

## Comparative Perspectives to Advertising by Lawyers in Nigeria

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### Abstract

This paper analyzes the extent to which a legal practitioner can advertise his trade in view of global initiatives and contemporary challenges in the legal profession. Part E of the Rules of Professional Conduct for Legal Profession 2007 was critically examined in this paper *vis a vis* similar provisions in selected jurisdictions. The paper welcomes new innovations and possible amendments of the Rules of Professional for Conduct for Legal Practitioners 2007 in line with international best practices. The paper further makes comparative analysis of lawyer advertising in the USA, UK, Canada and South Africa. The paper makes recommendations on the need to improve legal marketing by Nigerian lawyers within the ambit of an amended Rules of Professional Conduct.

### Introduction

Lawyers, unlike other professionals, are restricted from advertising freely by their regulatory bodies across various jurisdictions. The provisions of Part E of the Rules of Professional Conduct for Legal Practitioners, 2007 (RPC) provides for what constitutes improper attraction of business starting with Rule 39 which deals with advertising and soliciting.<sup>2</sup> A careful perusal of the Rules shows some lacuna when compared to what obtains in similar jurisdictions such as Canada, USA, UK and a few others. The paper seeks some broader inputs into Part E of the RPC for Nigerian lawyers in line with international best practices. The paper is of the view that use of websites, social media and price tags for services must be included in the next amendment of the RPC by the General Council of the Bar. The paper is also a call for further regulation and reforms on the ethical aspect of lawyer advertisement. The paper posits that the provisions of

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<sup>2</sup> R. 39 – 47 of the RPC

Part E of the RPC are inadequate to address modern legal practice with respect to advertisement.

#### **a. Advertisement in the Legal Profession**

The word advertisement simply means to advertise. To advertise simply means to make known a product, things or service to a third party or the general public in any means permissible by the laws of the land and ethics of journalism. The Black's Law Dictionary defines advertising as the 'action of drawing the public's attention to something to promote its sale'.<sup>3</sup> It could also mean the business of producing and circulating advertisements.

#### **b. Solicitation in the Legal Profession**

Soliciting may be a crime in some jurisdictions particularly when it comes to aiding prostitution and allied offences. Solicitation is defined by the Black's Law Dictionary as the act or an instance of requesting or seeking to obtain something.<sup>4</sup> It is further defined as an attempt or effort to gain business where the attorney's solicitations took the form of radio and television adverts. The Model Rules of Professional Conduct place certain prohibitions on lawyers' direct solicitation of potential clients.

Within the Nigerian jurisprudence, a lawyer shall not solicit professional employment either directly or indirectly: by circulars, handbills, advertisement, through touts or by personal communication or interview; by furnishing, permitting or inspiring newspaper, radio or television comments in relation to his practice of law; by procuring his photograph to be published in connection with matters in which he has been or is engaged, or concerning the manner of their conduct; the magnitude of interest involved or the importance of the lawyer's position; by permitting or inspiring sound recordings in relation to his practice of law; or by such other means of self-aggrandizement.<sup>5</sup>

#### **c. Legal Practice Marketing in Nigeria**

Under the RPC, the permissible modes of advertising for a lawyer in Nigeria should be by publishing in a reputable law list or directory, a brief biographical or informative data of himself

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<sup>3</sup> Black's Law Dictionary, (Thomson West 9<sup>th</sup> edn 2009) 168

<sup>4</sup> Black's Law Dictionary, Pg 4351

<sup>5</sup> *Ibid.* R. 39 (3) of RPC

in respect of his name, professional association, address and telephone number, Telex number, e-mail address, his school, colleges or other institutions attended with date of graduation, degree and other academic or educational qualifications or distinctions. It includes dates and place of birth and year of admission to practice law, any public office or quasi public office held, post of honour, legal authorship, any legal teaching profession, any national honours, membership and offices held in the Bar Association and duties; and any position held in legal scientific societies.<sup>6</sup>

Within the RPC parlance, a lawyer can also have his name written on Note Pads, envelopes and visiting cards in line with Rule 40 RPC 2007. It is as well permissible for a lawyer to have his name written on signs and Notices in line with the provisions of Rule 41 of RPC. A lawyer's name and qualifications may be written in books or articles for publication under Rule 42 of the RPC 2007.

In the light of the above, a Notice of change of address must be sent to client under Rule 43 of RPC. This Notice of change of address enables the lawyer to give Notice to other lawyers in his locality and also publish in his local journal, a brief and dignified announcement of his availability to serve other lawyers as associates or consultants as provided by Rule 44 of the RPC. A lawyer may write articles for publication or participate in Radio or Television programmes in which he gives information on the law but shall not accept employment from any such programmes or publication to advice on inquiries in respect of their rights.<sup>7</sup>

The following acts are not permissible under the Rules:

A lawyer shall not:

- a. Insert in any newspaper periodical or any other advertisement offering as a lawyer to undertake confidential enquiries;
- b. Write for publication or otherwise cause or permit to be published except in a legal periodical, any particulars of his practice or earnings in the courts or cases where the time for appeal has not lapsed on any matter in which he has been engaged as a lawyer; and take steps to procure the publication of his photograph as a lawyer in the press or any

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<sup>6</sup> *Ibid.* R. 39 (4)

<sup>7</sup> *Ibid.* R. 46 (1)

periodical.

