

THE PROFESSIONAL DUTIES OF LAWYER AND THE CONSEQUENT HEALTH CHALLENGES: THE NEED TO TRADE WITHIN THE HEALTH WATCH*

Abstract

Profession is an occupation that can claim exclusive technical competence and also adheres to ethics of professional conduct. Elsewhere, a profession is being defined as a calling in which one professed to have acquired special knowledge used by either instructing, guiding or advising others or serving them in some art. Very often, occupational groups have referred to their occupations as professions as long as members are able to come together to discuss issues of common interest. Examples of professions are Lawyers, Doctors, Engineers, Accountants, Architects and Quantity Surveyors (emphasis mine). These are professions that have quality control measures and compulsory registration of their members. Lawyers as professionals have professional duties which they must perform within a professional guided conduct, ethics and which must give rise to justice. They have these duties to the society, their clients, courts, states, professions and fellow lawyers. But in discharging these responsibilities as mortal human beings, lawyers must watch the effects and consequences of subjecting themselves to hazards, dangers and of course, denial of their body system to normal and natural rest as required by nature. It is the result of achieving these duties expected of a lawyer as a professional vis-à-vis the denial of their natural body to relax and rest under normal health conditions that form the precis of this paper. We adopted doctrinal methodology relying on secondary sources of data gathering. We found that lawyers while performing their professional duties must relax their bodies and be guided under health watch to be able to discharge their responsibilities to a long time. Else, they breakdown and leave these duties to someone else who understands and keep these health implications. We recommended that lawyers must watch their system and health conditions always to live to discharge these professional duties for themselves and societal development.

Keywords: Professional, Lawyers, Duties, Health Hazards, Consequences.

1. Introduction

The issue of professionalism in relation to the legal profession has occupied the language and writing of many scholars for a long time. Very often, occupational group have referred to their occupations as professions as long as members are able to come together to discuss issues of common interest.¹ Sociologist have addressed professionalism and made some contributions regarding its ingredients or characteristics. For example, an occupation can be truly a profession or a semi-professional depending on the level of autonomy enjoyed by the groups.² The term 'Lawyer' is defined by different authorities in different ways but all depicts the same meaning.³ A lawyer is a person who is trained and qualified to advise people about the law and to represent them in court and to write legal documents.⁴ A lawyer is someone who, having been licensed to practice law, is qualified to advice people about legal matters, prepare contracts and other legal instruments and represent people in court.⁵ A legal practitioner (otherwise a lawyer) means a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings.⁶ A careful look at these definitions shows that they conveyed the same meaning.

2. Importance of a Lawyer in the Society

In an attempt to explain this, permit me to better refrain the heading to be the role and duty of a lawyer. This is because ordinarily, importance means the quality of being important. Therefore, it is the role or duty which one performs in the society that makes him important, hence the duty/role/importance of a lawyer. Let me discuss them under the following subheadings:

*By **Livinus I. NWOKIKE, PhD**, Lecturer, Department of International Law and Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria, Notary Public, Justice of Peace, Member, Nigerian Society of International Law, Member, International Law Association, Legal Practitioner & Notary Public. Email: li.nwokike@unizik.edu.ng website: www.geci.org.ng, Phone Number: +2348033521034, +2349073018015; and

***Helen Obageli OBI, PhD**, Lecturer, Public and Private Department, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria

¹ E M Umar, *Professional in Teaching: Course Development, National Open University of Nigeria (NOUN)*, 2020, p. 10

² n 1

³ L I Nwokike, The Nigerian Legal Profession as an Instrument of Social Engineering Umunya: Oracle of Wisdom, *Journal of Philosophy and Public Affairs*, Tansian University, Umunya, Anambra State (2018), Vol. 3, No 3, p. 110

⁴ A S Hornby, *Oxford Advanced Learner's Dictionary* New 9th edition (2015) p. 882

⁵ B A Garner, *Black's Law Dictionary*, 11th edition (2019) p. 1063

⁶ Section 24 of the LPA, LFN, 2004 of Practitioners' Act

3. Characteristic of a Profession

A true profession must have the following characteristics:

- (i) Knowledge acquired after a period of specialized intellectual study and training essential for the practice of an occupation.
- (ii) Controlled entry into the occupation.
- (iii) A code of conduct to guide the behaviour of the members of the profession.
- (iv) A strong professional organization which guides the interest of its members as well as codifies the entire professional framework.
- (v) Independence and freedom to practice without any interference⁷

4. Duties and Responsibilities of Lawyers in Legal Profession: Justice Dispensation

A Lawyer, practising as such in Nigeria is a citizen of the Federal Republic of Nigeria and accordingly is obliged to observe and perform that role, together with the duties and responsibilities attached thereto.

