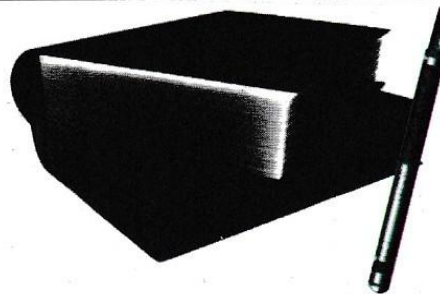


ESSAYS IN HONOUR OF PROFESSOR ENEFIOK ESSIEN

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CHAPTER TWENTY LAWYERS AND LAWYERING IN NIGERIA: THE ETHICAL QUESTION**

1.1 Introduction

At the individual level, “ethics” refers to the moral principles which control or influence a person's behaviour.¹ All professions and businesses have their own ethics. Thus we talk of work ethics, business ethics and professional ethics. For lawyers, “legal ethics” encompasses an ethical code written and unwritten, governing the conduct of people in the practice of law. Some of the defining features of legal ethics are: client-lawyer relationship, duties of lawyer as solicitor and as advocate in adversary proceedings, respect to the court and between lawyers inter se, confidentiality, duty of care, maintain the integrity of the profession, candour and truthfulness in statements made from the bar or made to others, and professional independence. In Nigeria, as in United Kingdom, legal ethics is taught as Professional Ethics at the professional level, i.e. at the Nigeria Law School and the General Council of the Bar respectively. In America, Law schools are required to offer a course in professional responsibility, which encompasses both legal ethics and matters of professionalism that do not present ethical concerns.

Law is always referred to as an “honourable” profession, and lawyers,² as “learned men” or “gentle men” of the bar. But how, in the first place, did lawyers come by all these beautiful epithets, considering that though law itself may be popular, the lawyer is “not necessarily the world's most popular professional”? The books are replete with a loathing for and accusations of ethical bankruptcy by lawyers. We have all heard the line, “the first thing we do, let's kill all the lawyers”. More often than not it is intended as some kind of lawyer joke. Few people realize that the line actually comes from William Shakespeare's *Henry VI (Part 2)*. The line³ is uttered by a character named Dick the Butcher. The name speaks for itself; he is a hired killer! Shakespeare, who often used legal themes in his plays, might have intended this line as a statement against corrupt lawyers who would subvert the system of justice to their own ends. This may have been why Adolf Hitler vowed with great venom, “I shall not rest until every German sees that it is shameful thing to⁴ be a lawyer”. No doubt, the legal profession, as an honourable profession, has been a subject of so much scrutiny and critical comment that the “honourable” appears to be lost, leaving only the “profession”.⁵ Instances of unethical behaviour have generated accusations and bolstered a distrust that the public has historically carried toward the legal profession.

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¹ *Oxford Advanced Learner's Dictionary*, 6th edn p. 395.

² We adopt the position of rule 53 of the Rules of Professional Conduct, by using the word “lawyer” loosely for convenience, to mean “legal practitioners” as defined in the legal Practitioners Act.

³ See: *The Complete Works of William Shakespeare*, 18th impression, London. The Hamlyn Publishing Group Ltd., 1978, Act IV Scene ii (at page 522).

⁴ Adolf Hitler, 1889 – 1945, in Kenneth Redden, *Modern Legal Glossary*, 1983, at p. 103.

⁵ “Is law (still) an honourable profession?” is the title of a call-to-arms lecture by Professor Stephen Gillers of New York University School of Law. See “Ethical Lawyers and Accountants could have saved the day” at gazetteextra.com/news/2009/feb/23/, last accessed on 10 October, 2015.

When allegations surface that legal ethics have been breached, the public tends to focus on the legal profession as a whole rather than the individuals who are alleged to have committed the breach. While some may argue that it is neither fair nor proper to stereotype the legal profession based on a few, or even several, instances of alleged misconduct, others may contend that the legal profession is still an honourable profession and represents one of the great attributes of a democratic government. Without immediately adopting either view, this paper appraises the degree of observance of legal ethics by trial lawyers in Nigeria and the extent to which judges abide by, or consider themselves bound by, ethical rules. The concentration here is on trial lawyers because they are the ones to whom the bulk of the ethical issues apply. In this respect, one easily agrees with Louis Nizer that the difference between an office lawyer and a trial lawyer is as great as between an internist and a surgeon. Both require high talents, but the specialized skill and tools are so different that they may as well be different professions.⁶ Lawyers are learned because they are the people who know, or who are supposed to know, their rights and the rights of others. Whether you are a doctor or pharmacist, artisan or an academic, you have to consult a lawyer for the vindication of your rights when the need arises.⁷