Also, a lawyer shall not engage in any advertising or promotion of his practice of law whether accurate or inaccurate or calculated to mislead; or likely to diminish public confidence in the legal profession or the administration of justice. He shall not make comparison with or criticizes other lawyers' work, the size of success of his practice or his success rate.<sup>8</sup>

A careful anatomy of Part E of the RPC reveals a noticeable lacuna with respect to omission of the word 'website' and its regulation for the purposes of marketing legal services in Nigeria. This writer agrees that some law firms hoist websites in Nigeria but some posers in this respect need be answered. What is the legal framework for hoisting websites as law firms in Nigeria when the RPC made specific mention of words such as Note pads, Envelopes, Law Directory, Law publications and a few others? The next poser remains, who regulates the content of law websites, social media and what should it contain within the legislative intent of Part E of the RPC? It should be noted that some international clients and corporate organizations would not transact business with a Nigerian law firm without a website. Hence, the need for a standard law firm to hoist one. It should be noted that we are not averse to hoisting of websites by law firms for the purposes of marketing legal practice. This writer is of the opinion that Nigeria should brace up for full compliance within international best practices. It is time for Nigerian lawyers to put a price tag on their services as it obtains in the United States of America and Canada only to mention but a few. It is suggested that the Local branch of NBA may determine the charges appropriate for their locality owing to differentials in the standard of living from one territorial jurisdiction to another. It is further suggested that the Legal Practitioners Remuneration Committee (LPRC) established by section 15 of the Legal Practitioners Act 2004 be made an independent committee of the NBA in order for it to function effectively. The present composition of the LPRC wherein the Attorney – General of the Federation is the chairman with other Attorney – General as members of the committee seems not to be in the best interest of the legal profession. This is because the office of the Attorney – General of the Federation as well as the state Attorneys – General is already overburdened with enormous responsibilities by various statutes. An amendment of the relevant provisions of the Legal Practitioners Act 2004 is desirable in this respect. If made a committee of the NBA, the members in private practice who

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<sup>8</sup> *Ibid.* R. 39 (2)

knows where the shoe pinches them would work assiduously to ensure that there is a workable template for legal marketing in Nigeria. The proposed Remuneration Committee of the NBA would also drive the necessary push to ensure a holistic review of the Legal Practitioners (Remuneration for Legal Documentation and other Land Matters) Order 1991. This is because the inflationary rate in 1991 and 2017 is unmatched. The standard of living in Nigeria in 1991 and 2017 is incomparable.

#### **d. Lawyer Advertising in Canada**

The Law Society of Upper Canada applies the Rules of Professional Conduct for lawyers which became effective on 1<sup>st</sup> November, 2000 and was subsequently amended on 22<sup>nd</sup> September, 2011. Section 3.02 of the Canadian RPC 2000 provides for marketing legal services as follows:

### **3.02 MARKETING**

#### **Marketing Legal Services**

3.02 (1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos. (2) A lawyer may market legal services if the marketing (a) is demonstrably true, accurate and verifiable, (b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive, and (c) is in the best interests of the public and is consistent with a high standard of professionalism.

Instances of marketing practices that may contravene this rule include: stating an amount of money that the lawyer has recovered for a client or referring to the lawyer's degree of success in past cases, unless such statement is accompanied by a further statement that past results are not necessarily indicative of future results and that the amount recovered and other litigation outcomes will vary according to the facts in individual cases. It further includes practices suggesting qualitative superiority to other lawyers or raising expectations unjustifiably by suggesting or implying the lawyer is aggressive, disparaging or demeaning other persons, groups, organizations or institutions and taking advantage of a vulnerable person or group by using testimonials or endorsements which contain emotional appeals.

The above though similar by way of general rule to Rule 39 (1) of RPC 2007 which provides for fair and proper advertisement in all circumstances in compliance with the provisions of the RPC, seems more elaborate than what obtains in the Nigerian RPC with respect to the instances of contraventions stated above.

In furtherance of the above, the Canadian RPC provides for advertising of fees by providing that a lawyer may advertise fees charged by him for legal services if the advertising is reasonably precise as to the services offered for each fee quoted and the advertising states whether other amounts, such as disbursements and taxes, will be charged in addition to the fee, and the lawyer adheres to the advertised fee.<sup>9</sup> This is not obtainable in Nigeria. What obtains in Nigeria is a stale scale<sup>10</sup> of charges prescribed by the Legal Practitioners Remuneration Committee<sup>11</sup> for charging various non – litigious services undertaken by the lawyer in Nigeria. Our view is that the Nigeria version of the RPC should toe the modern path of the Canadian version where a client is not seemingly ambushed by subsequent preparation and sending of a Bill of Charges.

