



Legal ethics in a post pandemic recovery era: Landscape and roadmaps for a pandemic-proof legal profession

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Abstract

The COVID-19 Pandemic marked a major dispensational progression or regression in the learning and practice of law globally and in several jurisdiction. As the learning and practice of law regresses or progresses, it is needful to articulate how professional ethics has been affected and to adapt legal and professional ethics to ethic into the new glass box.

This paper articulates the impact of the COVID-19 Pandemic on legal education and legal practice and its implication for legal ethics as contained in legal codes in select jurisdiction. Participants will adopt interactive tools to identify strategies for adaptation to changes and how those changes will affect the future of legal education. It aims to promote interaction on how professional ethics can be adapted to accommodate new norm in the legal profession.

Keywords: ethics, pandemic, COVID-19

Introduction

Ethics is a branch of philosophy concerned with moral code for professional conduct. It refers to philosophical concepts of moral right and wrong and usually deals with issues of honesty, loyalty, integrity and responsibility. In the Legal Profession ethics deals with principles and values which shape rules of conduct that regulates the profession. They act as an important guide to ensure right and proper conduct in the daily practise of the law.

The COVID-19 pandemic opened the world to the effect of a global pandemic on societal life including education and the legal Profession. There is need for an examination of the pandemic's impact on professional ethics both in the teaching and in the practice of law. The key role Law plays in the development of any country and citizen perception of how lawyers should work in integrity to ensure justice makes it imperative to put the assessment of the effect of the pandemic on professional ethics on the agenda for future development and reform.

The key role Law plays in the development of any country and citizen perception of how lawyers should work in integrity to ensure justice makes it imperative to put the assessment of the effect of the pandemic on professional ethics on the agenda for future development and reform. According to Nicolson , *'...If the quality of law and legal justice is a central concern of legal education, as I believe it should be, then it follows that so should the question of how lawyers behave, and hence the ethical values and principles which govern their behaviour'*.

In several jurisdictions, legal ethics is codified. Principle 26 of the UN Basic Principles on the Role of Lawyers states that 'Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognised international standards and norms'. For instance ethical standards for legal practitioners in Nigeria is contained in Rules of Professional Conduct in the Legal Profession.

However though codes for lawyers function much like statutes, they are mostly not adopted by the legislature, but instead by bar associations. Having codes of ethics increase the probability that lawyers would adopt some agreed moral behaviour indicated in the codes which are in actual sense identified moral behaviour, breach of which could attract disciplinary action by the Bar.

Ethics in Legal Education

One of the most important function of legal education is to train law students to become responsible professionals. The ABA Section of Legal Education describes 'ethical conduct and integrity' as essential characteristic of a professional lawyer. This can only be achieved by training law students in legal ethics in a way that it becomes part of their character. The teaching of ethics is an opportunity to influence what happens in the future. Law students need concrete legal and ethical training. They need to have all teachers address ethical problems.

Russell Pearce advocates in her work that Legal Ethics is the most important subject in Law School and should be taught seriously. She recommended an ethics curriculum which places legal ethics at the centre of the law school curriculum and the teaching of ethics within law school in a way that connects legal ethics with the entire curriculum. Her statement is correct because connecting ethics to the curriculum and the practice.

Ethics in legal practice has been described as an elements of professionalism. Baron and Greenstein in their work opined thus:

...the role of lawyer is widely understood by law students and practitioners as the entry into a simplified ethical world, one in which ordinary moral principles are cleared away by the hegemony of doctrines unique to the practice of law... these understandings are supported by and may originate in a particular view of lawyers' professional responsibility view in which a lawyer's ethical obligations as a professional are defined largely (though not entirely) by specialized legal rules (principally the codes of ethics

and other rules that regulate lawyer conduct) and the policies thought to underlie those rules Baron & Richard.

1. Teaching of Legal Ethics Prior to the Pandemic

In Nigeria, the teaching of legal ethics was left till law student's vocational training at the Nigerian Law School. However recently a few universities with law clinics had begun to integrate legal ethics into their law clinic curriculum. This can be attributed to the agreement of the legal professional at the 2018 Nigerian Association of Law Teachers Conference that Professional Ethics can no longer be a finishing course at the Nigerian Law School but should be integrated throughout legal education.

The interaction between the Bar and the Nigerian Association of Law teachers supported the premise that law students trained on professional ethics will preserve the tradition of honesty, integrity and professionalism in the legal profession. Both the lawyers at the Bar and academia are in accord that desirable legal education is one that prepares law students for effective, ethical, and responsible members of the profession.

