



X-Raying the Roles of Legal Practitioner in Adversarial System of Justice in Nigeria

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ABSTRACT

The thrust of this paper is to examine the role of litigation lawyer in adversarial system of justice. The pertinent questions which this paper seeks to answer are: What are roles of lawyer in adversarial system of justice? What are the duties and responsibilities of legal practitioners in the society and court ethics in judicial proceedings? What are the challenges confronting legal practice in Nigeria? To resolve these questions, the paper traces the evolution of legal practice in Nigeria. The paper highlights the two key actors in adversarial system of justice. The paper concludes with recommendations aimed at keeping litigation lawyers abreast of the international best practices in the legal profession.

Keywords: Legal Practitioner, Adversarial System, Legal Practice and Justice,

1. INTRODUCTION

In an adversarial system of jurisprudence as against inquisitorial system of justice,¹ it is the role of legal practitioner to decide what cases he will bring into court for the plaintiff and what cases he would contest in court for the defendant. Quite apart from these, a legal practitioner must also consider the importance and relevance of evidence in legal proceedings. For instance, judges deliver judgment based on the quality of the evidence adduced by the parties to dispute. Over the years, it has been observed that a very minute error during the institution of legal action and wrong approach to ethical and procedural issues during a trial can go a long way in turning the table the other way round, most especially negatively in a case that is otherwise on a sound footing.² In practice, lawyers frequently assume that the client's interest requires the lawyer to maximize and exercise all the client's legal rights and financial interest.³ Traditional regulatory controls on the ethics of legal practice, entry to the profession, discipline and liability for breach of fiduciary and other equitable obligations are intended to promote the ideal of the lawyer as adversarial advocate. The thrust of this paper is to examine the role of legal practitioner in adversarial system of justice in Nigeria. To this end, the pertinent questions which the paper seeks to answer are: What are the roles of lawyer in adversarial system of justice? What are the duties and responsibilities of legal practitioners in the society vis-à-vis court ethics in judicial proceedings? What are the challenges confronting legal practice in Nigeria? To resolve these questions, the paper is divided into eight sections. Following this introduction, the paper in section two traces the evolution of legal practice in Nigeria. Section three examines the two key personalities in legal proceedings namely: the judge and legal practitioner. In section four, the paper itemises the role of legal practitioner to his clients. Section five discusses the duties and responsibilities of legal practitioners in the society and court ethics in

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¹The dichotomy between adversarial and inquisitorial system of justice lies in the fact that adjudication in adversarial system is parties or litigants based whereas in inquisitorial system, it is judge based. See Schwikkard PJ and S E Van Der Merwe and Coller DW and W L De Vos and A St Q Skeen and E Van Der Berg, "*Principles of Evidence*", (2nd ed. Lansdowne 7779: JUTA Law, 2002) 152-153; S, Uglow, *Evidence Text and Materials* (2nd ed. London: Sweet and Maxwell, 2006) 9.

²The importance of evidence can be traced back into the first trial of Adam and Eve in the Garden of Eden. Before God pronounced His judgment, the parties were given the opportunity to give evidence in defence of their cases Failure of Adam and Eve to adduce credible and convincing evidence on the balance of probability as against the extant order of God led to the fall of the first family. Up till today, the pattern of taking evidence in the law courts the world over is tailored after the above precedent. See Genesis, Chapter 3, John Maxwell and Tim Elmore, *The Maxwell Leadership Bible*, (2nd ed, NKJV, United States of American: Thomas Nelson Inc. 2007) 6-7.

³John Leubsdorf. 1998. Using Legal Ethics to Screw your Enemies and Cleints. *Georgetown Journal of Legal Ethics* vol. 11. 831, 836-7.

judicial proceedings. Section six highlights challenges confronting legal practitioner in Nigeria. The seven section proposes reform of legal practice in Nigerian while the last section concludes the paper.

2. Evolution of Legal Practice in Nigeria

Prior to the introduction of English-type court by the British Colonialist, disputes in traditional Nigerian communities between individuals were resolved by traditional heads and rulers who were by virtue of their position charged with the responsibility of maintaining peaceful co-existence in their domains. These traditional rulers in some cases also appointed local chiefs who had no formal training to hear disputes and hand down judgments.⁴ Colonialism had enormous socio-economic and political impact on traditional Nigerian communities. With the introduction of English business modules and practices, traditional dispute resolution mechanisms became largely inadequate to meet the challenges posed by increasingly international, if one-sided, commerce and trade. Complex commercial transactions and political disputes emerged which were less amenable to traditional modes of disputes resolution.⁵ Principles of English common law and equity developed by English courts were relied upon to resolve disputes. In some cases, statutes of general application in England became directly applicable in Nigeria or were relied upon by way of analogy. Between 1880, when the first Nigerian lawyer Christopher Sapara Williams was enrolled and made his first appearance at the Supreme Court, there was no qualified practising lawyer in Lagos.⁶ In general, laymen started the practice of law in Nigeria and this was so until 1913 when the Chief Justice discontinued the issue of practicing licenses to non-lawyers. In her account of this period, Doherty,⁷ stated as follows:

Lawyers were required to occupy judicial positions in the English-type courts, to advise the colonial administration, to draft agreements and to render advice generally on commercial transactions. Lawyers were also required to plead the case of litigants in the English-type courts. There were few legally qualified persons in the colonial service to render professional services to the colonial administration.

