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AN APPRAISAL OF THE APPROPRIATE AUTHORITY RESPONSIBLE FOR THE ENFORCEMENT OF THE RULES OF PROFESSIONAL CONDUCT FOR LEGAL PRACTITIONERS IN NIGERIA

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Abstract: *The legal profession is a noble which etiquettes are built on some rules guiding the conduct of its members. It settled that the rules are created by Statutes and some authorities are vested with powers to enforce any breach of those rules. However, what remains in dispute is the question of the appropriate authorities saddled with the responsibility of enforcing same and the modus operandi of doing so. While some legal practitioners, law teachers, and law students are of the view that only the Legal Practitioners Disciplinary Committee (LPDC) can enforce any breach, others hold a contrary view. This paper examines the appropriate authorities with powers to enforce the rules and the modus operandi in doing so, some decisions and enactment for enforcing the rules, some decisions against the enforcement of the rules, the right of a client to challenge the appearance of a legal practitioner and the duty imposed on legal practitioners to report any act of professional misconduct, the responsibility of our courts in enforcing the rules and the need for a single viewpoint by the apex court on enforcing the rules. The paper finds that the LPA and the RPC do not confer on the regular courts with the powers to enforce RPC. It also finds that there were inconsistent decisions by our regular courts on enforcement of RPC. It is recommended that the LPA and the RPC be amended so as to confer on the regular courts with the powers to enforce the breach of professional conduct. It is recommended that there is the need for consistency of decisions of our regular courts on enforcement of RPC.*

Keywords: *Legal Profession; Legal Practitioner; Professional Conduct.*

Introduction

The Rules of Professional Conduct for Legal Practitioners 2007[1] (hereinafter referred to as the RPC) has the force of a statute being a subsidiary legislation that is made pursuant to Section 1 of the Legal Practitioners Act[2] (hereinafter referred to as the LPA). The Supreme Court in the case of *Yaki vs. Bagudu*[3] held:

> The legal status of the Rules of Professional Conduct in the legal profession made by the General Council of the Bar, pursuant to Section 1 of the Legal Practitioners Act, Laws of Federation of Nigeria, 2004, is that of a subsidiary legislation since it is made by provision in a statutory enactment. By virtue of section 18 (1) of the Interpretation Act, a subsidiary legislation has the force of law…[4]

A cursory look at the authorities cited will clearly show that the RPC is binding and enforceable against any legal practitioner in Nigeria. However, there are a lot of disagreements from legal practitioners, law teachers and law students as to who is (are) the appropriate authorities responsible for enforcing breach of professional conducts. Some are of the view that only the Legal Practitioners Disciplinary Committee (LPDC) can enforce any breach of the RPC[5], while others hold a contrary opinion. Our Courts including the apex Court were unable to set the record forthright as different decisions abound, the Supreme Court 2015 decision in *Yaki vs. Bagudu*[6] and the most recent of 21st day of November, 2016 in *Zakirai vs. Muhammad & 3 Ors*[7] are classical examples. Hence, the following posers call for answers. Who are the appropriate authorities to enforce any breach of the rules? Can the breach of the rules be raised in any Court? Who is responsible for reporting any breach of the rules? Can the Supreme Court enforce any breach of the rules where such breach occurs before it? This paper examines the appropriate authorities with powers to enforce the Rules of Professional Conduct (RPC) 2007 and the modus operandi in doing so. It also analyses some courts' decisions and enactment for enforcing the RPC as well as some decisions against the enforcement of the rules. The paper also discusses the rights of a client to challenge the appearance of a legal practitioner, the duty imposed on legal practitioners to report any act of professional misconduct and the responsibility of our courts in enforcing the rules. Most importantly, the paper highlights the need for a single viewpoint by the apex court on enforcing RPC.