It should be further noted that the Canadian RPC made provisions for protecting vulnerable groups with respect to advertisement of fees. In essence, the fees charged should not be exploitative and the lawyer must subsequently abide by same. In same vein Rule 3.03 (1) of the Canadian RPC provides that a lawyer may advertise that the lawyer is a specialist in a specified field only if the lawyer has been so certified by the Society. In other words, the Law Society of Canada certifies lawyers in specialized fields of legal practice and he may practice and advertise his specialized practice in this respect. Furthermore, lawyer's advertisements may be designed to provide information to assist a potential client to choose a lawyer who has the appropriate skills and knowledge for the client's particular legal matter. In accordance with Section 20(1) of the Law Society's Bye Law 15 on Certified Specialists, the lawyer who is not a certified specialist is not permitted to use any designation from which a person might reasonably conclude that the lawyer is a certified specialist. In a case where a firm practises in more than one jurisdiction, some of which certify or recognize specialization, an advertisement by such a firm which makes

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<sup>9</sup> R. 3.03 (3) of the Canadian RPC

<sup>10</sup> Examples of different fees chargeable as a scale fee is contained in Scales I and II of the Legal Practitioners (Remuneration for Legal Documentation and Other Land Matters) Order 1991

<sup>11</sup> The Legal Practitioners Remuneration Committee (LPRC) is a creation of s. 15 (1) of the Legal Practitioners Act 2004.

reference to the status of a firm member as a specialist, in media circulated concurrently in the other jurisdiction(s) and the certifying jurisdiction, shall not be considered as offending this rule if the certifying authority or organization is identified. A lawyer may advertise areas of practice, including preferred areas of practice or that his or her practice is restricted to a certain area of law. An advertisement may also include a description of the lawyer's or law firm's proficiency or experience in an area of law. In all cases, the representations made must be accurate and must not be misleading.<sup>12</sup> In Nigeria, though there are lawyers in specialized fields, some are certified in some areas such as capital market operations, arbitration, shipping, maritime practice and aviation but the Nigerian RPC makes no provision for specialists advertising unlike what obtains in Canada. The Nigerian RPC makes it obligatory for a lawyer to refuse to accept a brief where he knows that he is not competent to handle same. The Rules further allow the lawyer to associate with a lawyer who is competent to handle such except where the client objects.<sup>13</sup> It is apposite to state that Nigeria should adopt specialized practice approach owing to the geometric progression in which new wigs are being called to the Bar annually. It is time for the Nigerian Bar Association (NBA) to toe the path of modern legal practice. The various sections of the NBA should be encouraged and authorized to train and certify specialist legal practitioners subject to fulfillment of certain conditions for specialized training.<sup>14</sup>

#### e. Lawyer Advertising in the USA

In the US, the publication of the Canons of Professional Ethics by the American Bar Association in 1908 prohibited advertising. The case of *Bates & Others v State Bar of Arizona*<sup>15</sup> discussed in more depth, the history of attorney advertising in the United States of America as far back as 1977. Bates represented the watershed moment when the Supreme Court first found that the free speech rights of attorneys and the free speech interests of consumers in having access to information about legal services trumped the Bar Associations' interest in banning or significantly hamstringing attorney advertising. It was also one of a number of cases in the late 1970's and early 1980's that helped establish the Supreme Court's commercial speech doctrine for evaluating government regulation.

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<sup>12</sup> That is, it must be demonstrably true

<sup>13</sup> R. 16 (1) (a) RPC 2007

<sup>14</sup> Business Law, Anti Corruption, Public interest litigation, etc

<sup>15</sup> 433 US 350 (1977)

In August 2012, the American Bar Association (ABA) House of Delegates approved changes to the comments to the Model Rules of Professional Conduct that addressed advertising and solicitation. Nevada's Supreme Court adopted substantial changes to the ethics rules that govern advertising in that state, while the courts of Florida and Tennessee are considering changes that are far afield from the ABA rules. Ethics committees in several states have issued opinions that attempt to apply the rules to aspects of technology – based marketing, such as daily deals, question-and-answer sites and recommendation requests. Meanwhile, the state of Virginia became the first state to bring disciplinary charges against a lawyer for failure to apply the advertising rules to his blog.

### **ABA Ethics 20/20**

The ABA is the proverbial 800-pound gorilla in the room. Ironically, the ABA Model Rules of Professional Conduct has no force and effect. Compliance with them serves as no protection for a lawyer who advertises in ways in violation of the lawyer's state rules. The Model Rules are developed to assist the states, but few states have adopted the ones governing client development under Rules 7.1 to 7.5 verbatim. The ABA rules are important, however, because nearly every state has embraced them as a core of their rules.<sup>16</sup> The states then embellish from there.

The cornerstone of the rules governing advertising and solicitation is the prohibition against false or misleading communications. Rules governing solicitation, or “direct contact,” have included other limitations, such as the anti-ambulance chasing prohibition on most in-person solicitations and a requirement to label mailed material as an advertisement.

