LEGAL REGULATION OF BUSINESS AND THE RULE AGAINST UN-AUTHORISED PRACTICE OF LAW: A CONCEPTUAL ANALYSIS

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Abstract

Practice of law, though a profession, is also a business, and thus subject to a dual regulatory framework. Consequently, a legal right to indulge in business is circumscribed by the rule of un-authorised practice of law which acts to restrict legal business to legal professionals. The concept of un-authorised practice of law requires explanation and its jurisprudence requires clarification. In doing this, the paper, examined general principles of un-authorised practice of law, and revealed that the breach is committed when a person not admitted to the bar undertakes legal business or performs acts which are reserved by law for duly licensed attorneys. The paper established that the effect of un-authorised practice of law on related proceedings is to imbue them with irremediable vice resulting in nullity of the acts and proceedings. The paper specified five areas of particular interests and delimited how far laymen may be permitted to function in those areas without breaching the restriction on unlicensed practice of law. The paper then set out procedure for suppression of un-authorised practice of law and disclosed that its punishment as contempt is different from its punishment under general criminal prosecution. The paper concluded that notwithstanding absence of a legislative definition of practice of law, there is clear legislative purpose consonant with public policy to restrict practice of law to persons duly licensed to practice law.

Keywords: Barrister and Solicitor; Law practice; Un-authorised practice of law; Licence to practice law; Admission to the bar; Public policy

1. Introduction

In 2020, the Section on Legal Practise of Nigerian Bar Association (SLP-NBA) wrote cease and desist letters to a commercial bank, a consultancy company and a real estate company which had advertised their readiness to render legal services to the public. In 2021, SLP-NBA also wrote a similar letter to a Lagos state local government council which had advertised legal services to the public. The presence of typists in or near our court premises offering services to the public for preparation of affidavits, and other legal documents is ubiquitous. Regularly, unlicensed persons practising as advocates are apprehended in our courts. Often, property vendors simply copy and alter specimen legal forms, and present to the opposite party for signature. Introduction of lawyers' stamps for transaction authentication reduced but did not eliminate this deception. In February, 2022, the Federal High Court barred the big four accounting and consulting firms in Nigeria; KPMG, PWC, Ernst & Young and Deloitte from providing legal services in Nigeria. This was the result of four separate lawsuits filed by a Lawyer against the accounting firms. In the terms of settlement entered as the judgment in the cases, the reliefs granted against the defendants included a declaration that the accounting firms are not firms of 'Legal Practitioners' as defined under s. 24 of Legal Practitioners Act (LPA), and cannot, practice as Legal Practitioners in any form or guise

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in Nigeria or offer services reserved by law for Legal Practitioners. The specified services include - preparation, signing and/or franking of originating court processes, pleadings and/or court related applications or filing any such documents as Legal Practitioners in courts for clients in connection with court proceedings; representation of clients in courts as their Legal Practitioners; preparation, signing and/or franking of any agreement, contract, deed, letter or any other document that confers, transfers, limits, charges or extinguishes any interest in any immovable property; and preparation, signing and/or franking of any document relating to, or with a view to, the grant of probate or letters of administration.[1] Un-authorised practice of law is a topical issue. It is the purpose of this paper to analyse and render a comprehensive and cohesive study of the topic. In the section next, the paper will consider generally, the issue of un-authorised practice of law, and thereafter, will look at who may and who may not practice law. Then, it will consider the general effect of un-authorised practice of law on proceedings. Thereafter, it will consider un-authorised practice of law on particular acts and services. Tying the above together, the paper will consider suppression of authorised practice of law, and will then conclude.

2. Un-authorised Practice of Law in General

Practice of law is a matter of vital interest to the general public since lawyers are engaged in preservation and protection of fundamental liberties of the people, and are involved in carrying out fundamental aims and purposes of government.[2] The underlying purpose of regulating practice of law is not merely to protect the public from paying fees to unqualified legal advisers, as it is to protect the public against the often drastic and far-reaching consequences of following inexpert legal advice.[3] *'Practice of law'* is the rendition of service requiring knowledge and application of legal principles and technique to serve the interests of another with his consent. It is not limited to appearing in court or advising and assisting in the conduct of litigation, but embraces preparation of pleadings and other papers incident to action and special proceedings, conveyancing, preparation of legal instruments of all kinds and the giving of legal advice to clients and all action taken for them in all matters connected with law. A counsel engages in the practice of law by maintaining an office where he is held out to be a counsel, using a letterhead describing himself as counsel, counselling clients in legal matters, negotiating with opposing counsel about pending litigation, and fixing and collecting fees for services rendered by his associate.[4]

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[1] <https://dnllegalandstyle.com/2022/court-bars-kpmg-pwc-deloitte-ernst-young-from-providing-legal-services-in-nigeria/> Accessed on May 6, 2022

[2] *Menz v Coyle*, 7 CJS 858; art. 56 of Rules of Professional Conduct for Legal Practitioners, 2007 (hereinafter RPC) states that – *Lawyer* means Legal Practitioner as defined by the Legal Practitioners Act. S. 24 of Legal Practitioners Act (hereinafter LPA) states that a *Legal Practitioner* means a person entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings

[3] *Re Baker*, 7 Am Jur 2d 177

[4] *Atake v Afejuku*, [1994] 9 NWLR Part 368, 379; in *West Virginia State Bar v Earley*, 7 CJS 859, it was held that in practice of his profession, an attorney generally engages in three principal types of professional activity: legal advice and instructions to clients to inform them of their rights and obligations; preparation for clients of documents requiring knowledge of legal principles not possessed by ordinary laymen; and appearance for clients before public tribunals, which possess power and authority to determine rights of life, liberty, and property according to law in order to assist in proper interpretation and enforcement of law.