Analysis on the Appropriate Authorities with Powers to Enforce the RPC

Despite its high code of conduct, the legal profession in Nigeria has over the years been plagued by certain members who have displayed untoward conduct that have brought (sic)

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[1] The acronyms **RPC** in this paper means Rules of Professional Conduct for Legal Practitioners 2007.
[2] Cap L6, Laws of Federation of Nigeria, 2004.
[3] *(2015) All FWLR (pt. 810) 1026. See also NBA vs. Koku (2006) 11 NWLR (Pt. 991) 431 and NBA vs. Akintokun (2006) 13 NWLR (Pt. 996) 167.*
[4] Supra at p. 1056, paras D-E.
[5] Y. Ali, (July, 2016). *"Decline in Ethics and the LPDC"* Being a paper Presented at the Ethics Section of The Nigerian Bar Association, Ilorin Branch, held In the Government House Banquet Hall, Ilorin, pp 2- 12. His paper discussed LPDC, LPA and RPC thereby highlighting instances when LPDC assumes jurisdiction on breach of RPC but never made reference to when regular court can assume jurisdiction on same
[6] *Yaki v. Bagudu (Supra)*
[7] (2017) LER SC/433/2015

disrepute to the profession.[8] The RPC has declared any breach of its rules as a professional misconduct and mandate any lawyer to report any breach of the rules thereof. Section 55 (1) and (2) of the RPC provides:

> (1) If a lawyer acts in contravention of any of the rules in these Rules or fails to perform any of the duties imposed by the Rules, he shall be guilty of a professional misconduct and liable to punishment as provided in Legal Practitioners Act, 1975.
> (2) It is the duty of every lawyer to report any breach of any of these rules that comes to his knowledge to the appropriate authorities for necessary disciplinary action.

The question here is who are these appropriate authorities that a lawyer is compelled to report to for necessary disciplinary action? In answering this question recourse has to be made to Legal Practitioners Act 1975[9] and other legislations that subject the right of audience to the provisions of the Legal Practitioners Act. There are three main organs charged with the responsibility of enforcing any breach of professional conduct under the Legal Practitioners Act[10]. They have original jurisdiction to determine breach of professional conduct[11]. These three organs are hastily assumed by lawyers and law students to be the only organs that can enforce the breach of professional conduct, but a further study in this paper will reveal how other organs take charge. They are:

Legal Practitioners Disciplinary Committee

Section 10 (1) of the Legal Practitioners Act provides:

> There shall be a committee to be known as the Legal Practitioners Disciplinary Committee (hereafter in this Act referred to as "the disciplinary committee") which shall be charged with the duty of considering and determining any case where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason be the subject of proceedings under this Act.[12]

It is not clear from the above provision whether the misbehaviour is in respect of the professional offences[13] as contained in the LPA alone or includes the professional misconducts contained in the RPC. But a careful perusal of the provisions of the Disciplinary Committee Rules[14] and the punishments contained therein will rightly confirmed the facts that the LPDC is only saddled with the responsibility of disciplining legal practitioners in respect of the professional offences as provided in the LPA. Any appeal from the decisions of the LPDC goes to the Appeal Committee of Body of Benchers.[15] The procedure of the LPDC

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[8]Adegoke, O. A, et al, (2014), "*Law in Practice: Professional Responsibilities and Lawyering Skills in Nigeria"*, Jos University Press Limited, p. 289.
[9] Ibid.
[10] Ibid
[11] Ibid
[12] See *NBA vs. Alabi (2006) 14 NWLR (Pt. 1000) p. 841, NBA vs. Ndukwe (2006) 12 NWLR (Pt. 994) 427, Iteogu vs. LPDC (2009) 17 NWLR (Pt. 1171) 614, NBA vs. Aladejobi (2008) 14 NWLR (Pt. 1108) p. 611 and NBA vs. Ohioma (2010) 14 NWLR (Pt. 1213) L.P.D.C*.
[13] Section 11 of the LPA
[14] Rules 16, 17 and 18 of the Legal Practitioners Disciplinary Committee Rules 2006
[15] Section 12 of the LPA and *NBA vs. Aladejobi (Supra)*

