Understanding the Psychology Involved In Legal Practice- Useful Tips

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A good knowledge of the psychology of the legal practice, is fundamental. A Judge could be influenced and impressed by proper sequential, logical and eloquent presentation of cases. The exhibition of such skill and devotion to the cases being handled by counsel usually reduces the tedious job of the Judge. As such, a Judge would always look forward to having respectful, hardworking, thorough, neatly dressed, eloquent, vibrant and amiable Counsel appear in his court. This work will suggest certain tips to assist lawyers understand their professional responsibilities and expectations.

1. Introduction

Psychology is both an applied and academic field that studies the human mind and behaviour. Research in psychology seeks to understand and explain how we think, act and function. It studies the mental processes and behaviour. The term psychology comes from the Greek word *psyche* meaning "breath, spirit, soul" and the *logia* meaning "study of." It emerged from biology and philosophy and is closely linked to other disciplines including law, sociology, medicine, linguistics and anthropology.

Psychology is not just an academic subject that exists only in classrooms, research labs and mental health offices. The principles of psychology can be seen all around in everyday situations. The television commercials and print advertisements one sees everyday rely on psychology to develop marketing messages that influence and persuade people to purchase the

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advertised products. The websites one visits on a regular basis utilize psychology to understand how people read, use and interpret online information. As a Legal Practitioner, it is equally very useful for one to understand the psychology of legal practice generally.[1]

In social psychology, various terms which are germane to the present discuss has been utilised in describing human response to issues. Such terms include *person* and *attitude*. The term person refers to the different ways that we form impressions of other people. This includes not just, how we form these impressions, but the different conclusions we make about other people based upon our impressions.[2]

Psychologists define attitudes as a learned tendency to evaluate things in a certain way. This can include evaluations of people, issues, objects or events. Such evaluations are often positive or negative, but they can also be uncertain at times. For example, you might have mixed feelings about a particular person or issue. Researchers also suggest that there are several different components that make up attitudes. Attitudes can also be explicit and implicit. Explicit attitudes are those that we are consciously aware of and that clearly influence our behaviours and beliefs. Implicit attitudes are unconscious, but still have an effect on our beliefs and behaviours. Attitudes form directly as a result of experience. They may emerge due to direct personal experience, or they may result from observation. Social roles and social norms can have a strong influence on attitudes. Social roles relate to how people are expected to behave in a particular role or context and involve society's rules for what behaviours are considered appropriate. Attitudes can be learned in a variety of ways. Consider how advertisers use classical conditioning to influence

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1 Kendra Cherry, "10 Things You Need to Know About Psychology Basic Facts About Psychology for Beginners," Sourced at About.com Guide on 1st February, 2012 at 9.55 p.m.

2 Note 1 above.

one's attitude toward a particular product. In a television commercial, you see young, beautiful people having fun on a tropical beach while enjoying a sport drink. This attractive and appealing imagery causes one to develop a positive association with this particular beverage. That same attitude can be developed in all aspects of legal practice in order to achieve positive results. The main aim of this paper is to provide tips or tools that will assist legal practitioners, especially those who are newly called to the Bar, to ensure that they are adequately equipped to have an effective and successful legal practice by fully understanding the psychology involved in legal practice.

2. Use of psychology in Law Practice in Nigeria

Every lawsuit is a gamble. This is well understood in the literature on the economics of litigation, which assumes that litigants make choices that are risk-averse or risk-neutral, depending upon size of the stakes in the litigation relative to their wealth. Research on the psychology of judgment and choice, however, has revealed that risk preferences depend upon a decision-maker's reference point rather than their wealth. When choosing among perceived gains, people make risk-averse choices, and when choosing among losses, people make risk-seeking choices. In general, this suggests that defendants will often adopt risk-seeking litigation strategies, while plaintiffs will often adopt risk-averse strategies.

This theory has several implications: that settlement offers are consistently well below the expected value of a case; that reforms that increase the risks of litigation, such as fee-shifting, have asymmetric effects on plaintiffs and defendants; and that attorneys can promote or impede settlement by manipulating the perceptions of their clients as to whether they face gains or losses.