 ISSN: 2736-0342

Practice of law comprehends all the activities of a lawyer in advising and assisting others in any legal matters, in or out of court.[5] Statutes governing practice of law are aimed at the practice of law and not performance of acts incidental to the work of a distinct occupation; however, if acts are undertaken which are not merely incidental to the service performed, but rather constitute practice of law as adjunct to such a service, the field of law is then invaded and the unlicensed practitioner is subject to legal sanctions.[6] In determining whether an act constitutes practice of law, the decisive factor is the character of the act done and not the place where it is done. Thus, it is immaterial whether the act is done in an office, before a court, or before an administrative body.[7] The word *'represent'* in the context of legal representation means to act or stand for or be an agent of another.[8] To appear as a legal practitioner, there must be that element of legal service rendered to a third party, whether for fee or not.[9] However, no valid distinction can be drawn between that part of the work of the lawyer which involves appearance in court and that part which involves advice and drafting of instruments in his office, the work of the office lawyer being the groundwork of a possible future contest in court.[10] Thus, preparation of an assignment for benefit of creditors and advising the assignor of its legal effects constitutes practice of law[11]; so does giving legal advice regarding the law of a foreign country[12]; or preparing memorandum and articles of association and other documents needed for establishment of a company.[13] In this respect, it is immaterial whether or not these services are rendered for free or are remunerated.[14] It is not necessary that a person pursue a course of conduct over a period of time in order to be engaged in the practice of law. Thus, a single act, for example, preparation of a will or drawing of a power of attorney, in appropriate circumstances constitutes practice of law.[15] To hold that a period of time of following a course of conduct is required, would result in the court being called on to determine how many wills a layman may draw, or how many people he may advise, or how many times he may defraud the public by his impositions before he is deemed to be engaged in the practice of law and subject to the superintending power of the court.[16]

3. Practicing Without Admission

Generally, the right to practice law is in every jurisdiction restricted to those who in accordance with regulatory requirements of that jurisdiction have been admitted to the bar and licensed to practice law. Consequently, in every jurisdiction, various statutes or rules either specifically or by implication provide for restriction on practice of law by persons who have not been admitted to the bar. S. 2 of LPA provides that a person shall be entitled to practice as a barrister and solicitor only if his name is on the roll. An attorney may practice law only by being licensed to practice in his own right, and he receives no licence as the employee of another attorney.[17] However, a person

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5 *Rhode Island Bar Association v Automobile Service Association*, 100 ALR 226
6 *Auberbacher v Wood*, 7 CJS 861
7 *Chicago Bar Association v Goodman*, 302 US 728, 82 L Ed 562, 58 S Ct 49
8 *Fawehinmi v NBA (No. 1)* [1989] 2 NWLR Part 105, 494
9 *Atake v Afejuku*, (n 4)
10 *Re Opinion of Justices*, 7 Am Jur 2d 171
11 *Clark v Reardon*, 7 Am Jur 2d 172
12 *Bluestein v State Bar of California*, 91 ALR 3d 570
13 *Florida Bar v Town*, 7 Am Jur 2d 172
14 *Florida Bar v Keehley*, 7 Am Jur 2d 172
15 Am Jur 2d § 101
16 *Re Baker*, 7 Am Jur 2d 177
17 *Brinton v City of Jonesboro*, 7 CJS 864

whose name is not on the roll may be granted a special personal *ad hoc* privilege. This indulgence arises where an application is made to the Chief Justice by or on behalf of any person appearing to him to be entitled to practice as an advocate in any country with a legal system similar to that of Nigeria. If the Chief Justice believes it is expedient to permit that person to practice as a barrister for purposes of proceedings described in the application, he may authorize that person, to practice as a barrister for purposes of those proceedings and any appeal brought in connection with it. Furthermore, a person whose name is not on the roll may be granted a dispensation to practice law *virtute officii* under provisions that a permit a person for the time being exercising the functions of either the office of the Attorney-General, Solicitor-General or Director of Public Prosecutions of the Federation or a State; or such offices in the civil service of the Federation or of a State as the Attorney-General of the Federation or of the state, as the case may be, may by order specify, shall be entitled to practice as a barrister and solicitor for the purposes of that office. Accordingly, practice of law, either generally, or for purposes of any particular transaction or proceeding by any person other than any of these three classes enumerated above is prohibited. The gravity of the public policy objective in prohibiting law practice by laymen is revealed by the fact that it amounts to unprofessional conduct for a lawyer to assist in un-authorised practice of law.[18]

Justification for excluding persons not admitted to the bar from the practice of law, is found, not in protection of the bar from competition, but in protection of the public from being advised and represented in legal matters by incompetent persons over whom the judicial department can exercise little control.[19] This prohibition is applicable to both laymen and lawyers, who though qualified to practice in a foreign jurisdiction, are not admitted to practice in the local jurisdiction, or granted any legal exemption or dispensation to enable them practice therein.[20] This restriction on the unlicensed practice of law is prohibited not only when expressly undertaken, but also when undertaken through subterfuge. Therefore, a person who has no right to practice law directly cannot do so indirectly by employing licensed attorneys to practice for him;[21] and a corporation or voluntary association cannot legally practice law indirectly by employing competent lawyers to practice for it.[22] Though a person not admitted to the bar as counsel cannot practice law, nevertheless, by s. 36(6)(c) & (d) of the 1999 Constitution, every person charged with a criminal offence is entitled to defend himself in person or by legal practitioner of his own choice. Thus, every member of the public, though not a barrister, has a right to argue his case at either first instance or appeal in person.[23] Though a natural person, party to an action, may appear in court either personally or by attorney,[24] however, a husband who is not a member of the bar may not

[18] arts. 2-5 of RPC, (n 2)

[19] *Lowell Bar Association v Loeb*, 7 CJS 865

[20] *Jemzura v McCue*, 7 CJS 867

[21] *Cain v Merchants National Bank and Trust Co of Fargo*, 7 CJS 867; art. 5 of RPC, (n 2) provides *(1) A lawyer shall not form a partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consists of the practice of law.*

[22] *Doughty v Grills*, 7 CJS 867; art. 5 of RPC, (n 2) provides that *(4) A lawyer shall not permit his professional service to be controlled or exploited by any lay agency, personal or corporate, which intervenes between him and the client. Charitable societies or other institutions rendering the aid to the indigent are not deemed to be such intermediaries. (5) It shall be unlawful to carry out legal practice as corporation.*

