

ATTRACTION OF BUSINESS AND RESTRICTION IN LEGAL PRACTICE IN NIGERIA AND UNITED STATES: NEED FOR GLOBALIZATION VIA LEGAL EDUCATION

Abstract

The legal practice is perceived by many to be a noble profession where high professional standards and ethics are maintained. In addition, it is a profession for the diligent; those who know their worth and have what it take to discharge their professional responsibility. However, the practice in many jurisdictions where advertisement of legal practice or law firm is permitted does not encourage the display of skills and can kill brilliant performance and nobility accorded the profession. It puts law for sale and capable of deceiving prospective clients to engage law firms who have money to advertise or attracts even when they do not possess the ideal or desired qualities. Thus, this paper explores some of the provisions of the Rules of Professional Conduct in Nigeria, which restrict the attraction of business in the practice of law with some exceptions. It will also compare the implications of the practice with other jurisdiction(s) in order to discover the value of it. The paper further advocates the globalization of the concept through legal education in law faculties in the Universities and law schools.

Keywords: *Attraction, Legal Practice, Globalization, Legal Education, Entreprenlaw.*

1. Introduction

The legal practice is perceived by many to be a noble profession where high professional standards and ethics are maintained.¹ There is perhaps no greater *professional dignity or calling* than to stand as an advocate of the Supreme Court or sit as judge over the peoples God has created² even though few other hold that the nobility of the legal profession is no longer visible again.³ In addition, it is a profession for the diligent; those who know their worth and have what it takes to discharge their professional responsibilities. However, the practice in many jurisdictions where advertisement of legal practice or law firm is permitted does not encourage the display of skills and can kill brilliant performance and nobility accorded the profession. It puts law for sale and it is capable of deceiving prospective clients to engage law firms who have money to advertise or attracts even when they do not possess the ideal or desired qualities. Unhealthy rivalry may occur in the course of competition and battle for superiority.

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¹ E. C. Gerhart, 'A Noble Profession: A Panorama of Law Office Practice' [1955] *American Bar Association Journal*, Vol. 41, No. 3, 213-216, 283-287.

² Brian Kisomose, 'Law: A Noble Profession', *Vision Reporter*, available at <http://www.newvision.co.ug/new_vision/news/1337554/law-noble-profession.#sthash.Xtx9uw0j.dpuf> accessed 28 May 2017.

³ George W Kanyeihamba's, 'Law: A Profession with rotten Reputation' in one of the publications of *Vision Reporter* on February 2, 2014 at *Vision Reporter*, available at <http://www.newvision.co.ug/new_vision/news/1337554/law-noble-profession.#sthash.Xtx9uw0j.dpuf> accessed 28 May 2017.

This come into play unintentionally because of the legal framework or Rule of Professional Conduct permits it. The gist of the paper and the argument being canvassed is that, attraction of business which consist of publicity, advertisement, soliciting, touting and the likes should be restricted in all jurisdiction in order to preserve the nobility of the legal profession, promote hard work, integrity, knowledge and professionalism. These are the traditional means of advertisement in the legal profession which many clients are attracted to. The paper adopts the traditional system of research. The method of research is doctrinal through the use of primary sources consisting of the laws, rules of professional conduct and decided cases. It further harnessed secondary sources through published materials both in print, electronic copy and available materials on the internet. It is however pertinent to mention that there is a dearth of materials of the topic discussed.

2. Conceptual Clarification

Attraction of Business

Attraction of business in the legal practice as conceived by this paper consist of publicizing the legal practice, law firm or the person of a solicitor or barrister, advertising a law firm's or lawyer's services in any medium such as Newspapers, television, radio, channels, internet, and other related platform. It also involved the act of soliciting for job in a way that is not dignifying. Legal practitioners asking friends and colleagues informally to influence legal works for them to do for an establishment, a company or private clients seeking such legal services. Touting is another form of improper attraction of business. An example is where flyers are distributed expressing call for visiting law firms to patronize their service or deliberately staying in a place, position or even when the lawyer anticipate dispute or breach of any form of rights with a view to offer his services to any of the party to the dispute in the eventuality.

Legal Restriction

The Free Legal Dictionary defines a legal restriction to mean 'any limitation on activity, by statute, regulation or contract provision. In multi-unit real estate developments, condominium and cooperative housing projects, managed by homeowners' associations or similar organizations are usually required by state law to impose restrictions on use.⁷⁴ But the Oxford Learners Dictionary puts it better by simply stating that it is 'a rule or law that limits what you can do or what can happen.'⁷⁵

Legal Practice

Legal Practice cannot be conceived globally as different jurisdictions have different system of practice of law. In some countries, Lawyers can be referred to as either Barristers or Solicitors with different practice of law. Barristers are Advocates who appear in court to prosecute or defend a case or suit while Solicitors are lawyers primarily doing the business of legal documentation, taking of brief and interview and counseling of clients.⁶ They are the generally the first contact before Advocates. However, in Nigeria, a lawyer can practice both as Barrister and Solicitor because the legal system permits the fusion of the two practices. Hence, legal practice can be described as the setting up of legal outfit for the purposes of rendering legal services in accordance with the statutes regulating it in a particular jurisdiction. Legal Practice in Nigeria is regulated by statute and institutions such as the Legal

⁴ 'Restriction Legal Definition of Restriction', available at legal-dictionary.thefreedictionary.com/restriction (accessed 28/5/2016).

