Rethinking Ethics at the Bar and Bench: Two Sides of a Coin

It is a privilege to be invited by the Body of Senior Advocates of Nigeria at Abuja, to speak at its 2014 Special Dinner event. I must start by thanking the leadership of the Body of Senior Advocates at Abuja for the privilege of being able to share with the audience, my thoughts on a subject, whose importance to our profession and the administration of justice, particularly at this point, has been brought to the front burner as it rightfully should. It is the subject of the importance of ethics in maintaining standards at the Bar and the Bench. It is something which benefits us all as lawyers as well as the people who rely on our services – Clients! It also benefits us all as citizens active or retired as justice administration is something which we all rely on to live peacefully in the pursuit of happiness. Ethics and standards at the Bar and Bench (or the lack of it) are really two sides of the same coin. Ethics in both professions enhance the common good rather than diminish it.

My point of reflection and invitation of this audience to it, is this - Ethics is the quest for a life worth living: putting every activity & goal in its place, knowing what is worth doing & what is not worth doing. It is also, within business itself, keeping in mind what is ultimately important and essential & what is not, what serves our overall career goals & what does not, what is part of business & what is forbidden to business, even when increased profit – the most obvious measure of business success – is at stake.¹

OVERVIEW

Legal ethics refers to an ethical code governing the conduct of persons engaged in the practice of law and persons more generally in the legal sector. They are the standards of professional conduct applicable to members of the legal profession.² In one sense, the term “legal ethics” refers narrowly to the system of professional regulations governing the conduct of lawyers. In a broader sense, however, legal ethics is understood in the central traditions of philosophy and religion. From this broader perspective, legal ethics cuts more deeply than legal regulation; it concerns the fundamentals of our moral lives as lawyers.³

¹ R.C Solomon, Ethics and Excellence: Cooperation and Integrity in Business, Oxford University Press, 1992
³ Deborah L.Rhode & David Luban, Legal Ethics 3 (1992)
Undoubtedly, all regulated professions including the legal profession, have rules of professional ethics, which regulate the conduct of their members inter se, and towards other members of the society. Accordingly, the International Bar Association (IBA) was developed by the IBA International Principles on Conduct for the Legal Profession (IBA International Principles)⁴ for practicing lawyers across the globe to enable legal practitioners carry out their professional duties in a manner consistent with upholding the dignity and respect of the profession in relation to their clients.

Through fostering a climate of understanding about national and international rules that govern the conduct of lawyers, the aim is that the ideals and integrity of the legal profession will be promoted worldwide. The core values constituting the IBA International Principles include Independence; Honesty, integrity and fairness; Conflicts of interest; Confidentiality/ professional secrecy; Clients’ interest; Lawyers’ undertaking; Clients’ freedom; Property of clients and third parties; Competence; and Fees. The “IBA International Principles” serve as a basis for codes of conduct throughout the global legal profession and beyond.

In the same vein, the IBA Guidelines on Party Representation in International Arbitration⁵ were enacted as IBA’s challenge to finding a uniform set of ethical standards and rules of professional conduct that can cut across the differing landscape of legal systems across the globe. They provide a framework for parties and their representatives to identify appropriate conduct and behavior within the context of international arbitral proceedings.

In Nigeria, the Rules of professional Conduct for Legal Practitioners regulate the conduct of legal practitioners and ensure that Legal practitioners conform to the ethical standards in the profession. It stipulates amongst others that it is the general responsibility of a lawyer to uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and not engage in any conduct which is unbecoming of a legal practitioner.⁶

The key question to be considered in this paper is whether the actions of legal practitioners in Nigeria encourage public confidence in the administration of justice and in the legal profession. This paper therefore seeks to examine the ethics and standards in the Legal profession in Nigeria.

THE IMPORTANCE OF ETHICS AND STANDARDS AT THE BAR

The relevance of ethics and standards in the legal profession cannot be over emphasized as lawyers are integral to the workings of the law and the Rule of Law itself is founded on principles of justice, fairness and equity. Accordingly, if lawyers do not adhere and promote ethical principles, then the law will fall into disrepute.

---

⁵ This Guidelines were adopted by the International Bar Association Council, at its session of May 25, 2013.
As lawyers are professionals, a sound knowledge of the law and the application of the Rules of Professional Conduct in the legal profession are necessary. This concept of professionalism conveys the notion that issues of ethical responsibility and duty are an inherent part of the legal profession. It has been said that a profession’s most valuable asset is its collective reputation and the confidence which that inspires. Consequently, the legal profession especially must have the confidence of the community. Professionalism in the legal profession relates to the education and training required for members of the legal profession. It encompasses the need for them to receive and manifest this high level of training, learning and professional approach to the practice of this profession.

Furthermore, ethics in the legal profession is important because lawyers are admitted as officers of the court and therefore have an obligation to serve the court and the administration of justice.

THE POINT COMMUNIQUE ISSUED BY THE SECTION OF LEGAL PRACTICE OF THE NIGERIAN BAR ASSOCIATION

The point communiqué issued by the Section of Legal Practice of the Nigerian Bar Association on November 15, 2012 contains a clarification of what ethics and professionalism in relation to the legal profession is. It reads among other things that –

- A lawyer lives for the direction of his people and the advancement of the cause of his country”, therefore as lawyers, we owe a duty to the society to observe the intrinsic rules of basic fairness, equality and justice. We are to carry out our profession in the spirit of these three ideals; organization, learning and a spirit of public service.
- Lawyers should at all times uphold the core traditional values that underline the very essence of our calling as professionals.
- That the NBA and its members should ensure the observance of ethical codes amongst its members and be at the forefront of the fight against impunity in Nigeria and champion the reform of the polity.
- Public office holders should demonstrate a higher sense of responsibility, accountability and respect for the rule of law.
- The NBA is urged to keep faith with its National Executive Committee (NEC) decision to set up a viable Anti-Corruption Committee/Commission.
- Reading is a veritable source of intellectual development and accordingly, lawyers should be encouraged to maintain the reading culture and embrace other forms of continuing legal education to improve their professional skills.