In 2009, the ABA launched an initiative known as Ethics 20/20. The 20/20 Commission was charged with a reconsideration of all the Model Rules because of globalization and technological developments. The Ethics 20/20 working group on technology and client development sought comments on the direction it should follow. Lawyers from across the country responded with an overwhelming sentiment to focus on the prohibition on false or misleading communications and to abandon notions of micromanaging technology-based advertisements.

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<sup>16</sup> William Hornsby, “Lawyer Advertising and Marketing Ethics Today: An Overview” (2013) accessed September 14, 2016.



It should be noted that the provisions of the ABA rules are similar to the intendment of Rule 39 (1) & (2) of the RPC in the sense that a lawyer shall not mislead the client in terms of false or misleading communications in professional advertisement. However, Part E of the RPC is silent on technology – based advertisement unlike what obtains in the ABA Model Rules.<sup>17</sup>

In furtherance of the above, Rule 7.3 of ABA Rules provides for direct contact with prospective clients of the lawyer thus:

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer; or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).<sup>18</sup>

Of special interest is the express provision to avoid coercion, duress or harassment of the client by the lawyer. The breach of the above code of ethics may lead to applicable sanctions for professional misconduct.<sup>19</sup> However, it should be noted that Nigeria has an express provision against direct advertisement in Rule 39 (3) (a) of the RPC which provides that a lawyer shall not solicit professional employment either directly or indirectly by circulars, handbills, advertisement, through touts or by personal communication or interview. This writer agrees with

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<sup>17</sup> This includes technology – based marketing, such as daily deals, question-and-answer sites and recommendation requests

<sup>18</sup> The exception to R. 7.3 of the ABA Rules above states (d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

<sup>19</sup> R. 55 (1) of RPC states the implication of a breach of any of the provisions of the RPC thus: If a lawyer acts in contravention of any of the rules in these Rules or fails to perform any of the duties imposed by the Rules, he shall be guilty of a professional misconduct and liable to punishment as provided in Legal Practitioners Act, 1975 (now 2004).

the Nigerian version of the RPC with respect to total prohibition of touting as a form of advertisement. This writer is however taken aback as regards advertisement as quite a number of Nigeria law firms hoist websites. It is suggested that the word 'advertisement' in Rule 39 (3) (a) be expunged to pave way for modern legal marketing in line with what obtains in developed jurisdictions. This is because advertisement through personal interviews or communication conforms to new trends in modern legal practice.

The State of California Bar by her rules 1 – 400 in paragraph E empowers the Board of Governors of the State Bar to formulate and adopt standards as to communications which will be presumed to violate rule 1-400 on advertising and legal marketing. The standards shall only be used as presumptions affecting the burden of proof in disciplinary proceedings involving alleged violations of these rules. "Presumption affecting the burden of proof" means that presumption defined in Evidence Code sections 605 and 606. Such standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members. In effect, the General Council of the Bar after amending the RPC in line with modern trends should liaise with the NBA to institute disciplinary measures against erring lawyers.

In the same vein, paragraph (F) of rule 1 – 400 as it is called, states that a member shall retain for two years a true and correct copy or recording of any communication made by written or electronic media. Upon written request, the member shall make any such copy or recording available to the State Bar, and, if requested, shall provide to the State Bar evidence to support any factual or objective claim contained in the communication. It is apposite to state that this is a good initiative to check abuse of advertisement policies of the Board of Governors of the Californian Bar. It is a ready defence against any false permutations and allegations by the client.

**SAMPLE ADVERT IN THE STATE OF ARIZONA, USA<sup>20</sup>**

ADVERTISEMENT

**DO YOU NEED  
A LAWYER?  
LEGAL SERVICES  
AT VERY REASONABLE FEES**



- **Divorce or legal separation--uncontested  
(both spouses sign papers)  
\$175.00 plus \$20.00 court filing fee**
- **Preparation of all court papers and instructions on  
how to do your own simple uncontested divorce  
\$100.00**
- **Adoption--uncontested severance proceeding  
\$225.00 plus approximately \$10.00 publication cost**
- **Bankruptcy--non-business, no contested proceedings**  
  - Individual  
\$250.00 plus \$55.00 court filing fee**
  - Wife and Husband  
\$300.00 plus \$110.00 court filing fee**
- **Change of Name  
\$95.00 plus \$20.00 court filing fee**

**Information regarding other types of cases  
furnished on request**

**Legal Clinic of Bates & O'Steen**  
**617 North 3rd Street**  
**Phoenix, Arizona 85004**  
**Telephone (502) 252-8838**

The above sample helps a client to make informed choices in a client – attorney relationship. ‘Living Rating’s’ recent report based on Kred.com ratings looked at 42 law and accountancy firms’ use of social media. It found Twitter to be the most popular method of social media

<sup>20</sup> [www.arizonajournal.org](http://www.arizonajournal.org) accessed September 20, 2016

communication among law firms.<sup>21</sup> Twitter is also widely used by the judiciary and the English Bar, its users include: the UK Supreme Court; the Bar Standards Board (BSB); and the four Inns of Court.<sup>22</sup> While rigorous legal debate may prove challenging in 140 characters, Twitter is widely recognised as powerful, free tool for marketing and recruitment. Nigerian lawyers should not be shielded from enjoying the new trend in legal marketing. This will help to boost patronage to maximize profit and enhance qualitative service delivery. To buttress the above, Nigerian lawyers are already marketing their profile and image on LinkedIn which is a veritable social media for professional advertising. It is time we develop a proper legal framework for regulating online posts with respect to legal services by lawyers in Nigeria.