1.2 Lawyers as Gentlemen

At inception, lawyers were known to be gentlemen and till today they are addressed as such. That is why in the olden days a lawyer could not bring himself down by demanding payment for his legal services from his client. One would notice that till today the lawyer's gown has a pocket at the back to serve as a constant reminder that payment was not put at the front burner: money was the least of the lawyer's concerns. The practice, in those days, was that when the lawyer left the court room the client who was clearly impressed by the lawyer's performance in court, would walk behind him and in appreciation he would secretly put money into the pocket at the back of the lawyer's gown, because he was afraid that the lawyer would not condescend to receiving any payment for his legal/professional service. That was why, in its country of origin, i.e Great Britain, one had to come from either the upper class (or nobility) or at least the upper middle class to be a lawyer. The lower class (or plebians) had no place. Law was a class affair, which led to the now frequently made statement (albeit now erroneous) that, "law is not for the poor". The general assumption in Britain has always been that a newly qualified lawyer needs family or other financial support at least in the first three years of practice, during which period he is expected to earn little or nothing in legal practice. It is a learning period during which the lawyer cuts his teeth. Lord Denning calls the early years, the Devilling years. That is why we find such English case as *Shadwell v Shadwell*⁸ where Shadwell, in order to assist his nephew in starting as a young barrister, promised to pay him the sum of \$150 yearly until the young barrister's annual income derived from his profession as a Chancery barrister shall amount of 600 guineas. Shadwell paid the young barrister the promised sum for 12 (twelve) years and part of the 13th year before discontinuing. The agreement was as far back as 1838.

⁶See: *Newsweek*, December 10, 1973.

⁷Chief Afe Babalola. "Success at the Bar". in Yemi Akinseye-George & Gbadamosi (eds), *The Pursuit of Justice and Development*, Lagos. *Diamond Publications Ltd.* (2004). pp. 356–357 at 357–358.

⁸(1860) 9 CBNS 159, 30LJCP 145, 142 ER 62

By contrast, in Nigeria today the notion of lawyers as gentlemen is going out of the window. A newly qualified lawyer from the Law school thinks that the certificate of call given to him is a passport to instant earnings and self-support in private practice; whereas, in truth, at that initial stage the certificate in his hands only entitles him to learn how to practice. The Certificate is not yet a meal ticket. Even when the certificate has become a meal ticket, being a gentleman still requires some moderation and a de-emphasis on money. Overcharging, "money first" or "Money for hand..." attitude should be avoided, as this does not bring honour to the honourable profession. Lawyers should not behave in a way which gives credence to the misconception that "doctors purge the body, preachers the conscience, lawyers the purse",⁹ or that "a man may as well as open an oyster without a knife, as a lawyer's mouth without a fee".¹⁰ On fixing of professional fees, the Rules of Professional Conduct provides a ready guide. It provides:

44(a) in fixing fees, a lawyer should avoid charges which overestimate his advice and service, as well as those which undervalue them. A client's ability to pay cannot justify a charge in excess of the value of the service, though his poverty may require a less charge or even none at all. The reasonable request of brother lawyers and of their widows and orphans without ample means should receive special and kindly consideration.

Since law was originally a preserve of the nobility, dressing was also part and parcel of being a gentleman. It has long been the case that "as you are dressed, so are you addressed". The dress a lawyer wears in and out of court reflects his state of mind. Rather than flamboyant and unobtrusive, a lawyer should look tidy, sober and respectable. Collars/collarettes should be white and shoes black. For the gentlemen in skirt, particularly, the hair style should be wig-friendly: it should allow the wig to, as much as possible, cover the hair, which should be drawn back from the face and forehead and, if long, should be put up. It is absolutely embarrassing to see a learned gentleman appearing in a "coat of many colours": brown shoes, black suit, green tie, red shirt and yellow belt. He looks more like clown than a lawyer!

In Nigeria, the source of professional ethics for lawyers is mostly the Rules of Professional Conduct in the Legal Profession¹¹ ("the rules"). Before then, the Code of Conduct for legal practitioners was unwritten, presumably because lawyers were few and they knew what to do. The aim of the Rules is the maintenance of the highest standards of professional conduct, etiquette and discipline in the legal profession. A breach of any aspect of the Rules may be referred to the Legal Practitioners Disciplinary Committee. The Committee is neither a tribunal nor a court. It is a quasi-

⁹ German proverb, Charles Cahier, *Quelques Six Mille Proverbs*, 1856.

