GOING TO COURT: QUEST FOR FEES; CLIENTS' INTERESTS; ETHICAL DEMANDS

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Abstract

One of the pronounced challenges confronting the Legal Practitioner engaged in litigation or courtroom practice is the ability to balance the quest for his fees, his client's interests and the ethics of the profession. Except he chooses to offer his professional services on a *pro bono* basis, a Lawyer is entitled to his fees and can maintain an action for non-payment of his full charges against any client in default. This article seeks to study the right of the Legal practitioner to earn a living through the practice of law vis-à-vis his duty to promote and protect his client's interest within the ambit of the law. The research revealed that, in recent times, the legal profession has been infected with desperate practitioners who want to earn fees at all costs, a situation, occasioned sometimes, by pressure from their clients, in total disregard of the ethical demands of the profession. A doctrinal approach to legal research was adopted by referring to diverse primary and secondary sources, particularly caselaw. It was concluded that there is a need for a Lawyer to carefully consider these concerns- his fees, clients' and ethical demands before accepting a brief. It was recommended that, when a client takes his time to consult a Lawyer to lead him to court, the Lawyer must always take his time too, to consult the law and rules, particularly the Rules of Professional Conduct, before taking a single step on that journey to Court.

Key Words: Client, Court, Ethical Demands, Fees, Interests

1. Introduction

In every human society, disputes arise and will continue to arise. When a decision to resort to litigation is taken by the disputing parties, lawyers are usually engaged to approach the court for redress. On one side is the Lawyer who initiates the suit; on the other side is the Lawyer engaged to defend the suit. Even after the Court of first instance renders a decision on such suit, the parties may still desire to have further recourse to an appeal Court by way of appeals and/or cross-appeals or even applications for setting aside of the judgment. In the course of prosecuting and defending such suits both at the trial and appellate levels, the Lawyers involved file diverse processes and applications before the Courts seeking one form of relief or the other.

Rule 24(2) of the Rules of Professional Conduct for Legal Practitioners[1] provides: "It is the responsibility of a lawyer to decide what cases he will bring into court for the Plaintiff and what cases he would contest in Court for the Defendant. *Rule 48(1) of the RPC* goes further to provide that a Lawyer is entitled to be paid adequate remuneration for his services to the client. When a Lawyer accepts a brief, *Rule 14(1) of the RPC* provides that: "A Lawyer shall devote his attention, energy, and expertise to the service of his client and, subject to any rule of law, act in a manner consistent with the best interest of the client". In the course of performing the duties and discharging the responsibilities imposed on him, *Rule 1 of the RPC*, categorically states: "A Lawyer shall uphold and observe the rule of law, promote and foster

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1 2023 herein referred to as RPC, 2023

the course of justice, maintain a high standard of professional conduct and shall not engage in any conduct which is unbecoming of a legal Practitioner".

From the foregoing, while the Lawyer, when briefed, is bestowed with authority to decide when to go to Court for his client and endowed with mandate to pursue the best interest of his client, the law demands that the Lawyer, thus plying his trade, must act within the bounds of the law and in obedience to the demands of professional ethics.[2]When an approach is made to the Court, the result is the eventual judgment/ruling that the Court delivers. Having regard to these judgments/rulings we listen to and read from the Law Reports, this discourse seeks to interrogate how to balance the need to secure the Client's best interest and the obligation to comply with ethical rules when, as Lawyers questing to earn our fees, we lead our clients on a journey through the Courts.

2. Definition of Terms

2.1.1 "Going to Court"

The expression "*Going to Court"* is used loosely to refer to the act of approaching the Court by a formal process for the purpose of prosecuting or defending an action or seeking from the Court one relief or the other, whether substantive or interlocutory. It also includes approaching the Court with processes for the prosecution or defence of criminal proceedings.

2.2 Fees

The term 'fees' is used interchangeably with the word 'charges' to describe the remuneration of a Lawyer for services rendered to his client. *Section 19* of the Legal Practitioners' Act[3] defines charges to mean "any charges (whether by way of fees, disbursements, expenses, or otherwise) in respect of anything done by a legal practitioner in his capacity as a legal practitioner. This definition was confirmed in *Okoli & Associates v Crusader Insurance Co. Nig. Ltd* [4].

