

RESOLVING CONUNDRUMS REGARDING LEGAL PROFESSION REGULATION IN NIGERIA (PART 1) *

Abstract

While there is a general consensus among members of the legal profession in Nigeria, that the profession is variously regulated and by multiple institutions, certain controversies have persisted among stakeholders, especially because, as in most other jurisdictions, many people understand regulation only in terms the narrow compass of government interventions through legal rules enforced by statutory bodies. Besides, many are still confused about the precise nature of regulation, classification of regulation and regulators, as well as the structural, legal and institutional framework for legal profession regulation in Nigeria. In this three-part discussion (each part contained in a separate paper), the present author comprehensively addresses these and some other questions on the subject. The first part (contained in the present paper), examines nature and scope of the legal profession, nature of regulation, and powers of, and power-interplay among some regulators of the Bar in Nigeria, including the NBA, Council of Legal Education (and the Nigerian Law School), General Council of the Bar, Body of Benchers, Legal Practitioners Disciplinary Committee, Legal Practitioners Remuneration Committee, and Legal Practitioners Privileges Committee. Part 2 focuses on analysing questions related to involvement of the Supreme Court of Nigeria, the office of the Chief Justice of Nigeria, the Attorney-General of the Federation, Courts of law, the Corporate Affairs Commission, the Economic and Financial Crimes Commission, the National Identity Management Commission, and Public Opinion, in regulation of the Nigerian Bar. The third part focuses on regulators of the Bench. Although each discussion relies heavily on statutes, delegated legislation, law reports and other conventional legal materials as major sources of data, based on which it goes ahead to formulate principles and draws necessary conclusions, it must be advised that the work is neither speculative nor hypothetical; emphasis is not on mere legal doctrines and concepts but on people and institutions regulated by law. The approach is both descriptive and expository, adopting the doctrinal method in a largely socio-legal style, with a view to eliminating or minimizing uncertainties among members of the profession, researchers, law students, law teachers, practitioners, knowledge-seekers and the general public on the subject.

Keywords: Legal Profession, Regulation, Conundrum. Resolution, Bar and Bench, Nigeria

1. Introduction: Meaning and Nature of the Legal Profession in Nigeria

According to Law Insider, a profession is ‘a field of employment requiring special education or skill and knowledge of a particular discipline. The labour and skill involved in a profession is predominantly mental or intellectual, rather than physical or manual.’¹ Globally recognized professions include but are not limited to, law, medicine, education, engineering, accountancy, and journalism. Generally, the legal profession is a profession of lawyers, the profession of law practice;² the body of individuals qualified to practice law in a particular jurisdiction. The term is used also to refer to the body of people who practise law³ in any given society or jurisdiction. The legal profession, can also be described as a ‘vocation that is based on expertise in the law and in its applications’;⁴ the profession practised by legal practitioners; the group of persons who have been admitted to practise law as attorneys-at-law pursuant to the Law.⁵ Law Teacher explains further:⁶

Defining the term ‘legal profession’ is more difficult than one may anticipate. It becomes apparent that the simplest definition is perhaps the most befitting. The legal profession is a ‘vocation that is based on expertise in the law and in its applications.’ Those who pursue these ‘vocations’ collectively form a ‘body of individuals who are qualified to practice law in particular jurisdictions. The learned occupation of these individuals is to study, promote, uphold and enforce the collection of rules imposed by the authority. They thus form a ‘legal profession.’

Thus, from the above, one could say that in Nigeria, the legal profession is the profession or vocation that is based on expertise in the law and in its applications; the profession of the group of persons who have been admitted to practise law as counsel, lawyers, legal practitioners or barristers and solicitors pursuant to the Nigerian law. In Nigeria, the term legal practitioner⁷ or lawyer has a different connotation from what it has in the UK or in the USA. In the UK, for example, a lawyer is a person who trained and qualified as either a barrister or a solicitor, while in Nigeria, a lawyer (legal practitioner) is a person who trained, qualified and is admitted to the Nigerian Bar as both a Barrister and a Solicitor of the Supreme Court of Nigeria. Thus, in Nigeria, the legal profession is a fused profession in that every person duly called to the Bar in

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¹ Law Insider, 'Profession Definition' (lawinsider.com, 2022) < <https://www.lawinsider.com/dictionary/profession> > accessed 22 December 2022

² Oxford Languages, 'Legal Profession' (Oxford University Press 2022) < <https://languages.oup.com/google-dictionary-en/> > accessed 22 December 2022

³ Ibid

⁴ Mary Ann Glendon, 'Legal Profession' (Britannica 2022) < <https://www.britannica.com/topic/legal-profession> > accessed 22 December 2022

⁵ Law Insider, 'Legal Profession' (lawinsider.com 2022) < <https://www.lawinsider.com/dictionary/legal-profession> > accessed 22 December 2022

⁶ Law Teacher, 'Defining the Legal Profession' (lawteacher.net 28 Jun 2019) < <https://www.lawteacher.net/free-law-essays/administrative-law/the-legal-profession.php> > accessed 22 December 2022

⁷ Legal Practitioner is as defined in section 24, Legal Practitioners Act (Revised), CAP L11, Laws of the federation of Nigeria, 2004

Nigeria is both a barrister and solicitor, unlike in the UK.⁸ Efobi and Ekop write that all lawyers are admitted to the bar as barristers and solicitors of the Supreme Court without any distinction as to their roles or functions.⁹

2. Scope of the Legal Profession in Nigeria

The legal profession in Nigeria has two major branches, namely, the bar and the bench. The term ‘the bar’ as used in this paper means the whole body of lawyers qualified to practice in a given court or jurisdiction or a State. On the other hand, ‘the bench’ means all the judges taken together as distinguished from the ‘bar’.¹⁰ All justices, judges and members of the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, the FCT High Court, State High Courts, the National Industrial Court of Nigeria (NICN), Customary Court of Appeal, Sharia Court of Appeal, Election Tribunals and other tribunals set up by law, Magistrates’ Courts, Area Courts, District Courts, Customary Courts, make up the bench. Thus, the Nigerian bench consists of the judges appointed through special procedure laid down in the Constitution of the Federal Republic of Nigeria. The Bench is further divided into The higher bench and the lower bench. All judicial officers are members of the higher bench, while Magistrates, Area Court Judges, District Court Judges, Customary Court Presidents are members of the lower bench. Members of the lower bench are appointed by the relevant Judicial Service Commission on the advice of the Chief Judge of each state whereas members of the higher bench are appointed by either the Governor of a State or the President of the Federal Republic of Nigeria, on the recommendation of the National Judicial Council¹¹ and in some cases subject to confirmation of the relevant legislature.¹² It is important to note that unlike judges, who are referred to as members of the higher bench, magistrates upon retirement or resignation can still practice as legal practitioners.¹³ However, note further that a retired judicial officer is not totally barred from law practice; he may practice only as a solicitor, but not as an advocate and may not sign any pleading in any court.¹⁴ The the Nigerian bar has four segments namely:

The Official Bar (lawyers in public law practice): This comprises all lawyers in public practice (law officers in government ministries, departments, institutions and agencies): The head of the official bar in Nigeria is the Attorney-General of the Federation. The Constitution of the Federal Republic of Nigeria provides that the Attorney-General of the Federation is the Chief Law Officer of the Federation.¹⁵ However, it should be noted that there are lawyers found in both private and public sectors who work as law officers or legal officers; yet, lawyers who work as legal officers in private institutions are not members of the official bar and as such are not under the control or supervision of the Attorney-General. law/legal officers generally are said to be responsible for monitoring all legal affairs within their organization, handling both internal and external legal concerns and are tasked with doing everything in their power to keep their organization out of legal trouble.¹⁶

The Private Bar: Lawyers in private practice: usually called private legal practitioners, they either carry on law practice as independent practitioners or may establish law firms which they run as private organizations subject to legal ethics.¹⁷ There are three types of private practice law firms, namely: (A) partnership; (B) associateship; and (C) sole Proprietorship¹⁸

Lawyers in Public Legal Service Career: These include lawyers who work as employees in public or private sector bodies or institutions, but not as legal officers or courtroom-advocacy practitioners. Examples include law lecturers in public or private education institutions, special advisers on legal matters to public or private sector operators, etc. and

⁸ See also ThisDay Newspapers, ‘Ethics and Discipline in Law: Akin to Waiting for Godot (Part 1)’ (Thisdaylive.com, 8 November 2022) <[⁹ Ngozi Efobi and Naomi Ekop, ‘Regulation of the legal profession in Nigeria: overview’ \(uk.practicallaw.thomsonreuters.com 1 July 2021\) accessed 22 December 2022](https://www.thisdaylive.com/index.php/2022/11/08/ethics-and-discipline-in-law-akin-to-waiting-for-godot-part-1/#:~:text=Unlike%20what%20obtains%20in%20England,of%20the%20modern%20legal%20profession.> accessed 22 December 2022</p>
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¹⁰ SRD Law Notes, ‘Meaning of Bar and Bench’ (*SRD Law Notes*) <<https://www.srdlawnotes.com/2016/10/meaning-of-bar-and-bench.html>> accessed February 24, 2022

¹¹ The National Judicial Council is one of the Federal Executive Bodies created by virtue of Section 153 of the 1999 Constitution of the Federal Republic of Nigeria. In order to insulate the Judiciary from the whims and caprices of the Executive; hence guarantee the independence of this Arm of Government, which is a sine qua non for any Democratic Government, the National Judicial Council was created and vested with enormous powers and functions of the erstwhile Advisory Judicial Committee (AJC) which it replaced. See: <<https://njc.gov.ng/faq>> accessed 22 Decmeber 2022.

