

**STRENGTHENING ETHICS IN CLINICAL LEGAL EDUCATION: ANALYSIS OF CLIENTS EXPECTATION AND STUDENT'S PROFESSIONAL OBLIGATION IN NIGERIA\***

**Abstract**

*Indigent clients are the major beneficiaries of law clinics in Nigeria. Law clinics bridge the gaps between the poor and the justice system. Clients using law clinics come with much expectation including ethical expectations. However, the Rules of Professional Conduct generally applies to lawyers called to the Nigerian Bar and not to law students. It becomes imperative for law clinics to develop strategies to strengthen ethics in clinical legal education program not only in the teaching of ethics but also in promoting ethics in every aspect of discharging duty at the law clinic. This paper undertakes an analysis of student's obligation under the rules of professional conduct and its ability to meet client's expectation. Also utilizing findings from the law clinics in Kano, Yola and Yenagoa campuses of the Nigerian Law School, it identifies challenges and makes recommendations that will strengthen the teaching and application of ethics in clinical legal education programmes.*

**Keywords:** Professional Ethics, Clinical Legal Education, Clients Expectation, Student's Professional Obligation, Nigeria

**1. Introduction**

Clinical legal education has been variously defined. In this paper, it is referred to as a method of teaching that is concerned with getting law students involved in the practical application of legal knowledge, legal ethics and legal skills by immediate use in a hypothetical or real situation while also providing them the opportunity and space to discharge a social justice function.<sup>1</sup> Common features in law clinics are that they are usually established by law schools to advance experiential learning that harnesses students' skills. They also meet societal needs such as proffering solutions to the problems of communities where the law schools are situated and build student's consciousness of law as being an avenue or instrument of social good, a vehicle of justice, public service and professionalism.<sup>2</sup> The opportunities opened to students in law clinics aligns with the role of lawyers in promoting human rights, shaping society and ensuring the rule of law subject to ethical standards. This is in line Principle 14 of the UN Basic Principles on the Role of Lawyers which provides that:

Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

It is expected that in discharging this obligation lawyers should promote activities and programmes that promotes public understanding of human rights. This is to enable citizens to assert their rights giving special attention to indigent persons and other disadvantaged persons who lack access to justice<sup>3</sup>. A high number of the indigent and poor globally, still lack access to justice because they are unable to afford and sustain legal representation to seek protection and remedy for the legal wrongs they suffer.<sup>4</sup> These range from issues covering housing, violence, discrimination, unlawful termination of employment, environmental and human right abuses. These challenges are also common for Nigeria. A 2015 report of the United Nations Development Programme assessed the difficulty posed by cost of seeking justice in Nigeria:

The cost of accessing justice in Nigeria include the cost of hiring the services of a good lawyer, the transportation costs to the urban areas to access the lawyers who are mostly based in the urban areas and the other costs which are incurred during the legal battle. These costs are crippling

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<sup>1</sup> Kipnis, K. 'Ethics and the Professional Responsibility of Lawyers' [1991] (10) (8) *Journal of Business Ethics*; 569.

<sup>2</sup> Jajadev Pati, 'Clinical Legal Education, Ethics of the Profession' <https://www.lawyersclubindia.com/articles/clinical-legal-education-and-ethics-of-profession-238.asp> <Assessed 15 August, 2020>

<sup>3</sup> Principle 4 of the UN Basic Principles on the Role of Lawyers

<sup>4</sup> Robert Kuehn and Peter A. Joy 'An Ethics Critique of Interference in Law School Clinics' <https://ir.lawnet.fordham.edu/flr/vol71/iss5/10page1972> <Assessed 15 August, 2020>

especially in Nigeria where more than half of the population live on less than \$1.25 a day (UNDP, 2015)<sup>5</sup> and where about 52% of the population live in the rural areas<sup>5</sup>

These challenges have to an extent benefited from the interventions of law clinics. The growth of Law Clinics in Nigeria in the last decade can be traced not only to the need for experiential learning but also as a response to government's failure to provide legal services to the indigent. With only one understaffed Legal Aid Office in some States capital cities, access to justice has been a huge challenge for the poor and marginalized. This is more so in Nigeria where most people do not have understanding of their rights. Law school clinics therefore provide a significant portion of the citizens a glimpse of hope as their only bridge to judicial remedy and having a voice.