is regulated by the Legal Practitioners Disciplinary Committee Rules 2006 and the procedure is summarized as follows:

a. A written complaint of any aggrieved person can be forwarded to either: the Chief Justice of Nigeria, the Attorney-General of the Federation, President of the Court of Appeal, the Chief Judges of the States, Federal Capital Territory and the Federal High Court, the Attorney-General of the States, Chairman of the Nigerian Barr Association and the Chairman of the Body of Benchers.
b. A copy of the complaint is sent to the Secretary of the legal Practitioners Disciplinary Committee.
c. The secretary will send it to the Lawyer involved to respond within a period of 21 days.
d. The complaint is also sent to the NBA for necessary investigation.[16]
e. The NBA will investigate the complaint by way of inquiry through a Committee appointed for that purpose.
f. The Committee will write to the Legal Practitioner involved inviting him to bring in his written representation. If a prima facie case is made, the NBA will then send the Report to the Secretary of the LPDC.
g. The NBA will appoint lawyers from amongst it to prosecute the lawyer before the LPDC.
h. The matter will be heard by the Committee.
i. Once a Direction has been reached, Notice of it will be served on the person to whom it relates the Body of Benchers and the Registrar of the Supreme Court.[17]
j. The Notice of the Direction is to be gazetted in the Federal Gazette.
k. An aggrieved party can appeal against the direction to Appeal Committee of Body of Benchers and subsequently to the Supreme Court.[18]

Supreme Court of Nigeria

Section 13 (1) of the Legal Practitioners Act provide:

> Where it appears to the Supreme Court that a person whose name is on the roll 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 that person and such other persons as the court considers appropriate, give such a direction as is mentioned in subsection (1) of section 11, 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.

The Supreme Court of Nigeria exercises original disciplinary jurisdiction over legal practitioners for misconducts they committed in the course of practice of the profession. However, the powers of the Supreme Court are restricted to misconducts committed by a

[16] R. 3(2) of the LPDC Rules.
[17] S. 11 (6) of the LPA.
[18] *Aladejobi vs. NBA (Supra)*

legal practitioner in the course of handling a matter before any court of record in Nigeria.[19] By the provisions of Section 12 of the LPA and the decision of the Supreme Court in the case of *NBA vs. Aladejobi*[20] the exercise of the original jurisdiction of the Supreme Court will not bar the Court from sitting on appeal from the decision of the Appeal Committee of Body of Benchers.

Chief Justice of Nigeria

Section 13 (2) of the Legal Practitioners Act provides:

> 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 this Act before the disciplinary committee 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, give such direction as is authorised by paragraph (ii) of subsection (1) of section 11; and in deciding whether to give such a direction in consequence of the conviction of a legal practitioner, the Chief Justice shall be entitled to disregard the provisions of subsection (5) of that section.

Okoye said on the power of suspending legal practitioners by the Chief Justice of Nigeria that "the reason for this interim action by the Chief Justice may be to prevent more damage being done to the profession by the legal practitioner".[21]

There are numerous legislations that subject the right of audience in Courts to the provision of the Legal Practitioners Act or other enactments like the Supreme Court Act[22], Federal High Court Act[23] and some rules of Court. Section 57 of the Federal High Court Act provides thus: "All persons admitted as legal practitioners to practise in Nigeria shall subject to the provisions of the Constitution and the Legal Practitioners Act have the right to practise in the Court."[24] Equally Section 15 (1) and (2) of the Supreme Court Act provides:

> (1) Subject to the provisions of any other enactment, in all proceedings before the Supreme Court the parties may appear in person or be represented by a legal practitioner entitled by or under any enactment or rules of court to practise in that Court.
> (2) A person entitled to practise in the Supreme Court immediately before the commencement of this Act shall be entitled to practise as a legal practitioner in the Supreme Court

