

# Emerging Cases of Professional Misconduct of Legal Practitioners in Nigeria: A Case for Law Reform

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## *Abstract*

In recent times, the Bar, the Bench, and the general public have been alarmed by the increasing and expansive dimension of misconduct of legal practitioners in Nigeria. This paper takes a critical look at the emerging cases of professional misconduct among lawyers in Nigeria. It sets out with an introductory part that gives an overview of what is considered professional misconduct by a lawyer in Nigeria. The main body of the paper dwells on the statutory regulation of the legal profession with a focus on ethics in legal practice. Some recent cases of professional misconduct of legal practitioners are reviewed leading to the interrogation of the rationale for establishing a case of professional misconduct of a lawyer in Nigeria pointing to the need for a more pragmatic approach. The paper concludes with the position that while the need for a lawyer to remain a light bearer, a leader worthy in learning and character because of the nobility of his calling is inviolate, the thin line between a lawyer's professional and private life should be identified and respected to contain the expansive cases of misconduct. The point is made that the law which holds every act of a legal practitioner to a standard even where such an act was not done in a professional capacity deserves reformation. Recommendations are proffered to suggest ways of reducing cases of misconduct of lawyers without lowering the standards at the Bar.

**Keywords:** *Law Reform, Legal Profession, Legal Practitioner, Professional Ethics, Professional Misconduct.*

## **Abstrak**

Akhir-akhir ini, para pengacara, hakim, dan masyarakat umum telah dikejutkan oleh meningkatnya dan meluasnya dimensi pelanggaran hukum yang dilakukan oleh para praktisi hukum di Nigeria. Tulisan ini mengkaji secara kritis kasus-kasus pelanggaran profesionalitas yang muncul di kalangan pengacara di Nigeria. Tulisan ini dimulai dengan bagian pengantar yang memberikan gambaran umum tentang apa yang dianggap sebagai pelanggaran profesionalitas oleh seorang pengacara di Nigeria. Isi utama Tulisan ini membahas tentang peraturan perundang-undangan profesi hukum dengan fokus pada etika dalam praktik hukum. Beberapa kasus pelanggaran profesionalitas yang dilakukan oleh para praktisi hukum baru-baru ini yang mengarah pada interogasi tentang alasan untuk menetapkan kasus pelanggaran profesionalitas yang dilakukan oleh seorang

pengacara di Nigeria yang menunjukkan perlunya pendekatan yang lebih pragmatis. Tulisan ini diakhiri dengan posisi bahwa meskipun kebutuhan seorang pengacara untuk tetap menjadi penasihat hukum, seorang pemimpin yang bermartabat dalam hal pengetahuan dan karakter mengingat kemuliaan panggilannya tidak dapat diganggu gugat, garis tipis antara kehidupan profesional dan pribadi seorang pengacara harus diidentifikasi dan dihormati untuk mengatasi kasus-kasus pelanggaran yang meluas. Intinya adalah bahwa hukum yang menetapkan setiap tindakan praktisi hukum pada standar tertentu, bahkan jika tindakan tersebut tidak dilakukan dalam kapasitas profesional, patut direformasi. Rekomendasi diajukan untuk menyarankan cara-cara agar bisa mengurangi kasus pelanggaran hukum tanpa menurunkan standar di asosiasi advokat.

**Kata kunci:** Reformasi Hukum, Profesi Hukum, Praktisi Hukum, Etika Profesi, Pelanggaran Profesi.



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## A. INTRODUCTION

Every profession has standards of operations below which it cannot go. Elliston<sup>1</sup> conceive that a discipline may fall short of a profession except it possesses four major traits which include, a specialised body of knowledge, a commitment to the societal welfare, the capacity to self-regulate and high social status. The author identifies legal practice, medical practice and engineering as few disciplines that have attained the status of a profession. To retain the foregoing formidable characteristics, legal profession like other professions, is abundantly regulated to ensure compliance with set standards and checkmate erosion of the confidences reposed in the profession by the society. These standards which set the limits and boundaries of a legal practitioner in Nigeria, otherwise described as professional ethics, have evolved through customs, conventions, pronouncement of jurists and statute.<sup>2</sup> Traditionally, professional ethics for legal practitioners was viewed as the set of norms and values that patterned the custom of engagement in the profession.<sup>3</sup> (It was based on the obligation to uphold the rule of law as underpinned by the principles of professional integrity, autonomy and independent

<sup>1</sup> Frederick A Elliston, "Ethics, Professionalism and the Practice of Law," *Loyola University Chicago Law Journal* 16, no. 3 (1985): 529, 531.

<sup>2</sup> Sylvester Udemezue, "An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers in Nigeria," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3842835>; Dinara Abdunayimova, "THE PROFESSIONAL ETHICS of LAWYERS: PRINCIPLES, PROPERTIES and NORMS.," *Theoretical & Applied Science* 85, no. 05 (May 30, 2020): 923–26, <https://doi.org/10.15863/tas.2020.05.85.175>.

<sup>3</sup> Bernadette Loacker, "Does the Ethos of Law Erode? Lawyers' Professional Practices, Self-Understanding and Ethics at Work," *Journal of Business Ethics* 187, no. 1 (2023): 33–52, <https://doi.org/10.1007/s1055102205276x>; R. Dinovitzer, H. Gunz, and S. Gunz, "Professional Ethics: Origins, Applications and Developments," in *Handbook of Professional Services Firms*, ed. L. Empson et al. (Oxford University Press, 2015), 113–14.

sound judgment.<sup>4</sup> Legal ethics cuts more deeply than legal regulation; it concerns the fundamentals of moral lives of lawyers.<sup>5</sup> Consequently, legal practitioners are subject to three duties, namely, duty to clients, the profession and the court.<sup>6</sup> Thus, a lawyer must serve many masters in the course of his calling.<sup>7</sup> The obligation placed on lawyers to maintain high professional standards transcend geographical boundaries and has become subject of universal code.<sup>8</sup> Legal profession develops its ethical professional code or posture in reaction to the prevalent norms and societal demands.<sup>9</sup> The breach of these professional prescriptions may be described as professional misconduct.<sup>10</sup>

The Legal Practitioners Act (LPA) and the Rules of Professional Conduct for Legal Practitioners (RPC)<sup>11</sup> did not define professional misconduct or misconduct generally. Orojo<sup>12</sup> distinguishes between Professional Etiquette and Professional Conduct without any definitions. He argues that while breach of Professional Etiquette may be ignored or lightly countenanced, a failure to comply with rules of professional conduct attracts adequate sanctions.<sup>13</sup> Similarly, the Advocates Act of India of 1961 did not define misconduct. In *State of Punjab v Ram Singh*,<sup>14</sup> the Indian Supreme Court broadly construed misconduct to include moral turpitude, improper or wrongful behaviour, unlawful behaviour, a forbidden act, transgression, carelessness or negligence in performance of duty, or the act of illegal or forbidden quality or character. A community reading of the foregoing case law and the rules of Bar Council of India reveals that the

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<sup>4</sup> B Fasterling, "The Managerial Law Firm and the Globalization of Legal Ethics," *Journal of Business Ethics* 88, no. 1 (2009): 21–34, <https://doi.org/10.1007/s1055100901042>.

<sup>5</sup> B A Garner, *Black's Law Dictionary* (West Legalworks, 2004), 913; M C Ogwezzy, "THE LEGAL PRACTITIONERS ACT: A CODE for REGULATING the CONDUCT of LAWYERS in NIGERIA\*," *Agora International Journal of Juridical Sciences* 7, no. 3 (October 1, 2013): 109, <https://doi.org/10.15837/aijjs.v7i3.693>.

<sup>6</sup> Angelo Dube and Nicholene Nxumalo, "When Lawyers Lie, Cheat and Steal: Understanding the Role of the Bar – *Ndleve v Pretoria Society of Advocates* [2016] ZACC 29," *Obiter* 40, no. 2 (October 2, 2019), <https://doi.org/10.17159/obiter.v40i2.11268>.

<sup>7</sup> B. D. Dennison and P. T. Kalyegira, "The Advocate-Client Relationship in Uganda," in *Legal Ethics and Professionalism: A Handbook for Uganda*, ed. B D Dennison and P. T. Kalyegira (Globethics African Law Series, 2014), 53.

<sup>8</sup> I Abdullahi, "Ethics, Rules of Professional Conduct and Discipline of Lawyers in Nigeria: An Overview," *International Journal of Public Administration and Management Research* 4, no. 1 (2017): 1–16; See International Bar Association (IBA), *International Code of Ethics* (adopted at Oslo on 8 July 1956 and amended by the General Meeting of the International Bar Association at Mexico City, 29 July 1964 and at Stockholm, 18 August 1976), Art. 4.