¹² In the case of Federal courts, confirmation is by the Senate while in the case of State Courts, confirmation is done by the relevant House of Assembly

¹³D. O. Thomas, ‘The Legal Profession In Nigeria At A Glance – History, Nature And Regulations...’ (alexoduanam.blogspot.com June 14, 2017) <<http://alexoduanam.blogspot.com/2017/06/the-legal-profession-in-nigeria-at.html>> accessed 22 December 2022

¹⁴ Rule 6(3)&(4) RPC

¹⁵ Section 150(1). Section 150(2) provides that A person shall not be qualified to hold or perform the functions of the office of the Attorney-General of the Federation unless he is qualified to practise as a legal practitioner in Nigeria and has been so qualified for not less than ten years.

¹⁶ Hon. Justice Esohe Frances Ikponmwen FCJIE: FICMC Chief Judge, Edo State, ‘Legal Officers Independence: Addressing The Challenges In Public Sectors’ (edojudiciary.gov.ng November 2018) <<https://edojudiciary.gov.ng/wp-content/uploads/2018/11/Legal-Officers-Independence-Addressing-the-Challenges-in-Public-Sector.pdf>> accessed 22 December 2022

¹⁷ The term ‘Legal ethics’ is used to refer to the principles of conduct that members of the law profession are expected to observe in their practice of law and personal conduct. They are an outgrowth of the development of the legal profession itself. See: Pirsig M.E., Glendon M.A. *et al.*, ‘Legal Ethics’ (*Encyclopædia Britannica*, February 26, 2020) <<https://www.britannica.com/topic/legal-ethics>> accessed October 23, 2022. See also: Udemezie, S.C., ‘An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers In Nigeria’ (2021) Vol. 21, No. 17,

¹⁸See:Wingrass Media, ‘ORGANISATION AND TYPES OF LAW FIRMS IN NIGERIA’ (wingrass.blogspot.com 18 May 2014) <<http://wingrass.blogspot.com/2014/05/organisation-and-types-of-law-firms.html>> accessed 22 December 2022

Lawyers In Non-legal Service Careers: These include lawyers whose names are on the Roll, but who are not currently engaged in law practice nor pursuing any legal-service career.¹⁹ Examples: lawyers working or operating as bankers, private businessmen, or lawyers employed in the public or private sector but not for purposes of providing legal services: public relations officer, director of personnel or administrative officer in a government department or a private institution.

3. Regulation of the Legal Profession In Nigeria

In his treatise, 'What is Regulation?'²⁰ Barak Orbach, professor of law at the *University of Arizona College of Law, USA*, writes that most people understand 'regulation' only in terms of government intervention in liberty and choices, through legal rules that define legally available options and legal rules that manipulate incentives. This pattern of definition, the learned author says, has resulted in a confusion of the meaning and nature of regulation while obscuring accurate understanding of the term, the result being that 'regulation' is currently among the most controversial topics in law, among the most misunderstood concepts in modern legal thinking, being one that has escaped any clear definition. Orbach refers to some definitions of the term, perhaps to illustrate his point:²¹

The legal concept of 'regulation' is often perceived as control or constraint. For example, the definitive legal dictionary, *Black's Law Dictionary*, defines 'regulation' as 'the act or process of controlling by rule or restriction.' Similarly, *The Oxford English Dictionary* defines 'regulation' as 'the action or fact of regulating,' and 'to regulate' as 'to control, govern, or direct.' To many people, 'control' connotes 'restrictions,' although control may have other meanings. Regulation often imposes no restrictions, but enables, facilitates, or adjusts activities... Lawyers frequently use the word 'regulation' in reference to rules of administrative agencies. This habit tracks the executive branch's terminology... John Stuart Mill casually used the word 'regulation' to describe 'governmental intervention in the affairs of society' and laws that implement such intervention....

On its part, the *Organisation for Economic Co-operation and Development (OECD)* in its 'Glossary of Statistical Terms'²² gave the following definition of the term 'regulation':

Broadly defined, regulation refers to imposition of rules by government, backed by the use of penalties that are intended specifically to modify the economic behaviour of individuals and firms in the private sector... Not all forms of regulation have to be mandated or imposed by government. Many professions adopt self-regulation, i.e., develop and self-enforce rules commonly arrived at for the mutual benefit of members. Self-regulation may be adopted in order to maintain professional reputation, education and ethical standards. They may also act as a vehicle to set prices, restrict entry and ban certain practices.

In this author's opinion, and as is demonstrated in this work, the legal profession in Nigeria is thoroughly regulated, being both government-regulated, self-regulated, and subject also to regulation by public opinion. There are government agencies and institutions that play roles in regulating the legal profession and there are also rules and regulations put in place by members of the profession themselves, to regulate the profession and the conduct of its members. Generally, regulation is achieved by way of statutes and subsidiary legislation enforced by these organisations, authorities and operators who are then seen as regulators of the profession in Nigeria. Before proceeding into a discussion on the respective powers of the various authorities and persons identified in this work as legal profession regulators, it is important to briefly identify some of the extant legal instruments that guide the regulatory institutions in the legal profession in Nigeria.

4. Legal Framework for Legal Profession Regulation in Nigeria

Legal Practitioners Act:²³ This is one of the principal regulatory statutes in the legal profession in Nigeria. An Act (Revised Edition) to reenact the Legal Practitioners Act 1962 and incorporating the provisions of the Legal Practitioners (Amendment) Decree No 21, 1994, now published as supplemental to the LFN 2004 by the Federal Ministry of Justice, Abuja.²⁴ This law defines who a lawyer is,²⁵ provides for entitlement to practice law in Nigeria,²⁶ right of audience in court,²⁷ rights exclusive to lawyers in Nigeria,²⁸ establishes certain regulatory authorities²⁹ and contains other provisions,

¹⁹For a highlight of some careers opportunities in the legal profession, see: Sylvester C. Udemezue, 'Career Opportunities for Lawyers and Place of Skills, Ethics and Values in Successful Law Practice' (courtroommail.com 13 December 2021) < <https://www.courtroommail.com/career-opportunities-for-lawyers-and-place-of-skills-ethics-and-values-in-successful-law-practice-by-sylvester-udemezue/>> accessed 25 Decemeber 2022

²⁰ Barak Orbach, 'What is Regulation?' (The Yale Journal on Regulation (JREG) July 25, 2016) < <https://www.yalejreg.com/bulletin/what-is-regulation/>> accessed 22 December 2022

²¹ *Ibid*

²² OECD, 'Glossary of Statistical Terms' (stats.oecd.org January 3, 2002) < <https://stats.oecd.org/glossary/detail.asp?ID=3295>> accessed 22 December 2022

²³ (Revised edition) CAP L11, LFN, 2004

²⁴See the Foreword to the LPA (Revised Edition) <file:///C:/Users/user/Downloads/LEGAL%20PRACTITIONERS%20ACT%20(AS%20%20REVISED)0001%20(2).pdf> accessed 22 December 2022

²⁵ Section 24

²⁶ Section 2

²⁷ Section 8

²⁸ Section 22

²⁹ Such as the Body of Benchers, the General Council of the Bar; the Legal practitioners Disciplinary Committee, etc

including those on making and revising of the Rules of Professional Conduct, privileges of law officers,³⁰ right of audience and order of precedence in court,³¹ remuneration of legal practitioners,³² professional negligence,³³ professional legal discipline,³⁴ classes of disciplinary authorities IN the legal profession, among others.

Legal Education (Consolidation, etc) Act:³⁵ An Act to re-enact the Legal Education Act 1962, and to introduce new provisions relative to the composition of the Council of Legal Education and the appointment of the Director-General of the Nigerian Law School,³⁶ the Act establishes the Council of Legal Education and gives it exclusive responsibility for, and regulation of, legal education in Nigeria, and provides for establishment of the Nigerian Law School.

Rules of Professional Conduct (RPC) for Legal Practitioners, 2007:³⁷ This is a legal ethics code issued by the by the General Council of the Bar (GCB) in exercise of the powers conferred on it by the Legal Practitioners Act (LPA).³⁸ Members of the public view lawyers generally as custodians of a high moral value and distinguished members of society, whose conduct and activities should serve as a light to the rest of the society. It was in order to live up to and maintain this standard and to meet the high expectation of the society on lawyers, that the RPC is put in place to guide and regulate legal practice and the conduct of legal practitioners in Nigeria.³⁹ To ensure effectiveness in implementation of provisions of the RPC, the RPC itself provides that if a lawyer acts in contravention of the Rules or fails to perform any of the duties imposed by the Rules, the lawyer shall be guilty of a professional misconduct and liable to punishment as provided in LPA.⁴⁰ Meanwhile, it is the duty of every lawyer to report to the appropriate authorities for necessary disciplinary action, any breach of any of the rules that comes to the lawyer's knowledge.⁴¹

Legal Practitioners Disciplinary Committee Rules (LPDC Rules):⁴² Made pursuant to the LPA⁴³ the LPDC Rules requires that the disciplinary powers conferred on the Body of Benchers shall be exercised in such a manner as may be prescribed by rules made by the Chief Justice of Nigeria in that behalf. The LPDC⁴⁴ is an arm of the Body of Benchers through which the Body of Benchers exercises its disciplinary responsibilities to the legal profession in Nigeria.

Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991: makes general provisions for regulation of professional legal charges in Nigeria. It replaces the previous Scale of Charges for conveyancing matters prescribed for legal practitioners in 1971.⁴⁵

Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and for Related Matters (Revised Edition), 2022:⁴⁶ made by the Legal Practitioners Privileges Committee (LPPC) in exercise of powers conferred on it by the LPA,⁴⁷ for the purpose of conferment of the rank of Senior Advocate of Nigeria on deserving lawyers in Nigeria, discipline and sanction of holders of the rank, and for related matters.

Constitution of the Federal Republic of Nigeria, 1999: The Constitution is the *grundnorm*, the fundamental law of Nigeria with which all other laws must conform. It is the enabling law for all the Superior Courts in Nigeria, the offices of the various Attorneys-General (including the AGF and the Attorneys-General (AG's) of the various States in Nigeria), the National Judicial Council, the State Judicial Service Commission, the Federal Judicial Service Committee, the office of the Chief Justice of Nigeria, and many other regulatory authorities of the legal profession in Nigeria. The Constitution serves also as a source of rules of procedure on law-making, for appointment and discipline of judicial officers, contains the Code of Conduct for Judicial officers in Nigeria, procedure for filing and conduct of trials, appeals,⁴⁸ fair-trial procedure, filing of certain cases, appeals, definition and procedure for enforcement of fundamental human rights,⁴⁹ powers of the AG's, and so on. Finally, the Constitution is an enabling statute for many laws and subsidiary legislation such as Rules of Court, etc.

³⁰ Section 6

³¹ Section 8

³² Sections 15 to 21

³³ Section 9

³⁴ Section 12

³⁵ *Cap L.10*, Laws of the Federation, 2004.

³⁶ The Long title

³⁷ RPC, 2007.

³⁸ section 12(4). The GCB was established by section 1 LPA CAP L11, LFN, 2004

³⁹ See: Sylvester C. Udemezue, 'An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers In Nigeria' [June 03, 2021] Vol 21, Issue 17, Legal Ethics & Professional Responsibility eJournal <<https://ssrn.com/abstract=3842835>> or <<http://dx.doi.org/10.2139/ssrn.3842835>> accessed 22 December 2022

⁴⁰ Rule 55 (1)

⁴¹ Rule 55 (2)

⁴²Published as No 47, Vol 107, Government Notice No 20 of 24 March 2020 <<https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/06/LPDC-RULES-2020.pdf>>

⁴³ section 10 (7)

⁴⁴ Established by section 11(10)LPA

⁴⁵ Government Legal Notice No. 198 made. on 15th, August, 1991

⁴⁶See: <<https://thenigerianlawyer.com/download-2022-guidelines-for-the-conferment-of-the-rank-of-senior-advocate-of-nigeria-and-for-related-matters/>> accessed 22 December 2022

⁴⁷ Section 5(2)

⁴⁸ Example: Sections 35, 36, 294, 285, etc

⁴⁹ See Chapter IV of the Constitution; Section 46, 254C

Constitution of the Nigerian Bar Association, 2015: The current Constitution was made in 2015 and amended in 2019 and again in 2021. The Constitution provides the objectives of the Nigerian Bar Association (NBA) as well as the functions, powers and operation of the principal officers and organs of the body, among other matters.

Other Legislation and Regulations: There are countless other statutes and delegated legislation, including the various statutes (High Court Laws of the Various States, the Supreme Court Act, Administration of Criminal Justice Act, 2015, the Police Act, 2020, etc); the Various Rules of Court; Practice Directions; the National Judicial Policy; Revised National Judicial Council Guidelines & Procedural Rules for the Appointment of Judicial Officers, made on December 03, 2014; the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, the Companies and Allied Matters Act (CAMA), 2020,⁵⁰ the Senior Advocate of Nigeria (Functions and Privileges) Rules 1979,⁵¹ and many more.

5. Regulators of the Nigerian Bar

The Nigerian legal profession is subject of regulation by multiple authorities, including government agencies, statutory authorities and incorporated bodies as well as by public opinion. This segment discusses some of these authorities involved in regulation of the Nigerian Bar.

Nigerian Bar Association (NBA)

As the OECD has noted, and with which this author agrees, an aspect of professional regulation may be self-regulation, that is, developing and self-enforcing rules commonly arrived at for the mutual benefit of members, mainly in order to maintain professional reputation, education and ethical standards or as a vehicle to set prices, restrict entry and ban certain practices. The NBA was registered as 'Registered Trustees of Nigerian Bar Association',⁵² by virtue of which registration, under the Companies and Allied Matters Act (CAMA),⁵³ the Registered Trustees of NBA became a juristic, corporate personality,⁵⁴ with perpetual succession, common seal, power to hold property and to sue and be sued in its corporate name.⁵⁵ Thus, the NBA is not a creation of any specific statute, but it is severally recognized by Acts of the National Assembly and some other subsidiary legislation made pursuant to the Acts. It is respectfully submitted that in order to be a regulator, such a body as the NBA need not be specifically created by a statute. Additionally, by statute, NBA has been assigned numerous regulatory powers in/for the legal profession, especially in respect of the bar. Further, the Constitution of the NBA has been severally endorsed or recognised by statute as a subsidiary legislation or by-law⁵⁶ within the legal profession, for regulation of conduct of legal practitioners in Nigeria⁵⁷ Accordingly, NBA plays vital statutory regulatory roles within the legal profession. Aside statutes, the courts⁵⁸ have acknowledged and reemphasized NBA's status as the only umbrella association of all lawyers in Nigeria and a prominent regulator of the Nigerian bar, an aspect of the legal profession; this affirms that NBA is both a regulator of the legal profession and a regulator in the profession. In *N.B.A. v. Kehinde*,⁵⁹ the Court of Appeal stated that '*The Nigerian Bar Association (NBA) was established for the purpose of regulating the affairs and conduct of all legal practitioners in Nigeria and upon being called to the Nigerian bar, there is automatic membership to the NBA on a lawyer...*'⁶⁰ Continuing, the Court observed:⁶¹

I agree with the arguments of appellant's counsel to the extent that the NBA is statutorily recognized by the Legal Practitioners Act. This was why my Lord Hon. Justice Obaseki, (JSC) in the case of Chief Gani Fawehinmi v. Nigerian Bar Association & Ors (No.2) (1989) LPELR-1259(SC)PP. 92-93, paras. C-E, (1989)2 NWLR (pt.105) 558 at p.628, paras. G-H while commenting on the status of the Nigerian Bar Association stated thus: 'The Constitution of the Nigerian Bar Association ... was accorded its due superior position by the Legal Practitioners Act, 1975 in the conduct of the affairs of the Nigerian Bar Association by the General Council of the Bar'

This position was buttressed in the case of *Chinwo v. Owkhonda*,⁶² where Court of Appeal declared that 'The appellant was not compelled to take up the profession of law and its attendant compulsory membership of the Nigerian Bar Association. However, once he made the choice to study and practice law and thereby placing his name on the roll of honour of belonging to the profession, he stands bound by the internal rules and regulations of the Association. There would therefore be no issue

⁵⁰ Which regulate registration of business names. You cannot use some names for your Law Firm unless you register them with the CAC under CAMA. Such registered Law Firms must render Annual Returns to the CAC, as well as report their dissolution to the CAC.

⁵¹ Made by the LPPC pursuant to section 5(7) LPA

⁵² under the Land (Perpetual Succession) Ordinance 1924, contained in CAP 98, LFN and Lagos 1958. By virtue of this registration on 8th of April 1983. Note that CAP 98, LFN 1958 became Part C, CAP 59, CAMA 1990 (later called CAMA, CAP C20, VOL III, Laws of the Federation 2004).

⁵³ 1990, section 695 of (later S.612, CAP C20 CAMA, LFN 2004) and 679 (1) CAMA 1990 (which later became S.596, CAP C20, CAMA, LFN 2004)

⁵⁴ powers to acquire, own, dispose of property and to enter into a contract and to sue or be sued in its own name

⁵⁵ Please note that Cap C20, LFN 2004 has now been repealed and replaced by the Companies & Allied Matters (Repeal & Reenactment) Act, 2020. The relevant sections in CAMA 2020 may be found in Part F (dealing with Incorporated Trustees); see for example sections 823, 825, 830, 836, 837, etc., of CAMA, 2020.