¹⁰ Barten Holyday, English writer, *Technogamia*, 1618, in David Shrager and Elizabeth Frost (eds). *The Quotable Lawyer*, New England Publishing Associates, inc., (1986) p. 112.

¹¹ Made by the General Counsel of the Bar, pursuant to the Legal Practitioners Act, 1975, Cap. L11 vol. 8 LFN 2004. The English equivalent is the Code of Conduct of the Bar of England and Wales (Adopted by the Bar Council on 27 January, 1990, effective from 31 March 1990, and incorporating amendments upon to No. 5 of 14 April, 1997

administrative body; a fact-finding and house-cleaning body to maintain discipline and decorum of the legal profession. It investigates, and makes findings and recommendations.¹²

Not all forms of professional ethics are covered in the Rules of Professional conduct. This is not all surprising, because it is not possible for the draftsman to conceive, foresee and prohibit the diverse forms of future unethical behaviour. Whatever lacunae there have been filled from time to time, on case by case basis, by judicial decisions and by “known custom or practice of the bar”.¹³ The major forms of (un)ethical behaviour may now be considered:

(i) **Respect**

It is unethical to show disrespect to the court or to professional colleagues. As a reminder, the Rules of Professional Conduct requires that a lawyer maintains a respectful attitude towards the court, nor for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance.¹⁴

Disrespect to court may take many forms. One form is by going late to court. Many lawyers are guilty of this. They may have good reason(s) for going late, but that does not make them any less late; it only explain the lateness. A lawyer should be punctual in all court appearances and where he envisages lateness or absence, he should promptly inform the court in writing, copied to the opposing counsel. The court is not supposed to wait for counsel; the reverse should be the case. It is calculated act of disrespect to the court for a lawyer to be absent from court after he had been duly notified of a further address. It shows disrespect to the court and what to do is for counsel to arrange for another lawyer to hold his brief when he is unable to attend court.¹⁵ It is discourteous, impolite and unethical for a lawyer to turn down an invitation of the court to address it further on any issue.¹⁶ Also, it is a rude and an unprofessional conduct, unbecoming of a lawyer, for him to walk out on or from the court.¹⁷

Disrespect to the judge may also lie in the way the lawyer sits or stands in court. Sprawling on the chair with one leg on the chair to address court is certainly not respectful; it does not show a dignified and respectful attitude towards the judge.¹⁸ So also is sitting down when speaking to or being spoken to or addressed by the judge.¹⁹ I have seen two judges remove their wig in the court room while still sitting; they removed it completely and placed it on the table and sat there wigless for quite a while before putting it back on the head. This is definitely an inappropriate judicial

¹²*Okike vs Legal Practitioners Disciplinary Committee* (2005) 15 NWLR (Pt. 949) 741, held 18.

¹³Rule 16(b) of the Rules of Professional Conduct.

¹⁴Rule 1. *Ibid.*

¹⁵*Usani v Donald Duke & 23 Ors* (2006) 17 NWLR (Pt. 1009) 610

¹⁶*LSDPC v Nigerian Land and Sea Food Ltd.* (1992) 5 NWLR (Pt. 224) 653

¹⁷*Magna Maritime Services Ltd v U.D.U. Etuk* (2005) 14 NWLR (Pt 945) 517, held 5.

¹⁸Rules 3(a) and 6(b), *ibid.*

¹⁹Rule 6(a) *Ibid.*

behaviour. However, a lawyer should not, without the judge's permission, remove his wig and gown in the court room.²⁰

It is disrespectful to the court and unethical for a lawyer to employ intemperate language in addressing the court.²¹ As observed by Adekeye JCA,

The practice of law where counsel walk out on their client in court, or where they are highly discourteous to court, is a breach of professional ethics – which is the contributory factor to the falling standard in the practice of this honourable and disciplined profession. All members of the legal profession must rise in defence of their professional ethics – where much attention is paid to mutual respect.²²