In the state of Florida, the Supreme Court of Florida has issued new advertising rules<sup>23</sup> effective at 12:01 a.m. on May 1, 2013. *In re: Amendments to the Rules Regulating The Florida Bar - Subchapter 4-7, Lawyer Advertising Rules*,<sup>24</sup> the following are some, but not all, of the differences between the current and new rules: The rules have been completely reorganized and renumbered, starting at Rule 4-7.11 and going through 4-7.23 – Rules 4-7.1 through 4-7.10 are vacant. All advertisements by lawyers must be filed at least 20 days in advance of their planned use, unless they are exempted under Rule 4-7.19(a). All lawyer advertising rules apply to websites and social networking and video sharing sites in addition to other media such as print, television and radio by virtue of Rule 4-7.11(a).<sup>25</sup> Unduly manipulative techniques are prohibited, including appeals to emotions rather than rational evaluation of lawyer qualifications with proven objectivity under Rule 4-7.15(a).<sup>26</sup>

In addition, lawyer advertisements in the state of Florida may not use authority figures, or actors portraying authority figures, to endorse, recommend, or act as a spokesperson for, the advertising lawyer as provided in Rule 4-7.15(b). In furtherance of the above, Rule 4-7.15(d) states that lawyers

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<sup>21</sup> See [www.livingratings.com/pdf/Living\\_Ratings\\_of\\_Social\\_Media.pdf](http://www.livingratings.com/pdf/Living_Ratings_of_Social_Media.pdf). accessed September 17, 2016

<sup>22</sup> See [www.barstandardsboard.org.uk/regulatory-requirements/the-code-of-conduct/the-code-ofconduct/part-iii-fundamental-principles](http://www.barstandardsboard.org.uk/regulatory-requirements/the-code-of-conduct/the-code-ofconduct/part-iii-fundamental-principles) accessed on September 19, 2016

<sup>23</sup> [www.floridabar.org](http://www.floridabar.org) accessed October 6, 2016

<sup>24</sup> 38 Fla. L. Weekly S47 (Fla. Jan. 31, 2013)

<sup>25</sup> Effective May 2013, websites will remain exempted from the filing requirement under R. 4-7.20(g) as amended by the Supreme Court of Florida.

<sup>26</sup> Advertising Rules of the State of Florida in the USA available at [www.floridabar.org](http://www.floridabar.org) accessed on October 6, 2016

may not offer economic incentives to view an advert or hire a lawyer, except for a discounted fee. In the same vein, non-lawyers may not pay for a lawyer's advertisements in line with Rule 4-7.17(c). Every page or panel of a direct mail advertisement and its envelope must include a prominent "Advertisement" in ink that contrasts with both the background and other text – Rule 4-7.18(b)(2)(B)

As it is obtainable in the State of California, direct email advertisements must begin the subject line with the word "Advertisement" under the provisions of Rule 4-7.18(b)(2)(B). Direct email advertisements, in addition to other direct mail advertisements, must include a statement of qualifications and experience as stated in Rule 4-7.18(b)(2)(C) of the Rules. Specifically, lawyer referral service advertisements must contain an affirmative statement that lawyers pay the service to get referrals in Rule 4-7.22(a) (11).

#### **f. Lawyer Advertising in the UK**

##### **Barristers' Regulation**

The English Code of Conduct permits advertising but states that "knowingly or recklessly publishing advertising material which is inaccurate or likely to mislead" could result in breach of the code. It further warns that barristers "should be particularly careful about making comparisons with other persons as these may often be regarded as misleading." In both the US and in England and Wales, legal advertising was once banned.<sup>27</sup> Whereas, the US Model Rules of Professional Conduct published by the American Bar Association stress that "a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services". It should be noted that Barristers are restricted by the rules of the Bar Council, while the Law Society's regulations on solicitor advertising are more liberal in the UK. In addition, "ambulance chasing" is considered a threat to the dignity of the legal profession in Ireland. The position is the same in Nigeria.<sup>28</sup> At least one of the reasons for regulating advertisement is to avoid adverts like the following: in a television commercial,

Dallas-based lawyer Brian Loncar calls himself "the strong arm" and encourages potential customers to call 1-800-HURT. The ad ends with the message: "Here at

<sup>27</sup> [www.blog.justis.com/author/maleha-khan](http://www.blog.justis.com/author/maleha-khan). Why are the approaches to legal advertising so different in the US and UK? posted by Maleha Khan on 25 September 2014 and accessed October 6, 2016

<sup>28</sup> R, 47 (2) (b) of the RPC

Loncar and Associates, it's raining car wrecks. So call me now, and I'll make them pay."<sup>29</sup>

From the advert above, we could decipher assurances and exaggerations on the part of advertising barrister. This is against the norms of legal ethics. This is because the advert gave assurances in all claims before the court without recourse to professionalism, circumstances of each case as it preempts the outcome in a court or tribunal. The client is misled to make a choice based on non – verifiable assurances which infringes the client's right to choose based on objective criteria.