Data from survey responses to hypothetical scenarios and from actual settlement decisions support this theory.[3]

Law courts usually occupy a pre-eminent position in the administration of justice in most countries, including Nigeria. By the provisions of the 1999 Constitution of the Federal Republic of Nigeria, the judicial powers, in all their amplitude, are vested in the courts.[4]

Judges and Magistrates by their position are dispensers of justice and they decide cases that are brought before them in accordance with the applicable law. They have the sacred duty to ensure that justice is done to the parties in the cases adjudicated by them. They preside independently and impartially, and decide guilt or innocence, or weigh the merits of claims between parties. They usually have reference to facts as far as can be established. Justice also requires that the Judges understand all the factors relevant to the situation they are considering, including those which may affect the way the trial process is perceived. They must not only be fair, but must be seen to be fair.

4. Understanding the Rules of Professional Conduct and Ethics

Legal practitioners in Nigeria are statutorily conferred with some rights and privileges to the exclusion of any other profession or person. Such rights become automatically vested on a person upon his qualification as a legal practitioner in Nigeria in accordance with the provisions of the Legal Practitioners Act (LPA). Such rights which a legal practitioner in Nigeria may exercise may differ, depending on the category of legal practitioners to which the person belongs. One basic right, however, is that a legal

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3 Rachlinski, J.J.: "Gains, Losses, and the Psychology of Litigation," Cornell Law School, November 1996, *Southern California Law Review*, Vol. 70, No. 1 (1996).

4 See Constitution of the Federal Republic of Nigeria, 1999, section 6.

practitioner shall have the right of audience in all courts of law sitting in Nigeria.[5]

All parties in both criminal and civil proceedings are entitled to handle their cases personally or to retain a legal practitioner of their choice to handle the matter on their behalf. The extent of this right of audience in Nigeria, however, depends on the status of such legal practitioner and whether or not he suffers any restriction at any given time. For example, a legal practitioner who practices in Nigeria by virtue of the warrant of the Chief Justice of Nigeria cannot represent any other client in court, except the client whose cause is the subject matter of the warrant.[6] Also, a legal practitioner who fails to pay the annual practicing fee,[7] fulfil the mandatory Continuing Professional Development requirement[8] or fails to procure the Annual Practicing Certificate,[9] shall not have right of audience in any court in Nigeria.

While appearing before superior courts of record in Nigeria, a lawyer is expected to be robed in his wig and gown, but where the lawyer is a party in any proceeding before the court, he shall not be robed as he is precluded from sitting in the Bar during the proceeding. He is also precluded from appearing as an advocate on behalf of a client in such proceeding in which he is a party.[10]

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5 See section 8(1) Legal Practitioners Act; provided however, that the legal practitioner does not suffer any limitation or restriction on such right.

6 See section 2(b), *id.*

7 Section 8(2), *id*.

8 Section 8(2), *id*. Such fee must be paid on or before the 31st day of March every year. See Rule 9(1)), *id*.

9 Rule 11(1) RPC, 2007. The programme is organized by the Nigerian Bar Association (NBA).

10 See Rules 17(5) & 35(f) RPC, 2007. Also see *Fawehinmi v NBA* (1989) 2 NSCC 1.

There are certain statutory restrictions that affect the capacity of a legal practitioner to practice as Solicitor or Advocate or both. For example, a legal practitioner shall not practice at the Bar while simultaneously engaged in the sale or purchase of commodities personally or as a commission agent. He shall also not deal in such other trade or business which the General Council of the Bar may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession.[11] Consequently, the General Council of the Bar has banned all manners of trading by legal practitioners and the only exceptions are, being a shareholder of a company, being a director of a company which does not involve executive, administrative or clerical function; or being a secretary of a company.[12]

Similarly, a legal practitioner shall not practice at the Bar simultaneously with any other profession unless with the approval of the General Council of the Bar.[13] The law recognizes the right of a legal practitioner to offer legal services to his clients without any remuneration (*pro bono* services). These services may be rendered free of charge to indigent clients, friends, family members or clients with long standing relationship with the legal practitioner. The matter may be contentious or it may be non-contentious. Rendering of *pro-bono* services is one of the mandatory criteria for the award of the rank of Senior Advocate of Nigeria (SAN) by the Legal Practitioner's Privileges Committee, in addition to several other requirements.[14]

A legal practitioner in Nigeria is at all times subject to disciplinary measures for misconduct in the course of his profession or even where such misconduct was not committed in

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11 Rule 7(2) RPC.