---

7 This Point communiqué was issued by the Section of Legal Practice of the Nigeria Bar Association on November 15, 2012 after its meeting at Ibadan.
Control of Incidents of Litigation

At common law, once a legal practitioner has accepted a brief, he had the implied authority of the client to control the incidents of the trial of the case. He could decide the number of witnesses to call in the proceedings, the questions to ask in examination in chief and cross-examinations as well as whether to cross examine witnesses for the opposing party or not. He also had the authority to opt for discussions on an out of court settlement of the case with the opposing counsel. All these he could do on behalf of the client without first informing the client, except where the client expressly forbade the legal practitioner from exercising any of these powers unilaterally at the time of giving their brief to the lawyer.8

Recently however, the scope of authority of counsel handling a case in court to take decisions without prior consultation with the client appears to be whittling down. Accordingly, the Rules of Professional Conduct for Legal Practitioners 2007 provides as follows:

- The lawyer shall be responsible for taking decisions in respect of incidental matters not affecting the merit of the case or operating to prejudice substantially the right of a client9

It further provides as follows:

- In matters not directly affecting the merit of the case or operating to prejudice the rights of the client, the lawyer may, to the exclusion of his client, determine what accommodations to be granted to the opposing lawyer.

The Rules therefore expressly prohibits the lawyer from taking unilateral decisions affecting the merits of a case he is handling without first consulting the client.

Representing a Client within the bounds of law

While representing his client, it is the lawyer’s duty to do so within the bounds of law. He should not breach any law or rule even if his client desires that he should do so and no matter how much he is paid by the client. A lawyer should not advise his client to breach the law or influence judicial decisions through bribery. A lawyer should not fabricate facts or evidence and he must not undertake fraudulent or illegal activities on behalf of his client.10

In his representation of his client, a lawyer shall keep strictly within the law notwithstanding any contrary instruction by his client and, if the client insists on a breach of the law, the law shall use his best endeavours to restrain and prevent his client from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if the client persists in his action or conduct, the lawyer shall terminate their relations.

---

8 See Adewumi v Plastex Nig Ltd (1986) 2 NSCC 852. However, the decision of the Supreme court in the case appears not to be current law in Nigeria by virtue of the Rules of Professional Conduct 2007.
9 Rule 24(4) Rules Of Professional Conduct For Legal Practitioners 2007
10 Rule 15 (3) (i) and (j) Rules Of Professional Conduct For Legal Practitioners 2007
In his representation of his client, a lawyer shall not give service or advice to the client which he knows or ought to know is capable of causing disloyalty to, or breach of, the law, or of bringing disrespect to the holder of a judicial office, or involving corruption of holders of any public office. Lawyers are enjoined to inform their clients of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of the clients. However, he must not conceal or knowingly fail to disclose that which he is required by law to reveal.

Where in the course of his legal representation of his client, a lawyer receives clearly established information that the client has perpetrated a fraud upon a person or tribunal, \(^{11}\) he shall promptly call on his client to rectify it, and if his client refuses or is unable to do so he shall reveal the fraud to the affected person or tribunal, except when the information is a privileged communication; and if the person who perpetrated the fraud is not his client, the lawyer shall promptly reveal the fraud to the tribunal.

**Fellowship and Precedence**

The Rules of Professional Conduct provide that lawyers should treat one another with respect, fairness, consideration and dignity, and shall not allow any ill-feeling between opposing clients to influence their conduct and demeanour towards one another or towards the opposing parties.\(^ {12} \) It is unethical for counsel to criticize his colleague, challenge the procedure that he adopts in handling the matter or question his motive for seeking adjournment. A legal practitioner should not see the matter he handles for his client as a matter of life and death or be overly interested in securing victory in his client’s case.

Furthermore, the Legal Practitioners Act\(^ {13} \) provides that legal practitioners appearing before any court, tribunal or a person exercising jurisdiction conferred by law to hear and determine any matter (including an arbitrator) shall take precedence among themselves according to the table of precedence set out in the First Schedule to the Act. The first schedule referred to in section 8(4) of the Act clearly states the table of precedence as follows:

a. The Attorney-General of the Federation
b. The Attorney-General of the States in order of seniority as Senior Advocates of Nigeria and thereafter in order of seniority of enrolment.
c. Persons authorized to practice as legal practitioners by virtue of paragraph (b) of subsection (3) of section 2 of the Act
d. Persons whose names are on the roll in order of seniority of enrolment
e. Persons authorized to practice by warrant.

---

\(^{11}\) Tribunals include court

\(^{12}\) Rule 26(1) Rules Of Professional Conduct For Legal Practitioners 2007

\(^{13}\) Section 8(4) Legal Practitioners Act CAP L11 LFN 2004
Duty to observe Good Faith

A lawyer shall observe good faith and fairness in dealing with other lawyers.\(^{14}\) Elements of this good faith include the following:

a. The lawyer shall observe strictly all promises or agreements with other opposing lawyers whether oral or in writing and whether in or out of court, and shall adhere in good faith to all agreements implied by the circumstances of the case.\(^{15}\)

b. Where he gives a personal undertaking and does not expressly or clearly disclaim personal liability there under, honour his undertaking promptly; and c. The lawyer shall not take an undue advantage of the predicament or the misfortune of the opposing lawyer or client.

c. The lawyer shall not take an undue advantage of the predicament or the misfortune of the opposing lawyer or client.

