

# **AN APPRAISAL OF PROFESSIONAL CHARGES AND RECOVERY OF LAWYERS PROFESSIONAL FEES IN NIGERIA**

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## **ABSTRACT**

Lawyers professional charge is a fee paid directly by client to the legal practitioner for his services. The rate is determined and regulated by the professional and is partially or fully paid in advance. Some charge fee on an hourly basis and few charge on the entire service. The charges of a professional invariably increases with the amount of experience they incur in the field. There have been cases where lawyers render professional services but could not be paid by the clients after repeated demands. These could be as a result of failure to make demands at the appropriate time or recalcitrant attitude of the client. It is recommended amongst others that a lawyer should make timely demand for his fees in advance before the conclusion of his services to the client.

## **1.0. INTRODUCTION**

When a legal practitioner provides services to his clients, they most times charge a professional fee for his services. This fee is generally determined in advance by the service performed. These services are based on the value of the expertise of the person who provided the service. A lawyer professional service may be based on hourly charges or a particular fee agreed by the parties. A lawyer professional fee varies from hourly fees, contingency fee bases or flat fee for his representation.<sup>1</sup> Also the legal profession charges is regulated by the appropriate sections of Legal Practitioners Act<sup>2</sup>

The legal practitioner may be exposed to a recalcitrant client who may fail or refuse to perfect the brief of the legal practitioner after rendering his professional fees. The lawyer will be in a dilemma of the appropriate action to take to recover his fees. Is he to embrace Alternative Dispute Resolution (ADR) or should he approach the court as a way out of the quagmire? These

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<sup>1</sup>My Law Questions "What is a Professional Fee" My law question.com/what a professional fee - accessed on 24/12/23.

<sup>2</sup>Section 16 (1) Legal Practitioners Act Cap LIILFN 2004.

are some of issues that will be considered in this work and appropriate recommendations will be proffered at the end of the paper.

## **2.0. TYPES OF LEGAL SERVICES**

Generally, once a lawyer has been called to bar, he is licensed to practice lawyer generally in Nigeria. There are no restrictions in respect where to practice. The practice of law is a very broad field, and the recent trend is the lawyers are now specializing in certain areas of practice. This enhances the benefits of specialization and the opportunity to build ones expertise accordingly.<sup>3</sup>

There are likely areas of practice namely: corporate law, transactional law, property law, criminal defence law, immigration law, divorce case law, employment law, debt recovery law, dispute resolution law, public interest law, tax law, general practitioner and energy law. The list is not exhaustive, and the nomenclature is based on the interpretation of the practitioner.

The rendering of appropriate service to the client attracts appropriate fees from the lawyer to his client, and if the fees were not paid by the client, it may lead to strain in the relationship between the lawyer and his client if not properly handled.

## **3.0. LAWYERS PROFESSIONAL CHARGES**

A legal practitioner enjoys the right of having the exclusive right to prepare legal documents and instruments relating to transfer of interest on land in Nigeria and other legal service<sup>4</sup> Infact the contravention of *Section 22 (1) (d) LPA* is an offence that attracts punishment ranging from fines to terms of Imprisonment.

Generally, where a Legal Practitioner has rendered adequate legal service to her client he is entitled to be adequately remunerated.

The payment may be in advance or based on contingency agreement. Generally where there clear agreement as to fees, then the lawyer can submit his bill of charges. This was decision of the court in *TBN PLC V NDOMA-EGB*.<sup>5</sup>

Where the court held that in situations where the lawyer has not received his fees and there was no agreement between both parties, the solicitor is required to submit bill of charges.

Generally, a lawyer is expected to charge a professional fee for his services which is reasonable and commensurate with the services he rendered.<sup>6</sup> The question is how do you determine what is reasonable and commensurate? Every legal practitioner knew his worth, based on his years of experience, expertise and depth of work carried out in rendering a particular legal service. It is opined that this provision is rather subjective, than objective in nature.

### **3.1. TYPES OF FEES<sup>7</sup>**

Legal practitioner uses gearing system in their billing system. It starts with the payment of consultancy fee and or a deposit on account, and thereafter a full and final bill of charges is presented to the client or as agreed by the partners.

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<sup>3</sup>Prejudice.ng. "10 types of Lawyers in Nigeria" <https://proguide.ng/lawyersinnigeria> - access on 24/12/23.

<sup>4</sup>See *Section 22 (1) (d) Legal Practitioners Act 1975 (CAP LII LFN 2004)*

<sup>5</sup>(2006) ALL FWLR (Pt 307) 1012 cf 1034

<sup>6</sup>*Rule 52 (1), Rules of Professional Conduct, 2007.*

<sup>7</sup>Bridget Edokwe Billing and Professional Fees by Lawyers under Nigerian Law Barristering.com - accessed on 24/4/23

**Scale Fees:** This is charged for contentious work.

**Fixed Rate Fee:** These are fees charged with a fixed rate for a specific work.

**Appearance Fee:** These are fees charged by legal practitioners for appearing in court.

**Hourly Rate:** These are fees charged for every hour a legal practitioner rendered his service or services.

**Percentage Fee:** These are fees charged with a given percentage based on the value of the transaction.

**Contingent Fee:** These are fees charged for recovery of debt whether it is contentious or non-contentious. It is permissible under *Rule 50* RPC, 2007, if it is not vitiated by fraud, mistake, undue influence or contrary to public policy or not in a criminal case<sup>8</sup>

### **Retainership**

A retainership is an agreement in which payment is made to the legal practitioner. It could be special or general retainership<sup>9</sup>. A General Retainer, entails a legal practitioner handling all issues in a particular area of law or every area of law during the pendency of the retainership. He is precluded from accepting to advice in or appear in any proceedings detrimental to his clients interest during that period.