In order to fill this vacuum, non-lawyers with basic education and some knowledge of English law were appointed to practice as attorneys. This practice continued until 1913 when about 25 overseas trained lawyers enrolled as barristers and joined the profession. From that year on, the Chief Justice stopped issuing licenses to non-lawyers to practice as attorneys. From 1913 to 1962, Nigerian lawyers received training abroad and on completion of their study were called to the English Bar. Following the recommendations made by the Unsworth Committee, the Nigeria Law School was established to provide vocational training to legal practitioners. It also recommended that certain subjects be taught at the Law School which led to the enactment of the Legal Education Act 1962 and the Legal Practitioner Act of 1962.⁸ The Legal Education Act 1962 was re-enacted by the Legal Education (Consolidation, ETC) Act 1972 and this Act established the Council of Legal Education which is responsible for the legal education of persons seeking to become members of the legal profession in Nigeria.⁹

Today we have in our Courts all professionally trained and qualified practitioners in a fused profession as Solicitors and Advocates of the Supreme Court. We have all the external paraphernalia, all the external trappings on British justice quite visible too. We have not only copied and applied the outward signs of British justice which had all along, through many years preserved the sanctity of justice in British Courts and had made it the envy of the world.¹⁰

⁴ Fidelis Oditah SAN. 2006. Legal Practice and Economic Prosperity, A Keynote Address delivered at the Maiden Seminar of the Section on Legal Practice of the Nigeria Bar Association on 18th July, 2006, 1

⁵ *Ibid*

⁶ Jegede, J. K, 1998. The Legal Profession, Our Noble Heritage. *Nigerian Law and Practice Journal*, vol. 2 (1) 141-155: 142.

⁷ Oluwatoyin Doherty, *Legal Practice and Management in Nigeria* (1998) 7

⁸ Fidelish Oditah SAN (n 4) 2

⁹ Fagbemi, S. A. Jan/June 2009. The Roles, Prospects and Challenges of Academic Lawyers in Legal Education in Nigeria. *Ibadan Journal of Educational Studies* vol. 6 (1 & 2) 86, 89; See also the Legal Education (Consolidation etc.) Act, 1976, which established the Council of Legal Education which is responsible for the legal education of persons seeking to become members of the legal profession.

¹⁰ Jegede, J. K (n 6) 143.

3. The Key Actors in Legal Proceedings

Apart from litigants, two other prominent figures in adjudicatory processes are the judge and lawyer. These two are instrumental to the administration of justice and according to Amina Augie,¹¹ ‘they are bound together in some form of symbiotic existence’. Obviously, judge and lawyer play key roles in the administration of justice; however, they are supported in this onerous task by other supporting staff. In this categories are: court registrar, court clerk and sheriff. The registrar and court clerk, on one hand, perform administrative duties.¹² According to *Black’s Law Dictionary*,¹³ judge is a public officer appointed or elected to hear and decide legal matters in court’. Within this contexts, a judge is the first person in legal proceedings as a presiding officer. His role is very essential in legal proceedings. Judges, amongst others, must have integrity of character and doing what is right according to the law. He should be free to give orders, which must be respected by the legislature, the executive and the citizens.¹⁴ To meet the above demands, the fundamental attributes of judge requires patience, wisdom and courage. The integrity of a judge is a dominant factor in the conduct of the trial and in its outcome. The character and personality of different judges can be divided into the careful type or attentive judge and the talkative, the slow and the fast.

In order to checkmate the excesses of judges in Nigeria, section 153 (1) (i) of the Constitution of Federal Republic of Nigeria 1999 (as amended) established the National Judicial Council (NJC). The NJC is empowered to recommend the appointment, removal or retirement of judicial officers (both Federal and State) and also to collect, control and disburse all monies, capital and recurrent for the judiciary.¹⁵ Integrity is further enforced among judges through the Code of Conduct for Judicial Officers, which is a guide to all judicial officers on the standard of conduct and discipline expected of them.¹⁶

Legal practitioners are next to judges in adversarial system of justice. A legal practitioner is simply a lawyer. In the traditional English system, he is a member of the recognised branch i.e. he may be either barrister, special pleaders not at the bar, certified conveyancer, or solicitor.¹⁷ In the Nigerian context, the Legal Practitioners Act¹⁸ defines a legal practitioner as a person entitled in accordance with the provisions of this Act to practice as a barrister or a barrister or solicitor, either generally or for the purposes of any particular office or proceedings. A legal practitioner is someone who has received legal education either in Nigeria or abroad and has been formally admitted to the Nigerian Bar as Barrister and Solicitor of the Supreme Court of Nigeria.¹⁹ From the moment a lawyer is admitted into the Nigerian Bar and his name enrolled in the Roll of Legal Practitioners at the Supreme Court, he has a right of audience in all superior

¹¹ Hon. Justice Amina A. Augie JCA, ‘The Bar and the Bench: Twin Pillars Upholding the Rule of Law in Nigeria’ (Thursday, 1st June, 2006). After Dinner Speech at the Nigeria Bar Association (NBA) Ibadan Branch held in Ibadan 140, 181.

¹² In Nigeria, with the exceptions of the Federal High Court, Court of Appeal, Supreme Court and those at the high pedestal at the State High Courts, Court Registrars are mainly laymen. However, in England most especially County Courts, Registrars are Solicitors and they perform some judicial functions in hearing interlocutory applications and minor suits.

¹³ Bryant A. Garner, *Black’s Law Dictionary*, (8th ed. United States of America: West Publishing Company, 2004) 857.

¹⁴ Hon. Justice Amina A. Augie JCA, (n 11) 151.

¹⁵ See Third Schedule, Part I to the Constitution of Federal Republic of Nigeria, 1999 (as amended). See in particular Third Schedule the Constitution ss 20 and 21. See Obi Okoye. A. *Law in Practice in Nigeria: (Professional Responsibilities and Lawyering Skill)*. (Snaap Press Limited, 2011).

¹⁶ The Code of Conduct for Judicial Officer is applicable to all judicial officers throughout the Federal Republic of Nigeria. See Ajayi, J. F, Akinseye-George, Y and Kayode Esho. *The Making of a Judge*. (Ibadan: Spectrum Books Limited, 2002) 125; Hon. Justice A. A. Gbolagunte. “Towards Strengthening Professional Integrity, Ethics and Rule of Law in the Legal Profession in Nigeria.” In Dr. Akin Onigbinde and Seun Ajayi (eds), *Contemporary Issues in Nigerian Legal Landscape, A Compendium in Honour of Prince Lateef Fagbemi SAN*, (Ibadan: Crown Goldmine Communications Limited, Nigeria, 2010) 59, 63; Akintan, H. S. The Art of Judging. Being Text of Paper presented at the Induction Course of Newly Appointed Judges and Kadis, Held at Abuja on 22nd June to 3rd of July, 2014; Hon. Justice Adam O. Onum. Performance Evaluation for Judicial Officers: Practical Hints for High Court Judges. Being Text of Paper presented at the National Workshop for Judicial Officers in Judicial Ethics, Anti-Corruption and Performance Evaluation on the 25th and 26th of May, 2015, at the National Judicial Institute (NJI) Abuja with the Theme: Promoting Performance through Judicial Ethics in Nigeria.

