, Nigerian Universities have been bedeviled with violence, cultism, and gangsterism. Murder, arson, robbery and other forms

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1 O Ogbu *et al*, ‘The Challenge of Moulding the Character And Minds of Law Students for Positive Contribution to Political Development in Nigeria: The Role of Legal Methods and Legal Theory’ (NALT Conference, Kogi State University, Ayingba, 17<sup>th</sup>– 20<sup>th</sup> May 2010).

2 *ibid*.

of violent crimes are rampant in the Nigerian universities. Nigerian universities have become the largest market for the recruitment of political thugs. Furthermore, examination malpractices and other forms of academic fraud have become cancerous in our universities. The problem is not with students alone. A culture of mercantilism among lecturers is now pervading our universities with lecturers becoming traders dealing in all sorts of wares including the sale of marks. Some amorous ones exchange marks for sex. Some lecturers leak examination questions to some preferred ones.<sup>3</sup>

This paper examines the challenges of endemic and systemic corruption in the Nigerian legal profession. The paper adopts a crosscutting approach in reviewing how perennial instances of corruption threaten the nobility and growth of the Nigerian legal profession. The paper proposes a holistic purging of the bench, practicing bar, and the legal academia to name and shame miscreants in order to address the spate of decline in the Nigerian legal profession and to return the practice of law in Nigeria to its golden years.

The discussions that follow are divided into four sections. After this introduction, section 2 examines the rise and rise of corruption in the Nigerian legal profession. It identifies the nature and systemic causes of corruption in the Nigerian legal profession. Section 3 discusses reform proposals through which corruption in the Nigerian legal profession could be holistically addressed. This section discusses the importance of naming, shaming and purging miscreants from the legal community in order to restore discipline and dignity to the profession. The paper concludes in section 4.

## 2. THE GEOMETRIC RISE OF CORRUPTION IN THE NIGERIAN LEGAL PROFESSION

Events of the last decades have shown that discourses on corruption in Nigeria can no longer be rightly focused on governmental corruption alone. Corruption, nepotism and indiscipline have equally taken prominent places in the supposedly noblest and elitist profession in Nigeria-the legal

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3 *ibid.* A former Inspector General of Police expressed his worry over the use of arms by students of tertiary institutions in the country. He stated that some arrests made by the police show that students have become recruits for political violence. He gave the instances of 15 students from Auchi Polytechnic in Edo State travelling to Anambra State who were arrested with 15 pistols and other dangerous weapons. During the same period six students were arrested in Osogbo with six pistols and 30 kilograms of drugs suspected to be cannabis. He maintained that it is alarming and massive that students now carry pistols, dangerous weapons and commit crimes. See *This Day* (7 August 2006).

profession. Within the last few years, lawyers ranging from the bar, bench and the legal academia have been linked with spearheading, aiding or playing prominent roles in high profile cases of forgery, bribery, money laundering and other economic crimes. Most alarming is the geometric rise in instances of corruption in our higher institutions of learning; ranging from prevalent sharp practices in admissions, examinations, research, teaching, tenure and academic promotions.

In many of our Universities, particularly in state-owned Universities students that are not qualified to study law are allegedly offered admission at the instance of top officials in state governments, highly ranking traditional rulers *etc*; who put pressures on the Vice Chancellors who in turn transferred the pressures to the Dean of the Faculty of Law. It is also said that even the Nigerian Law School is guilty of providing admission forms at the instances of their acquaintances and, many of such admitted students, are not intellectually equipped for the rigour of studying law. This swells the number of students admitted. This led to many Universities having backlog of students that could not get admission to law school at the ripe time.<sup>4</sup>

Another challenge is that many students leave secondary schools nowadays by the time they are sixteen or seventeen years and gain admission to university at that age. Observations have shown that many of such students lack the maturity to deal with the rigours of university life. They easily fall prey to bad influence of others. The result is that some of them get distracted from their academic studies.<sup>5</sup>

With regard to the curricula of the faculties of law of the Nigerian Universities and the Law School, a criticism, which appears constructive, summed it up in the following words:<sup>6</sup>

The fact that Legal education in Nigeria today operates under unified standard curriculum and regulations prescribed by the National Universities Commission (NUC) is not an over statement; somehow we all do same thing. According to Clinical Legal Education Curriculum for Nigerian Universities Law Faculties/Clinics, the objectives of NUC Approved Standard are laudable but in reality these objectives

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4 Ogbu (n 3).

5 F Anyogu *et al*, 'Appropriate Curriculum for Training 21<sup>st</sup> Century Lawyers' (Proceedings of the 43<sup>rd</sup> NALT, Kogi State University, May 2010).

6 See J Lokulo-Sodipe and O Omolola, 'Appropriate Curriculum for Training 21<sup>st</sup> Century Lawyers' (43<sup>rd</sup> Conference of NALT, Kogi State University, 17<sup>th</sup>- 20<sup>th</sup> May 2010).

have not been met because of the actual content and teaching methods adopted. The faculties have continued to function with strict traditional and conservative attitudes towards training programme. It is believed that the law faculties only teach purely the theories of law/substantive law without the application of skills/procedure.

