

## CONUNDRUMS REGARDING LEGAL PROFESSION REGULATION IN NIGERIA (PART 2) \*

**Abstract**

*This author believes that legal profession regulation in Nigeria is multi-faceted, multi-dimensional, and that the subject has hardly ever been given such a research or discussion-attention as would be considered to be thorough or in-depth enough to help to avert or resolve massive controversies and uncertainties which have until now persisted on the subject. Hence, with the aim of providing a detailed and all-encompassing research material towards resolving apparently intractable conundrums surrounding exact horizons and appropriate dimensions of regulation of legal profession in Nigeria, or, at least, of provoking serious discussions in the wider public space towards this end, this author had set out on a three-part discourse, the first part of which comprehensively examined nature of regulation and some existing legal and institutional framework for regulation of the Nigerian Bar, while delineating exact regulative boundaries and analysing the interplay of powers among such regulators. The present paper is the second part, focusing on a dimension that has hardly ever been expansively and comprehensively discussed, namely: whether, and to what extent each of such institutions as the office of the Chief Justice of Nigeria, the Nigerian Supreme Court, the office of the Attorney-General of the Federation, courts of law, public opinion, the Economic and Financial Crimes Commission, the National Identity Management Commission, the Corporate Affairs Commission, the Federal Inland Revenue Service, could be said to be involved in regulating the Nigerian Bar. Part 3 (comprised in a separate paper) undertakes an in-depth assessment of institutional framework for regulating the Nigerian Bench/judiciary. It is the author's expectation that such broad discussions on resolving these conundrums are necessary towards repositioning stakeholders to be better assessors of extent of effectiveness of existing regulatory structures and institutions, which knowledge could help to move the profession forward. Research emphasis in the entire work, is not on mere legal doctrines or concepts but on people and institutions regulated by law as well as on the law and regulative experience of these institutions. The approach is both descriptive and expository, adopting the doctrinal method in a largely socio-legal style.*

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

**1. Introduction**

Authorities discussed in this part include the office of the Chief Justice of Nigeria, the Nigerian Supreme Court, the office of the Chief Justice of Nigeria, the office of the Attorney-General of the Federation, courts of law, the Economic and Financial Crimes Commission (EFCC), the National Identity Management Commission (NIMC), the Corporate Affairs Commission (CAC), the Federal Inland Revenue Service (FIRS). It is also considered, whether the public opinion could play any role in regulating professional conduct of legal practitioners and the entire legal profession in Nigeria.

**2. The Attorney-General of the Federation (AGF)**

The Constitution of the Federal Republic of Nigeria, 1999,<sup>1</sup> establishes the office of the Attorney-General of the Federation to be the 'Chief Law Officer of the Federation and a Minister of the Government of the Federation' To qualify to hold office or to perform the functions of the office of the Attorney-General of the Federation, a person must be qualified to practise as a legal practitioner in Nigeria and must have been so qualified for not less than ten years.<sup>2</sup> Powers of the AGF are provided for in section 174 of the Constitution. The involvement of the AGF in regulation of the legal profession includes:

**While Appearing Before Any Court or Tribunal In Nigeria, the AGF Is at the Head of the Order of Precedence at the Bar:** By virtue of the LPA, 'Legal practitioners appearing before any court, tribunal or person exercising jurisdiction conferred by law to hear and determine any matter (including an arbitrator) shall take precedence among themselves according to the table of precedence set out in the First Schedule to'<sup>3</sup> the Act. The 'Table of Precedence'<sup>4</sup> (Order of Precedence) is as follows: (i) The Attorney-General of the Federation; (ii) The Attorneys-General of the States in order of seniority as Senior Advocates of Nigeria and thereafter in order of seniority of enrolment; (iii) Life Benchers; (iv) Senior Advocates of Nigeria in order of seniority; (v) Persons authorized to practice as legal practitioners by virtue of section 2(3)(b) of the LPA (that is, Law Officers). (vi) Persons whose names are on the roll in order of seniority of enrolment; and (vii) Persons authorized to practice by warrant.<sup>5</sup>

**As the Chief Law Officer of The Federation, the AGF is at the Head of the Privileges accorded to Law Officers in Nigeria:** The LPA provides that '(1) Notwithstanding any other provision of this Act but subject as provided in section 8 (5) and the First Schedule hereto, all courts of law in Nigeria before which legal practitioners are entitled to appear shall accord to every law officer specified in this section, the following rights and privileges, that is to say - (a) the exclusive right to sit in the inner bar or, where no facilities exist for an inner bar, on the front row of seats available for legal practitioners; and (b) the right to mention any motion in which he is appearing or any other cause or matter which is on the list for mention and not otherwise listed for hearing out of its turn on the cause list. (2) The law officers to whom this section applies are the Attorney-General of the Federation, the Attorney-General of any State in the Federation and the Solicitor-

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<sup>1</sup> Section 150(1)

<sup>2</sup> Section 150(2)

<sup>3</sup> Section 8(4) LPA.

<sup>4</sup> see sections 6(3) and 8(4) LPA, and the First Schedule to the LPA

<sup>5</sup> Note that **Rule 26 (2) of the Rules of Professional Conduct for Legal Practitioners, 2007** commands lawyers to observe and respect the **order of precedence**, notwithstanding the notion of equality at the Bar. The Rule provides that '*lawyers shall observe among one another the rules of precedence as laid down by law, and subject to this, all lawyers are to be treated on the basis of equality of status.*'

General of the Federation'.<sup>6</sup> Judging by the provisions of section 6 of the Legal Practitioners Act, it would appear that the right to call a case out of turn in a court of law is available only where the case or motion is listed for **mention** and not otherwise, while the right itself is subject to the discretion of the affected court. Further, Senior Advocates of Nigeria are not among the persons listed in section 6 (2) of the LPA as persons for whose benefit the privileges provided in the section enure. But this is not the end of the discussion because a closer look at section 6(1) shows that the subsection itself is made to apply only 'subject to' the provisions of section 8(5) LPA and of the First Schedule to the LPA, with the result that both the provisions of section 8 (5) LPA and the provisions of the First Schedule to the LPA must prevail over the provisions of section 6, in cases of conflict.<sup>7</sup>

**Role in the Council of Legal Education:** The Chairman of the Council of Legal Education shall be appointed by 'the Federal Executive Council on recommendation of the Attorney-General of the Federation'.<sup>8</sup> Besides, the AGF is a member of the Council.<sup>9</sup> Further, the AGF has powers to appoint into the Council 'a representative of the Federal Ministry of Justice' and two other persons 'who must be authors of published learned works in the field of law'.<sup>10</sup> Finally, the AGF may give the Council directions of a general character with regard to the exercise by the Council of its functions and it shall be the duty of the Council to comply with such directions.<sup>11</sup>

**Membership of Some Other Regulators in the Profession:** The AGF is the President of the Bar Council,<sup>12</sup> and a member of the following: Body of Benchers,<sup>13</sup> the LPPC,<sup>14</sup> the LPRC,<sup>15</sup> among others.