In the performance of their duties, the Lawyer is bound by the Constitution and Laws of the Federal Republic of Nigeria, all relevant Rules of Practice and Procedure, the Constitution of the NBA and the Rules of Professional Conduct in the Legal Profession. The Rules are made by the General Council of the Bar in furtherance of the aims and objectives of the NBA as stipulated in the Constitution of the Association, for the maintenance of the highest standards of professional conduct, etiquette and discipline, and they circumscribe the various duties which the Lawyer owes the Court and the whole gamut of the machinery for the administration of Justice, to their learned friends and colleagues and their Clients.⁸

5. General Duty of Lawyers to the Society

There is no doubt that effective delivery of legal services is crucial in ensuring that the society enjoys the gains of the Justice System. Legal services range from preparation of documents such as deeds of assignment, tenancy agreements, hire purchase agreements and a host of documents of varying types expressing the agreement between two or more parties for various purposes, to preparation of court processes, legal representation in court and a host of other services. As Society develops, there is a need for Legal Practitioners to improve on the way they serve those who retain them. Clients of legal services also have varying demands and expectations. The Bar Council in furtherance of the aims and objects of the Nigerian Bar Association and for the maintenance of the highest standards of professional conduct, etiquette and discipline among legal practitioners have made Rules to guide the conduct of legal practitioners in the following situations:

1. Duty of counsel to client.
2. Duty of counsel to court.
3. Duty of a counsel in criminal cases.
4. Duty of counsel to fellow counsel.
5. Duty of counsel to opponents.
6. Duty of counsel to the State.
7. Duty of counsel to the profession,

Duty of counsel to client

Duty to accept brief

A lawyer is bound to accept briefs from clients in respect of matters arising from the court in which he professes to practice on first come first serve basis - this is called the 'Cab Rank Rule.'⁹ But a lawyer may refuse to accept brief in 'special circumstances'. Special circumstances include the following:

- a. Nonpayment of proper professional fees.
- b. Specialization - let client know that you not practise in that branch of the law.
- c. Personal interest - let client know that there is likelihood of conflict of interest in the matter, for example, that the opponent is your in-law.

⁷ n 2

⁸ OCJ Okocha SAN (JP) 'The Role of Lawyers in an Enduring Democracy in the Pursuit of justice and development edited by Yemi Akinseye George and Gholahan Gbadamosi p. 55

⁹ Rule 23 of the Rules of Professional Conduct. See also *Rondell v Worsley* (1967) 3 All ER 993

Duty to accept briefs in Chambers

Legal practitioners (unlike doctors) should not call at the client's house or office for the purpose of taking instructions. Briefs should be taken in Chambers.¹⁰ But in special circumstances or for urgent reasons, a lawyer may take instructions in the client's house or office. Special circumstances include:

- a. Where the client is ill.
- b. Any other reason that prevents the client from coming to Chambers

Duty to take full instructions

A lawyer should take full instructions from the client before advising him. Advice should be based on merit; a lawyer should not give bold and confident assurance to clients.¹¹ Therefore:

- a. A lawyer should not say 'I must win this case!'
- b. A lawyer should always inform the client concerning the progress of his case,
- c. Where there is conflict between the client and the lawyer in respect of the exact instructions given to the lawyer, the instructions of the client should prevail.

Duty to disclose conflicting interest

The duty here is 'disclosure'.¹² Where the client, after full disclosure, still wants the lawyer he can act notwithstanding conflict of interest. The test is, assuming the client had knowledge of the conflict of interest would the client still retain the services of the lawyer? To avoid conflict of interest;

- a. A Lawyer should not accept brief in a case he is likely to be a witness.
- b. A Lawyer may be a witness only in respect of formal matter such as identification and custody of documents.
- c. A lawyer is not a competent witness for the opponent,

Duty not to breach fiduciary relationship

A lawyer should not abuse the trust or take advantage of the confidence reposed in him by the client. For example, a lawyer should not buy the client's property unless the client has independent legal advice: *William vs Franklin*.¹³ A lawyer must disclose any profit or compensation paid to him for his client: *Ikabala vs Ojoshipe*.¹⁴ Nevertheless, a lawyer has a right of lien against the property of the client in respect of the unpaid fees.