<sup>9</sup> Christine Parker and Tanina Rostain, "Law Firms, Global Capital, and the Sociological Imagination," *Fordham Law Review* 80, no. 6 (June 18, 2012): 2347.

<sup>10</sup> A. J. Beredugo, *Nigerian Legal System*, 3rd ed. (Malthouse Limited, 2009), 215–16; Federal Republic of Nigeria, *Legal Practitioners Act [LPA]* (CAP L 11, Laws of the Federation of Nigeria, 2004); Federal Republic of Nigeria, *Rules of Professional Conduct for Legal Practitioners 2007*, Statutory Instrument No. 6, FRN Official Gazette vol. 94, 24 January 2007.

<sup>11</sup> J. O. Asein, *Introduction to Nigerian Legal System* (Ababa Press Limited, 2005), 3; The LPA and RPC apply to Barristers and Solicitors alike as both callings are united in the definition of a 'Legal Practitioner' unlike under the British Legal System where the two callings are distinct and separate.

<sup>12</sup> J. O. Orojo, *Professional Conduct of Legal Practitioners in Nigeria* (Mafix Books Limited, 2008), 127.

<sup>13</sup> *Ibid.*

<sup>14</sup> 1992 SCR (3) 634.

expansive definition of misconduct are in respect of act done within the practice of law.<sup>15</sup> Breach of professional etiquette and professional conduct are both unethical and unbecoming of a legal practitioner. In *Madu v Okeke*,<sup>16</sup> the Nigerian Court of Appeal remarked that it is “unethical” for counsel to appear in court without relevant case file. The court, however, fell short of tagging counsel’s behaviour as a professional misconduct. Aladekomo<sup>17</sup> argues that it would be unreasonable to charge a legal practitioner before the Legal Practitioners Disciplinary Committee (LPDC) on the premise that he failed to appear in court with his case file. Similarly, in *Hon. Bassey Etim & Anor. V. Hon. Emmanuel Bassey Obot & Ors*,<sup>18</sup> the Nigerian Court of Appeal strongly condemned counsel’s choice of words in the description of the judgment of the lower court describing such diction as inappropriate and inconsistent with the ethical standards of the legal profession. Also, in *Abubakar v Yar’adua*,<sup>19</sup> the Supreme Court of Nigeria noted that it is unethical for counsel to assure his client that ‘come rain come sunshine’ he will win the case.

Misconduct is a dereliction of duty; unlawful or improper conduct.<sup>20</sup> In *Allison v General Council of Medical Education and Registration*,<sup>21</sup> the Medical Defence Union charged one Thomas Richard Allison with infamous conduct in a professional respect. Allison, a consultant surgeon, engaged in extensive public advertisement to attract patronage and in the process ridiculed his fellows of the same profession against ethical convention prohibiting such level of advertising in medical practice. The court found him liable to infamous conduct in a professional respect. Allison’s case highlighted two important points which are relevant to this discourse. First, the ‘offensive’ act must have arisen in professional capacity. Second, such act must have disparaged or defamed his professional brethren. The former has evolved into what is presently known as professional misconduct while the latter underpins ethics of the profession. Again, while the former has been somewhat codified, the latter has remained largely uncoded, malleable and elastic according to the size and length of the foot of those who enforce the ethos thereby leading to floodgate of cases.<sup>22</sup>

Nevertheless, infamous conduct in professional capacity as established in Allison’s case is but one of the plethora of misconducts for which a legal practitioner may be disciplined under the law.<sup>23</sup> The courts and other disciplinary bodies established for the

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<sup>15</sup> Chapter II, Part VI of the Rules made by the Bar Council of India pursuant to Section 49 (1) of the Advocates Act 1961.

<sup>16</sup> (1998) JELR 77814 (CA).

<sup>17</sup> Anthony Aladekomo, “Growing Cases of Lawyers’ Misconduct in Nigeria and Corrective Measures,” *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3685149>.

<sup>18</sup> (2009) LPELR-4128(CA).

<sup>19</sup> (2008) CLR 1(g) (SC).

<sup>20</sup> B A Garner, *Black’s Law Dictionary* (West Legalworks, 2004).

<sup>21</sup> [1894] 1 QB 750, CA.

<sup>22</sup> J Selden, “Table Talk,” in *Sources of English Legal and Constitutional History*, ed. M B Evans and R I Jack (Butterworths, 1984), 223–24.

<sup>23</sup> Federal Republic of Nigeria, *Legal Practitioners Act*, s. 11(1)(a).

legal profession<sup>24</sup> have continued to shift the frontiers of what constitutes professional misconduct for lawyers. In the case of *NBA v Ibebunjo*,<sup>25</sup> the LPDC shocked the legal community when it established the principle that a lawyer is incapable of engaging in law practice and the business of buying and selling of land simultaneously.<sup>26</sup> Udemezue and Shaeab<sup>27</sup> contend that the direction of LPDC is unjustifiable, misconceived and a hasty generalisation'. The authors further argue that legal ethics must operate within the extant laws of the larger society. When lawyers conduct themselves properly and the RPC is properly applied, the reputation of the legal profession is maintained, the client's right to professional services are upheld and access to justice is broadened. Consequently, the Court of Appeal in considering the Rules of Professional Conduct for Legal Practitioners in Nigeria (RPC) in *Ukah v Onyia*,<sup>28</sup> stated the correct position to be that a lawyer cannot be a lawyer and a commissioned land agent contemporaneously in the same transaction. By being a lawyer, it is understood to be a person in the legal profession, doing law as business. This is important because there are some who though were called to Bar in Nigeria, engage businesses other than the legal practice. The decision of the Court of Appeal appears to be more in tandem with the current Nigerian experience and makes regulation in this aspect of legal practice much more realistic. The law, in an attempt to cover the field in this area tends toward the absurd. This article, departing from the *status quo*, explores circumstances in which it may be awkward to bring one within the disciplinary net of the Bar simply because such one qualified as a lawyer. This is the present position of the law, without more.

In order to properly, address the subject matter the article is discussed under four broad headings or segments. The first heading is the foregoing introduction which lays the foundation for the discourse. The second heading is the research methodology which shows sources of information and how they were analysed to arrive at a rational conclusion. The third segment of the article, the main body, sets out the result and discussion of the subject matter. The main discourse is arranged under four subheadings, including recommendations, for better appreciation. The article rounds off on the fourth segment with a concise conclusion.

## B. RESEARCH METHOD

This article adopts the doctrinal or conceptual research methodology in analysing both primary and secondary sources to highlight the ethical, legal and sociological issues

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<sup>24</sup> See Legal Practitioners Disciplinary Committee (LPDC) and Legal Practitioners Privileges Committee (LPPC) established by the LPA.

<sup>25</sup> (2013) 18 NWLR (Pt 1386) 413 LPDC; in contrast, in *NBA v Kareem* [2015] 12 NWLR (Pt 1472) 190, the LPDC held that a lawyer can sell his own land. *NBA v Kareem* appears to have stated the difference between twelve and a dozen in the light of *NBA v Ibebunjo*.

<sup>26</sup> Anthony Aladekomo, "NBA v IBEBUNJO: A REVIEW of CRIMINALIZATION of SALE of LAND by NIGERIAN LAWYERS," *INTERNATIONAL REVIEW of LAW and JURISPRUDENCE (IRLJ)* 2, no. 2 (April 14, 2020).

<sup>27</sup> Sylvester C. Udemezue and Olajumoke M. Shaeab, "DELIMITING LAWYERS' INVOLVEMENT in SALE of LAND in LIGHT of the STEADY DIMINUTION of the LAW PRACTICE SPACE in NIGERIA," *LAW and SOCIAL JUSTICE REVIEW* 3, no. 2 (January 24, 2023): 183–96.

<sup>28</sup> LPELR-40025(CA).



relevant to the discourse. The research approach is analytical and comparative. Accordingly, verifiable primary and secondary sources of law are used to the exclusion of empirical data. This is done through intensive, comparative library and desktop evaluation of contemporary literature which primarily centres on the legal-sociological aspect of a lawyer's conduct within and outside the business of legal practice. Statutes, case laws, journal articles, periodicals and online sources from local and international platforms are scrutinised in the course of the work in order to buttress the points made in this research.

## C. RESULT AND DISCUSSION

### A. Regulation of the Legal Profession in Nigeria

Black's Law Dictionary defines regulation as the act or process of controlling by rule or restriction.<sup>29</sup> Regulation is a prescribed rule, an authoritative direction.<sup>30</sup> Regulation has been used to imply governmental intervention in the affairs of the society and laws that implement such interventions.<sup>31</sup> Orbach<sup>32</sup> argues that defining regulation in terms of government interventions obscures the precise understanding of the term since regulation as a legal concept is one concept in contemporary jurisprudence that has escaped any clear definition. The truth is that not all kinds of regulation are mandated or decreed by the government. Legal practice in Nigeria is one profession that is well regulated by public opinion, the profession itself (Nigerian Bar Association) and the government.