12 Rule 7(3), *id*.

13 Rule 7(1) Rules of Professional Conduct, 2007.

14 See the Guidelines for the conferment of the rank of Senior Advocate of Nigeria, 2011.

the course of practice of his profession. The duty to discipline lies with the Legal Practitioner's Disciplinary Committee of the Body of Benchers.[15]

Some of the professional misconducts which may be brought against a legal practitioner before the Disciplinary Committee are, infamous conduct in a professional respect, obtaining enrolment by fraud, conduct not amounting to infamous conduct but which is incompatible with the status of a legal practitioner and conviction by a court in Nigeria of an offence which is incompatible with the status of a legal practitioner.[16]

Generally, where a legal practitioner is found to have committed any of the professional offences above, the Disciplinary Committee may give direction to the Registrar of the Supreme Court to either strike out the name of the legal practitioner from the roll of legal practitioners kept by the Registrar, suspend the legal practitioner from practice for the period stated in the Direction, admonish or caution the legal practitioner, or ask the legal practitioner to return documents or to refund money or any other thing which came into the possession of the lawyer in the course of the transaction.

However, where the legal practitioner is convicted for a misconduct which is not infamous but which is incompatible with the status of a legal practitioner, the Disciplinary Committee does not have the power to order the Registrar to strike off the name of the lawyer from the roll, but can order the other punishments stated above. Where the legal practitioner is directed to refund money or hand over documents or any other thing and he fails to do so within 28 days from the date of the direction or from the date of the determination of an appeal by the lawyer (if any), the Committee

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15 See Section 9 Legal Practitioners (Amendment) Act, 1994.

16 See sections 1(1) (a), 12(1) (c), 12(2) and 12(1) (b), *id*. Also see *Re Idowu* (1971) 1 ANLR 218; *Abuah v Legal Practitioners Committee*, cited in *Re A.C. Abuah* (A Legal Practitioner) (1962) 2 NSCC 175.

may treat such refusal as infamous conduct in a professional respect against the legal practitioner.[17]

Appeal from the decision of the Disciplinary Committee lies to the Supreme Court and such appeal must be filed not later than 28 days from the date a copy of the decision of the committee was served on the legal practitioner.[18]

Where the name of the legal practitioner has been struck off the roll or he is suspended from practice, he may apply to the appropriate authority for the restoration of his name or for the cancellation of the suspension. Where the punishment was ordered by the Supreme Court or the Chief Justice of Nigeria, the application should be made to the Supreme Court, but where the punishment was ordered by the Legal Practitioners Disciplinary Committee, the application is to be made to the Committee. However, the Committee and the Supreme Court are usually very cautious in re-admitting a person whose name was struck off or who was suspended.[19]

Some of the issues that are considered in determining such an application are; the gravity of the offence or offences necessitating the striking off of the applicants name in the first instance; whether there is sufficient evidence of genuine remorse shown by the applicant in the period between the striking off of his name and the submission of his application for re-instatement; and whether in all the circumstances of the case the court is satisfied that the applicant has, in the intervening years become a fit and proper person to be re-incorporated as a member of the legal profession.[20]

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17 See Sections 12(1), (2) & (9) Legal Practitioners Act.

18 See Section 10(e) Legal Practitioners (Amendment) Decree 21 of 1994. This removed the jurisdiction to entertain the appeal from the Appeal Committee of the Body of Benchers and vested it on the Supreme Court. Also see section 12(7) LPA.

19 See Section 14 (1) (a) & (b) *id*.

20 Per Elias CJN (As he then was) in *Re A.C. Abuah*, above note 19.

Where the name of the applicant is ordered to be restored on the roll of legal practitioners, a copy of such restoration order is sent to the Body of Benchers, the Chief Registrars of all the High Courts and to the Nigerian Bar Association.[21]

It is therefore very important that all legal practitioners should not only be very conversant with the rules governing their conduct, but must at all times abide by those rules in order to remain fit and proper to practice the very noble profession of the law.