Duty of Counsel to Court

It is important to note that Counsel owe the following duties to the court:

a. Duty to be punctual in court;

b. Duty to attend all sittings of court unless he had obtained leave of court to be absent;\(^{16}\)

c. Duty to be properly dressed in court;\(^{17}\)

d. Duty to know and maintain the correct decorum in court;\(^{18}\)

e. Duty to maintain a respectful attitude to the Court in words and Deed;\(^{19}\)

f. Duty to be fully prepared to go on with the case and not seek unnecessary adjournment thereby wasting the court’s time;

g. Duty to conduct its case in logical sequence thereby assisting the court to follow the case with ease;

h. Duty to be candid and fair;

i. Duty to avoid trial publicity

---

\(^{14}\) Rule 27(1) of the Rules Of Professional Conduct For Legal Practitioners 2007

\(^{15}\) United Mining Co. v. Becher (1910) 2 KB 296

\(^{16}\) FRN v Abiola (1997) 2 NWLR (Pt. 488) 444 at 467

\(^{17}\) Rule 36 Rules Of Professional Conduct For Legal Practitioners 2007

\(^{18}\) Rule 36 Rules Of Professional Conduct For Legal Practitioners 2007

\(^{19}\) Rule 31(2) Rules Of Professional Conduct For Legal Practitioners 2007
THE OTHER SIDE OF THE COIN - THE BENCH
JUDICIAL ETHICS AND PROFESSIONALISM

The judicial function is a solemn, sober, wise, balancing and increasingly risky function. In the process of discharging their judicial duties, Judges are required to exercise the highest level of sagacity. Their Lordships must not only perform their functions judicially and judiciously, but must be seen by right thinking members of the society so to do. That is the standard the society expects Judges to attain and maintain, and there is little or no understanding when the standard is not met or kept. Indeed, there is neither an allowable margin of error or indulgence from observers and stakeholders of justice administration.

The reality however, is that little or no attention is paid to the challenges of the modern day adjudicatory function. The pressures by litigants seeking redress of various kinds, the complexities and demands of modern commerce and speed of information gathering and piling, the sanctions and threats of sanctions by the supervisory bodies, driven in part by the increasing culture of petitions against judges all serve to place our Judges under excessive strain – strain of body, mind and soul. The expectations are indeed numerous and high, yet the sympathisers are few, if at all existent.

The precipitating question therefore is - Is there a case for a mechanism for addressing judicial complaints? Yes, but with fairly systemic processes and procedures that ensure that the integrity of the judiciary and the judicial process is not impaired by reason of the uncertainties the indiscriminate use of those mechanisms may have on the judiciary and entire system of administration of justice.

The Bench is a sacred trust – a public trust. The privileges of office must be subjected to the burdens of leadership. The Oaths Act in its schedule requires Judges while taking oaths to declare inter alia that they will ‘always place service to the nation above all selfish interests, realising that a public office is a public trust’. This is a charge to persons in positions of authority in some instances, to transit from office holders to leaders. However, there cannot be good leadership in the face of fear and intimidation.

The author was once before a Judge of the Federal High Court, who felt constrained to preface the court session with assertions that he would not be intimidated or cowed by a petition, which had just been written against his Lordship by a party in a case before the Court. It is likely that my Lord was genuinely never going to be intimidated, but it might also be that the statement was an effort to muster courage not to be intimidated or to remind himself that he ought not to be intimidated. Whatever it is, that incident simply illustrates the varying degrees of distractions that your Lordships have to deal with in discharging the judicial function.

---

20 The word is used here in the broad sense that includes but is not limited to Judges of the Federal and State High Courts, and courts of coordinate jurisdiction.
21 Cap O1 LFN 2004.
THE TRUST WE COLLECTIVELY HOLD

It is perhaps pertinent to briefly discuss here a subject whose significance in recent times is sought to be brought to the front burner as it rightfully should. It is this subject of leadership as a pre-requisite for honouring the trust we hold as citizens, judges, professionals, office holders, business owners, managers, and leaders in our different disciplines. It is the subject of honoring the trust we collectively and I dare say, individually hold, for posterity – the future generation. This duty increases as we hold the asset in trust for others. This is the duty and responsibility of Leadership that cannot be unbundled into privileges without accompanying duties or burdens.

The privileges of office must be subjected to the burdens of leadership. The Oaths Act in its schedule requires Judges while taking oaths to declare inter alia that they will ‘always place service to the nation above all selfish interests, realising that a public office is a public trust’. This is a charge to persons in positions of authority in some instances, to transit from office holders to leaders. However, there cannot be good leadership in the face of fear and intimidation.

The author was once before a Judge of the Federal High Court, who felt constrained to preface the court session with assertions that he would not be intimidated or cowed by a petition, which had just been written against his Lordship by a party in a case before the Court. It is likely that my Lord was genuinely never going to be intimidated, but it might also be that the statement was an effort to muster courage not to be intimidated or to remind himself that he ought not to be intimidated. Whatever it is, that incident simply illustrates the varying degrees of distractions that your Lordships have to deal with in discharging the judicial function.

In his book, ‘The Trouble with Nigeria’, published on the eve of former President, Shehu Shagari’s second term, distinguished Novelist, Professor Chinua Achebe (of blessed memory) remarked thus:

“The trouble with Nigeria is simply and squarely a failure of leadership. There is nothing basically wrong with the Nigeria character. There is nothing wrong with the Nigerian land or climate or water or anything else. The Nigerian problem is the unwillingness or inability of its leaders to rise to the responsibility, to the challenge of personal example which is the hallmark of true leadership....”

