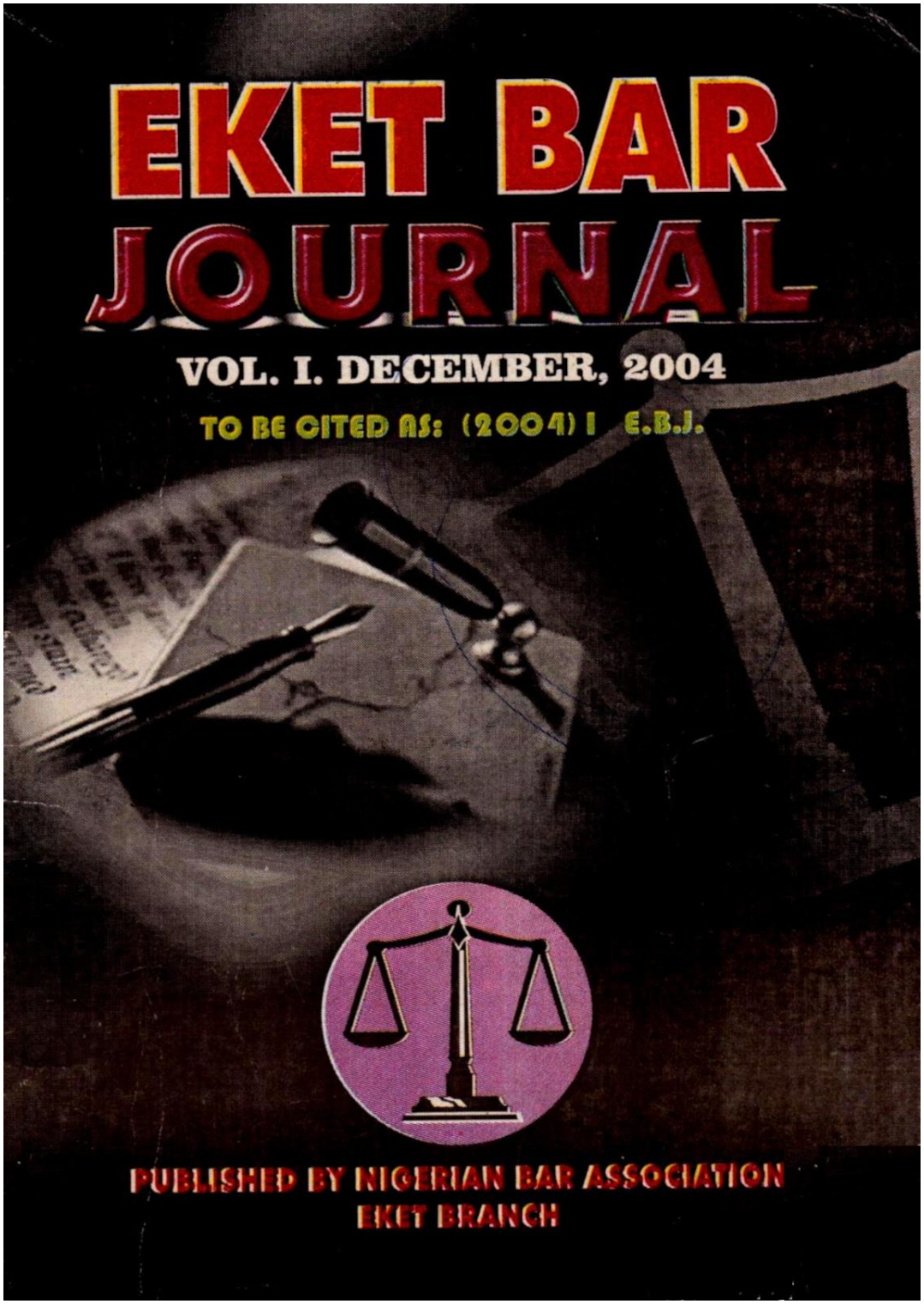

UNWRITTEN RULES OF PROFESSIONAL CONDUCT FOR THE LEGAL PROFESSION

By:

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INTRODUCTION

Is it not amazing that the "Greatest Commandment" which had fundamental consequences was not among the ten written commandments ...? There are surprisingly many unwritten rules in the legal profession a breach of which have damnable consequences that are incomparable with the written rules of professional conduct. If we pause to rewind our legal memory, it will be seen that the Rules of Professional conduct in the Legal Profession made pursuant to the Legal Practitioners Act of 1975 was made by the General Council of the Bar at its General Meeting in Lagos, in December, 1967 and further amended by the meeting of the Council held in Lagos on 15th January, 1979. The framers of the rules stretched their imagination so wide in order to proffer guiding principles for the conduct of Legal practitioners in Nigeria. In their zeal, they arrived at multiple rules, which were 52 in number with the interpretation making 53. The rules wear a façade of comprehensiveness, but sadly the lacunae in the rules to a large extent beg for a change in the title of the said rules.

LOPSIDED NATURE OF THE RULES OF PROFESSIONAL CONDUCT

Before raising any dust on this issue, it is interesting to refresh our memories with the epigrammatic testament of Rt. Hon. Lord Denning in his celebrated book: THE DISCIPLINE OF LAW[1]:

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1 (1979) Butterrocks at page 149

"Each member, it was said had agreed with the other members to abide by the rules of the Association, no matter how unreasonable they were - no matter how unfair to him - they were binding on him, just as any contract which a man makes is binding. So whenever a member was unfairly treated by the group or expelled unjustly from the group - then, so long as the rules permitted it, he had no remedy wherever a difference arose between a voluntary association and its members, the courts said: 'LET US LOOK AT THE RULES' then they got into a pretty pickle, usually because of the obscurity of the rules. In the point of drafting, the rules of these Associations are the worst ever. Time and time again they have given the lawyers 'toil, tears and sweat' We had a lot of tears over the 'Rules of the Actors' Equity Association.'"

The above goes to demonstrate the importance of rules in any given association. It further shows how any obscurity of provisions or absence of rules can bring "tears" to all and sundry. What is the state of our rules? The first observation here is that the title of the Rules does not reflect the Contents. Whereas the title of the Rules gives the impression that it is meant to govern the "Legal Profession" or legal practitioners, yet the contents reflect that it is only a section or class of legal practitioners that are practically addressed by the rules - that is, legal practitioners serving as advocates in our courts and those performing jobs as solicitors to Clients in their private capacity.

Before you get put off or attempt to challenge this writer, remember what Lord Denning said - "Let us look at the Rules" ... For instance, Rule 1 deals with the duty of the lawyer to the Court; Rule 2 deals with Relations with the Judges; Rule 3 - Conduct towards Judges during trial; Rule 4 - Candour and Fairness during trials; Rule 5 - Attitudes towards certain Tribunals; Rule 6- Courtroom Decorum; Rule 7 - Employment in Criminal Cases, and on and on till the end. Being a legal practitioner is not synonymous with being an advocate. There are other categories and fields of engagement as legal practitioners. We have legal practitioners serving in Companies, government Departments (apart from the Ministry of Justice), Political office holders, Traditional Rulers, Academic Fields, Non-governmental Organizations among others. Are they not Legal Practitioners? They are. By section 24 of the Legal Practitioners Act[2], a legal practitioner is defined as:

"A person entitled in accordance with the provisions of this Act to practice as a Barrister and Solicitor, either generally, or for the purpose of any particular office or proceedings."

The definition of a legal practitioner opens with the phrase "A person entitled ...," which means that once you have been called to the Nigerian Bar, you are "entitled". The area you then serve in the vast field of the profession is your choice. As a person, you are seen as a Legal Practitioner, then if seen as a legal practitioner, then you are deemed subject to the rules of professional conduct. Sadly, when you look at the Rules, it says nothing about how you are to conduct yourself generally as a

2. Laws of the Federation of Nigeria, 1990.

legal practitioner irrespective of the legally recognized areas of operation. Rather, by Rule 52 of the Rules, "Lawyers" have a duty to report to the NBA, any conduct of their colleagues in breach of the Rules that will tarnish the image of the profession. The 'Rules' are clearly the ones set out from Rules 1-52. Can other categories of Legal Practitioners not do a thing that will tarnish the image of the profession in the course of their enterprise ...? When a lawyer who is a Company Secretary accepts bribes or connives with other directors to transfer shares owned by one individual to another, or forges a company's resolution and forwards same to the Corporate Affairs Commission, does it not tarnish the image of the profession ...? As a legal practitioner, can the NBA not deal with him irrespective of other in-house administrative or penal procedures of the company? Here our Rules become dumb! Can you intelligently punish a person for what is not in the Rules?