The term 'fees' was more prominently used in the Rules of Professional Conduct[5], though not defined. Part V1 of the Rules, captioned: "Remuneration and Fees," provides for the right of Lawyers to earn their fees. *According to Rule 48(1) of the Rules*, "A lawyer is entitled to be paid adequate remuneration for his service to the client." However, he shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.[6] "In determining the amount of the fee, a lawyer may take into account all or any of the following considerations in ascertaining the value of the service rendered –

(a) the time and labour required, the novelty and difficulty of the questions involved and the skill required to conduct the cause properly;
(b) whether the acceptance of employment in the particular case will preclude the lawyer's appearance for others in cases likely to arise out of the transaction and in which there is a reasonable expectation that otherwise he would be employed;
(c) whether the acceptance of the employment will involve the loss of other employment while employed in the particular case of antagonisms, with other clients;
(d) the customary charges of the Bar for similar services; provided that in determining the customary charges of the Bar, the Lawyer may consider a schedule of minimum fees, if any, adopted by the Bar Association but he is not bound to follow it strictly or alone;

2 See *Dariye v FRN* (2015) LPELR – 24398 (SC)
3 Cap 207 LFN 2004
4 [1994] 2 NWLR (PT 329)653 S.C
5 2023, herein referred to as RPC
6 *Sub Rule 2*

(e) the amount involved in controversy and the benefits resulting to the client from the services. (f) the contingency or the certainty of the compensation; and (g) the character of the employment, whether casual or for an established or constant client.

2.3 Ethical Demands

The term 'ethical demands' is a combination of two words: ethical and demands. 'Ethical', derived from the word: ethics, means the moral principles that govern a person's behaviour or the conducting of an activity[7]while 'Demands' in this context means obligations or duties. Thus, 'Ethical demands' relate to moral duties arising from the conduct of one's affairs, trade, or profession. Ethical considerations are fundamental to the practice of law, serving as guiding principles that shape the conduct of legal professionals and maintain the integrity of the legal profession. However, Nigeria faces unique challenges in ensuring that legal practitioners uphold ethical standards, given the diverse cultural, social, and political landscape of the country.[8]

Ethics are foundational to the legal profession because it is a vocation that is essentially for rendering service" when labour sweats for duty, not for need". They encompass principles of integrity, honesty, fairness, and professionalism that guide the behaviour and conduct of lawyers. Without ethics, the practice of law loses its moral compass and credibility. Ethical conduct is not just a moral imperative but also a professional obligation for lawyers. Upholding ethical standards is essential for maintaining the integrity of the legal profession, ensuring fair and just outcomes in legal proceedings, and upholding the rights and interests of clients.[9]

3. Judicial Concerns and Complaints about Approaches to Initiating Legal Actions in Court

Although innumerable judgments/rulings of the courts abound on the basis of which it may be postulated that approaches to Courts made by Lawyers on behalf of their clients largely follow the rules, it cannot be denied that innumerable pages of judgments/rulings also exist that are replete with worrisome lament of Judges bemoaning proceedings brought before the Courts when such proceedings are conducted unprofessionally or ought not have been embarked upon at all thus, casting a slur on the administration of justice.

As recent as the 31st day of January, 2025, in the Judgment delivered in *Dagazu Carpets Ltd v Bokir International Co. LTD & Anor* [10] the Supreme Court, Per Abiru**,** JSC stated as follows:

> The facts of the case leading up to this appeal as adumbrated in the lead Judgment show a classic example of the abuse and misuse of the processes of Court by the Counsel to the Appellant. All that the Counsel to the Appellant had sought to do from the time of his involvement in this case since 1998 was to prevent the first Respondent from taking possession of the assets of the Appellant which the first Respondent legitimately purchased from the second Respondent the duly appointed receiver/Manger of the Appellant. The fact that Counsel to the Appellant was able to use the processes of Court to achieve this ignoble aim from then till now – a period of over twenty – six years, shows how

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7 Oxford Dictionary

8 Sulaiman U, "Ethics, Etiquette, and Navigating Ethical Precepts in Legal Practice in Nigeria," <https://gamzakilawchambers.com/ethics-etiquette-and-navigating-ethical-precepts-in-legal-practice-in-nigeria/> accessed on 30/4/2025

9 *Ibid.*

10 (2025) LPELR – 80302 (SC*);* See also *Wema Bank Plc v Awotunde & ors* (2025) LPELR – 80567 (SC)*; Nnabuchi & ors v IGO & ors* (2025) LPELR – 80541 (SC).