From the consumer perspectives, the consumers of legal services have been denied their freedom of knowledge and choice of the different fields of legal services. As the saying goes, the consumer is king but in the legal profession in Nigeria, to what extent is the consumer king? A client with a brief does not really know the specialization of most lawyers except in few urban areas. The consumer is left at sea to walk into any law firm for legal advice or rendering of full legal services. We should bear in mind that it is not in all instances that the lawyer would refer the client who requires specialized services to a legal expert in that field. Where the legal service is rendered in partnership with the specialist, the client is made to pay more for the same service. This seems to be against the spirit and legislative intent of the Consumer Protection Act.<sup>30</sup> In jurisdictions<sup>31</sup> where advertisements through the use of bill boards and television jingo are allowed for personal injury cases, family matters, we believe the level of consumer information and awareness towards his choice of lawyer is better and the client spends less than conservative jurisdictions such as Nigeria.

In furtherance of the above, the poser is: do the regulators value the dignity of the profession over the best interests of the consumer? In answering this poser, the Competition Authority<sup>32</sup> in 2006 published a report about competition in the legal field, concluding that the legal profession needed “substantial” reform. It found competition was “severely hampered by many unnecessary

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<sup>29</sup> Eric Mcguire, Is it time to ease the rules and allow lawyers advertise freely? Available at <http://www.irishtimes.com/news/crime-and-law/> accessed September 30, 2016

<sup>30</sup> LFN 2004

<sup>31</sup> USA

<sup>32</sup> The Competition Authority in the UK is responsible for promotion of competitive market across various sectors of the economy and protection of consumer rights.

restrictions” and that those restrictions should be removed “so that consumers can benefit from greater competition in legal services”. The report noted that the Law Society and the Bar Council “have presided over restrictions on competition which may have benefits for lawyers, by sheltering them from competition, but which harm consumers. The overall effect of the myriad restrictions on competition in legal services has been to limit access, choice and value for money “for consumers”. The report further cited the “near blanket-ban on advertising by barristers and some unnecessary restrictions on solicitor advertising”.<sup>33</sup>

### **Solicitors’ Regulation**

With respect to solicitor’s work, advertising and competitive behaviour were for many years regarded as unethical. Yet when the solicitors’ profession in the UK was threatened by the government with competition from institutional lenders for conveyancing work, the profession decided that if competition was to occur, it must compete vigorously. This led to the reduction of restrictions on advertising by solicitors: competition flourished and conveyancing fees fell by nearly a third.<sup>34</sup> For proponents who have argued that the legal profession is engaged in the pursuit of its collective self – interest, we must deviate from this argument because the essence of legal practice is justice which culminates in client satisfaction. They postulate that the sociology of law is strongly influenced by the Marxist tendency to view law as superstructure and therefore subservient to underlying economic forces. We submit therefore, that the profession should not be over – regulated at the expense of competitive and efficient service delivery for optimum client satisfaction.

Furthermore, Rule 7 of the Solicitor’s Code of Conduct 2007<sup>35</sup> allows a solicitor the latitude to publicise his practice subject to the requirements of the rule. Rule 7.01 states that publicity must not be misleading. This is *in pari materia* with Rule 39 (2) (a) of the Nigerian RPC. In furtherance of the above, any publicity relating to solicitors’ charges must be clearly expressed. In relation to practice from an office in England and Wales, it must be clear whether disbursements and Value Added Tax (VAT) are included.<sup>36</sup> Publicity by making unsolicited visits

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<sup>33</sup> <http://www.irishtimes.com/news/crime-and-law/> accessed September 20, 2016

<sup>34</sup> Richard O’Dair, *Legal Ethics Text and Materials*. Butterworths, Dublin (1989) p. 76

<sup>35</sup> Inclusive of Solicitors’ Recognised Bodies Regulations 2007

<sup>36</sup> R. 7.02 of the UK Solicitors’ Code of Conduct

or telephone calls to a member of the public is prohibited.<sup>37</sup> This is because such gestures cheapen the profession and the professional. It is not permissible for a solicitor to use proxy to conduct publicity even within the confines of the rules.<sup>38</sup>

With respect to international aspects of solicitor's publicity, the Code provides that it must comply with Rule 7 and 15.07<sup>39</sup> (if applicable) and the rules in force in that jurisdiction. Publicity intended for a jurisdiction where it is permitted will not breach Rule 7.04 through being incidentally received in a jurisdiction where it is not permitted. It should be pointed out that the UK Solicitors Code takes into consideration the provisions of European Union (EU) member countries. However, in view of the recent decision of Britain to exit the EU, it Law Society of the UK should amend Rule 15.07 of the Solicitors' Code of Conduct 2007. It is apposite to note that the Nigerian jurisdiction omits international partnership and collaborating with respect to conformity with rules of publicity in other jurisdictions. An amendment of the RPC in this regard is necessary in view of recent trends in global legal practice.