Clinical Legal Education at the Nigerian Law School can be traced to the establishment and recommendation of a 2006 Review Committee. Implementation of the recommendations resulted in the development of a new knowledge and skill-based curriculum, remodelling of courses, and reviewing of training methodology to integrate experiential learning process. Today the six campuses of the Nigerian Law have Law Clinics in different stages of operation where students can immediately apply what they have learnt and acquire more skills when attending to life clients and real-life legal problems. This must however be learned in an environment that fosters ethics and responsibilities on the part of the students. The opportunity to represent indigent people provides the law school clinicians the opportunity for experiential learning, professionalism and discharge of ethical duties which they ordinarily would have been able to discharge only after being called to the Bar as lawyers. The application of ethical standards is crucial for students who serve at the clinics hence, 'it is incumbent upon clinics to ... impress upon students the importance of ethics when representing clients who have the least power in our society and the least access to lawyers or the legal system especially when representing those clients against powerful forces'<sup>6</sup>.

Ethics and professional responsibility/obligation are related and mutually reinforcing terms and are recognized as the foundation of professionalism and integrity needed for an independent bar that will promote and protect the rule of law and social justice. While legal ethics refers to legal rules developed and codified by the legal profession to regulate the conduct of all legal professionals in a country, professional responsibility/obligation refers to the sense of duty and commitment a lawyer is expected to show to the profession, other lawyers, his client and the courts to uphold the rule of law and ensure that justice is done, and rights are upheld at all times. The American Bar Association Section of Legal Education asserts this when it stated that 'ethics [is] an essential element of professionalism and a desirable quality for lawyers which will enhance the practice of law'<sup>7</sup>. At the core of the Mission of the Nigerian Law School is the responsibility to train students to conform to the ethics and traditions of the legal profession and exhibit the highest sense of integrity and candour in the discharge of their professional calling and to inculcate in its graduates the ideals of rule of law, social justice and community service such as providing free legal services to the indigent and encouraging the development of opportunities for access to justice.

There have been debates in Nigeria on who should be responsible for unethical behavior of law students<sup>8</sup>. However, it is acknowledged by both the Bar and academics in Nigeria that legal ethics being the essence of a good lawyer, should not be restricted to the one-year programme at the Law School but must be integrated throughout legal education commencing at the degree level at the universities. This is for adequate impartation in preparing persons who will eventually emerge as legal service providers. These persons are expected to have the core value of ethics, professionalism and integrity needed to function in the promotion and protection of the rule of law and social justice.

At the 2018 National Association of Law Teachers Conference, it was reiterated that the task of imbuing the rule of law lies with the law teachers.<sup>9</sup> Every law school has a profound duty and a unique opportunity to inculcate principles of professional ethics and standards in its students. The training of law students at the university, the

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<sup>5</sup>Rofiah Sarumi, 'Legal Education in Nigeria and the Potential Role of University Law Clinics in Facilitating Access to Justice and the Realization of Human Rights in Nigeria' [www.researchgate.net/publication/315672537](http://www.researchgate.net/publication/315672537) <Assessed 15 August, 2020>

<sup>6</sup> Tarr, N. W. (2009) 'Ethics, Internal Law School Clinics, and Training the Next Generation of Poverty Lawyers' <http://open.mitchellhamline.edu/wmlr/vol35/iss3/9> <Assessed 20 August, 2020>

<sup>7</sup> American Bar Association, 'Report of the Professionalism Committee of the Aba Section of Legal Education and Admissions to the Bar, Teaching And Learning Professionalism' (1996)

<sup>8</sup> Lawyers and members of the Bar blame the Nigerian law School teachers who are expected to teach ethics to law students for their unethical conduct. Nigerian Law School teachers argue that considering the fact that they keep students for one year at the most after their university 4 year legal training they can't be blamed after covering curriculum contents with Bar Aspirants.

<sup>9</sup> Oluwaseun Abimbola is the current Attorney General of Oyo State.

law school classes and legal clinics, at assigned law firms and the court in the course of externship provides space and opportunity for law students to learn. Succinctly put:

The law school is uniquely situated to shape and form the habits of students during the period in which their professional ideals and standards of ethics, decorum and conduct are being formed. At this stage, law students are more malleable and receptive than they will be after years of professional observation of bad habits of legal thinking, legal application, or dubious ethics<sup>10</sup>.

The decline in ethical conduct of lawyers is a global phenomenon. In other words, it is not only in Nigerian that the decline of ethics in lawyers is attributed to lawyers and legal pedagogy. Frankfurter has stated that lawyers are what the law school makes them<sup>11</sup>. Assessing the situation in Ontario law school for instance, Clark and Seymour attributed this decline to the failure to teach courses that promote pride in the profession and elevate ethical issues and inadequate curriculum where ethics is thought.