The Law School where it is assumed that students will learn the practical approach, only teaches what can be referred to a 'theory of practical.' This leaves the young practitioner less equipped for the work ahead. The same anomaly going on in the law faculties is thus, further perpetrated in the Law School. Aspirants to the Bar are loaded with lecture notes and materials which majority of them just read to pass and not to practice. The realities of these issues always come into limelight at the onset of a practicing career.

Our second major challenge is from within *i.e.* relating directly to the legal profession. The current legal profession is largely a legacy of colonialism. The British introduced a system of administration of justice from thence emerged the legal framework and structures ensuring the origin of the legal profession in Nigeria. Thus, at the initial stage there was dearth of qualified advocates to man legal institutions. This remained the position for quite some time. The Supreme Court Ordinance came into effect in 1876, which provided for the admission of persons to practice as legal practitioners in Nigeria, thereby laying the legal framework for organized practice of law.<sup>7</sup> By virtue of the provision of section 71 of the Supreme Court Ordinance,<sup>8</sup> Nigerians who were called to the English Bar and admitted either as barristers or solicitors in England were admitted to practice in Nigeria. 'These set (sic) of legal practitioners', observed Oputa:<sup>9</sup>

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7 Worthy of note is that in 1986, the legal profession in Nigeria celebrated its century anniversary. The anniversary was significant as it officially fixed the birth year of practice of the legal profession as 1886, though some legal writers are in disagreement on the exact date when legal practice started in Nigeria. See and compare the views of Obilade in his book *The Nigerian Legal System* (Spectrum Books 2005) 270; Karibi-Whyte, in his paper 'Status and Privileges in the Nigerian Legal Profession' (NIALS Law series No2) 267; Orojo, *Conduct and Etiquette for Legal Practitioners* (Sweet & Maxwell 1979) 6.

8 Section 71 of the Supreme Court Ordinance provided as follows: The Chief Justice shall have power to appoint, admit and enroll to practice as barristers and solicitors in the court, such persons as shall have been admitted barristers or advocates in Great Britain or Ireland and as shall have been admitted as solicitors or writers to signate in any of the court in London, Dublin or Edinburgh, provided always that the Chief Justice may, upon due cause, refuse to admit any person as a barrister, or as a solicitor notwithstanding, he may have the qualification aforesaid.

9 GU Oputa, 'Belgore's Judicial Pronouncements and the Nigerian Legal Profession' (Justice Watch Publication, Lagos) 80.

were the ideal legal practitioners having some sound formal training in law, acquiring thereby the necessary skill and nuances of that trade. Their entrance set a different tone for the Nigerian Legal Profession. Within a short time, they assumed leadership of the Bar and brought a lot of pomp, pageantry and sophistication to the profession and immediately elevated the status of the profession.

Since that time, the legal practice in Nigeria, through gradual enactment of enabling laws keeps on expanding with thousands of qualified aspirants now being called to the Bar as solicitors and advocates of the Supreme Court of Nigeria. It is certainly a good expansion and a positive development in the legal profession. My worry, however, is with the quality of the teaming chaps being churned out year-in-year-out. An expressions by several legal luminaries on their experience with the new wigs of today, spells doom for the legal profession. Ayua,<sup>10</sup> once observed:

Many employers, clients and senior practitioners have expressed great alarm over the deteriorating standard of lawyers that are being churned out of law faculties today. Many are ill equipped mentally and otherwise to deal with legal issues they are briefed to handle. Some lack even rudimentary grasp of basic principles. Sadly these species of lawyers are now to be found at both ends of the spectrum – the Bench and the Bar. Part of the problem has to do with the increasing decay in the educational system as a whole, but if the public faith in the legal profession is to be sustained, something has to be done to salvage the state of legal education in particular.

Other legal luminaries observed as follows:

It is not an exaggeration to say that the crop of lawyers being produced now are of lesser standard and quality. In recent times, the leaders of the profession have repeatedly pointed out the falling standards in the performance of new wigs and some want the law school program extended from one year to two.<sup>11</sup>

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10 IA Ayua, 'Nigerian Legal Profession: Problems and Prospects' Essay in Honour of Hon. Justice Mohammed Bello (1995) NIALS 18. (Professor Ayua is a one time Dean of Law of the Faculty of Law ABU Zaria, a former Solicitor-General, FMOJ and former Director General of NIALS).