Approach to teaching of professional ethics at the Nigerian Law School is done by teaching of ethics as a main course once a week, integration of ethics into all topics in every other course daily and as part of induction course at the legal clinic. Generally, as a main course and at the legal clinic, the course is taught by the use of exercises, group discussions, role plays, debates, case studies, hypothetical problems, mock trials and student's presentations. Also, teachers could include other interactive teaching methods identified as being able to impact ethical values such as reflections and creative writing.

Also, ethics is integrated into other courses by making students identify ethical issues that could arise when dealing with different aspects of legal practice. For instance, in the property law class, students may be asked to identify ethical issues that could arise when a student is dealing as a Solicitor on any property transaction. Teaching of legal ethics at the law clinic is done using the combination of contents and methods in the professional ethics curriculum, a manual produced by the Global Alliance for Justice Education and a manual produced by Nigerian Network of University Legal Aid Institutions (NULAI).

2. Teaching of Legal Ethics in the Pandemic and Post Pandemic Era

Teaching of legal ethics during the pandemic was initially totally frustrated enforced shut downs of law schools and law clinics. This interrupted existing model of in-person teacher-student training and mentorship. For severally months there was no physical lectures; no externships and there was no physical interactions with beneficiaries of law clinics. The pandemic direct & indirect negative impact on health of students or those of loved ones.

Other problems encountered by law students and lawyers includes financial challenge posed by loss of income of sponsors, difficulty of running large online classes, challenges posed by computer literacy & use of new applications, unsettled assessment model for online classroom, lengthy school year affected level of comprehension, lack of direct interaction with teachers and mentors in a class and clinic setting, problem of summarized legal curriculum, difficulty to participate in externship,

ineffective online classes, Unwanted extension of tenure of the Law School program.

A research conducted to ascertain the impact of the COVID-18 adjusted trend in teaching on students satisfaction using the Nigerian Law School Yenagoa revealed that students were negatively impacted by the trauma of losing loved relatives, lost funding support from relatives who lost their jobs, were psychologically affected by unwanted extension of tenure of the Law School program which made some of them lose the zeal to study, shortened the life span of online training and inability to have physical access to their facilitators was difficult for them. It put more financial pressure on students to buy data to join online classes and being a vocational program, no externship means no vocational training. They felt cheated deprived of court and law firm externship.

3. Impact of Covid-19 Pandemic on the Legal Profession and Covid-19 Adjusted Trends

The Legal sector like other sectors of the global economy was negative affected by its health impact directly on lawyers, their non-legal staff and their families and clients. In several countries there was need for lawyers as a result of increased land sector activities due to deaths and the need for succession. However, due to unpreparedness of several countries for digitalization of their legal and court systems, the legal sector experienced its challenges and bottlenecks including challenges associated with electronic execution and attestation of legal documents. The myriad of challenges which confronted the legal profession had their ethical implications.

The Pandemic forced many countries to obstruct their legal system. Courts were locked down for months, resulting in the delay of administration of justice. During the lockdown, cases were either postponed or adjourned indefinitely to contain the pandemic. Although some courts resorted to virtual hearing, certain factors like poor electronic broadband and network glitches made the process less effective.

One bright side of the pandemic was an increased knowledge of the value and utility of technology in the legal business. As succinctly stated, 'The pandemic has brought about a fast-track digitalisation of legal operations), communicating with clients and the delivery of legal services has become unprecedented. In addition, on the business side, a lot of clients who value legal services have had to lean heavily on law firms to navigate them through restructuring they require in these times'.

Law practice generally necessitates in-person meetings with the client. This is normally very prevalent in legal practice but was impossible under the constraints of the lockdown. Consequently, lawyers could not conduct in-person interviews with new clients or review matters with existing clients in pre-trial conferences. In several jurisdiction, a Legal Practitioner must verify the identity of a client before acceptance of a brief, this rule was hugely affected by the restrictions posed by the pandemic.

In several jurisdictions, it was difficult to conduct litigation. In Nigeria, litigants could not access the courts because the Chief Judge of Nigeria directed that all courts be closed till further notice. Although the courts eventually resumed skeletal virtual court sittings, majority of people still had no access to use the court system. However, a landmark development was the 4 May 2020 virtual session by the

Ikeja High Court in which a man was sentenced to death for the murder of the mother of his employer. The Judge of the Court, Justice Mojisola Dada, delivered the judgment via Zoom. The court proceedings, and judgement were made pursuant to the Lagos State Judiciary Remote Hearing of Cases Covid-19 Pandemic Period Practice Direction.