#### **g. Lawyer Advertising in South Africa**

In South Africa, the applicable rule of professional conduct is the General Council of the Bar of South Africa Uniform Rules of Professional Conduct. With respect to advertising, Rule 4.17 makes provision for regulation of advertising by a legal practitioner. The Uniform Rules provides:

- 4.17.1 Counsel may advertise.
- 4.17.2 An advertisement must be factually true and must not be of a kind that is or might reasonably be regarded as:
  - 4.17.2.1 false, misleading or deceptive;
  - 4.17.2.2 in contravention of any legislation;
  - 4.17.2.3 vulgar, sensational or otherwise such as would bring a court, the counsel, another counsel or the legal profession into disrepute or ridicule.
- 4.17.3 Counsel may on the basis of specialised qualification or experience and with the prior approval of his or her Bar Council advertise or hold himself or herself out as being a specialist or as offering specialist services.

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<sup>37</sup> *Ibid.* R. 7.03

<sup>38</sup> *Ibid.* R. 7.05

<sup>39</sup> R 15.07 provides that publicity applies to overseas practice except that rule 7 does not apply to website, e-mails, text messages or similar electronic communications of any practice you conduct from an office in an EU state other than the UK



From this provision, it could be deduced that lawyer advertising may be allowed but it must be true and must not mislead a potential client. In furtherance of the above, the content of the advertising must not be misleading, vulgar, sensational or bring the legal profession into disrepute. Though the provisions of Rule 4.17 on advertising in South Africa are similar to Rule 39 of the Nigerian Rules, the Rules of Professional Conduct in Nigeria appears richer in content. For instance, the words solicit and solicitations are not stated expressly or impliedly in the South African Uniform Rules whereas the Nigerian Rules provided for what amounts to soliciting by lawyers. It should also be noted that both Rules are conscious of the conservative nature of the profession and the need for a lawyer not to do anything that will bring the profession into disrepute. The South African Uniform Rules allows a specialist lawyer to advertise or hold himself out as a specialist whereas the Nigerian RPC only allows the lawyer to give a brief biographical or informative data of him with specified information about his bio data.

#### **h. Emerging Legal Markets in Africa**

According to a study by Pew Research in 2015, 84% of all Americans use the Internet. Of those, 81% use the Internet to research products or services. Here in the 21st century, being without a website is akin to not having a business card. If a potential client cannot instantly find you, they will move on to someone else as fast as it takes to click a button.<sup>40</sup> This is new trend across Africa because technology is fast dictating the pace with which businesses are run with several multitasking facilities for real time solution. New technological trends are anticipated to have the biggest effect on law firms in general, and include the following: availability of online legal resources, the ability to consult with clients using some form of video-conferencing, for example Skype. In addition, there is increased usage of cloud computing by law firms, lessening the need for staff to sit in a physical office. The ability to store client files and firm records electronically and to obtain access to these documents remotely from anywhere in the world has been greatly boosted by technology coupled with increase in availability and use of big data. For example, there is a company that uses data mining to develop a product to analyse a given set of facts according to decided cases in order to predict the probability of winning the case.<sup>41</sup> Legal work is being deconstructed into component parts by using tools like knowledge management software,

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<sup>40</sup> <https://www.hg.org/marketing.html> accessed April 10, 2017

<sup>41</sup> [www.derebus.org.za/wp-content/uploads/2016/07/DR\\_June2014.pdf](http://www.derebus.org.za/wp-content/uploads/2016/07/DR_June2014.pdf). Ben Groot, New Trends Facing Lawyers. *De Rebus* June 2014 accessed April 12, 2017

artificial intelligence and document review technologies, with each component being valued differently.

In recent years, the legal industry across Africa has experienced a global paradigm shift in the delivery model for legal services. This new model, known as Legal Process Outsourcing (LPO), transfers the work of attorneys, paralegals and other legal professionals to external vendors located domestically and overseas.<sup>42</sup> Legal outsourcing, both onshore and offshore, is transforming law practice as law firms and corporate legal departments seek to minimize costs, increase flexibility and expand their in-house capabilities. Therefore, an institutional body such as the African Bar Association (ABA) has a major role to play in developing legal advertising reforms across the continent.