Achebe took the view that the leadership question remained pre-eminent among Nigeria’s numerous problems, and identified other perennial issues such as “tribalism, corruption, indiscipline, social injustice, preference for mediocrity over excellence, etcetera”; and concluded that “without good leadership, none of the other problems stand a chance of being tackled, let alone solved.” Thus without good leadership, there can really be no question of governance, let alone effective governance.

---

22 Cap O1 LFN 2004.
Attachment and allegiance to family, ethnic and cultural groups are universal phenomenon of civil societies. In Nigeria, these appear to have so undermined national consciousness and solidarity that it had in the past been difficult to replace the negative aspects of these feelings with a positive feeling of common identity, a shared community sentiment and a common sense of patriotism and nationalism. What Nigerians need, is rising above these parochial basis of allegiance to integrate on the basis of common interests for the good of the society, and which unites them against executive excesses that threaten the common good. Among the common good threatened is judicial independence and courageous discharge of the judicial function.

THE JUDICIAL FUNCTION

Judges are as much lawyers as members of the Bar and they are bound and required to comply with the Rules of Professional Conduct in the Legal Profession. In Atake v. A.-G., Federation, the Supreme Court demonstrated that a retired judge is a lawyer. Judges are High Priests in the temple of justice and bound by additional codes of conduct, higher than what members of the bar are bound to comply with. Judges take judicial oaths. They swear to:

- Be faithful and bear true allegiance to the Federal Republic of Nigeria;
- To discharge their duties, and perform their functions honestly, to the best of their ability and in accordance with the law;
- To abide by the Code of Conduct contained in the Fifth Schedule to the Constitution;
- Not to allow their personal interests to influence their official conduct or decision; and
- To preserve, protect and defend the Constitution of Nigeria.

Judges must fulfil the duties contained in the words of their oath of office. If they fulfil their duties in the exemplary manner required by the constitution they would display the attributes of a good judge and be deemed to have lived up to the condition of impartiality to have done justice without favour. Judges’ duties include:

a) It is a fundamental duty of the judge, and his professional calling and ethics require him to do his best and ensure that justice is done. In Josiah v. State, the Supreme Court per Oputa J.S.C., held:

Justice is not a one-way traffic. It is not justice for the appellant only. Justice is not even only a two-way traffic. It is really a three-way traffic: justice for the appellant accused of a heinous crime of murder; justice for the victim, the murdered man, the deceased whose blood is crying to heaven for vengeance and finally justice for the society at large: the society whose social norms and values had been desecrated and broken by the criminal act complained of. It is certainly in the interest of justice that the truth of this case be known and that if the appellant is properly tried and found guilty, that should be punished… It is the duty of the court and lawyers to ensure that justice is done…

24 ME Ajogwu, SAN, Federalism and National Unity in Nigeria, 2003, Enugu
25 (1982) 11 SC 153
26 They are required to comply with the Code of Conduct for Judicial Officers made by the National Judicial Council.
27 Seventh Schedule to the Constitution of the Federal Republic of Nigeria.
28 (1985) 1 NWLR (Pt. 1) 125 at 141
29 Emphasis supplied.
Similarly, in his book, *The Mystery Gunman*, Justice Kayode Eso advised:

…as judge or as counsel, he must know his part, but, more importantly, he must know how to play without forgetting that it is a life-drama that he is engaged in; non artificial, but real, one which could change the course of history, the fortunes of man and one which is recorded for posterity. The whole purpose of the play in the courtroom and the dramatis personae must constantly remind themselves, is the attainment of JUSTICE. Justice is the ultimate and joint goal of the Bar and the Bench that should permeate the minds of the players.

b. To be diligent and exhibit competence in their work

Judges must manifest industry, hard work and knowledge in the discharge of their functions. Judges or members of the Bench are not only to improve the quality of their judgments, but also to ensure that minimum standards of diligence, competence and ethical conduct are upheld.

c. To display an understanding of the law

Closely related to the above duty of the judge is the duty to exhibit a sound knowledge of the law. The judge must apply the relevant law to the dispute before the court. They must not disregard an applicable law as to do so would give the impression that the court lacks knowledge of the law.

d. To be ethical in the discharge of their functions

Honourable Justice Oyeyipo also admonished that it is common place that in conflict, the decision maker has to be competent, independent and impartial. We must however remind ourselves that the voice of a solitary judge is more impressive and compelling than the many voices of the Legislature since it is in that tiny voice that conscience itself is to be found.

e. To show courtesy to lawyers and litigants

It is important for the court to show respect to counsel appearing before the judge. Disrespect of lawyers by judges is usually noted by members of the public and contributes to worsening the image of the legal profession. Olanipekun justified the duty of the court to extend courtesy to Counsel in the following words:

---

31 Oyeyipo, “Relationship between the Bar and the Bench in the course of Justice”, paper presented at an induction course for newly appointed Judges on 3rd June, 2002. See also Wole Olanipekun, Relationship between the Bar and the Bench: The Way Forward (delivered at the ceremony organized by the Lagos State Judiciary to mark the commencement of 2010/2011 legal year on Friday September 24, 2010 at City Hall, Lagos).
Who stands to give the Judex the magisterial courtesy that he or she deserves? Who presents the case of the litigant to him or her? On whom does he or she rely upon for the legal research that would dovetail to what he or she would later call “This is my judgment or this is my ruling”? Who refers him or her to recent decision(s) of concurrent and appellate courts, as well as new legislations?33

f. To avoid abuse of power

Section 6(6) of the Constitution of the Federal Republic of Nigeria vests enormous powers in the Courts. They are also conferred with jurisdiction to determine every conceivable matter between parties to a dispute coming before the Courts. Olanipekun34 describes the judicial powers in the following words:

The powers are awesome and virtually unrestricted, subject, of course, to the jurisdiction of each court. Constitutionally, we have all invested our Judges with the power, in appropriate cases, to levy fines on us, dissolve our marriages and commercial contracts, adjudge on the rightness or wrongness of our adverse claims to land, chieftaincy titles, political offices, intellectual property, codicils etc.