6. Mastery of the Facts of the Case Being Handled

Adequate knowledge of the facts of the case being handled must be assiduously and properly pursued. These facts must then be subjected to scrupulous analysis, and serious effort must be made to know how to elevate them to the pedestal that would convince the court to find in favour of the party seeking the court's intervention.[22]

The facts of a case is simply, the story of what happened, which has necessitated the initiation of judicial proceedings. It entails the narration of the events, including a description of the persons involved and their respective roles. It also encompasses an appreciation of the scene of the events and whatever materials that were utilized or were connected to the events as to have become relevant and without which the story may be incomplete or rather, which might help in establishing the allegation. Although one can presume that a Judge handling a particular case knows the law,

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21 See A. Obi-Okoye, *Law in Practice in Nigeria: (Professional Responsibilities and Lawyering Skills)* (Enugu: Snaap press Nig. Ltd.), pp. 135-165 for extensive discourse on Professional discipline of legal practitioners.

22 Per Pats-Acholonu, JSC in *Sirpi Allustee Ltd v Snig (Nig) Ltd* (2000) 2 NWLR (Pt. 644) 229 at 290.

there is no basis for a belief that he knows the facts, until they are decently and clearly marshalled out to him.[23]

In civil cases, a cause of action must exist and must be properly identified. Similarly in criminal cases, the charge upon which the accused person is to be tried must be supported by the facts of the case, as the ingredients of an offence are distilled from the facts of the alleged offence. It must also be ascertained before the charge is filed, that the action is not statute barred.

Although generally, criminal proceedings can be instituted at any time against persons alleged to have committed offences, there are certain exceptions to this general rule. One of them for instance, is that for offences committed under the Customs & Excise Management Act, criminal proceedings must be instituted within 7 years of the commission of the alleged offence. After 7 years, the alleged offender can no longer be prosecuted for that offence, as the action would be statute barred. A preliminary objection can be raised by the accused if there is an attempt at such prosecution.[24]

It is equally important that the parties before the court are the proper parties and most importantly, that the court has jurisdiction in that particular case. Jurisdiction is primary in judicial adjudication, whether criminal or civil.[25] For example, the Federal High Court is the court vested with both original civil and criminal jurisdiction in matters connected with or pertaining to customs & excise duties and export duties, including any claim by or against the Nigerian Customs Service or any member or officer thereof, arising from the performance of any duty imposed under

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23 See *I.M.N.L. v Nwachukwu* (2004) All FWLR (Pt. 220) 1216 at 1242.

24 See Section 176(3) Customs & Excise Management Act Cap C45 Laws of the Federation of Nigeria(LFN) 2004. Also see *Custom & Excise v Senator Barau* (1982) 2 N.C.R. 1.

25 See *Madukolu v Nkemdilim* (1962) All NLR 587.

any regulation relating to customs and excise duties and export duties.[26]

7. Mastery of the Law Applicable to the Case.

It is very important to know where to find the law and apply it appropriately. It is very important for instance, to understand clearly the acts and omissions that constitute offences under the Customs and Excise Management Act, in order to successfully prosecute alleged offenders. This is in addition to a proper assimilation of the Nigerian Constitution and any other relevant case or other laws.

8. Adequate Preparation

Adequate research, including internet research, is very important when it comes to preparation for trial. It is important to develop a theory of the case, which focuses on building a line of argument against the background of facts sought to be presented and proved. Apart from this theoretical framework, some practical steps must also be taken.

Pre-trial interview of witnesses must be meticulously carried out, particularly to acquaint a witness with the procedure by which he is expected to present his testimony and the proper decorum to be observed in court. The choice of number and order in which witnesses may be called is not determined by the court but is entirely at the discretion of the party calling them. It should be ensured; however, that witnesses are called to fulfil a particular or specific role. In criminal cases, for instance, prosecuting counsel may choose to call the witnesses in the order in which the charges or counts are laid. Exhibits intended to be relied upon must also be studied and reviewed. If a technical issue is involved or

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[26] See section 251 (1) and (3) 1999 Constitution of the Federal Republic of Nigeria.

where an expert's testimony is required, it is important to consult the relevant technician or expert.

Make a note of questions you intend to ask your witnesses in examination in chief, while also anticipating the likely questions that will be put to them by the opponent on cross examination. Witnesses will then be able to attune their minds to these or similar questions and would not be taken by surprise or react negatively, as the Judge will be watching their demeanour, which will be imprinted on the mind of the Judge and will eventually determine whether he believes that witness or not.