Consequently, the profession of law in Nigeria is regulated by statute and subsidiary laws enforceable within the legal system. Some of the statutes which regulate the practice of law in Nigeria are:

- (i) The Constitution of the Federal Republic of Nigeria (CFRN) 1999<sup>33</sup>
- (ii) The Legal Practitioners Act (LPA)<sup>34</sup>
- (iii) The Rules of Professional Conduct (RPC) for Legal Practitioners in Nigeria<sup>35</sup>
- (iv) The Legal Education (Consolidation, etc) Act<sup>36</sup>
- (v) Legal Practitioners Disciplinary Committee (LPDC) Rules<sup>37</sup>

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<sup>29</sup> B A Garner, *Black's Law Dictionary* (West Legalworks, 2004).

<sup>30</sup> Della Thompson, *The Concise Oxford Dictionary of Current English*, 9th ed. (Oxford University Press, 1995), 1158.

<sup>31</sup> Sylvester Udemezue, "Resolving Conundrums Regarding Legal Profession Regulation in Nigeria (Part 1)," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.4316170>.

<sup>32</sup> Barak Orbach, "What Is Regulation?," *Yale Journal on Regulation* 30, no. 1 (July 25, 2016), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2143385](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143385).

<sup>33</sup> Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended), s. 230 (for the creation of superior courts); CFRN 1999 (as amended), s. 153 (for the National Judicial Council and other judicial bodies).

<sup>34</sup> Federal Republic of Nigeria, *Legal Practitioners Act* (Revised Edition, CAP L 11, Laws of the Federation of Nigeria, 2004), ss. 24, 2, 8, 22, 9, 12, and 6.

<sup>35</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 55.

<sup>36</sup> Federal Republic of Nigeria, *Legal Education (Consolidation, etc) Act* (CAP L10, Laws of the Federation of Nigeria, 2004).

<sup>37</sup> *Legal Practitioners Act* (CAP L 11, Laws of the Federation of Nigeria, 2004), s. 10(7), 11(10).

- (vi) The Legal Practitioners (Remuneration for Legal Documentation and other Land Matters Order)<sup>38</sup>
- (vii) The Constitution of the Nigerian Bar Association<sup>39</sup>
- (viii) The Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and for Related Matters<sup>40</sup>
- (ix) The Senior Advocate of Nigeria (Functions and Privileges) Rules<sup>41</sup>

Udemezue states that subsidiary legislations that regulate the legal profession are innumerable.<sup>42</sup> They cover every field where the lawyer plies his trade.

## **B. Institutional Regulation of the Legal Profession in Nigeria**

The Profession of Law in Nigeria is subject to the regulation of diverse authorities. These authorities are statutory governmental agencies and bodies corporate which have received judicial imprimatur. These bodies include the Council of Legal Education (CLE),<sup>43</sup> the Body of Benchers (BoB), the General Council of the Bar,<sup>44</sup> the Nigerian Bar Association (NBA), the Legal Practitioners' Disciplinary Committee (LPDC), the Legal Practitioners' Privileges Committee (LPPC) and the courts. This paper shall dwell on the last four.

### **i. Nigerian Bar Association (NBA)**

The NBA is a body corporate.<sup>45</sup> It is not specifically created by statute although its existence and operations have statutory and judicial imprimatur.<sup>46</sup> The NBA is a body to which every person called to the Nigerian Bar mandatorily belongs.<sup>47</sup> Consequently, it has developed rules for the overall benefit of its members in its attempt to self-regulate.

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<sup>38</sup> Federal Republic of Nigeria, *Government Legal Notice No. 198*, 15 August 1991.

<sup>39</sup> The operative Constitution of the Nigerian Bar Association (NBA) was adopted in 2015 with the latest amendment in 2021. The constitution regulates the operations of the organs of the NBA, a body to which all lawyers in Nigeria mandatorily belong.

<sup>40</sup> The Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and for Related Matters was revised in 2022. The Guidelines was made in accordance with Section 5(2) of the LPA and contains directions for discipline and sanctions of those who adore that privilege rank. Senior Advocates of Nigeria (SAN) is equivalent to a King's Counsel (KC) in England.

<sup>41</sup> The Senior Advocate of Nigeria (Functions and Privileges) Rules 1979 was made by the Legal Practitioners Privileges Committee (LPPC) pursuant to Section 5(7) of the LPA.

<sup>42</sup> Sylvester Udemezue, "Resolving Conundrums Regarding Legal Profession Regulation in Nigeria (Part 1)," *SSRN Electronic Journal*, 2023, <https://doi.org/10.2139/ssrn.4316170>.

<sup>43</sup> Established by the Legal Education Act (n 36) following the recommendations of the Unsworth Committee.

<sup>44</sup> Nigerian Bar Association, *Constitution of the Nigerian Bar Association* (amended in 2021), s. 7(2) and (3); *Rules of Professional Conduct for Legal Practitioners 2007*, r. 7.

<sup>45</sup> The NBA was registered under the Land (Perpetual Succession) Ordinance, CAP 98 LFN and Lagos 1958, which has now advanced and transformed to become Part F (dealing with Incorporated Trustees) in *Corporate and Allied Matters Act (CAMA) 2020*, Part F, ss. 824, 825, 830, 836, and 837.

<sup>46</sup> *Chief Gani Fawehinmi v. Nigerian Bar Association & ORS* (No.2) (1989) LPELR-1259(SC); *Ben Oloko V. The Incorporated Trustees of Nigeria Bar Association, LPA*, s. 1.

<sup>47</sup> *NBA vs. Kehinde* (2017) LPELR (49798).

In *Chinwo v Owhonda*,<sup>48</sup> the Court of Appeal held that upon appellant's voluntary choice to study and practice law and thereby placing his name on the Roll of Honour belonging to the profession, he is bound by the internal rules and regulations of the NBA. Similarly, in *NBA v Kehinde*,<sup>49</sup> the Court of Appeal confirming the regulatory powers of the NBA held that 'The NBA was established for the purpose of regulating the affairs and conduct of all legal practitioners in Nigeria and upon being called to the Nigerian Bar, membership of the NBA by a lawyer is automatic and mandatory.

The NBA has shown capacity to regulate law practice in Nigeria by its role to fix the Bar Practising Fee (BPF),<sup>50</sup> issuing stamp and seal for Law Practice,<sup>51</sup> issuing Bar Practising Certificate,<sup>52</sup> ensuring Mandatory Continuing Legal Education,<sup>53</sup> role in the Legal Education of aspiring members of the Bar,<sup>54</sup> supervision of the establishment and dissolution of law firms,<sup>55</sup> prescription of functions for the General Council of the Bar,<sup>56</sup> representation in statutory bodies or government parastatals,<sup>57</sup> active participation in the appointment of judicial officers,<sup>58</sup> among others.<sup>59</sup>

## ii. The Legal Practitioners Disciplinary Committee (LPDC)

The BoB is a body of legal practitioners of the highest distinction in Nigeria.<sup>60</sup> It has the exclusive right of admitting to the Nigerian Bar, all 'fit and proper' persons certified by the CLE.<sup>61</sup> The LPDC is an arm of the BoB saddled with the responsibility to consider and determine cases of infringement of the Rules of Professional Conduct for

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<sup>48</sup> (2008) 3 NWLR (Pt. 1074) 341.

<sup>49</sup> (2017) LPELR (49798).

<sup>50</sup> *Legal Practitioners Act*, ss. 8(2), 2(3), and 10(1)(d).

<sup>51</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 10.

<sup>52</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 12(1), 12(2).

<sup>53</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 11, 12; *Legal Education (Consolidation, etc) Act*, s. 1(2), 1(3).

<sup>54</sup> *Legal Education (Consolidation, etc) Act*, s. 2(1), 2(1)(f).

<sup>55</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 13(1), 13(3) and 13(4).

<sup>56</sup> *Legal Practitioners Act*, s. 1(1); *Constitution of the Nigerian Bar Association* (2015, as amended in 2021), s. 7(2), 7(3); *Rules of Professional Conduct for Legal Practitioners 2007*, r. 7.

<sup>57</sup> These bodies include the Council of Legal Education, The Board of the Corporate Affairs Commission, the General Council of the Bar, the Body of Benchers, the Judicial Service Commission, the Legal Practitioners Privileges Committee, the Legal Practitioners Remuneration Committee, the Legal Practitioners Disciplinary Committee and others. Most of these statutory bodies render accounts of their stewardship (annual report) at NBA Annual General Meetings (AGM).