Duty to give a candid and honest advice

A lawyer should give his client candid and honest advice, Where the lawyer knowingly mislead the client, the lawyer is liable to the client for the refund of the fees paid and damages. Should a lawyer who knows that a cause of action is statute barred go ahead to institute an action? No, he should not because if he fails in the case, he will be liable to the client: *Bello Raji v X*.¹⁵

Duty to preserve confidentiality

Rule 26 of the Rules of Professional Conduct: this duty extends to the lawyer's employees and continues even after the lawyer has concluded the case. However, the duty of confidentiality does not extend to suppression of a crime: *Annesley v Earl of Anglesea*.¹⁶ What should the lawyer do if a client (suspect) confesses to the commission of the offence but lies to the court during trial? The lawyer is protected by section 173 of the Evidence Act, which is that a lawyer cannot be compelled to disclose confidential communication between his client and himself. Nevertheless, under Rule 9(b) the lawyer should not lie to deceive the court so as to cover the truth. Where the lawyer discloses to court what the client told him, he is in breach of confidence. What the lawyer should do is to threaten the client that unless the truth is told he will ask for the leave of court to withdraw from the case: *R v Eguabor*.¹⁷

Duty to follow client's instruction

A lawyer has a duty to follow the client's lawful instructions. This duty is limited to lawful; instructions and instructions that are not in breach of the Rules of Professional Ethics. Where the client's instructions are unlawful or a breach of Rules of Professional Conduct, the Lawyer should terminate the client's brief and with the leave of court withdraw from the case.

¹⁰ Rule 32 of the Rules of Professional Conduct

¹¹ Rule 12 of the Rules of Professional Conduct

¹² Rule 12 of the Rules of Professional Conduct

¹³ (1961) All NLR 218

¹⁴ (1972) 4 S.C. 82

¹⁵ (1946) 18 NLR 74

¹⁶ (1743) L.R.Q.B. 317

¹⁷ (1962) 1 All NLR 287

Confirming client's instructions in writing

In practice, most clients instruct their lawyers orally during interview. But there are cases when the client's instructions should be in writing. For example, in the procedure for recovery of premises, the client's instructions to the lawyer must be in writing. Where the client's instructions are oral, the lawyer should take notes and later confirm the instructions with the client. The main advantage of confirming client's instructions in writing is that the lawyer will not later be held liable to have exceeded his authority. The rule is that where there is conflict as to the exact instructions of the client to the lawyer, the client's version of his instructions prevails. Furthermore, confirming client's instructions in writing provides the opportunity to correct any error either on the part of the client or the lawyer before the instructions are carried out.

Right to control the incidents of the trial

Rule 18 of Rules of Professional Conduct: a lawyer has absolute control on how to conduct his case; he can take decisions on incidental matters without consulting his client. This rule is based on the presumed general or apparent authority of a lawyer when engaged in the discharge of his professional duty. The sky is the limit. For example, a lawyer has absolute right to take adjournment without the consent of the client. The lawyer's right to control the incidents of the trial extends to matters that affect the merit of the case; he can settle the case out of court, provided he acts *bona fide* and is not in fraud of the client. However, the presumed authority of a lawyer could be limited by the express instructions of the client. Where there is such limitation, the lawyer's authority ceases to be pervasive; *Adewumi vs Plasfex Ltd.*¹⁸ Similarly, a lawyer does not have authority when he is debriefed. What options are available to a lawyer if in the course of cross-examining a witness or arguing a case, the client insists that the lawyer should ask certain questions or follow a specific line of argument? A lawyer has a right to control all matters incidental to the case he is handling. Hence, the scope of the lawyer's authority is very wide. There are two limitations to the wide authority of a lawyer: (a) He must act in good faith, (b) There is no express prohibition from his client. Note that the wide authority of a lawyer applies even if the client is also a lawyer.

Duty to represent client to the conclusion of the case

Rule 29 of Rules of Professional Conduct: a lawyer should conclude a case he started; he can only withdraw for 'good cause.' Good cause includes but is not limited to where the client wants the lawyer to do something that is unlawful, immoral, or against the Rules of Professional Conduct. It also includes deliberate refusal to pay professional fees. Withdrawal must be with the leave of court, and sufficient notice to the client to allow him to brief another lawyer. Where the client had paid full fees, the lawyer should refund to the client money that has not been earned. However, the client can terminate the lawyer's brief without reason but must pay his full fees; and the new lawyer engaged in the matter owes duty to ensure that the former lawyer handling the matter is paid his full fees. Where a lawyer is not paid fees, he can sue for his fees and he also has a right of lien: *Aburime vs N.P.A.*¹⁹

General duty of the lawyer to his client

There issue here is whether or not a lawyer owes the client absolute duty to defend him by all possible means, lawful or otherwise? There are two views on this point:

- a. The first view is that a lawyer must defend his client by all means, lawful or otherwise.
- b. The second view (and the better view) is that despite the lawyer's general duty to ensure absolute dedication to the client, there is a limit because the lawyer should pursue justice and equity. A lawyer owes a paramount duty to the state and the profession to uphold the law: *Rondel vs Worsley*.²⁰

Duty of Lawyer in Criminal Cases

Rule 7 of Rules of Professional Conduct repeats the constitutional right of an accused to fair hearing; even the worst criminal is entitled to legal representation.