In *UBA Plc v. BTL Ind. Ltd.*,²³ a Senior Advocate of Nigeria, who is regarded as the “lamp and guide post” of the legal profession, was judicially castigated for using uncouth language in his brief. Also, a very senior lawyer of 35 years post-call was charged with and convicted for making disparaging and disrespectful comments about a judge. The lawyer had deposed that the court's judgment as “a ruse judgment” and “a demonstration of misunderstanding of the law”; and that the judge “departed from the course of justice to deliver a tailor-made and feeble judgment”.²⁴ It is noteworthy that Nigerian courts readily expect respect from trial lawyers but hardly remember that they owe mutual and reciprocal respect to the trial lawyers. Courts are sensitive to the slightest hint or semblance of disrespect to the bench. For instance, the omission of the word “learned” has attracted judicial reprimand in *Health Care Products (Nigeria) Ltd v Bazza*,²⁵ the court said:

I notice that from the first to the last page of the brief there was not a single place where the learned counsel for the appellant used the word or adjective “Learned” while referring to the learned trial judge, be it in the issues he formulated or the arguments he advanced. In the brief he referred to the trial judge as simple “trial Judge”. This is not in consonance with the ethics and practice of our noble and honourable profession... That to me is a clear indication that the discipline and respect in this noble profession is decreasing or vanishing.²⁶

On the other hand, the court described counsel's brief as “very incoherent and unintelligible... not a clear presentation of appellant's case”,²⁷ (thereby indicting

²⁰Rule 6(b). *Ibid.*

²¹*Usani v Donald Duke & 23 Ors* (2006) 17 NWLR (Pt 1009), 610 held 21

²²*Ibid.* at pp. 650 – 651 paras H-C.

²³(2004) 18 NWLR (Pt. 904) 180, held 28

²⁴“Lagos Lawyer jailed for three months for ‘Criminal Contempt’”. *The Nation Newspaper*, Friday, September 18, 2009 at p. 5.

²⁵(2004) 3 NWLR (Pt 861) 582.

²⁶*Ibid.* held 11

²⁷*Usani v Duke* (2006) 17 NWLR (Pt 1009) 610

counsel); and speaks of the accused person's counsel as “inappropriately” going on a “fishing expedition or trial and error... in a serious suit such as this”. Such uncomplimentary judicial backslap on counsel is totally unethical and uncalled for, as it clearly does not portray the counsel in good light. In fact there are cases in practice where after counsel has finished his cross examination and sat down, the court then takes over to ask the witness “relevant questions”, thereby impugning the integrity of counsel by telling the client that his counsel did not know the right questions to ask. There is the story of the weeping lawyer in *Okoduwa & Ors v The State*.²⁸ Here, counsel had applied for transfer of a case on the ground that he would not get justice. The trial judge not only refused the application but also accused the counsel of conspiring with his client (the accused) to impugn the integrity of the court by making unwarranted application for transfer. The court got counsel charged with contempt of court. Counsel apologized and burst into tears. He was pardoned by the court and then the proceeding continued. The Supreme Court frowned at the conduct of the trial court and questioned the justification for humiliating the counsel right in the presence of his client. The Supreme Court held that the bursting into tears and loss of words indicated the measure of injustice to which the counsel was subjected.

Disrespect to professional colleagues is also unethical. In *A. N. Mohammed Petroleum Ltd v Afribank Nigeria Plc*,²⁹ the Court of Appeal held, per Kekere-Ekun JCA:

Finally, a few words must be said about the use of language employed by learned counsel for the respondent in the counter-affidavit to this application. The averments in paragraphs 8, 9, 15, 16 and 26 of the counter-affidavit are an attack on the professional competence of opposing counsel. Apart from the fact that those averments are in breach of section 87 of the Evidence Act, they do not reflect well on our profession, which is built on ethics, etiquette and decorum and should not be encouraged.

The Supreme Court also advised³⁰ that “counsel may fight client's case with all vigour but he cannot descend to rubbishing his colleague's image and hard-earned reputation in the guise of espousing his client's case and protecting his interest. It reflects on the integrity of counsel who stoops so low”.³¹ It is disrespectful for a lawyer to occupy the front row of seats in court (the inner bar) when Senior Advocate of Nigeria (SAN) is present; it does not matter that the lawyer is senior at the bar to the learned SAN. The Senior Advocate of Nigeria (Privileges and Functions) Rules preserves the inner bar or the front row (where there is no inner bar) for the SANs, where one is present in court. In practice, the Senior Advocate of Nigeria occupies the head of the table available for legal practitioners, as some courts do not provide the inner bar nor more than one table, so that there is no front row. The Senior Advocate's right to sit at the front row (inner bar) or head of the table, and his right to mention his matter, have been strictly

²⁸(1988) 2 NWLR (Pt.) 345.