> porous our administration of justice system is and the need for urgent reforms … The law is that although every person as citizen has a right of access to the court for redress, that right should be exercised in good faith … Suffice it to say 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."

It is proposed therefore, to examine some of the matters, the consideration of which will impact on how the right balance may be achieved when the Lawyer having a brief; missioned to secure the best interest of his client and faced with the demands of ethical rules, is making a decision to bring a matter into court.

4. Who Briefed the Lawyer?

A Lawyer acts only when he has been consulted and briefed by a client. Indeed, the Rules of Professional conduct prohibits a Lawyer from fomenting strife or instigating litigation.[11]In *Uche & Anor v INEC & Ors,* [12] the Court held as follows: "*Where a counsel has no authority to represent a party, he lacks the authority to file processes on behalf of the party. Any process filed without the requisite or apparent authority of the party must be discountenanced by the court*."

A consideration of the question as to who briefed the Lawyer is also germane, as the said person, in a civil dispute, will invariably be the Claimant in whatever proceedings the Lawyer may choose to bring to Court. This, therefore, brings to the fore the question of *locus standi*. The law is settled that the Court can only be approached by a person who has the requisite *locus standi* and not by "busybodies" and "meddlesome interlopers". A person will be held to have *locus standi* where he shows that his legal right, interest, and obligations have been or are in danger of being infringed by the acts complained about.[13]

In the realm of private law, it appears easier to ascertain when *locus standi* exists as it is clearer to see whether the Claimant has or does not have sufficient legal interest in the subject matter of the suit.[14]However, in the realm of public law, the concept is fraught with so much complexities and vagaries that a Lawyer leading his client to court to challenge a public wrong should be more circumspect.

Forceful arguments exist in support of liberalization of the rules of *locus standi* in public law to effectively police the corridors of power and prevent violations of law.[15] However, traditional restrictive views, shackled by acclaimed policy concerns about "*opening floodgates of litigations"* still appear dominant.[16]

5. Who takes the decision to go to Court?

As already noted, it is the responsibility of the Lawyer who accepts a brief "*to decide what cases he will bring into court…and what cases he would contest in court*." In taking that decision

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11 *Rule 47 (1)* RPC 2023.

12 (2019) LPELR – 48396 (CA).

13 *Adesanya v President of the FRN & Anor* (1981) LPELR – 147 (SC).

14 *See Owodunni v Registered Trustees of Celestial Church &Ors* (2000) LPELR – 2852 (SC).

15 *Centre for Oil Pollution Watch v NNPC* (2018) LPELR – 50830 (SC); *A – G Kaduna State v Hassan* (1985) LPELR – 617 (SC).

16 *Okonjo – Iweala v Fawehinimi & ors* (2025) LPELR – 80384 (SC); *Edun & Anor v Governor of Delta State & anor* (2022) LPELR – 58062 (SC*); Uwazuruonye v Governor of Imo State* (2012) LPELR – 20604 (SC); *Nworka v Ononeze – Madu & ors (2019*) LPELR – 46521 (SC).

however, the Lawyer is required to keep within professional limits and only advise that his client has a good case as the law stands; it is not the duty of the Lawyer to go to the extent of assuring his client that come rain, come shine, he will win the case.[17]

Though the Lawyer is bestowed with extensive authority to take decisions regarding the client's case, the fact[18]cannot be ignored that the Lawyer is usually under constant pressure to do the bidding of desperate litigants. However, the Lawyer must always hold the helm because the law remains that a Lawyer is not absolved from bringing questionable actions or arguing questionable defences or giving questionable advice on the ground that he is only following his client's instructions.[19]For instance, it is not uncommon to meet litigants who insist on their suit being filed in a particular court/jurisdiction where they believe they "*have people*" even when such court has no jurisdiction on the facts and the law to entertain such suits. This is the reprehensible practice of forum-shopping and Judge – shopping which the Supreme Court in *Mailantarki v Tongo & Ors*[20] declared an "unethical practice" which no Lawyer should indulge in. Such practice was recently condemned as an – abuse of Court process in *EFCC v Bukura Ors.*[21] where the cause of action arose in Abuja while the Suit was filed at Gusua, Zamfara State.