**The Ultimate Prosecutor of Crimes in the Legal Profession:** The AGF shall have power to institute and undertake criminal proceedings in any court in Nigeria, to take over and continue any such criminal proceedings that may have been instituted by any other authority or person; and to discontinue at any stage before judgement is delivered any such criminal proceedings instituted or undertaken by him or any other authority or person.<sup>16</sup>

**Prescription of Bar Practising Fee:**<sup>17</sup> Although the powers of the General Council to fix bar practising fee was transferred to the Body of Benchers under Decree 21 of 1994,<sup>18</sup> the current practice is that the Federal Attorney General now fixes the practising fees in consultation with the NBA.<sup>19</sup>

### 3. The Supreme Court of Nigeria (SC)

The Supreme Court is a disciplinary authority in the legal profession in Nigeria, under section 13 LPA. Thus, where it appears to the Supreme Court that a legal practitioner in Nigeria has been guilty of infamous conduct in any professional respect with regard to any matter of which the court or any other court of record in Nigeria is or has been seized, the Supreme Court may if it thinks fit, after hearing any representations made and evidence adduced by or on behalf of the affected legal practitioner and such other persons as the court considers appropriate, give any direction as prescribed by law,<sup>20</sup> and the direction shall take effect forthwith; and except in the case of an admonition the court shall cause notice of the direction to be published in the Federal Gazette.<sup>21</sup> As seen from the above, the disciplinary jurisdiction of the Supreme Court is with respect to only 'infamous conduct in any professional respect' allegedly committed by a legal practitioner in respect of a case pending in court or other tribunal.<sup>22</sup>

### 4. The Chief Justice of Nigeria (CJN)

Where it appears to the Chief Justice that a legal practitioner should be suspended from practice, either with a view to the institution against him of proceedings under LPA before the LPDC or while any such proceedings are pending, the Chief Justice may if he thinks fit, after affording the practitioner in question an opportunity of making representations in the matter, suspend the legal practitioner; and in deciding whether to give such a direction in consequence of the conviction of a legal practitioner, the CJN shall be entitled to disregard the provisions of section 12(5) of the LPA.<sup>23</sup> Additional regulative

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<sup>6</sup> Section 6 (1) & (2) of the Legal Practitioners Act (LPA), Cap L11, Laws of the Federation of Nigeria, 2004

<sup>7</sup> See: Sylvester C. Udemezue, 'Revisiting Seniority & Order of Precedence in The Legal Profession' (dnlegalandstyle.com 31 October 2019) < <https://dnlegalandstyle.com/2019/revisiting-seniority-order-of-precedence-in-the-legal-profession-sylvester-udemezue/> > accessed 24 December 2022

<sup>8</sup> Section 291(a), Legal Education (Consolidation, etc) Act

<sup>9</sup> *Op Cit.*, section 2(1)(b)

<sup>10</sup> Section 2(1)(h)

<sup>11</sup> Section 4

<sup>12</sup> Section 2(a) LPA

<sup>13</sup> Section 3(1)(c) LPA

<sup>14</sup> Section 5(3)(b) LPA. Note that some members of the LPPC are appointed by the CJN in consultation with the AGF

<sup>15</sup> Section 15(b) LPA

<sup>16</sup> Section 174, and section 211 in respect of AG's of States), Constitution of the Federal Republic of Nigeria, 1999. For the purpose of exercising his powers under the Constitution, the AG is a law unto himself. See *the State v. Ilori* [1983] NGSC 37; (Appeal No: S.C. 42/1982)

<sup>17</sup> See the Legal Practitioners (Amendment) Act No 31, 1999.

<sup>18</sup> See section 10(1)(d)

<sup>19</sup> This is perhaps by virtue of the Legal Practitioners (Amendment) Decree 31 of 1999

<sup>20</sup> See section 12(1) LPA

<sup>21</sup> Section 13(1), LPA

<sup>22</sup> *Ibid*

<sup>23</sup> See: section 13(2) LPA

powers exist for the CJN: the CJN is the Chairman of the LPPC,<sup>24</sup> NJC,<sup>25</sup> the NJI,<sup>26</sup> head of the Supreme Court of Nigeria,<sup>27</sup> and a member of the Body of Benchers, and some other regulators in the profession.

### 5. The Courts (The Judiciary)

Through court pronouncements, and rules of court, courts of law also serve as regulators the legal profession and the conduct of its members.

**Through Court Pronouncements:** More often than not, pronouncements of courts of law give directions to legal practitioners on proper practice, procedure and conduct in and out of court. Some other times, the courts impose sanctions in the form of deprecation of improper conduct to serve as a deterrent to other members of the profession. In *Lawan v. Zenon Petroleum & Gas Ltd & Ors*,<sup>28</sup> the Court of Appeal gave admonition to counsel on proper manner to address or treat a judge or court of law:

My learned brother has rightly drawn our attention to the innuendoes contained in the arguments of the learned counsel for the appellant. No matter the level of disapproval of the decision of a learned judge by a learned counsel, the Rules of our professional conduct and ethics require that lawyers and litigants use decent language in Court. In the case of *Global Transport Oceanico S. A. & Anor. v. Free Enterprises Nigeria Limited* (2001) 2 SCNJ 224 at 244 per Kalgo, JSC, the Supreme Court held that it is unethical for learned counsel to use indecent words and language for Judges.... In the case of *Abeke v. The State* (2007) All FWLR (Pt. 366) 644 at 662, the Supreme Court, per Niki Tobi, JSC stated that: 'Parties do not win cases by aspersion (sic) on a judge who has no opportunity to defend himself beyond the cold records of appeal... Let counsel refrain from bringing the judge, the unbiased umpire so to say, to the theatre of litigation and rub him with muck. That will be tantamount to reducing the height that the law has bestowed on the Judge.'<sup>29</sup>

On whether a judge could be addressed in the third person, the Supreme Court gave the following direction in the case of *Global Transport Oceanico S.A. & Anor v. Free Enterprises (Nig) Ltd*<sup>30</sup>

It is common ground that the trial Judge in this case was a lady, and the word, 'she' in issue 2 referred to the learned Judge. This is a very bad way of showing discourtesy to a lady Judge or infact any Judge at all by referring to him or her in third person pronoun. It is absolutely unethical and unpardonable and whether the Judge is a 'he' or 'she', reference should be made to the 'learned trial Judge or learned Judge or even Hon. Judge.' I was very disturbed and disappointed to observe that this brief was coming from the Chambers of a respectable Senior Advocate of Nigeria. I hope this type of thing will never happen again.

In *LPC v. Abuah*,<sup>31</sup> the Supreme Court explained why it is necessary that Courts should intervene in appropriate cases to ensure maintenance of high standards or to ensure integrity in the legal profession and proper professional conduct by lawyers:

Legal practitioners are officers of the Court. It is our bounden duty to see that officers of the Court are men of integrity who should be trusted not only by the Court but also by the public for whom they act. We are in this respect carrying out a sacred duty by acting as judges of their conduct. By enrolling them we present them to the public as men the public can with confidence employ to carry out the duties and responsibilities appertaining to their all important office. We therefore owe it to the public to see that members of the public are not exposed to risks in their dealings with these men. No one is more aware of the fact than this Court that not all cases of misconduct do find their ways to the Legal Practitioners Committee to be dealt with for misconduct, but wherever they are brought to the notice of this Court, we must do our duty.<sup>32</sup>

**By Rules of Court and Practice Direction:** Courts regulate the profession through issuance of rules of court or Practice Directions, which may sometimes contain provisions that regulate the conduct of Legal Practitioners. An example is the procedure on change of counsel,<sup>33</sup> diligent prosecution,<sup>34</sup> in the High Court of Lagos (Civil Procedure Rules, 2019, or under the FCT High Court of the FCT (Civil Procedure) Rules, 2018 with respect to requirement to file Certificate of Pre-action Counselling.<sup>35</sup> It is submitted that failure of a lawyer representing a party to file the certificate may be punished on the lawyer as the court may order the lawyer to pay any fine imposed on the defaulting party if the court finds that a frivolous

<sup>24</sup> Section 3(a) LPA

<sup>25</sup> The Constitution of the Federal Republic of Nigeria (CFRN), 1999, Item 2 (a) of Part I of the 3<sup>rd</sup> Schedule.

<sup>26</sup> National Judicial Institute

<sup>27</sup> Section 230(2)(a) CFRN, 1999

<sup>28</sup> (2014) LPELR-23206(CA) Per ADUMEIN, J.C.A ( Pp. 51-52, paras. C-A )

<sup>29</sup> See also *Menakaya v. Menakaya* (1996) 9 NWLR (Pt. 472) 304 at 319 - 320, per Ejiwunmi, JCA (as he then was)

<sup>30</sup> (2001) LPELR-1324(SC), Per KALGO, J.S.C ( P. 23, paras. C-E )

<sup>31</sup> (1962) LPELR-25045(SC) Per ADEMOLA, J.S.C ( Pp. 8-9, paras. C-E )

<sup>32</sup> 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

<sup>33</sup> Order 52

<sup>34</sup> See Order 34. It is submitted that in extreme cases of failure of diligent prosecution, the fine or cost ordered to be paid may be imposed on the legal practitioner where the party is represented by counsel

<sup>35</sup> Form 6 pursuant to Order 2 Rule 2.

case was filed as a result of the lawyer's failure to advise his client on the options of alternative resolution or the need to not abuse the process of court.

**Power of Court to Discipline Legal Practitioners for Contempt of Court or Other Professional Misconduct:** As a form of disturbance that may impede the functionality of the court, contempt of court is serious professional misconduct when committed by a legal practitioner.<sup>36</sup> A court of law has power to punish for contempt in proven cases of disrespectful attitude to the court, its presiding officers or administration of justice generally. In *Atake v. AG, Federation*,<sup>37</sup> Idigbe, JSC, described contempt as 'any conduct which tend to bring into disrespect, scorn or disrepute the authority and administration of the law or which tends to interfere with and or prejudice litigants and/or their witnesses in the course of litigation.'. Also, contempt is defined in *Agbachom v. The State*<sup>38</sup> as 'any act done or writing published calculated to bring a court or Judge of the court into contempt or to lower his authority; this is one class of contempt. Further, any act done or writing published calculated to obstruct or interfere with due course of justice or the lawful process of the Courts is a contempt of court. The former class belongs to the category which Lord Hardwick L.C. characterised as range scandalising a court or a Judge.<sup>39</sup> Contempt therefore means any wilful disobedience to, or disregard of, a court order or any misconduct in the presence of a court; any action that interferes with a judge's ability to administer justice or that insults the dignity of the court. The rules regulating contempt of court apply both to lawyers and non-lawyers alike, though with much higher strictness to lawyers. As an officer of the court, a lawyer must not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.<sup>40</sup> He must always treat the court with respect, dignity and honour. Where the lawyer has a proper ground for complaint against a judicial officer, he shall make his complaint to the appropriate authorities. Such complaints are made to the court itself,<sup>41</sup> the Chief Judge<sup>42</sup> of the State or as a ground of appeal to the appellate court, or in extreme cases, a complaint could be lodged with the NJC.<sup>43</sup> In most cases where a lawyer is found to have committed contempt in the face of the court,<sup>44</sup> the presiding judge or magistrate can summarily try and punish<sup>45</sup> the contemnor.<sup>46</sup> Sometime in 2021, an Abuja Magistrate<sup>47</sup> had ordered policemen at the court to arrest and handcuff a lawyer<sup>48</sup> for challenging the court 'on the summary of the case before the court'.<sup>49</sup> The Court<sup>50</sup> thereafter summarily sentenced the lawyer to two months in prison for contempt in the face of the court. The difficult question is whether the presiding judicial officer can summarily try and punish where the acts allegedly amounting to contempt were a personality attack against the judge or the contempt is allegedly committed outside the court room but in relation to a matter still pending in court and against the person of the presiding officer.<sup>51</sup> Finally, the court of law has power to punish a lawyer or otherwise impose a punitive fine on a lawyer for other forms of professional misbehaviour or unprofessional conduct other than contempt of court. For example, court reserves the power to punish a lawyer who files a frivolous or vexatious case or application before, or commits other form of abuse of the process of, the court; such is a form of professional misconduct.<sup>52</sup> Sometime in 2020, the Supreme Court of Nigeria had to impose a punitive fine of N30 million each against two Senior Advocates of Nigeria, 'for agreeing to file an application for the review of a judgment' of the Supreme Court. Hon Justice Amina Augie, who announced the fine said she regretted<sup>53</sup> 'that the 'very senior' lawyers took the responsibility for filing the applications'.<sup>54</sup>