¹⁷ Bryant A. Garner, *Black’s Law Dictionary*, (8th ed. United States of America: West Publishing Company, 2004) 915.

¹⁸ Legal Practitioner Act, Cap L11, Laws of the Federation of Nigeria 2004 s 24

¹⁹ Fagbemi, S. A (n 9).

courts of record including the Supreme Court of Nigeria.²⁰ A Lawyer is an officer of the court and ministers in the temple of justice; accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.²¹ A legal practitioner must be honest and not knowingly conceal the truth from the court. He must realize that he owes an allegiance to a higher cause.²²

A legal practitioner is expected to be a man of integrity, diligent, honest, scrupulous, skilled and partisan - belief in client's case.²³ A lawyer must be dedicated to his client's case and pursue same with vigour and conviction.²⁴ Ultimately, there is need for legal practitioners to conduct their clients' cases competently albeit within the stipulations of the law and the Rules of Professional Conduct for Legal Practitioners.²⁵ The roles of a legal practitioner to his client is the subject of next section.

4. The Roles of Legal Practitioners to his Clients

As discussed above, lawyers are the bedrock of our courts of justice and crusaders for the entrenchment of the rule of law in every facet of our lives. As a result of heavy responsibility involved in the office of counsel, he is subject to certain Rules of Conduct which are crucial to the proper performance of his functions. These rules are known as "Rules of Professional Conduct in the Legal Profession".²⁶ It is the paramount duty of the Bar to assist the Bench in the administration justice. Furthermore, legal practice involves in a representative capacity appearing as an advocate or draw papers, pleadings or documents, or perform any act in connection with proceedings or prospective before a court or body, board, committee, commission or officers constituted by law or having authority to take evidence in or settle or determine controversies in the exercise of the judicial power of the state or any subdivision thereof. It is also part of a lawyers' vocation to render expert opinions on matters of law and to be engaged as a consultant by public or private bodies to render professional services including drafting of legal or administrative documents, statutes, regulations, etc.²⁷ The roles of a legal practitioner in the course of his onerous calling is divers and include the following among others.

4.1. Legal Practitioner to act on Clients' Instruction

The first step toward the resolution of any dispute or grievance is the client instruction phase. This is the phase wherein the lawyer is briefed by his client. The legal practitioner listens to facts as presented by the client. The first interview with client is very important; many suits are lost or won upon the first interview. A hasty interview with clients, perfunctory grasp of the matters he is trying to lay before the solicitors may be fatal to the solicitors handling the matter subsequently. At the first interview, the lawyer

²⁰ Akinola, B. O. 2013. Section 12 of the Legal Practitioner's Act Examined, *Nigerian Law and Practice Journal* Vol. 12, 94. In this paper the words 'counsel and 'lawyer' are used interchangeably for legal practitioner.

²¹ In the case of *Nkuma v Odili* [2006] 2-3 SC. 18. The Supreme Court per Oguntade JSC held that: "It is necessary to say here that counsel appearing in matters before the court should see themselves first and foremost as officers of the court and refrain from imposing on the courts the tedium of sending it on a wild goose chase".

²² The expected status and roles of legal practitioners was captured by Lord Denning in the case of *Ronald v Worsely* [1967] 1 QB 443 HL. where he put the position in the following terms: 'As an advocate, he is 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. A Barrister cannot pick and choose his clients. He is bound to accept a brief from any man who comes before the courts, no matter how great a rascal that may be. No matter how given to complaining, no matter how underserving or unpopular his cause. The Barrister must defend him to the end provided that he is paid a proper fee....' See further the case of opinion of Crampton J in the case of *R v O'Connell*, [1844] 71 L. R. 261 at 312-313 See also Rahmatu Ishaq Ahmed, 'Management and Organisation of Law Firm in Nigeria: The Ethical Trends and Challenges' (2014) 17 (1), *The Nigerian Law Journal* 213, 214; Akubo, P. A. "Setting Standards of Best Practice in the Legal Profession as Lawyers," In Dr. Akin Onigbinde and Seun Ajayi (eds), *Contemporary Issues in Nigerian Legal Landscape, A Compendium in Honour of Prince Lateef Fagbemi SAN*, (Ibadan: Crown Goldmine Communications Limited, Nigeria, 2010) 100, 141.

²³ In the case of *Akomolafe v Nigeria Exchange Insurance Co. Ltd* [2000] 13 NWLR (Pt. 683) 181 SC. It was held that: "The legal profession is an honourable profession and is expected to be practiced by men of integrity and great honesty".

²⁴ Rules of Professional Conduct for Legal Practitioners, 2007 r 14 (1).

²⁵ *Ibid* rr 15 and 16.

²⁶ The Rules was made in 1967 and amended in 1982, the latest amendment is the Rules of Professional Conduct for Legal Practitioners 2007

²⁷ Abdulkarim A. Kana. 2016. Can Law Teachers Practice and Act as Consultants for Free or for a Fee. *The Nigerian Law Journal* vol. 19 (1), 35-53:39.

has his opportunity to lay good foundation for the services he would eventually render. Before the commencement of an action in court, the pre-requisites for the maintenance of the action have to be considered. It is essential to comply with prescribed procedures, either statutory or contractual, or the selection of the particular court may be decisive. The essential factors which a legal practitioner retained to conduct a case must consider at the planning stage of an action include but not limited to the determination of the relevant law, possible parties and their standing,²⁸ the cause of action,²⁹ jurisdiction of the subject matter and the appropriate court,³⁰ statute of limitation,³¹ compliance with conditions precedent, immunity of any kind, cost of litigation and ultimately knowledge of the scope and various rules of evidence.