It is often said that power corrupts. Judges must not allow themselves to be corrupted by the powers bestowed upon them. If anything, it should humble their Lordships. It is a widely held view that an earthly judge is holding justice in trust for the Almighty God, who is the judge of all, and the only righteous judge who never makes any mistake. Section 6(6) of the Constitution of the Federal Republic Nigeria 1999 vests judicial powers of the Federation in the superior courts created by the same constitution.

g. To avoid corrupt practices

Judges are not immune to discipline for corrupt practices under the relevant legislation. Importantly, they become candidates for compulsory retirement as soon as it is proven that they are guilty of corrupt practices. It has become an unfortunate incident of Nigeria’s democracy that some politicians attempt (and in some cases, successfully) to entrap judges with offers of money. They drag the judges into the centre of their battlegrounds and make them join in the battle with dire consequences. Judges must watch carefully, the antics of such politicians and do everything to ensure that they are not, or seen to be biased in favour of any litigant. Otherwise it could be interpreted as evidence suggestive of having been bribed or of having allowed an unwarranted closeness to develop. The list of judges who have fallen35 as a result of scandals in election petition cases include Thomas Naron J.36 of the Plateau State High Court, Jos, Justices Okwuchukwu Opene and David Adeniji. The last two were Justices of the Court of Appeal.

33 Wole Olanipekun, op. cit.
34 Wole Olanipekun, op. cit.
35 Who have been compulsorily retired
36 As at date, the NJC’s recommendation for his Lordship’s retirement has not been implemented by the Governor of Plateau State.
CODE OF CONDUCT FOR JUDICIAL OFFICERS

An independent, strong, and respected judiciary is indispensable for an impartial administration of justice in a democratic State. A Judicial Officer should actively participate in establishing, maintaining, enforcing, and himself observing a high standard of conduct so that the integrity and respect for the independence of the Judiciary may be preserved. Bearing in mind the need for impartial, independent and respectable judiciary, the Code of Conduct for Judicial Officers was adopted to provide a minimum guide as to the conduct of Judicial Officers so as to ensure sound ethical and professional standards in the discharge of their duties.

A Judicial Officer under the code of conduct means “a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge of the Federal High Court, of a State and of the Federal Capital Territory, Abuja, the Grand Khadi or Khadi of a Sharia Court of Appeal of a State and of the Federal Capital Territory, Abuja, the President or Judge of a Customary Court of Appeal of a State and of the Federal Capital Territory, Abuja and includes the holder of a similar office in any inferior court whatsoever.” The provisions of the code of conduct are mandatory and violation is viewed as misconduct that may attract disciplinary action.

The Code of Conduct requires Judicial Officers to avoid impropriety and the appearance of impropriety in all their activities; respect and comply with the laws of the land and conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary; and avoid social relationship that are improper or give rise to an appearance of impropriety, that cast doubt on the judicial officers’ ability to decide cases impartially, or that bring disrepute to the Judiciary.\(^{37}\)

Under Rule 2 of the Code of Conduct, a Judicial Officer should maintain order and decorum; must avoid the abuse of the power of issuing interim injunctions, \textit{ex parte}; should be patient, dignified and courteous to accused persons and litigants, assessors, witnesses, legal practitioners and all others with whom the Judge has to deal in his official capacity and should demand similar conduct of legal practitioners, his staff and others under his direction and control; should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorised by law, neither initiate, encourage, nor consider \textit{ex-parte} or other communications concerning a pending or impending proceeding.

A Judicial Officer is required to devote adequate time to his duties, to be punctual in attending Court and expeditious in bringing to a conclusion and determining matters under consideration. Unless ill or unable, for good reason, to come to court, a Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the court.

\(^{37}\) Rule 1 of the Code of Conduct for Judicial Officers.
A Judicial Officer is prohibited from commenting about a pending or impending proceeding in any court in Nigeria, and should require similar abstention on the part of court personnel under his direction and control; is bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties other than in public proceedings. Part of the duty of a Judicial Officer is to prohibit broadcasting, televising, recording of or photographing in the court room and areas immediately adjacent thereto during sessions of court or recesses between sessions in order to prevent the distortion or dramatisation of the proceedings by such recording or reproduction.

In addition to the adjudicative duties of a Judicial Officer identified under the Code of Conduct for Judicial Officers, there are other administrative duties a Judicial Officer must perform for sound ethical and professional standards. They include the following duties: to require his staff and other court officials under his direction and control to observe the standards of fidelity and diligence that apply to him; to take adequate steps to report unethical or unprofessional conduct by another judicial officer or a legal practitioner to the appropriate body seised with disciplinary powers on the matter complained of; avoid nepotism and favouritism; refrain from engaging in sexual harassment; and shall not be a member of a tenders' board or engage in the award of contracts.

A Judicial Officer is expected to disqualify himself in a proceeding in which his impartiality might reasonably be questioned. A Judicial Officer should inform himself about his personal and fiduciary financial interests. A Judicial Officer should regulate his Extra-Judicial Activities to minimise the risk of conflict with his judicial duties. A Judicial Officer may engage in the arts, sports and other social and recreational activities if such avocational activities do not adversely affect the dignity of his office or interfere with the performance of his judicial duties.