Beyond the above, what do our Rules say about Legal Practitioners who have become Judicial Officers vis-à-vis the existence of a classified Code of Conduct for Judicial Officers?[3] Are the judicial officers externally excluded from the basic professional standard for legal practitioners? If yes, why do we have Rule 39 (c-h) dealing with practice as retired judicial officers? It then means that if a retired Judicial Officer violates this provision, he can still face the NBA for discipline as provided for under Rule 52. By bringing in Rule 39, the impression created is that retired Judicial Officers are still subject to NBA discipline. That point is not spelt out clearly.

It is submitted by this writer that in so far as the Rules of Professional Conduct remain court-practice-driven, it leaves a dangerous loophole for other categories of legal practitioners to operate as if they are not bound by the Rules. It is not enough

3. Conduct of Conduct for Judicial Officers of the Federal Republic of Nigeria.

for Rule 53 to define Lawyers under the Rules to include other legal practitioners when the detailed rules make no mention of the "minimum general professional standard" expected of a legal practitioner irrespective of his field of engagement.

The above point becomes necessary because when these other categories of legal practitioners die, as a matter of convention, they are still given the rights accruing to legal practitioners who appear in Courts. We still hold Court Sessions in honour of them. Is it not "an abuse of Court" to bring the body of a man who never saw himself as owing a duty to court all his life, to the court upon his death? If it is not an abuse, then our Rules should clearly address the situation, in order that the duty to the profession be not slaughtered by the legal practitioners on the altar of alternative (non-court) engagements. The professional tie must not be broken.

UNWRITTEN YET FORCEFULLY BINDING

There are so many unwritten Rules of professional conduct, which are seriously binding on legal practitioners. We must concede that all the Rules cannot be written in one book. That reminds one of a renowned ecclesiast who opined as follows:

> "And there are also many other things ... which if they should be written everyone, I suppose that even the world itself could not contain the books that should be written."[4]

Time and again, the Courts, the Bar, the Government and Society at large have evolved Rules of Conduct in society. Amazingly, the society expects a higher standard from legal practitioners than any other sets of persons in society. The effect of the foregoing is that some of these unwritten Rules may have

4. Apostle John - John Chapter 21, Verse 25 (Holy Bible)

to be elevated into our Rules so that an equal standard can be adopted to curb their violation. Section 11 of the Legal Practitioners Act[5] which gives the legal practitioners Disciplinary Committee the power to discipline Legal Practitioners, outlines four main factors[6] that should form the basis for discipline, namely:

(i) Infamous conduct in any professional respect
(ii) Conviction by a court
(iii) Proof of fraudulent Enrolment as a Practitioner
(iv) Misconduct, which is incompatible with the status of a legal practitioner.

Painfully, the Law does not write down what amounts to an infamous conduct in a professional respect. It gives the Council the intuitive and introspective right to solely determine what amounts to an infamous conduct and a misconduct which is incompatible with the status of a legal practitioner. Is that not sufficient to challenge a lawyer to conduct himself like a saint, angel or even God!

Section 11(4) of the said Act puts the final nail to the casket. It urges the council to prepare a statement in writing as to the kind of conduct which the council considers to be infamous conduct in a professional respect and "the registrar shall send to each person whose name is on the roll", by post, a copy of such a statement.

From the foregoing, it shows that the idea was that what amounts to misconduct should be published in writing, and personal service on each legal practitioner was to be effected by means of post. I am sure you will agree that the Council has not complied with this provision. The subsection does not end there, it continues and concludes as follows:

5. Laws of the Federation of Nigeria, 1990
6. Section 11(i)(a-c) and (ii).

> "but the fact that any matters are not mentioned in such a statement shall not preclude the Supreme Court or the Disciplinary Committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters." (Underlined by this writer).