Due to the foregoing, it is the duty of a lawyer to devote his attention, energy and expertise to the services of his client and subject to any rule of law, to act in a manner consistent with the best interest of the client.³² The legal practitioner acts on the general instruction of his client but he controls how these instructions are to be carried out. For instance, in the case of *Adewumi v Plastex (Nig.) Ltd.*³³ in that case, the respondents as plaintiff filed an action against the defendant at the High court. The defendant did not file any statement of defence throughout the hearing. Judgment was entered for the respondent and the defendant appealed to the Court of Appeal. The appeal was dismissed. The appellant further appealed to the Supreme Court. On the day fixed for hearing, counsel for the appellant considering the circumstances of the case, informed the court that he was withdrawing the appeal. This he did contrary to the instruction of his client. It was held that:

It was after full consideration of the circumstances of the case that the counsel withdrew the appeal. The decision was an exercise of discretion in emergency arising in the conduct of the appeal. The counsel was right in the circumstances of the case and justified in the decision and his act binds his client; (2) the general authority of counsel apart from express limitation, and terms of agreements is only limited where his authority goes beyond matters incidental to matters collateral; (3) the dominant instruction of the client in all cases where litigation in court is involved, is that the counsel should conduct the litigation in the court to its finality. Hence the actual legal relationship between the counsel and his client is akin to that of employer and an independent contractor. It is not between one of principal and agent.³⁴

4.2. Legal Practitioner should renders Efficient Legal Advisory Services to his Client

A legal practitioner has the role to render efficient legal advisory services to his client. The lawyer consults with the client on all questions of doubt which do not fall within his discretion.³⁵ He shall not fail or neglect to inform his client of the options of alternative dispute resolution before resulting to or

²⁸ *Senator Abraham Adesanya v The President, Federal Republic of Nigeria* [1981] 5 SC 112.

²⁹ *Senator Abraham Adesanya v The President, Federal Republic of Nigeria* [1981] 5 SC 112.

³⁰ *Egbe v Adefarasin* [1985] 5 SC 50 at 87.

³¹ It is more than settled that the issue of jurisdiction is fundamental pre-requisite in the adjudication of any matter. Jurisdiction has been aptly described as the life-wire of all suits. See the case of *Federal Government of Nigeria & 2 Others v Adams Oshiomole* [2004] 3 NWLR (Pt. 860) 305 at 319 SC.

³² The issue of whether or not an action is statute-barred is one touching on the jurisdiction of the court, once an action is found to be statute-barred, although the plaintiff may still have his cause of action, his right of action has been taken away by statute. See the case of *Emiator v Nigerian Army* [1999] 12 NWLR (Pt. 631) 362 at 372 SC.

³³ Rules of Professional Conduct for Legal Practitioners 2007 r 14 (1)

³⁴ (1986) 2 NSCC 852

³⁵ Note that in the case of *Nigerian National Supply Co. Ltd. v Sabana & Co. Ltd & Ors* (1988) 2 NWLR 23. It was held that the wide powers of counsel to bind his client as stated in *Festus Adewumi v Plastex Nigeria Ltd* must be limited to technical matters relating to the conduct of litigation and ought not to be extended to admission of facts particularly where it appears that counsel had no sufficient time for instruction. Also in *Edozien v Edozien* (1993) 1 NWLR 678. It was held *inter alia* that 'all those briefed have a right to conduct, settle or compromise in so far as their actions are within the ethics of the profession; the generally accepted view is that counsel acts on the general instruction of his client. He must adhere to any special instruction given by or on behalf of his client'. Thus in the case of *Afegbai v A. G. Edo State* (2001) 14 NWLR 427, it was held that where the nature of the specific instruction conflicts with the manner of discharging his professional skills and interferes with his control of how to conduct the case of his client, counsel is entitled to return the brief of his client. The nature of the relationship between counsel and his client is one of an independent contractor and not of agent and principal.

continuing litigation on behalf of his client.³⁶ In the course of consultation with his client, the lawyer warns his client against any particular risk which is likely to occur in the course of the matter.³⁷ Where he considers the client's claim or defence to be hopeless, he must inform him accordingly.³⁸

When representing a client, a lawyer may where permissible, exercise his independent professional judgment to waive or fail to assert a right or position of his client.³⁹ In the case of *Afegbai v A. G. Edo State*⁴⁰ the court stated thus:

The scope and amplitude of the authority of counsel with regards to an action and all matters incidental to it extend to the conduct of trial such as withdrawing the record, calling or not calling witnesses, cross-examining witnesses, consent to reference or arbitration ... undertaking to appear; or on hearing of the motion for new trial; consenting to reduction to damages. The client's consent is not needed for matters which are within the ordinary authority of the counsel.

4.3. Legal Practitioner must avoid Conflict of Interest

A lawyer shall, at the time of the retainer, disclose to the client all the circumstances of his relations with the parties, and any interest in connection with the controversy which might influence the client in the selection of the lawyer.⁴¹ Except with the consent of his client after full disclosure, a lawyer shall not accept a retainer if the exercise of his professional judgment on behalf of his client will be or may reasonably be affected by his own financial, business, property or personal interest.⁴² The lawyer should disclose if he has any interest in the matter presented by his client. The objective of this rule is to ensure fairness and justice.

4.4. Legal Practitioner must be Diligent

Another role played by the legal practitioner is that of due diligence in the discharge of his professional duties. Negligence in handling of a client's affairs may be of such a nature as to amount to professional misconduct.⁴³ In the case of *Rondel v Worsley*⁴⁴ the appellant was arraigned for causing grievous harm. He obtained the service of the respondent to defend him. His only line of defence was self-defence. He was convicted and six years later, he sued the respondent for negligence in the conduct of the defence. It was held that (i) an action did not lie at the suit of the appellant against his counsel for negligence in the conduct of the appellant's defence. (ii) the immunity of counsel from being sued for professional negligence is the conduct of a cause, criminal or civil, is based on public policy, and it is in the interest of the public that the immunity should be retained, one factor being that the counsel owes a duty to the court for the true administration of justice.