Three law clinics of the Nigerian Law School were randomly selected and studied over a period of two weeks. The case study methodology was employed. First, a questionnaire was utilized, and then a follow up oral phone interview of the staff supervisors/trainers of the clinics due to the geographical distances between the locations of the participants and the constraints of movement imposed by Covid-19 lock down. Further documents reviewed in order to get a better sense of the workings of the law clinics are newsletters and annual reports of the law clinics which gave insights on the subject of this paper as it affects the three law clinics analyzed. The study has useful contribution to this paper as it sought to inquire into the running of the selected law clinics at the Nigerian Law School to see how these clinics deal with the issue of effective impartation of professional ethics in the students at the law clinics, the application of ethics by the students in their dealings with the recipients of their services, and structures that regulate and sanctions any breach where applicable.

This paper therefore analyzes student's obligation under the rules of professional conduct and its ability to meet client's expectations at the law clinics. It commences with a general introductory overview of the subject, then assesses the framework regulating professional responsibility. It then addresses client's expectation and professional responsibilities in Nigeria. In the fourth section, it identifies limitations of student's professional obligation to client's expectations in law clinics in Nigeria and makes recommendations for strengthening ethics in clinical legal education programmes before its conclusion. The case studies utilized were useful contributions to the analysis made in this paper.

## **2. Framework of Legal Professional Responsibilities in Nigeria**

Professional values are crucial to the content of legal education. This is also affirmed by the Advisory Committee on Legal Education and Conduct (ACLEC) in the UK. This is a '... commitment to the rule of law, to justice, fairness and high ethical standards, to acquiring and improving professional skills, to representing clients without fear or favour, to promoting equality of opportunity, and to ensuring that adequate legal services are provided to those who cannot afford to pay for them.'<sup>12</sup> Student's ethical obligation and professional responsibility in a clinic setting can only be understood in relation to the ethical and professional responsibility of lawyers. It is needful to therefore view this issue from two positions. First is the ethical and professional responsibility of lawyers as set out in the rules of professional conduct. The other, refers to how these responsibilities are assessed through lawyers' obligation towards law and justice based on the codes of law while still ensuring the independence of the judiciary and access to justice. Based on the requirement of principle 26 of the UN Basic Principles on the Role of Lawyers which provides that 'Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms, each country is expected to have ethical rules that regulate the conduct of their legal practitioners. Nigeria like most countries has done this and has Rules of Professional Conduct in the Legal Profession for its lawyers. Hence the necessity for aspiring lawyers to be taught these rules during their training. Addressing the framework of legal professional responsibilities in Nigeria requires a delineation of its scope. It is therefore important to state at this stage that the analysis of 'questionable prescriptions' of the various theories of legal ethics in a bid to resolve the dilemma of conflicting resolution for prescriptions based on dominant views and contextual practicalities<sup>13</sup> is not engaged. The dominant view basically covers various principles including

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<sup>10</sup>Warren Burger, 'The Role of the Law School in the Teaching of Legal Ethics and Professional Responsibility' <https://engagedscholarship.csuohio.edu/clevstrev/vol29/iss3/12>, 389 <Assessed August, 2020>

<sup>11</sup> Edwards, H.T. 'The Growing Disjunction between Legal Education and the Legal Profession [1992] 91 *Michigan Law Review* 34

<sup>12</sup> n1

<sup>13</sup>Andrew Perlman, 'A Behavioral Theory of Legal Ethics' <http://ilj.law.indiana.edu/articles/14-Perlman.pdf> <Assessed , 2020>

the principle where lawyers must uphold ‘all lawful and ethical conduct a client requests’<sup>14</sup> Contextual practicalities on the other hand presents a situation where there is a strong ‘inclination among philosophers to understand the relationship between ethics and applied ethics.’<sup>15</sup>

Legal ethics in Nigeria are basically sourced from the Legal Practitioners’ Act<sup>16</sup> and the Rules of Professional Conduct for Legal Practitioners.<sup>17</sup> Ethics generally is seen as ‘the basic concepts and fundamental principles of decent human conduct’.<sup>18</sup> Legal ethics on the other hand connotes the ‘minimum standards of appropriate conduct within the legal profession, involving the duties that its members owe one another, their clients and the courts’.<sup>19</sup> The lawyer’s duty to the client, court, fellow lawyers and the state fosters the rule of law and the administration of justice.<sup>20</sup> Even though legal ethics came with the package of legal practice and education from England,<sup>21</sup> there have been domesticated rules applicable in Nigeria that adopts the peculiarity of the Nigerian situation, which are taught in the course of legal education.<sup>22</sup> Nicolson argued ‘that a core element of professionalism is the maintenance of ethical standards’<sup>23</sup> Ethics has been mentioned as the most important subject in legal education and cannot be ignored.<sup>24</sup> Therefore the adoption of ‘professional ethical standards’ is vital for the training of future lawyers. This assertion is supported by not only stake holders in Nigeria and by judicial authorities such as in the case of *Pharmacists Council of Nigeria v Lamlex (Pharmacy) Nigeria Limited & Ors*<sup>25</sup> where the Court of Appeal emphasized ethical duties of counsel, but also the Advisory Committee on *Legal Education and Conduct* ACLEC in the UK and also by the American Bar Association.<sup>26</sup> The International Bar Association also promotes this through its IBA International Principles on Conduct for the Legal Profession.<sup>27</sup>