A Judicial Officer shall not take or accept any Chieftaincy title while in office. A Judicial Officer should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of his family, and that only if such service will not interfere with the proper performance of his judicial duties. A Judicial Officer and members of his family shall neither ask for nor accept any gift, bequest, favour, or loan on account of anything done or omitted to be done by him in the discharge of his duties.
THE QUESTION OF INDEPENDENCE OF THE JUDICIARY

In carrying out functions without fear or favour, the independence of the Judiciary is an essential element. It is a sacrosanct principle which goes hand in hand with the doctrine of separation of powers as well as the principle of checks and balances. However, these principles are difficult to realise as several impediments stand in the path of Judicial Independence. For example, the budgetary allocation to the Judiciary is determined by the Executive at the Federal or State level, respectively.

Another example is the recent amendment of laws by a few state governments in a bid to exert influence over the judiciary. For example in Rivers State, the power to assign cases now lies in the hands of the Chief Registrar instead of the Chief Judge of the State. Recently, the Abia State House of Assembly passed a resolution for the dismissal of the Chief Judge by the Governor, although the attempt to get the Chief Judge removed was unsuccessful.

These instances of issues that hamper judicial independence has led to clamours by Stakeholders in the judiciary for a reform of the judicial system. Recently, the Judiciary Staff Union of Workers (JUSUN) embarked on a 21-day strike demanding judicial independence of the judiciary and financial autonomy of the state judiciary.38 This occurred as a result of an awareness of the fact that in order to uphold the rule of law and ensure that the functions of the judicial officers are carried out like well-oiled machinery, judicial independence must be guaranteed.

From the process of nomination, selection, appointment, remuneration, discipline, promotion, dismissal and retirement of all judicial officers, there must be no room for bias, preferential treatment or subjective opinion. Another way of ensuring judicial independence is by granting life tenure for Judges, which frees them to exercise their judicial discretion justly. The twin pillars of judicial independence, i.e. security of tenure and conditions of service must be deeply rooted in the foundation of society. Chief Gani Adetola-Kazeem, SAN, recently remarked thus:

...Over the years, we found that the Executive have assumed so much power. They exercise so much authority over the other arms of government that some of the times, the judiciary is in a fix as to what to do. They don’t have independence in the appointment of Judges, they don’t have independence in terms of funding, they don’t have independence in terms of what they are able to do apart from sitting in court and writing the judgments and all these pinch upon one another.

...It is supposed to be the last hope of the common man and therefore it is important that it is independent in the dispensation of justice...it must be able to control its own resources even though the resources come from the same pool, when it comes from the consolidated revenue fund. But in a situation where this is under the control of an authority of the Executive for example, they just dole it out the way they want. This affects the independence of the judiciary. ...A government that is overbearing will hold on to these funds and the head of the courts, that is, the Chief Judges of the various high courts quite often will have to go cap in hand to the governor or whoever the executive of the state is to bid for funds. Once you have overbearing government that wants it bidding to be done the judge will either have to bend to do whatever the executive wants before they can have funds released to them or before they can find court equipped or provide many other amenities or many other things they want to do. ...

Ikeji added that:

Independence of the judiciary requires the principle of separation of powers balanced by the principle of checks and balances. A situation where the executive arm of government always has its preferred candidates for different judicial positions does not augur well for the independence of the judiciary. Where judges’ salaries are controlled by the executive is not good enough.

Ogwemoh SAN⁴¹, has expressed the opinion that:

...The Judiciary, being the last hope of the citizen must uphold the Constitution and other laws of the land at all times and must courageously challenge it when the occasion presents itself particularly when the executive actions exercised outside the confines of the constitution and other extant laws of the country are thrown up. To be able to do this effectively, the judiciary must be free and independent. For the judiciary to be free and independent, each Judge must enjoy both personal and substantive independence. Personal independence means that the terms and conditions of judicial services are adequately secured by law so as to ensure that individual judges are not subjected to executive control. A judge is subject to nothing but the law and commands of his conscience.⁴²

---

⁴⁰ Ibid.
⁴¹ Recently elevated to the rank of Senior Advocate of Nigeria
⁴² Ibid.
NATURAL JUSTICE AND ABSENCE OF FEAR OR FAVOUR

The twin pillars of justice are nemo judex in causa sua43 and audi alteram partem44. The former is a Latin expression that means, no one should be a judge in his own cause. By this principle of natural justice no person can be the judge in a case in which he has an interest. It is a strict rule, which must not be mistaken as applying only to cases where the Judge is a litigant in the matter before the same Judge, a clear breach of the rule which rarely occurs. The principle is breached if there is any relationship between the Judge and a party to the case. It is also breached where the Judge or the Judges’ assistant has previously been connected with the matter in any capacity. Lord Justice Hewart declared in R v Sussex Justices, ex parte McCarthy45:

a long line of cases shows that it is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.46

In R v Bow Street Metropolitan Stipendiary Magistrate, Ex Parte Pinochet Ugarte (No. 2)47 a House of Lords Judgment on the immunity of former Chilean dictator General Augusto Pinochet was set aside because Lord Hoffman who sat in the matter failed to declare his and his wife’s link to Amnesty International, an intervener in the appeal.48

The latter Latin maxim, audi alteram partem means hear the other side49. The fair hearing principles are encapsulated in the 1999 Constitution of the Federal Republic of Nigeria. In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.50 Similarly, whenever any person is charged with a criminal offence, he shall:

1) unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal;

2) be entitled to defend himself in person or by legal practitioners of his own choice and examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal, and among other things,

3) be entitled to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution.51

43 No man shall be a Judge in his own cause.
44 Let the other side be heard.
45 (1924) 1 KB 256, (1923) All ER 233
46 R v Sussex Justices, ex parte McCarthy (1924) 1 KB 256, (1923) All ER 233
47 [1999] UKHL 52.
48 See also Akinwale v. Nigerian Army (2001) 16 NWLR (Pt. 738) 109 at 120 and 122, paras. F-G and B-C
49 Ibid
50 Section 36 (1) of the 1999 Constitution of Nigeria
51 Section 36 (4) (d), (e) Ibid.
It is these pillars that ensure that Judges discharge their duties without favour. A breach of any of these rules would therefore indicate that favour has been done, to the benefit of either the judicial officer or the party who profits from the bias.

