

MAINTAINING ETHICS IN LEGAL PRACTICE IN A CRISIS PERIOD

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Introduction

At no other time is the objective guiding principles and values for the conduct of a person's affairs put to stricter test than a time when there is unstable state of affairs occasioning hardship with a possibility of undesirable outcome. Those objective principles form the ethics; while the unstable condition with a high possibility of instability producing undesirable outcome is a condition of crisis. In legal practice, ethical standards for the practice of law have been codified. Breach of those codes exposes the offending practitioner to sanctions ranging from admonition, to suspension, to striking off his name from the roll of legal practitioners in Nigeria or withdrawal of practice license in some jurisdictions. As it concerns legal practice in Nigeria, the issue is not so much what those ethical conducts are. The issue rather is: considering the pressure to engage in inappropriate dealings so as to survive in a crisis period, how does a legal practitioner maintain those ethical standards in the face of daunting challenges occasioned by difficult and unstable situations? This discourse examines the concepts of ethics in legal practice and period of crisis. It discusses various methods of maintaining ethical values in legal practice and the need to observe and uphold those guiding principles at all times. It concludes with the requisites for attaining those standards in a crisis situation and the way forward.

Concepts of 'Ethics' and 'Crisis'

Ethics is a set of moral principles; a theory or system of moral values. It has been defined as the discipline dealing with what is good and with moral duty and obligation.² Ethics are moral principles that govern a person's behavior or the conducting of an activity. Although used interchangeably with morals, there is a difference between ethics and morals. Ethics tends to suggest aspects of universal fairness and the question of whether or not an action is responsible. Conversely, morals connote an element of subjective preference regarding one's particular values of what is right and what is wrong. A code of ethics is a formal statement of an organisation's values and beliefs which offer guidelines on how to behave in situations applicable to ethical dilemma.³ Code of ethics or ethical code is defined as an officially adopted statement of the principles of acceptable conduct relevant to the activities of an occupational group, especially a professional one.⁴

Ethical standards are those standard behaviours below which a member of a profession or an organisation should not conduct his affairs. They identify expected behavioural conducts in avoiding improper or infamous conduct in the practice of one's profession and good relationship with colleagues. In respect of legal practice, legal ethics underscore the minimum

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² <www.merriam-webster.com> accessed 2nd December 2020

³ H Abdi *et al*, <<https://prezi.com/4ygss0evzebb/how-can-ethical-standards-be-maintained/>> accessed 30th November 2020

⁴ B Garner (ed) *Black's Law Dictionary*, West Publishing Co, St. Paul Minnesota, 10th edition (2014)

standards of appropriate conduct within the legal profession, involving the duties that its members owe one another, their clients and the courts.

Tracing the origin of ethics and its breach to the Biblical Garden of Eden, Honourable Justice Kayode Eso⁵ had this to say:

Ethics commenced with creation. That man was given leave to dwell; for his life only, to die in it was ordained for him; he must, and so was he meant to be in the theological Garden of Eden for that life. He was given dominion over everything - animals, vegetables, and minerals therein, with only one obligation on his part, and that was to refrain from eating fruits from just one tree. He did not, that was unethical, and that was his fall. Ethics demanded the best of man, that is obedience and decency and that, having been given free sojourn in the garden of Eden, he should live by the tenets and conditions as enunciated by his creator. Man failed and that was the first known breach of ethics. Man was thereby ejected from the cherished garden for not keeping to the ethics attendant thereto, and that to his chagrin. This constitutes the first sanction for failure of ethics.

Crisis, on the other hand, is an unstable or crucial time or state of affairs in which a decisive change is impending, especially one with the distinct possibility of a highly undesirable outcome.⁶ It is a time of great disagreement, confusion, or suffering; an extremely difficult or dangerous point in a situation; an extremely dangerous or difficult situation; a situation when people become less confident and start to worry.⁷ A period of crisis is simply a time when a difficult or important decision must be made. This will invariably lead to an examination of what that difficult or important decision is or will be at a time like that.