The largest economy in 2014 according to British Broadcasting Service in Africa is Nigeria followed closely by South Africa South Africa has regained the position of being the largest economy in Africa by the year 2016.<sup>43</sup> Justice sector development is a catalyst to foreign investment and economic growth. It is therefore apposite to state that the largest economy in Africa must give its customers the opportunity to freely decide who advocates its investment disputes by allowing the consumer of its legal market to make informed choices. Informed choices cannot therefore be made without adequately regulated legal advertising in line with global best practices.

Globalization and networking is the new trend across legal industries of the globe. Africa should not play the back role. Domestic law firms are expanding across borders, collaborating with foreign counsel and forming intercontinental mergers, erasing traditional boundaries on the geographic scope of law practice. Although globalization is not new, it is gaining momentum due to the growth of the Internet, the automation of legal processes, developments in data security

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<sup>42</sup> [www.derebus.org.za/wp-content/uploads/2016/07/DR\\_June2014.pdf](http://www.derebus.org.za/wp-content/uploads/2016/07/DR_June2014.pdf) Ben Groot, New Trends Facing Lawyers. *De Rebus* June 2014 accessed April 12, 2017

<sup>43</sup> [www.bbc.com](http://www.bbc.com) last visited on January 22, 2017. According to IMF data, South Africa has regained the rating from Nigeria.

and emerging technology tools. As law firms continue to expand their footprint worldwide, globalization will continue to reshape the landscape of the legal industry in the coming years.<sup>44</sup>

Comparatively, the rules of lawyer advertising in developed economies such as U.S.A, UK and Canada appears more liberal and wider in scope in its application than that of developing economies like Nigeria and South Africa. Therefore, in order for Africa as a developing economy to thrive, there is the need for reforms in her legal advertising so as to sustain investors' confidence in the continent. Reforms in this respect will also help potential investors in Africa to make informed choices with respect to the choice of attorneys to mediate in investment disputes. It is our submission that both local and foreign investors have a right to an informed choice of solicitors as a consumer of the product in the African legal market. We further submit that other emerging markets in Africa other than Nigeria and South Africa should initiate reforms for informed attorney choices by local and foreign investors so as to restore investors' confidence and protect the consumer's right.

#### **i. Contemporary Challenges of Legal Advertising in Nigeria**

The conservative nature of the legal profession in Nigeria is a major challenge to legal marketing reforms. This is because some posers which align with contemporary global trends dictated the pace for how legal services should be rendered in the 21<sup>st</sup> Century. For instance, is advertising a firm's Facebook page a breach of any of our Rules of Professional Conduct (RPC)? Did a lawyer breach any rule of professional conduct by running an advert for a law firm's Facebook page? We think not. Once the content of a legal advertisement on the social media is not calculated to deceive a potential client, the advertiser is safe and the client makes informed choices of his would be legal practice.

Social networking has the potential to transform the business and practice of law in the coming years. Lawyers have a growing number of social media tools at their disposal to accomplish a variety of legal tasks and career objectives. Social networking is changing how lawyers recruit, job hunt and network, locate and discredit witnesses, manage their careers and interact with clients.<sup>45</sup> Social media tools such as LinkedIn, Facebook, Twitter, and YouTube are also key

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<sup>44</sup> <https://www.thebalance.com/trends-reshaping-legal-industry-2164337> accessed April 10, 2017.

<sup>45</sup> <https://www.thebalance.com/trends-reshaping-legal-industry-2164337> accessed April 10, 2017.

marketing tools, helping lawyers and legal professionals reach a broad audience and accomplish branding, advertising and client development goals within the ambit of consumer protection.

In addition, we must stress the fact that specialist legal practitioners should be allowed to indicate their field of specialization in their advertisement tools such as note pads, letterhead, business cards, sign posts, websites, pages or forums on social media. If this is done, it will aid the consumer of the legal product to make his choice based on the lawyer's expertise, experience and professional competence. This suggestion would also increase productivity among law firms and in effect increase prosperity in the legal market. We are not submitting that some law firms are not practising within the above recognized means, we simply submit that our legal framework should expressly include this modern tools in the lawyers' trade and toolkits.

The poser is: is Rule 39 of RPC 2007 adequate for today's legal market considering the socio – economic growth between 2007 and 2017? This writer thinks the rule is taking the back seat in addressing contemporary challenges of an emerging legal market in Africa. It can therefore not be over emphasized to call for a surgical operation of Part E of the Rules of Professional Conduct for Legal Practitioners in Nigeria.

### **Conclusion**

It has been observed from the above considerations across jurisdictions, outright ban on legal services advertising has been relaxed to give room for competition within the bounds of professional limits and ethical standards. It is apposite to note that across jurisdictions, advertising should not be calculated to mislead or deceive the public or client. With recent trends and developments, it is needful for the RPC to be amended to conform to international best practices while taking advantage of information and communication technology to reach and richly inform clients to make informed choices in seeking efficient and competitive legal services. Though, South Africa is currently the largest economy in Africa after taking over from Nigeria in 2015, both jurisdictions needs modern reforms in their lawyer advertising rules to protect their client's rights and guide them to make informed choices with respect to choice of attorneys. The use of social media will boost legal advertising once the legal limits of usage are set.