11 Lokulo-Sodipe (n 8).

Thirdly, the courts, loosely referred to as the Judiciary, are not exonerated from blame in contributing to the falling standard of the legal profession. O N Ogbu is once again recorded to have said:

One area where lawyers have played very negative roles in Nigeria is in the area of elections and electoral dispute resolutions. For instance, the Judiciary played an inglorious role in the annulment of the June 12, 1993 election. A night before the election, at about 11:00a.m. (sic: PM?) an Abuja High Court presided over by Justice Bassey Ikpeme granted an injunction restraining the National Electoral Commission (NEC) from conducting the election. The injunction was granted on the application of the Association for Better Nigeria (ABN), an association that had earlier been declared 'illegal by a Lagos High Court because its objectives was (sic) to derail the transition to civil rule programme and to prolong military rule. The court unusually disregarded the ouster clause in Decree 13 of 1993, which ousted the jurisdiction of courts in respect of any action to stop the election.

Subsequently, a Lagos High Court presided over by Justice Moshood Olugbani made an order compelling NEC to conduct the elections. The election was conducted, and when it was apparent that Chief Moshood Abiola was winning the election an Abuja High Court presided over by Justice Dahiru Saleh, on yet another application by the Association for Better Nigeria, declared the election illegal and restrained NEC from further release of the results of the elections. On 18<sup>th</sup> June, 1993, Justice Olugbani of the Lagos High Court who had on 11 June, ordered NEC to go ahead with the election, made a fresh order giving NEC 24 hours within which to release the result of the election and declare the winner. Further, on an ex-parte application by Senator Ayo Otegbola, Justice Ope-Agbe of the Lagos High Court made an order compelling NEC to announce the results of the elections. There were also other decisions by Benin and Anambra High Courts compelling NEC to announce the results of the election. In annulling the results of the June 12, 1993 Presidential election, President Ibrahim Babangida said:

'In view of the spate of litigation (sic) pending in the various courts, the Federal Military Government is compelled to take appropriate steps to rescue the Judiciary from intra wrangling.

These steps are taken so as to protect our legal system and the judiciary from being ridiculed both nationally and internationally.<sup>12</sup>

It must be noted, according to Ogbu,<sup>13</sup> that the Nigerian Bar Association boycotted courts for two days as a way of protest against the flawed elections of the 2007, yet ironically, lawyers, soon thereafter went to the Election Tribunals and Courts to challenge the petitions to either be struck out or that the court should declare that same elections free and fair.

The Bar and the Bench have also been criticized where both played an inglorious role in the area of trial of high profile corruption cases. Some lawyers obtained injunctions on behalf of their clients restraining the anti-corruption agencies from investigating or prosecuting some former governors. Some have employed all forms of tactics to stall the trial of such former governors for corruption. These lawyers are guided by the philosophy that the end justifies the means.<sup>14</sup> Many Attorney Generals in the country, instead of promoting the public interest and the interest of Justice, promote the interest of their Chief Executives at the expense of justice and public interest.<sup>15</sup>

### 3. PROPOSALS FOR REFORM

Lawyers, Judges and other stakeholders in the legal profession have important roles to play in dealing with these challenges. Education, generally, stands for development and legal education makes citizens law-abiding and socially conscious. Legal education promotes the establishment of socio-economic justice. Change is the law of nature and law is the regulator of social change. Legal education is therefore, key to administering the rule of law in a democratic society. It is therefore time, we take a sober look at our universities, faculties of law and other tertiary institutions such as the

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12 Ogbu (n 3). Even the Supreme Court is not spared from criticisms on election matters conducted in 2007 & 2011. See *Abubakar v. Yar'Adua* (2008) 19 NWLR (Pt.1120) 1; *Buhari v. INEC* (2008) 19 NWLR (pt.1120) 246.

13 Ogbu (n 3) *ibid*.

14 *ibid*.

15 *ibid*

Law School with a view to reviewing and transforming the academic and the professional curricula.

Certainly, for a change to occur in our current legal culture, legal education will need to contextualize and become a pluralistic enterprise. We need to reframe the entire educational process. Instead of maintaining universality of the curriculum, there is need to obtain positive, adaptive, whole sale change with a paradigm shift in the text of the curriculum by the addition of contexts which will enable different forms of interpretative law school culture. University curriculum must be able to adjust to recent development globally which leads, inevitably, students into critical analysis and examination of the prevailing social, economic and political systems of the community. The law school should rather lean more towards the practicalities of the profession such as how to tender documents in courts; how to conduct examination in chief and cross-examination rather than theories of the laws or procedures.<sup>16</sup>

This brings me directly to the theme of this year conference. “Mainstreaming Inter-disciplinary Approach to Legal Education: Imperatives for Nigeria’s Development.” The idea of inter-disciplinary exchange of knowledge/expertise will equip graduates with many of the necessary generic skills needed to perform effectively in the modern work place. Thus, lawyers must not only be trained in law, but must also be trained in related fields such as business, communications, health, technology, international studies, social work and education that complement and enhance their legal expertise. Globalization, thus, calls upon lawyers to perform multiple tasks in the society and lawyers are expected to act as change agents and social engineers in governance and development. Hence there is need for inter disciplinary approach to the law education in Nigeria. Oputa, JSC (Rtd.), conceived a good Nigerian lawyer to be “a jack of all trades and master of all.”<sup>17</sup> He, as a matter of necessity, has to have some knowledge of human nature. Oputa observed further:

Since it is now virtually important that our lawyers should be as broadly educated as possible, the undergraduate law course in all universities should provide a sound liberal education which itself is a potent force for training the mind.