**Prescription of Seal by Some Courts in Nigeria:** Apart from the general requirement that every document filed in the courts in Nigeria must have on it, the official stamp of the affected court, sometime in 2017, the Lagos State Judiciary introduced a seal that would be affixed on court processes and documents in Lagos State. According to a circular issued by the Chief Registrar of the Lagos High Court, the seal was introduced with the intent to block leakage and give authenticity to documents issued from the Lagos State Judiciary. According to the circular, the effective date for the commencement and sale of the seal was Monday, 24 July 2017. A seal office was opened with designated officers to manage and dispense the

<sup>36</sup> Breach of any one of Rules 30, 31, 32, 33, 34, 35, and 36 of the RPC may be treated as contempt of court for which the court is empowered to punish without the necessity to initiate any disciplinary procedure before other disciplinary bodies in the profession.

<sup>37</sup> (1982) 11 S.C 175

<sup>38</sup> (1970) 1 All NLR 69 at page 77 (per Lewis J.S.C. citing with approval what Lord Russel laid down)

<sup>39</sup> In *Re Read & Huggonson (1742)* 2 ARK 291, 469

<sup>40</sup> Rule 30 RPC

<sup>41</sup> By way of an application for recusal/withdrawal from the suit

<sup>42</sup> By way of complaint or a letter appealing the CJ to transfer the Case file to another judge/court

<sup>43</sup> Against the judge, for breach of Code of Conduct or for other professional misconduct

<sup>44</sup> Known as contempt *in facie curiae*

<sup>45</sup> See: Lovina Anthony, 'Rights lawyer, Effiong sentenced to one month in prison for contempt in Akwa Ibom' (Daily Post 27 July 2022) <<https://dailypost.ng/2022/07/27/rights-lawyer-effiong-sentenced-to-one-month-in-prison-for-contempt-in-akwa-ibom/>> accessed 24 December 2022

<sup>46</sup> A contemnor is a term used to describe a person alleged to have committed the act amounting to contempt

<sup>47</sup> Ibrahim Mohammed

<sup>48</sup> Eburu Ekwe Barth, Esq

<sup>49</sup> Sahara Reporters, 'BREAKING: Abuja Magistrate Orders Lawyer To Be Handcuffed, Jailed For Interrupting, Challenging Him' (Sahara Reporters 23 March 2021) <<https://saharareporters.com/2021/03/23/breaking-abuja-magistrate-orders-lawyer-be-handcuffed-jailed-interrupting-challenging-him/>> accessed 24 December 2022

<sup>50</sup> Magistrate Court 2, Wuse Zone 6, Abuja

<sup>51</sup> See: *Chief Dibia v. Chief Ezigwe* (1998)9 NWLR (Pt.564) 78; *Agbachom v. The State* (1970)1 All NLR 69; *Boyo v. A. G. Mid-Western State* (1971)1 All NLR 342 at 35; *Deduwa v. The State* (1975) 1 All NLR (Pt. 1)

<sup>52</sup> by virtue of Rule 15 RPC. 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

<sup>53</sup> With 'tears' in her eyes

<sup>54</sup> 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;

seal as appropriate.<sup>55</sup> The introduction of the mandatory seals by the Lagos State Judiciary has been unsuccessfully challenged in court.<sup>56</sup>

#### 6. The Corporate Affairs Commission (CAC)

Certain law firms must be registered with the CAC as business names<sup>57</sup> or for change<sup>58</sup> of such names, pursuant to the CAMA, 2020 and every Firm so registered must file annual returns<sup>59</sup> with the CAC. Note that a law firm is not permitted to get registered as a company in Nigeria, neither are companies permitted to carry on the work of law practice in Nigeria. Thus, by virtue of the RPC, 2007, it shall be unlawful to carry out legal practice as a corporation.<sup>60</sup>

#### 7. The Federal Inland Revenue Service (FIRS)

Proprietors or partners of, and employees in, every law firm are required to pay certain taxes,<sup>61</sup> including the Pay As You Earn (PAYE), VAT, among others. Default may attract legal sanctions. Indeed every lawyer practicing in Nigeria is obliged to collect and remit to the FIRS as Value Added Tax (VAT), an amount of money equal to 7.5 percent of the professional fee collected from each of his clients. In *Al-Maseer Law Firm v. Federal Inland Revenue Service*,<sup>62</sup> delivered on May 24, 2019, by Honourable Justice B. M. Ugo (JCA), the Court of Appeal held that law firms are engaged in providing legal services to their clients for profit, and that they are, therefore, a taxable persons within the meaning of the VAT Act,<sup>63</sup> especially since legal service is not exempted under the First Schedule of the VAT Act. Please note that law firms in Nigeria are not liable to pay company income tax.<sup>64</sup>