²⁹(2006) 17 NWLR (Pt 1007) 131

³⁰*Nwaogbi v Atuma & Ors* (2013) 10 NWLR (pt 1363) 591

³¹*Ibid.*, at p. 601

respected at the bar, except for one reported instance which is recounted below. However, the same cannot be said with regard to other senior members of the bar who are not Senior Advocate.

Instances abound where a junior lawyer jumps to mention his case when a lawyer who is senior to him is present in court. Custom and practice demand that both in the sitting arrangement and in the mentioning of cases, the lawyers in court should take their turn in order of seniority at the bar. Where a Senior Advocate is present in court, seniority at the bar ceases to count. The SAN takes precedence; thereafter the most senior lawyer then follows, in descending order. There is the isolated incident recounted by Afe Babalola, SAN, where a very senior member of the bar came to court a year after his (Afe Babalola's) call to the inner bar. He met the SAN in court and asked whether he could sit beside the SAN in the front row. The senior member of the bar was by then not yet a Senior Advocate. He had just returned to the bar after completing his term as an Executive Governor of a State. Babalola's response was that he could sit beside him at the front row if our Code of Conduct permitted it. The senior member got the message and quietly left. However, when the learned trial judge sat, the senior lawyer asked for the judge's permission to sit beside the SAN in the front row. The permission was granted because the judge himself was appointed by the senior member of the bar when he was the State Governor. The learned SAN thereafter wrote to the judge condemning his act. He also petitioned the Chief Judge, who as a result wrote a letter warning judges to desist from allowing any other lawyer, President or Governor, to sit in the front row whenever a Senior Advocate was in court.³² It must be admitted that all members of the bar are equal, but the equality is subject to the rules relating to precedence.³³

Respect is not meant only for learned seniors but also for mates, juniors and for self. For instance, it is disrespect and unethical to allude to the personal conversation between counsel before the judge, or to deliver to the judge³⁴ any letter, memorandum, brief or other written communication without concurrently delivering a copy to the opposing counsel. In practice, it is common to see letters for adjournment being written to the judge without copying the opposing counsel.³⁵ This is not only unacceptable but unethical; it does not show respect to the opposing lawyer. Respect among lawyers should be mutual and reciprocal. No member of the bar irrespective of his rank or title should regard himself as superior or inferior to the other.³⁶ The usual professional courtesy must be shown.

Respect is usually earned, not given. It is earned by having self respect. How one carries and comports one's self is very important. It is certainly not ethical or self-respecting to be upstanding when another lawyer is already on his feet, nor for two lawyers to be addressing the court simultaneously. A lawyer must suppress the urge to jump up and interject or interrupt, unless he is making an objection. What a lawyer does is to make notes and reply when his time comes.

³²Chief Afe Babalola, "Success at the Bar", *op cit.*, at page 360

³³Rule 38 of the Rules of Professional Conduct in the Legal Profession

³⁴Rule 16(b) of the Rules of Professional Conduct.

³⁵Rule 3(c), *ibid.*

³⁶Rule 38, *ibid.*

It is also an aspect of professional self-respect that a lawyer should not wear his barrister's robes on any occasion other than in court or as may be directed by the Bar Council.³⁷ "Barrister's robes" are the wig, gown, wing collar/collarette and bib. This means that a lawyer should not go about, say, on the road or on a motorcycle, with his lawyer's regalia on him. It is hereby suggested that in order to ensure ethics in dressing, every local bar should as a matter of priority consider the provision of a well equipped common room for lawyers, wherein there would be robbing room where lawyers can change dress. Conducive environment should be created for ethical dressing by lawyers.

A lawyer who shares his legal fee is not self-respecting and will not be respected. It is wrong for a lawyer to share his legal fee with the Police, for instance, for referring criminal cases to him. The rule is clear that "no division of fees for legal services is proper, except with another lawyer based upon a division of service or responsibility."³⁸ It is also wrong, unethical and self-disrespecting for a lawyer to sign or append his signature to a document prepared by a layman.

