

INDUCTION PROGRAMM FOR NEW SENIOR ADVOCATES OF NIGERIA

DECEMBER 1, 2021

ACCOUNTABILITY AND DISCIPLINE OF A SENIOR ADVOCATE OF NIGERIA

PRESENTED BY

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1.01 On December 8, 2021 a new set of Senior Advocates of Nigeria will be inaugurated when the Honourable the Chief Justice of Nigeria will administer the Oath of inauguration to each of them. This talk shop is a pre-inauguration summit, organised by the older members of the Body of Senior Advocates of Nigeria (BOSAN), to initiate the new members to the body. To BOSAN; I say thank you not only for the pre-inauguration summit, but also that you selected me to be part of the activities. To the new members of BOSAN; you are welcome on board. Congratulations. I thank God for this unique opportunity.

1.02 The pre-inauguration summit is organised under the theme: **LEGAL ETHICS AND PROFESSIONALISM IN THE PRACTICE OF LAW**. The legal profession is a regulated profession. It sounds tautologous and/or oxymorous that we are talking about “legal ethics and professionalism in the practice of law” to members or prospective members of the body Senior Advocates of Nigeria (BOSAN). That is the cross I

have to bear – repeating to those who know the law, and are learned gentlemen, about the things they already know and/or are presumed to have known.

1.03 I was invited “to facilitate” on the much more narrower topic :– LEGAL PRACTICE AS A SENIOR ADVOCATE, which to me means – **ACCOUNTABILITY AND DISCIPLINE OF A SENIOR ADVOCATE OF NIGERIA**”. What duty does a Senior Advocate owe to the society. I will highlight the don’ts more so that, in the words of Shakespeare’s Polonius – we shall use the indirect to find the direct. It is going to be a rehash of my 2019 paper.

1.04 Permit me if, in the presentation I may appear to sound like the Wife of Bath in Geoffrey Chaucer’s Canterbury Tales. She had had several marriages and divorces, and was always critical of her previous spouses - that is, they were each not the right men! In the same Canterbury Tales the Pardoner, the itinerant preacher, did say: if gold doth rot, what will iron do, and his sermon to all his congregation remained: Radix malorum est cupiditas (i. e greed is the root of all evils).

1.05 The Senior Advocate of Nigeria is, first and foremost, a Lawyer. He is a lawyer among lawyers. Some think or liken him to the Knight in the Church, - the defender of the faith. To whom much is given, much is therefore, expected. And so,

like in Tax Administration, those who earn more should pay more. That puts the Senior Advocate on guard – never in his dealings should he be asked Et tu, Brute? (Even you, Brutus?). To be queried – even you, Senior Advocate?, is the most serious indictment for a conduct most treacherous and unwholesome in relation to your calling.

1.06 I will discuss the sub-topic: **THE DUTY OF A SENIOR ADVOCATE** to the society which I said also means – “**Accountability and Discipline of a Senior Advocate of Nigeria**” will be discussed under three sub-heads or titles; namely –

- i. The Regulation of Senior Advocates of Nigeria.
- ii. Professional Misconduct as a Senior Advocate of Nigeria.
- iii. Profession Discipline of Senior Advocate of Nigeria.

2.0 **REGULATION**

2.01 Section 4 of the Legal Practitioners Act, 2004 provides inter alia, that “a person shall be entitled to be called to the (Nigerian) Bar if – a/ he is a citizen of Nigeria; and b/ he produces a qualifying Certificate to the Benchers; and c/ he satisfies the Benchers that he is of good character”. Sub-Section (2) of Section 4 of the Act makes allowance for non-

citizens of Nigeria to be called to the Nigerian Bar. To be called to the Bar and in order to practice as a Legal Practitioner the provisions of sub-sections (3) & (4) of the Section 4 of the LPA must be satisfied. The prospective Legal Practitioner, upon satisfying the basic educational standards (in both learning and character) set by the Council of Legal Education he is issued “a Certificate of call to the Bar”. The Certificate is the prima facie evidence that he is eligible to be called to the Bar to Practice Law – a fit and proper person.

2.02 A Senior Advocate of Nigeria is selected from among Legal Practitioners for conferment of the rank by the Legal Practitioners Privileges Committee (LPPC), the composition of which is set out in Section 5(3) & (4) of the LPA. Section (2) thereof provides that –

A person shall not be conferred with the rank of Senior Advocate of Nigeria unless he 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 (LPPC) may, from time to time, determine.