⁵⁶ A bylaw is a regulation made by a local authority or a corporation; a rule made by a society/body to control the actions of its members

⁵⁷ See for example section 1, LPA, CAL L11, LFN, 2004

⁵⁸ See the most recent decision: Sult No. Ob/27/2020: *Ben Oloko v. The Incorporated Trustees of Nigeria Bar Association*, judgment was delivered On Friday, 29 July 2022, by Hon. Justice R.O. Odugu, Enugu State High Court

⁵⁹ (2017) 11 NWLR (PT 1576) 225

⁶⁰ @250 -251 paras H- A, His lordship, Nimpur.JCA

⁶¹ @246, per Tukur, JCA

⁶² (2008) 3 NWLR (Pt. 1074) 341, at 361

of a breach of the Constitution of the country if the rules demand of him, undivided loyalty'. Specific Regulatory Powers of the NBA for the Legal Profession include:

Bar Practicing Fee (BPF): The LPA⁶³ provides that no legal practitioner⁶⁴ shall be accorded the right of audience in any court in Nigeria in any year, unless the legal practitioner has in respect of that year, paid to the Registrar of the Supreme Court of Nigeria⁶⁵ Bar Practicing Fees (BPF)⁶⁶ as may be prescribed from time to time in accordance with the provision of this section. Although the Body of Benchers is listed to be responsible for prescribing/fixing the BPF 'after consultation with the NBA'⁶⁷ it appears that in practice, the Hon Attorney-General of the Federation (AGF) fixes the BPF in consultation with the NBA.⁶⁸ Whichever way, there is a clear indication that the NBA is an integral part of the decision-making process regarding prescription and fixing of the BPF. Additionally, the LPA⁶⁹ directs the Registrar to pay to the Nigerian Bar Association (NBA) 'as soon as maybe after the end of each year a sum equal to nine-tenths (90 percent) of the aggregate amount of the bar practicing fees received by the Registrar as BPF during the year. The NBA is mandated to manage the money for the purpose of promoting its objectives as set out in the NBA Constitution.'⁷⁰

Mandatory Continuing Legal Education: NBA has regulatory roles with respect to Mandatory Continuing Legal Education under the Rules of Professional Conduct for Legal Practitioners (RPC), 2007.⁷¹ Any lawyer in Nigeria who wishes to carry on law practice in Nigeria must participate in, and satisfy the requirements of, the mandatory Continuing Professional Development (CPD) Programme operated by the NBA. The NBA is expected to establish a Continuing Professional Development Department in its office for the operation of the programme⁷² and to make rules for regulating the operation of the programme.⁷³

Issuing Stamp and Seal for Law Practice: NBA has the exclusive power to prescribe stamp and seal which gives an insignia of validity to any legal document prepared by a lawyer in Nigeria.⁷⁴ The RPC⁷⁵ requires that a legal practitioner acting as such legal practitioner, or as a legal officer or adviser of any Government Department, ministry or any corporation, who signs or files a legal document must affix on any such document his seal and stamp approved by the NBA. The requirement of stamp and seal applies to all legal documents prepared by a lawyer. Legal documents envisaged include pleadings, affidavits, depositions, applications, instruments, agreements, deeds, letters, memoranda, reports, legal opinions or any other similar documents.⁷⁶ This exclusive regulatory power of the NBA to prescribe stamp and seal has been judicially endorsed.⁷⁷ The Nigerian Supreme Court has ruled that any processes filed in court by a lawyer in Nigeria without affixing the Stamp and Seal prescribed and approved by the NBA is deemed to be not properly filed.⁷⁸

Issuance of Bar Practicing Certificates: NBA has the exclusive statutory regulatory role of issuing bar practicing certificates to lawyers in Nigeria. The RPC⁷⁹ requires the NBA, in each year to publish a list⁸⁰ of legal practitioners who have complied with the requirements of the Continuing Professional Development (CPD) Programme and have paid their practicing fees and are, therefore entitled to practice as legal practitioners in that year, and to issue a practicing certificate to all legal practitioners whose names are on the list, in order to certify that they have paid their practicing fee and participated in the programme for that year. Only lawyers who hold the Annual Practicing Certificate issued by the NBA, shall in that year appear in court as lawyers, or sign any legal documents or processes, or file any such legal documents as legal practitioners, legal officers, or advisers of any Government Department or Ministry or any company or corporation.⁸¹

⁶³ Section 8(2)

⁶⁴ other than such a person as is mentioned in section 2(3) of the Act.

⁶⁵ LPA, section 24

⁶⁶ Subscription/membership fee paid annually by lawyers in Nigeria

⁶⁷ LPA, section 10 (1) (d)

⁶⁸ By virtue of the Legal Practitioners (Amendment) Act No 31, 1999

⁶⁹ section 8 (3)(c)

⁷⁰ Section 3

⁷¹ Rule 11. As a subsidiary legislation made pursuant to the Legal Practitioners Act, RPC is an existing law in Nigeria;

⁷² RPC, Rule 11(5)

⁷³ Op Cit, Rule 11(6)

⁷⁴ Rule 10, RPC 2007

⁷⁵ Rule 10 (1)

⁷⁶ See Rule 10(2) RPC.

⁷⁷ See: *All Progressive Congress (APC) v. General Bello SarkinYaki* SC/722/15 (reported as *Senator Bello SarkinYaki v. Senator Atiku Bubakar Bagudu Ors* (2015) LPELR-25721 SC); (2015) 18 N.W.L.R (Pt. 1491) 288; *ADEWALE & ANOR v. ADEOLA & ORS* (2015) LPELR-25972(CA), the Court of Appeal (Per AGIM, J.C.A. (Pp. 16-17, Paras. D-A; 19-20, Paras. A- B, P 20, Para C-E)

⁷⁸ See also: *Josiah Cornelius Ltd and Ors v. Ezenwa* (1996) LPELR-1632 (SC) and *In Re: Osibakoro D. Onuedon* (1995) LPELR-1506 (SC).'

⁷⁹ Rule 12 (1)

⁸⁰ the Annual Practicing List by virtue of Rule 12, RPC

⁸¹ Rule 12(2)

Establishment and Dissolution of Law Firms in Nigeria: Under the RPC 2007,⁸² the NBA has the statutory regulatory role of supervising and regulating establishment and dissolution of law firms by lawyers in Nigeria. Every lawyer or lawyers who set up private legal practice of any type shall, not later than thirty (30) days after commencement of such legal practice, deliver a notice in the prescribed form to the relevant NBA Branch⁸³ which branch shall enter the particulars in the notice in a register or database kept for that purpose.⁸⁴ The same applies to change of name or address for legal practice.⁸⁵

Role in Legal Education for Aspirants to the Bar: Apart from that the NBA is represented in the Council of Legal Education by the NBA President⁸⁶ and 15 (fifteen) other lawyers of not less than ten years standing, selected or elected by the NBA,⁸⁷ the NBA President doubles as the Alternate Chairman of the Council of Legal Education (CLE). The Council of Legal Education is the body with exclusive responsibility for the legal education of persons seeking to become members of the legal profession in Nigeria.⁸⁸ The Council shall in addition to the function conferred on it by section 1 (2) of this Act have responsibility for Continuing Legal Education in Nigeria.⁸⁹

Makes Rules for the Continuing Professional Development Program:⁹⁰ The program shall be operated under the rules made for the purpose by the NBA.⁹¹

Statutory Representation In Other Regulatory Bodies and In Some Government Parastatals: By requirement of extant law, the NBA is represented by members of the NBA nominated by the NBA to represent the NBA in all the other regulatory institutions and bodies in the legal profession as well as in many other statutory and government agencies, including but not limited to the following: (1) the National Judicial Institute (NJI); (2) the Council of Legal Education (CLE);⁹² (3) the Board of the Corporate Affairs Commission (CAC);⁹³(4) the National Judicial Council (NJC);⁹⁴ (5) the Body of Benchers (BOB)⁹⁵ (6) the General Council of the Bar (GCB);⁹⁶ (7) the Legal Practitioners Privileges Committee (LPPC);⁹⁷ (8) the Legal Practitioners Disciplinary Committee (LPDC);⁹⁸ (9) the Legal Practitioners Remuneration Committee (LPRC);⁹⁹ and (10) the Judicial Service Commission.¹⁰⁰ to name but a few.

Regulation of the General Council of the Bar (GCB): In some way, the NBA regulates the GCB in that the NBA prescribes functions for the GCB. The LPA provides that ‘There shall be a body to be known as the General Council of the Bar (hereinafter in this Act referred to as ‘the Bar Council’) which shall be charged with the functions conferred on the Council by this Act or the Constitution of the Nigerian Bar Association (the ‘Association’).¹⁰¹ Accordingly, the Bar Council has two categories of powers under the LPA, namely -- (1) powers reserved for it under the LPA, and (2) those reserved for it in the NBA Constitution.¹⁰² But there is a third category: powers reserved for the GCB by the RPC.¹⁰³

Role in Appointment of Judicial Officers in Nigeria: NBA plays some statutory role in the process of appointment of judicial officers in Nigeria.¹⁰⁴

Other Duties, Powers and Functions of the NBA: These are seen in the prescribed¹⁰⁵ aims and objectives of the NBA which include: Maintenance and defence of the integrity and independence of the Bar and the Bench; Promotion of Legal

⁸² Rule 13

⁸³ Rule 13(1)

⁸⁴ Rule 13(3)

⁸⁵ Rule 13(4)

⁸⁶ Legal Education (Consolidation, etc) Act, section 2(1)(e)

⁸⁷ *Op Cit.*, section 2(1)(f)

⁸⁸ *Op Cit.*, section 1(2)

⁸⁹ Section 3. Note that the NBA currently performs this role pursuant to Rule 11 of the RPC, 2007.