<sup>58</sup> Judicial officers are naturally appointed from the pool of legal practitioners. Federal Republic of Nigeria, *Revised National Judicial Council Guidelines and Procedural Rules for the Appointment of Judicial Officers*, 3 December 2014, r. 3(4)(iii).

<sup>59</sup> *Constitution of the Nigerian Bar Association* (2015, as amended in 2021), s. 3.

<sup>60</sup> *Legal Practitioners Act*, s. 3(1).

<sup>61</sup> Sylvester Udemezue, "CONTEMPORARY TRAINING at the NIGERIAN LAW SCHOOL: AN INSIDER'S ACCOUNT," Sylvester C. Udemezue, January 29, 2017, <https://udemsyl.wordpress.com/2017/01/29/education-at-the-nigerian-law-school-an-insiders-account/>; *Legal Practitioners Act* (CAP L 11, Laws of the Federation of Nigeria, 2004), ss. 4(1) and 4(2)(c). The Concept of 'fit and proper' begins at the point of entry. In *Okonjo v Council of Legal Education* [1979] 1 FNLR 70, it was held that the NLS may only admit and train 'fit and proper persons' irrespective of their degree certificates. The requirement to be 'fit and proper' follows successful aspirants throughout their journey as lawyers and underscores the justification for lawyers to maintain ethical standards in order to remain at the Bar.



legal Practitioners in Nigeria.<sup>62</sup> It is a quasi-administrative body with capacity to sanction erring lawyers in their professional capacities.<sup>63</sup> Although the proceedings of the LPDC is civil in nature, the far-reaching effect of its directions may be punitive on the legal practitioners found liable to the LPDC's sanctions. The LPDC's powers to handle professional legal misconduct<sup>64</sup> are as immense as its range of probable sanctions.<sup>65</sup> With the peculiar rules of proceedings applicable at LPDC,<sup>66</sup> the directions of the LPDC is appealable only to the Supreme Court.<sup>67</sup>

### iii. The Legal Practitioners Privileges Committee (LPPC)

The LPPC is one of the statutory regulators of the law profession in Nigeria.<sup>68</sup> The Chief Justice of Nigeria (CJN) appoints members of this body in consultation with the Attorney-General of the Federation.<sup>69</sup> The LPPC is saddled with enormous responsibilities impacting status and ranking at the Bar. It is the LPPC that regulates entry into the inner Bar.<sup>70</sup> Thus, the LPPC may by an instrument confer the prestigious rank of Senior Advocate of Nigeria (SAN) on distinguished members of the NBA. In consultation with the BoB, the LPPC also prescribes rules for ensuring the sustenance of the dignity of the rank and privileges attaching the rank.<sup>71</sup> The LPPC has exclusive powers to impose disciplinary directives on any SAN.<sup>72</sup> In *Honeywell Group v Ogunba*,<sup>73</sup> Kunle Ogunba, a Senior Advocate of Nigeria had his rank of the SAN withdrawn. The LPPC took the decision following a petition against the Senior lawyer for instituting multiplicity of proceedings before different judges of the Federal High Court on the same subject-matter in abuse of court process and for the purpose of frustrating justice.

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<sup>62</sup> *Legal Practitioners Act*, s. 11(1).

<sup>63</sup> (2005) CLR 7(a) (SC).

<sup>64</sup> *Legal Practitioners Act*, s. 11 and 12.

<sup>65</sup> *Legal Practitioners Act*, s. 11.

<sup>66</sup> *Legal Practitioners Disciplinary Committee (LPDC) Rules 2020*, Official Gazette No. 47 vol 107 (Government Notice No. 20) of 22 March 2020.

<sup>67</sup> Izunna Isdore Ozu, "Legal Hermeneutics of the Supreme Court Decision in *Akintokun v LPDC*: Need for Progressivism in Judicial Exegesis," *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 4 (2013): 160–73.

<sup>68</sup> *Constitution of the Nigerian Bar Association* (2015, as amended in 2021), s. 5(3); *Legal Practitioners Act* (CAP L 11, Laws of the Federation of Nigeria, 2004), s. 5(7) and 5(8); F. Oditah, "The Evolving Role of Senior Advocates in the Administration of Justice and Nation Building," in O. Ogunde, *The Senior Advocate of Nigeria: Pillar or Predator?* (Lecture delivered 1 October 2018 at the Reception for Chief Wale Taiwo, SAN, on his Elevation to the Rank of Senior Advocate of Nigeria).

<sup>69</sup> *Constitution of the Nigerian Bar Association* (2015, as amended in 2021), s. 5(5). The CJN is president of LPPC.

<sup>70</sup> Sylvester Udemezue, "An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers in Nigeria," *SSRN Electronic Journal*, 2020, <https://doi.org/10.2139/ssrn.3842835>.

<sup>71</sup> F. Oditah, "The Evolving Role of Senior Advocates in the Administration of Justice and Nation Building," in O. Ogunde, *The Senior Advocate of Nigeria: Pillar or Predator?* (Lecture delivered 1 October 2018 at the Reception for Chief Wale Taiwo, SAN, on his Elevation to the Rank of Senior Advocate of Nigeria); David, "Stripped of Rank of SAN Lawyer Cries for Justice," *The Sun Nigeria*, December 7, 2018.

<sup>72</sup> *NBA v Kalejaiye* (2016) 6 NWLR (Pt 1508) 393.

<sup>73</sup> Taiwo Ojoye, "Ogunba: 'We've Communicated Our Decision to Honeywell,'" *Punch Newspaper*, March 15, 2018.

Similarly, Beluolisa Nwofor lost his rank of SAN to unethical conduct.<sup>74</sup> In *Aondoakaa v Obot*,<sup>75</sup> the appellant was former Attorney-General and Minister of Justice of Nigeria. He deployed his office to abuse the judicial process. He meddled with the judicial process at the Election Petitions Tribunal. The court gave judgment in favour of the 1st Respondent but the Appellant wrote to the Chairman of Independent National Electoral Commission (INEC) and the Speaker of the Federal House of Representatives to ignore and disobey the judgment of the Court of Appeal. 1st Respondent instituted action against the Appellant at the Federal High Court, Calabar. The trial court gave judgment to Respondent who was plaintiff at the lower court. The Court of Appeal unanimously dismissed the appeal by Appellant. Oyewole, JCA of the Calabar Division of the Court of Appeal made the following statement in his concurring judgment.

It is unthinkable that the occupier of the exalted office of the Attorney-General would subvert the ends of justice as was crudely done in this case by the appellant... an Attorney-General should epitomize all that is good and noble in the legal profession. That office should never again be occupied by individuals of such poor quality as the appellant...the Nigerian Bar Association is invited to the facts of this case...to subject the appellant to its appropriate disciplinary processes.<sup>76</sup>

Following verdict of the court on the conduct of the Appellant, the LPPC withdrew the rank and privileges of SAN from the appellant.<sup>77</sup>

The direction of the LPPC in this respect may be supported on the grounds that at all material times, an Attorney-General carries on the business of law. His engagement with the government is qualified by his standing at the Bar. He is a Barman per excellence. However, his appointment is political, making him a prime political appointee. Hazard<sup>78</sup> rightly posits that among politicians, particularly those in elective offices, extra-legal and mundane considerations for political votes are invaluable and could validly drive certain decisions. They are regulated by standards of their offices and the definitions of their positions, external to the RPC. A lawyer-politician would be a disaster if he sticks with the ethics of the legal profession to the detriment of political exigencies. Consequently, the application of the foregoing rule, that is, to hold Attorney-General accountable for his unlawful action while in office may be disruptive if applied across board to lawyers in government irrespective of the positions they occupy. Another justification for the

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<sup>74</sup> Unini Chioma, "LPPC Restores SAN Rank to Beluolisa Nwofor," *TheNigeriaLawyer*, September 9, 2021, <https://thenigeriaLawyer.com/lppc-restores-san-rank-to-beluolisa-nwofor/>.

<sup>75</sup> (2016) 10 NWLR (Pt 154) 394.

<sup>76</sup> *Ibid.*, 327-28; Bridget Edokwe, "Matters Arising from the Decision of the Supreme Court in Michael Aondoakaa (SAN) v. Emmanuel Bassey Obot (2022)," *BarristerNG.com*, May 3, 2022, <https://barristerng.com/matters-arising-from-the-decision-of-the-supreme-court-in-michael-aondoakaa-san-v-emmanuel-bassey-obot-2022/>.

<sup>77</sup> C. A. Odikal, "Senior Advocates of Whatever," *The Guardian* (Lagos, 18 April 2022), 3.