Maintaining Ethics in a Crisis Period

From his training in the University when he must be found worthy in character and in learning in order to be awarded a degree in law; to his training at the Law School when he must be found fit and proper in order to be called to the Nigerian Bar as a Solicitor and Advocate of the Supreme Court of Nigeria; and up to his days (or years) as a practitioner when he would be expected to observe the Rules of Professional Conduct for Legal Practitioners or face disciplinary sanctions, the legal practitioner has from the time of his undergraduate training been trained on ethics. To maintain ethical standards generally, four ways have been identified in the manner following: Ethic training, whistle blowing, ethical role models and code of ethics.⁸

Ethic training is attained through fora like the ones organized by the Nigerian Bar Association and its branches where members of an organisation or a profession are trained

⁵ Justice of the Supreme Court in 'Ethics in Business and Profession; Yesterday, Today and tomorrow, In further Thought on Law and Jurisprudence', Spectrum Publishing (2003)

⁶ www.merriam-webster.com

⁷ <www.dictionary.cambridge.org> accessed 2nd December 2020

⁸ H Abdi *et al.*, <<https://prezi.com/4ygss0evzebb/how-can-ethical-standards-be-maintained/>> accessed 30th November 2020

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and re-trained on the guiding behavioural standards expected of them. The aim is to assist the members appreciate the ethical aspect of the decisions they make and to incorporate high ethical standards into their daily behaviour. Such trainings also help the trained learn how to deal with ethical issues while under pressure. These pressures often occur when one is faced with ethical dilemma between maintaining ethical standard and unethical behaviour for the purpose of achieving a goal, notwithstanding the inappropriate procedure adopted.

Another method of maintaining ethics is through whistle blowing. Whistle blowing is the act of exposing misdeeds of others in a profession or an organization. For instance, the Onitsha Branch of the Nigerian Bar Association has Ethics Committee as one of its committees a member of which I am privileged to be. Although whistle blowers face the risks of impaired career process and other forms of organizational retaliations, whistle blowing still protects against some improper or illegal acts which do not conduce to preserving ethical standards.

There is also the ethical role model method. Ethical role models are persons among us in the legal profession who have lived and are still living by the tenets of the profession in both their public and private lives, maintaining high standard of conduct expected of a member of the legal profession. Legal practitioners are enjoined to emulate those role models. One outstanding to learn from the role models is that it is humanly possible to live by the tenets of the profession in our own environment.

A typical code of ethics for legal practitioners in Nigeria is the Rules of Professional Conduct for Legal Practitioners.⁹ In the course of his training at the law school up to his practice years as a legal practitioner, the legal practitioner's conduct is regulated by certain bodies established under enabling statutes such as the Legal Practitioners Act¹⁰. These bodies include the Council of Legal Education (CLE), the Body of Benchers (BoB), the Legal Practitioners' Disciplinary Committee (LPDC) and the Legal Practitioners' Privileges Committee (LPPC). The making of the rules of professional conduct for legal practitioners is the responsibility of the General Council of the Bar established under the Legal Practitioners' Act.¹¹

No doubt, with the prevalence of daunting challenges facing us as a country, the Nigerian society is in need of lawyers - both those in full time legal practice and those who are not - for its social, political, economic and legal development. For this reason, it cannot be overemphasized that legal practice ought to be regulated. The guiding principles of the status of the legal practitioner can be found in the Legal Practitioners' Act,¹² while the duties of the legal practitioner in the practice of law in Nigeria are codified in the Rules of Professional Conduct for Legal Practitioners.

⁹ 2007. I am aware of the Rules of Professional Conduct (Amendment) 2020 dated 3rd September, 2020 contained in the Notice with Serial number S. I. No. 15 of 2020 containing provisions said to have deleted Rules 9(2), 10, 11, 12 and of the Rules of Professional Conduct for Legal Practitioners 2007. Due to the controversy surrounding the 2020 Rules, reliance is here placed on the 2007 Rules.