One key innovation in several jurisdiction was the introduction of full or partial e-conveyancing processes. For instance, Lagos State introduces the Drop Box Facility for land documentation. Legal Practitioners practiced by placing the application and supporting documents inside an envelope with the name of the applicant and phone number written on it. Searches and other legal documentation are processed by the land registry and the applicant is contacted to pick up processed request. While effective, it posed a challenge to the issue of confidentiality. Although the legal sector in the UK remained fairly stable throughout the pandemic, there was need for some covid adjusted trend for categories of solicitors whose practice was under supervision. In the United States, This was an increase in digital auctions, signing of virtual contracts, and virtual opening for inspections in land matters. In Canada usually, where transactions are subject to the *Land Title Act*, by virtue of Sections 42 to 48 of that statute an individual is required to appear before an officer before executing an instrument with a few exceptions. However, covid-19 adjusted trends use of electronic signatures in Ontario, British Columbia and Alberta for closing transactions to create binding obligations³. In Australia, the Australian Registrars' National Electronic Conveyancing Council (ARNECC) was established to coordinate the legal framework for National Electronic Conveyancing.

Ethics in the Legal Profession

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1. Ethics in Legal Profession Prior to the Pandemic and Covid-19 Adjusted Trends

In several jurisdiction studied, legal ethics is codified and formed the basis of the assessment of ethical conduct in the legal profession. Some common aspects of ethical responsibility of lawyers to client that formed the basis of analysis in this paper includes the duty of lawyers to accept instruction and termination of representation, confidentiality and integration of ICT provisions.

Generally, economic hardship creates the possibility of more ethical misconduct. Several countries do not have ethical regulation for the wages of new wigs. In some countries, the fees of new wigs is very low. For instance in Nigeria, many young lawyers are not well paid and often have to place of dependency on their appearance fees. With

lock-downs and shut-downs of courts, most lawyers especially the young wigs have lost a substantial part of their income used for day to day survival in the head of 'appearance fees'.

1.1 Acceptance of Instruction

Taking instructions and acceptance of briefs is a key aspect of the work lawyers do and is majorly regulated by codes of ethics in several jurisdictions which provide unique regulation for acceptance of briefs. In Nigeria, it is the duty of a lawyer to accept any brief in the court in which he professes to practice provided the proper professional fee is offered unless there are special circumstances which justify his refusal. Circumstances in which a Lawyer may refuse to provide legal aid includes a personal believe that he cannot represent a client in a case successfully, if the relevant matter does not belong to his recognized specialization or is not a matter he usually deals with.

Other reasons for refusal to accept a brief includes provision legal aid or adjudication as a trainee, lawyer or Judge to opposing party either regarding the same case or any other issue related to that case, existence of personal interests which is or which could be in conflict with the interests of represented party, frivolous defences, deliberate disregard by a client of an agreement or obligation as to payment of fees or expenses. (3) Where the lawyer is justified in withdrawing from the employment, he shall give reasonable notice to the client allowing him time to employ another lawyer.

Although it seems that an attorney is free to decide whether to accept or refuse a client's request for legal advice, representation or defence, according to the Bar Association of the Federation of Bosnia and Herzegovina, *'...in principle, he shall not refuse to provide legal aid'*. However, in taking instructions and accepting briefs, most codes provide for diverse regulation. For instance in Nigeria, a lawyer is not permitted to call at a client's house or place of business except in special circumstances.

In several jurisdiction, a Legal Practitioner must verify the identity of a client before acceptance of a brief. For instance the Republic of Armenia Chamber of Advocates, *Code of Conduct of Advocates* provides that if the identity, authority, and power of the person giving the assignment to the advocate are not clear and were not established through the advocate's efforts, the advocate shall refuse the assignment. Similar provisions are contained in the Belgian Act and Flemish Code of Ethics. The obligation to identify a client in the Belgian Act states that, 'a lawyer must identify his client and verify the client's identity on the basis of a supporting document, of which a copy will be made on paper or an electronic data carrier'. Similar provision is contained in the Flemish Code of Ethics.

A lawyer is expected to continue to update his client's information and supplement it with new information he receives from or about his client. He must check whether his involvement and role in providing services to the client is compatible with the information about the purpose and anticipated nature of the business relationship. Clients who come forward again after a number of years must be identified again. A lawyer must ensure that the identification data he has gathered corresponds to the statutory obligations and recommendations of the Flemish Bar Council and of his Bar.