(ii) (Dis)honesty

Dishonesty, or lack of honesty, by lawyers is a most worrying unethical conduct which has given lawyers a bad name down the ages. Laymen are wont to say that "lawyers are liars and when they die they lie still"; that "an honest lawyer is a work of fiction"³⁹ and that "a good lawyer must be a great liar".⁴⁰ The social and biblical perception of lawyers is not salutary. For instance, it sounds to some like a paradox, or an oxymoron, to talk about "a Christian lawyer". They wonder: how can a lawyer be a Christian? Down through the centuries of written history and literature, as well as in the oral folk-tales, proverbs and curses of every culture in the world, the lawyer has been universally hated, at least on paper. A Spanish proverb has it that "it is better to be a mouse in the mouth of a cat than a man in the hands of a lawyer". A French proverb adds that "No lawyer will ever go to Heaven as long as there is room for more in Hell".

The hatred for lawyers is borne out of the (mis?)conception that "lawyers are liars, and when they die they lie still"; which is why Edward Cooke added his pejorative that, "lawyer and liar are synonymous terms". Due to this perceived dishonesty, the generality of the public have the impression that lawyers are crafty, grasping and grabbing people who live on the misfortune of others. The only ones with good words for the legal profession are invariably either lawyers themselves or their mothers.

Even Jesus Christ, who suffered the worst sinners, tax collectors and adulterers to come unto Him, drew the line at lawyers. The Bible projects lawyers as not keeping the words of God; Luke 7:30 records that "the Pharisees and lawyers rejected the counsel of God". The word "lawyer" is written about eight times in the Bible, all in the New testament, and has to do with a personality that lurked around Jesus, not for excitement or hope of what Jesus had to offer, but to tempt, set trap for Him or ask Him difficult questions or pose as a self-righteous person. See: Luke 11:45-46; 52: 14:3;

³⁷ Rule 34(f) of the Rules of Professional Ethics

³⁸ Rule 45 of the Rules of Professional Ethics.

³⁹ Grace Hibbard, American Writer and Poet, 1870 – 1911, "Books Received".

⁴⁰ Rosalind Fergusson, The Facts on File Dictionary of Proverbs, 1983

Matt. 22:35; Luke 7:30; 10:25; Titus 3:13.⁴¹ Jesus Christ had three major encounters with lawyers in the Bible and they are all recorded in the Book of Luke. The first was in Luke Chapter 10 when Jesus sent out the mission of seventy to preach the Gospel. In the course of His speech, a certain lawyer stood up and tempted Him saying: “Master what shall I do to inherit eternal life?” (Luke 10:25). Because Jesus Christ knew that the man was a lawyer, Jesus asked him: what is written in the law? (Luke 10:26), to which the lawyer replied that he should love the Lord his God with all his heart, soul, strength, mind and his neighbor as himself (Luke 10:27; Matt. 23:37). Satisfied with the answer, Jesus asked him to do likewise. However, the lawyer willing to justify himself, asked Jesus further: who is my neighbor? Jesus answered this question with the parable of the Good Samaritan (Luke 10:30 – 35), which is same as the neighbourhood principle in the Law of Torts. Jesus did not tell the lawyer that he could not be a Christian. Rather, he advised him to take steps to be saved.

Next was the occasion when a Pharisee marveled at the idea of Jesus taking dinner without first washing, which was against the tradition of the Pharisees. When Jesus said woe to the Pharisees, one of the lawyers was surprised and said to Jesus: “Master thus saying thou reproachest us also” (Luke 11:45). The lawyer was thus asking Jesus if He by saying “woe to the Pharisees” he was also insulting lawyers. The lawyer, up to this point, had excluded himself and his profession. He was applying all that Jesus was saying to someone else. It never dawned upon him that Jesus could be talking to him! All of a sudden something struck the lawyer's mind and he felt Jesus was including his profession. Jesus proceeded to leave no doubt in anyone's mind, that He was speaking to all who put religion, ritual, ceremony, heritage, and anything else before God. To answer the lawyer, Jesus then said (Luke 11:46):

Woe unto you also, ye lawyers! For ye lade men with burdens grievous to be borne, and ye yourselves touch not the burdens with one of your fingers.

Not over yet, Jesus went on in Luke 11:52:

Woe unto you, lawyers! For ye have taken away the key of knowledge: ye entered not in yourselves, and them that were entering in ye hindered.