[19]Okoye A. O, (2011) *Law in Practice in Nigeria: Professional Responsibilities and Lawyering Skills*, Snaap Press Nigeria Ltd, p. 163.
[20] Supra
[21] Okoye A. O, (2011) *Law in Practice in Nigeria: Professional Responsibilities and Lawyering Skills*, Snaap Press Nigeria Ltd, p. 165.
[22] Cap S 5, Laws of Federation of Nigeria, 2004.
[23] Ibid.
[24] See *FRN vs. Osahon (2006) 4 MJSC p.37*

> unless he is suspended or prohibited from so practising by or under the provisions of any enactment or rules of court.[25]

It is crystal clear that the right of practice/audience in the above provisions is subject to the Legal Practitioners Act which by implication also subject to RPC being a subsidiary legislation to the Act.[26] The Court gave an extensive explanation on the phrase "subject to" in the case of *Oluruntoba vs. Abdul-Raheem*[27] as follows:

> Whenever the phrase "subject to" is used in a statute, the intention, purpose and legal effect is to make the provision of the section inferior, dependant on, or limited and restricted in application to the section to which they are made subject to. In other words, the provision of the latter section shall govern, control and prevail over the provision of the section made subject to it. It renders the provision of the subject section subservient, liable, subordinate and inferior to the provisions of the other enactment.

Also in *I.N.E.C vs. D.P.P*[28] the term *subject to* was given another judicial blessing where it was defined thus: "Subject to" when used in a statute it means liable, subordinate, subservient, or inferior to, governed or affected by, provided that or answerable for. The expression is also used to introduce a condition, a *proviso* or limitation and thereby subordinate some provisions to other provisions…"[29]

It is the view of the writers that the Courts including the Supreme Court which disciplinary powers seems to be restricted to enforcing misconduct which are infamous conduct in professional respect can also enforce any breach of the RPC which connotation serve as a disability to the right of audience in Court. Any disability created by RPC is as good as disability created by the Legal Practitioners Act.[30] So even if where the rules of court have given right of audience such right is subject to the Legal Practitioners Act which by implication extends to the RPC. In *Braithwaite vs. Skye Bank Plc*[31] the Supreme Court, Per Fabiyi, JSC held:

> The rules of court must be subject to the applicable Law Legal Practitioners Act: section 2(1) and 24, which mandate that processes filed in court must be signed by a Legal Practitioner enrolled in this court. Rules of court must bow before the Legal Practitioners Act duly passed by the National Assembly…

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[25] See also Section 13 of the Court of Appeal Act, Cap C37, Laws of Federation of Nigeria, 2004 and Section 92 of the Magistrates Courts Law of Kano State 1987 (as amended).
[26] The dictum of Per Onnoghen JSC in *Yaki vs. Bagudu (supra) at pp. 1057-1058.*
[27] (2009) All FWLR (Pt. 497) 1 @ 8-9.
[28] (2014) All FWLR (Pt. 738) p. 920.
[29] Also see University of *Uyo vs. Akpan (2014) All FWLR (Pt. 736) p. 513* where the Court held thus: "Where the provision of a section is made subject to another one in application, the provision of the latter section governs, controls and prevails over the provision made subject to it.
[30] See Section 9, 10, 11, 12 (3), 17 (4) and (6) of the RPC. A careful perusal of these sections will clearly indicates to our readers that the intendment of the drafters is that of creating disability on a Legal Practitioner where there is breach of the Rules.
[31] (2013) 5 NWLR (Pt. 1346) 1 @ 19.

Judicial Decisions and other Enactments on Enforcing the RPC

There have been various decisions and enactments on issues of enforcement of breach of professional conduct. Some of the decisions and enactments are discussed as follows:

Stamp and Seal

The case of *Yaki vs. Bagudu*.[32]

Brief Facts of the Case:

The case is an election petition from the Kebbi State Governorship Election Petition Tribunal. After pleadings were closed, the appellants applied for the issuance of pre-hearing notice out of time. The first respondent consequently filed a motion on notice praying the tribunal to strike out the petition for non-compliance with paragraph 18(1) of the 1st Schedule to the Electoral Act, 2010 (as amended). Consequently, the tribunal struck out the petition as having been abandoned.