<sup>78</sup> Geoffrey C Hazard, "The Morality of Law Practice," *Hastings Law Journal* 66, no. 2 (2015): 359-80.

direction rendered against the former Attorney-General of the Federation is that even as a political appointee, he was called to practice law as the foremost law officer of the federation. The case might be different with a sitting Senate President of the Federation whose schedule for the time being is legislation rather than advocacy. Every case must be appreciated with its peculiar facts.

#### iv. The Courts

The courts are critical regulators of the legal profession. In *LPC v Abuah*,<sup>79</sup> the Supreme Court justified the need for courts to intervene to ensure maintenance of standards and proper professional conduct by lawyers in deserving cases. The Courts may regulate the excesses of the lawyer by activating the machinery of contempt proceedings against an erring counsel<sup>80</sup> and by insisting on strict application of the rules of court and practice directions.<sup>81</sup> The courts may by their appropriate pronouncements admonish a lawyer<sup>82</sup> or refer such erring counsel for disciplinary action.<sup>83</sup>

The Supreme Court specifically derives its disciplinary powers over the legal profession in Nigeria from the LPA which exclusively pertains to infamous conduct in any professional respect by a lawyer in respect of any pending case in court.<sup>84</sup> The Supreme Court is presided over by the CJN.<sup>85</sup> The CJN may, in deserving cases direct the suspension of any lawyer from practice either prior to institution of proceedings at the LPDC, the LPPC or while such proceedings are on-going, after affording the lawyer the opportunity to make representation accordingly.

#### C. Professional Misconduct of Legal Practitioners in Nigeria.

Any act which makes an advocate unfit for the profession amounts to a professional misconduct.<sup>86</sup> It stands to reason that a person must be fit and proper in order to be qualified to be called as a lawyer and remain fit and proper in order to remain at the bar.

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<sup>79</sup> [1962] LPELR-25045 (SC). See the dictum of Ademola, JSC at pages 8 and 9, paragraphs C-E.

<sup>80</sup> *Agbachom v The State* [1970] 1 All NLR 69.

<sup>81</sup> High Court of Lagos, *Civil Procedure Rules 2019*, Orders 34 and 52; High Court of Lagos, *Civil Procedure Rules 2019*, Orders 34 and 52.

<sup>82</sup> In *Lawan v Zenon Petroleum & Gas Ltd & Ors* [2014] LPELR – 23206 (CA), the Court of Appeal per Adumein, JCA at pages 51-2 admonished counsel on appropriate manner to address a judge or court of law. Kalgo, JSC of the Supreme Court of Nigeria has on another occasion admonished lawyers not to address a judge in the third person pronoun.

<sup>83</sup> Rules of Court contain provisions which regulate conduct of lawyers in some cases. These cases include manner of prosecution, change of counsel by a litigants and others. See Orders 34 and 52 of the High Court of Lagos (Civil Procedure) Rules 2019. See also, Order 2 Rule 2 of the Federal Capital Territory (Civil Procedure) Rules 2018 for obligation on counsel to file certificate of Pre-Action Counselling. Rules of Court are meant to be obeyed.

<sup>84</sup> *Legal Practitioners Act*, s. 13 and 12(1).

<sup>85</sup> *Constitution of the Federal Republic of Nigeria* 1999 (as amended), s. 230(2)(a). The CJN has additional powers as Chairman and president of the LPPC, National Judicial Council (NJC), the National Judicial Institute (NJI) and member of the BoB. The CJN is the head of the Judiciary in Nigeria and exercises formidable authority over the legal profession in Nigeria.

<sup>86</sup> I. Tyagi, “A Critical Analysis of Professional Misconduct by Advocates in India,” *Indian Politics and Law Review Journal* 5 (2020).

Being fit and proper presupposes a minimum ‘good’ character trait. Good moral character, without more is in itself morally ambiguous and problematic.<sup>87</sup> It must therefore be contained with some level of precision determinable by law and devoid of sentiments. Consequently, in *Florida Board of Bar Examiners re: NRS*,<sup>88</sup> the court held that private, non-commercial sex acts between consenting adults were not relevant to prove fitness to practice law. Accordingly, denial of admission to the bar must be on factors with rational nexus with applicant’s fitness to practice law.<sup>89</sup> The minimum standard of conduct which a lawyer must display in all his dealings as a professional may be referred to as legal ethics. Legal ethics also known as professional ethics is a branch of moral science which deals with the duties of a lawyer to the society, the court, his professional brethren and his clients. According to Xu, Li, and Li, legal ethics when adhered to by legal practitioners build confidence and trust in the legal system.<sup>90</sup> The authors conceived the core principles of legal ethics in terms of confidentiality, integrity, and duty to court, competence and avoidance of conflict of interests by legal practitioners. These ethics may not necessarily be contained in a single rule or document nor in traditional books but in new canons of conscience which will commend the members of the calling of justice to obey rules of morality and utility. In affirming the decision of the trial court in *Rondel v Worsley*,<sup>91</sup> Lord Denning, MR remarked that:

As an advocate, he is a minister of justice equally with the judge. He must do all he honourably can on behalf of his client...the code which requires a barrister to do all this is not a code of law. It is a code of honour. If he breaks it, he is offending against the rules of the profession and is subject to its discipline...

Promoting ethical conduct and maintaining the high moral standards of the legal profession are indispensable for upholding the trust of the public in the judicial institution. In contemporary times, the profession of law has recorded abrasive reports of weighty professional misconduct involving the very senior and younger members of the Bar.<sup>92</sup> The need for regulation and discipline has never been more expedient.

Professional misconduct of legal practitioners may be classified as statutory and non-statutory.<sup>93</sup> Statutory misconduct refers to infringement of duties prescribed by the LPA or RPC. Non-statutory misconduct covers the field where statute may not have been

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<sup>87</sup> *Konigsberg v. State Bar of California* 353 U.S. 252 (1957).

<sup>88</sup> 403 So. 2d 1315 (Fla. 1981).

<sup>89</sup> *Schwartz v. Board of Bar Examiners* | 353 U.S. 232 (1957).

<sup>90</sup> Jingwei Xu, Zhengmin Li, and Siyu Li, “Legal Ethics and Professional Responsibility in the Legal Profession,” *SHS Web of Conferences* 190 (2024): 02006–6, <https://doi.org/10.1051/shsconf/202419002006>.

<sup>91</sup> [1967] 3 WLR 1666.

<sup>92</sup> L E Effiong et al., “A Conceptual Analysis of Discipline of Lawyers in Nigeria: Key to the Development of the Profession,” *Scholars Bulletin* 4, no. 2 (2018): 191.

<sup>93</sup> K Nwosu, ed., *Legal Practice Skills and Ethics in Nigeria in Honour of Chief Babatunde Abiodun Ibronke*, SAN (DCON Consulting, 2004), 194.

so broadly or specifically laid out to contain certain mischief not within the contemplation of the regulators but which professional brethren find ignoble and despicable.<sup>94</sup> They are those conducts the courts or LPDC have been held to be unfitting or unbecoming of legal practitioners in a number of cases.<sup>95</sup> Where the rules are clear and precise, their enforcement becomes a natural expectation upon breach. However, in this era of information technology and social media hype, conducts of lawyers have been given negative publicity on conducts which were hitherto known to reside outside professional competence and obligations of lawyers.<sup>96</sup>

The legal community in Nigeria was inundated with uncomplimentary comments on different social media handles following the publicity of the alleged conducts of the ‘baddest lawyer.’<sup>97</sup> Ifunanya Excel Grant is a viral social media influencer who goes with the alias of ‘Baddest Lawyer’. She has attracted escalated attention following her alleged controversial social media posts which included her nude photographs and videos of herself smoking cannabis.<sup>98</sup> Consequently, the NBA informed the legal community of its resolution to refer Ifunanya and two others to the disciplinary committee for professional misconduct.<sup>99</sup> News of the reference was received with mixed feelings by legal practitioners across board. While many welcome the development, particularly for the ‘baddest lawyer,’<sup>100</sup> others are of the opinion that lumping the three lawyers together was an over-kill for Ifunanya.

Professor Cyril Ndifon is a don at the University of Calabar. He was former Dean of Law alleged to have a penchant for habitual sexual harassment of female law students. His case was one of judicial notice.<sup>101</sup> He was suspended for sexual predatory acts on students in 2015 but re-instated in 2021. His attempt to stop his investigation for rape of a student was blocked by the Federal High Court, Calabar Division which validated his suspension.<sup>102</sup> His perversion for sex reached a crescendo when the entire students of the

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<sup>94</sup> *Legal Practitioners Act*, s. 2(1)(a) and 12(2).

<sup>95</sup> Re Idowu (1971) All NLR 128.