One aspect of this matter where the overbearing wishes of litigants is most prevalent is in the choice of parties to be proceeded against when initiating an action. At the time of constituting an action, vengeful litigants would usually desire every real and perceived enemy to be included in the suit including those who are seen as supporters and sympathizers of their opponents. This may be in situations where no cause of action even exists against such persons or in situations where one or two persons may be conveniently sued in a representative capacity on behalf of the others.

However, a Lawyer should not give in to the desires of his client to join as a party to a suit, a person against whom no cause of action exists. In *Union Homes Savings & Loans Plc & Anor v Enechukwu & Ors* **22** the Court of Appeal condemned the joining of a Lawyer as a party to a fundamental rights application simply because he was the lawyer that wrote the Petition on the basis of which the Applicant was arrested by the EFCC.

This anomaly is gaining worrisome frequency in criminal proceedings. The law has always been that prosecutors should not turn prosecution into persecution. However, in practice we see persons arraigned as defendants in criminal charges against whom no iota of ground exists to arraign them simply because the decision to charge does not flow from purely professional considerations by the prosecuting Lawyer. For instance, in *Obiorah v FRN*,[23] a Lawyer was joined as a co-accused in a charge alongside his client on the allegation of the complainant that the Lawyer frustrated the efforts made to recover from his client the money his client was alleged to have defrauded even when nothing in the proof of evidence linked the Lawyer with the alleged offence. In condemning this practice, the Court of Appeal noted: "It seems to me that the apprehension and arraignment of the appellant for standing by his Client Rev. Fr. Silas Nweke, for the offence of obtaining property by false pretences smacks of victimization, oppression and prejudice against him by the Respondent. There is clearly no reasonable

17 *Abubaka & ors v Yar'adua & ors* (2008) LPELR – 51 (SC)

18 *Adewunmi v. Plastex (Nig) Ltd (1986) LPELR – 164 (SC); Cappa & D'Alberto Ltd v. Akintilo* (2003) LPELR – 829 (SC).

19 *See Rule 24 (3)* RPC 2023*; Braimoh & anor v. Ododo & ors* (2024) LPELR – 63018 (SC).

20 (2017) LPELR – 42367 (SC).

21 (2024) LPELR – 62225 (CA)**;** *Johnson & Anor v Eze & Anor* (2020*) LPELR – 49636 (CA).*

22 **(**2018) LPELR – 50611 (CA)

23 (2018) LPELR – 40965 (CA).

evidence linking the Appellant with the charges of obtaining property by false pretences from anybody ...Before I draw the curtain on this appeal, I should say a word with respect to the role of the appellant as a lawyer in the performance of his duty …and the way the appellant was perceived and oppressed by some of the Respondent's Officers in the Economic and Financial Crimes Commission, which led to his arrest and arraignment for prosecution as a co-accused with his client. In the circumstances of the instant case, this is unacceptable."

Before deciding to go to court, the Lawyer must consider certain factors to make an informed decision that does not run afoul of the law or ethics of the profession. These will be considered below:

5.1 What is the Motive behind the Decision to Go to Court?

It is generally taken that a client who approaches a Lawyer to take a case to Court on his behalf seeks to obtain justice. However, the reality, which the law recognizes, is that some litigants indeed take out court processes merely to harass or injure the opposite party or to work oppression or wrong.[24]

In the same manner, the first duty of a Lawyer as a minister in the temple of justice is to offer a defence that is hopeless or that is unwarranted under the existing Law or promote a case which, to his knowledge is false. [20]It has been held therefore, that **t**he right to pursue the case of a client should not be utilized to pursue the selfish interest of a client to the detriment of the administration of justice.[25]

However, a perusal of some judgments shows that some Court proceedings initiated by Lawyers are filed out of diverse motives that are clearly not for the pure pursuit of justice. Some are filed just for the sake of earning fees; some are filed just to build up cases to beef up the profile of the Lawyer for certain ranks and positions[26]; some are filed to frustrate court proceedings; some are filed to meet the sinister objectives of their clients – to avoid legitimate obligations and to oppress their opponent[27]etc. In *Yandy v Alhaji Umar Na Alhaji Lawan & Anor*[28], the Appellant, a tenant had taken several steps and filed several applications using several lawyers to perpetuate his occupation of the Respondent's premises. The Court of Appeal noted: "The records show that the Appellant found willing lackeys in different counsel who pandered to his bidding… Perhaps, if the different Counsel had not been so willing to do his bidding and at least one of them had given him a fair and honest opinion of his options, the Appellant would not have abused the administration of justice the way the sought to do"