¹⁰ CAP L 11 Laws of the Federation of Nigeria, 2004

¹¹ *supra*

¹² CAP L11 Laws of the Federation of Nigeria, 2004

Code of Ethics in Legal Practice in Nigeria

Harping on the need for legal practitioners to maintain high standards in the practice of the profession, the Nigerian Supreme Court had this to say:

Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country.¹³

Duties of the legal practitioner as contained in the Rules of Professional Conduct are comprised in 56 Rules arranged in seven parts. Part A deals with the practice of the legal practitioner, Part B deals with the relationship between the lawyer and his client, Part C deals with the relationship between the lawyer and fellow lawyers, Part D deals with the relationship between the lawyer and the court, part E deals with improper attraction of business, part F deals with remuneration and fee, while Part G deals with miscellaneous provisions. Broken down into three broad categories, the duties of the legal practitioner to his clients, fellow lawyers and the court are contained in Rules 12 -25, 26 – 29 and 30 -38.

A breach of any of the provisions of the ethical codes may attract a complaint against the offending practitioner being made to the Legal Practitioners' Disciplinary Committee (LPDC) of the Body of Benchers. Where the complaint is tried and the legal practitioner is found guilty of misconduct or infamous conduct unbecoming of a legal practitioner properly so called, the LPDC may make any of the following recommendations: striking off the name of the offending practitioner from the roll of legal practitioners, suspending such a practitioner from law practice for a period of time or admonishing the practitioner.¹⁴

Such duties as commitment and devotion to the cause of a client, representing a client within the bounds of the law, disclosing or avoiding conflicts of interest, maintaining confidence of client, withdrawal from employment, dealing with client's property, duty to avoid sharp practices, duty to respect precedence,¹⁵ and so on are well-known to legal practitioners. They cannot be over-emphasised, as every legal practitioner who has not seen must have heard or read either the Rules of Professional Conduct or reported cases of complaints decided by the LPDC and contained in various law reports concerning breaches of the code of ethics for legal practitioners in Nigeria. Instances abound where legal practitioners found guilty of infamous conducts unbecoming of a legal practitioner have also been visited with the maximum sanction of their names being struck of the roll of legal practitioners in Nigeria.

What is however pertinent for this discourse is this: despite the knowledge of what the rules of professional conduct prescribe, how does a legal practitioner maintain the requisite ethical

¹³ *N. B. A v. Ohioma* [2010] 14 NWLR (Pt. 1231) 641, 680

¹⁴ See generally section 10(2) of the Rules of Professional Conduct, 2007

¹⁵ See generally Rules 14 to 27 of the Rules of Professional Conduct for Legal Practitioners, 2007

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standards in the face of crisis? The crisis may be financial, social, legal, political, health and so on and so forth. Irrespective of the type of crisis prevalent at any given time, one thing that is certain is that crisis situations are far from normal situations and there is palpable pressure to derail in conduct by either cutting corners or engaging in sharp practices in order to make ends meet.

Need to Maintain Ethics

We are familiar with such expressions as ‘extraordinary situations demand extra ordinary measures’. ‘Abnormal behaviour in an abnormal situation is a normal behaviour.’ If such extra ordinary and abnormal behaviours are ethical, there is no problem with them. There is, however, a problem when such measures or behaviours are far from being ethical.

While times of crisis call for unusual measures, breach of ethical standards exposes one to risks of dire consequences including losing one’s primary source of livelihood - legal practice – or even one’s life. But why would anyone want to take such insensible and uncalculated risks of colossal magnitude in the name of trying to survive in legal practice during a crisis period? As a rational human being, a person faced with two courses of action, for instance, considers the marginal cost and the marginal benefit of both and take that course of action in which the marginal benefit outweighs the marginal cost. Crisis period is not an excuse for violation of ethical standards. Clearly there is the likelihood that a breach of ethics may attract some sanction of sorts depending on the magnitude of the dereliction. On the other side of it, maintaining ethical standards even in the face of daunting challenges will not expose the practitioner to any sanction and is both commendable and exhilarating. Any form of sanction on account of breach of ethical standard is a dent on the image of not just the practitioner but also the legal profession. In this wise, since the marginal benefit of maintaining ethics even in crisis situations outweighs its marginal cost vis-à-vis indulging in unethical standards, wisdom dictates that as a rationale human, a legal practitioner should always take that course of action which supports maintaining ethical standards.