<sup>96</sup> P C Aloamaka, “Data Protection and Privacy Challenges in Nigeria: lessons from Other Jurisdictions,” *UCC Law Journal* 3, no. 1 (2023): 281–321, <https://doi.org/10.47963/ucclj.v3i1.1259>.

<sup>97</sup> Sunny Green Itodo, “‘I’m Not Practising Law’ - ‘Baddest Lawyer’ Ifunanya Replies NBA (VIDEO),” *Daily Post Nigeria*, August 24, 2023, <https://dailypost.ng/2023/08/24/im-not-practising-law-baddest-lawyer-ifunanya-replies-nba-video/>.

<sup>98</sup> Unini Chioma, “‘The Baddest Lawyer’ Clarifies: Fake Social Media Accounts Attributed to Her, Emphasizes Focus on Modeling and Music, Not Practicing Law,” *TheNigeriaLawyer*, August 23, 2023, <https://thenigerialawyer.com/the-baddest-lawyer-cliarifies-fake-social-media-accounts-attributed-to-her-emphasizes-focus-on-modeling-and-music-not-practicing-law/>.

<sup>99</sup> Solomon Odeniyi, “NBA Drags Adamawa REC, ‘Baddest Lawyer’ before Disciplinary Committee,” *Punch Newspapers*, August 19, 2023, <https://punchng.com/nba-drags-adamawa-rec-baddest-lawyer-before-disciplinary-committee/>.

<sup>100</sup> W Nnaemeka, “‘Baddest Lawyer’ Ifunanya Gains Support as Legal Professionals Fault NBA’s Petition over Nude Photos,” *The Whistler Newspaper*, August 20, 2023, <https://thewhistler.ng/baddest-lawyer-ifunanya-gains-support-as-legal-professionals-fault-nbas-petition-over-nude-photos/>; Y. Gbenga-Ogundare, “NBA vs Baddest Lawyer: Does the NBA Have a Case?” *Nigerian Tribune* (Ibadan, 30 August 2023).

<sup>101</sup> *Ndifon v University of Calabar*, NICN/CA/01/2016 (National Industrial Court, Calabar, judgment delivered by Justice E. Agbakoba, 21 September 2016).

<sup>102</sup> *Professor Cyril Osim Ndifon v Independent Corrupt Practices and Other Related Offences Commission (ICPC) & Anor.*, Suit No: FHC/CA/M19/2016 (Federal High Court, Calabar).



Faculty of Law engaged in an organised civil protest calling for his removal as Dean of Law. The university suspended him accordingly.<sup>103</sup>

Hudu Yunusa-Ari was alleged to have been called to the Bar in 1992. He was appointed a Resident Electoral Commissioner (REC) for Adamawa State by President Muhammadu Buhari. Though he was politically appointed, his basic qualification for the appointment was his qualification as a lawyer. He allegedly sabotaged the electoral process in Adamawa State when he announced a certain Binani as winner of the election while voting was on-going.<sup>104</sup> The Independent National Electoral Commission (INEC) set aside his unlawful declaration and proceeded to conclude the elections, announcing a different winner.<sup>105</sup> He was consequently suspended as a REC with various bribery allegations levelled against him. He is currently being prosecuted for election fraud.<sup>106</sup>

Ifunanya, ‘the Baddest Lawyer’ is a young lawyer. She is a social media influencer, a model, singer and entertainer ever before she was called to the Bar in 2021. Besides her mandatory payment of the first Bar Practicing Fee (BPF) which is prerequisite for call to the Bar, she is not known to have paid subsequently. She is not known to have paid any dues to any Bar branch in Nigeria as practice demands.<sup>107</sup> She has not been employed anywhere as a lawyer or held herself out as anything but a model and entertainer despite her qualification as a lawyer. Her alleged citing or reference for disciplinary action to the LPDC together with other well established lawyers raised several questions.

First, what should be the basis to hold a lawyer liable to compliance with professional conduct and its attendant discipline? Second, having been called to the Nigerian Bar, can one quit by choosing any other vocation, business or career which does not bring one within the court room practice or lawyer-client relationship as to be exempt from the radar, supervision and sanctions of the NBA and LPDC? Third, should every conduct of a lawyer outside his professional capacities be subject of concern to the NBA for which a reference may be made to LPDC?

In attempting to answer the foregoing questions, it is expedient to review the basis for NBA’s disciplinary regulations over a lawyer in Nigeria. These bases are discussed under the models below.

### **i. Membership model**

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<sup>103</sup> Richard Ndoma, “Suspended UNICAL Dean Drags VC, 3 Others to Court over Alleged Defamation,” *Leadership News*, September 4, 2023.

<sup>104</sup> C. Okocha, A. Enumah, A. Akinwale, and D. Sani, "INEC Suspends Adamawa REC As Binani Seeks Judicial Review of Her Announcement," *This Day* (Lagos, 18 April 2023).

<sup>105</sup> *Ibid.*

<sup>106</sup> Bankole Abe, “INEC Drags Suspended Adamawa REC to Court, Files 6-Count Charge,” *International Centre For Investigative Reporting*, July 6, 2023, <https://www.icirnigeria.org/inec-drags-suspended-adamawa-rec-to-court-files-6-count-charge/>.

<sup>107</sup> Bridget Edokwe, “Baddest Lawyer Is Not Our Member, She Is Unknown to Us - NBA Aba Branch Disowns Ifunanya Grant Esq [See Notice of Disclaimer],” *BarristerNG.com*, August 22, 2023, <https://barristerng.com/baddest-lawyer-is-not-our-member-she-is-unknown-to-us-nba-aba-branch-disowns-ifunanya-grant-esq/>.

This is the take-off point for every argument on lawyer's discipline in Nigeria.<sup>108</sup> Membership of the Bar is voluntary. However, once one elects to belong to the legal profession in Nigeria, being a member of the NBA is not only compulsory but statutory.<sup>109</sup> To this end, a member of the NBA is subject to the prescriptions of the Association.<sup>110</sup> Those prescriptions are in duties, obligations, and privileges.<sup>111</sup> The privileges do not inure in favour of the lawyer because he is called to the Bar and no more, but because his is fulfilling his obligations to the Association. These obligations include the payment of the annual Bar Practicing Fee (BPF),<sup>112</sup> annual Local Bar Dues (LBD) and payment and obtaining of the Stamp and Seal for each year of practice.<sup>113</sup> It is posited that since there is no law prescribing any honourable mode of exit from the Bar except by death or upon a member's name being struck off the roll of legal practitioners by the Supreme Court of Nigeria, payment of the BPF and LBD should suffice to renew or affirm a lawyer's membership of the NBA. Conversely, failure to effect the payments should be regarded as an honourable exit from the Bar. This is more apposite as to practice law in Nigeria, for non-judicial officers, without payment of BPF tantamount to professional misconduct.<sup>114</sup> The NBA is mandated to publish in every year, the Annual Practicing List (APL) which shall function as a directory of lawyers who paid their BPF and have complied with the requirements of the continuing Professional Development Programme for the year.<sup>115</sup> Such lawyers whose names and particulars are in the APL shall be issued with the Annual Practicing Certificate (APC) operated by the NBA for the particular year.<sup>116</sup> A legal practitioner who does not have the APC in a relevant year shall not conduct legal proceedings or frank legal documents.<sup>117</sup>

In the light of the forgoing statutory provisions, membership of the NBA upon being called to the Bar and enrolled at the Supreme Court no longer suffice to qualify one to practice law in Nigeria. Consequently, the application of this model in all cases and as a general rule has brought much concern as it broadens rather than narrows down targets for disciplinary actions thereby giving the rather cosmetics impression that the profession is diminishing in ethical standards. It therefore stands to reason that in considering who a legal practitioner is for the purpose of discipline for misconduct in a professional

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<sup>108</sup> *Legal Practitioners Act* (CAP L 11, Laws of the Federation of Nigeria, 2004), s. 24 and s. 2(1).

<sup>109</sup> *Ben Oloko v The Incorporated Trustees of the Nigerian Bar Association*, Suit No: OB/27/2020 (Enugu State High Court, Obollo-Afor, judgment delivered by Justice R. O. Odugu, 29 July 2022), referencing Constitution of the Nigerian Bar Association (2015, as amended in 2021), art. 4(1); A Ejekwonyilo, "Court Declares NBA Membership Compulsory for Nigerian Lawyers," *Premium Times*, November 2022.

<sup>110</sup> *Chinwo v Ow'honda* [2008] 3 NWLR (Pt 1074) 341; *Gani Fawehinmi v NBA (No. 2)* [1989] 2 NWLR (Pt 105) 558, 628; *NBA v Kehinde* [2017] 11 NWLR (Pt 1576) 225, 250-51 (per Nimpár, JCA).