In *Heywood v Wellers*,⁴⁵ the plaintiffs, a woman who wanted a legal advice on how to put an end to persistent pestering by a former man friend, went to a local solicitor's office. She was seen by a young unqualified litigation clerk whom she believed to be a solicitor. He suggested that she may apply to the local county court for an injunction against the man. During the following eleven (11) months, the clerk initiated proceedings at the High Court which, because of errors and omissions, prove wholly ineffective, and the plaintiff continued to suffer molestation from the man friend. The plaintiff sued the defendant solicitors claiming damages. She prepared and conducted her own case being of the opinion that it would be impossible to find other local solicitors who put their case properly against fellow solicitors. The court held that the plaintiff was entitled to damages in respect of the solicitors' breach of contract by their negligent conduct if the defendant's case.

³⁶ Rules of Professional Conduct for Legal Practitioners, 2007 r 14 (2) (a).

³⁷ *Ibid* r 15 (3) (d).

³⁸ *Ibid* r 14 (2) (c).

³⁹ *Ibid* r 14 (2) (e).

⁴⁰ *Ibid* r 14 (2) (d). See also the case of *Festus Adewumi v Plastex (Nig.) Ltd.* (supra).

⁴¹ (supra)

⁴² Rules of Professional Conduct for Legal Practitioners, 2007 r 17 (1).

⁴³ *Ibid* r 17 (2).

⁴⁴ *Ibid* r 14 (5).

⁴⁵ (1996) 3 All E.R 657.

Generally, on the subject of negligence, the court has held that counsel are by calling of their profession, responsible men in whom the vice of negligence or inadvertence is a rare attitude. Hence, when in exceptional cases, a counsel is found to be guilty of professional negligence, a situation deserving of most favourable consideration arises if and only if the litigant has not himself been guilty of negligence. If both the counsel and his litigant are guilty of negligence, the burden to be discharge to show that the litigant is entitled to the exercise of the discretion of the court as a heavy one.⁴⁶ Furthermore, a solicitor could be liable for the tort of negligence not only to his client but also to others where a *prima facie* duty of care towards them could be shown.⁴⁷

4.5. Legal Practitioner Obligation to Keep Privilege and Confidence of a Client

All oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged. A lawyer shall exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client unless where such is permitted under the rules or required law or a court order; the intention of his client to commit a crime and the information necessary to prevent the crime and confidences or secrets necessary to establish or collect his fees or to defend himself or his employees or associates against an accusation of wrongful conduct.⁴⁸

In the case of *Awoniyi v The Registered Trustees of the Rosicrucian Order (AMORC)*,⁴⁹ the court held that communication between counsel and his client with reference to the matter upon which the client is seeking professional advice are privileged provided that the communication is fairly referable to the relationship of counsel and client. A lawyer must also keep the money of client kept in his custody. He must have financial integrity.

5. The Duties and Responsibilities of Legal Practitioners in the Society and Court Ethics in Judicial Proceedings

The legal profession prescribes Rules of Professional Conduct and Etiquette for its members. These basically require that a legal practitioner should be of good character. According to *Adegoke et al*,⁵⁰ these are traits and characteristics becoming of members of the learned profession of noble and gentlemen of honour. The founding fathers of this profession earned for themselves enviable and dignified appellation of “learned and honourable” men. This enduring achievement cannot and must not be lowered down. A lawyer must conduct himself well in court and in the public generally. Again, he must display utmost good character at all times. The society will frown at a lawyer who behaves himself unseemly in the public. A lawyer should not be caught fighting or brawling in streets. Waywardness is unbecoming of members of this respectable profession. It is an age-long phenomenon that, lawyers are known for their nobility.⁵¹

Premised on the foregoing, the general responsibility of a legal practitioner is to 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.⁵² In legal proceedings, the trial process is very crucial. It involves the examination-in-chief, cross examination and re-examination of witnesses.⁵³ The delivery of an effective civil justice requires that the system be accessible and affordable, free of discrimination, free of corruption and without improper influence by public officials.

⁴⁶ (1976) 1 Q.B 446.

⁴⁷ *Imo Broadcasting Corporation v Iwuke* (1995) 1 NWLR (Pt. 372) 488.

⁴⁸ *Ross v Counters* (1980) 1 Ch. 297

⁴⁹ Rules of Professional Conduct for Legal Practitioners 2007 r 19.

⁵⁰ (1990) 6 NWLR (Pt. 154) 42

⁵¹ Adegoke, O. A & Akinola Afolarin. 2013. The Character and Learning of Nigerian’s 21st Century Lawyer: Playing a Game by Its Rules. *Nigerian Law and Practice Journal* vol. 12, 68-93: 74

⁵² *Ibid.*

⁵³ See the Rules of Professional Conduct for Legal Practitioner 2007 r 1.

The delivery of an effective civil justice also necessitates that court proceedings are conducted in a timely manner and not subject to unreasonable delays.⁵⁴

It is the duty of a lawyer employed in respect of a court case to be personally present or be properly represented throughout the proceedings in court.⁵⁵ When a cause on the weekly cause list has been called for hearing and neither party appears, the judge shall, unless he sees good reason to the contrary, strike out the cause.⁵⁶ The legal practitioner shall use his best endeavours to restrain and prevent his clients from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if client persist in his action or conduct, he shall terminate their relations.⁵⁷ The legal practitioner has a duty to ensure courtroom decorum when in court. He is expected to be attired in a proper and dignified manner, conduct himself with decency and decorum observing the customs of the practice at the Bar with respect to appearance, manners and courtesy. He should rise when addressing or being addressed by the judge. A lawyer must not remove his wig or/and gown while court is sitting. He should not raise his voice in display of frustration. Making and answering phone calls in court is indecorous, likewise reading of newspaper or magazines when court is sitting.⁵⁸ A lawyer should also address his objections, arguments and observations to the judge without any exchange of banter, personality display, arguments or controversy with the opposing lawyer.⁵⁹ The legal practitioner is expected to treat the opposing counsel with respect fairness, consideration and dignity, and shall not allow any ill-feeling between opposing clients to influence his conduct and demeanour toward the other or toward opposing clients.⁶⁰

A legal practitioner shall not handle a legal matter which he knows or ought to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects.⁶¹ He shall not handle a legal matter without adequate preparation.⁶² He shall represent his client competently and shall not neglect a legal matter entrusted to him.⁶³ Neither shall he attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.⁶⁴

The legal practitioner shall be honest, forthright in the discharge of his duties before the court. He shall not do act calculated to mislead the court. He shall not knowingly use perjured or false evidence⁶⁵ neither shall he knowingly make a false statement of law or fact. The legal practitioner shall not participate in the creation or preservation of evidence when he knows or ought reasonably to know that the evidence is false. He shall not assist his client in conduct that he knows to be illegal or fraudulent.⁶⁶ A legal practitioner shall not be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants or ask any question only to insult or degrade the witness; and he shall not allow the unfair suggestions or demands of his clients to influence his action. In other words, a legal practitioner acts with candour and dignity. He must be polite and candid in his conduct.