In Nigeria, basically, the content of legal ethics as contained in the RPC are broadly summed into six main areas comprising of the extent of the legal practitioners’ practice, the relations of the legal practitioner with the clients, relations with other legal practitioners, relations with the court, improper attraction of business and remunerations and fees. These duties are common among other jurisdictions such as the UK, the US and Australia to mention a few.<sup>28</sup>

The paramount provision of the RPC presents the lawyer’s duty to uphold the law, ‘observe the rule of law, promote the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.’<sup>29</sup> The first broad area also covers certain duties and responsibilities of the lawyer in the practice of law such as the lawyers duty on admission into the legal profession, ‘aiding the

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<sup>14</sup> Ibid p1644.

<sup>15</sup> (n1)

<sup>16</sup>Laws of the Federation of Nigeria 2014 (As amended).

<sup>17</sup> 2007.

<sup>18</sup>Joe-Kyari Gadzama, ‘Ethics of the Legal Profession for Aspirants to the Nigerian’ <https://jkgadzamallp.com/images/newsletters/ethics%20of%20the%20legal%20profession%20for%20aspirants%20to%20the%20nigerian%20bar.pdf> <Assessed , 2020>

<sup>19</sup> n19.

<sup>20</sup> Marisa Secco, Lawyers’ Duty to Client’ Texas Court Contact Rules Attorney’ <http://www.runazur.com/a-lawyers-duty-to-the-client/>; National Criminal lawyers, A Lawyers’ Ethical Duties to the Court and to the Client 07/07/2018 by <https://www.nationalcriminallawyers.com.au/a-lawyers-ethical-duties-to-the-court-and-to-the-client/> < Assessed 15 August, 2020 >

<sup>21</sup> (n21)

<sup>22</sup> Dawuni Jarpa and Badejogbin, Rebecca ‘Transplantation and Domestication of American Models of Legal Education in Nigeria’ in Bartie, Susan and Sandomierski, American Legal Education Abroad: Critical Histories (New York University Press, 2021), 139-161.

<sup>23</sup> Donald Nicolson, ‘Calling, Character and Clinical Legal Education: A Cradle to Grave Approach to Inculcating a Love for Justice, Legal Ethics’ 16:1, 36-56, DOI: 10.5235/1460728X.1.1.36 <Assessed , 2020>

<sup>24</sup> Russell Pearce, ‘Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School, (1998) (29) LOY. U. 719-721.

<sup>25</sup> Henry Chibuikwe Ugwu, The role of a legal practitioner in the administration of justice: can a legal practitioner win or lose a case?’ <https://www.legalnaija.com/2019/03/the-role-of-legal-practitioner-in.html> <Accessed 10 August, 2020>.

<sup>26</sup> n18 and n25

1965-1974: Watergate and the rise of legal ethics’ ABA Journal (2015)

[https://www.abajournal.com/magazine/article/1965\\_1974\\_watergate\\_and\\_the\\_rise\\_of\\_legal\\_ethics](https://www.abajournal.com/magazine/article/1965_1974_watergate_and_the_rise_of_legal_ethics)

<sup>27</sup> n18; IBA International Principles on Conduct for the Legal Profession Approved on 25 May 2019 by the Council of the International Bar Association approved in 2019.

<sup>28</sup>Peter Sise ‘Professional conduct and responsibilities: An overview for in-house Counsel’

<https://www.claytonutz.com/knowledge/2014/december/professional-conduct-and-responsibilities-an-overview-for-inhouse-counsel>

<sup>29</sup> Rules of Professional Conduct (RPC), 1

unauthorized practice of law' etc.<sup>30</sup> The second broad area which covers the lawyer's relations and duties to the client, encompasses issues of devotion to the client's cause, competence, conflict of interest engaging the client, conducting litigation for the client and investigation of facts and dealings with witnesses.<sup>31</sup> The third broad area covers the lawyers responsibilities and conduct toward other colleagues in the course of law practice which also relates to good 'faith and fairness'.<sup>32</sup> The fourth area centres on the lawyer's relation with the court in terms of his responsibilities and duties to the court, conduct during proceedings, decorum, *pro bono*, responsibility to the court in criminal matters and as an officer of the court.<sup>33</sup> The fifth area covers the propriety or impropriety of the methods engaged to attract briefs.<sup>34</sup> The sixth area covers the rules that prescribe the how-to and what-to of the lawyer's remuneration and fees.<sup>35</sup> The enforcement of the rules is provided for under the section on miscellaneous.