In Bulgaria, an Attorney-at-law shall handle a case for a client based only upon that client's authority, or on instruction of another attorney-at-law who represents that client, or where he/she has been instructed to represent that client by a competent body. Before an attorney-at-law accepts such brief reasonable efforts must be made to ascertain the identity, competence and authority of the person or body who instructs him/her when the specific circumstances give reason to believe that the identity, competence or authority of that person are uncertain.

As soon as a lawyer accepts a brief he is obliged to honour the commitments he accepts. He is not permitted to accept a commitment or guarantee for a foreign commitment except he is certain of fulfilling it. According to most lawyers code of ethics and as is succinctly captured in the Republic of Armenia Chamber of Advocates *Code of Conduct of Advocates*, 'a lawyer shall not withdraw from an undertaken representation, with the exception of reasonable causes ...'. Reasonable grounds for which a lawyer could withdraw from a case include: overload or unnecessary knowledge in a special legal area; where a client asks for legal assistance having dishonest motivation; when the client insists that that lawyer carries out actions in contradiction with the law or with the Ethics Code; when the client insists that the lawyer carries out actions which go in contradiction with his professional evaluation; when the client cannot pay for the assistance or does not fulfil contractual obligations on payments after they have been offered legal assistance. It would also be justifiable for a lawyer to refuse to provide legal service even in the cases of conflict of interest touching on an existing representation and his state of health or mental condition prevents him.

The pandemic era frustrated several rules meant to regulate professional ethics in different jurisdiction. For instance in Nigeria, legal consultation and brief in lawyer's place of business was impracticable in the face of lock downs and restrictions on contact. In jurisdictions where verification of identity were to be established before the acceptance of a brief, such verification was frustrated. As a result of an unprepared shift to online documentation and increased online legal documentation, data protection obligation called for more regulation of data processing, under the ethical code of some countries like the Republic of Czech. According to Vladimir Vardanyan, with a view of flattening the curve of the infection in the Czech Republic, the Processing of Personal Data and a number of other legal acts were amended to align Czech law with the GDPR'. The key principles of the GDPR are data minimization, transparency and security.

1.2 Confidentiality

Confidentiality is a core duty of a Legal Practitioner. The client communicates to the advocate information that the advocate is expected not to disclose to others on the basis of a duty of confidentiality. Rules of Professional Conduct in several jurisdiction provides that all oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged and cannot be revealed except with consent of the Client or as permitted under the rules or as permitted by a court order. A lawyer is expected to exercise reasonable care to prevent his employees, associates and others whose services are utilized by him from disclosing or using confidences or secrets of a client. The lawyer is obliged to duly and

promptly instruct all persons who contribute to his activities connected with the provision of legal services about the extent of their legal duties to observe their confidentiality even in connection with the witness duties of such persons and shall incorporate provisions on such nondisclosure in an employment contract concluded with such persons. In Croatia, an attorney is expected to continue to preserve the attorney's secret even under threat of disciplinary accountability while rendering legal assistance and afterwards, as long as its disclosure is likely to be detrimental to the client.

The pandemic resulted in the need for urgent digitisation. One major negative impact of the increased digitisation process in Nigeria was the reliance on third party in data computation due to the challenges of technology expertise.

1.3 Diligence and Competence

It is the duty of a lawyer employed in respect of a court case to be personally present or be properly represented throughout the proceedings in court. (5) Negligence in handling of a client's affairs may be such a nature as to amount to professional misconduct. The activity of an advocate is a rights-protecting activity. The main goal of an advocate is to provide legal assistance to the client. When accepting the assignment to provide legal assistance, the advocate shall bear in mind his professional ability to execute it and shall refuse accepting the assignment if it becomes clear that the advocate cannot comply with the requirements of this Code.

The duty of diligence and competence includes an Advocate advising and defending their clients within reasonable period, conscientiously, promptly, diligently and in the most efficient manner possible. The competence implies the legal knowledge and professional skills which are necessary in any concrete case. The Armenia code states that this duty requires the advocate to have strong professionalism, knowledge of the legislation, practical experience, and command of the advocacy tactical methods and means and the art of public speaking.

A Lawyer is not expected to accept a legal matter which he/she is not able to handle within a reasonable time frame and shall also not accept a legal matter which he/she knows or ought to know that he/she has no competence to handle, without cooperating with a lawyer who has competence to handle it.