⁵ *Oxford Learners Dictionary*, available at <http://www.oxfordlearnersdictionaries.com/definition/english/restriction> (accessed 28/5/2016).

⁶ Joe-Kyari Gadzama (n 6) 7.

Practitioners Act,⁷ the Legal Education Act, Rules of Professional Conduct,⁸ Nigerian Bar Association⁹ and its Constitution, the Body of Benchers,¹⁰ Legal Practitioners Privileges Committee¹¹ and the Council of Legal Education.¹²

Globalization

There are different views, issues and conceptions of globalization.¹³ Globalization is a fairly new term first employed by Professor Theodore Levitt, a marketing professor at the Harvard Business School, in a 1983 article in the *Harvard Business Review*.¹⁴ Regardless of various definitions and conceptions of the concept, globalization can be described as the process of integrating nations and peoples—politically, economically, and culturally—into a larger community.¹⁵ It involves but not limited to the basic incremental process over the centuries whereby people and nations have been brought closer together as technological innovation dissolved barriers of time and distance, and enhanced flows of information promoted greater awareness and understanding. Thus, a more sophisticated definition might emphasize that contemporary globalization is a complex, controversial, and synergistic process in which improvements in technology (especially in communications and transportation) combine with the deregulation of markets and open borders to bring about vastly expanded flows of people, money, goods, services, and information.¹⁶ This process integrates people, businesses, nongovernmental organizations, and nations into larger networks.¹⁷ Globalization promotes convergence, harmonization, efficiency, growth, and, perhaps, democratization and homogenization.¹⁸

Legal Education

Legal education can simply be interpreted to mean the process of learning, teaching and training required by law to produce a lawyer. In Nigeria, legal education comprises of: a) the academic law programmes leading to award of degrees in law, and, b) practical training at the Nigerian Law School presently having six campuses spread across the six geo-political zones of Nigeria.¹⁹

3. Attraction of Business and Restriction in Legal Practice in Nigeria

This section will be dedicated to brief history of legal practice in Nigeria and provisions of the Rules of Professional Conduct on restriction of business and attraction of business in the practice of law in Nigeria.

⁷ Laws of Federation of Nigeria, 2004, Cap. L11.

⁸ Rules of Professional Conduct 2007.

⁹ Established in 1933.

¹⁰ Established by Section 3(1) of the Legal Practitioners Act. The Body of Benchers is the highest professional body in Nigeria saddled with the responsibility of calling aspirants to the Bar.

¹¹ Established by Section 3(3) of the Legal Practitioners Act as a Committee of the Body of Benchers.

¹² Established by the Council of Legal Education (Consolidation) Act Cap. L10 LFN 2004

¹³ Chandan Sengupta, 'Conceptualising Globalisation: Issues and Implications' *Economic and Political Weekly* [2001] Vol. 36, No. 33, 3137-3143.

¹⁴ 'Globalization-Definition and Conceptualization', *Encyclopedia of the New American Nation*, available at <<http://www.americanforeignrelations.com/E-N/Globalization-Definition-and-conceptualization.html>> accessed 30 May 2016.

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ See Sam Rugo et al, 'Legal Education and Social Change in Nigeria', in Oyelowo Oyewo and Edefe Ojomo (eds), *Law, Democratization and Social Change*, (NALT Conference Proceedings, 2012) 207.

The historical account of Legal Practice in Nigeria has been made by various scholars.²⁰ In 1862, the British colonial administration introduced a system of courts akin to those found in the British system in order to create an organized legal profession which would gradually familiarize the country with English laws and procedure. Legal training in Nigeria has traditionally been divided into three phases: 1876-1914, 1914-1962 and 1962 to date.²¹ During the period between 1876 and 1914, two categories of lawyers existed. These were the professionally qualified Attorneys and local Attorneys. Indeed, in the Legal Practitioners Act, the word lawyer was used and defined as ‘legal practitioner’ meaning the local Attorney and the professionally qualified Attorney. The professionally qualified Attorney undertook legal works in Nigeria as at that time. The Supreme Court Ordinance²² empowered the Chief Justice of Nigeria to grant temporary license to admit fit and proper persons to practice as Local Attorneys, these include experienced court clerks. To qualify for such a license the applicant must sit for an examination to test his general education and knowledge as well as principles and practice of law and show moral character testified to by a judge or two District Commissioners. The license to practice was usually for six months and renewable subject to good moral character. The power to grant such license was discretionary.