Our universities should therefore offer interrelated courses of four

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16 Lokulo-Sodipe (n 8).

17 Oputa, ‘The 40<sup>th</sup> Anniversary of the Nigerian Law School Commemorative Publication’ in *Four Decades of Service to the Legal Profession by Council of Legal Education* (Nigerian Law School) 89.

to five years leading naturally to an extra degree in a discipline other than law. In other words, the LLB degree should be a second degree. To this end, the general studies programme should be extended and made to lead to a general degree in Art or Science. This programme will no doubt include, inter alia, subjects like English Literature, the science of Mathematics, general principles of science, Elementary Philosophy, Logic and Scientific method, Economics, the science and philosophy of Religion, Psychology, History, Sociology etc.<sup>18</sup>

Although a conservative profession, all efforts must now be geared towards modernizing the legal profession by taking advantage of scientific and technological progress and advancements. It is inescapable today for the legal profession to ignore Information Technology (IT). Information Technology today rules every enlightened person. Life is made easier by the use of ICT. Most lawyers nowadays are computer literate and have their legal firms connected to the internet.<sup>19</sup>

In several countries of the world, mainstreaming interdisciplinary approach to legal education is highly developed. Citing the examples of India, the United States and Australia will suffice. In India, partial exposure of relevant commercial and taxation laws is provided at commerce and accountancy undergraduate and post-graduate levels. In India and USA Business law is taught at Business Schools too. At undergraduate level in engineering in India, a partial exposure is provided to intellectual property law. In Australia and New Zealand, Applied Law programmes are made available at certificate courses or postgraduate diploma. Equally, subjects like Commercial Transactions, Family law, In-House Practice, Property law; wills and Estate and Graduate Diploma of Family Dispute Resolution laws. Human Rights and legal literacy, criminology and penology, cyber law; taxation laws etc. are available.<sup>20</sup>

18 *ibid* 91. Oputa suggested some areas to be emphasized at the law school such as Command of the English and Forensic Eloquence; Bar Advocacy and the Art of Rhetoric; Law of Evidence; Attachment, Legal Clinic etc rather than repeating core subjects taught at the universities. *ibid* 92-94.

19 Some suggestions have been offered that the frontiers of the Law Courses in both universities & the Law School should be expanded: Law School to be for two (2) years period or after obtaining first degree in another field and then Law as 2<sup>nd</sup> degree; introduction to pupillage in Legal Education; Negotiation & Mediation Skills. From the Electives are: Sports Law; Aviation Law; Transportation Law, World Trade Organisation & International Trade Course; Information Technology & Telecommunication Law; Entertainment & Media Law; Medical and Health Care Law; Immigration & Refugee Law; The Military & Law; Education Law; etc.

20 See R Johnstone & S Vignaendra, Learning Outcomes and Curriculum Development in Law (A report commissioned by the Australian Universities Teaching Committee (AUTC) <[http://www.cald.asn.au/docs/autc\\_2003\\_johnstone-vignaendra.pdf](http://www.cald.asn.au/docs/autc_2003_johnstone-vignaendra.pdf)> accessed May 25, 2015.

I think we should all be grateful to these institutions, such as the Nigerian Institution of Advanced Legal Studies (NIALS); the National Judicial Institute (NJI) etc for offering refresher courses/training to legal practitioners whether as judges or those in real private practice on such inter-disciplinary areas. It is therefore, not too late. To be late in acquisition of knowledge is always better than never.

*Are the criteria for the conferment of the Rank of Senior Advocate of Nigeria (SAN) on Lawyer-Academicians fair?*

It is the conferment of the rank of Senior Advocate on deserving lawyers within the academic circle. Section 3 of the Legal Practitioners Act<sup>21</sup> establishes the Body of Benchers. Section 5 (7) of the Act empowers the Legal Practitioners Privileges Committee (LPDC) with the approval of the Body of Benchers to make rules/guidelines for conferment of the rank of Senior Advocate of Nigeria. In pursuance thereof, Guidelines for such conferment were made<sup>22</sup>. Paragraph 21 makes provisions for the conferment of SAN on academicians:

- 21-(1) In any given year the Legal Practitioners Privileges Committee may in appropriate circumstances appoint an academic who has distinguished himself and has made substantial contribution to legal scholarship and jurisprudence through teaching, research and published works in any Nigerian University, Research Institute, Nigerian Law School and other recognised institutions.<sup>23</sup>
- (2) An applicant for the award of Senior Advocate of Nigeria under this category shall furnish at least 20 copies of his published works to the Legal Practitioners Privileges Committee along with his application.
- (3) In the light of the above provisions, in Section 21(1) and (2) the applicants published works or books shall be by a reputable publisher, whose reputation shall be assessed and determined by the academic sub-committee, the applicant shall also show substantial contribution to legal scholarship and jurisprudence through teaching, research and published works in any Nigerian University, Research Institute, Nigerian Law School and other Recognised Institutions.