Yet as recent as the 31st day of January, 2025 the Supreme Court in *Homan Engineering Co-Ltd v Ugobecks World Wide Solutions Ltd & Anor*[29] again lamented as follows:

> "Therefore, Counsel to the Appellant knew and was aware from the get go that the appeal was going nowhere, but he filed it nevertheless obviously for the purpose of preventing the Respondents from getting the fruits of the judgment … The law is that although every person as citizen has a right of access to court for redress, that right should be exercised in good faith… It is obvious that the

24 See *Rule 24(4) RPC 2023.*

25 See *Rule 1 RPC 2023; Rule 14(2)(e); Rule 15(3)(c) and Rule 32 (3) (j) & (k) RPC, 2023; APC & Ors v Enugu State Independent Electoral Commission & Ors* (2021) LPELR – 55337 (SC).

26 *Maba v State* (2020) LPELR – 52017 (SC).

27 *See Bulet Intl (Nig) Ltd & Anor v Olaniyi & Anor* (2017) LPELR – 42475 (SC).

28 (2018) LPELR – 45634 (CA).

29 (2025) LPELR – 80301 (SC); *See also Nka v Eze* (2017) LPELR – 43451 (CA).

> appeal commenced by the Appellant in the lower Court was done in bad faith and this further appeal is a protraction and elongation of the bad faith and a continuation of the abuse of Court process. The Court has refrained from commenting on the unprofessional conduct of the Lawyers that assisted the Appellant in the disgraceful abuse of the process of court. Suffice it to say that Lawyers as operators of the administration of justice 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 honor, respect and belief to the justice system. They should not allow themselves to be used by litigants to bring the justice system into disrepute"

In the same manner in *Sopetro Marine Ltd v Nepal Oil & Gas Services Ltd & Anor*[30] the Supreme Court bemoaned as follows: "what Counsel has done with this appeal is to misuse and use the entire administration of justice system most particularly the appellate Court process from the lower court to this court, for the singular reason of shielding his client from answering to its legitimate obligation to the Respondent and this the Counsel has successfully done for eight years. This is a display of an appalling and dismal understanding by Counsel of his responsibility as an advocate in Court … Counsel to the Appellant has not acted in the cause of truth and justice in the present case".

In this regard, it is not unusual in these climes, for instance, for a litigant to come to a Lawyer and state*:* "This is what I want you to claim for me". Even under the pressure of such demands, it still behoves the lawyer to insist on what the Client is entitled to under the law; it is wrong to go along with the Client just to make him feel good when the quest will yield no fruit. In *Jenyo v Akinreti*[31] the Plaintiff had filed a suit under the Lagos State Fatal Accidents Law claiming huge damages of N600,000.00 in respect of the death of a child of five years. The Plaintiff, aggrieved by the award of N25,000.00 made by the trial Court, appealed to the Court of Appeal where the award was reduced to N1,000.00. The Plaintiff fought the case up to the Supreme Court on the issue of applicable quantum of damages. In its judgment, the Supreme Court held: "*… the award of N1000.00 damages given by the Court of Appeal has been more than generous. On the application of the correct principles, the appellant would have received nothing and he is entitled to none*".

It needs to be emphasized, therefore, that a Lawyer remains under obligation to keep strictly within the law notwithstanding the wishes of his client. The Lawyer still bears any resultant blame at the end of the day. No matter how powerful the client may be; no matter how viable the brief is, the Lawyer is obliged to maintain his professional honour and act professionally and tell his client the truth.[32]In *Ifeta v SPDC (Nig) Ltd*[33] the Supreme Court admonished as follows:

> "If legal practitioners can come to terms with this true position of the law on the subject, client's money and the court's time would be saved by their honestly advising their clients accordingly and probably settling the matter out of court by demanding only what is legally due to their client… so you have the client saddled with enormous bills in instituting and presenting such cases… from the High Court right up to this Court only at the end to be told the bitter truth which his counsel could have told him much earlier…"