Aggrieved, the appellants appealed to the Court of Appeal. The 1st respondent filed a preliminary objection contending that the appeal was incompetent as the appellant filed two notices of appeal, and did not indicate which one he relied on. The Court of Appeal dismissed both the appeal and cross-appeal. In its judgment, the Court of Appeal held the failure of a legal document to have affixed to it, a stamp and seal as mandated by Rule 10 of the Rules of professional Conduct, 2007, does not render it incompetent. The petitioners/appellants appealed to the Supreme Court, while the 1st and 2nd respondents filed cross-appeals.[33] The Supreme Court raised the following issue which is relevant to this paper, to wit:

> Whether the Court of Appeal was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10 of the Rules of Professional Conduct, did not carry with it the consequence of rendering such legal document incompetent.

The apex Court held that failure to affix a stamp and seal in compliance with one of the rules in the Rules of Professional Conduct (i.e. Rule 10) rendered such document incompetent. Per Ngwuta, JSC while delivering the lead judgment put it:

> The documents in question here purportedly signed and filed by a lawyer in his capacity as legal practitioner did not have on it 'a seal and stamp approved by the Nigerian Bar Association.' The process so signed and filed is a legal process within the intendment of Rule 10 (2) of the Rules. What is the consequence of a legal document signed and filed in contravention of Rule 10 (1) in the Rules? The answer is as provided in Rule 10(3) to the effect that "…the legal document so signed or filed shall be deemed not to have been properly signed or filed." It is my humble view that the legal document so signed and/or filed is not null and void or incompetent like the case of a court process signed in the name of a corporation or association (even of lawyers). See Okafor v. Nweke (2007) All FWLR (Pt. 368) 1016, (2007) 10 NWLR (pt.1043) 521 SC cited by the learned

[32] *Supra*

[33] *Yaki vs. Bagudu (Supra)* @ pp. 1029-1030.

> Silk for 2nd respondent/cross-appellant. The document, in terms of the Rule, is deemed not to have been properly signed or filed but not incompetent as the 2nd Respondent assumed… It is akin to a legal document or process filed at the expiration of the time allowed by the Rules or extended by the court...In the case at hand, the process filed in breach of Rule 10(1) can be saved and its signing and filing regularized by affixing the approved seal and stamp on it."[34]

When the apex Court was called to deviate from its stance in giving effect to the provisions of RPC. Onnoghen, JSC (as he then was) held:

> My attention has been drawn to the decision of this Court in a ruling rendered on 12 October, 2015 in appeal No. SC/665/2015 in which the court held, *inter alia*, as follows:
>
> > 'The issue of BAR stamp raised by Dr. Ayeni is in a circular which has been issued by the Hon. Chief Justice of Nigeria to all Heads of Courts for the betterment of the Legal Practice in Nigeria. The circular has not metamorphosed into a Practice Direction. It cannot be compulsory requirement for filing process in a court of law as of now. Section 10 of the Legal Practitioners Rules of Professional Conduct (*Supra*) relied upon by Dr. Ayeni is directory and not mandatory in nature. Failure to affix the Nigerian Bar Association stamp cannot, in my view, invalidate process filed in a court of law. …'[35]

It is clear that the first part of the above ruling deals with the effects of the circular issued by the Honourable Chief Justice of Nigeria, which the court held does not have the status of a Practice Direction. The court is right in that the said circular is purely an administrative exercise by the Honourable Chief Justice of Nigeria directed at effective administration of the relevant Rules of Professional Conduct, 2007 by the various judiciaries in the country. It was not meant to bring into effect the provisions of the said Rules of Professional Conduct, 2007 neither is the enforcement of the said Rules dependent on the Practice Direction. The Rules having been made by the appropriate authority with an assigned date of its coming into effect, does not need any further action by anyone to bring it into force, as there is no provision therein to suggest such requirement.[36]