<sup>111</sup> A O Okoye, *Law in Practice in Nigeria: Professional Responsibilities and Lawyering Skills* (Snaap Press Nigeria Limited, 2011), 24–29.

<sup>112</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, rr. 9(1) - 9(3); *Legal Practitioners Act*, s. 8(2).

<sup>113</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 10.

<sup>114</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 9; *Rules of Professional Conduct for Legal Practitioners 2007*, r. 55(2).

<sup>115</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 12(1).

<sup>116</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 12(2).

<sup>117</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 12(3).

capacity, notice should be taken of such a lawyer's statutory capacity to practice law in the relevant year. In the absence of such statutory capacity, such lawyer should be deemed to have honourably exited the profession.

## ii. Functionality or utility model

This model emphasises the capacity in which the offending conduct was carried out. A lawyer's work in its pristine nature may be identified within the four domains of: negotiation, giving legal advice, litigation and legal documentations.<sup>118</sup> The foregoing crystallises as the business of law or legal practice which has elicited measures from regulators to flush out quacks. Within the business of law, client' interest, access to justice, relationship with colleagues and the end of justice may be prioritised and guarded jealously. The requirement for stamp and seal as well as the APC which area part of measures instituted to identify 'practising lawyers' affects only legal practitioners who are practising the profession.<sup>119</sup> A lawyer who elects to practise another vocation other than the law may not be caught by the practice-requirements. Okoye suggests that a lawyer in salaried employment for a company in a capacity other than as a law officer should not be bound by the practice requirements.<sup>120</sup> Such a lawyer's employment defines his allegiance. This is because human imagination about ethics, as about almost every aspect of life, is constrained by the historical, social and cultural situations in which one finds oneself.<sup>121</sup> A few examples would make this assertion much clearer.

Where, for instance, a police officer who is also a legal practitioner behaves in a manner tolerable by the Police Service Commission but which is unbecoming of a legal practitioner in Nigeria, would the NBA refer such a member for disciplinary action when his employer has not found him wanting?<sup>122</sup> Another crystal example is the case of lawyers in military service. A soldier is an agent of the sovereign irrespective of his primary discipline and may be subject to some operational codes such as the *Lincoln's Code*<sup>123</sup> and other 'non-legal' norms such as the Geneva Convention. The military uniform on a soldier in the war front does not detract from the fact that such an agent is a

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<sup>118</sup> Geoffrey C Hazard, "The Morality of Law Practice," *Hastings Law Journal* 66, no. 2 (2015): 363.

<sup>119</sup> *Rules of Professional Conduct for Legal Practitioners 2007*, r. 10 and 11.

<sup>120</sup> A O Okoye, *Law in Practice in Nigeria: Professional Responsibilities and Lawyering Skills* (Snaap Press Nigeria Limited, 2011), 44. A legal practitioner employed as a marketing manager in a company or operations manager in a bank is not obviously acting in the capacity of a lawyer.

<sup>121</sup> ME Tigar, "Crises in the Legal Profession: Don't Mourn, Organize'," *Ohio Northern University Law Review Symposium Articles* 37, no. 3 (2011): 37, 539.

<sup>122</sup> Bridget Edokwe, "Disregard to Valid Court Order and Violation of Human Rights by Mr. E. A. Iregebor, Esq. Of the Nigeria Police Force, FCT Command Abuja: A Call on the Human Rights Community," *BarristerNG.com*, October 3, 2023, <https://barristerng.com/disregard-to-valid-court-order-and-violation-of-human-rights-by-mr-e-a-iregebor-esq-of-the-nigeria-police-force-fct-command-abuja-a-call-on-the-human-rights-community/>; The Warri Branch of the NBA under the Chairmanship of John Aikpokpo-Martins once challenged and profiled a Divisional Police Officer (DPO) who was at the time harassing lawyers, detaining lawyers who came to apply for bail of their clients and damning the consequences. The DPO informed the leadership of the Bar that he was posted to Warri to do Police work, not lawyer's work. He insisted that only the Police Service Commission could call his conducts into scrutiny.

<sup>123</sup> John Fabian Witt, *Lincoln's Code: The Laws of War in American History* (New York: Free Press, 2012).

lawyer if he were called to the bar. However, at the point of such military operations, it would be bizarre to hold him accountable to the provisions of the RPC because he was called to the bar. If for instance, a well-known member of the Bar becomes enthroned as a monarch in which situation he quits court appearances and sundry obligations to the NBA, should the RPC apply to his conducts and affairs which may be widely objectionable within the legal community but which he performed in the best interest of his subjects in his capacity as their monarch?<sup>124</sup> A situation where a chartered accountant who is also qualified as a legal practitioner in Nigeria is found to have ‘cooked the books’ or have superintended over such magnitude of fraud as to cast aspersions on his integrity as a lawyer, though he has never practised law after he was called to the Bar, would the NBA deploy its resources against the fraudulent accountant-lawyer?<sup>125</sup> Again, where a legal practitioner is elected to the National Assembly and he deploys his position as a parliamentarian to defraud and collect bribes of such magnitude as to bring his status as a legal practitioner into disrepute, would the NBA refer such to the LPDC?<sup>126</sup> Where a legal practitioner who ekes out a living through music and entertainment performs in a classified concert, smokes substances suspected to be cannabis and in order to excite his fans, goes completely nude on stage, should NBA wield the ‘big stick’ upon the video of such performance going viral on social media?<sup>127</sup>

In the case of the police officer, at the time he conducted himself unprofessionally, he was in police uniform discharging his policing functions.<sup>128</sup> In the soldier’s analogy, he was at the time subject to certain mores distinct from mores of legal profession. In the hypothetical case of the monarch, upon his enthronement, his primary

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<sup>124</sup> N Binani and I M Giginyu, “Meet Judges Who Are Now Traditional Rulers,” *Daily Trust*, May 25, 2019, <https://dailytrust.com/meet-judges-who-are-now-traditional-rulers/>; F T Oghenesivbe, “The Impressive Biography of HRM, Orodje of Okpe Kingdom and Chairman, Delta State Council of Traditional Rulers,” *Delta Pride*, January 26, 2022, <https://deltaprideng.com/2022/01/26/the-impressive-biography-of-hrm-orodje-of-okpe-kingdom-and-chairman-delta-state-council-of-traditional-rulers/>; Several Lawyers in Nigeria have answered the call to serve their subjects as traditional rulers. These monarchs include HRM Felix Agho Mujakperuo who was called to Bar in 1985 and rose through the ranks to become head of Nigerian Army Legal Services.

<sup>125</sup> Lesi Nwisagbo, “As Granny, I Studied for Longer Hours to Catch up with My Younger Classmates – Ajayi, Retired Chartered Accountant Called to Bar at 68,” *Punch Newspaper*, August 22, 2021, [https://punchng.com/as-granny-i-studied-for-longer-hours-to-catch-up-with-my-younger-classmates-ajayi-retired-chartered-accountant-called-to-bar-at-68/#google\\_vignette](https://punchng.com/as-granny-i-studied-for-longer-hours-to-catch-up-with-my-younger-classmates-ajayi-retired-chartered-accountant-called-to-bar-at-68/#google_vignette).

<sup>126</sup> Q E Iroanusi, “Akpabio Names Lawmakers Who Got NDDC Contracts,” *Premium Times*, July 27, 2020, <https://www.premiumtimesng.com/news/headlines/405270-akpabio-names-lawmakers-who-got-nddc-contracts.html?tztc=1>; Senators James Manager and Peter Nwaoboshi indicted in the NDDC forensic audit for shady deals are Senior Members of the NBA. No reference has however been made against them to the LPDC.

<sup>127</sup> EDWIN USOBOH, “Top Nigeria Entertainers Who Are Lawyers - New Telegraph,” *Newtelegraphng.com*, August 6, 2021, <https://newtelegraphng.com/top-nigeria-entertainers-who-are-lawyers/>; Mr. Folarin Falana (Falz), a lawyer whose parents are both Senior Advocates of Nigeria, is a musical stage entertainer.

<sup>128</sup> Solomon Odeniyi, “NBA Drags Adamawa REC, ‘Baddest Lawyer’ before Disciplinary Committee,” *Punch Newspapers*, August 19, 2023, <https://punchng.com/nba-drags-adamawa-rec-baddest-lawyer-before-disciplinary-committee/>; The Police Service Commission is the disciplinary authority over senior police officers in Nigeria except the Inspector General of Police. It has the powers to dismiss erring senior police officers who are lawyers without recourse to the NBA.

obligation and allegiance goes to his subjects and neither to the law profession nor to the courts. Regarding the accountant-lawyer, a case of double jeopardy would arise should he be disciplined over the same act by the two professional bodies to which he belongs.<sup>129</sup> The parliamentarians are like the police officer who at the time of the professional misconduct is subject to such authorities and rules external to the Bar. The case of the musical entertainer may pose a moral burden to the NBA given that the NBA had in the past invited some weird musical entertainers at great cost to its functions.<sup>130</sup> The legal profession gatekeepers should be concerned about the contrariness of the lawyers' corporate morality and the possibilities of true justice. The functionality model tends to narrow the disciplinary powers of the gatekeepers of the profession confining such regulatory powers to those in actual law-practice, who come in direct contact with institutions as legal practitioners to avoid distractions, particularly in this era of information technology.