**JUDICIAL OATHS: ANY CONFLICT?**

The Judicial Oath contained in the 1999 Constitution of the Federal Republic of Nigeria has vows to be made by the Judicial Officer in question, that he would be faithful and bear true allegiance to the Federal Republic of Nigeria, and that he would discharge his duties and functions honestly and to the best of his ability as well as in accordance with the Constitution and also abide by the Code of Conduct contained in the Fifth Schedule to the Constitution; that there would be no conflict of interest and he would preserve, defend and protect the Constitution of Nigeria.

The Judicial Oath in the Oaths Act is however more detailed. The Judicial Officer is made to vow to a list of principles he would abide by. The vow that he would be faithful and bear true allegiance to Nigeria at all times is present, alongside vows to: truly exercise judicial functions and do right to all manner of people without fear or favour, affection or ill-will; place service to the nation above all selfish interests; diligently performing judicial duties and avoiding all forms of conflict of interest whether directly or indirectly, eschew corruption in all its facets, and follow the path of justice, honesty and concord amongst all people of Nigeria in all he does.

This seems like a more detailed oath than that in the 1999 Constitution especially in the light of the fact that the 1999 Constitution, in the judicial oath, refers to the Code of Conduct in the Fifth Schedule. This Code is however a general code for Public Officers which makes provisions for conflicts of interest in duties, restrictions on specified officers, prohibition of foreign accounts, retirement, restriction on loans, bribery, abuse of powers, membership of societies and declaration of assets, among others. It does not refer specifically to the standard of conduct expected from an officer of the judiciary, bearing in mind that judges are ministers in the temple of justice.

Arguably, the most important phrase which is conspicuous by its absence from the judicial oath in the Constitution and its presence in the Judicial Oath in the Oaths Act is **without fear or favour**. The importance of the absence of fear from the minds of our judicial officers in the discharge of their judicial functions cannot be overemphasised. A “timorous soul,” cannot effectively and efficiently dispense justice. Only a courageous soul can. Every effort must therefore be made to ensure that judges do not have to work with fear (whether they admit it expressly or not). However, in the event of any conflict between the Judicial Oath in the Constitution and the Oaths Act however, section 1(3) of the 1999 Constitution of the Federal Republic of Nigeria is to the effect that the Constitution shall prevail, and the other law shall, to the extent of its inconsistency, be void. Similarly, where an Act of the National Assembly provides, in an identical manner, for issues already dealt with by the Constitution, such an Act becomes inoperable, null and void if not inconsistent.\(^52\)

---

THE PSYCHOLOGY OF FEAR

Problems for Judges often proceed from allegation to petition, sanction, intimidation and result in fear. The allegation could be of corruption, bias or incompetence. The motive for petitions is sometimes more of a vindictive rather than of a corrective nature - in local parlance, to “teach the Judge a lesson”. Most are written by or for politicians and business people who find it difficult to accept defeat. Then there is sanction, if not by the disciplinary bodies, then by Learned Brother Justices or the Society. In most cases, the punishment is by all. Imagine if the same litigant (or Counsel to the litigant) who made the allegation, wrote the petition that led to the punishment were to come before the same Judge, the Judge will be most certainly be intimidated or confused, if not afraid.

Psychologists posit that traumas or bad experiences can trigger a fear response within us that is difficult to suppress. A Judge who has an allegation of wrongdoing hanging over his head hardly receives any benefit of doubt or of innocent until proved guilty. Judges often get punished without proof beyond reasonable doubt that they have done something wrong. The situation has gotten so bad that some Governors trying to vent their vindictive grievances against Judicial Officers remove them without following due process. The danger is that the nation’s Judges may transit from fearless to the frightened! Therefore all who are interested in the justice system must work assiduously to eliminate this threat to the health of our judiciary. The war against corruption in the judiciary must go on simultaneously with a new war that the author advocates – that is the war against fear and intimidation in the judiciary.

It is a source of relief that the Supreme Court has ruled in the appeal by the former Kwara State Chief Judge that Governors and Houses of Assembly cannot appoint or remove Judges arbitrarily and without the recommendation of the National Judicial Council.

Whilst Judges are expected to perform their functions in accordance with the highest standards, lawyers, judges, regulatory authorities, society and other stakeholders are required to support them to ensure that there is efficient and effective justice delivery. A situation where a litigant refuses to take advantage of the right to fair hearing and constitutionally entrenched right of appeal to the Appellate Courts and prefers instead to write baseless petitions against Judges if the judgment goes against them is condemnable. Often times, the grounds of the petition could very well be the grounds of appeal. In Akinduro v. Alaya, the Supreme Court observed thus:

---

54 (2007) 15 NWLR (Pt. 1057) 312 at page 337.
55 Per Niki Tobi, JSC
Learned counsel for the appellant submitted that the appellant was denied fair hearing on the ground that the Court of Appeal allowed the respondent to raise a fresh issue without giving an opportunity to the appellant “to prepare himself with the evidence necessary to present his case fittingly to the Court of Appeal.” I do not think appellant is correct in saying that he had no opportunity to respond to the issue. Paragraph 5.09 of the brief of the respondent in the Court of Appeal the appellant in this court, at page 81 of the record reads:-

“It is submitted that even if exhibit 1 is expunged, there is still enough documentary evidence to sustain the finding of a valid sale of land to the plaintiff.”