Some have held that by the above verses Jesus cursed lawyers. Others have said that it is difficult for lawyers to enter the kingdom of God because they have been cursed as a professional group. There are also some who say that it was not a curse but a mere reproach, criticism or rebuke, i.e, Jesus rebuked lawyers for not living according to their professional calling. The lawyers Jesus rebuked were those who laid (“lade”) great burdens on people without making any effort to solve them. Instead of lightening the burden of people by attending to their legal problems and defending their causes, the lawyers kept away and did not show any concern; the lawyers merely instigated

⁴¹ Here Apostle Paul, in his letter to Titus, refers to “Zenas the lawyer” as one of the first-century Christians. By tradition, Zenas is often counted as one of the unnamed seventy disciples sent out by Jesus into the villages of Galilee mentioned in Luke 10: 1-24. Who says a lawyer cannot be a Christian!

litigation without finding appropriate solution. These were the things Jesus decried. Luke 11:46 is concerned with instigation of litigation or legal problem by lawyers. Jesus' rebuke of lawyers in Luke 11:52 is for keeping the people perpetually in ignorance of the law. Here, Jesus placed the blame squarely on lawyers, for keeping the people in ignorance of the law of the Bible; the lawyers hoarded their knowledge of the law by refusing to share with their less fortunate neighbor. The laws Jesus talked about were Scribal laws. The lawyers took away the "Key of knowledge" through their erroneous interpretations of Scriptures and their added man-made rules, thus making God's truth hard to understand and practice. They also showed bad examples, by arguing their way out of demanding rules which they placed on others. The "burdens grievous to be borne" which lawyers laid on others were the details the Pharisees and lawyers had added to God's law. For example, to the commandment, "Remember the Sabbath day, to keep it holy" (Exodus 20:8), they had added instructions regarding how far a person could walk on the Sabbath, which kinds of knots could be tied, and how much weight could be carried. Healing a person was considered unlawful work on the Sabbath, although rescuing a trapped animal was permitted (14:5). No wonder Jesus condemned their additions to the law.

In today's world, we no longer live under the Old Testament. No lawyer (or any person) is allowed to add or subtract from what Jesus Christ bids us say or do, as embodied in the New Testament. So Jesus' criticisms of lawyers no longer avail. Rather, the criticism ("woe") applies to all who would pervert the words of Christ. Also, today the Rules of Professional Conduct in the Legal Profession forbids lawyers from fermenting strife or instigating litigation. Any lawyer who practices his Christian faith and abides by the Rules of Professional Conduct is both a lawyer and a Christian, or, a Christian Lawyer. All said, the only way to correct the erroneous impressions about lawyers is for lawyers to display transparent honesty.

It is dishonest for a lawyer to lie so as to obtain an adjournment of his case, and yet this is common place. The Supreme Court has had occasion to "put on record the desire of the Judiciary to curb the now notorious attitude of some legal practitioners and politicians faced with very bad cases to employ delay tactics to either defeat the ends of justice or postpone the evil day".⁴² Concealing the facts from the court so as to win the case, or advising your client to perjure in order to secure judicial victory, are all dishonest and unethical. Collecting fees from a client but failing to render professional service or collecting money meant for a client and converting it is dishonest, fraudulent and unethical. Conversion by lawyers is disgracefully common, and does not speak well of the otherwise learned gentleman of the honourable legal profession. The abundance of recent cases on the point shows how common the problem has become in Nigeria. Recent cases include *Nigerian Bar Association v Akintokun*,⁴³ *Nigerian Bar Association v Fobur*,⁴⁴ *Nigerian Bar Association v Udeagha*,⁴⁵ *Nigerian Bar Association v Alabi*,⁴⁶ *Nigerian Bar Association v Edu*.⁴⁷

⁴² *Dapianlong & Ors v. Dariye* (2007) 8 NWLR (Pt. 1036) 332 (SC).

⁴³ (2006) 13 NWLR (Pt 996) 167, held 8.

⁴⁴ (2006) 13 NWLR (pt 996) held 3.

⁴⁵ (2006) 12 NWLR (pt 994) 438.

⁴⁶ (2006) 14 NWLR (pt 1000) 841

⁴⁷ (2006) 14 NWLR (pt 1000) 827

iii) (Mis)conduct

The conduct of any lawyer is very important. It must be constantly borne in mind that membership of the bar is a privilege burdened with conditions.⁴⁸ The conditions lie mainly in proper conduct by lawyers. Improper conduct amounts to a misconduct. The Rules of Professional Conduct in Legal Profession does not define “professional misconduct”. It is however clear that the term is a generic one, a catch-all phrase which covers:

- (a) any form of dishonesty or fraud perpetrated against the client by the legal practitioner;
- (b) failure to deliver to the client money or property received on his behalf or to disclose the receipt of such money or property, or
- (c) making use of any property of the client entrusted to him without the client's authority.