The Prosecution

Rule 9(d) of Rules of Professional Conduct: the primary duty of the prosecution is not to secure the conviction of the accused but to ensure that justice is done. The prosecution should fairly and impartially present all facts to the court, he should not suppress evidence that is favourable to the case of the defence: *Enahoro vs The State*;²¹ *Odoftn Bell vs The State*.²² After conviction the prosecution should not ask the court to impose the maximum sentence. Would you recommend that a prosecution lawyer who is always losing his cases against the defence is

¹⁸ (1986) 3 NWLR 767

¹⁹ (1978) 4 S.C. 111

²⁰ *Supra*

²¹ (1965) 1 All NLR 125

²² (1967) NMLR 1

incompetent? What is important is the reason why he loses cases? Where he loses cases because he does not know or apply the Law properly, the prosecution is incompetent. But where he loses cases because he has refused to suppress useful evidence that is favourable to the defence, he is not incompetent, he should be rewarded.²³

The Defence

A lawyer should not allow his personal opinion to affect his conduct of the defence in a criminal trial.²⁴ The primary duty of the defence is not to secure acquittal for the accused at all cost but to ensure that justice is done. He can only be expected to do his best; he should put up all possible defences. A confidential disclosure of guilt is sufficient ground for the lawyer to ask for leave to withdraw from the case.²⁵

6. Four Health Hazards all Lawyers Face

You might not work on an oil rig, but practicing law can be pretty dangerous. All the long hours in courts, all that sitting and the stress associated with practice can become dangerous to the lawyer's health. Below are a list of some of the health hazards faced by lawyers.

Maximum Stress Levels

Being a lawyer is stressful. Every job can be stressful at times, and the adversarial nature of law practice arguably makes it one of the more stressful professions.²⁶

A Serious lack of Sleep

Lawyers are known to work into the night and sometime round the clock. While you may think the only way to be on top of your schedule is to work long hours, there is also the need to ensure that you do not wear out your body.²⁷

Not Enough Exercise

The legal profession isn't one that keeps you on your toes, at least not literally. Most of us will spend a good chunk of our days sitting behind a desk. If we're lucky, we might get a nice detour to a conference room or, on rare occasions, court – but mostly, legal brain work requires little physical stimulation.²⁸

Eating out all the time

It is rather very difficult to be a lawyer in active practice and avoid eating out regularly. While you may not be able to avoid eating out as a practicing lawyer, there are a few things that would help you to ensure that you stay healthy while at it.

1. Make smarter choices at food courts. You can eat out seven days a week; for breakfast, lunch and dinner and never gain a pound.
2. At restaurants, always ensure to tell the chef to use the options of healthy preparation. Example; grill, rather than fry or sauté.
3. Eat breakfast. This would help to prevent your brain from releasing wave after wave of appetite-inducing hormones hours later. Experts says such release sets the stage for cravings which leads to overeating.²⁹

7. Conclusion

The role/duty/importance of a lawyer cannot be overemphasized. We found that lawyers while performing their professional duties must relax their bodies and be guided under health watch to be able to discharge their responsibilities to a long time. But this role, duties or importance are not without hazards which have been stated. We recommended that lawyers must watch their system and health conditions always; to live to discharge these professional duties for themselves and societal development.

²³ A Umar & S Imhanobe, *Quick Reference Material on Nigerian Law & Practice* (2nd ed., Jaynita Communication Ltd, 2006) pp. 407 - 421.

²⁴ Rule 9(a) of Rules of Professional Conduct

²⁵ Rule 9(b) of Rules of Professional Conduct

²⁶ I Peters, *The Healthy Lawyer: Four Health Hazards all Lawyers face* (2020) <https://dnlllegallandstyle.com/2020/the-healthy-lawyer-four-health-hazards-all-lawyers-face/> pp.1-4, accessed on 21st June, 2022.

²⁷ n 1

²⁸ n 2

²⁹ n 3