⁹⁰ See Rule 12, RPC, 2007

⁹¹ Rule 12(1) RPC

⁹² Legal Education (Consolidation, etc) Act, section 2(1)(e) &(f)

⁹³ Companies and Allied Matters Act (CAMA), 2020, section 2(2)(b)(ii).

⁹⁴ the Constitution of the Federal Republic of Nigeria, 1999, Item 20(i) of Para I in Part 1 of the 3rd Schedule, provides: ‘The National Judicial Council shall comprise the following members -(i) five members of the Nigerian Bar Association who have been qualified to practice for a period of not less than fifteen years, at least one of whom shall be a Senior Advocate of Nigeria, appointed by the Chief Justice of Nigeria on the recommendation of the National Executive Committee of the Nigerian Bar Association to serve for two years and subject to re-appointment’

⁹⁵ By 30 lawyers nominated by the NBA. See sSection 3(1)(k), LPA.

⁹⁶ Section 1(1)(c) LPA

⁹⁷ Section 5(3)(g)

⁹⁸ Section 10(2)(c) LPA

⁹⁹ Section 15(1)(c) LPA.

¹⁰⁰ the Constitution of the Federal Republic of Nigeria, 1999, para E, Item 12(e) of Para E in Part 1 of the 3rd Schedule: ‘The Federal Judicial Service Commission shall comprise the following members ((e) two persons, each of whom has been qualified to practice as a legal practitioner in Nigeria for a period of not less than fifteen years, from a list of not less than four persons so qualified and recommended by the Nigerian Bar Association’

¹⁰¹ Section 1(1) LPA

¹⁰²See the NBA Constitution, Section 7(2) and (3). <<https://thenigerialawyer.com/wp-content/uploads/2022/01/The-NBA-Constitution-2021-Approved-by-AGM-on-29-10-2021-TheNigeriaLawyer.pdf>> accessed 23 December 2022.

¹⁰³ See for example, Rule 7 of the RPC.

¹⁰⁴ See the Revised National Judicial Council Guidelines & Procedural Rules for the Appointment of Judicial Officers, made on December 03, 2014, Rule 3(4)(iii).

Education, Continuing Legal Education, Advocacy and Jurisprudence; Improvement of administration of justice and regular law reporting; Proving Legal Aid for indigent citizens; Promotion of law reform; Maintenance of professional conduct, etiquette and discipline; Promotion of good relations among NBA members and lawyers of other countries; Promotion of co-operation between the NBA and other National or International Law Organizations; Encouragement and protection of the right of access to justice; Encouragement of the establishment of a National Law Library; Promotion of the rule of law and fundamental human and people's rights; Creating empowerment schemes for new members, members living with disabilities, and aged members; Promoting the welfare, security, and economic advancement of NBA members; Creating and Maintaining an Endowment Fund for the proper discharge of any of these aims and objects.

Council of Legal Education and the Nigerian Law School

The Nigerian Law School (NLS): The Nigerian Law School (NLS) was set up by the Federal Government of Nigeria in 1962.¹⁰⁶ The aim of the institution was to provide for the local needs of the then foreign-trained lawyers and to provide the much needed practical training to those aspiring to become Legal Practitioners in Nigeria.¹⁰⁷ The School started at Igboere Street, near Obalende in Lagos State, Nigeria, and was later moved to Ozumba Mbadiwe Street in Victoria Island, Lagos, in 1969. In 1997, it was relocated to Bwari, a suburb of Abuja, Nigeria's Federal Capital Territory (FCT). The need to accommodate the ever-growing number of law graduates from Nigerian universities (and their foreign counterparts desirous of becoming lawyers in Nigeria) led to the decentralization of the Nigerian Law School in 2001, with the creation of three additional Campuses - in Enugu, Kano and Lagos States - in addition to the Headquarters in Bwari, Abuja. Two more Campuses were later created in 2011 -- one in Yenagoa, Bayelsa State and another in Yola, Adamawa State. One more Campus (donated by Rivers State Government¹⁰⁸) was commissioned in Port Harcourt, Rivers State, Nigeria in November 2022. In all, the Nigerian Law School now has seven fully functional Campuses: (1) Bwari Abuja (the headquarters); (2) Agbani (Augustine Nnamani Campus), in Enugu State; (3) Bagauda, in Kano State; (4) Victoria Island, Lagos; (5) Yola, in Adamawa State; (6) Yenagoa, in Bayelsa State, and (7) Port Harcourt, (Nabo Graham-Douglas Campus) in Rivers State. In addition to having the Bachelor of Laws (LL. B) degree from a Nigerian university whose law faculty is officially recognized and duly approved by the Council of Legal Education, an applicant for an admission into the Nigerian Law School must also be a 'fit and proper' person for admission into the legal profession. For example, an ex-convict, a member of a secret cult, a drug addict or peddler, or an armed robbery gang member, etc., may in proven cases, be considered not fit and proper, and accordingly disqualified, even if the person graduated from a university with a first class honours degree in law.¹⁰⁹ Persons graduating from university law faculties outside Nigeria, but who aspire to become members of the Nigerian Bar, are made to undergo a three-to-four-month **Bar Part 1** training course at the Law School Headquarters, in Bwari, Abuja, before being considered for a formal admission into the mandatory one-year-long¹¹⁰ **Bar Part 2** (Bar Final) programme. In addition to persons graduating from university law faculties within Nigeria, students who are successful in the Bar Part 1 programme are also considered for an admission into the Bar Part 2 course. The Bar Part 1 programme is aimed chiefly at introducing the 'foreign'¹¹¹ law graduates to basic aspects of the Nigerian Legal System, such as Nigerian Land Law, Nigerian Customary Law, Constitutional Law, Criminal Law, Law of Evidence, Nigerian Customary Law, among others. Teaching in the Law School under the *New Curriculum*¹¹² is practice-based, and is aimed at producing lawyers who would be in a position to measure up to contemporary benchmarks and international best practices in the legal profession.

The Council of Legal Education (CLE): As the parent body of Nigerian Law School,¹¹³ the CLE was established in 1962,¹¹⁴ and saddled with the responsibilities¹¹⁵ for legal education of persons seeking to become Legal Practitioners in Nigeria and with such other powers and functions as the Council may consider expedient for the purpose of performing its

¹⁰⁵ See section 3 of the Constitution of the NBA, 2015.

¹⁰⁶ See <http://www.lawschoollagos.org/about/>. The School began operations in 1963 at No. 213A Igboere Road, Lagos.

¹⁰⁷ Otherwise known as 'Aspirants to the Nigerian Bar'

¹⁰⁸ See: Ameh Ochojila, 'Buhari commissions Port Harcourt Law School complex, lauds Wike' (The Guardian 19 November 2022) <<https://guardian.ng/news/buhari-commissions-port-harcourt-law-school-complex-lauds-wike/>> accessed 24 December 2022; KN News, 'FG Approves Nigeria Law School Campus 'Port Harcourt' (cknnigeria.com 25 June 2021) < <https://www.cknnigeria.com/2021/06/fg-approves-nigeria-law-school-campus.html>> accessed 24 December 2022; Victor Edozie, 'Malami Flags Off Law School's Port Harcourt Campus' (Daily Trust 18 June 2021) < <https://dailytrust.com/malami-flags-off-p-harcourt-campus-of-nigeria-law-school/>> accessed 24 December 2022; The Port Harcourt Spectator, 'Senate okays Port Harcourt Law School Campus' (pnspectator.com 16 November 2022) < <https://pnspectator.com/2021/11/16/senate-okays-port-harcourt-law-school-campus/>> accessed 24 December 2022

¹⁰⁹ See *Okonjo v. Council of Legal Education* (1979) VOL. 1 FNLR 70; (1979) 3 C.A. 205; (1979) IFNIR 70.

¹¹⁰ Council has the power to fix the duration of the Bar Academic Program at the NLS: See: section 5(b) Legal Education (Consolidation, etc) Act

¹¹¹ Persons (whether Nigerians or not) who graduated from Law Faculties outside Nigeria

¹¹² New Curriculum is the name given to the new system of teaching and learning in the Nigerian Law School, which focuses on making the students the centre of the learning process. Students must be ready to prepare in advance for lectures, by undertaking reading assignments, exercises, tasks, role plays, etc as would be indicated by the tutors from time to time. Any student who fails or neglects to carry out assignments would be deemed to not have participated in the class. Students should not expect that tutors would come to the class and 'fill' them up with knowledge by merely dictating lines of pages of books, statutes and law reports. Full participation in all class and pre-class activities are mandatory.

¹¹³ CLE is the parent body for the Nigerian Law School. In other words, the Nigerian Law School is owned and supervised by the CLE. Note that the Nigerian Law School is not a juristic person; all actions by or against the Nigerian Law School must be instituted in the name of or against the Council of Legal Education. See: <See <http://www.nigerianlawschool.edu.ng/#>> accessed 24 December 2022.