2.03 To merit the privilege, it is not enough that the legal practitioner had practised law in Nigeria for not less than ten

years, he must have “achieved distinction in the legal profession in such manner as the (LPPC) may, from time to time, determine”. Distinction, according to Oxford Advanced Learners’ Dictionary, connotes that a legal practitioner, who amongst his peers is important, separate and special with a quality that gives him a clear difference or contrast from other legal practitioners. Like the Pharisee, he is not like others. And like Gulder lager beer, he is proud to be different. Thus, it is provided, in the Guidelines for the Conferment of the Rank of Senior Advocates of Nigeria, 2017, S. 1, No. 10 of 2017, made pursuant to Section 5 of the LPA, 2004, in paragraph 1 thereof that –

The award of the rank of Senior Advocate of Nigeria (SAN) is a privilege awarded as a mark of excellence to members of the legal profession who –

- a. are in full time legal practice;
- b. have distinguished themselves as advocates; and
- c. have made significant contribution to the development of the legal profession in Nigeria.

In recent times, some legislators, who are lawyers, have argued stridently that, because they are law makers in the legislative houses, they are entitled to be considered for the conferment of the rank of Senior Advocates of Nigeria. The argument is puerile by dint of paragraphs 1, 18 & 19 of the Guidelines for the Conferment of the Rank of Senior Advocates of Nigeria.

2.04 The summary of paragraphs 18 and 19 of the Guidelines is that

- a. No lawyer is eligible for consideration for the award of the privilege unless he is a court room advocate – and not just practising as a mere solicitor. Academics whose legal writings immensely shape and assist in the development of the law are eligible for the award.
- b. A candidate must demonstrate and possess high moral probity, integrity, good character and reputation.
- c. He must have sound knowledge of the law and excellent demonstrable skills

of an advocate with clear ability to use the knowledge of the law for the advancement of the administration of justice.

- d. He must show observance of the code of conduct and etiquette at the Bar. That is why he is subjected to scrutiny by Judges, from the trial, to appellant, courts.

2.05 Section 5 (8) of the LPA suggests, that “a Senior Advocate of Nigeria shall not be entitled to engage in practice as a member of the legal profession otherwise than a barrister” though he may enter into, or continue “in partnership with a Senior Advocate of Nigeria”. Those practising as solicitors are thus not eligible, it appears.

2.06 Among conducts that disqualify a lawyer, or make him ineligible, for the award of the rank of Senior Advocate are, under paragraph 18 of the Guidelines for the Conferment of the Rank of Senior Advocate, inter alia –

- a. Bad behaviour, whether in or out of court; poor temperament or propensity to insult or assault people

- or cause them harm, or put them in state of fear of bodily harm;
- b. indulgence in drug, alcoholic or other similar substances, addiction;
 - c. Evidence of moral depravity or socially unacceptable behaviour;
 - d. Abuse of legal trust such as embezzlement or mismanagement of client's fund;
 - e. Indulgence in blatant self-seeking praise or advertisement through sponsored (directly or indirectly songs by musicians, record or tapes, or other media such as print or electronic; and
 - f. touting for briefs or engaging in any form of canvassing for cases.

2.07 The office of the Senior Advocate is one very seriously regulated by statute. Morally, the society expects more, in terms of transparency, character and reputation.

2.08 The practice of the legal profession, as a business, is generally, a pursuit of wealth. The love of money, according

to Geoffrey Chaucer's Pardoner – Canterbury Tales, is the root of all evils. The pursuit of wealth is not itself a bad thing. What is bad, according to Chief Obafemi Awolowo is –

- Wealth accumulated on a selfish basis, at the expense of the State in defiance of social justice (that) helps to create a disorganised society - -

3.0 **PROFESSIONAL MISCONDUCT AS A SENIOR ADVOCATE**

3.01 On 11th June, 2019 at Transcorp Hilton Hotel, Abuja, on the theme: THE USE OF PUBLIC FUNDS IN ELECTION LITIGATION AND INTEGRITY OF THE JUDICIARY, Hon. Justice Ayo Salami, OFR, PCA (rtd) lamented that –

Our focus, today, is – the use of public funds by political office holders to pursue election cases, for personal or private gains. This remains a major source of concern in Nigeria because of the negative impact it has on our socio-economic development. – Funding of election petitions has become one of the ways through which public funds are

mismanaged and wasted. It is an open secret that election matters have become sort of a windfall to the legal practitioners engaged in election matters. The humongous fees being charged by their lawyers in pre- and post-election matters are mostly paid with public funds – especially where the client is a public office holder who has no right to use such monies to defend his election.