The endeavours into which lawyers engage outside the strict legal profession are numerous.<sup>131</sup> The problem with the law therefore lies with the definition of a legal practitioner in Nigeria. The Preamble to the American Bar Association Model Rules defines "a lawyer, as a member of the legal profession, as a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice."<sup>132</sup> The foregoing definition exempts person who are not at the material time carrying out the practice of law. This is imperative as global trend shows lawyers venturing into other areas of livelihood such as technology. Ikpeze<sup>133</sup> posits that legal education must diversify for law, law students and lawyers to impact positively in today's world since education, including legal education are driven by new market dynamics of demand and supply. Accordingly, Menkel-Meadow<sup>134</sup> argues that moral judgments in professional ethics should depend on the demands of the profession or occupation both in its duties and obligations to clients or constituencies. The author suggests some nexus of the personal behaviour to the professional role or business as prerequisite to cite a practitioner for misconduct. This is in line with the IBA International Principles on

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<sup>129</sup> Benjamin O. Igwenyi, Iruka Nwakpu, and Onyekachi Eni, "A JURISTIC OVERVIEW of the CONSTITUTIONAL LAW DOCTRINE of DOUBLE JEOPARDY in NIGERIA," *African Journal of Law and Human Rights* 4, no. 1 (April 16, 2020), <https://journals.ezenwaohaetorc.org/index.php/AJLHR/article/view/992>.

<sup>130</sup> BAYO AKINLADE, "2023 NBA Annual Conference: Evaluating the Impact of Unbarred Events, AGM," *Independent Newspaper Nigeria*, September 7, 2023, <https://independent.ng/2023-nba-annual-conference-evaluating-the-impact-of-unbarred-events-agm/>.

<sup>131</sup> M. Kayode, "Top Nigerian Pastors You Never Knew Were Lawyers," *The New Man* (Lagos, 13 September 2023); D Elumoye, "Tinubu: Subomi Balogun, an Icon, Model for Generations of Bankers, Lawyers – THISDAYLIVE," *This Day*, July 8, 2023, <https://www.thisdaylive.com/index.php/2023/07/08/tinubu-subomi-balogun-an-icon-model-for-generations-of-bankers-lawyers/>. Lawyers are employed as in-house counsel in banks and construction firms. Some lawyers engage in religions employments to become Imams, Bishops, Chief Priests, and so on.

<sup>132</sup> American Bar Association, *Model Rules of Professional Conduct*, Preamble (2013).

<sup>133</sup> Ogugua V. C. Ikpeze, "Legal Education in the 21st Century Nigeria: Need for Diversity in Content Paradigm," *Journal of Law, Policy and Globalization* 39, no. 0 (2015): 63.

<sup>134</sup> Carrie Menkel-Meadow, "Private Lives and Professional Responsibilities? The Relationship of Personal Morality to Lawyering and Professional Ethics," *Pace Law Review* 21, no. 2 (April 1, 2001): 374, <https://doi.org/10.58948/2331-3528.1254>.



Conduct for the Legal Profession<sup>135</sup> which identified issues relating to conduct of legal practitioners in the global market relating them to the business or practice of law. The Council of Bars and Law Societies of Europe have shown common alignment on ethical questions towards conducts bothering on the business and practice of law.<sup>136</sup> The legal profession in the present global dynamics cannot be subjected to mundane local cultural sentiments which has coloured the understanding of professional corporate morality of the NBA. In China, the increasing global legal market has resulted in the influx of lawyers from other countries with more liberal approach to the Chinese ideology of a lawyer's public duties.<sup>137</sup> Consequently, it would be uncharitable to transform the NBA into a moral compass for lawyers in diverse walks of life. The result of the NBA's 'moral dragnet' waiting for every lawyer irrespective of the functions or utility of the lawyer at the time of the 'offending' conduct would be a total absurdity or selective justice. The thin line dividing professional misconduct and private morality should be identified and respected. In the light of the foregoing, the functionality model for holding lawyers to comply with the RPC should be adopted to limit the emerging cases of professional misconduct for legal practitioners in Nigeria.

#### **D. Professional misconduct in South Africa: a gist**

South Africa shares common law history with Nigeria. There has been a meteoric rise in cases of legal practitioners' misconduct. By August 2024, 50 lawyers have received disciplinary directions from the Legal Practice Council.<sup>138</sup> The South African Constitutional Court of Appeal observed that the surge in ethical complaints threatens the public trust in the legal system and undermines the foundation of justice.<sup>139</sup> The cases for which lawyers were cited for misconduct ranged from contempt of court to financial dishonesty with clients which situates the process within the business of law. None relates to private morality of the lawyers.

The Federation of Law Societies of Canada's Model Code of Professional Conduct<sup>140</sup> identifies a broad range of cases which amounts to professional misconduct, the corollary of which is the obligation of colleagues in the profession to report to disciplinary authorities. The model aligns with the South African model. These instances relate to misappropriation of trust monies, abandonment of law practice, criminality,

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<sup>135</sup> International Bar Association, *International Principles on Conduct for the Legal Profession* (2011).

<sup>136</sup> Mary Ann Glendon, William P. Alford, and Maynard E. Pirsig, *Legal Ethics: Professional Responsibility and Moral Obligation* (Britannica, 2024).

<sup>137</sup> *Ibid.*

<sup>138</sup> Lundi Mqina, "Unethical Surge: South Africa's Legal Profession Faces Integrity Crisis — Canon Collins Trust," Canon Collins Trust, August 30, 2024, <https://canoncollins.org/news/unethical-surge-south-africas-legal-profession-faces-integrity-crisis/>.

<sup>139</sup> *Hewetson v Law Society of Free State* (948/2018) [2020] ZASCA 49 (5 May 2020).

<sup>140</sup> Thomas Harban, "Are Legal Practitioners Obligated to Blow the Whistle on Unethical Conduct of Their Peers? - de Rebus," De Rebus, August 31, 2023, <https://www.derebus.org.za/are-legal-practitioners-obliged-to-blow-the-whistle-on-unethical-conduct-of-their-peers/>; *Legal Practice Act* [LPA] 2014 of South Africa, §§ 95 & 109.

dishonesty, incompetence, inability to provide professional services and any prejudicial situation in which a client may be subjected.<sup>141</sup>

The following suggestions are recommended: *First*, the LPDC's disciplinary powers should be confined to conducts done in professional capacity. This would narrow down the conducts to be cited for misconduct and reduce public interference and commentaries in the affairs of the Bar. Professional misconduct should be cited only in cases where a crime has been committed under a written law or on any activity relating to the business of law. *Second*, the LPA should be amended to suggest situations when a lawyer should be deemed to have quit the Bar. Lawyers should be allowed egress into the bar voluntarily as they were allowed ingress. Nigeria should covet the South African Model where colleagues are among other things obligated to report abandonment of practice has a way to keep a tab on those in practice and eliminate doubts over those engaged in other careers outside legal practice. *Third*, failure by a lawyer to comply with financial obligations to the NBA and Supreme Court should be deemed as an honourable exit from the Bar. Consequently, a lawyer who has not paid BPF and other dues which statutorily deprive such a lawyer of stamp and seal and APC for a prescribed number of years should be deemed to have quit the Bar and should require consequential application to be re-admitted. *Fourth*, there should be no omnibus grounds in the enforcement of professional conduct against legal practitioners. The facts or grounds constituting professional misconduct should be expressly stated and without ambiguity.

#### **D. CONCLUSION**

Professional ethics is a code of conduct for professionals. This article has considered the recent and emerging cases of references for professional misconduct against lawyers to the LPDC. The model of functionality or utility as rationale for exerting discipline on perceived erring legal practitioners is highlighted and preferred over and above the traditional membership model. The law which gave a sweeping authority to the NBA to scrutinise all conducts of its members even where such conducts are not within professional compass should be reformed. The Bar should strive to have firm grip on the standards and ethics of its members if the legal professional must retain its place of pride as a noble profession among the comity of professions in Nigeria. However, in so doing, individual morality must be identified and severed from the corporate morality of the legal profession. The limits to which law may be deployed to enforce morality in the legal profession should not be blurred.

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