While a special retainer, where a legal practitioner is instructed to handle a single matter only.

### **3.2. BILL OF CHARGES**

The legal practitioner is precluded from charging arbitrarily. A legal practitioner charge is regulated by various law(s)<sup>10</sup>. The order contains remuneration of legal practitioners in land matters and other legal documentation. The bill of charge must contain the particulars of the principal items charged and signed by the legal practitioner (if it is a firm by a partner in the name of the firm)<sup>11</sup>

The Bill of Charges has no particular format, it must take. However, it is likely to look like an invoice, and must be signed by the legal practitioner, who prepared it.

The bill of charges must contain the following:

Principal items to be charged, particulars of the principal items, the date on which the principal item 'were incurred. The signature of the legal practitioner issuing the bill. The date in which the bill of charges was issued.

The bill must be served personally or by registered post or left at the client's last address known to the legal practitioners.

The matters to which the bill of charges relate and The name of the client to whom the bill of

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<sup>8</sup>*Ibid*

<sup>9</sup>*Rule 43, RPC, 2007*

<sup>10</sup>*Section 15, Legal Practitioners Act and Legal Practitioners (Remuneration for Legal Documentation and other Legal Matters) Order 1991.*

<sup>11</sup>*Section 16(2) LPA*

charges is being issued.

A legal practitioner should endeavour to prepare a detailed bill of charge containing the particulars of work done, cost expenses and disbursements. A client could object to a bill of charge that is not detailed. However, if the client did not object, it will be deemed as waiving of his right.

### **Particulars of the Principal Items**

The bill of charges should be headed to reflect the subject matter; all charges, fees and professional disbursements which the legal practitioner is making a claim. Also the standing of the legal practitioner at the bar in terms of years of experience and/or rank with which he is invested in the profession. See: *Savannah Bank of Nigeria Plc V Opanubu*<sup>12</sup>

Therefore, it is necessary to show the particulars of each item given in the bill of charges, a specific amount, taking into cognizance, the status, and experience of the legal practitioner, time and effort involved<sup>13</sup>. Finally, it is necessary to give enough information in the bill to enable the client obtain advice as to its taxation and for the taxing officer to tax it.

### **4.0. RECOVERY OF LAWYERS PROFESSIONAL FEES IN NIGERIA**

In the course of rendering his professional service, a client may delay or blatantly refuse to pay the agreed fees to the lawyer, whose service he retained; contrary to the retainerhip or contingency agreement. The situation is very delicate to handle most times.

This is because, on the part of the lawyer, he is entitled to his fees, on the other hand a lawyer will want to maintain his self respect and avoid straining his relationship with the client while trying to earn his fees.<sup>14</sup>

Even the rule of professional conduct for legal practitioners advice that litigation should be the last resort.

It states as follows:

Controversies with clients concerning remuneration are to be avoided by the lawyers so far as shall be compatible with his self respect and with his right to receive reasonable recompense for his services and law suits with clients should be resorted to only to prevent injustice, imposition or fraud<sup>15</sup>

So the above is a clear position of the profession in respect of proceeding against a client to recover one's professional fees. It should be the last resort after exhausting all alternatives. In other words, a legal practitioner should seek Alternative Dispute Resolution before "resorting to legal action in the Court of Law.

Infact the Legal Practitioners Act provides for a right of a legal practitioner to recover his fees.<sup>16</sup>

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<sup>12</sup>(2004) ALL FWLR(Pt 220) 1587 cf 1510

<sup>13</sup>*Supra* (Bridget Edokwe)

<sup>14</sup>Pressreader.com "Recovering of fees from clients"www.pressreader.com - accessed on 24/4/23.

<sup>15</sup>Rule 47, Rules of Professional Conduct, 2007.