#### 8. The Economic and Financial Crimes Commission (EFCC) through the SCUML

The acronym SCUML stands Special Control Unit on Money Laundering (SCUML). It is the government agency charged with the responsibility of monitoring, supervising, and regulating the activities of Designated Non-Financial Institutions (DNFIs)<sup>65</sup> in line with the Money Laundering (Prevention and Prohibition) Act, 2022<sup>66</sup> and the Economic And Financial Crimes Commission (Anti-Money Laundering, Combating The Financing Of Terrorism And Countering Proliferation Financing Of Weapons Of Mass Destruction For Designated Non-Financial Businesses And Professions, And Other Related Matters) Regulations, 2022.<sup>67</sup> The regulation of these DNFIs by SCUML is to help to curb money laundering by monitoring closely the funding and financial status of these institutions. SCUML evidences monitoring, supervision, registration of the DNFIs, providing vital information relating to DNFIs money trails to assist criminal investigations etc.<sup>68</sup> Regulation 4(3)(a) of the 2022 Regulations includes 'law firms, notaries, and other independent legal practitioners' in Nigeria among the DNFIs (that is, those to whom the Regulation applies) However, earlier, in the case of *Central Bank of Nigeria v. Registered Trustees of the NBA*,<sup>69</sup> the Court of Appeal had held as inapplicable to lawyers and law firms in Nigeria, certain aspects of the SCUML regulation under the Money Laundering (Prevention and Prohibition) Act. Specifically the Court of Appeal held that 'Legal Practitioners are excluded from those tagged 'Designated Non-Financial Institutions' (DNFIs) under Section 25 of the Money Laundering Act, 2011' The Court had considered two major issues: (1) Applicability of S.5 of the Money Laundering (Prohibition) Act, 2011 to Legal Practitioners; and (2) Legality of Registration of Legal Practitioners under SCUML.<sup>70</sup> The decision was reaffirmed in 2021 in the case of *FRN v. Chief Mike Ozekhome (SAN)*<sup>71</sup> where the court declared that a legal practitioner is not required to investigate whether money paid to him as professional fees is not from an

<sup>55</sup> Peters Ifeoma, 'Lagos State Judiciary Introduces Secured Seal on Court Document' [ 2 August 2017] [dnllegalandstyle.com](https://dnllegalandstyle.com/2017/lagos-state-judiciary-introduces-secured-seal-court-document/) <https://dnllegalandstyle.com/2017/lagos-state-judiciary-introduces-secured-seal-court-document/>, 25 December 2022

<sup>56</sup> Peters Ifeoma, 'Lawyer sues Lagos Judiciary Over Introduction, Sale of Seals in Lagos Courts' [ 2 January 2018] [dnllegalandstyle.com](https://dnllegalandstyle.com/2018/lawyer-sues-lagos-judiciary-introduction-sale-seal-lagos-courts/) <https://dnllegalandstyle.com/2018/lawyer-sues-lagos-judiciary-introduction-sale-seal-lagos-courts/>, 25 December 2022

<sup>57</sup> CAMA, 2020, sections 814, 815, 816, 817, 818, 819, 820, 821, and 822.

<sup>58</sup> Section 818, CAMA

<sup>59</sup> Section 822

<sup>60</sup> Rule 5(5)

<sup>61</sup> Sanmi Abiodun, 'TAX OBLIGATIONS AND RESPONSIBILITIES OF LEGAL PRACTITIONERS' [ Oct 27, 2012] [legalnaija.com](https://legalnaija.com/tax-obligations-and-responsibilities-of-02900951941647681314/) <https://legalnaija.com/tax-obligations-and-responsibilities-of-02900951941647681314/>, 24 December 2022

<sup>62</sup> Appeal No. CA/J/179/2018 (Unreported). See: Olisa Agbakoba Legal (OAL), 'Lawyers/Law Firms are Taxable Persons Liable to Pay VAT — Conclusions from Al-Masser vs. FIRS' [ 30 September 2019] [ommonlii.org](https://ommonlii.org/ommonlii.org/ng/legis/num_act/lpa207/Lawyers/Law_Firms_are_Taxable_Persons_Liable_to_Pay_VAT_-_Conclusions_from_Al-Masser_vs._FIRS) [ommonlii.org/ng/legis/num\\_act/lpa207/Lawyers/Law\\_Firms\\_are\\_Taxable\\_Persons\\_Liable\\_to\\_Pay\\_VAT\\_-\\_Conclusions\\_from\\_Al-Masser\\_vs.\\_FIRS](https://ommonlii.org/ommonlii.org/ng/legis/num_act/lpa207/Lawyers/Law_Firms_are_Taxable_Persons_Liable_to_Pay_VAT_-_Conclusions_from_Al-Masser_vs._FIRS), 24 December 2022

<sup>63</sup> sections 2, 3, 14(1), 15(1) and 46

<sup>64</sup> Robert Egbe, 'Court declares law firm not liable to pay companies' income tax' [ 22 October 2019] [The Nation](https://thenationonlineng.net/court-declares-law-firm-not-liable-to-pay-companies-income-tax-2/) <https://thenationonlineng.net/court-declares-law-firm-not-liable-to-pay-companies-income-tax-2/>, 24 December 2022

<sup>65</sup> Eunice Olopade, '3 EASY STEPS TO OBTAIN A SCUML CERTIFICATE IN NIGERIA' (Mondaq.com, 5 June 2022) [https://blog.sidebrief.com/scuml/?utm\\_source=mondaq&utm\\_medium=syndication&utm\\_term=Government-Public-Sector&utm\\_content=articleoriginal&utm\\_campaign=article](https://blog.sidebrief.com/scuml/?utm_source=mondaq&utm_medium=syndication&utm_term=Government-Public-Sector&utm_content=articleoriginal&utm_campaign=article) accessed 24 December 2022.