¹¹⁴ The Legal Education (Consolidation) Act, CAP L10 L.F.N. 2004, section 1 (1)

¹¹⁵ *Op Cit*, sections 1 (2).

main functions.¹¹⁶ Additionally, the Council shall in addition to the function conferred on it by law,¹¹⁷ have responsibility for those matters in respect of which, before the commencement of this Act, the Nigerian Institute for Continuing Legal Education had responsibility.¹¹⁸ The CLE is the sole regulator of legal education in Nigeria, with an additional duty to grant accreditation to Law Faculties established in Nigeria, as a precondition to eligibility of graduates of such Law Faculties to be considered for an admission into the Nigerian Law School for the Bar Part 2 Course, preparatory for induction into the legal profession in Nigeria where the aspirant meets prescribed conditions.¹¹⁹ The School has prescribed certain conditions, which its students must satisfy in order to qualify for call to the Bar and enrolment as lawyers¹²⁰ in Nigeria. These conditions include that (1) the aspirant must be fit and proper;¹²¹ (2) the aspirant must be successful at Nigerian Law School's Bar Part 2 course;¹²² (3) The aspirant must have participated in the mandatory three-dining terms (three law dinner sessions) at the Law School;¹²³ (4) the aspirant must be successful in the mandatory Portfolio Assessment exercise organised in the Law School;¹²⁴ and (5) the aspirant need now¹²⁵ not be a Nigerian citizen.¹²⁶ At the end of each Bar Part 2 course, the Council would recommend students who meet these requirements, among others, to the Body of Benchers for call to the Bar. They are then admitted into the Legal profession during call-to-the-bar ceremonies, usually held in Abuja, after which they are enrolled at the Supreme Court as Barristers and Solicitors of the Supreme Court of Nigeria.

General Council of the Bar (GCB)

Established by the LPA which provides¹²⁷ that 'There shall be a body to be known as the General Council of the Bar (hereinafter in this Act referred to as 'the Bar Council') which shall be charged with the functions conferred on the Council by this Act or the Constitution of the Nigerian Bar Association (the 'Association').¹²⁸ The LPA also prescribes its functions/powers, membership composition,¹²⁹ tenure of elected members,¹³⁰ quorum¹³¹ of the meeting of the Bar Council. As already pointed out above, the Bar Council has three classes of powers namely -- (1) powers reserved for it under the LPA,¹³² (2) Powers reserved for it by the RPC, 2007,¹³³ and (3) those reserved for it in the NBA Constitution.¹³⁴ Specific functions and powers of the GCB include:

General Management of the Affairs of the NBA: Although the LPA¹³⁵ had given to the GCB the power of general management of the affairs of the NBA in emergency situations to avoid vacuum and irresolvable crises in NBA leadership, subject to any limitations for the time being provided by the Constitution of the Association, this power has now been

¹¹⁶ Section 2(5)

¹¹⁷ By the Legal Education (Consolidation) Act, section 1 (2)

¹¹⁸ *Op Cit.*, section 3

¹¹⁹ Conditions for an admission into the Nigerian Bar include:

¹²⁰ In Nigerian, the term, 'lawyer' is used interchangeably with 'legal practitioner,' 'counsel,' Solicitor' and 'barrister,' to refer to a person who is called to the Nigerian Bar and duly admitted to practice law in Nigeria. A university law graduate is not a lawyer, and is not qualified to practice law in Nigeria. See sections 2 and 22 of the Legal Practitioners Act Cap L11, LFN, 2004, (as amended). Section 24 defines a 'legal practitioner' as '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.'

¹²¹ See section 4(1)(c) and (2)(c) LPA. It needs to be emphasized that the concept of 'fit and proper' is a continuous one. Accordingly, every aspirant to the Nigerian bar is expected to maintain a high standard of ethical conduct, failing which he may be disqualified from admission into the Law School, or, if already admitted, may be shown the way out. Even after call-to-bar, a legal practitioner who fails to observe the professional code of conduct would be made to face professional discipline and, if found guilty, could face serious punishments, such as warning, suspension from practice or his name could be struck out from the Roll, meaning that he ceases to be a member of the bar in Nigeria. The idea behind this is that the legal profession is a noble one; hence only those worthy in learning and character are expected to be admitted into, and to remain in, it. The Roll is a term used to refer to the register, kept at the registry of the Supreme Court of Nigeria, which contains names of all legal practitioners in Nigeria, in order of call-to-bar and enrolment.

¹²² Section 4(1)(b)LPA and section 5(b) Legal Education (Consolidation, etc) Act.

¹²³ Every student must participate in the mandatory law dinners organised at the Law School. There are three in all taken during the bar part 2 programme. During these dinners, students are expected to also observe a modicum of decent behaviour, decorum, table manners and protocol.

¹²⁴ At end of the mandatory Court and Law office attachments (now known as externship or placement), each law school student is made to face a panel in what is now known as Portfolio Assessment, the aim of which is principally to determine whether the student was actively involved in the externship programme.

¹²⁵ Nigerian citizenship used to be a precondition for an admission into the NLS, until removed by Decree 21 of 1994

¹²⁶ Section 4(2)(a) LPA

¹²⁷ Section 1(1)

¹²⁸ Section 1(1) LPA

¹²⁹ Section 1(2)

¹³⁰ Section 1(3)(b)

¹³¹ Section 1(4)

¹³² Section 1

¹³³ See for example Rule 7, RPC, 2007

¹³⁴ See the NBA Constitution, Section 7(2) and (3). <<https://thenigerianlawyer.com/wp-content/uploads/2022/01/The-NBA-Constitution-2021-Approved-by-AGM-on-29-10-2021-TheNigeriaLawyer.pdf>> accessed 23 December 2022.

¹³⁵ The previous section 1(1) (before the 1994 Amendment provided: 'There shall be a body to be known as the General Council of the Bar (hereinafter in this Act referred to as 'the Bar Council') which shall be charged with the general management of the affairs of the Nigerian Bar Association (subject to any limitations for the time being provided by the constitution of the association) and with any functions conferred on the council by this Act or that constitution'. The current provision is 'There shall be a body to be known as the General Council of the Bar (hereinafter in this Act referred to as 'the Bar Council') which shall be charged with the functions conferred on the Council by this Act or the Constitution of the Nigerian Bar Association (the 'Association').

transferred¹³⁶ to the Body of Benchers. In reality though, attempts by the Body of Benchers to manage NBA affairs has always been met with resistance.¹³⁷

Duty to Make and Amend the Rules of Professional Conduct (RPC) for Lawyers in Nigeria: The GCB possesses exclusive power to make, revise, amend or otherwise alter the RPC. The LPA¹³⁸ provides that 'It shall be the duty of the Bar Council to make rules from time to time on professional conduct in the legal profession and cause such rules to be published in the Gazette and distributed to all branches of the Association'. The first RPC which was made by the Council at its general meeting in Lagos on 25 December 1967, was later amended on 15 January 1979, and later replaced by the RPC, 2007. The RPC 2007 was however, singlehandedly purportedly amended by the Attorney-General of the Federation (AGF), Mr. Abubakar Malami, SAN, in September 2020.¹³⁹ This purported amendment was later set aside (nullified) by Court in 2022¹⁴⁰ at the instance of a suit filed by the NBA.¹⁴¹

Fixing Bar Practising Fee (BPF): Although the powers of the General Council to fix bar practising fee was transferred to the Body of Benchers under Decree 21 of 1994,¹⁴² the current practice is that the Federal Attorney General now fixes the practising fees in consultation with the NBA.¹⁴³

Other Roles of the GCB: Making rules of accounts to be kept by legal practitioners in Nigeria¹⁴⁴ as well as performing other functions as may be assigned to it by the NBA Constitution¹⁴⁵ or the RPC.¹⁴⁶

The Body of Benchers (BOB): Established by the LPA as 'a body of legal practitioners of the highest distinction in the legal profession in Nigeria,'¹⁴⁷ the LPA makes it a juristic person¹⁴⁸ and prescribes its membership composition,¹⁴⁹ regulation of membership and proceedings,¹⁵⁰ et.c.¹⁵¹ Other powers of the BOB include:

Organises Law Dinners for Aspirants to the Bar: As a precondition for eligibility for call to the bar in Nigeria, every aspirant to the bar must participate in three dinner terms. The dinners are organised by the BOB as part of the professional bar training program at the Nigerian Law School.¹⁵²

Professional Discipline of Legal Practitioners in Nigeria: The Body of Benchers performs disciplinary role for the legal profession.¹⁵³ The LPA provides that 'There shall be a committee of the Body of Benchers to be known as the Legal Practitioners' Disciplinary Committee... which shall be charged with the duty of considering and determining any case where it is alleged that a person who is a member of the legal profession has misbehaved in his capacity as such or should for any other reason be the subject of proceedings under this Act'. Some difference is noticed between the current provision¹⁵⁴ and the previous one. Under the previous provision, the LPDC could only consider and determine cases of professional discipline reported against a member of the legal profession who is alleged to have committed professional misconduct or misbehaviour 'in his capacity as legal practitioner'. Under the current provision, the expression has changed to 'in his capacity as a member of the legal profession'. It is submitted that the implication of this alteration is that any member of the legal profession (including members of the Bar and members of the Bench) could be subjected to professional disciplinary procedure before the LPDC for alleged misbehaviour committed in his capacity as a member of the legal profession. Accordingly, it is further submitted that a judicial officer could be subjected to the procedure before the LPDC for misbehaviour allegedly committed as a member of the profession. It is however doubtful whether a judicial officer could be dragged before the LPDC for misbehaviour allegedly committed during, or in respect of, judicial proceedings.¹⁵⁵ Meanwhile, it should be noted that the BOB is not the only disciplinary authority in the legal profession in Nigeria. It shares this function