It is therefore the humble submission of the writers that this attempt to distinguish the two cases by His Lordship was just the use of semantics as the Chief Justice of Nigeria directives is not from the *blues* rather from the provision of Rule 10 of the RPC. The dictum of per Peter-Odili, JSC is apt on this where she held:

> …any non-compliance with the Rule 10(2) of Rules of Professional Conduct, with the circular of the Chief Justice of Nigeria as a reiteration is visited with the sanction that the process is without competence. It cannot be excused by talking of the inalienable right of a litigant to appeal as that right has to

[34] Supra @ pp. 1053-1054.
[35] *Yaki vs. Bagudu (Supra).*
[36] Supra @ pp. 1056-1057.

> be exercised within the necessary prescribed rules of legal practice."[37]

The above decisions (ratio and dictums) of the apex Court have clearly indicated how the Court of Appeal decision was gorgeously protected to enforce the provisions of the RPC.

Payment of Practicing Fee

The RPC has mandated any legal practitioner to pay his practicing fee every year and failure of which served as disability to sign any legal document and right of audience in court[38]. Rule 9 of RPC provides:

> (1) A lawyer shall pay his Annual Practicing fees not later than 31st march in every year. In the case of lawyers who are enrolled during the year, the fees shall be paid within one month of the enrolment.
>
> (2) A lawyer shall not claim in any court or before a judicial tribunal that he has paid his Annual Practicing fee when he is, in fact, in default.
>
> (3) A lawyer shall not sign documents, pleadings, affidavits, depositions, applications, instruments, agreements, letters, deeds, letters, memoranda, reports, legal opinions or similar documents, or process or file such documents as a legal practitioner, legal officer or adviser of any Governmental department or ministry or any corporation when he is in default of payment of his Annual Practicing fees.

Any Court has the requisite powers to enforce the breach of this rule since the right of audience and signing of legal documents are subject to the payment of practice fee. Section 8 (1)[39] provides:

> Subject to the provisions of the next following subsection and of any enactment in force in any part of Nigeria prohibiting or restricting the right of any person to be represented by a legal practitioner in proceedings before the Supreme Court or the Sharia Court of Appeal or any area or customary court, a legal practitioner shall have the right of audience in all courts of law sitting in Nigeria.

It is worth noting that there are other provisions of the RPC that serve as a legal disability to the right of practice/audience in court (i.e. Retired Judicial Officers, Lawyers in Salaried Employment, Mandatory Continuing Professional Development etc.)[40] The breach of these provisions can be enforced by our Courts in order to prevent lawyers from treating the Rules with disdain.

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[37] Supra p. 1078. Paras D-E.

[38] Section 8 (2) of the LPA.

[39] Supra. The inferior and superior Courts of record in Nigeria have always enforced breach of this provision whenever the issues are raised in the courts. Because of the fear of any issue related to practice fee being raised you usually see lawyers carrying their practice licence or evidence of payment of practising fee in their bags/brief case.

[40] See generally Rules 6, 8 and 11 of the RPC.

In *Zakirai v. Muhammad & 3 Ors.*[41] The case is a pre-election matter from Federal High Court, Kano Judicial Division presided over by Hon. Justice Fatun O. Riman. The first Respondent who was the Plaintiff in the matter got judgment from the Federal High Court which was affirmed by the Court of Appeal Kaduna Division. The Appellant was dissatisfied with both judgements appealed to the Supreme Court.

In the Supreme Court, the Appellant filed his Brief of Argument and the first Respondent equally filed his Respondent Brief of Argument. Hearing Notice was issued on 27th of August, 2016 that the matter is fixed for 21st November, 2016 for hearing of the motion filed by the Appellant for accelerated hearing.