Based on the above, it is pertinent to examine some conducts, which though not clearly written, could indict a legal practitioner:

(a) Membership of Secret Societies:

Considering that the Constitution of Nigeria disqualifies persons who are members of Secret societies from holding key offices, the legal profession being regarded as the most noble profession has an implied rule which makes it incompatible with the status of a legal practitioner to belong to a secret society. The caution given by an erudite Nigeria Jurist, Hon. Justice (Professor) Niki Tobi (JSC) is worthy of note:

> "A lawyer should not be a member of any secret society .. if he is already a member of one, he should quickly move out of it ..."[7]

(b) Excessive drinking and smoking:

The society and indeed the profession shudder at the legal practitioner who humiliates himself through smoking and wanton consumption of alcoholic drinks. As noted by a Judge of high standing:

7. Tobi, N. The Christian Lawyer, CLASFON, Academy Press Plc. Lagos, 2000 at p.200

"Although rules of professional ethics do not provide that it is unethical for lawyers to drink or smoke in court that is the professional standard. As a matter of fact, there is really no need for the rules of professional conduct to make specific provisions ... unprofessional conduct is taken for granted ... our concern is not therefore drinking and smoking in court; but drinking and smoking anywhere at all, as habits of a lawyer."[8]

(c) Issue of Bribes:

Rt. Hon. Lord Denning summarized the issue by bringing out the writing of Shakespeare:

"Let me tell you Caussius, you yourself are much condemned to have an itching palm; to sell and mart your offices of gold to underservers ... shall we now contaminate our fingers with base bribes, and sell the mighty space of our large honours for so much trash as may be grasped thus? I had rather be a dog, and bay the moon than such a Roman."[9]

We do not need to write a dissertation on the issue of bribery. Legal practitioners whether in private practice, academics, judicial officers, police lawyers, company lawyers, and all others should note the above and be advised accordingly.

8. Ibid at pp.192-193.
9. Denning - What Next in the Law, London (1982) p.226

(d) Frivolous Litigation:

How do you feel when you see a well dressed Legal practitioner adorn himself with a frivolous self-defeating and nonsensical application or action, defying all counsel of his conscience and fellow colleagues, and just waiting to be undressed before the court and often before the spectating gallery, or cautioned in Law reports? This is a sickening conduct. The courts in a long line of cases have interpreted such actions to be unprofessional, infamous and incompatible with the status of a legal practitioner.[10]

(e) Swearing of Affidavits in Cases:

If a counsel is not careful, he can lose his wig for taking oaths on behalf of his Client in certain categories of cases. It is unprofessional for a lawyer to put himself in a position where an opponent in a counter affidavit will describe his averments as "well designed falsehood" ... "blatant lies" ... "attempt to defraud", and many other despicable words and phrases. This writer associates himself with the caution given by E.C. Ubaezonu, J.CA:

"Counsel as officers of Court must not put themselves in a position in which they may come under a cross-fire between the opposing views of both parties to the case. They must not swear to affidavits in respect of controversial facts in a case ..."

CONCLUSION

The essence of this paper was not to exhaustively bring out the unwritten rules of professional conduct, but to stir up our

10. See Adefulu v. Okulaja (1998) 58 LRCN page 3665 H.18 Akpan v. Union Bank Plc. & Anor C.T.C of Judgement Delivered on 10/06/2002 in CA/PH 177/98

minds as professionals to re-examine the state of our rules and our conduct – rules or no rules, it is, therefore, safe to pull this train to a halt by saying that the rules of professional conduct should be reviewed to set out the minimum general standard of professional conduct for legal practitioners irrespective of whether they are practicing in Courts, serving in Companies, Academic Institutions, Politics, Traditional endeavours, among others.

We must always remember that Section 10 of the Legal Practitioners Act has a descending axe:

> "... where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason be subject of proceeding under this act ..."

Going by the above all embracing provision, it is wrong to couch our rules of professional conduct as if the only legal practitioners are those who practice in Courts. Furthermore, as much as possible, the frontiers of professional misconduct should be spelt out in the Rules. Beyond all these, lawyers should train themselves to live above reproachable conduct by all means. This calls for diligence, selflessness and the fear of God. The unwritten rules could still haunt a legal practitioner beyond the grave. We must be extra careful.

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11. Ezekiel v. Westminster Dredging Nig. Ltd. (2001) FWLR Pt.60, p.1564, H.9.