¹³⁶ By section 2 of Decree 21 of 1994; See the Legal Practitioner (Amendment) Decree 21 of 1994. See section 10 of the LPA (Revised Edition)

¹³⁷ Professional Ethics and Skills Handbook, Nigerian Law School

¹³⁸ Section 12(4)

¹³⁹ TheNigeriaLawyer, 'AGF Malami (SAN) Amends RPC, Deletes Provision For NBA Stamp and Seal' (TheNigeriaLawyer.com 12 September 2020) < <https://thenigerialawyer.com/agf-malami-san-amends-rpc-deletes-provision-for-nba-stamp-and-seal/> accessed 23 December 2022

¹⁴⁰ Blueprint, 'Court nullifies Malami's amendment of lawyers' professional conduct rules' (Blueprint.ng 11 August 2022) accessed 23 December 2022

¹⁴¹ Suit No: FHC/ABJ/CS/77/2022: Incorporated Trustees of the NBA v Attorney-General of the Federation

¹⁴² See section 10(1)(d)

¹⁴³ This is perhaps by virtue of the Legal Practitioners (Amendment) Decree 31 of 1999

¹⁴⁴ See section 20 Legal Practitioners Act

¹⁴⁵ See: section 1(1) LPA and section 7, NBA Constitution.

¹⁴⁶ See Rules 7, 45(2); RPC, 2007

¹⁴⁷ section 3

¹⁴⁸ Section 3(2)

¹⁴⁹ Section 3(1)

¹⁵⁰ Section 3(5)to(9)

¹⁵¹ Section 3A provides for its power to accept gifts and to invest its funds

¹⁵² Sylvester C. Udemezue, 'Contemporary Training at The Nigerian Law School: An Insider's Account' (udemsyl.wordpress.com 29 January 2017) <<https://udemsyl.wordpress.com/2017/01/29/education-at-the-nigerian-law-school-an-insiders-account/>> accessed 23 December 2022

¹⁵³ See sections 11 and 12 LPA

¹⁵⁴ Pursuant to the 1994 Amendment by Decree 21 of 1994

¹⁵⁵ This forms a subject of planned further research by this author

with the Supreme Court,¹⁵⁶ the Chief Justice of Nigeria,¹⁵⁷ the Court,¹⁵⁸ the National Judicial Council,¹⁵⁹ the Federal Judicial Service Committee,¹⁶⁰ and the Judicial Service Commission of the various States in Nigeria.¹⁶¹

Power to Constitute a Committee to Generally Manage the Affairs of the NBA Under Certain Conditions: As observed earlier in this work,¹⁶² under section 1 of the LPA,¹⁶³ the General Council of the Bar (GCB) had the power for 'general management of the affairs of the Nigerian Bar Association', subject to limitations as may be imposed by the NBA Constitution, which powers were later transferred to the Body of Benchers (BOB).¹⁶⁴ However, intervention by the Body of benchers in the management of NBA's affairs is not automatic but discretionary upon the happening of specified events.¹⁶⁵ While the LPA¹⁶⁶ reserves for the BOB, the power to constitute a Committee with power to take over and manage the affairs of the NBA where any such emergency occurs, the NBA Constitution (perhaps inadvertently) has allocated the power to take over and manage the affairs of the NBA, in the case of such an emergency to the GCB.¹⁶⁷ It is submitted that in cases of conflict, the powers of the BOB under LPA¹⁶⁸ must be held to prevail over the power reserved for the GCB in NBA Constitution.¹⁶⁹

Other Powers and Functions of the BOB: The BOB is entitled to take all measures which it considers necessary or expedient for maintaining the traditional values of the legal profession in Nigeria;¹⁷⁰ formal call to bar of aspirants to the bar;¹⁷¹ issuance of certificate of call to the bar to inducted lawyers¹⁷² prescribing bar practicing fee after consultation with the NBA;¹⁷³ and prescribing call-to-the-bar fee.¹⁷⁴

The Legal Practitioners Privileges Committee (LPPC)

Established by the LPA,¹⁷⁵ members of the LPPC are appointed by the CJN after consultation with the AGF.¹⁷⁶ The LPPC is charged with the following powers:

Conferring the Rank of Senior Advocate of Nigeria (SAN) on Deserving Members of the Bar In Nigeria: The LPPC may by instrument¹⁷⁷ confer the rank of SAN on any member of the bar who 'has been qualified to practise as a legal practitioner in Nigeria for not less than ten years and has achieved distinction in the legal profession in such manner as the Committee may, from time to time, determine'.¹⁷⁸

Making Rules for the Privileges to the Accorded SANs: Section 5(7) of the LPA provides that the LPPC 'may, with the approval of the Body of Benchers, make rules as to the privileges to be accorded to Senior Advocates of Nigeria, as to the functions of a legal practitioner, which are not to be performed by a Senior Advocate of Nigeria, as to the mode of appearance before courts by a Senior Advocate of Nigeria, and generally, but without prejudice to the foregoing, for ensuring the dignity of the rank of Senior Advocate of Nigeria'. Pursuant to this power, the LPPC has enacted the Senior Advocate of Nigeria (Functions and Privileges) Rules 1979. In this respect, Oditah¹⁷⁹ observes:¹⁸⁰

¹⁵⁶ Section 13(1) LPA

¹⁵⁷ Section 13(2)

¹⁵⁸ Court reserves the power to punish counsel who file frivolous or vexatious cases which itself is a form of professional misconduct by virtue of Rule 15 RPC. See: Bayelsa verdict: Supreme Court fines Babalola, Olanipekun N60m <<https://www.vanguardngr.com/2020/02/bayelsa-verdict-supreme-court-fines-babalola-olanipekun-n60m/>> accessed 24 December 2022; See also section 13(1) LPA which permits the Supreme Court to punish a lawyer for proven misconduct in respect of cases pending in a court of law.

¹⁵⁹ This is a special disciplinary authority for only judicial officers -- judges and justices of the superior courts in Nigeria. See section 292 of the Constitution of the Federal Republic of Nigeria for definition of 'judicial officer'

¹⁶⁰ Exercises disciplinary powers over Magistrates and members of inferior courts (non judicial officer-members of the Bench) within the Federal Capital Territory, Abuja

¹⁶¹ Exercises disciplinary powers over Magistrates and members of inferior courts (non judicial officer-members of the Bench) in the various States in the Federation

¹⁶² During discussions on the Powers of the GCB under the Number 4.1.1.2.1.1. (supra)

¹⁶³ before the 1994 amendment (Decree 21 of 1994)

¹⁶⁴ vide section 2 of the Legal Practitioners Act, (Decree 21) of 1994. See now section 10(2) of the LPA (Revised Edition) incorporating Decree 21 of 1994

¹⁶⁵ The BOB cannot and has no power to interfere in the affairs of the NBA unless and until any of such scenarios as listed in s. 10(2) has occurred.

¹⁶⁶ Section 10

¹⁶⁷ Section 7 of the NBA Constitution

¹⁶⁸ section 10 (2)

¹⁶⁹ section 7(2)

¹⁷⁰ Section 10 (1)(c).

¹⁷¹ See sections 10(1)(a); 3(1), and 4(1)(c), and 4(3) of the LPA. Call-to-the-Bar is a swearing ceremony; the induction ceremony into the Nigerian Bar.

¹⁷² Section 4(4) LPA

¹⁷³ Section 10(1)(d). But see the discussion in paragraph 4.1.1.1.1. (supra)

¹⁷⁴ Section 4(1)(d)

¹⁷⁵ See section 5(3)

¹⁷⁶ Section 5(5)

¹⁷⁷ Section 5(1). The Instrument is The Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and for Related Matters (Revised Edition), 2022.

¹⁷⁸ Section 5(2)

¹⁷⁹ Prof. Fidelis Oditah SAN

In Nigeria, the privileges attached to being a senior advocate are largely statutory rather than conventional. They derive in part from section 5 (7) of the Legal Practitioners Act 1975 and in part from the Senior Advocate of Nigeria (Functions and Privileges) Rules 1979. Three privileges are conferred: the right to wear a silk gown; the right to sit at the inner bar or front row; and the right to mention cases out of turn. Apart from the obligation to appear with a junior counsel which appears to derive from convention rather than statute and the restriction from practicing other than as a barrister (section 5 (8) of the Legal Practitioners Act 1975), there appear to be no restrictions on a senior advocate - they routinely sign and draft evidence.