[30] (2025) LPELR – 80380 (SC).
[31] **(**1990) 4 SC 196 @ 213
[32] *Ajuwon & Ors v Governor of Oyo State & Ors* (2021) LPELR – 55339 (SC).
[33] (2006) LRCN 2664 @ 2698

Speaking on the duty of the Lawyer *vis-à-vis* the desires of his client, Lord Denning, MR, in *Rondel v Worsley*[34] stated as follows: "*It is a mistake to suppose that he is the mouthpiece of his client to say what he wants; or his tool to do what he directs. He is none of these things. He owes allegiance to a higher cause. It is the cause of truth and justice.*"

The Rules of Professional Conduct not only make it clear that the Lawyer is bound to keep strictly within the law notwithstanding any contrary instruction by his client, but goes further to state that a Lawyer "*shall withdraw his services*" if the client insists on any breach of the law.[35]

5.2 Is There Evidence to Sustain the Proposed Proceedings?

Cases before the Court are decided upon the evidence placed before the Court. The law remains that: "*Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.*"[36]

It becomes the duty of the Lawyer desiring to take a case to Court to have sufficient evidence to sustain the claim "to *avoid a ride to the Court that produces failure and disillusionments*".[37] In the case of a Lawyer initiating a Criminal prosecution, there must be prima facie evidence to justify a charge.

In the same manner, it is the duty of a Lawyer engaged in a case to ensure that all the evidence relevant to a case is presented to the Court in a state admissible under the law. It is certainly not a compliment if it is said of a lawyer's case, what the Supreme Court said about the case of *Elias v Omo-Bare*[38]thus:

> If there was ever a land case completely starved of evidence, this is certainly one. This case clearly cries to high heavens in vain to be fed with relevant and admissible evidence. The appellant woefully failed to realize that Judges do not act like the oracle of Ife, which is often engaged in crystal gazing and thereafter would proclaim a new Oba in succession to a deceased Oba. Judges cannot perform miracles in the handling of civil claims and least of all manufacture evidence for the purpose of assisting a plaintiff to win his case.

It is important, however, to stress that a Lawyer is obliged to present the evidence as it is; the Lawyer is prohibited from creating or using false evidence[39]. A lawyer should not indulge in distorting facts; manipulating evidence, knowingly concealing the truth or engaging in client/witness tutoring in a bid to win.[40] It has been held that ensuring a client's best interest does not mean that the Client must win at all costs**.** In *Onagoruwa v State*[41]the Court of Appeal held as follows:

> "…where the investigation does not succeed in assembling the relevant evidence to prosecute the accused to secure a conviction, the best discretion is to abandon the matter and thrown in the towel … On no account should the prosecution go out of its way in search of evidence to prosecute when it is not

34 (1967) 1QB 443 @ 501.
35 See *Rule 15(2) (a)* RPC 2023
36 See *S. 131 (1)* Evidence Act, 2011
37 See *I. M. N. L V. Nwachukwu* (2004) LPELR – 1526 (SC).
38 (1982) LPELR – 1116 (SC)
39 *See Rule 15 (3) (f); Rule 32 (3)(j),* RPC 2023
40 *See Aliyu v State* (2021) LPELR – 55002 (SC*); Abdulsalam v State* (2021) LPELR – 55095 (CA)*; Ugochukwu v Okonkwo* (2017) LPELR – 50018 (CA).
41 (1993) LPELR – 43436 (CA).

> there. When it degenerates to such a situation of "hunting down," the prosecution is no more regarded as the prosecutor but as a persecutor.

Where the available evidence does not support the claim or defence making same hopeless, the Lawyer has a duty to inform the client accordingly.[42] Where the client insists on proceeding with a course of action that offends the law or pressing on with a frivolous claim or defence, the Lawyer is required by the Rules to withdraw his services.

5.3 Consideration of Professional Competence

A Lawyer called to the Bar is entitled to practice law like any other lawyer called to the Bar. But a lawyer's competence is honed by experience–experience gathered from years of active practice; experience acquired from years of deliberate pursuit of knowledge.

The practice of law covering diverse aspects of human relationships and activities is like a journey through a vast forest which no one person may traverse every patch. So, one Lawyer, though learned, may not be proficient in all areas of legal practice. The Lawyer who is a maestro in election petition litigation may be pitiably purblind when faced with a writ in an admiralty dispute.