Although these ethical rules are applicable to only qualified legal practitioners, they are taught to the students preparatory for the future also utilizing the law clinics teaching pedagogy. Clinical legal education method is at the very core of adopting a skills-based pedagogy in the adoption of an enhanced teaching methodology adopted in legal education in Nigeria. Professional ethics is at the core of 'achieving the goals of 'educators and the professions in the preparation of student lawyers' through clinical legal education'<sup>36</sup> At the university stage in Nigeria, there is no compulsory course on legal ethics. Most universities do not even offer ethics during the four/five years of the undergraduate programme. At the Law School however, it is a compulsory course integrated conspicuously into the one-year programme. The purview covered in the RPC in Nigeria is similar to that covered by the IBA. The compendium of Campus Based Law Clinics in Nigeria a publication of NULAI which is a guide to curriculum content for law clinics in Nigeria also includes legal ethics as part of the curriculum.<sup>37</sup> Studies have found that an effective training of law students in the various law clinics must of necessity include professional ethics curriculum to achieve the dual purposes of keeping the students abreast with the rudiments of successful law practice as well as meeting the expectations of the clinics' clients<sup>38</sup>

Diverse approach to integrating ethics in clinical legal education programmes has needfully been adopted by law schools under different methodologies. It is therefore taught as a core course module, integrated into other courses, at clinics where students are expected to apply what they learn in dealing with clients, through reflections at externship and creative writing exercises as part of their assessment. This is to enable students understand its importance. This agrees with Rhodes' position that, 'the most important characteristic of effective professional responsibility programs is the message that the subject is itself important'. Since law schools have affirmed their 'commitment to professional responsibility', they must reflect these 'rhetorical allegiance into curricular priorities'.<sup>39</sup>

As in other jurisdictions, law clinics programmes in Nigeria encompass in-house clinics, out house or externships and simulations respectively carried out under the guidance and supervisions of faculty members, practicing legal practitioners and judges. It is collaboratively done. For the in-house, the students work with real life clients and work within the code of conduct contained in the LPA and Rules of Professional conducts in Nigeria as they interact with life clients and potential witnesses through interviews to get information relevant to the case. They identify the legal issues, conduct research and analyze these facts in the light of the rights of their clients as defined by the applicable laws. They also proffer advice and arrange for the representation of clients by qualified legal practitioners since according to the applicable laws, students do not have a right of audience in court. There are no express rules specifically for the ethical conduct of the clinics even though general codes of conduct applied by the institution are by extension applied here where relevant.<sup>40</sup> Sometimes, a particular clinic would have its own sets of rules of dos and don'ts. It becomes imperative for law clinics to develop strategies to strengthen ethics in clinical legal education program not only in the teaching of ethics but also in promoting ethics in every aspect of discharging duties at the law clinic because Clinicians are exposed not only to real life cases before call to bar

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<sup>30</sup> RPC, 1-13.

<sup>31</sup> RPC, 14-25.

<sup>32</sup> RPC, 26-29.

<sup>33</sup> RPC, 30-38.

<sup>34</sup> RPC, 39-47

<sup>35</sup> RPC, 48-54.

<sup>36</sup> Nigel Duncan 'Ethical Practice and Clinical Legal Education' *International Journal of Clinical Legal Education*, July 2014 p7.

<sup>37</sup>NULAI, 'Compendium of Campus Based Law Clinics in Nigeria' [https://www.researchgate.net/publication/335277327\\_Compendium\\_of\\_Campus\\_Based\\_Law\\_Clinics\\_in\\_Nigeria](https://www.researchgate.net/publication/335277327_Compendium_of_Campus_Based_Law_Clinics_in_Nigeria) < Assessed 15 August, 2020>

<sup>38</sup> Green B. A. 'Foreword, Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients' [1999] (67) (1713) *Fordham Law Review*.

<sup>39</sup> Deborah Rhode, 'Into the Valley of Ethics: Professional Responsibility and Educational Reform'

<sup>40</sup> n 39

but are also exposed to confronting ethical dilemmas and need to make ethical decisions.<sup>41</sup> According to Nicolson, some questions lawyers may be faced with which also applies to law students includes:

...how to allocate the privilege of their legal training, skill and experience: should it be based on money or justice and moral considerations? Do lawyers have a duty to help the most vulnerable even when they cannot pay? ...professionalism involves an ethical dimension and this includes some sort of commitment to ensuring that legal services are provided to those most in need<sup>42</sup>.

