

“THE BAR-BENCH RELATIONSHIP: MAINTAINING THE BALANCE (PERSPECTIVE FROM THE BAR)

Being a paper presented by:

AUGUSTINE O. ALEGEH SAN, FCIArb.[UK]

President, Nigerian Bar Association

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1.0 Introduction

- 1.1 It is indeed a great honour to have been invited to this auspicious event to speak to this august gathering on the topic: ***“The Bar-Bench Relationship: Maintaining the Balance (Perspective of the Bar).*** I commend the National Judicial Institute for their efforts in organizing this seminar/workshop aimed at improving the quality of justice dispensed in our Courts and thank them for this singular privilege extended to me.
- 1.2 My interactions with the members of the Bench, especially Magistrates in the course of my legal practice have revealed that there is an urgent need for the Bar and the Bench to come together and work harmoniously in order to ensure that justice is dispensed according to law. This has become increasingly important in view of the negative perception of our justice delivery system by the general public.
- 1.3 I have in this paper dealt in general with the exercise of judicial powers by the Courts, the duties, obligations and roles expected of the Bar in the adjudicatory process and the overriding need to ensure that cases are conducted in a decent and lawful manner.

2.0 The Court and Judicial powers/functions

- 2.1 It is a generally accepted aphorism that the most exalted function which a man can be entrusted is the administration of justice to his fellow beings. The performance of this onerous duty undoubtedly requires the presence of certain qualities, as well as the sacred observance of standard of behavior.

2.2 The exercise of judicial powers and/or functions in Nigeria is succinctly captured in **Section 6(1) and (2)** of the **1999 Constitution (as amended)** which provides thus:

“6 (1) The Judicial Powers of the Federation shall be vested in the Courts to which this section relates, being Courts established for the Federation;

(2) The judicial powers of a State shall be vested in the Courts to which this section relates, being Courts established, subject as provided by this Constitution, for a State

2.3 Flowing from the above, it is crystal that the exercise of judicial powers and/or functions are vested in the law Courts and are constitutionally recognized. In English theory, a Judicial Officer exercises the King's power of dispensing justice since he cannot do it himself. Thus, the world over, there is a deep and abiding acceptance of the truism that the Judiciary as the third arm of government is represented by the Courts which are manned by judicial officers who are to administer justice according to law.

2.4 There is no gainsaying the fact that a critical consideration of the practice of Courts will show beyond doubt that the administration of justice according to law by the Courts includes a degree of activism and discretion which is usually applied to attain justice.

3.0 RELATIONSHIP BETWEEN THE BAR AND THE BENCH

3.1 The 'Bar' in legal parlance means an association or group of Lawyers or Advocates. When used in relation to Court, it means lawyers, Advocates, or where Lawyers assemble in the Court.

- 3.2 The term 'Bench' on the other hand signifies Judicial Officers in the court or where they sit in the Court. The word 'Bench' also has a broader meaning in law – it is a metonym used to describe members of the judiciary collectively, or the judges of a particular court. It can also mean a Tribunal or place where justice is administered. To appear before the full Bench means to appear before the entire group of Judicial Officers of a particular Court.
- 3.3 The Bar and the Bench have oftentimes been described as Siamese twins, dependent on each other in the quest to sustain and dispense justice according to law. This unique relationship exists in no other profession and in no other walk of life and oftentimes depends on the mutual assistance and respect of each group toward the other.
- 3.4 The Bench and the Bar occupy significant roles in the administration of Justice. It is only by working harmoniously together that the Bar and the Bench can advance the course of justice and promote a just society where Rule of Law is observed and Human Rights respected.

4.0 ROLE OF LAWYERS

- 4.1 The **Rules of Professional Conduct for Legal Practitioners, 2007** vide its provisions in **Rules 30 – 38** impose obligations and duties on lawyers in the conduct of their matters in court and in their dealings with Members of the Bench. The RPC enjoins lawyers to observe a high level of decorum and professionalism in the discharge of their matters in Court. It goes further to establish the requisite standard of behavior or comportment expected of lawyers in their dealings with members of the Bench. A lawyer's duty to the court relates to his or her status as a professional who serves, not only clients, but also the public interest. In

other words, a lawyer may not be able to act in a way that serves the client's best interests if doing so would put the administration of justice and the community's confidence in the profession at risk. A lawyer's duty to the court also helps define the limits of his zealous representation of a client.