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21 Cap. L11, LFN, 2004.

22 Ibid. (The Guidelines).

23 Out of a total number of 408 Senior Advocates of Nigeria till date, only 30 have been so conferred with the rank of SAN on the basis of their qualifications as academicians.

- (4) Every application for the award of the rank on the ground of academic distinction shall be subject to evaluation by an academic subcommittee comprised of:
- a. two Law Professors from renowned Nigerian Universities
  - b. a nominee of the body of Senior Advocate of Nigeria;
  - c. a Justice of the Supreme Court who shall be the Chairman

The general requirement for other legal practitioners (mainly in practice) are provided by the Guidelines as follows:

- 18(1) The candidate must be a legal practitioner called to the Bar and practicing in Nigeria as an advocate and must have been in active current legal practice and have been so for at least 10 years immediately preceding the date of application. In determining 'active current legal practice' in addition to such inquiry it considers necessary, the Legal Practitioners' Privileges Committee may consult the-
- a. Chief Judge of the State where the candidate has his main law office; and
  - b. Local branch of the Nigerian Bar Association where the candidate has his main office
- (2) The candidate must be of good character and must have no pending disciplinary case or complaint relating to professional misconduct against him. A candidate shall be considered ineligible if in the opinion of the Legal Practitioners Privileges Committee the candidate is adjudged to be of the following disposition –
- a. bad behavior, whether in or out of court; poor temperament or propensity to insult or assault people or cause them harm or put them in state of fear of bodily harm;
  - b. indulgence in drug, alcoholic or other similar substances addiction;
  - c. evidence of moral depravity or other socially unacceptable behavior;
  - d. abuse of legal trust such as embezzlement or mismanagement of client's funds;
  - e. indulgence in blatant self-seeking praise or advertisement

- through sponsored (directly or indirectly) songs by musicians, records or tapes or other media such as print or electronic media; and
- f. touting for briefs or engaging in any form of canvassing for cases.

19(1)A candidate must –

- a. demonstrate a high professional and personal integrity;
  - b. be honest and straight forward in all his professional/personal dealings;
  - c. be of good character and reputation;
  - d. be candid with clients and professional colleagues;
  - e. demonstrate high level of understanding of cultural and social diversity characteristic of the Nigerian society; and
  - f. show observance of the Code of Conduct and Etiquette at the Bar.
- (2) A candidate whose application contains false or misleading information will not be considered for the award of the rank of Senior Advocate of Nigeria for a period of not less than 10 years.
- (3) A candidate must have sound knowledge of the Law and demonstrable excellence in skills as an advocate with clear ability to use such knowledge for the advancement of the administration of justice.
- a. pursuant to paragraph 13(1) and (2) of these guidelines, a list of 10 Judges of superior courts and at least 6 legal practitioners who can provide confidential reference of the professional competence of the candidates; and
  - b. a list of at least 6 legal practitioners by whom the candidate has been led or against whom he had appeared, in contested cases of substance or complexity or of particular difficulty or sensitivity and who can attest to the candidates professional competence, ability and integrity.
- (5) For the purpose of evaluating professional competence of a candidate, a case will be considered of significance if in the opinion of the Legal Practitioners Privileges Committee it meets two or more of the following –

- a. involves an issue of significant legal or public interest;
  - b. decides a novel point of law;
  - c. is considered ground breaking or a landmark decision; and
  - d. is frequently cited in the Law courts.
- (6) A candidate for the rank of Senior Advocate should demonstrate tangible contribution to the development of the Law through case law or publications in recognized journals or scholarly presentation at national or international conferences considered by the Legal Practitioners Privileges Committee as of particular significance.
- (7) (a) A candidate should demonstrate clear qualities of leadership and loyalty to the Legal Profession.
- (b) He must have paid consistently as and when due his practicing fees and membership dues to the local branch in the last 10 years preceding his application.
- (c) He must have been involved in the provision of at least 3 pro bono legal services to indigent clients or some form of community service.
- (d) He must present evidence of income tax payment paid as and when due for a period of 3 years preceding the application.
- (8) A candidate should have or be a partner in chambers considered by the Legal Practitioners Privileges Committee to have good and up to date facilities including a good quality law library with good working environment. There must be at least five full time junior legal practitioners and other para legal or support staff in full time salaried employment.
- (9) The Legal Practitioners Privileges Committee shall from time to time provide guidelines for the evaluation of Library and Chambers which shall include –
- a. Standard Text Books;
  - b. Statute Books;
  - c. Law Reports; and
  - d. Equipment including computers, fax machines, internet facilities, file cabinets, firefighting equipment etc.