The Way Forward

Although it is not quite easy to function effectively in legal practice during a period of crisis, there is still need to live by the approved ethical standards. To achieve this and move forward in a crisis period, the following behavioural traits¹⁶ need to be imbibed:

- Taking decisions with speed over precision. A period of crisis is characterized by such situations as cognitive overload, incomplete information, clash of interests and priorities, high emotions and anxieties. A time like that requires that focus should be on those few things that really matter. This will also entail some trade off of sorts between today’s survival and tomorrow’s success; between urgent needs and important needs.

¹⁶ C Nichols, et al <<https://hbr.org/2020/04/4-behaviors-that-help-leaders-manage-a-crisis>> accessed on 1st December, 2020

- Adapting boldly to changing or the changed situation. Seeking input and information from different sources and seeking assistance or expertise when necessary, is an effective way of operating efficiently during crisis.
- To reliably deliver in legal practice as a practitioner, one needs to keep mind and body in optimal functioning shape. This entails maintaining calmness even when other people are losing their heads over excruciating crisis of diverse sorts. To perform optimally, a lawyer needs to establish a routine of self-care including exercise, meditation, health, diet and those attitudes that would help one stock up energy, inculcate coping mechanisms and maintain emotional reserves.
- Engage for impact. During crisis situations, senior lawyers and heads of law offices or principals ought to take care of those who may be loosely regarded as constituting their teams and understand their circumstances and distractions. These leaders should also strive to motivate the younger colleague in any meaningful way that they can.
- There is also productive engagement. A time of crisis such as the current health crisis occasioned by the COVID-19 pandemic with its attendant economic crisis gave rise to the New Normal. The New Normal has made people embrace mode of conduct of legal and other businesses without the usual physical contacts. At its peak from the end of first quarter to the 2nd quarter of the year 2020, many countries including Nigeria were in either partial or total lock down for a reasonable length of time hitherto unimagined by health experts and those who claim or actually have the ability to see tomorrow. During the lock down, people including legal practitioners were at home to maintain health safety of both themselves and others. As a fall out of that health crisis, there is economic crisis and hardship. Due to that emergency situation and in a bid to stay afloat, many legal practitioners were under pressure to carry out their business of legal practice in most unethical manners apparently in a desperate bid to survive. Others, however, indulged in productive activities such as undergoing online training in diverse but related areas of practice such as arbitration, conciliation, mediation, management and so on. By being productively engaged, the legal practitioner makes productive use of the crisis period to further educate and equip himself for future challenges. By that productive engagement, the lawyer effectively avoids the temptation that visits an idle mind thereby becoming more useful to himself, the profession and the society.

It is a fact that maintaining ethics in legal practice in a crisis period is not ordinarily an easy task. But experience has shown that it is an achievable objective. A search in the Igbo ideological philosophy will reveal the popular adage that no matter the extent of hunger and how nutritious grasses are, a lion must not feed on grasses. By the same token, irrespective of the magnitude of pressure during a crisis period, a legal practitioner should strive not to feed on the proverbial grasses of infamous conduct unbecoming of a legal practitioner. The legal practitioner should endeavour at all times to live by those standards of conduct and practice that dignify the legal profession and legal practice.

Conclusion

Maintaining ethical standards in legal practice is a choice between progression and retrogression, a choice between dignity and debasement, a choice between honour and dishonor, a choice between satisfying immediate needs through inglorious means and enduring a momentary difficulty for a better tomorrow, a choice between what is right and what is wrong. In the face of daunting odds such as overwhelming financial crisis, let the legal practitioner choose the path of progression, dignity, what is right and maintain the ethics of the legal profession. By so doing, many of us who I pray would have the grace of God to exit legal practice in scores of years to come, would leave legal practice better than we met it and posterity will certainly judge us well in this regard.