[23] *Mode Nigeria Ltd v UBA Plc*, [2004] 15 NWLR Part 897, 542

[24] *Osborn v Bank of US*, 22 US 738, 6 L Ed 204; a litigant, though not a lawyer may represent himself and either defend or prosecute the proceedings in court, and may prepare and file pleadings and other papers in connection with the litigation. He has the right to act as his own attorney, but if he does so, should be restricted to the same rules of

 ISSN: 2736-0342

represent his wife in a court of law, whether her interest is separate from, or joint with, his.[25] A litigant can appear in person, but a company can only appear by counsel on its behalf. A company is not in the same position as litigant in person. Accordingly, in the case of a company, the right of audience is necessarily limited to counsel briefed on its behalf.[26] Thus, that an individual may represent himself in legal proceedings, and a company must of necessity act through employees or representatives, will not permit the company's representative or employee to indulge in un-authorised practice of law on the theory that the company is thus acting for itself.[27] An unincorporated society can appear in Court only by counsel, and accordingly a member of the society has no right of audience on its behalf.[28]

Practising without admission is contemporary in the context of the practice of signing documents and processes in the names of law firms without purporting it to have been signed by a particular legal practitioner in the firm. Most attorneys carry on practice as law firms and partnerships. Formerly, the legal position appeared to be that a document signed in the name of the firm instead of in the name of the individual attorney was nonetheless valid. In *Cole v Martins,*[29] the notice of appeal was signed by a firm of solicitors. The appeal was struck out because under LPA, a law firm was not a legal practitioner and was incompetent to sign a notice of appeal. On appeal, the Supreme Court held that

> *'……. it is a sufficient compliance with the requirement for a legal practitioner to sign and give his name, if a legal practitioner practising alone gives the name under which he is registered as a business name, as this can only refer and apply to the legal practitioner who so holds himself out as practising under the business name. No possible doubt or confusion can therefore arise in these circumstances.'*

However, in *Okafor v Nweke,*[30] the Supreme Court held that by virtue of s. 24 of LPA, a legal practitioner must be a person entitled in accordance with Act to practise as a barrister or a barrister and solicitor; a law firm is not a legal practitioner and therefore cannot practice as such by filing processes in court. In *Unity Bank Plc v Abiola,*[31] the Court Appeal attempted to reconcile the two preceding decisions, and held that the Supreme Court did not overrule its decision in *Cole v Martins*, so that the operating principle is still that there is need to discard technicalities where resort to them would be at the expense of substantial justice. The Court of Appeal reasoned that it was proper to strike out the process in *Okafor v Nweke*, because it was an interlocutory process and the applicant had another chance of refiling it, but where the party would suffer irreversible loss as a result of invalidating the process, requirements of justice indicate that the processes should be

evidence and procedure as those qualified to practice law; otherwise ignorance is unjustly rewarded. See 7 Am Jur 2d 59

[25] *Haberkorn v Sears, Roebuck & Co.*, 7 Am Jur 2d 171; in *Cobbett v Hudson*, (1850), 15 QB 988; 117 ER 731, it was held that wife of plaintiff cannot manage the cause for him at *nisi prius*, he being absent and in custody, and judge was right where he refused in such case to hear wife as advocate for husband

[26] *Mode Nigeria Ltd v UBA Plc* (n 23)

[27] *Daniels v Wells*, 7 CJS 868

[28] *Annual Defence & Anti-Vivisection Society v IRC*, 66 (Part 1) TLR 1112; 94 Sol. Jo. 420

[29] (1968) 1 All NLR 161; this decision was followed in *Unity Bank Plc v Oluwafemi*, [2007] All FWLR Part 382, 1923, and *NDIC v Lagos State Government*, [2011] 1 NWLR Part 1229, 629

[30] [2007] 10 NWLR Part 1043, 521

[31] [2009] All FWLR Part 452, 1082

salvaged by according the mode of signature validity. In *Bank of the North Ltd. v Adegoke,*[32] the Court of Appeal in allowing the process held that the operating principle was to discard technicalities where resort to them would be at the expense of substantial justice. However, this position does not exhaust the jurisprudence of the matter. Other decisions hold that a process in the name of a law firm is at best improper and most possibly, a nullity. In the previous decision of *Thomas v Maude,*[33] the Court of Appeal invalidated a notice of appeal signed in the name of a law firm, and held that a law firm cannot validly sign a process without a particular counsel appending his signature as a duly enrolled person on behalf of the firm. In *SCC Nigeria Ltd v Ekenma,*[34] the Court of Appeal analysed the decisions in *Thomas v Maude*, *Unity Bank Plc v Oluwafemi*, and *Okafor v Nweke*, and held that a law firm is not a legal practitioner given the provisions of s. 2 and s. 24 of LPA, and thus, cannot legally sign or file processes in the courts. The Court further held that it was not proper in the circumstance to have recourse to the doctrine of substantial justice and treat the signing of the notice of appeal upon which the instant appeal was founded as a mere technicality. In *Ogundele v Agiri,*[35] the Supreme Court held that a partnership or a law firm '*unless duly registered as such'*, is not a legal practitioner or a person entitled to practice as a barrister and solicitor. This holding seemed to suggest that a process signed in the name of a registered law firm would be proper unlike a process signed in the name of an unregistered law firm. This erroneous impression was corrected in *Oketade v Adewunmi,*[36] where the Supreme Court held that there was a big legal difference between the name of a firm of legal practitioners and the name of a legal practitioner *simpliciter*, and one is not a substitute for the other. The court further held that by s. 2(1) of LPA, the only person permitted to practice law in Nigeria is a legal practitioner and the definition of legal practitioner in s. 24 of LPA does not include a law firm. Thus, a law firm cannot and should not sign a court process meant to be signed personally by party or counsel. Accordingly, where counsel is required to sign a document or court process, this should be done by a person whose identity is readily ascertainable from the roll of legal practitioners. Only such a person can append his signature to a document or court process and not otherwise.[37]