20. (1) In determining whether an applicant qualifies as a partner for purposes of conferment with the rank of Senior Advocate of Nigeria, the Legal Practitioners Privileges Committee shall among other criteria (including but not limited to inheritance) have regard to proof of substantial proprietary and financial interest of the applicant in the said partnership, evidenced in a stamped deed under the hand and seal of all members of the said partnership in respect of the assets and infrastructure put forward for inspection which deed shall in all cases be in place for at least 5 years prior to the application at the chamber inspection state.

Provided always that if such deed is adjudged by the Legal Practitioners Privileges Committee to have been made for purposes of the applicant's application, the candidate and members of the said firm shall be barred from applying for a period of ten years and if such discovery is made after conferment, it shall constitute a ground for withdrawal of the award.

- (2) Where a Senior Advocate of Nigeria is found to have colluded with the applicant he is liable to have his rank withdrawn on account of such conduct.

It can be observed from the requirements to qualify as a SAN, the expectation on an ordinary legal practitioner who is in private practice is much higher than in the case of the academician. But, why is it that the academics find it difficult to make it?

#### *Withdrawal of the Rank of SAN.*

Paragraph 22 of the Guidelines is clear on circumstances/conditions that may render a legal practitioner including the academicians liable to lose the prestigious title of "SAN" which may have been conferred on him. The paragraph provides:

- 22.1– The rank of Senior Advocate of Nigeria may be withdrawn from any person holding the rank by the Legal Practitioners' Privileges Committee if the person is:

- a. Adjudged by the Legal Practitioners' Privileges Committee to have conducted himself in a manner incompatible with the dignity and honour of the rank;
- b. Found guilty of professional misconduct by the Legal Practitioners' Disciplinary Committee; or
- c. Convicted by a Court of Law for any offence which in the opinion of the Legal Practitioners' Privileges Committee is incompatible with the honour and dignity of the holder of the rank such as an offence relating to breach of trust, theft or other offences involving fraud or dishonesty.

It is to be noted that the disciplinary action(s) provided by the Guidelines is/are applicable to "any person holding the rank". Thus, to my humble understanding, includes any legal practitioner whether in private practice, in Government service, in the service of corporate bodies and those in academic line once conferred with the rank of SAN. At the risk of repetition, the offences listed and or contemplated by the Guidelines are:

- a. Conduct which is incompatible with the dignity and honour of the rank (profession)
- b. Professional misconduct
- c. Conviction by a court of law for any offence, which is incompatible with the honour and dignity of the rank, e.g. breach of trust, theft, fraud or dishonesty.

In some cases, the legal practitioner may be suspended from using the rank where he is facing such disciplinary action, complaints or prosecution pending the determination of such action.

These misconducts are by the operation of law applicable not only to the SANs but any legal practitioner that of course is the essence of maintaining ethics in the profession. The National Judicial Council takes adequate care of erring Judicial Officers. Not long ago, some were dismissed from service, some retired and others suspended.

The Legal Practitioners Disciplinary Committee of the Body of Benchers has been up and doing. Several legal practitioners have been sanctioned on various offences involving misconduct, dishonesty, mistrust and some conduct, which is incompatible with the dignity and honour of the legal

profession. Just of recent, the name of a SAN has been struck off the Roll of the Legal Practitioners.<sup>24</sup> Some others were placed on suspension and several others earned the striking off of their names from the Roll of the Legal Practitioners.<sup>25</sup>

Mr. Chairman, distinguished participants, it is heart-breaking, astonishing, disgraceful, immoral and embarrassing to hear some of the atrocities and illegalities committed by some legal practitioners in the course of handling cases on behalf of his clients. Mr. Chairman, the atrocities and illegalities are many but permit me to cite only three instances

- a. As reported in the Directions & Rulings of the LPDC, the Nigerian Bar Association (NBA) filed a complaint before the LPDC. The complaint reads as follows:

That you Timipa Okponipere, Esq. a legal practitioner sometimes in the year 2007 admitted giving an unsolicited purported legal services to Timi Alaibe, Managing Director of Niger Delta Development Corporation (NDDC); by purporting to have nominated Mr. Timi Alaibe for National Merit Award and thereafter via a letter dated 22/10/2007 while purportedly practicing as “Trader in law, strategy and consultancy” made irregular demands for fees for legal services from Niger Delta Development Corporation (NDDC) in the sum of N40,000,000.00 (Forty Million Naira) and by so doing, you failed to maintain the high standard of professional conduct expected of a legal practitioner, by engaging in a conduct unbecoming of a Legal Practitioner all contrary to Rules 10, 21 and 55 of the Rules of Professional Conduct in the Legal Profession 1979 now Rules 1 and 55 of the Rules of Professional Conduct in the Legal Profession 2007 and section 12 of the Legal Practitioners Act as amended.<sup>26</sup>

After hearing, the LPDC made the following fact-findings:

- i. the respondent is a legal practitioner;
- ii. the respondent describes himself as a “Trader in Law, strategy and consultancy;

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24 See Directions & Rulings of the LPDC of the Body of Benchers (January- May 2013) Vol 1.