Lawyer as an Officer of the Court – Rule 30

- 4.2 A lawyer's duty to the court is the paramount element of ensuring a relationship between the bar and the bench.
- 4.3 A lawyer should be punctual in all court appearances and, whenever possible, should give prompt notice to the court and to all other counsel in the case, of any circumstances requiring his absence from Court.
- 4.4 A lawyer should make every reasonable effort to prepare himself fully prior to court appearances. He should promptly inform the court of any settlement, whether partial or entire, with any party, or the discontinuance of any issue.
- 4.5 A lawyer must ensure that all depositions and other legal documents required to be filed are filed promptly. He must, upon reasonable request, permit the opposing counsel to inspect all evidence of which the law permits inspection, and, in general, should do everything possible to avoid delays and to expedite the trial. We cannot but admit the fact that members of the Bar are responsible for some unnecessary adjournments of cases and this constitutes a clog in the speedy dispensation of justice by the Courts. It is well understood that adjournments are in certain circumstances

inevitable but the unnecessary and unreasonable applications must cease henceforth in the interest of justice.

Decorum and Professionalism – Rules 31, 35 & 36

- 4.6 Lawyers are expected to show utmost respect to the courts in their daily practice of law. This is usually manifested in the manner of their conduct before the court, the manner of addressing the courts and general disposition towards the courts.
- 4.7 Except as provided by rule or order of court, a lawyer should never deliver to the Judge/Magistrate any letter, memorandum, brief or other written communication without concurrently delivering a copy to opposing counsel.
- 4.8 A lawyer should always display a dignified and respectful attitude towards the Magistrate, not for the sake of his person, but for maintenance of respect for and confidence in the judicial system. It is both the right and duty of the lawyer to fully and properly present his client's case and to insist on an opportunity to do so. He should vigorously present all proper arguments against any ruling he deems erroneous and should see to it that a complete and accurate case record is made. In this regard, he should not be deterred by any fear of judicial displeasure or even punishment.
- 4.9 It is the duty of the lawyer to maintain a respectful attitude towards the Court at all times. Where a lawyer appears to be aggrieved or displeased with the conduct of the Magistrate, he is encouraged not to showcase such displeasure in open court, but rather to channel his complaint to the appropriate judicial authority.

Trial Publicity, Candid & Fair Dealings in Court – Rules 32, 33 & 34

- 4.10** A lawyer must not knowingly and habitually violate any established rule of procedure or of evidence, knowingly misquote a witness or contents of a document, cite as authority a decision that has been overruled with intent to mislead the Court. This type of unwholesome or sharp practice is totally unacceptable and reprehensible. Any such judgment delivered based on the misleading evidence presented by Counsel will be liable to be set aside on appeal.
- 4.11 Lawyers are also enjoined to disclose all legal authorities which will aid the just and efficient determination of matters in court irrespective of the fact that such authorities may be to the detriment of their clients.
- 4.12 Lawyers are precluded from making extra-judicial statements during the pendency of a matter in court with the aim of unduly influencing the Magistrate or the Court in the matter.
- 4.13 A lawyer should never show undue attention or unusual hospitality to a Magistrate, especially when he has matters pending before that same Magistrate. Lawyers are encouraged to avoid anything calculated to gain or have the appearance of gaining special consideration or favour from a Magistrate.

Duty of Care in Criminal Matters – Rules 37 & 38

- 4.14 Lawyers are urged to exercise extreme care and diligence in the conduct of criminal matters in court. This duty of care is expected from both the prosecution and the defence counsel. Consequently, all facts within the personal knowledge of either the prosecution or

the defence must be presented before the Court for the matter to be effectively determined.

- 4.15 Furthermore, a lawyer who acts in defence of an indigent accused shall exert his utmost best and discharge his obligations to his client with a high level of professionalism.

5.0 EXPECTATIONS FROM THE BENCH

- 5.1 As co-Ministers in the temple of Justice, Members of the Bench are also saddled with a corresponding duty to discharge their judicial functions with a high level of professionalism. This minimum standard of acceptable behavior for Judicial Officers is imposed and prescribed by the Code of Conduct for Judicial Officers. Permit me to highlight and discuss some of these provisions.

- 5.2 Judicial Officer by virtue of the sensitive nature of their office are charged to uphold the course of justice by abiding with the provisions of the Constitution and the law and must maintain professional competence, order and decorum at all times.