4. Effect of Un-authorised Practice of Law on Proceedings and Transactions

A suit commenced by a person who is not entitled to practice law amounts to abuse of the process of court. Abuse of process of court is a term generally applied to a proceeding which is wanting in *bona fides*, or abuse of legal procedure or improper use of legal process.[38] By s. 6(6)(a) of 1999 Constitution, every superior court of record is conferred with inherent powers and sanctions of a court of law. This includes the right of the court to see that its process is not abused. Once a court is satisfied that any proceeding before it is an abuse of process, it has the power and duty to dismiss it.[39] Proceedings in a suit by a person not entitled to practice are a nullity, and if appropriate steps are timely taken, the suit would be terminated. If the cause has proceeded to judgment, the

[32] [2008] All FWLR Part 398, 263
[33] [2007] All FWLR Part 381, 1749
[34] [2009] All FWLR Part 497, 53
[35] [2010] All FWLR Part 507, 1
[36] [2010] All FWLR Part 526, 511
[37] *Mohammed v Martins Electronic Company Ltd.* [2010] 2 NWLR Part 1179, 473
[38] *7Up Bottling Co. Ltd. v Abiola & Sons Bottling Co. Ltd.* [1996] 7 NWLR Part 463, 714; see also *CBN v Ahmed*, [2001] 11 NWLR Part 274, 369; *Saraki v Kotoye* [1992] 9 NWLR Part 264, 156; *Jimoh v Starco (Nig.) Ltd.* [1998] 7 NWLR Part 558, 523; *Uba v Ukachukwu* [2006] All FWLR Part 337, 515
[39] *COP v Fasehun* [1997] 6 NWLR Part 507, 170

 ISSN: 2736-0342

judgment is void and will be set aside; and all un-authorised acts of the pretender, including any papers or documents filed by him will be stricken and disregarded.[40] The court's action in dismissing a proceeding because of un-authorised practice of law therein is not an action taken for the benefit of lawyers who are duly admitted to practice law, but is an action taken for the protection of citizens and litigants against the mistakes of the ignorant on the one hand, and the machinations of unscrupulous persons on the other.[41] Participation in a trial as counsel by a person who is un-authorised to practice law is ground for mistrial, notwithstanding that actual prejudice to parties to the action was not shown. This is because, since the proceeding was void, prejudice is conclusively presumed.[42]

5. Particular Acts, Conduct or Services

Various acts, conduct, or services, such as participating in court proceedings for another, holding out as an attorney or advertising legal services, conferring with clients, and giving them legal advice, constitute the practice of law, and the persons performing them without being admitted, are guilty of un-authorised practice of law.[43] Distribution and use of business cards falsely representing and suggesting the respondent is an attorney licensed to practice law constitute un-authorised practise of law.[44] Where a pretender listed himself in the telephone directories as a lawyer with offices, such listing was tantamount to holding himself out as a practicing attorney willing to accept and handle cases.[45] The conduct of a person who is not licensed to practice law in any jurisdiction, in holding himself out as being qualified legally to handle immigration matters and to perform services requiring familiarity with immigration laws, constitute un-authorised practice of law[46]. Despite the fact that foreign law must be proven as a fact in the courts, any person giving advice as to foreign law, is giving legal advice and, any person preparing documents in conformity with foreign law is practicing law.[47] Whether a person gives advice as to local law, federal law, the law of a sister state, or the law of a foreign country, that person is giving legal advice.[48] Potential and actual conflict of interest exists where a person or entity not licensed to practice law attempts to give legal advice and/or provide legal services to a prospective client to whom he is attempting to sell a product, e.g., life insurance.[49] Consequently, an accountant is not permitted despite his knowledge of the law, to give advice unconnected with his accounting work[50]; and one who repeatedly gives legal advice to others with expectation of being compensated therefor is engaged in practice of law although he constantly advices those to who he gives such advice to consult their attorneys and refuses to draw any legal instruments necessary to give effect to such advice.[51] Generally, facts of

[40] *McKenzie v Burris*, 61 ALR 3d 250
[41] *Niklaus v Abel Construction Co*., 7 CJS 869
[42] *Colton v Oshrin*, 7 CJS 869
[43] *Berk v State*, 84 ALR 740
[44] *The Florida Bar v Moran*, 7 CJS 872
[45] *Virgin Island Bar Association v Dench*, 7 CJS 872
[46] *The Florida Bar v Escobar*, 7 CJS 872
[47] In Re Roel, 7 CJS 873
[48] *Bluestein v State Bar of California*, (n 12)
[49] *In Re Florida Bar*, 7 CJS 873
[50] *Application of New York County Lawyers Association*, 9 ALR 2d 787; in *Gardner v Conway*, 7 CJS 877, it was held that where an accountant or other layman employed to prepare an income tax return is faced with difficult or doubtful questions of interpretation or application of statutes, administrative regulations and rulings, court decisions or general law, it is his duty to leave determination of such questions to an attorney.
[51] *Green v Huntington National Bank*, 7 CJS 873

a case belong to the litigant. Apart from verifying facts given to him by his client, it is not part of the duties of the lawyer to investigate facts concerning either a present or a potential case. It is therefore not practice of law for the lawyer's clerk or other non-lawyer staff or other laymen whether or not under the instructions of counsel to investigate facts relating to a case. The investigation may include locating potential witnesses and documents, preserving evidence; and writing investigation reports. Here, activities of insurance investigators, loss adjusters, fraud investigators, and private investigators, do not come within the ambit of law practice.