25 *ibid.*

26 *ibid* 35.

- iii. The respondent purported to render unsolicited legal services by nominating Mr. Timi Alaibe for National Honours without his consent or request;
- iv. The respondent demanded N40,000,000.00 (Forty Million Naira) for his unsolicited services;
- v. The respondent employed base, uncouth and demeaning language not befitting of a legal practitioner in his correspondences especially in his response to the petition; and
- vi. The respondent acted dishonestly in making an unsolicited nomination of Timi Alaibe for National Honours when in his own estimation of Timi Alaibe's esteem he did not consider him worthy since he had only such invectives as 'dodgy character' 'unfaithful husband' and a man who 'stinks' to describe him.

Earlier, in his response to the petition which the respondent addressed to the General Secretary of the Nigerian Bar Association (NBA), which was received in evidence, the respondent, stated, *inter alia*:

I have absolutely no apologies to make to the NBA, the police or any Ombudsman, for that matter! Isn't better than the criminal militancy the petitioner and his boss have failed to curb in Niger Delta inspite of the resources at their disposal?

In its decision ("Direction"), the LPDC commented, *inter alia*:

The Legal Profession is a profession for 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 Bar. Where however, an unfit and improper person slips through the mesh of the screening sieve then he should either turn a new leave (*sic*) or await the long hands of the Rules of professional conduct. In this case the respondent has been firmly caught by Rules 1 and 55 of the Rules of Professional Conduct 2007 as charged and by section 12 of the Legal Practitioners Act as amended. His conduct is clearly infamous. By his conduct he did not seem to appreciate what the high standard demanded of a legal practitioner is and could not in these circumstances be expected to

maintain it.... By purporting to provide unsolicited services the respondent was certainly engaging himself in a conduct unbecoming of a legal practitioner. A legal practitioner ought always to carry himself in a dignified manner no matter his circumstances financial or otherwise.

The LPDC found the respondent liable of infamous conduct and directed the Chief Registrar, Supreme Court to strike off his name from the Roll of Legal Practitioners.<sup>27</sup>

- a. In *NBA v. D. E. Ntiero*,<sup>28</sup> there were 3 counts against the respondent:
  1. That you Dominic Ntiero, Esq, as Legal Practitioner to Rita B. Edet in Suit No. HU/313/2004 recovered the sum of N10,000,000.00 (Ten Million Naira) on behalf of your client and failed and neglected to account for the money till date and by so doing you put yourself in a position of conflict of interest, and you failed to maintain the high standard of professional conduct expected of a legal practitioner, by engaging in a conduct unbecoming of a legal practitioner all contrary to Rules 21, 24, 49 and 52 of the Rules of Professional Conduct in the Legal Practitioners 1979 now Rules 1 and 23 of the Rules of Professional Conduct in the Legal Profession 2007 and section 12 of the Legal Practitioners Act as amended.
  2. That you, Dominic Ntiero, Esq, as Legal Practitioner to Rita B. Edet confessed to funding litigation in Suit No. HU/313/2004 without any prior contingent fee agreement and by so doing,

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<sup>27</sup> The long enduring effect and the wide circulation or publicity given to the Order/Direction is another form of punishment, which is indelible. The order was forthwith to be brought to the attention of the Chief Registrar, Supreme Court (for immediate action), to the respondent even through publication in any of the PUNCH Newspaper and the Federal Gazette, President of the NBA (who notifies the General Council of the Bar, National Executive Committee and other organs of the NBA); the Chief Judges of Rivers and Bayelsa States and all other states of the Federation; the Inspector General of Police and the respective Commissioners of Police in the afore mentioned state and the Attorney-General of the Federation and all other Attorneys General of all the states of the Federation, the Corporate Affairs Commission, all land registries in the Federation and the Law Society of England and Wales.

<sup>28</sup> Directions & ruling of the LPDC (n 26) 61.

you put yourself in a position of conflict of interest, and you failed to maintain the high standard of professional conduct expected of a legal practitioner, by engaging in a conduct unbecoming of a legal practitioner all contrary to Rules 21, 24, 42 and 52 of the Rules of professional conduct in the legal profession 1979 now Rules 47, 50 and 51 of the Rules of Professional Conduct in the Legal Profession 2007 and section 12 of the Legal Practitioners Act as Amended.