<sup>16</sup>Section 16 (1). LPA

It provides as follows;

"A legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction".<sup>17</sup> See also *Mabogunye V Odutika*<sup>18</sup>

Therefore, being a debt, the fees owed by the client to the legal practitioner is recoverable. After exhausting Alternative Dispute Resolutions (ADRs), like negotiation, persuasion, mediation, conciliation etc. It should be noted that a legal practitioner may charge interest on debt, until it is paid by the client.<sup>19</sup>

#### **4.1. STEPS OF RECOVERY**

These steps must be complied with by the legal practitioner towards the recovery of his debt:

1. The legal practitioner must prepare his bill of charges containing the particulars of the principal items of the claim.
2. The bill must be served on the client by the legal practitioner.
3. The legal practitioner must allow for a period of one month to expire from the date of service, before he can proceed with a legal action while waiting for the response of the client in respect of demand for the payment of his debt, the following is advised.
  - i. A letter of reminder should be sent to the client, giving him details of service rendered and the cost of the service.
  - ii. A demand letter should accompany the letter of reminder, stating the cost of services rendered, and stipulate that payment be made within 7 days, failure of which legal action may ensue.
  - iii. A final letter of demand repeating the paragraph (ii) that after 7 days of non-payment, a legal action will ensue.
  - iv. After failure of the client to respond to the demand letter and ADR processes, the legal practitioner can commence action to recover his fees in the court.

It should be noted that while trying to recover debt or fees from a client, on the client's fund should not be touched by the legal practitioner.<sup>20</sup> Such action will be treated as a professional misconduct and will attract appropriate sanction.

The place for the commencement of the legal action is the High Court where both legal practitioner and client do their business or resides.<sup>21</sup> Also, where the client makes application for the tax action of the Bill of Charge, delivered to him, the court shall order that the bill of charge be taxed, and the action for recovery of debt will be stayed, until the tax action is completed.<sup>22</sup>

Generally, charge for work carried out by a legal practitioner are based on the amount of the time spent on a particular matter. A legal practitioner must be fair and reasonable. He must take into

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<sup>17</sup>(2003) 1NWLR (Rt 802) 570 and *Abubakar v Manulu* (2001) 8 NWLR (Ft 714) 70

<sup>18</sup>(2003) 1 NWLR (Pt. 802) 570

<sup>19</sup>*NBA V GBENOB*A (2015) 15 NWLR (Pt 1483) 585

<sup>20</sup>*NBA V GBEN OBA* (2015) 15 NSLR (Pt. 1483), 585

<sup>21</sup>*Section 19 (1) LPA*

<sup>22</sup>*Section 17 (LPA) and Section 18(1) LPA*

account complexity of the matter and the value of the property or money involved. Every legal practitioner involved in a matter must try to keep a detailed note of meetings, telephone calls and time spent on every file or matter.

Another way to recover a legal practitioner's fee is for the successful party in a suit to recover his lawyers fee from the defendant.

The decision in *Union Bank of Nigeria v Mr. N.M. Okpara Chimezu*<sup>23</sup> is germane. In that case, the respondents as plaintiffs took out a suit at the Edo State High Court against the appellant claiming the sum of ₦30,000,000.00, as general and special damages for the wrongful dishonor of the cheque drawn on the appellant in favour of Lever Brothers Nigeria Ltd. As part of his claims the plaintiff claimed the sum of ₦250,000 as special damages for his solicitors professional fee for representing him in a suit. The Supreme Court held that a successful party in litigation could recover his solicitors fee from the other party in the proceedings.

Therefore one of the ways to recovery professional fee of a lawyer, is for the successful party to institute a legal action against the opposing party to pay his solicitors fees.

## **5.0 DISENGAGEMENT OF SERVICES**

A lawyer can withdraw from the service on a good cause, this includes non-payment of professional service by the client. *Rule 21(2) RFC* and *Section 15-19, 24 LPA*.

In addition, where there is a change of counsel, the incoming counsel should ensure that the disengaged lawyers fees are paid.

Secondly, the court will not recognize the incoming lawyer as a counsel, until the disengaged lawyer confirms his fees had been paid. See *Section 29(3)b LPA*.

## **6.0 CONCLUSION**

Litigation should be the last resort in the recovery of lawyers professional fee from a client. It causes strain in lawyers - clients relationship, it not only alienates the clients, but it could alienate possible clients who witnessed the litigation process. However after exhausting Alternative Dispute Resolution mechanisms like negotiation mediation, conciliation and discussions, plus reasonable reminders to pay, the lawyer might resort to litigation.

## **7.0. RECOMMENDATIONS**

In view of the foregoing, it is recommended that:

Legal practitioners should collect 50% of their fees in advance and collect the remaining balance before the conclusion of their legal services to the clients, using appropriate case management strategy.

In the event of clients inability to pay due to impecuniosity, and the lawyer having confirmed it, he may consider reducing the bill or writing it off completely (Pro Bono).

The RPC should be amended to allow for right of lawyers to recover their fees from clients account, where it was properly established.

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<sup>23</sup>(2018) LPELR 45568CA/SE

Recovery of professional fee of lawyers should be given expedited hearing of the court.

Issues bothering on recovery of professional fees of lawyers should be heard in the chambers.

Lawyers should include an interest upon default of payment clause in the engagement letter with the client.

Apart from *Pro Bono Cases*, Legal Practitioner must always charge consultancy fees. Most times when an idea of how much you may charge comes up, the clients may go without coming back. Consultancy fee gives lawyers a guaranteed payment.

Legal practitioners must put all agreements in writing, avoid oral discussions only.

Also, receipts may be issued for all payment received. It helps to keep tab of your transactions.