On the 16th day of November, 2016 the 1st Respondent was served with the Hearing Notice dated the 27th day of August, 2016, the 2nd and 4th Respondents' Brief of Argument filed from the law firm of H.O. Ben Umar & Co but signed by one Bashir Ahmad Esq a counsel who represent the Appellant at the Federal High Court. Upon the receipt of the above documents on the 16th day of November, 2016, the 1st Respondent filed a motion on the 18th day of November, 2016 challenging the appearance of the 2nd and 4th Respondents' Counsel on the grounds that the law firm of H.O Ben Umar & Co or any other counsel associated with them from appearing on behalf of any of the Respondents in this matter because the 2nd and 4th Respondents' counsel were the counsel to the Appellant before the Trial Court, the 2nd and 4th Respondents' counsel did not lodge either appeal or cross appeal against the Judgment of the Lower Court, by the law and tradition of practice before the Court, the professional role and obligation placed on the Respondent's counsel is to defend and support the judgment of the Court of Appeal before the Court having not appealed or cross appealed against the judgment of the said Court, the 2nd and 4th Respondents' counsel have violated the trite rules of professional practice, the 2nd and 4th Respondents' counsel are in a position of conflict of interest to the extent that if they act professionally by defending the judgment of the Lower Court on behalf of the 2nd and 4th Respondents they will equally be acting unprofessionally by going against their former client in respect of the same matter and finally that by the provision of Rule 17(6) of the Rules of Professional, 2007 all counsel in the law firm of H.O Ben Umar & Co or any other counsel affiliated with them shall not appear in the matter in this manner they did.

On the 21st day of November, 2016 the five man panel of the Supreme Court namely[42] in their wisdom asked the 1st Respondent Counsel to withdraw the application as the Court has no power to determine breach of the RPC. They further held that only a client can challenge the appearance of a counsel. The Court is also of the opinion that a breach of the RPC can only be reported to the LPDC.[43]

The Supreme Court here refused to enforce the provision of the rules which could have protected a lot of litigants from the overreaching practices that are explored by lawyers in our Courts but surprisingly queried some lawyers for not being fully robed and barred some

[41] SC/433/2015.

[42] Per Bode Rhodes-Vivour JSC (Presided), Per Musa Dattijo Muhammad JSC, Per Clara Bata Ogunbiyi JSC, Per Centus Chima Nweze JSC and Per Amiru Sanusi JSC.

[43] It is our humble submission that unethical legal practitioners can never be disciplined if such procedures provided under the LPDC rules is followed jealously to determine whether his conduct is a professional misconduct or not. For, it is trite that the court cannot sanction completed act.

lawyers from wearing the Barrister's robe when conducting their own cases as party to a legal proceeding before it.[44] The Court misconceived the application as that of challenging counsel appearance instead of enforcing the RPC as done in *Sarkin Yaki's*[45] case.

The Right of a Client to Challenge the Appearance of a Legal Practitioner and the Duty Imposed on Legal Practitioners to Report any act of Professional Misconduct

A litigant is free to engage counsel of his choice at any time and may equally terminate such engagement at any time.[46] There is a rebuttable presumption that counsel representation becomes an issue only when there is clear evidence from the client concerned that the counsel was not instructed to appear for him or was debriefed.[47] Therefore, once a counsel announces that he is instructed to take a brief, the court cannot question this authority except there is a dissent by the client.[48]

A legal practitioner is duty bound to report any breach of the RPC as provided in Rule 55 (2) of the RPC as follows: "It is the duty of every lawyer to report any breach of any of these rules that comes to his knowledge to the appropriate authorities for necessary disciplinary action." The question here is, is the legal practitioner reporting to the benefit of the client or the profession or both? What will be the role of a legal practitioner in a matter where a client who is supposed to raise objection to the appearance of a counsel who represented him at the lower court but refused to, because he is benefiting from such appearance by overreaching the client adversary? It is the view that the role of a lawyer in reporting a breach of the RPC is for the benefit of the profession and the client. It is also the duty of the lawyer to challenge any breach of the profession rules in court in order not to ruin the ethics of his profession.