1.4 Withdrawal/Termination of Relations with the Client

A lawyer is only permitted to withdraw from representing a client in accordance with the provision of law. A Lawyer exercising his/her right to withdraw from representation shall inform his/her client within a reasonable time, to enable the client to proceed with his/her case. However, the Bulgarian code permits a lawyer to withdraw from representation without stating the reasons for withdrawing. In Nigeria, a lawyer shall not abandon or withdraw from an employment once assumed, except for good cause. Good cause for which the lawyer may be justified in withdrawing from the client's employment includes conflict of interest between the lawyer and the client, where the client insists on an unjust or immoral course in the conduct of his case or a client persists against the lawyer's advice and remonstrance in pressing a matter. A lawyer may refuse to provide legal service where it will be detrimental to his state of health.

The period of the COVID-19 pandemic was marked by inaction of lawyers on legal cases due to ill health, rising death, enforced quarantine, Lockdown and social distancing. Such inaction and inability to follow deadlines and timeline could be interpreted as negligence on the part of lawyers amounting to professional misconduct. For instance only the ethical code of Czech among the States studied provided for a lawyer refusal to provide legal service on the ground that it will be detrimental to his/her state of health Negligence in handling of a client's affairs may be such a nature as to amount to professional misconduct.

1.5 Recognition and Inclusion of Electronic/ Digital Transaction by Ethical Codes

The republic of Armenia Chamber of Advocates provides for the electronic storage of advocacy file for three years after the completion of the case. However the ethical codes of most of the jurisdiction including the Attorney Ethics Code Albany 2005, Bar Association of Republic of Srpska, Lawyers Ethics Code 2005, Cyprus Bar Association, Code of Conduct Regulations and the Czech Bar Association made no mention of the use of electronic documents or storage systems.

The Bulgarian Attorneys-at-Law Ethics Code provides for lawyers use of electronic communications and for continuous professional development (CBD) training to be given electronically through live stream and any other means. The Flemish Bar Council provides an electronic system for registering attendance and for issuance of attendance certificates, evaluation and on completion of training provides for automatic electronic addition of credits earned to lawyer's electronic card. Also recognized by the code is the production of electronic copies of documents and exhibits on request in proceedings before administrative, social, and tax proceedings.

Although out of the jurisdiction studied most had no integration of rules regulating electronic and digitalization in legal practice, urgent digitisation and increase digitisation processes marked legal practice in the pandemic era. Lack of preparation for the new norm as a result of challenges of technology expertise and absence of ethical framework regulating electronic legal transactions, electronic execution of documents and electronic conveyancing practice led to a sliding legal scenario.

1.6 Insurance

Generally, the ethical codes of the jurisdiction studied except that of Austria was silent on insurance. The Austrian Act provides for lawyers to take professional indemnity insurance with an insurer entitled to provide insurance cover in Austria. If a lawyer does not comply, the lawyer could be banned from legal practice even if legally registered to practice law in Austria.

Such insurance is expected to cover civil legal responsibility outside of their professional activity insofar as it is necessary in view of the nature and size of risks that incur during the performance of their professional activities.

Conclusion and Recommendations

1. Conclusion

COVID-19 is unlikely to be the last virus that threatens global health and challenges prevailing paradigms in the legal profession. The Challenges posed to legal education and Legal Services by the COVID-19 pandemic calls for a

re-evaluation legal training and practice and rules regulating ethics in the legal profession. Access to legal education [and legal services] during this and future pandemics requires a commitment to health, safety, and equity WHO Director-General.

The transition of the legal profession during the COVID-19 Pandemic would have been smooth if the ethical codes of various countries had an existing framework to accommodate some likely changes associated with a crisis situation.

Countries which had integrated the use of electronic and technology into their ethical codes were able to adapt within that framework.

Remote practice of the law using electronic, technology and new digital system within the legal profession is a new norm that should be retained.

2. Recommendations for Post Covid-19 Pandemic Proof Legal Education Program

The Challenges posed to legal education and Legal Services by the COVID-19 pandemic calls for a re-evaluation legal training and assessment model. It is necessary to identify applications that can accommodate large classes and permit user friendly breakout sessions. Institutionalization of hybrid classes should be accepted by all nations as a new normal to retain. There is need to develop suitable models for online assessment

There is need to review ethical codes in different jurisdictions with a view to inclusion of rules regulating ethics in the use of electronic and digitalization in the legal profession The Austrian Act Regulating the Exercise of the Lawyers Profession is a model for consultation. The Art recognizes dissemination of information by electronic mail, use and storage of lawyer's electronic signature and provides for electronic register for lawyers signature. Wherever the right to represent a client ends, the right for the lawyer's signature to be included in the Register also ends. We recommend urgent digitisation & automation of land registries and other registries related to legal processes Nigeria.

Finally, there is need to invest in building capacity of law students, law teachers and lawyers for utilising of computers, legal and court systems related to legal practice.

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