5.1 Drafting or Preparing Documents Generally

While preparation of legal documents may constitute practice of law, the drafting by a layman of simple legal documents not requiring unusual legal training, knowledge and skill may not be illegal[52]; and a statute governing practice of law does not affect the right of persons to act as clerks or stenographers as long as they act within the usual and ordinary scope of such employment. Nevertheless, the fact that one may be a stenographer or clerk gives him no right to practice law.[53] Land Instruments Preparation Laws of most jurisdictions contain provisions invalidating land instruments prepared by non-lawyers.[54] Therefore, by virtue of these laws, a non-lawyer is not permitted to prepare instruments affecting land for reward, and any such instrument prepared by a non-lawyer is void.[55]

5.2 Collection of Debts

Setting up and operation of a debt collection agency is a legitimate business. It is not unlawful practice of law for a debt collection agency to maintain legal action in its own name on behalf of a customer in order to collect a debt due and owing to the customer. However, rules of professional conduct prohibit a lawyer from permitting his professional service to be controlled by any lay agency, which intervenes between him and the client.[56] Consequently, in forwarding claims to attorneys for collection, persons not members of the bar, operating a collection agency should not interpose themselves between the patron and attorney, control the attorney's conduct of matters, give the attorney directions, split fees, receive any commission upon his fees, or hold him out as their attorney.[57] Furthermore, a collection agency may not solicit a claim for legal action on a contingent fee basis, may not advise the creditor when to start the suit, and may not employ an attorney to institute and carry on the litigation under the control and direction of the agency in order to enforce legal rights of the creditor.[58] When one is not the actual client, but on the strength of an assignment for collection purports to act as such, advises the true creditor of the necessity for suit and also directs an attorney in beginning, conduct and termination of a lawsuit, he is practising law.[59]

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[52] 7 CJS 876

[53] *Grand Rapids Bar Association v Denkma*, 7 CJS 877; in *Childs v Smeltzer*, 7 CJS 877, it was held that a stenographer making a practice of drafting legal instruments for hire was *'practicing law'*. However, in *Re Marinho*, 7 CJS 878, it was held that a person, as for example, stenographer in a law office, may prepare legal papers provided they are approved by licensed attorneys before they are utilised.

[54] For example, see s. 2, 4 and 5 of Land Instrument Preparation Law of Ogun State, 1978

[55] *Fasanya v Adekoya*, [2000] 15 NWLR Part 689, 22

[56] Art, 4 of RPC, (n 2)

[57] *In Re Lyon*, 7 CJS 879

[58] *J. H. Marshall & Associates Inc v Burleson*, 7 CJS 879

[59] *State Bar of Wisconsin v Bonded Collections Inc*, 27 ALR 3d 1138, [a collection agency which habitually engages in course of conduct whereby it takes assignments of accounts for collection, furnishes an attorney, brings suit in its own

 ISSN: 2736-0342

5.3 Legal Publications and Forms

Authorship of legal writings, books, manuals and materials which state either what the law is or should be does not amount to legal practice. For this purpose, it is immaterial that principles of law and rules stated in the text might provide answer to the legal problems of a particular reader. Besides, publication of a multitude of forms for all manner of legal situations is commonplace activity, and their use by the bar and general public, and conjoining of the text and forms with advice as to how the forms should be filled out does not constitute unlawful practice law.[60] Sale of legal forms, books, journals, magazines, publications and legal paraphernalia, does not, without more, amount to practice of law. It is also not un-authorised practice of law for a layman to purchase any of these forms and publications and use the legal information contained therein for his own business. This is because, anyone may purchase a set of formbooks and use them in his own business, but when he advises others for a consideration that the particular form is the particular one to use in a certain transaction; he is doing what a lawyer does when a client seeks his advice.[61] Thus, there is no harm to the public in having printed legal forms and copies of statutes available.[62] Although it has been held that supplying of legal forms to others, coupled with instructions, advice, or representations as to how the forms should be filled out or the quality or effect of such forms as applied to the specific situation of others, constitutes legal advice and practice of law, as does the making of changes in legal forms to meet specific factual needs of others;[63] there is however, the converse view that there can be no practice of law without establishment of an individual attorney-client relationship, so that, sale of literature containing specific information on how a layman may achieve a legal result without consulting an attorney does not constitute un-authorised practice of law[64].

5.4 Representing Another before Administrative Agency

Ordinarily, it is the character of the act done, rather than place of its performance that determines whether it constitutes un-authorised practice of law. Consequently, whether a person who is not licensed to practice law, in representing another before an administrative commission or other quasi-judicial tribunal is practising law depends on the circumstances of the particular case under consideration.[65] If he is, no rule of such tribunal can legalise it,[66] so that the representation of another person by a lay person before any such commission constitutes practice of law.[67]

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name, and then pursuant to prior agreements deducts from proceeds, costs, and fixed percentage as its fee and remits balance to creditor is guilty of un-authorised practice of law.]

[60] *New York County Lawyer's Association v Dacey*, 7 CJS 880

[61] *Clark v Reardon*, (n 13), in *The Florida Bar v Brumbaugh*, 7 Am Jur 2d 173, [It is not improper to provide secretarial services by typing the forms for customers, provided the secretary only copies the information given in writing by the customers. The secretary may advertise provision of secretarial services and selling of legal forms and general printed information. However, the secretary must not engage in advising customers as to various remedies available to them or otherwise assist them in preparing forms, such as those necessary for marriage, dissolution proceedings, preparation of wills, or real estate transactions. The secretary may not make inquiries nor answer questions from customers as to particular forms which might be necessary, how best to fill out such forms, where to properly file such forms, and how to present necessary evidence at court hearings.]

[62] *The Florida Bar v American Legal & Business Forms Inc.*, 7 CJS 880

[63] *Re Florida Bar*, (n 49)

[64] *State Bar v Cramer*, 7 Am Jur 2d 174; in *Oregon State Bar v Gilchrist*, 7 Am Jur 2d 174, the court refused to enjoin publication, advertisement or sale of do-it-yourself divorce kits, but indicated that all personal contact, consultation, and the like with purchasers would be enjoined as un-authorised practice of law.