<sup>66</sup> See: Government Notice Number 67 in the FRN Official Gazette No: 90 Vol 109 of 13 May 2022 <https://placng.org/i/wp-content/uploads/2022/05/Money-Laundering-Prevention-and-Prohibition-Act-2022.pdf>

<sup>67</sup> See Government Notice Number 124 in the FRN Official Gazette No: 197 Vol 109 of 18 November 2022. The Regulations was made by the AGF on 7 November 2022, in exercise of the powers conferred on the AGF by section 28 of the Money Laundering (Prevention and Prohibition) Act, No. 14, 2022 and section 95 of the Terrorism (Prevention and Prohibition) Act, No. 15, 2022, and all other powers enabling him in that behalf. See: <https://loyalnigerianlawyer.com/download-2022-guidelines-for-conferment-of-san-and-the-efcc-scuml-regulations-2022/>

<sup>68</sup> Eunice Olopade, *Op Cit*.

<sup>69</sup> Unreported Appeal No. CA/A/202/2015.

<sup>70</sup> See also: <https://www.lawbreed.com/site/download/cbn-v-registered-trustees-of-the-nigerian-bar-association-anor-ca/> accessed 25 December 2022.

<sup>71</sup> (2021) LPELR-54666 (CA). See: <https://lawpavilion.com/blog/whether-a-legal-practitioner-is-required-to-investigate-the-source-of-money-paid-to-him-as-professional-fees-is-not-from-an-illicit-act-or-proceeds-of-unlawful-activities/> accessed 25 December 2022.

illicit act or proceeds of unlawful activities -- 'it is not a requirement of the law that a legal practitioner would go into inquiry before receiving his fees from his client, to find out the source of the fund from which he would be paid'. This notwithstanding, it is submitted that certain general obligations which the Act imposes on individuals and corporate bodies, especially those regarding mandatory limits on cash withdrawals and cash transactions in Nigeria, may still apply to law firms and lawyers.

### 9. Public Opinion (the Opinion of the Reasonable Man/Bystander)

**What People Will Say:** Public opinion is a major regulator of the legal profession in Nigeria; there are repercussions for neglect of public opinion.<sup>72</sup> What this means is that members of the bar and of the bench in Nigeria are very conscious of public opinion (usually described as 'what people will say'); consciousness about public opinion makes legal practitioners and members of the bench to exercise caution or carefulness in their conducts (professional or otherwise) bearing in mind that misbehaviour or misconduct on their part might impact negatively on the legal profession in the minds of the watching public.

**Reasonable Likelihood of Bias as an Aspect of Public of Opinion Which Regulates Administration of Justice:** Sometimes, while applying the rule of *Nemo Judex In Causa Sua*<sup>73</sup> in administration of justice, the view of the reasonable man, the reasonable bystander (which in effect represents the opinion of reasonable members of the public) is taken into consideration in deciding whether or not a judge should preside over a matter before him in any given scenario. In the case of *Metropolitan Properties Co. (F.G.C.) Ltd. vs. Lennon*<sup>74</sup> Lord Denning, M.R., after reviewing the facts in the case before him, stated, in respect of the law regarding *nemo judex in causa sua*, that 'A man may be disqualified from sitting in a judicial capacity on one or two grounds. First, a 'direct pecuniary interest' in the subject matter. Second, 'bias' in favour of one side or against the other. In respect of likelihood of bias, Lord Denning gave the determining factor, saying that <sup>75</sup> 'the court looks at the impression which would be given to other people (the public). Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. and if he does sit, his decision cannot stand'. It is irrelevant whether he was in fact biased, because 'justice is rooted in [public] confidence'.<sup>76</sup> Giving the rationale for taking the reasonable man's view into consideration under such circumstances, the Nigerian Court of Appeal<sup>77</sup> observed that '.... One important object, at all events, is to clear away everything which might engender suspicion and distrust ...., and so to promote the feeling of [public] confidence in the administration of justice which is so essential to social order and security... The Court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking: 'the judge was biased'.

**Public Expectation:** This sometimes influences professional conduct of lawyers and the direction of regulative activities by some Regulators. The abstract to an earlier paper stated, in part:<sup>78</sup>

...quite often, the public judges the legal profession by the standard of its erring members, hence the need to continue to highlight the various duties and responsibilities of the lawyer and the need for members of the bar to be fully alive to these duties and responsibilities in order to check the falling ethical standard in the profession, be examples to the society in which they find themselves and ultimately promote the honour and nobility of the profession. Discipline at the bar is very essential. This is because offences, to which the police attach no significance when committed by a medical doctor, may be attended with humiliation and embarrassment when committed by a lawyer. Similarly, a simple act of breach of the law by an accountant, which may not be considered as anything, may form banner headlines in newspapers and magazines if committed by a lawyer. This only stresses the fact that society views lawyers as custodians of a high moral value and distinguished members of the society, whose conduct and activities should serve as a light to the rest of the society. To maintain this standard and meet the high expectation of the society on lawyer, the Rules of Professional Conduct for Legal Practitioners has been put in place to guide and regulate legal practice and the conduct of legal practitioners, especially with respect to their duties and responsibilities to their clients, the court, the profession and the society at large, and of course their rights and privileges. Another example is easily seen in the area of administration of justice; the judiciary as the third arm of government became the formal institution for settling disputes with the advent of the colonial masters. This led to high public expectation that the courts of law would always dispense justice with utmost effectiveness and swiftness; the court is thus seen as the temple of justice and the last hope of the common man.

<sup>72</sup> Including public opprobrium, loss of public confidence.

<sup>73</sup> An arm of the twin pillars of natural justice which requires that one ought to not be a judge in one's own case.

<sup>74</sup> (1969) 1 Q.B. 577, 598.

<sup>75</sup> Lord Denning, MR, in *R. v. Amber Valley DC, ex parte Jackson* [1985] 1 WLR 298, [1984] 3 All ER 50

<sup>76</sup> See also the following cases: (1) *R. v. Bow Street Magistrate ex parte Pinochet (No. 2)* [2000] 1 AC 119, [1999] 1 All ER 577 and (2) *R. v. Secretary of State ex parte Kirkstall* [1996] 3 All ER 304

<sup>77</sup> In the Nigerian case of *ZAMAN v. STATE* (2015) LPELR-24595 (CA) the Court of Appeal took time to explain the rationale for the wide application of the *Nemo Judex* rule. The court stated

<sup>78</sup> Sylvester C. Udemezue, 'An Appraisal of Professional Legal Ethics and Proper Conduct for Lawyers In Nigeria' (2021) Vol. 21, No. 17, Jun 3, 2021, Legal Ethics & Professional Responsibility eJournal. <[https://hq.ssrn.com/Journals/IssueProof.cfm?abstractid=3842835&journalid=205108&issue\\_number=17&volume=21&journal\\_type=CMB O&function=showissue](https://hq.ssrn.com/Journals/IssueProof.cfm?abstractid=3842835&journalid=205108&issue_number=17&volume=21&journal_type=CMB O&function=showissue)> accessed 24 December 2022.