Making the Guidelines for Conferment of the Rank of Senior Advocate of Nigeria:¹⁸¹ Pursuant to this power, the LPPC has made the Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and for Related Matters.¹⁸²

Exercising Power of Discipline over Senior Advocates of Nigerian in their Capacity as SANs: The Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria contains additional provisions for 'Discipline and Sanctions' against erring Senior Advocates of Nigeria. Please note that the LPPC may only discipline a SAN as a SAN, and not in his capacity as a legal practitioner. For example, the LPPC has no power to strike out the name of a legal practitioner from the Roll of legal practitioners or to suspend a lawyer from practice as a lawyer. It may only suspend or otherwise withdraw the rank of SAN from an erring SAN either for a fixed period¹⁸³ or indefinitely. Note further that the power of the LPPC to award the rank of SAN in Nigeria is an absolute privilege. This author has had cause to address this issue elsewhere:¹⁸⁴

Action of the LPPC in denying or awarding the rank of SAN is ... absolutely privileged. The Black's Law Dictionary (see page 1316, 9th ed., by B. Garner) draws a clear distinction between absolute privilege and qualified privilege. An absolute privilege is one that 'immunizes the actor from law suit, no matter how wrongful the action might be and even though it is done with an improper motive'. A qualified privilege is one that 'immunizes the actor from law suit only when the privilege is properly exercised in the performance of a legal or moral duty.' Award of SAN is not a qualified privilege because qualified privilege arises in the course of performance of a legal duty; award of SAN has absolutely nothing to do with performance of a legal duty...court cannot compel the LPPC to award the rank, or to refrain from awarding same, to anyone in any particular instance. If it were otherwise, many lawyers who obviously deserve the rank, but have apparently been improperly denied same, would have flooded our courts with lawsuits, each seeking to compel the LPPC to do the needful. Further, some lawyers who feel they have been unjustly denied the rank, especially on account of petitions (alleging professional misconduct), filed against them by some other persons, would have approached the court to strike down LPPC's decision using the judgement in *Amaechi v. INEC*¹⁸⁵ as their ground, because, according to the Supreme Court, in *Amaechi's* case, no citizen deserves to be denied anything otherwise due to him, on account only of a mere allegation unproven before a court of law.

The Legal Practitioners Disciplinary Committee (LPDC)

The Legal Practitioners Disciplinary Committee was established by the LPA¹⁸⁶ as a Committee of the BOB¹⁸⁷ and a quasi-administrative body¹⁸⁸ whose proceedings are civil in nature,¹⁸⁹ charged with the duty of considering and determining cases of alleged unprofessional conduct or professional legal misconduct¹⁹⁰ against lawyers in Nigeria, and with powers to impose certain sanctions,¹⁹¹ including ordering that the name of the affected legal practitioner be struck out from the Roll¹⁹² of legal practitioners in Nigeria; suspension from law practice (either for a definite or indefinite period); warning/admonition; or

¹⁸⁰ in 'The Evolving Role of Senior Advocates In The Administration Of Justice And Nation Building' Lecture delivered at the SAN Maiden Annual Lecture on 28th June 2018, cited in OLUWEMIMO OGUNDE SAN, 'THE SENIOR ADVOCATE OF NIGERIA: PILLAR OR PREDATOR? Lecture delivered on 1st October, 2018 of the occasion of the reception for Chief Wale Taiwo SAN on his elevation to the rank of Senior Advocate of Nigeria' (wemimo-ogunde.com March 2019) < <https://www.wemimo-ogunde.com/wp-content/uploads/2019/03/THE-SENIOR-ADVOCATE-OF-NIGERIA-Pillar-or-Predator.pdf>> accessed 23 December 2022

¹⁸¹ Made by the LPPC pursuant to its powers under section 5(1)

¹⁸² The latest edition of *The Guidelines For The Conferment Of The Rank Of Senior Advocate Of Nigeria And For Related Matters* (Revised Edition), 2022. See: <<https://thenigerianlawyer.com/download-2022-guidelines-for-the-conferment-of-the-rank-of-senior-advocate-of-nigeria-and-for-related-matters/>> accessed 22 December 2022

¹⁸³ Michael Aodoakaa, ex AGF, was suspended for two years; By Ahuraka Yusuf Isah, 'Nigeria: Aondoakaa Suspended as SAN' (allafrica.com, 8 October 2010) <<https://allafrica.com/stories/201010080192.html>> Accessed 23 December 2022

¹⁸⁴ Sylvester C. Udemezue, 'Award Or Denial Of SAN Is An Absolute Privilege, Immunizes The LPPC From Lawsuit, No Matter How Wrongful The Action/Inaction Is (Part 2)' (BarristerNG 26 November 2020) <<https://barristerng.com/award-or-denial-of-san-is-an-absolute-privilege-immunizes-the-lppc-from-lawsuit-no-matter-how-wrongful-the-action-inaction-is-part-2/>> accessed 24 December 2022

¹⁸⁵ *Amaechi v. INEC* (2008) 5 NWLR (Pt 1080), the Apex Court (per Oguntade, J.S.C)

¹⁸⁶ Section 11 of the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004

¹⁸⁷ Section 11(1)

¹⁸⁸ *Okike v. LPDC* (2005) LPELR-2450(SC), per Belgore, J.S.C (p. 39, paras. A-B)

¹⁸⁹ See the Legal Practitioners Disciplinary Committee (LPDC) Rules, 2020 in Government Notice No 20, in the Federal Republic of Nigeria Official Gazette Number 47 Vol 107, 22 March 2020. <... <https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/06/LPDC-RULES-2020.pdf>> accessed 23 December 2022

¹⁹⁰ There are basically four categories of professional legal misconduct for which a lawyer may be made to face the LPDC: (a) Infamous Conduct in a Professional Respect; (b) Conduct Incompatible with the status of a legal practitioner; (c) Obtaining enrolment by fraud; (d) Conviction in Nigeria for an offence incompatible with the status of a Legal Practitioner. See sections 11 and 12, LPA.

¹⁹¹ LPA, section 11

¹⁹² A nominal register containing the names of all legal practitioners duly called to the Nigerian Bar and who have not been disbarred.

restitution.¹⁹³ Proceedings before the LPDC are regulated by the LPDC Rules, 2020,¹⁹⁴ and the LPDC possesses jurisdiction to consider and determine any of the categories of professional misconduct in the legal profession¹⁹⁵ including Infamous Conduct in a Professional Respect;¹⁹⁶ Conduct Incompatible with the status of a legal practitioner;¹⁹⁷ Obtaining enrolment by fraud;¹⁹⁸ and Conviction in Nigeria for an offence incompatible with the status of a legal Practitioner.¹⁹⁹

The Legal Practitioners Remuneration Committee (LPRC)

Established by section 15(1) of the LPA, with composition²⁰⁰ and quorum²⁰¹ prescribed by the LPA, the LPRC shall have power to make orders regulating generally the charges of legal practitioners which may include provisions as to (a) the maximum charges which may be made in respect of any transaction or activity of a description specified by the order; the ascertainment of the charges appropriate for any transaction or activity by reference to such considerations as may be so specified; (c) the taking by practitioners of security for the payment of their charges and the allowance of interest with respect to the security; and (d) agreements between practitioners and clients with respect to charges. The Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order, 1991 was made by the LPRC pursuant to its powers under the LPA to regulate lawyers' professional remuneration for matters covered by the Order. The procedure for making such an Order is prescribed in the LPA.²⁰²

6. Conclusion

This paper has taken time to analyse nature of the legal profession in Nigeria, meaning, nature of, and legal framework for, regulation, some of the authorities having regulative roles within the Nigerian bar, their exact regulative boundaries, and interplay of their powers. The author believes that discussions towards resolving these conundrums are necessary to reposition stakeholders as better assessors of extent of effectiveness of existing regulatory structures, which knowledge could help to move the profession forward. 'Man, know thyself' is a major step to progress in every human endeavour; the legal profession is not an exception. The second part, titled '*Resolving Conundrums Regarding Legal Profession Regulation in Nigeria (Part 2)*' focuses on whether, and to what extent each of such authorities as the Supreme Court of Nigeria, the office of the Chief Justice of Nigeria, the Attorney-General of the Federation, Courts of law, the Corporate Affairs Commission, the Economic and Financial Crimes Commission, the National Identity Management Commission, and Public Opinion, could be said to be involved in regulation of the Nigerian Bar, while part 3 focuses exclusively on regulation of the Nigerian bench. As earlier noted, the ultimate objective is to help in resolving apparently intractable conundrums surrounding exact horizons and appropriate dimensions of regulation of the legal profession in Nigeria, or, at the least, to provoke formal discussions towards this end.

¹⁹³ See LPA, ss 11 and 12

¹⁹⁴in Government Notice No 20, in the Federal Republic of Nigeria Official Gazette Number 47 Vol 107, 22 March 2020. <<https://r6a8n4n6.stackpathcdn.com/wp-content/uploads/2020/06/LPDC-RULES-2020.pdf>> accessed 23 December 2022

¹⁹⁵ See n. 152 (supra)

¹⁹⁶ Section 12(1)(a)

¹⁹⁷ Section 12(2)

¹⁹⁸ Section 12(1)(c) LPA

¹⁹⁹ *Op Cit.*, Section 12(1)(b)

²⁰⁰ Section 15(1)

²⁰¹ Section 15(2)

²⁰² Section 15(4)&(5)