[65] *Denver Bar Association v Public Utilities Commission*, 13 ALR 3d 799

[66] *Lowell Bar Association v Loeb*, 7 CJS 881

[67] *Denver Bar Association v Public Utilities Commission*, (n 65)

5.5 By Corporate Bodies

Traditionally, prohibition against practice of law by a corporate entity was grounded on the essential personal relationship between the lawyer and his client. Non-corporate status of the lawyer was deemed necessary to preserve to the client the benefits of a highly confidential relationship, based on personal confidence, ability and integrity.[68] In the conduct of its legal business, a corporate body may, subject to the provisions of the RPC, properly utilise the services of its staff counsel. However, a lawyer, whilst in salaried employment of any kind, may not appear as advocate in a court or judicial tribunal for his employer except where the lawyer is employed as a legal officer in a Government department. A lawyer, whilst in salaried employment, may not prepare, sign, or frank pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinion or similar instruments or processes or file any such document for his employer. A director of a registered company shall not appear as an advocate in court or judicial tribunal for his company[69]. By s. 2 of the Entitlement to Practise as Barristers and Solicitors (Federal Officers) Order of 18th November, 1992, any person holding office in the civil service of the Federation, other than law officers in the Federal Ministry of Justice, is prohibited from practicing as a barrister or solicitor in Nigeria while still a holder of that office. Consequently, in order for legal officers in any government department to practice as barristers and solicitors for the purposes of their office, they must obtain a dispensation from the office of the Attorney-General of the Federation.[70]

A salaried lawyer for a company may render opinion for his own corporate principal without being guilty of un-authorised practice of law, but if the corporate principal sells that legal opinion to outsiders, the corporate principal is guilty of illegally practicing law.[71] A bank or any other corporate body should not, either through salaried attorneys, or lay employees, handle formal court proceedings or secure court orders.[72] A bank or trust company may, however, perform acts incident to its authorised fiduciary business, so that the bank or trust company in giving general information to customers and prospective customers on such matters as federal and state tax laws, *inter vivos* and testamentary trusts, wills, etc., but giving no specific advice, charging no fee, and urging customers to consult their own attorneys for advice on specific situations and have them draw any necessary instruments, was not engaged in illegal practice of law, but was performing those acts as incident to its authorised fiduciary business.[73] Since it is unlawful to carry out legal

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[68] *Re Florida Bar*, (n 49)

[69] Art, 8 (1)-(3) of RPC, (n 2)

[70] *See* Entitlement to Practice as Barristers and Solicitors (National Assembly Office) (Legal Practitioners) Order of 12th April, 1995; Entitlement to Practice as Barristers and Solicitors (Federal Housing Authority) (Legal Practitioners) Order of 12th April, 1995; Entitlement to Practice as Barristers and Solicitors (Federal Road Safety Commission) (Legal Officers) Order of 12th February, 1997; Nigeria Social Insurance Trust Fund (Legal Officers) (Entitlement to Practice as Barristers and Solicitors) order of 2001.

[71] *Steer v Land Title Guarantee and Trust Co.*, 7 CJS 863

[72] *Frazee v Citizens Fidelity Bank & Trust Company*, 7 Am Jur 2d 171, [A bank or trust institution may not directly or indirectly, offer to give legal advice or render legal services, and should not invite the public, either directly or by inference in advertisement, to bring their legal problems to the institution. A trust institution which regularly engages in drafting of wills, deeds, trust instruments, and other legal documents, as agent or fiduciary for compensation, is engaged in practice of law; and when probate or fiduciary documents are filed in a probate or other court of record by a trust company, they must be in name, and by authority of licensed attorney.]

[73] *State Bar Association of Connecticut v Connecticut Bank and Trust Co.*, 7 CJS 883

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practice as corporation,[74] a corporation may not indirectly practice law through the employment of qualified lawyers to perform services for others.[75]

5.6 By Real Estate Brokers or Agents

A real estate broker is not qualified to practice law, and real estate brokers, agents and salesmen are governed by the same limitations applicable to the course of lawful business with respect to refraining from engaging in un-authorised practise of law.[76] Drafting and preparation of instruments involving real property rights, and doing title examination and curative work for others constitute practice of law, without regard to whether any charge was made even though such activities are incidental to the business of preparing abstracts of title or acting as escrow agent.[77] Law practice embraces conveyancing, so that the drafting of deeds, bonds, mortgages, and other legal instruments associated with the transfer and encumbrance of title to realty constitutes practice of law.[78] While a real-estate dealer may draft offer and acceptance between purchaser and seller constituting the contract of sale, he may not draft instruments constituting a conveyance without being guilty of practicing law.[79]

6. Suppressing or Punishing Un-authorised Practice

Petitions seeking judicial action against persons charged with un-authorised practice of law may be entertained by courts when filed by the Attorney-General, the Bar Association or any of its committees, or by individual practitioners. Various legal methods may be employed to suppress un-authorised practice of law. These include an injunction, punishment for contempt of court, a criminal prosecution, judgement in a *quo warranto* proceeding, and declaratory judgment.[80] The judicial department is vested with full and complete authority, independent of the legislative department, to prevent intrusion of unlicensed persons into the practice of law,[81] and the fact that a prohibitory statute does not define what constitutes practice of law is no bar such a proceeding.[82] S. 36(12) of 1999 Constitution provides that no person shall be convicted for commission of a crime unless that offence is defined and the penalty is prescribed in a written law. In this context, written law refers to an Act of the National Assembly or a Law of a State, and any subsidiary legislation or instrument under the provisions of a law. S. 22 of LPA provides that, if any person other than a legal practitioner; practices, or holds himself out to practice, as a legal practitioner; or takes or uses the title of legal practitioner; or wilfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner, or is qualified or recognized by law to act as a legal practitioner; or prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or

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[74] Art, 6 (5) of RPC, (n 2)

[75] *Frazee v Citizens Fidelity Bank & Trust Company*, (n 72); in *Rosenthal v Shepard Broadcasting Service Inc.,* 114 ALR 1502, corporation was guilty of giving legal advice and practicing law in broadcasting questions involving legal question submitted by various members of public and answers prepared by qualified professional men. Fact that the broadcast was accompanied by disclaimer of intention to offer legal advice as substitute for that given by attorneys was deemed immaterial.