Consequently, strengthening ethics in clinical legal education and preparing students to confront ethical dilemma is an imperative. In order to avoid a plain rote compliance rather than an impactful sense of judgement, students' assessment is made to include responses to ethical dilemmas that arise from gray areas.<sup>43</sup> Sometimes the students are given scenarios from which ethical dilemmas may be raised for discussions. As part of the assessment exercise utilized by the Law School which measures the impact of clinical methods on the students. Students are also required to submit essays on ethical dilemmas they come up with based on what they observed during the externship programme. Duncan believes that the latter is more impactful.<sup>44</sup>

Ethics is taught on a dual capacity as a module on its own as 'Professional Ethics and Skills'; and reinforced by integrating them into each particular modules which are Civil Litigation, Criminal Litigation, Corporate Law Practice and Property Law Practice, generally to the students as part of the curriculum in the law programme. This is what is extended into the clinics as a guide. No doubt ethical issues arise in the course of the law clinics similar to what qualified legal practitioners face in the matters of competence, conflicts of interests, confidentiality of clients, and even the duty to accept briefs without selection in accordance to the cab rank rule. Third party interference by influential sources such as the government and even the university leadership are not left out and these are certainly ethical issues. The need for a 'lawyer [to] uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct and ... not engage in any conduct, which is unbecoming of a legal practitioner'<sup>45</sup> adds to the imperative that makes the decimation of ethics through law clinics very essential.

Very crucial to this paper is the utilization of clinical legal education methods to teach ethics and values, and the application of professional ethics in clinical legal education methods. There is said to be crisis in the utilization of clinical legal education methods to teach ethic for many countries.<sup>46</sup> Hence there must be a way out to strengthen these lapses in practice.

### **3. Client's Expectations and Limitation to Student's Professional Obligation to Clients in Law Clinics**

Though law clinics commenced in Nigeria only a couple of decades ago, it has been in existence for much longer periods in some jurisdictions and for over 100 years in for instance the United States.<sup>47</sup> The in-depth evaluation of the responsibilities and implications of ethics in student law clinics which began much later in other jurisdictions still contributes to the benefits of law clinics run in Nigeria because they preexisted the Nigerian experiment.<sup>48</sup> Some jurisdictions such as in the US, the American Bar Association (ABA) for instance, found it needful to require that law schools with ABA approval must include 'live-client or other real-life practice experiences.' into their curriculum.<sup>49</sup> Hence, there are law clinics in all US accredited Law Faculties.<sup>50</sup> In Nigeria, law clinics exists only in some law faculties even though the Draft National University Commission Benchmark LLB programme in Nigerian Universities has come to acknowledge the need for Law Clinics.<sup>51</sup>

The mode of operation of law clinics in both jurisdictions are however distinct. Student externship programmes exist in both jurisdictions. But while in the US the students under the supervision of the permanent faculty can

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<sup>41</sup> Kenneth Kipnis . 'Ethics and the Professional Responsibility of Lawyers' [1991] (10) (8) *Journal of Business Ethics*, 569.

<sup>42</sup>Donald Nicolson, 'Teaching legal ethics: what, how and why' ,<https://www.researchgate.net/publication/279422869>, 4 < Assessed 15 August, 2020>

<sup>43</sup>National Criminal lawyers, A Lawyers' Ethical Duties to the Court and to the Client 07/07/2018 by <https://www.nationalcriminallawyers.com.au/a-lawyers-ethical-duties-to-the-court-and-to-the-client/> (n43)

<sup>44</sup> Ibrahim Abdullahi, 'The Role of Legal Practitioners in the Fight against Corruption in Nigeria International' [2016] (4)(3) *Journal of Innovative Legal & Political Studies*, P28

<sup>45</sup>(n12) & (n13)

<sup>47</sup> Peter Joy 'The Ethics of Law School Clinic Students as Student-Lawyers' [2003-2004 ] (45) *Texas Law Review*, p 815

<sup>48</sup> n47

<sup>49</sup> Robert Kuehn and Peter Joy, 'An Ethics Critique of Interference in Law School Clinics' [2003] (71) (1971) *Fordham Law Review*.

<sup>50</sup> N49, 1972.