It is in this regard that *Rule 16 (a)* of the Rules of Professional Conduct unequivocally provides:

> "A Lawyer shall not - handle a legal matter which he knows or ought reasonable to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects".

It is therefore absolutely important that even as professional fees beckon, a Lawyer should not lead a client through the turbulent terrains of litigation with benighted legal eyes.

6. Consequences of Breach of Duty and Failure of Expectations

So much has been said about the need for a lawyer to discharge his duties and meet professional expectations in line with ethical demands. One may then ask: "*What, if the Lawyer defaults?*" The law recognizes that Lawyers, with the best of skills and knowledge, being humans, are not infallible.[43] However, any established case of culpable professional default does not go without consequences. Apart from and exposing himself to bad or low opinion by Judges,[44] and the attendant loss of professional reputation and patronage, such a defaulting lawyer leaves himself open to diverse sanctions.

In the first place, any Lawyer who contravenes or fails to perform any of the duties imposed by the Rules of Professional Conduct becomes guilty of professional misconduct and is liable to punishment as provided for under the Legal Practitioners Act, which includes his name being struck off the Roll of Legal Practitioners.[45] The Lawyer also exposes himself to such other sanctions as the courts may impose under their inherent powers and in application of the Rules of Court. For instance under Order *55 Rule 7(3)* of the National Industrial Court (Civil Procedure) Rule,[46] where the failure or neglect to do an act as required by the Rules is due to admitted fault of the lawyer, any costs awarded in respect of such neglect or failure shall be paid by the lawyer personally and not by the litigant. The courts also have powers to order that costs awarded in proceedings conducted with professional incompetence[47] or in

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42 *See Rule 14(2) (e)* RPC, 2023.

43 *See Nnaemeka & Anor v INEC & ors* (2024) LPELR – 63034 (SC).

44 *Abubakar & Ors v Yardadua & ors* (2008) LPELR – 51 (SC).

45 *Rule 74 (1) RPC 2023 and S. 12* Legal Practitioner Act; *Okoh ors v Nwobodo & Anor* (2017) LPELR – 42726 (CA).

46 2017

47 *Inye v. Registered Trustees Foursquare Gospel Church* (2020) LPELR – 51143 (CA).

proceedings adjudged to constitute an abuse of court process shall be paid personally by the Lawyer. For instance, in *Abubakar & Anor v Usman & Ors*[48] the Supreme Court awarded costs personally against the Counsel. Indeed, under, Order *12 Rules 3 & 4(2) of* the Supreme Court Rules,[49] the Court is empowered to award costs personally against Counsel where abuse of court process is involved and the quantum of costs where the Court has found that there has been an abuse of its process is fixed at a minimum of Two Million Naira. Furthermore, where a Lawyer conducts the case of his client negligently, he exposes himself to liability to be sued for damages for professional negligence[50]

7. Conclusion

It is clear from the above discourse that it remains quite a challenge for a Lawyer to keep the balance between the quest for fees, the need to satisfy the interest of clients and the obligation to maintain ethical standards. However, it is safe to posit that a conscious resort to applicable laws and rules will assist the lawyer in this demanding task. For, it is in the company of the law that the lawyer, can properly decide, for instance:

i. Whether the complaint of the client is justiciable;
ii. Whether the elements that constitute a cause of action have fully crystallized;
iii. Whether conditions precedent to the exercise of a right of action have been met;
iv. Whether the claim has become statute–barred;
v. What the proper reliefs available to the client are;
vi. who the proper parties to the suit should be;
vii. The proper Court where the grievance will be ventilated;
viii. The proper mode of approaching the Court;
ix. The nature of the evidence needed to prove/defend the suit;
x. the current state of judicial authorities on the subject matter of the suit; etc.

It is therefore, recommended that, when a client takes his time to consult a Lawyer to lead him to court, the Lawyer must always take his time too, to consult the law and rules, particularly the Rules of Professional Conduct, before taking a single step on that journey to Court. The fees may be right; the pressure may be high, but a Lawyer worth his wig should walk away when the cause is base. For the reason is not far-fetched: everyman, including the Lawyer, needs justice; if not today, the day after and every suitor will meet justice in the state in which his society has kept it

48 (2017) LPELR – 41915 (SC).
49 2024
50 *S. 9* Legal Practitioners Act; *Chidoka & Anor v First City Finance Co. Ltd* (2012) LPELR – 9343 (SC).