In *Nigerian Bar Association v Edu*⁴⁹ it was held that it is against professional etiquette for a legal practitioner to issue a dud cheque. Any act or omission which in the opinion of the Legal Practitioner's Disciplinary Committee is such that will bring the legal profession into disrepute is regarded as misconduct or an infamous conduct. For instance, misappropriation or conversion of client's money (to the tune of N2.3m) was seen as a serious act of infamous conduct. So also is the payment of “acceleration charge or fee”, a euphemism for a bribe or gratification, and has the despicable effect of corrupting the public servants to whom such bribe is given.

1.3 Conclusion

On the whole, the lawyer has to form a habit of showing respect to the court and to his fellow lawyers, both young and old. Even as concerns opposing lawyers in a case, it should always be borne in mind that the clients, not lawyers, are the litigants. Whatever may be the ill-feeling between clients should not influence the lawyers.⁵⁰ It was not for nothing that the great American educator, John R. Silber, said:

The lawyer's contribution to the civilizing of humanity is evidenced in the capacity of lawyers to argue furiously in the courtroom, then sit down as friends over a drink or dinner. This habit is often interpreted by the layman as a mark of their ultimate corruption. In my opinion, it is their greatest moral achievement; it is a characteristic of human tolerance that is most desperately needed at the present time.⁵¹

⁴⁸ Benjamin N. Cardozo. *In re Rouss.* 221 N.Y. 81, 84 (1917)

⁴⁹ (2006) 14 NWLR (Pt. 1000) 827.

⁵⁰ Rule 16(a) of the Rules of Professional Conduct

⁵¹ John R. Silber. American Educator. President. Boston University. *Wall Street Journal*. March 16, 1972.

The same point was made, rather humourly, by Tryon Edwards,⁵² that “lawyers on opposite sides of a case are like the two parts of shears; they cut what comes between them, but not each other”.

Misconduct appears to be on the rise among lawyers. This much is clear from the recent case laws cited earlier. There should be a conscious effort to promote ethical conduct. A de-emphasis on money will make lawyers well disposed to accepting briefs *pro bono public* (for public good), as a way of giving something back to society. It is unethical not to observe the cab-rank rule, which means that no lawyer should refuse a case for which he is properly briefed, for which he is available and which is within the area of his expertise in the profession. It is professional misconduct not to observe the cab-rank rule. A classic case of observance of the cab-rank rule was in 1792 when prosecution was brought against Tom Paine because he published a book titled *The Rights of Man*. The great advocate, Erskine, was sent the brief to defend. The then Prince of Wales to whom Erskine's was legal adviser viewed Erskine's acceptance of the brief with disfavor and cancelled Erskine's retainer. Erskine was unmoved. How many lawyers today will agree to lose a juicy government retainer in preference to defending an accused person? I am hoping that after reading this, many lawyers will choose to act as Erskine did, for the purpose of upholding the ethics of the legal profession.

The many proven cases of conversion and fraud by lawyers, the sporadic cases of involvement in Advanced Fee Fraud (“419) as reported in the press, and the cases of courtroom unethical behaviour all lead one to conclude that when placed on the imaginary lifted scale against professional ethics, lawyers are found wanting. It may well be that some of the unethical behaviour by lawyers are done in ignorance, but *ignorantia juris neminem excusat*.⁵³ Take for instance the rampant cases of lawyers practicing as lawyers and simultaneously engaging in buying and selling, i.e trading. Such business is not only incompatible with legal practice but also tends to undermine the high esteem of the legal profession.⁵⁴ On the whole, a lawyer's conduct in and out of court is very important not only to himself but also to the corporate image of the legal profession. Lawyers must not only uphold the ethics laid down for the profession, they must always be seen to be doing so. They must always bear in mind that they are the living exemplars – and thus teachers – every day in every case and in every court and out of court; and their worst conduct will be emulated and highlighted more readily than their best.⁵⁵

⁵²Jonathan & Andrew Roth. *Poetic Justice*, op. cit. at page 96

⁵³“Every man must be taken to be cognizant of the law, otherwise there is no knowing of the extent to which the excuse of ignorance might be carried. It would be urged in almost every case”: *R v Bailey* (1800) *Russ & Ry 1*; *R v Esop* (1836) 7 C & P 456

⁵⁴Rule 30(b) of the Rules of Professional Conduct

⁵⁵Warren E. Burger. Address at American Law Institute, Washington DC, reported in the *National Observer* May 24, 1971.