<sup>51</sup> N49, 2018.

render services to real clients,<sup>52</sup> in Nigeria, student's responsibilities in litigation, are reduced to observance except with respect to assistance they render in interviewing, research, drafting relevant documents (which they cannot endorse in their names) coupled with a few sundry errands. Despite these, there are clients' expectations from the clinicians even in Nigeria which cannot be downplayed, and the evaluation of the responsibilities and implications of ethics in student law clinics which had been ongoing in US is valuable to the Nigerian context.<sup>53</sup> According to Jajadev, clinical legal education is not 'simply a pedagogical method but the philosophy about the role of the lawyer in the society.' Its 'curriculum focuses on the problems of the common masses'<sup>54</sup> with achieving justice at the core. Clinical legal education cannot therefore operate without interactions with people whether it is through in-house clinic, 'out house clinic' or through simulation and here, the students need to acquire knowledge in human relations as it applies to ethics and responsibilities of lawyers in the legal profession.<sup>55</sup> This way, they also become aware of the clients' expectations of them on the services they seek to render to them. For the students, the benefits also include a foretaste of how to manage real clients.<sup>56</sup>

While not analyzing Condlin's criticism and assertions that clinical legal education is not a 'superior means for teaching professional ethics to law students', this paper merely reports how the teaching of ethics in CLE plays out in Nigeria covering our case studies and seeks to identify what the challenges are.<sup>57</sup> Law clinics do face challenges. This is affirmed by Mokidi and Agbebaku. They however state that the challenges are not 'insurmountable'. Even though they did not specifically mention the challenge of the application of ethics by students in the conduct of live cases,<sup>58</sup> this paper states that this too is not insurmountable. Part of the challenges as it relates to ethics is the ability of the student to know what the expectations of the client are of them and how to meet it satisfactorily. For the students at the law clinics, their duties transcend merely acting for the benefit of the client to include the responsibility to ensure the prevalence of justice which is inculcated in the various duties whilst acting in the 'best interest of the client'.<sup>59</sup> The vulnerability of the clients as being already indigent and at the receiving end of oppression behooves corresponding duties of the student at the clinic whom the clients see as possible rescuers. Hence the clients' expectations will no doubt be tied to the duties and responsibilities of the student at the clinics towards them even though they more often than not are not aware of any written code of ethics owed them by the students.

The ethical and professional responsibilities of students therefore flow from the demands of the Rules of Professional Conduct and the general expectation of society of law and of those that function as Lawyers. The critical questions are: are student clinicians expected to discharge ethical duties and responsibility? If yes, are there any limitation to student's professional obligation and client's expectation in law clinics? In answering these questions, the purpose of the rules of professional ethics, the status of law clinicians and general expectation of law as a means of social control is crucial. There is an extent of competence expected of the law students at the clinics. They must exhibit this degree of competence through research and consultation for guidance by their supervisors who are usually their teachers, practicing lawyers including lawyers employed by the Legal Aid Council, and judges.

The clients expect the students at the clinic to maintain their confidence by disclosures and updates of all relevant information concerning their cases to them. The clients would expect that the students would not betray them or use their circumstances for their personal benefits by avoiding every possible conflict of interest and observing their lawful instructions while candidly giving advice. The clients would expect that the students would discharge their services competently and timeously even though they may not be aware of the mechanisms of supervision and accountability of the students' discharge of their responsibilities in the running of the clinic. The clients would expect rectitude, 'professional independence',<sup>60</sup> honour and courtesy from the students in the discharge of their responsibilities. This courtesy must extend to other persons and authorities the students would necessarily interact

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<sup>52</sup> N49, 1973

<sup>53</sup> n47

<sup>54</sup> Jajadev Pati 'Clinical Legal Education, Ethics of the Profession' LCI Articles'

<https://www.lawyersclubindia.com/articles/clinical-legal-education-and-ethics-of-profession-238.asp>

<sup>55</sup> n54

<sup>56</sup> Ibid 10

<sup>57</sup> Condlin Robert, 'The Moral Failure of Clinical Legal Education' [https://digitalcommons.law.umaryland.edu/fac\\_pubs/296](https://digitalcommons.law.umaryland.edu/fac_pubs/296) <Assessed ,2020>

<sup>58</sup> Mokidi, S.K and Agbebaku C.A. 'Legal Clinics and Professional Skills Development in Nigeria' [2014] (17) *International Journal of Clinical Legal Education*, 47

<sup>59</sup> (n43)

<sup>60</sup> (n43)

with on their behalf. The students are also on the other hand obligated to ensure professional independence by being insulated from the clients' bias.<sup>61</sup>