The witness should be instructed on how to remain calm and composed throughout the period of his testimony. A weapon which some cross examiners often resort to is to rattle and deliberately annoy the witness so as to draw out remarks that are capable of doing damage to the case for which the witness is called. To this end, a prospective witness should also be instructed against perceiving the opposite party, counsel or even the court as an enemy or adversary. This attitude is a common manifestation and unless a witness is assisted during pre-trial meeting on how to avoid or overcome this feeling, he is likely to develop a hostile attitude. This often works more to the advantage of the opposite counsel, because he may exploit it as he possibly could in order to undo the witness and expose him as an unreliable witness.[27]

9. Psychology in Matrimonial Cases

Divorce litigation has been called "the ugliest litigation" because it can be filled with emotional rancour, distortions of personalities and of life events and can create an intense bitterness which serves to enhance the acrimony between the parties.[28] Even in cases were

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27 V.B. Ashi, *Basic Skills in Trial Advocacy* (2nd Edition), (Enugu: Chenglo Ltd, 2008), p. 79.

28 D. T. Saposnek, C. Rose, "The Psychology of Divorce" In D.L. Crumbley and N.G. Apostolou, eds. *Handbook of Financial Planning*

matters are settled within a legal pre-trial process, there is often the win/lose feeling, as the resolution results in one person feeling that they have been forced to "give up" or "lose" due to their perception that the system does not recognise their interests or needs (rightly or wrongly) or that financially, pursuing the matter is not feasible.

From a psychological perspective, what often occurs in a high conflict divorce case is that the parties negatively reconstruct the spousal identity of the other. This can often occur during the litigation stage of a divorce. This phenomenon is characterised by the tendency of one spouse to cast the other in a vilified image, for example, "He's a rotten, selfish bastard" or "she's a lying bitch." These negative polarized characterizations become immutable over time and form the basis of how each party frames their position before the court.[29] These negative images are entrenched in the pleadings and affidavits which serve to further rigidify their unyielding positions.

Separation and divorce make people feel vulnerable and wounded and they rely on the legal system to make things "better" for them. Their expectations are that when their stories are heard by a judge, justice will be done and their position will prevail. There is tremendous appeal to the clients, who are entangled in acrimonious proceedings, of the notion that there will be an end to their suffering once the "judge hears their story." The fact that the courts consider matters objectively and apply certain standards, that may seem unfair to them, is difficult for clients to accept.[30] A client's belief in what is morally right and wrong is often not consistent with the objective standard that will be applied by the court. The parties often have accepted the model of justice that gives them the expectation that the justice system will

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for Divorce and Separation, (New York: John Wiley, 1990), Pp 55-61.

29 *Id*, at 6.

30 *Id*, at 15.

impartially sort out the facts in dispute to provide a deductive reading of "truth." They expect the legal process to take their problems seriously and understand the emotions that drive them. They expect vindication of the position that they have adopted.[31]

The adversarial system authenticates what were early theories of child and marital problems, i.e. cause and effect relationships. It was always believed that dysfunctional marital relationships caused dysfunctional behaviour in children. Children were viewed as innocent victims of a "bad" parent or a "bad" relationship between parents. Early psychological theories were focused on identifying and treating dysfunctional parents in order to help the children.[32] These parents have become winners or losers, not only in the eyes of the law, but also in how they are perceived by themselves and their children. However, these disputants must carry on with the upbringing of their children and must somehow learn to deal with the aftermath of the legal battle. The parent who lost the legal battle will be viewed as the "loser," and therefore, the "bad" parent. The children must be sheltered by the "good" parent i.e. the "winner" who has secured a custody order which gives them the right to make all decisions regarding the children.

Current psychological theories no longer focus on treating the "bad" parent yet the adversarial process continues to focus on punishing the "bad" or "loser" parent by stripping them of any say in the upbringing of their children. Notwithstanding the fact that most matters are settled prior to trial, families still suffer much devastation as a result of the mandatory pre-trial proceedings.[33]

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31 W.L.F. Felstiner, A. Sarat, "Negotiation between Lawyer and Client in an American Divorce," In Robert Dingwall and John Eekelaar, eds., *Divorce Mediation and the Legal Process.* (Oxford: Clarendon Press, 1988), p. 37.