3. That you Dominic Ntiero, Esq, as Legal Practitioner to Rita B. Edet issued a dud cheque to your client for the sum of N6,300,000.00 (Six Million, Three Hundred Thousand Naira) and by so doing, you put yourself in a position of conflict of interest, and you failed to maintain the high standard of professional conduct expected of a legal practitioner, by engaging in a conduct unbecoming of a legal practitioner all contrary to Rules 21, 24, 49 and 52 of the Rules of Professional Conduct in the Legal Profession 1979 now Rules 1 and 23 of the Rules of Professional Conduct in the Legal Profession 2007 and section 12 of the Legal Practitioners Act as amended.

After hearing, and in its reasoning, process and findings, the LPDC quoted in extenso, several provisions of the Rules of Professional Conduct in the Legal Profession 1979<sup>29</sup> and the Legal Practitioners Act (as amended). The respondent was found liable on all the counts. The LPDC, accordingly, directed the Chief Registrar, Supreme Court to strike off the name of the respondent from the Roll of the Legal Practitioners.<sup>30</sup>

- a. The third instance is that of suspension doled by the LPDC.<sup>31</sup> The complaint against the respondent was in three counts:
  1. That you, Olawale Ojoge-Daniel, male, adult a lawyer in active legal practice sometime, in June, 2006, was briefed by the petitioner to institute an action against the petitioners employers, Nigeria Baptist convention for unfair termination of her

<sup>29</sup> As revalidated in 2007.

<sup>30</sup> The Order was to be circulated as shown in the earlier case cited with slight alteration of those to be served.

<sup>31</sup> *NBA v. Olawale Ojoge Daniel Esq*, reported in Directions & Rulings of the LPDC (n 26) 97.

employment and that you deliberately refused to carry out the petitioner's brief after collecting the sum of N100,000.00 (One Hundred Thousand Naira) as professional fees and thereby conducted yourself in an infamous professional manner in breach of rules 1, 14 & 16 (c) of the Rules of Professional Conduct in the legal profession.

2. That you, OLAWALE OJOGE-DANIEL, male, adult, a legal practitioner failed, refused to take adequate and reasonable step(s) even when the petitioner pleaded with you to promptly institute an action against her employers for unfair termination of her employment and thereby breaching rules 1, 14 and 16 (c) of the Rules of Professional Conduct in the legal profession.
3. That you, OLAWALE OJOGE-DANIEL, after initiating the suit against the petitioner's employer, Nigerian Baptist Convention, withdrew from the case without prosecuting it to its logical conclusion, abandoned your client and thereby breaching rules 1, 14, and 16 (c) of the Rules of Professional Conduct in the legal profession.

The respondent pleaded not liable. After hearing, the LPDC found the respondent liable of infamous conduct. Accordingly, the LPDC directed the Chief Registrar of the Supreme Court "to suspend" the respondent by ordering him not to engage in legal practice for five years.

#### 4. CONCLUSION

The cases involving legal practitioners whose conducts are unprofessional and unbecoming and which are capable of bringing disgrace, disrespect, and embarrassment to the profession are many and unending. We must however, appreciate the giant strides recorded by the Nigerian Bar Association (NBA) and the Legal Practitioners Disciplinary Committee (LPDC) to cleanse the profession from bad eggs. All of us, whether as judges, private legal practitioners, company secretaries, politicians, contractors, academicians have to look inwards for solutions. First we must note that once your name is on the Roll of Legal Practitioners in Nigeria, you can be sanctioned by the LPDC once you are found liable of any of the offences against the legal profession. According to Section 10 of the Legal Practitioners Act (as amended):

There shall be a committee to be known as the Legal Practitioners Disciplinary Committee (in this Act to be referred to as the Disciplinary Committee) which shall be charged with the duty of considering and determining any case where it is alleged that a person whose name is on the Roll has misbehaved in his capacity as a legal practitioner or should for any other reason be the subject of proceedings under this Act.

The above provision of the Legal Practitioners Act is clear and unambiguous. Any act of misbehavior by any person called to the Nigerian Bar irrespective of his/her qualification, status can be questioned into by the LPDC with a view to taking appropriate action.<sup>32</sup> It is not therefore, a license for a lawyer academic to commit fraud through examination malpractice; financial misappropriation or disrepute the person of any other person including his staff, colleagues and students. The LPDC has a legal duty to take appropriate action once such a case is reported and prosecuted before it.

This applies with equal force to all other qualified legal practitioners in the country. The idea started gathering more influence and momentum in the minds of many judges that in cases where legal practitioners knowingly push clients to pursue useless and unarguable cases with a view to drawing wrongful benefits from the clients and overburdening the Courts with such worthless actions/matters, such counsel may be made to bear the brunt by either paying heavy costs (personally) to the other party or may risk the danger of being reported for misconduct.

We are all stakeholders in protecting the nobility of the legal profession. We must recommit ourselves to the ideals of justice, equity, accountability, and transparency in order to ensure that we pass on a robust and admirable profession to the next generation.

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32 See *NBA v. I O Harrison Esq*, in Directions & Rulings of LPDC (n 26) 85.