The Law School clinics create an experiential learning environment where students as legal clinicians undertake practical work and are able to apply all their training on ethics and professional responsibility when conducting client's interview, undertaking counselling, undertaking negotiation, drafting documents and letters, undertaking research and contributing to prison visits and interventions, promoting human rights education and undertaking other activities aimed at promoting social justice. However, the Disciplinary provisions under the Legal Practitioners Act<sup>62</sup> bind lawyers and not law students. So, the issue that arises is how to protect clients, promote respect for ethics and professional responsibility by the students, and hold student clinicians accountable for any misconduct in the course of their work in the clinic. This must be addressed in adopting strategies to strengthen ethics, because unless strategies are adopted to promote ethics in law clinics and ensure accountability, it would be impossible to hold students accountable. So far, students generally work within the code of conduct contained in the LPA and Rules of Professional conducts in Nigeria. Some clinics have their dos and don'ts, but these may not be sufficient in setting clear cut standards and holding students accountable for ethical breaches. Also, general codes of conduct applied by the institution are by extension applied to ethical breaches relevant. In whole it is a synergy of all these i.e., principles of the provisions of the LPA, RPC, rules of conduct of respective clinics where they exist, and the general codes of conduct applied by the institution where relevant that has been applied.

#### **4. Strengthening the application of Ethics in Clinical Legal Education**

The findings from the case studies reveal the need for elaborate rules on confidentiality, gifts and donations to clinicians, and sanctions on breach of ethical rules of law clinic. Clinicians based on their roles, are brought face to face with clients' information. Clients are entitled to protection since the obligation on confidentiality extends beyond the legal practitioners to include those who work with them in the course of attending to the clients and these include the students.<sup>63</sup> It is also important that these obligations of confidentiality and other obligations (such as prohibition to accept gifts from clients) whether provided for in the RPC or not, as far as they pertain to the effective running of the clinic, be included in a handbook of conduct to guide the students for emphasis.

The strategies employed at instilling professional ethics on the clinicians begin at the induction and orientation programs for the clinicians at the start of their law clinic program. Nothing more is done to remind the students of these obligations even though these are in the handbook put together by some of the clinics which are yet to be published. It becomes necessary that these handbooks are published, copies given to the students during the induction exercise for continuing reference in the course of their participation in the clinic. The handbook on codes of ethics would ordinarily, also include sanctions and an enforcement mechanism. This enforcement mechanism is vital to ensure compliance with the codes. Examples of sanctions include suspension from clinical activities and withdrawal of membership of the law clinic.<sup>64</sup> There has, however, been loose sanction system in some instances. The breach of the codes at the clinic, where it also amounts to a breach of the codes of conduct at the law school may attract more stringent sanctions from the law school in addition to that meted by the clinic's enforcement mechanism. It would have been important that students are made to sign an undertaking as to clients' confidentiality even after the students cease to be clinicians, but this is not necessary since application of rule 3 of the RPC still continues to apply even after. The undertaking may, however, only be necessary to press upon the students the seriousness of the rules of confidentiality. Clinicians who eventually qualify as lawyers and would also have some form of restraint to act against the clinic clients and using any information they obtained at the clinics against the client. Such practical nuances must be explained to the law clinicians at the outset of their participation and have a likelihood of impeding their participation. Students must be taught that their services are pro bono and must not expect any remuneration by way of cash or money's worth from the clients. A client meaning to show appreciation must make the donation to the law clinic for use in the effective discharge of pro bono services to other indigent clients. Making the law clinicians understand early, the obligation to offer pro bono services, prepares them for the important role of the lawyer as agent of change in the society. A breach of ethical rules particularly one bordering on dishonesty must necessarily be taken seriously. Sanction befitting such misconduct must be of grave consequence.

#### **5. Conclusion**

The contributions of law clinics in meeting the justice needs of the indigents in the communities are certainly impactful. Law Clinics are also, no doubt effective means of teaching professional ethics to students. Inculcating ethics in the law clinicians also ensures effective service delivery to the legal aid clients who are the consumers of the law clinicians' services. Like in other jurisdictions, Nigeria also in adopting the clinical legal education pedagogy, utilizes it as a means of teaching ethics, and, expects the application of some modicum of conduct by the clinician in their dealings with their clients. This, it strives to achieve under defined frameworks amidst the expectations of clinical clients. Strategies for strengthening the application of ethics in law clinics must include a streamlined regulation of ethical conduct and a good means of addressing breaches through sanctions.

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<sup>61</sup> (n43)

<sup>62</sup> Section 12 Legal Practitioners Act provides for 4 categories of offences for which a Legal Practitioner may be punished by the Legal Practitioners Disciplinary Committee; They include infamous conduct in a professional respect; conviction by any court in Nigeria having power to award imprisonment of an offence which is incompatible with the status of a legal practitioner; obtaining enrolment by fraud, conducts incompatible with the status of legal practitioners.

<sup>63</sup> RPC, 3

<sup>64</sup> Mr. Sule's Interview