⁵⁴ Evidence Act, 2011 s 214. See Fidelis Nwadialo SAN, *Modern Nigeria Law of Evidence*, (Benin City: Ethiope Publishing Corporation, 1981) 550.

⁵⁵ Nlerum S. Okogbule. 2005. Access to Justice and Human Rights Protection in Nigeria: Problems and Prospects. *Sur, rev. Int. Direitos Human.* vol. 2 (3) São Paulo Dec. 2005 See also Aguda, T. A. *The Crisis of Justice* (Akure, Nigeria: Eresu Hills Publishers, 1986), 15-16.

⁵⁶ Rules of Professional Conduct for Legal Practitioner 2007 r 14 (4).

⁵⁷ Oyo State High Court (Civil Procedure) Rules 2010 Order 30

⁵⁸ Rules of Professional Conduct for Legal Practitioner 2007 r 15 (2).

⁵⁹ Adegoke, O. A & Akinola Afolarin (n 50) 77. See the warning of Onalaja JCA (as he then was) in the case of *UBA Plc v BTL Industries Ltd.* (2006) NWLR (Pt. 1013) 61.

⁶⁰ Rules of Professional Conduct for Legal Practitioner 2007 r 36

⁶¹ *Ibid* r 62

⁶² *Ibid* r 16 (1) (a).

⁶³ *Ibid* r 16 (1) (b).

⁶⁴ *Ibid* r 16 (1) (c).

⁶⁵ *Ibid* r 16 (1) (d).

⁶⁶ *Ibid* r 15 (3) (f).

In conclusion, absolute respect is the hallmark of the relationship between the Bar and the Bench. Hence, the Bar Council has left no one in doubt as to its significance. The requirement of section 31 (1) of the Rules of Professional Conduct for Legal Practitioner 2007 is that a lawyer shall treat the court with respect, dignity and honour at all times. The salient points that may be gleaned from the issue of respect of legal practitioner to court are: a legal practitioner must ensure that he maintains profound respectful attitude towards the courts in words and seasoned with modesty, politeness and courtesy and in manners of proper comportment, demeanour, disposition and posture.⁶⁷

6. The Challenges Confronting Nigerian Legal Practitioner

There is no doubt that there are challenges confronting Nigerian legal practitioners in the adversarial justice system. While some of these obstacles are substantive in nature, others are procedural and yet others have their roots in the present political, socio-economic and advance in technology. However, since, there is no problem without solution, this section is devoted to highlight some of the challenges confronting legal practice in Nigeria. The section is followed with suggestion for reform that can enhance the efficacy of legal practitioner in Nigeria

6.1. Economic Pressures on the Practice

The legal profession faces unprecedented economic pressures fueled by many factors, including societal changes and economic downturn. These pressures often dovetail with other challenges facing the profession. In today's buyer's market, clients determine what services are needed and at what cost. They will continue to demand efficiency and responsiveness from their lawyers – and for less cost.⁶⁸ To survive, lawyers and firms are looking for competitive advantages. The legal profession faces unprecedented economic pressures. It faces competitive pressures from accountants, realtors, financial advisors, and title agents, and others – and the Internet is making it easier for them to compete. Add to the mix competition from global legal service providers, as the doors to transnational practice by lawyers widen by the World Trade Organization's General Agreement on Trade in Services (GATS).⁶⁹ In a buyer's market, the client determines what services are needed and at what cost. In addition to the issues discussed below, lawyers and firms are turning to law firm managers and legal information managers to examine trends and identify competitive advantages.⁷⁰

6.2. Technology and the Practice of Law

Advances in technology are occurring exponentially. These advances increase the pace of practice and client expectations, forcing lawyers to adapt or face extinction. Understanding and implementing new technologies are difficult and time-consuming for lawyers. Clients are often ahead of lawyers in implementing new technologies, and they have increased access to legal information, much of it readily available on the Internet.⁷¹ It is therefore imperative that a lawyer develop unequivocal hunger and thirst for knowledge, especially of the law and of general affairs of life. Ability to carry our research would form a veritable tool in acquisition of knowledge needed in practice. The lawyers must read the subject matter *visa-vis* the substantive law; peruse the rules and procedures as well as judicial precedents. It is incumbent on advocate to carry out detailed research into matters involved with the brief given to him by his client. He must master the details of the subject matter and equally become a 'master of it in order to be able to adequately handle the case to the satisfaction of his client.'⁷²

⁶⁷ Adegoke, O. A & Akinola Afolarin (n 50) 90; Ekundayo, A 1992. Hints on Legal Practice, *Nigerian Law and Practice Journal*, Series No. 5: 51; Adedokun A. Adeyemi. Ethics in Legal Academia and the Profession. In Ayua, I. A and Guobadia, D. A. (eds) *Legal Education for Twenty- Century Nigeria*, (Lagos: Nigerian Institute of Advanced Legal Studies, 2000) 208-212.

⁶⁸ Board of Governors' Challenges to the Profession Committee. 2011. *The Challenges Facing the Legal Profession*, The State Bar of Wisconsin July 2011, 2.