3.02.1 The learned jurist thinks, very confidently too, that lawyers, sadly, “most senior lawyers who should ordinarily be role models and persons of integrity” collaborate with politicians to loot public funds.. It is criminal for a public officer to use or divert public funds for his private business. It is also criminal for whoever conspires with him to engage in the said illegality.

3.02.2 In the same paper. Hon. Justice Ayo Salami points out an instance of “a criminal charge by the EFCC against a Senior Advocate of Nigeria relating to converting to personal use, concealing the source of, disguising the origin of, and retaining in his account huge amount of money

to the tune of about a billion Naira belonging to a State Government. The funds were allegedly paid with State's funds for legal services rendered in personal capacity to the governor, who was then a governorship candidate".

3.03 Rules 48 – 54 of the Rules of Professional Conduct for Legal Practitioners (RPC), 2007 provide guidelines for charging clients professional fees. They, of course, do not put a limit on the fees to charge. They merely provide guides on how to go about it. Again, Hon. Justice Ayo Salami, *op. cit*; expresses the opinion:-

Granted that lawyers enjoy a wide liberty charging for their services; the charges must be reasonable and not arbitrary. Charging and collecting fee for services in an opaque manner does the society no good; it stands to promote corruption, tax evasion and money laundering".

3.04 On 26th June, 2019, Chief J. B. Daudu, SAN – former NBA President and the past Chairman, LPDC (2013 – 2018), in his paper – **THE LEGAL**

PRACTITIONER AND DISCIPLINARY POWER OF THE LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE, had expressed the view that: “in the past 30 years, the standards of advocacy have drastically fallen. Ethical issues and matters of integrity mean very little to members of the legal profession”. He concluded that “in Nigeria, the loss of face suffered by the profession is because of the ethical challenges suffered by lawyers arising from sharp practices inflicted on clients as a result of discharge of their duties”. That’s the point.

3.04.1 Even among fellow lawyers, the junior lawyers you are supposed to mentor should expect you to be more honourable. Rule 27 of the Rules of Professional Conduct for Legal Practitioners, 2007 is being eroded. Senior Advocates are “stealing and snatching” briefs from junior lawyers who invite the Senior Advocate to lead them as a mentor. It is utterly disgraceful and infradig to see Senior Advocate fight dirty in open court with a junior counsel over briefs.

3.05 The malaise goes on unabated. In recent times the courts, particularly the Supreme Court, have had to award costs to be paid personally by Legal Practitioners, including Senior Advocates of Nigeria for sundry acts of abuse of court's process, sharp practices, etc. – no doubt professional misconduct.

3.06 At a High Court of the Federal Capital Territory (FCT) a Senior Advocate sued a commercial bank in his personal name raising a fictitiously fraudulent money claim. The bank retained a counsel of about 8 – 10 years post-call. The said counsel raised a preliminary objection to which the SAN had no answer. After indulging in personal verbal assault and insult on the younger counsel, and holding the court to ransom for sometime, the SAN sought and was granted 30 days to respond. As the adjourned date approached, after the lapse of the 30 days, the younger counsel wrote to remind the SAN: that he had not filed the process. He copied the court through the Registrar. On the adjourned date the SAN, claiming falsely that he was before

the Supreme Court in another matter, wrote for further adjournment. He sent no junior. How does a reasonable man standing by adjudge this conduct on these templates – bad behaviour in court and towards a younger counsel, poor temperament, propensity to insult or assault other etc. This is not how to practice as a Senior Advocate.

3.07 Two SAN's are engaged in enforcement proceedings. At the hearing date one of the SAN's asked for adjournment in order to pursue out of-court settlement. The other agreeing, reluctantly, informed the court that the proposed adjournment and out-of-court settlement had been the usual gimmicks of the respondent. The High Court adjourned the matter for report of settlement. The latter SAN waited in vain for his silk brother to propose terms of settlement. On the adjourned date the same SAN, who sought and got adjournment, apparently for a breathing space for the fraud to gestitate, filed fresh and hostile processes. He then barefacedly denied ever proposing any out

of court settlement. The proceedings recorded verbatim by the stenographer of the court proved and established the sharp practice of the Senior Advocate, who rather than apologise for giving the court the deliberately false information on which he got the adjournment, chose to be absent subsequently. The conduct smacks of contempt of court and obstruction of the course of justice. Both in his inter-counsel relationship and his behaviour towards the court are res ipsa loquitur - a clear case of misconduct.

One bad apple spoils the lot. The corporate image of all Senior Advocates has thus been tinted and dented by this bad Senior Advocate and Nigerians would say of you all – “they-are-same-thing-one.”