32 Saposnek, above note 29 at 1.

33 Saposnek, above note 29 at 1. Saposnek also indicates that more recent psychological theories have demonstrated that a more circular system

10. Knowing the Court and the Judge

Counsel should take into account the personality of the Judge before whom he is to appear, as this is very important. His personal habits, his likes and dislikes, his moods, what infuriates him, what motivates him and every other thing about him which he brings to bear on the proceedings in court should be carefully studied and discerned. This is usually easier where counsel has a large volume of cases before that Judge and has been able to watch and study him over time, to understand their individual preferences, prejudices and attitudes.

Where, however, one is to appear before a Judge he knows nothing about, it is helpful to quickly try to find out certain things in respect of the attitude and other peculiarities of that individual Judge. This can be done through colleagues who have appeared before him and who have studied him in addition to familiarizing oneself with the staff of court. Indeed on many occasions one finds very useful hints from these staff of court. This is so because they are the ones who work with the Judge, both in open court as well as in chambers. Through such close contact, they get to study his disposition in specific situations. They can more accurately predict his response in many typical situations. It will be beneficial to pay attention to these details, to be prudent and alert in order to have one's way with the court. They, in most cases also prepare the Cause List, and being arrogant to them never pays.

You should also learn about the Judge's temperament, punctuality to court and whether he has a habit of rising or not in the middle of proceedings and the time he usually rises for the day. In addition to these, you need to know the climatic condition of the court, for example, whether it is fully air conditioned or not or

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of family dynamics exists wherein the family is conceptualized as a cybernetic system in which the actions of each member influence the actions of each other member reciprocally.

whether it is properly ventilated or not. You need to also find out the proximity of the parking lot to the courtroom and how you can ensure safety of your car if you intend to come to court with it. Also inquire about conveniences around the court and probably restaurants or shops where you may need to eat or have something to drink after your case or if there is a recess. All these are to mentally prepare you for the court.[34]

11. Duties of Counsel to Court

11.1 Be punctual in court

The court usually sits at 9.00am, and counsel, parties and their witnesses should aim to be in court about 30 minutes before the court sits to enable them properly compose themselves and be fully ready for the day's proceedings. This should be adhered to even if your inquiry shows that the Judge is not usually punctual. This is because on the day you are not punctual, the court may be punctual and this may be detrimental to your case, as you would be said not to be diligent in prosecuting that case. The court does not wait for anyone.

Again, when you are late to court, even if your case has not yet been called but the court is already sitting, the tendency is that you would not have had the opportunity of those last few minutes with the witnesses that will testify or to mentally compose yourself. If you are always late to court, the Judge will mark you and is likely to be impatient and hostile towards you. If you are in court early enough and for one reason or the other your case is stood down or you are informed by the registrar of court that the court will sit for about 2 or 3 hours, you can always ask for the court library and use it.

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[34] The Nigerian Law School Course Handout on Professional Ethics, p. 15.

Select an appropriate seat once you enter the courtroom. Avoid front row seats as these are usually reserved for Senior Advocates etc. Make sure you sit properly.

11.2 Attend all sittings of court in respect of your case

Attend all sittings of court in respect of your case, unless you have obtained the permission of court to be absent. If for any cogent and compelling reason you are unable to attend court on any particular adjourned date, you must seek and obtain the permission of the court to adjourn the case; otherwise your absence will be considered disrespectful to the court and would most likely be detrimental to your case.[35]

11.3 Be properly dressed to court:

You must always appear very neat and well dressed in court. You must be attired in a proper and dignified manner and you should also advise your witnesses to be decently dressed. The hair must also be very decent and well taken care of. This has been referred to as personal presentation. Looking fantastic in court makes you look like a winner. The court is a sober place so, it is important that you are soberly dressed. If you are appearing as a legal practitioner, of course it is expected that you will dress in black or dark suit with white shirt, black socks and shoes, for the men and for the women black or dark straight dress, skirt and blouse or skirt and jacket with white blouse and black shoes. The gown or the skirt must be at least knee length. If the appearance is in superior courts like the Supreme Court, Court of Appeal, Federal High Court, State High Court etc, counsel are in addition to the above expected to wear wigs and gowns and collaret for the ladies and white collars and bibs for men.

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35 See *FRN v Abiola* (1997) 2 NWLR (pt488) 444 at 467; *Okonofua v State* (1981) Vol.12 NSCC 233.