[76] *State Bar of Arizona v Arizona Land Title and Trust Co.*, 7 CJS 884

[77] *Beach Abstract and Guaranty v Bar Association of Arkansas*, 7 CJS 884

[78] *Cape May County Bar Association v Ludlam*, 7 Am Jur 2d 174

[79] *Gustafson v VC Taylor & Son Inc.* 7 Am Jur 2d 175

[80] 7 Am Jur 2d § 116 & 117

[81] *R.J Edwards Inc v Hert*, 7 CJS 886

[82] *Richmond Association of Credit Men v Bar Association of City of Richmond*, 7 CJS 886

letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, he is guilty of an offence; and proceeds to provide a sentence to be imposed upon conviction. This sufficiently satisfies the provisions of s. 36(12) of 1999 Constitution. Rules of professional conduct for legal practitioners apply only to members of the legal profession. Any provision in those rules seeking to sanction un-authorised practice of law by persons who are non members of the profession would be futile. Consequently, regulations proscribing un-authorised practise of law are not found in the RPC, but rather in the LPA. However, the stricture attaching to practice of law by laymen are of such gravity that in the very strongest terms, lawyers are forbidden from granting any assistance to un-authorised practice of law. Consequently, a lawyer may not aid a non-lawyer in un-authorised practice of law; or permit his professional services or his name to be used in aid of, or to make possible, un-authorised practice; or share legal fees with a non-lawyer except as provided in rule 53 of the canons of ethical conduct.[83] Additionally, a lawyer may not, in return for a fee, write or sign his name or permit his name to be written or signed on a document prepared by a non-lawyer as if prepared by him;[84] and a lawyer may not permit his professional service to be controlled by any lay agency, personal or corporate, which intervenes between him and the client;[85] and a lawyer shall not form a partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consists of law practice.[86] An attorney, who gives another leave to practise in his name, is answerable for what is so done.[87]

The statutory provision prohibiting practice of law by persons other than duly admitted and licensed attorneys in s. 22 of LPA does not take away the powers of the court to punish for contempt, un-authorised practice of law which occurs in respect of proceedings pending it. Therefore, nothing in s. 22(1) of LPA prevents a person from being dealt with for contempt of court, but no proceedings for an offence under it may be brought or continued against a person in respect of any act if he has been dealt with for contempt of court in respect of that act.[88] Aside from proscription of practice of law by laymen, the LPA adopts the pragmatic and sensible approach of acknowledging that in the normal course of business and affairs, it is inevitable that certain innocuous activities of other private or professional persons would fall within the ambit of law practice. S. 22(4) of LPA in providing an exemption of these activities from the proscription, provides that it shall not be construed as an offence for any person to prepare an instrument –

(a) in the course of his activities as a pupil of a legal practitioner or of his employment as a clerk or servant of a legal practitioner;
(b) relating only to property in which he has or claims an interest (including an interest as a personal representative or as a beneficiary to any part of the estate of a deceased person);
(c) relating only proceedings to which he is a party, or prepared with a view to proceedings to which he may be a party;

[83] art. 3(1) of RPC, (n 2)
[84] art. 3(2) (ibid.)
[85] art. 4 (ibid.)
[86] art. 5(1) (ibid.)
[87] Anon (1702), 88 ER 1589
[88] s. 22(3) of LPA (n 2)

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(d) for the purpose only of recording information or expert opinion intended for use in, or with a view to, any proceedings;
(e) which is, or is intended to be, a will or other testamentary instrument;
(f) of such a class or description as the Attorney-General may be order determine.

Where an offence under the section restricting practice of law to duly licensed attorneys which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, is guilty of that offence and liable to be proceeded against and punished accordingly.[89] Any agreement to transfer, either directly or indirectly, any money or thing in consideration of any act which constitutes an offence under the section proscribing un-authorised practice of law is void; and any money or thing transferred, or the value of the thing, is recoverable by the transferor from the transferee or from any other person by whom the offence was committed, whether or not any proceedings have been brought in respect of the offence or the time for bringing such proceedings has expired[90].

6.1 Un-authorised Practice as Contempt

There are two kinds of contempt. They are - direct or criminal contempt, and constructive/indirect or civil contempt. Direct contempt is contempt committed in the face of the court, seen by the court. It is punished summarily, i.e., the Judge has power to punish this kind of contempt instantly. The power is exercised by a fine or committal to prison or binding-over to be of good behaviour. Conversely, constructive or indirect contempt hardly occurs in or near the court.[91] While criminal contempt consists of words or acts which obstruct or tend to obstruct or interfere with the administration of justice, civil contempt consists of disobedience to judgment, orders or other processes of court and involving private injury.[92] It amounts to an egregious and contumelious affront to the dignity of the court and an obstruction of the administration of justice, for one, to appear before the court, and falsely assert a status of an officer of the court, or to assume under that assertion of a false status, to proceed to conduct proceedings in the court. Nevertheless, exercise of powers to control and punish for criminal contempt, a layman assuming to practice law, is limited to cases where the court is directly involved.[93] Consequently, conviction for contempt for illegal practice of law may be set aside, where proof of the charge is partly predicated on the action of respondent outside of the courtroom which does not occur in the presence of the court.[94] A disbarred attorney falsely representing himself to the court as a practising attorney will be liable to committal for contempt committed in the court's presence. In contempt proceedings there is no necessity to take additional testimony, where respondent, in open court, represented himself to the judge as a practising attorney and the falsity of the representations is established by answer under oath.[95]

[89] s. 22(5) (ibid.)
[90] s. 22(7) (ibid.)
[91] *Igbonekwu v Eronini*, [2008] All FWLR Part 409, 521
[92] *Onuaguluchi v Ndu*, [2000] 11 NWLR Part 679, 519
[93] *In Re New York County Lawyer's Association*, 7 CJS 889
[94] *In Re Gilliland*, 7 CJS 889
[95] *Bowles v US* 6 FD 324