3.08 It is professionally an unacceptable behaviour for a legal practitioner to accept brief and promote a cause that is clearly an antithesis of “the advancement of the administration of justice”. At a High Court in Enugu, in a pre-election matter, an SAN filed an Originating Summons supported by an affidavit to which he

exhibited a judgment, that had been set aside by the Court of Appeal, as the basis for the reliefs sought. His brother Silk, not only drew his attention to the fact, but also supplied him and the court a copy, each, of the Court of Appeal decision. He persisted in that infamy, against the express provision of paragraph 32(3)(g) - of the RPC, to the Supreme Court. Paragraph 33 (3) (j) of the RPC which prohibits a lawyer from “promoting a case which to his knowledge is false” is now almost honoured in breach especially in pre-election matters. Misconduct in either case is obvious. At the Supreme Court the guilty Senior Advocate was ordered to pay hefty costs to each set of respondents for this brazen abuse of court process and the unethical behaviour.

3.09 Order 8 Rule 16 of the Supreme Court Rules provides inter alia that the Supreme Court “shall not review any judgment once given and delivered by it save to correct any clerical mistake or some error arising from any accidental slip or omission”, etc. The provision

as it appears is clear and unambiguous. In July 2019, a Senior Advocate brought to the Supreme Court an application, under the same Order 8 Rule 16, for the Supreme Court to review its judgment and vary the orders made therein such as to nullify or void the consequential orders that did not favour his clients. No amount of persuasion, that his application was an abuse of court process, would dissuade him. He persisted in the argument, in a manner that he could only be seen, selfishly, albeit spuriously to be “earning his brief” or his pay. He thereby resorted to playing to the gallery. And even at the foyer of the Court, contrary to Rule 45(2)(a) of the RPC, he addressed the press wearing his wig, bibs and gown, ditto his juniors, to further advance his argument, albeit falsely and disingenuously, that upon re-filing the motion struck out the Supreme Court would set aside its judgment and return his clients to their offices. You may ask – for how long do we, as Senior Counsel, continue in these utter subversions of the Rules of Conduct? This crassly unethical conduct of Senior Advocates now appears to be

becoming the norm especially in political matters, oil and gas briefs and garnishee proceedings undertaken on behalf of garnishee banks. What is the business of garnishee bank pursuing and maintaining appeal to set aside garnishee order absolute, if not for pursuit of personal avarice and shenaniganism of the counsel retained for this abuse?

- 3.10. When a Senior Advocate files a “mercenary” process on behalf of a mercenary litigant acting on behalf of some faceless oil majors in a matter of a dispute between the a group of States and the Federal Government with the intent of “ousting” the original jurisdiction of the Supreme Court under Section 232(1) of the Constitution, in order to prevent the parties on record settling out of court and further to enable mercenary parties resort to dilatory tactics, he acts not only mala fide but also to obstruct justice and impede the advancement of the administration of justice – no doubt a clear misconduct.

3.11. A Senior Advocate sued all members of the Court of Appeal panel in their personal names. He caused affidavit to be deposed averring therein the most outlandish and odiously spurious allegations against each Justice of the appeal on the panel. He was rented by a politician in Ondo State to do this in order to force the panel to adjourn and the limitation in Section 285 of the Constitution to take effect in order for the cases to lapse. The misconduct not only earned him an order that the privileges of Senior Advocate be removed from him; he was ordered to pay, personally, ₦3,000,000.00 as costs to each of the 5 Justices in addition to the other costs awarded in favour of the respondents.

3.12. The newspapers and the Law Reports are replete with court orders made against most senior Senior Advocates to pay handsome costs personally for some egregious misconduct considered by the courts to be intolerable infamous conduct in actively promoting false claims, counselling litigants to embark on

proceedings that are clearly in abuse of court's process. In the United States of America, Judge N. Reld Neureicer ordered Senior Lawyers to pay \$187,000.00 in Legal fees over "frivolous" 2020 election lawsuit. The Judge reasoned:

They are experienced lawyers
who should have known better.
They need to take responsibility
for their misconduct.

3.13. The rank of Senior Advocate of Nigeria confers no privilege on the Senior Counsel to embark on unethical and unwholesome conduct both in court or outside. Rather to whom much is given, much is expected. The society expects every Senior Advocate to live above board. As every lawyer is a social engineer, the Senior Advocate in consequence should be seen to be a senior social engineer. He should lead and others follow in every positive way, by all the means he can.