⁶⁹ *Ibid.*

⁷⁰ *Ibid*

⁷¹ *Ibid*

⁷² Adegoke, O. A & Akinola Afolarin (n 50) 73

6.3. Regulation of the Legal Profession

Rapidly evolving technological advances, changing expectations on the part of the public concerning access to information and services, as well as sociologic and economic globalization, combine to require a reconsideration of traditional ethical rules and regulation mechanisms for the legal profession. Ari Kaplan,⁷³ opines that these issues will force the legal profession to restructure how it delivers legal services. In order for the profession to stay relevant and thrive, lawyers must examine who can invest in firms, models for publicly traded firms, and lawyer partnerships with other professionals.⁷⁴ However, it would seem that law practice in Nigeria is synonymous with advocacy. This is reflected in the number of small law practices spread across the country. Also the curriculum of the Law School programme place quite a lot of emphasis on criminal and civil procedures and evidence – in fact court procedures. For instance, law graduates are expected to embark upon court and law offices attachments which expose them to advocacy and solicitor practice. On completion of the law school programme, a lawyer becomes ‘a barrister and solicitor of the Supreme Court of Nigeria’ but the public perception of the law and lawyers is through trial lawyers.⁷⁵

Commercial and corporate law practice have continued to grow in view of globalisation of international commerce and trade and legal practice will therefore need to do more than pure advocacy in court. The practice of law in Nigeria should take advantage of its potentiality as a facilitator of successful trade and lawyer should be encouraged to explore new and emerging practices areas. For instance, a good number of law firms in the UK, US as with many others in developed economies are partnership specializing in different areas of practice. Partnerships between lawyers and among law firms in Nigeria should be encouraged.⁷⁶ The benefits of partnership are many and obvious. Apart from economies of scale, partnerships encourage capacity building and specialisation as lawyers in given fields understand the intricacies of such areas and are able to give first class advice in their areas of specialisation. It will also increase earnings for the firms and the lawyer alike as more income is generated.⁷⁷

6.4. New Lawyer Training and Development

The new trends and challenges facing the legal profession, particularly the evolution of legal services from bespoke to being ultimately ‘commodized’ raise concerns that should be quickly brought to the thoughts of the new wig.⁷⁷ The reality of today’s economy means fewer opportunities for law school graduates. With fewer clerkships, internships, and law firms hiring new graduates – and access to mentors – law schools are graduating more lawyers with less experience. The profession must share the responsibility for assisting these new practitioners, and that support must come from the Bar Association, the bench, and the law schools that produce new lawyers.⁷⁹

The challenges identified by the Board of Governors’ Challenges to the Profession Committee has created great difficulties for practitioners, especially those who are new to the profession. This explained why many new wigs avoid legal practice, whether private or public, like plague. They are ill-equipped for it, ignorant of it, apathetic towards it and must therefore of necessity reject it. Two other complications arise. After graduation, they discover that there is no proper mentoring process. Few, if any young lawyer have any source of role models. There is no custom or practice of senior lawyers choosing junior lawyers to mentor.⁸⁰ There is also no process of induction of new wigs into legal profession by the local or national

⁷³ Kaplan, Ari. 2010. *The Evolution of the Legal Profession: A Conversation With the Legal Community’s Thought Leaders on the Front Lines of an Industry in Transition*. Rep. Ari Kaplan Advisors, 2010.

⁷⁴ Board of Governors’ Challenges to the Profession Committee. 2011, 2

⁷⁵ Fidelish Oditah SAN (n 4) 8

⁷⁶ For instance, the NBA President Abubakar Balarabe Mahmoud (SAN) recently urges lawyers to form larger law firms to improve service delivery to clients in a globalise world. He made the declaration while unveiling a mega law firm Primera African Legal (PAL) in Lagos on Friday 18th August, 2017. PAL is made up of former partners of Sterling Partnership and Wali-Uwais, both very established law firms. See BarNews, A publication of Nigerian Bar Association (NBA) 21 August, 2017: 1

⁷⁷ Fidelish Oditah SAN (n 4) 8

⁷⁸ Oluwemimo Ogunde SAN 2011. *The Legal Profession in Nigeria: Service or Business?* Paper delivered at the Annual Lecture in honour of Mr. Layi Babatunde SAN on Wednesday 17th August, 2011 at the Faculty of Law, University of Ibadan, Ibadan. 1.

⁷⁹ Board of Governors’ Challenges to the Profession Committee. 2011 (n 68) 2

⁸⁰ Oluwemimo Ogunde SAN (n 78) 2.

Bar. The Nigeria Bar Association leaves them to discover everything by themselves. The result is that the new wigs become free-ranging lawyers, at the mercy of every wind of doctrine. There is no established process of job search or employment, no formal or informal methods of integration into the Bar. They are sent forth as sheep in the midst of wolves.⁸¹ The young, new, or inexperienced practitioner bears the responsibility to conquer these challenges. The challenge for any lawyer is to differentiate themselves from others in the market place. New lawyers will need to develop business skills, language, engineering / science – traits that set them apart from their peers. Many new lawyers are well situated to take advantage of the latest technologies. Change must start with law school education. They must train lawyers for real-life practice challenges, teach entrepreneurial skills, and paint a realistic picture of employment opportunities.⁸²

7. Proposals for the Reform of Legal Practice in Nigeria

The legal profession remains a noble profession. The sanctity of this profession will be better preserved by the conduct of the legal practitioner in the discharge of his role as a minister in the temple of justice both in relations with his clients and members of the public and also in his duty towards the court of law. By virtue of their vantage position, legal practitioners play significant roles in policy formulation and implementation, not only because they draft all laws but also because they interpret and apply the laws. In contributing to the political and social development of our nation, lawyers must be creative and proactive. Reform of our substantive and procedural laws, which has begun should be intensified.