**Public Opprobrium and Self-Help:** Contrary to public expectation, the system of justice delivery in Nigerian courts is abysmally slow-paced, leading to widespread public disenchantment and loss of confidence in the Nigerian court system which in turn leaves many citizens looking elsewhere for the 'justice'. Another major result of loss of public confidence in administration of justice or in the legal profession is that resort to lawlessness and self-help overwhelms respect for rule of law and due process, which is not surprising as, naturally, loss of confidence in the justice sector is a recipe for anarchy.<sup>79</sup> Most prospective clients of lawyers in Nigeria, appear to now prefer to take the law into their own hands by enlisting the services of members of louts, ethnic militias, retired military men, area boys, thugs and other social miscreants, etc., to get their otherwise legal jobs done quick – jobs which range from debt recovery, ejection of recalcitrant tenants (recovery of premises), to settlement of scores with perceived social, business or political enemies, etc, all because of loss of public confidence in effectiveness of administration of justice in Nigeria. Sometimes, there is expression of aggression against instruments of administration of justice, as could be seen in recent arson<sup>80</sup> and looting, court invasion<sup>81</sup> and destruction of courts of law by unknown miscreants and aggrieved citizens,<sup>82</sup> killing of lawyers,<sup>83</sup> judges. Aware of the public urge to resort to self-help and ventilation of frustration against the judiciary and in a bid to avert these, leaders of each of the bar and of the bench are known to continually take deliberate steps and to engage in plans and programs aimed to build or shore up public confidence in the administration of justice and in the legal profession generally; in this way, public opinion regulates the legal profession. Another way public opinion may regulate the regulators of the profession is seen in the public opprobrium that usually greets actions of the AGF and the AG's of States of the Federation over perceived wrongful or improper exercise of AG's powers under the constitution, more so, since there is no other punishment against the AG in such circumstances other than removal by his appointor; the AG is said to be a law unto himself, meaning that his actions under the constitution are unquestionable and absolute, being beyond judicial scrutiny.<sup>84</sup> How else would the public show their discontent under such circumstances if not by public outcry, a thing a wise AG should take steps to avoid. This means that public opinion or the fear of it may sometimes be a factor in shaping the opinion, decision or conduct of the AG.

**Limit of Influence of Public Opinion on Judicial Conduct and Proceedings:** Beside the discussion above on effect of public opinion on application of *Nemo Juxda in Causa Sua*, a court of law is strictly required to hear and determine any case before it on the basis, solely of the evidence, law, and facts properly placed before it, and not based on public commentaries, public opinion or other happenings outside of the courtroom. As noted earlier,<sup>85</sup> 'It is absurd, even illegitimate and intolerable for a court of law to pay heed to or to permit itself to be swayed by chinwags and annotations in the social, electronic or print media'. The duty of courts of law to not allow judicial proceedings to be influenced or swayed by public opinion or other extraneous considerations was emphasized by Ibiyeye, J.C.A, In *Odock v. State*.<sup>86</sup>

#### 10. Does the National Identity Management Commission (NIMC) regulate any aspect of Law Practice in Nigeria?

The NIMC operates and regulates matters relating to national identity in Nigeria with services covering National Identification Number (NIN) enrolment and issuance.<sup>87</sup> On 13 November 2017, the Mandatory Use of National Identification Number Regulations 2017 (Government Notice No. 123) was gazetted. The Regulations was made pursuant to the National Identity Management Commission Act, 2007.<sup>88</sup> By the introduction of these regulations,<sup>89</sup> it became mandatory for all lawyers to indicate their National Identification Number (NIN) in all court processes, agreements and similar legal documents they prepared.<sup>90</sup> However, 17 February 2021, Nigeria's Federal High Court, sitting in Abuja, declared the provisions of Regulation 1(1)(u) of the Mandatory Use of the National Identification Number Regulations, 2017, unconstitutional, null, and void for curtailing citizens' right of access to court or arbitration processes, which is a

<sup>79</sup> Sylvester Udemezie, 'Snail-Paced Justice Dispensation In Nigerian Courts: Factors, Actors and Aftermaths (Part 1)' (unpublished)

<sup>80</sup> See: Segun James, 'Exhibits, Case Files Burnt by Hoodlums in Lagos Court, Says CJ' (ThisDaylive, 26 Oct 2020) <<https://www.thisdaylive.com/index.php/2020/10/26/exhibits-case-files-burnt-by-hoodlums-in-lagos-court-says-cj/>> accessed 24 December 2022.

<sup>81</sup> See: Ozioruva Aliu, '2023: Thugs invade Appeal court in Benin, cart away documents' (VanguardNGR, 23 may 2022) <<https://www.vanguardngr.com/2022/05/2023-thugs-invade-appeal-court-in-benin-cart-away-documents/>> accessed 24 December 2022; Julius Osahons, ' Judge, lawyers scamper to safety as thugs invade Bayelsa High Court' (Guardian.ng, 15 April 2022 < <https://guardian.ng/news/judge-lawyers-scammer-to-safety-as-thugs-invade-bayelsa-high-court/>> accessed 24 December 2022.