11.4 Know the correct mode of addressing the Judge

In the Federal and State High Courts, you address the Judge as "My Lord" or "Your Lordship" and the plural is used at the Court of Appeal and Supreme Court since more than one Judge sits. The female Judges are sometimes referred to as "My Lady" or "Your Ladyship." It is advised that before this is used on any female Judge, you must find out if that particular Judge approves of it or not as some would prefer you stick to the same mode used in addressing her male counterparts. Again, "Your Worship" is the proper mode of addressing a Magistrate, while "Your Honour" is used to address Area or Customary Court Judges. If these terms are used in addressing a superior court judge, he or she is likely to find it demeaning, offensive and disrespectful.

11.5 Know and maintain proper court decorum

Courtesy must be shown to the court at all times. All must rise and bow when the judge comes into the court and when he rises to leave the courtroom. Anytime anyone is addressing or is being addressed by the court, he or she must be standing. If there is any cogent reason such as ill health, old age etc that will make it difficult for witness or counsel to remain standing, the court must be informed of that reason and its permission sought for that person to sit while addressing the court.[36]

11.6 Maintain a respectful attitude to court in words and deed

It is important to seek the judge's permission for almost anything you want to do in court. And thank him for almost everything he says to you. Never talk when the judge is speaking or when another counsel is talking, unless to enter an objection to the latter. Two

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[36] See Rule 36(c) Rules of Professional Conduct (RPC), 2007; Also see *Esso West African Inc. v Alli* (1968) 1 NMLR 414.

Counsel must never be standing at the same time. The court must always be treated with respect, dignity and honour. Failure to do this may amount to contempt of court, punishable with imprisonment. Handsets must be switched off and all other things that are not related to the proceedings in court must be put on hold. Flipping through newspapers, magazines, chewing gum etc are all conducts likely to distract the court and are not tolerated. All should assist in enhancing the smooth administration of justice. If one has a proper ground for complaint against a judicial officer, such complaint should be made to the appropriate authorities.[37]

11.7 Be prepared to proceed with your matter

Counsel must be fully prepared to go on with the case and not seek unnecessary adjournment thereby wasting the time of the court and in so doing, irritating the court. Courts have the discretion to refuse such unnecessary applications and insist that counsel proceed with the case.

11.8 Be logical in your presentation

Case should be conducted in a logical sequence thereby assisting the court to follow the case with ease. The court and indeed other people in the courtroom usually enjoy the proceedings better where counsel has good advocacy skills. Be audible, yet controlled. Be very attentive and take hints from the court and even from your colleagues. However, note that the primary duty of a prosecutor is not to secure conviction at all cost, but to see that justice is done.[38]

11.9 Be candid and fair

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37 Rules 31(1) & (2) &35 RPC, 2007; *Atake v AG Fed & Anor* (1982) 11SC 153.

38 Rule 37(4) & (6) RPC; *Odofin Bello v State* (1967) NMLR 9.

Counsel must be candid and fair as the court will rely upon him for assistance in ascertaining the truth. He is therefore, never to mislead the court.[39]

12. Conclusion

From the above, it is very clear that a good knowledge of the psychology of the court is fundamental if success is to be achieved and if the person appearing before such court is to be seen as being serious. The Judge is indeed a human being and is therefore influenced and impressed by adequate preparation and proper presentation of cases. We must therefore strive to be that counsel that lights up a courtroom and brings smiles to the faces of all Judges before whom we appear. It has been submitted that undisciplined conduct is a by-product of an undisciplined mind. Such a mindset could also be selfish, unconscionable, self-conceited, arrogant and reckless. Such traits impede the capacity to think creatively, constructively and altruistically. A mind that is stripped of these attributes losses its sense of responsibility. We must strive to overcome every negative trait in our conduct that is capable of making us to lose our sense of responsibility to the court, the community and the aspiration to attain social justice. It is suggested that machinery for professional discipline and enforcement of standards need to be strengthened.[40]

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39 Rule 32 RPC 2007.

40 Hon Justice V.B. Ashi, Towards Enlarging Lawyers' Occupational Responsibilities and a Review of Selected Problems of Professional Misconduct and Indiscipline, Abuja: (2010) *Unity Bar Law Journal*, Vol.2 No. 2, pp. 11-12.