4.01.0 **THE SILK WITHOUT STAIN - EPILOGUE**

4.01.1 A senior Advocate is not just an officer in the temple of justice. He may not be the Chief Priest in the temple. He is certainly a high priest in the temple of justice. He should not be counted among those Jesus Christ castigated – woe unto you lawyers for you create all the problems for mankind which you will not, yourselves, touch with a tip of your fingers. Nor should he aspire to be that person, the public thinks, that turns black into white and vice-versa. He should also not be derided, in a manner an angry client inscribed an epitaph on the tombstone of his erstwhile lawyer - Here lies the lawyer, when he lies no more; he lies dead. Nor should he be that person, a lawyer, who recovers your property from the adversary and keeps it to himself.

4.01.2 It should not be your portion for the society to think of a Senior Advocate as an unpatriotic. The PI & ID contract scandal speaks volumes about our senior lawyers. An English Judge berating a Senior Advocate of Nigeria for compromising the National Interest in the manner he defended the latter, his client, observed that the counsel “thinly defended” his client. In international contracts senior lawyers are just compromising National interest and assets for personal gains.

4.02 As I conclude this discourse let me adopt part of the valedictory speech of Chief J. B. Daudu SAN delivered on 16th

February, 2012. In honour of the late Justice A. N. Aniagolu, JCA – a charge to the members of the Bar, “who for particular manoeuvres or the gratification of “varying interest” misuse the process of the Supreme Court and other courts by bringing applications that are clearly frivolous and contemptuous”. I share his views that “the existing rules of professional Ethics (should) be amended to include such areas that will safeguard the dignity of the courts and the integrity of judicial process”, and that the members of the Bar must call themselves to order in this regard. Until we reach that level: only a proactive resort to the existing RPC will do us good to curb some of the excesses. It is only in a clime of lawlessness that anarchy thrives and everybody does what he likes with impunity. I am told that elsewhere, I think England and Wales, one established case of misconduct or abuse of court’s process earns the legal practitioner suspension; he is struck off the roll upon a repeat.

4.03 The existing rules may not provide enough sanction for some of the outrageous acts that are clearly malicious, disrespectful and utterly malfeasant, such as constitute an assault on the integrity of the courts and the judges. Suing Justices of the Court of Appeal in their personal names in order to coerce, albeit blackmail, them to disqualify

themselves and thereby delay hearing in an election matter that time is of essence, is one of such obnoxious or toxic misconducts. The Senior Advocate who perfects this perfidy had since been disrobed and de-ranked. But some of the odious culprits reprimanded are still shamelessly moving about in utter arrogance amongst us.

4.04 I will not attempt any classification of what facts constitute misconduct. I had earlier given instances of misconduct. As Chief J. B. Daudu, SAN stated on 26th June, 2019, op. cit., “it is a widespread internationally accepted practice that where a counsel uses his access to court to a) delay cases; b) exhibit rudeness and incompetence in the conduct of his case; c) files frivolous applications; d) makes submissions that border on rascality; e) plays to the gallery, etc; or does anything in court as to obstruct the due administration of justice then, in addition to the powers of the court to summarily deal with the issue and restore her dignity in the eyes of the public; that court is entitled and indeed must report the matter to the appropriate disciplinary body for sanction”. The Legal Practitioners Disciplinary Committee (LPDC) is one of such. Under Section 29(b) of the Legal Practitioners Ordinance, 1933, a single Judge of the “Supreme Court” (now the High Court) may temporarily

suspend a legal practitioner pending reference to the Full Court, which may confirm the Direction. As desperate malady deserves desperate remedy; time it is now for going back to those good old days, if the profession seeks to reclaim and redeem its name. It appears: having tasted the old wine and the new wine, the old is good.

4.05 Like Caesar's wife, the Senior Advocate must be seen to live above board. Misconduct is not only about the manner a counsel comports and conducts himself in the court room. It includes the totality of the conduct of his business, as Justice Ayo Salami, *op. cit.*, pointed out.

4.05.1 You were, each, called to the Nigerian Bar for your good knowledge and good Character. A person though knowledgeable in law but grossly deficient in character which includes integrity, reputation and comportment, cannot be said to be a good lawyer. Lawyers, so cantankerous, cannot be good lawyers. A lawyer lacking in character is not only a dangerous to be allowed to practice law; he is even more dangerous to the society.

4.06 By this award, to you, of this special privilege of the rank of Senior Advocate of Nigeria your way of life is in the public domain, and members of the public expect so much, as befitting your special status, from you to them. If I behaved

like the Wife of Bath towards you today; it is because the public believes you are such a gem – as gold that should not rot like iron. That is the charge to keep you have. Here I rephrase John F. Kennedy: ask not what the law profession and the society have done for you, but what you have done for the society, administration of justice and law profession.

Thank you.