6.2 Criminal Prosecution Generally

Every lawyer has a duty to report breach of the rules of professional conduct that comes to his knowledge to the appropriate authorities for necessary disciplinary action.[96] Accordingly, every lawyer is responsible to report any instance of contravention of rules 3, 4 and 5 of RPC, in respect of any of the following, i.e.: aiding a non-lawyer in un-authorised practice of law, or permitting his professional services or his name to be used in aid of, or to make possible, un-authorised practice, or sharing legal fees with non-lawyer; a lawyer, in return for a fee, writing or signing his name or permitting his name to be written or signed on a document prepared by a non-lawyer as if prepared by him; a lawyer permitting his professional service to be controlled or exploited by any lay agency, which intervenes between him and the client; a lawyer forming a partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consists of practice of law. Clearly, personal reporting requirement for lawyers applies only in respect of a lawyer committing or assisting in commission of the cited acts; otherwise, there is no personal reporting responsibility on individual lawyers. Consequently, in respect of un-authorised practice of law by a layman, there is no reporting responsibility on lawyers. However, in the light of art. 1 of RPC which *inter alia* requires a lawyer to uphold and observe the rule of law, promote and foster the cause of justice, and maintain high standard of professional conduct, there is an arguable general duty on every lawyer to report un-authorised practise of law if same should come to his notice. A proceeding for un-authorised practice of law is a criminal prosecution. Therefore, the defendant is entitled to protection of constitutional guarantee of fair hearing. No proceedings for an offence under s. 22 of LPA in respect of un-authorised practice of law shall be begun after expiration of three years from the date of the offence.[97] A formal charge of un-authorised practice of law, in order to be constitutionally valid must accord with the provisions of s. 36(12) of 1999 Constitution in the sense that it must be defined and the penalty thereof prescribed in a written law.[98]

6.3 Evidence and Punishment

In prosecuting an accused person for the offence of un-authorised practice of law, the general duty on the prosecution is discharged once it establishes that the accused person did any of the following,[99] i.e.: practiced, or held himself out to practice, as a legal practitioner; or took or used the title of legal practitioner; or wilfully took or used any name, title, or description falsely implying, or otherwise pretended, that he is a legal practitioner, or is qualified or recognized by law to act as a legal practitioner; or prepared for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria. Thus, other than instances where the layman is prosecuted for preparing for or in expectation of reward, an instrument relating to immovable property, or relating to the grant of probate or letters of administration, or relating to or with a view to proceedings in a court of law in Nigeria[100], it is not essential to prove that the layman practised law for a fee or reward. There is no legal presumption that any person in particular has been admitted to practice law. The evidential burden is on the person accused of un-authorised practice of law to prove

[96] art. 55(2) of RPC, (n 2)
[97] s. 22(6) of LPA, (n 2)
[98] In *Kerr v State*, 7 CJS 892, [Accusation charging defendant with unlawfully practicing law without license, allegation that he '*did in other ways and means assume to be entitled to practice law*,' without setting forth facts constituting the other ways and means, was held as too vague and indefinite to put defendant on notice of nature of charge he was required to defend.
[99] s. 22(1) of LPA, (n 2)
[100] s. 22(1)(d) (ibid.)

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that he is licensed to practice law. This is because generally, burden of proof as to any particular fact lies on that person who wishes the court to believe in it.[101] When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him[102]; so that where a person is accused of any offence, the burden of proving existence of circumstances bringing the case within any exception or exemption from, or qualification to operation of the law creating the offence with which he is charged is upon such person.[103] It is for the accused to prove that he is licensed to practice law, and the State does not share this burden with him. In a prosecution for un-authorised practice of law, the accused person is entitled to avail himself of any general defences of law and fact available to any other accused person in a normal criminal trial; and, where the accused person is being prosecuted for preparing for or in expectation of reward, any instrument relating to immovable property, or relating to the grant of probate or letters of administration, or relating to or with a view to any proceedings in a court of law in Nigeria, he is entitled to the statutory defences in s. 22(4) of LPA. No person may be tried or convicted for commission of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law[104]. Furthermore, no penalty shall be imposed in respect of commission of an offence which shall be greater than that prescribed by a written law as at the time the offence was committed.[105] Penalty for un-authorised practice law is exclusive, and the size of fees received from such practice does not furnish any basis for imposition of the penalty. Penalties provided under s. 22 of LPA may not be compounded with any other penalties.[106] Where the act of the layman constituting un-authorised practise of law also constitutes contempt of court, he may be proceeded against either for conviction for un-authorised practice of law or for contempt of court. There is no authority for proceeding against him for both. Accordingly, no proceedings for an offence in respect of un-authorised practice of law shall be brought or continued against a person in respect of any act if he has been dealt with for contempt of court in respect of that act.[107]

7. Conclusion

Lawyers are engaged in preservation and protection of fundamental liberties of the people. This renders practice of law a matter of vital interest to the general public. The legislature has not defined what constitutes law practice. A plausible explanation for this failure is the inability of law practice to lend itself to a precise all-inclusive definition. Notwithstanding this absence of definition, there is clear legislative purpose consonant with public policy to restrict practice of law to persons duly licensed to practice law. The basis for this restriction is essentially to protect the public against consequences of following inexpert legal advice. A penumbra exists in which certain of what lawyers may do could also be done by non-lawyers. The rule restraining practice of law to duly licensed attorneys does not aim to eliminate this penumbra. Rather it seeks to ensure that the confines of what is agreed as practice of law is preserved. In this regard, the efforts of NBA to restrain un-authorised practice of law is not a tactic to maintain a monopoly for the Bar. Rather it is a public service whose purpose is to ensure that the public are not defrauded in their legal matters by unlearned and incompetent persons who are not subject to professional discipline and sanction for their negligence and absence of skills and legal training.

[101] s. 136 of Evidence Act
[102] s. 140 (ibid,)
[103] s. 139 (ibid.)
[104] s. 36(12) of 1999 Constitution
[105] s. 36 (8) (ibid.)
[106] s. 22(1)(d) of LPA, (n 2)
[107] s. 22(3) (ibid.)