Fair Hearing & Incorruptibility

- 5.3 The Bar expects Judicial Officers to be incorruptible and to discharge their judicial functions without any form of bias whatsoever. The twin pillars of justice: *Audi Alterem Partem* and *Nemo Judex in Causa Sua* must be adhered to strictly by the Bench in the conduct of cases before it. This will improve the quality of judgments and ensure that justice is dispensed without fear or favour. Judicial Officers are urged to always provide adequate opportunity for Counsel to adequately and exhaustively present his client's case in court. A Magistrate should avoid irregular interruption in the Counsel's arguments. It is the

right of the Counsel to present his case in Court and it is the duty of the Magistrate to respect this right. A Magistrate should always respect an advocate or lawyer and should not be harsh towards him in court. A Magistrate can only interrupt on basis of irrelevancy and repetition of facts.

- 5.4 It is pertinent to note that the relationship between the advocate and Judicial Officer is quite delicate. On the one hand, it is important to allow Counsel to be firm and resolute in the pursuance of his case while on the other, the Magistrate must maintain his authority in the court. Of course, a lawyer should avoid making rude, insolent or insulting comments against a Magistrate and a Magistrate should not be over-sensitive to remarks made against him.

Inordinate Delay of Cases

- 5.5 The Nigerian Judiciary is urged to embrace the system of case scheduling to ensure speedy dispensation of justice. The normal practice of bringing every lawyer to Court at **9am** daily should be reviewed. The Courts in fixing matters should set both a date and a time for the matter. This would allow the time allotted for each matter to be effectively utilized.
- 5.6 The heat and humidity of the Nigerian climate coupled with the heat generating wigs, gowns and plastic collars commonly in use by our members make it unwise to pack many lawyers into one Court room which in most cases has faulty air conditioners.
- 5.7 This situation encourages the grant of frivolous adjournments by the Courts who often see the need to decongest their congested Courts. Allocation of time to cases would send a clear message to

Lawyers that the time allocated must be effectively utilized and frivolous applications for adjournment would no longer be the norm. To this end, Practice Directions should be issued to make this the standard practice in every Court.

Failure of Court to sit: Inability to notify Counsel

5.8 It is appreciated that emergency situations may arise which make it impossible for a Court to sit.

5.9 However, the instances where a Judicial Officer receives an invitation for a conference or other engagement which conflicts with his Court's diary but fails to notify the Counsel either by issuing fresh hearing notices; by text messages or email to the phone number or email address provided by the Counsel is not to be encouraged.

5.10 The practice should be well established that whenever a Magistrate has a good reason not to sit, the Court Registrar should be directed to notify Counsel promptly. Such notice would allow Counsel make better use of their time and may also obviate the need of travelling to the Court with the attendant risk involved.

5.11 We must commend the few Courts that have already adopted this approach.

Judicial Discretion

5.12 Our laws are replete with a latitude of discretion being granted to our Courts hence encouraging wanton abuse of discretionary powers. The areas that are worse hit are the areas of 'Bail' and 'Sentencing'.

- 5.13 There is urgent need to have a Bail Act and a Sentencing Act that will provide the spectrum of conditions to be imposed while granting bail and specify the limits within which a Judicial Officer can impose a sentence on a convict. The spectrum and limits should be based on the nature of the offence and the Magistrate would be obliged to operate within such clearly defined spectrum.
- 5.14 In the absence of a Bail Act and Sentencing Act, Judicial Officers are urged to exercise their discretion responsibly having regard to public policy.

6.0 CONCLUSION

- 6.1 Let me conclude by saying that over the past few years, the Nigerian Bar and the Bench have enjoyed a robust and symbiotic relationship which has led to the growth and development of the Nigerian legal system.
- 6.2 Nevertheless, there is always room for improvement and it is hoped that several fora such as these will be organized to facilitate further discourse and dialogue between the Bar and the Bench in order to strengthen the fraternal bond between both sides of the divide. This is very important because members of the Bar constitute the Bench and there is an urgent need to ensure that both the Bar and the Bench are on the same page at all times in advancing the course of justice.
- 6.3 Once again, I sincerely thank the National Judicial Institute for this opportunity and more importantly for providing this platform upon which to share my views on such a critical subject. I wish all of you a successful and rewarding programme.

6.4 Thank you all for listening.

Dated Monday, 18th April, 2016.

AUGUSTINE ALEGEH, SAN, FCI Arb (UK)
President, Nigerian Bar Association