Against this background, a convenient point to start any reform agenda for the legal practice is updating and strengthening our civil justice laws, rules, regulations and institutions. It is desirable to revise our laws regularly so as to bring them in line with international standards. However, a word of caution must be sounded at this point. A revision of our laws should not involve a blind transplant of western legal model as hitherto the practice. It really would make no sense to import laws or regulations which can hardly be operated in view of our peculiar socio-legal and cultural set up. Any law introduced must therefore be suitable to our specific needs without compromising standards. In order for the judiciary to perform its role as the ‘handmaiden of justice’, civil procedure must be effective and responsive to the needs of its users. This entails three qualities: it should be just, fair and effective in resolving disputes. Reform of our civil justice system is needed urgently and is already in progress in a number of states.⁸³

Other reforms necessary to the Nigerian legal practice and judicial system include (a) recognition in the civil procedure rules of the overarching aim of the civil justice system which is to ensure that cases are determined justly and fairly; (b) recognition in the civil procedure rules of the central role and responsibilities of key players in legal proceedings – the judge, the litigants and their legal representatives have in a civil justice system; (c) introduction of active case management powers by the judges enabling judges to balance the interests of the parties to civil proceedings and the public interest to ensure that parties do not use more than their fair share of public resources – the courts;⁸⁴ (d) more significantly efforts should be made to increase awareness of and resort to arbitration or other methods of alternative dispute resolution mechanisms in the country.⁸⁵ Not only are these mechanisms more cost-effective, they are largely in tandem with the traditional method of dispute settlement, which had served African societies so well before the imposition of the received English system of adjudication.⁸⁶ Happily, there is now a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to the

⁸¹ *Ibid*

⁸² Board of Governors’ Challenges to the Profession Committee. 2011 (n 68) 20.

⁸³ For instance, these writers are aware that the Civil Procedure Rule of the High Court of Justice of 2008 in Osun State is currently being reviewed to amend some of its provisions

⁸⁴ Fidelis Oditah SAN (n 4)

⁸⁵ Nwosu, K. N & Chukwu, L. O. C. 2013. The Role of Lawyers in Multi-door Courthouse, *Nigerian Law and Practice Journal*, 40-50: 43; Rules of Professional for Legal Practitioner 2007 r 15 (3) (d).

⁸⁶ Obilade, A. O. "The Relevance of Customary Law to Modern Nigerian Society", in Osinbajo, Y & Kalu, A. U. (eds.), *Towards a Restatement of Nigerian Customary Laws* (Lagos: Federal Ministry of Justice, 1991)1-4; Okunniga, A. A. O. *Transplants and Mongrels and the Law: The Nigerian Experiment* (Inaugural Lecture Series 62, University of Ife Press, 1983) 20-21.

judicial settlement of disputes in Nigeria.⁸⁷ It can hardly be disputed that resort to this mechanism coupled with improvement in the socio-economic and political conditions of the masses will go a long way in ensuring increased access to justice by a large majority of Nigerians.

Legal education is important if lawyers are expected to play any real role in our economic development and growth. The quality of the judicial output depends on our legal education and the quality of our lawyers. We see this daily in relation to litigation where the role of lawyers is most visible. The quality of our judicial decisions and the coherence of the reasoning underlying a judgment depend upon the quality of arguments presented to the court and upon the ability of the judge, and these in turn are dependent upon our legal education, especially continuing legal education. It is even more staggering that every person who has been called to the Bar can set up a legal practice once their enrolment at the Supreme Court has been completed. This is deeply flawed and must be stopped, if necessary, by legislation. Given the minimal practical content of the Nigerian Law School course and the ineffectiveness of court and law office attachments, it is imperative that a newly qualified lawyer should have gained at least two years post call practical experience before he is permitted to set up on his own.

Of more importance is the mentoring of young lawyer or new wigs. Senior members of the profession should invest in the future of the profession. Investing in the career development of young lawyers in terms of money and time would go a long way in professional development and finesse. There should be on-going continuous trainings organised by the association and organised or sponsored by experienced and successful practitioners. Senior lawyers should monitor the manners, comportment and appearances of the lawyers under their tutelage and branch. By showing good example all the time, it will be easy for young ones watching to imbibe fine character and decorum exhibited by those mentors. The place of hard-work is also importance in legal practice. A lawyer who fails to work hard should be ready to fail. Success in the Bar cannot be attained lying upon the bed of roses, but by application of oneself to hard-work and industry.⁸⁸ As lawyers, all that is needed is hard-work and dedication to the call as legal practitioner and this can constitute a firm and solid foundation for one's future career.

8. CONCLUSION

In adversarial system of justice, the role of counsel is to guide and present the cause of their client to the court. Due to this, a counsel retained by party, must keep abreast of both substantive and procedural law. He must master the rules of court and evidence; he must have knowledge of computer and other electronic devices. Being an officer of the court and ministers in the temple of justice, legal practitioner should not engage in any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice. As lawyers, we should not allow ourselves to be used as clogs in the wheel of speedy determination of cases. A legal practitioner must be honest and not knowingly conceal the truth from the court. He must realize that he owes an allegiance to a higher cause. To this end, legal practitioner must develop skilled and creative application of his knowledge of principles and practice of law to addressing legal issues and solving real life problems professionally.

Furthermore, intellectual candour on the part of counsel always pays. If the court has a difficulty, it is no more trying to evade or side step it, it must be met and answered, and it is a professional misconduct not to play fair with the Bench. Although, legal practice is a professional business having an underlying objective of rendering social service with a view to making profits and gains for sustenance. However, lawyers are required to abide by the rules of professional conduct when acting on behalf of clients and when advising on transactions generally. Ethical standards must be imbibed in business transaction and acts which are capable of bringing disrepute to the profession should be shunned and a balance between the carrying on of ethical legal practice and the pursuit of economic gains must be pursued with vigour. Finally, the tradition of the legal profession is founded on excellence, nobility and hard-work. We should not, however, pretend that all is alright with the profession. The Bar and the Bench now have to more than ever before confront the challenges highlighted in this paper and many more confronting the profession. Doing this is the only way to save legal profession from imminent disrepute.

⁸⁷The advantages of these mechanisms are highlighted in Chukwuemerie, A. I. *Studies and Materials in International Commercial Arbitration* (Port Harcourt, Nigeria: Lawhouse Books, 2002) 1-31; see also Nwakoby, G. C. Jan.-April 2004. Exploring Arbitration: A Commentary" (*Modern Practice Journal of Finance and Investment Law*, vol. 8 (1-2) 1: 8-16); on the Lagos Multi-Door Courthouse see Aina, K. 2004. The Lagos Multi-Door Courthouse and the Judge: A New Beginning. *Modern Practice Journal of Finance and Investment Law*, July-Oct. vol. 8 (3-4) 340.

⁸⁸Ekundayo, A (n 67).