Conclusion

Judging from the above, it is apparent that the Courts including the Supreme Court have the requisite powers to enforce any breach of professional conducts in the legal profession. The bar and the bench must guard our precious rules jealously to avoid a situation where individuals who breach the precious rules will lord themselves over the system. It is quite unfortunate, that the legal profession in Nigeria has in recent years, witnessed escalating reports of professional misconduct, corruption and sharp practices with attendant negative consequences on the standard of practice.[49]

In view of the foregoing it is clear that the LPA and the RPC do not confer on the regular Courts with the powers to enforce breach of professional conduct. The main legislations which set out the code of ethics to regulate the professional conduct of lawyers in Nigeria are the Legal Practitioners Act[50] and the Rules of Professional Conduct, 2007. These rules were made by the General Council of the Bar to further the aims and objectives of the Nigerian Bar Association under the constitution of the Association and to maintain the highest standards of professional conduct, etiquette and discipline in terms of that constitution. However neither

[44] Rule 45 of the RPC. In Fawenhinmi v. N.B.A. (No. 1) (1989) 2 NWLR (pt. 105) 494, Gani was barred from appearing in robe and sitting at the Bar while conducting his own case.
[45] Supra.
[46] Per Kutigi JSC in *Prince Ashimiu Isiaka & Ors vs. Saidi Ogundimu & Ors (2006) LPELR-1552 (SC).*
[47] *Hajiya Aisha Buhari vs. Alhaji Mohammad Modi Yabo (2006) LPELR-9317 (CA), p. 18.*
[48] *Mohammad Haruna vs. The State (2016) LPELR-40262 (CA), p. 13.*
[49] *Ikeme vs. Anekwe (2003) 10 NWLR (pt. 829) 548, Re: Edewor (1968) 1 All N.L.R. 226 at 232* and *Kwaptoe vs. Tsenyil (1990) 4 NWLR (pt. 600) 571.*
[50] 1975 (as amended) CAP L10, Laws of the Federation of Nigeria 2004.

the RPC nor the LPA that enacted the RPC confers on the regular court the powers to enforce breach of professional conduct. This is what gives some courts the discretions to refused to entertain cases of breach of professional conduct.

Also, inconsistent decisions by our regular courts on enforcement of RPC. It is apparent from the decisions of *Yaki vs. Bagudu*[51] and *Zakirai v. Muhammad & 3 Ors*[52] that the courts were uncertain as to the enforcement of the cases that have to do with breach of professional conduct. They enforced some sections of the RPC[53] and left the enforcement of other sections with the Legal Practitioners Disciplinary Committee that rarely get reports for the breach of the RPC. This negatively affects the profession in that lawyers are becoming unethical on daily basis.

In view of the above, the paper recommends that the LPA and the RPC be amended so as to confer the regular courts with the powers to enforce breach of professional conduct. Both the LPA and the RPC or either of the two should be amended to specifically confer on the regular courts the powers to entertain cases of breach of professional conduct. Even though such lacuna of the LPA or RPC does not automatically deprive the courts with the powers to adjudicate on the above issues. This is due to the fact that section 6 (6) of the Constitution of the Federal Republic of Nigeria has conferred on the courts with the powers to adjudicate on any issues. Hence, notwithstanding the silence of LPA on jurisdiction of regular courts to enforce breach of RPC, the courts have inherent constitutional powers to do so

It further recommended that there is need for consistency of decisions of our regular courts on enforcement of RPC. There is need for a standpoint by the apex Court in order to achieve consistency in its decisions on the enforcement of RPC. The Latin maxim *Lex uno ore omnes alloquitur* meaning "*the law speaks to all with one mouth*" should have being the slogan of our courts as opposed to the uncertain nature of our courts' decisions on the enforcement of the RPC. This is encapsulated in the Latin maxim *Misera est servitus ubi jus est vagum aut incertum* meaning "*it is a miserable slavery where the law is vague or uncertain."* The apex Court once given the opportunity should revisit its decision in the case of *Zakirai vs. Muhammad & 3 Ors*[54] to avoid uncertainty.

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[51] Supra.
[52] Supra.
[53] Like the provisions of Rule 10 of the RPC applied in *Yaki's* case.
[54] Supra.

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