<sup>82</sup> Vanguard Newspapers, 'Anxiety, as gunmen burn down Federal High Court in Ebonyi' [ 28 April 2021] vanguardngr.com <<https://www.vanguardngr.com/2021/04/anxiety-as-gunmen-burn-down-federal-high-court-in-ebonyi/>, 24 December 2022

<sup>83</sup> See: Chidi Odinkalu, 'Killing all the lawyers, By Chidi Anselm Odinkalu' [December 11, 2022] Premium Times <<https://www.premiumtimesng.com/opinion/570041-killing-all-the-lawyers-by-chidi-anselm-odinkalu.html>, 24 December 2022; Chidi Odinkalu, ' Counting the kidnapped and the killed among Nigeria's judges and lawyers' [ 18 December 2022] thecable.ng <<https://www.thecable.ng/counting-the-kidnapped-and-the-killed-among-nigerias-judges-and-lawyers>, 24 December 2022

<sup>84</sup> See: *State v Ilori* (supra)

<sup>85</sup> Sylvester C. Udemezie, 'Limits of Trial Publicity and Right to Free Speech: A Diagnostic Appraisal of Influence of the (Social) Media on Judicial Proceedings (2021) Vol 3 No. 1 Nile University Law Journal. 145. <<https://www.sciencegate.app/document/10.2139/ssrn.3802807>> accessed 24 December 2022

<sup>86</sup> (2006) LPELR-9776 (CA) (at pp. 28-33, paras. F-A). See also *KATTO v. C.B.N. (1991) 9 NWLR (Part 214) 126 at 145; STATE v. AIBANGBEE (1988) 3 NWLR (Part 84) 548 at 555; A.I.C. LTD. v. N.N.P.C. (2005) 11 NWLR (Part 937) 563 at 597; UBENE v. C.O.P. (2005) INCC 624 at 640; See Ndoma-Egba v. ACB Plc (2005) LPELR-1973 (SC), per Oguntade, J.S.C (at C (p. 27, paras. A-C). *Okafor v. Okafor* (2016) LPELR-40457 (CA), pp. 106-107, para. E),*

<sup>87</sup> See: <https://nimc.gov.ng> accessed 25 December 2022.

<sup>88</sup> Barrister NG, ' Mandatory Use of National Identification Number for Lawyers in Filing Court Processes' [11 January 2018] barristerng.com <<https://barristerng.com/mandatory-use-national-identification-number-lawyers-filing-court-processes/>>, 25 December 2022

<sup>89</sup> Section 27(1)(1) of the Act as well as Regulation 1 (1) required mandatory use of the National Identification Number (NIN) for the transactions including 'filing and registrations of criminal and civil action in courts or other arbitration processes.

<sup>90</sup> See: Regulation 1 (1) of the Regulations and section 27 (1) (1) of the Act

fundamental right guaranteed by the Nigerian Constitution.<sup>91</sup> This put an end to the attempt by the NIMC to be a regulator of law practice in Nigeria.

## 11. Conclusion

In parts 1 and 2 of this discussion, the author believes that he has provided a comprehensive overview of structural, legal and institutional framework for regulation of the Nigerian Bar, with the aim of resolving major controversies surrounding legal profession regulation in Nigeria. From the discussion so far, it could be concluded that the Nigerian bar undergoes three different forms of regulation by two different classes of regulators guided by a large pool of legislation and case law. The following forms of regulation have been identified to exist: (1) Regulation by government agencies and statutory bodies; (2) Self-regulation by leading (corporate) organisations within the profession, chief among which being the NBA, which is the umbrella body of all persons duly called to the Nigerian Bar, and (3) Effect of public opinion on professional conduct of members of the profession as well as on regulative policy-decision-making within the profession. Two major classes of regulators have been discussed. The first class of regulators is made up of institutions better described as being both regulators OF the profession and regulators IN the profession, meaning they are organisations and controlling bodies existing within the legal profession and which at the same time play (statutory) roles as regulators of the profession. The second class comprises authorities, mainly government agencies and institutions, which though themselves are not controlling bodies within the legal profession, nevertheless play regulatory roles for the profession and its members. While the EFCC, the FIRS, the CAC and Public Opinion (the general public) are examples of the latter class, all the other regulators identified and discussed in parts 1 and 2 typify the former class. All in all, the author believes the following additional tips and lessons could be said to flow from parts 1 and 2 of the discussion: NBA is a prominent regulator of the profession; legal profession regulation in Nigeria is multi-faceted, multi-dimensional, and has hardly ever, in any forum and at any time before now, been given such a research or discussion-attention as would be considered thorough or in-depth enough to avert the massive controversies and uncertainties which have until now, persisted on the subject; much of earlier research and discussion on the topic has been superficial, hazy and perfunctory, leading to a situation of near-absence of sufficient relevant literature affording comprehensive and painstaking insights into the topic, to members of the profession, managers and players in the legal education segment, aspirants to the bar, stakeholders in the justice delivery sector, the regulators themselves,<sup>92</sup> researchers generally, conscientious seekers of knowledge and the public at large. Having thus said, it remains to sincerely admit that any conclusion as to whether the in parts 1 and 2 of this discussion, the author has contributed to filling long-existing vacuum regarding legal profession regulation, is better left to the judgement of the reading, researching and assessing<sup>93</sup> audience. Meanwhile, the discussion continues in part 3 (contained in a separate paper) focusing on assessing regulators of the Nigerian Bench. The author's overall objective could be summarised by reference to the words of Udemezue and Hameed on benefits of respect for boundaries. Hear the learned authors:

[This] boils down to the words of Benjamin Franklin: 'a place for everything, everything in its place'...lack of respect for boundaries...ignites standoffs, provokes crises and results in quarrels. Boundaries define us; they define what is ours and what is not. They show us where we end and where others begin, leading us to a sense of ownership as well as a sense of responsibility. Boundaries are a part of self-care; they are healthy, normal and necessary. However, the best way to teach others about keeping to their own boundaries is by enforcing and staying within our own boundaries.<sup>94</sup>

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<sup>91</sup> See: *Eustace Nwaozuzu v. National Identity Management Commission (NIMC)* (unreported Suit No: FHC/ABJ/CS/189/2019)

<sup>92</sup> At least, so that each may be certain about limits of their own powers, in order to operate so carefully as to steer clear of any interfering with or in those of fellow regulators

<sup>93</sup> Including criticising

<sup>94</sup> Sylvester C. Udemezue and Titi Hameed, 'Circumscribing Powers of Major Stakeholders as a Way Out of Recurring Tension in Appointment of Chief Judges for States in Nigeria' (2022) 5(3) Redeemer's University Law Journal. <<https://ssrn.com/abstract=3889087>> or <<http://dx.doi.org/10.2139/ssrn.3889087>> accessed 24 December 2022