The appellant as respondent had the whole world at his feet to respond to the 1st issue in the appellant’s brief in the Court of Appeal. He did nothing. He only made a statement of concession which did not in any way help him. And he now complains of fair hearing. Why? I have said it in the past and I will say it again that the duty of the court is to create the environment for fair hearing and it is the decision of a party to take advantage of the environment created. A party cannot blame the court if he fails to take advantage of the environment created by the court. I see such a situation in this matter. The appellant should not blame the Court of Appeal. He has himself to blame.

The Court’s duty is to provide the parties fair trial and hearing. There is nothing wrong with justifiable complaints (the etymology of the word ‘petition’ connotes a beyond grievance issue) to the National Judicial Council against suspected erring judicial officers as such petitions could for instance ensure that the necessary correction is made within the system. It should not be a means to setting aside a judgment, or getting ones reliefs which were not granted. Frivolous petitions must not be tolerated, and should have consequences for petitions containing proven falsehoods. A great number of times, those kinds of petitions could be tactics for intimidation and instilling fear in judicial officers. This is especially so because Judges are by the nature of their calling not the best to do their own defence. They are put in the position of the physician who must then heal himself, with the attendant challenges. They hardly have sufficient opportunity to explain their side of the story. It has become the style of some lawyers to write or instigate the writing of petitions against Judicial Officers rather than appeal their decisions. These petitions no matter how frivolous they may appear have the effect of psychologically demoralizing Judicial Officers. This practice does not augur well for our judicial system and our Judicial Officers must be protected from such so as to create the requisite environment for the dispensation of Justice without fear.

CONCLUSION/RECOMMENDATIONS

In rethinking the recurring question of ethics at the Bar and Bench, the issue of correction can only be dealt with by looking at the two sides of the same coin – the Bar and the Bench. It rarely takes one but two to go the off path. In dealing with questions of ethics, this paper highlights the increasing challenges that Nigerian Judges face in their duty of dispensing justice without fear or favour. Judges are called upon to do all that is possible to ensure that the task of efficient justice delivery without fear or favour is undertaken. Nigerians must also strive to eliminate intimidation and other negative tactics employed by unsuccessful litigants and their Counsel.

Panels set up by the NJC to investigate petitions against Judges should undertake detailed and thorough investigations. Both the NJC and its panels could be guided by a Revised Complaint Process\(^{57}\). The idea here is to respectfully recommend that a procedure for the discipline of Judicial Officers that meets the demands of fair hearing be put in place. I have in previous literature dealt with recommendations (including a sample Complaints Handling Procedure) on having a system that achieves the objective of dealing with the ethical issues, without necessarily lumping all as corrupt, and also without leaving the Judicial officer in fear or unacknowledged fear.

It is important that the same be done with the Bar, at the Legal Practitioners Disciplinary Committee. A fair balance is needed, and the reforms ought to be concluded as soon as possible for. Our ethics as lawyers represent our obligation to do what is right by the law, by our clients, our colleagues and by the community. Legal practitioners therefore have an obligation to uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and not engage in any conduct which is unbecoming of a legal practitioner.

It remains beneficial to repeat Solomon’s (not the Biblical King Solomon) words on ethics –

> Ethics is the quest for a life worth living: putting every activity & goal in its place, knowing what is worth doing & what is not worth doing. It is also, within business itself, keeping in mind what is ultimately important and essential & what is not, what serves our overall career goals & what does not, what is part of business & what is forbidden to business, even when increased profit – the most obvious measure of business success – is at stake.

**Dr Fabian Ajogwu, SAN, FCIArb**
Transcorp Hilton Hotel, Abuja December 11, 2014
Email: fajogwu@kennapartners.com

---

REFERENCES

Avrom Sherr, Client Care for Lawyers, Second Edition, page 81
C. Achebe, The Education of a British Protected Child, 2009 Knopf Publishers, USA, Penguin,
UK, being a re-worked version of The University and the Leadership Factor in Nigerian
Politics, written September 23, 1986.
Code of Conduct for Judicial Officers
Deborah L. Rhode & David Luban, Legal Ethics 3 (1992)
Fl Ajogwu, Law and Society, CLDS, 2013, Lagos, P 179
Fl Ajogwu, SAN, Law & Society, Centre for Commercial Law Development, 2013, Lagos
http://cjpc.ca.gov/complaint_process.htm, accessed December 6, 2014
J. M Elegido, Fundamentals of Business Ethics, Criterion Press, Lagos
Knowles & Reed, How to Effectively Manage a Lawyer-Client Relationship: Best Practices for
Communication, Meeting Client Expectations, Avoiding Relationship-Ending Mistakes
Mark A. Sargent, Lawyers in the Moral Maze, 49 Vill. L. Rev. 2004, p. 867
Mary C. Daly, “The Cultural, Ethical and Legal Challenges in Lawyering for a global organization: The Role of the
General Counsel” 46 Emory LJ 1997, p. 1057 at 1067
ME Ajogwu, SAN, Federalism and National Unity in Nigeria, 2003, Enugu
O Olanipekun SAN, Relationship between the Bar and the Bench: The Way Forward (delivered at the ceremony
organized by the Lagos State Judiciary to mark the commencement of 2010/2011 legal year on Friday September 24,
2010 at City Hall, Lagos).
Oyeyipo SAN, “Relationship between the Bar and the Bench in the course of Justice”, paper presented at an
induction course for newly appointed Judges on 3rd June, 2002.
Peter MacFarlane, The Importance of Ethics and the Application of Ethical Principles to the Legal Profession, Journal
of South Pacific Law, Volume 13 Issue 1, 2009