

**CONFLICT OF INTERESTS IN PROFESSIONAL PRACTICE: ARE LAWYERS
OFFICERS OF THE COURT OR DEFENDERS OF THEIR CLIENTS?**

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1.0 PROTOCOLS:

- 1.1 It is a great honour and privilege to be at this forum today to deliver this paper to my esteemed colleagues of the Eti-Osa Lawyers Forum. I congratulate the chairman and his executive committee for sustaining the laudable activities of this Forum whilst hoping that it becomes a full branch of the NBA sooner than later.

2.0 INTRODUCTION:

- 2.1 The topic of today's discourse is one that must agitate the minds of all lawyers, especially those in private practice and who are perforce, bound by the provisions of the Rules of Professional Conduct for Legal Practitioners.
- 2.2 The conduct of a lawyer, in or out of the courtroom, is generally regulated by the Rules of Professional Conduct for Legal Practitioners (hereinafter just referred to as 'the rules') which is made pursuant to the Legal Practitioners Act, CAP 20, Laws of the Federation of Nigeria, 1990. The portions of the Rules relevant to this discourse are Rules 14, 15, 19, 30, 31, 32, 33, 34, 35, 36, 37 and 38.

3.0 HIGHLIGHTS OF A LAWYERS DUTIES

Lawyer's duties to the Court

- 3.1 The question that arises from the topic of our discourse is **Whether the Lawyer is an officer of the court?** The answer is clearly spelt out in rule 30 of the rules which provides:
- 'A lawyer is an officer of the court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice'.*
- 3.2 Aside conduct that may affect the smooth administration of justice, there are other duties a lawyer owes the court, including but not limited to,
- (a) treat the court with honour, dignity and respect – **Rule 31(1)**
 - (b) comply with undertakings made personally or on behalf of his client to the court – **Rule 31(3)**
 - (c) To deal with the court candidly and fairly – **Rule 32(1)**
 - (d) Not to mislead the court especially in citing Legal authorities and statutes – **Rule 32(3)(g),(i) and (j)**

- (e) Not to create the impression of ability to gain special personal consideration from the judge – **Rule 34**
- (f) Be properly attired and conduct himself with decency and decorum whilst in a courtroom – **Rule 35 (a) & (b)**
- (g) Rise when addressing or being addressed by the judge – **Rule 35 (c)**

Lawyer's duties to his client

3.3 A lawyer's duty to his client are captured in Rules 14 – 29 of the Rules. Some of these duties are of prohibitive nature that circumscribe the limits a lawyer may go in his relationship with his client and some of the highlights include the following

- (a) To devote his attention, energy and expertise to his client's service-**Rule 14(1)**
- (b) Inform the client when his claim or defence is hopeless- **Rule 14(2)(e)**
- (c) To refrain from aiding his client's unlawful conduct – **Rule 15(1)**
- (d) To keep strictly within the law in representing his client and not permit a breach of the law even where his client insists, and to use his best endeavours to prevent his client from such breach – **Rule 15(2) & (b)**
- (e) Not to give advise to his client that could encourage disrespect to the law or judicial officers, including corrupting a judge -**Rule 15(3)(a)**
- (f) Not to file an action or delay a trial in order to harass or maliciously injure another person – **Rule 15(3)(b)**
- (g) Not to conceal facts, use perjured evidence, make false statements of law or fact, participate in the fabrication of evidence or engage in any illegal conduct – **Rules 15(3)(c) – (j)**
- (h) To compel his client to rectify any fraud committed on any person or a court or tribunal and inform the court – **Rule 15(4)**
- (i) Not to reveal confidential information of his client except where such information is about his clients preparation to commit a crime-**Rule 19(3)**
- (j) Not to abandon his client's case except for good cause – **Rule 21**

3.4 The Supreme Court in **Bille vs State (2016) LPELR-40832(SC)** affirmed the duty of a lawyer to the court in the following words:

'As regards the conduct of learned counsel for the appellant in his brief, I need to sound a note of warning. Lawyers all over the world take sides for money. Though a lawyer owes a duty to client who hires him, he must always bear in mind that he owes a higher duty to a cause higher than that of his client, the cause of justice. A lawyer who distorts or massages the facts in the record may win his client's case, but such apparent victory would amount to a betrayal of justice.'

3.5 The *dictum* of NGWUTA, JSC quoted above captures the essence of the topic of our discourse today. It underscores the fact that a lawyer, whilst owing a duty to his client under and by virtue of the contract for service, also owes a duty, albeit a higher one, to the court by virtue of being an officer of the court.

3.6 It should naturally be expected that where the lawyer owes duties to different parties (in this case, his client on the one hand and the court on the other), there are bound to be conflicts along the way. Some examples of conflicts that could arise are apparent from even the rules of professional conduct itself. Whilst Rule 14(1) enjoins a lawyer to devote his attention, energy and expertise to his client's case, Rule 14(2)(e) directs that he must inform the client if his case is hopeless. Where the case is hopeless, does the lawyer just goes ahead to abandon the case but if he does not, would he not be in breach of Rule 15(3)(b) which prohibits a lawyer from filing or delaying a case just to harass or injure another person or in breach of Rule 30 which forbids a lawyer from engaging in any act that may obstruct, delay or adversely affect the smooth administration of justice?

4.0 RESOLVING THE CONFLICTS

4.1 From the very wordings of Rule 30, a Lawyer is indeed an officer of the court and therefore holds a higher duty, far above that he owes his client, to the court. See also **Bille vs. State (supra)**. It is for this reason that the many provisions in the Rules also prohibit and circumscribe the conduct of a lawyer even in the course of rendering service to his client.

- 4.2 It follows therefore that any conflict that may arise in the course of a lawyer's duties must always be resolved in favour of his higher duty, i.e his duty to the court. A classic example was in the case of **P.D.P & ORS v. BIOBARAKUMA DEGI-EREMIENYO & ORS [SC/1/2020]** wherein the Supreme Court had delivered judgment declaring that the APC candidate, David Lyon who had actually won the Bayelsa Governorship election was not an eligible candidate by reason that his running mate was nor properly nominated, the Supreme Court came down heavily to sanction 2 eminent Senior Advocates of Nigeria, Chiefs Afe Babalola and Wole Olanipekun because they both filed applications seeking to have the Supreme Court review its own judgment, a course of action the apex court found to breach the senior lawyers' duty to the court.
- 4.3 In **Williams V Akintunde (1995) 3 NWLR (Pt 381) 101** PATS-ACHOLONU, JCA (as he then was) explained the role of a lawyer as follows:

'We all agree that the attorney whose professional thoughts begin and end with his own private client is a pitiable mockery of what a great lawyer really is and that only by taking part in the movements for the betterment of the law and the profession can he practice Law in a grand manner, the only way it is worth practicing..'

The above passage shows that aside from the duties owed to the court, a lawyer also owes a duty to his profession and its advancement.

- 4.4 HABEEB ABIRU, JCA also said a few words on the subject in **Yakubu v. Shano & Ors (2020) LPELR-50866 (CA)** _where he stated as follows:

'This court has had cause to state and restate that lawyers who misuse their knowledge of the law and legal procedure to stultify the process of administration of justice constitute a hindrance to the progress of the profession. In MBAS HOTEL LIMITED Vs. WEMA BANK PLC (2013) LPELR-20736(CA), this court made the point that lawyers as operators of the administration of justice system owe a duty , to the society that nurtured them and made them what they are, to ensure that they conduct their activities in a manner that edifies and brings honour , respect and belief to the justice system. They should not allow themselves to be used by litigants to bring the justice system into disrepute...'

5.0 CONCLUSION:

- 5.1 From the foregoing, it is clear that many conflicts arise in the course of a lawyers job, however the lawyer owes a greater duty to his profession, the society and to the court which duties are of a higher pedestal that the contractual duty he owes his client. A lawyer must therefore lean towards performing his duty to the higher callings of the demands of the course of justice and the society whenever he finds himself conflicted in his duties.
- 5.2 In conclusion, and to answer the question posed by the topic of discourse, a lawyer **is an officer of the court** even whilst representing his client. He owes a duty to the court, and by extension, to the course of justice and this duty must never be shirked.
- 5.3 I thank you for the privilege of delivering this brief lecture and I hope you would find it helpful in the course of our daily attempts to navigate the labyrinths of legal practice.

End.