The second category of lawyers that practiced during this period was the professionally qualified lawyers.²³ The professionally qualified lawyers were those who were qualified to practice as Barristers or Solicitors in England and enrolled in the Supreme Court of Nigeria. To qualify to practice as Barristers in England at that time, a Barrister must pass the Part I and Part II of the Bar Examination, join one of the four Inns of Court,²⁴ and keep terms by dining in his Inn. Similarly, to qualify to practice as Solicitor, a person must enroll as a student with the Law Society, serve a period of pupillage — article for a minimum of four years with a practicing Solicitor and pass Parts I and II of the Law Society qualifying examination. It is worthy of note that the first Nigerian Barrister was Christopher Alexander Sapara-Williams.²⁵

Prior to 1945, lawyers trained in England had no law degree until the University College, London started law degrees in that year. In the words of Doherty: ‘there were no legally qualified private legal practitioners to render services to the business community and the community at large’.²⁶ However, the year 1913 was remarkable because it was the beginning of the legal profession and legal practice in Nigeria and those who trained overseas as Barristers and Solicitors joined the profession as legal practitioners. In 1914, the Supreme Court Ordinance 1914²⁷ repealed the Supreme Court Ordinance of 1876. This marked the second phase of legal training in Nigeria. During the second phase, the professionally qualified lawyers monopolized legal practice in Nigeria. This was so because enrolment was restricted to qualified lawyers only.

²⁰ O. Adewoye, *The Legal Profession in Nigeria 1865-1977* (Lagos: Longman, 1977); O. Doherty, *Legal Practice and Management in Nigeria* (London: Cavendish Publishing Limited, 1998) and S. Imhanobe, *Lawyer’s Deskbook* (Abuja: Temple Legal Consult, 2010)

²¹ P.O. Idornigie, ‘Training to Become a Lawyer in Nigeria,’ being a Chapter contribution to the book *The Anatomy of the Legal Profession in Nigeria* (Nigerian Institute of Advanced Legal Studies, 2013).

²² Ordinance No 4 of 1876.

²³ See Supreme Court Ordinance No. 4 of 1876. This ordinance granted powers to the (Thief Justice to admit persons to so practice.

²⁴ Gray’s Inn, Inner Temple, Lincoln’s Inn and Middle Temple.

²⁵ He was enrolled in England as Barrister in November 1879 and in Nigeria on II August, 1880. He set up practice first in Accra which was then part of the Southern Protectorate or Nigeria and then Lagos. He practiced among self-taught attorneys.

²⁶ Doherty (fn 20) 7.

²⁷ Ordinance 6 of 1914.

Clearly, the legal training in the UK then did not take into account the Nigerian Legal System especially our customary law and the strong influence of Islamic law. Accordingly, in 1959 the Unsworth Committee was set up by the Federal Government of Nigeria and the recommendations of the Committee included setting up of the Nigerian Law School in Lagos and establishing a Faculty of Law in University College, Ibadan. Based on the recommendations, in November 1961, a board was constituted to make arrangements for the establishment of the Nigerian Law School. This was accepted by the Government and the Legal Education Act, 1962 was passed under which the Council of Legal Education was set up. Unfortunately, the recommendation of the Unsworth Committee that a Faculty of Law be established at the University College, Ibadan was not accepted by the Government. However, in 1961, the University of Nigeria, Nsukka established the Faculty of Law — the first in the country. The rest of this chapter will be devoted to the consideration of the third phase, namely, 1962 to date.

At the very beginning, the ‘Law School consisted of just one campus in Lagos but over the years, particularly under the present administration, there has been a significant increase in the number of campuses to wit: (Lagos, Abuja, Enugu, Kano, Yenegoa and Yola). In the last 50 years since the advent of the Nigerian Law School, the pattern has basically remained the same. Students with a law degree from an approved University are qualified for admission into the Law School where they are trained professionally. These students are required to pass the Bar Part II Examinations. There are presently over thirty Law Faculties contained within various Nigerian Universities to prepare students for the Nigerian Law School. Students who are admitted into the school with degrees obtained outside Nigeria are required to pass the Bar Part I examination. Persons who have completed the professional training offered by the Nigerian Law School are entitled by section 4 of the Legal Practitioners Act to be formally called to, the Nigerian Bar and are issued a certificate authorizing them to practice law in the country by the Body of Benchers. This certificate can be withdrawn by the same Body for reasons usually related to gross misconduct and fraud.²⁸

After they have been called to the Bar, they are qualified to practice as Barristers and Solicitors of the Supreme Court of Nigeria and have the right of appearance in any Court in Nigeria. In addition they have other privileges incidental to their practice such as signing of conveyance documents and endorsing the statutory declaration of compliance at the Corporate Affairs Commission. They also consequently become members of the Nigerian Bar Association and are bound by the rules of that Body. Advocacy Practice is particularly regulated by Rules of courts, the Nigerian Constitution and various other enactments which govern aspects of law, the Criminal Code²⁹ and The Criminal Procedure Act,³⁰ the Penal Code³¹ and the Criminal Procedure,³² the Companies and Allied Matters Act³³ and the various High Court Civil Procedure Rules.³⁴ Those who desire and possess the qualification may become judges after having at least 10 years at the Bar³⁵ in the case of High Court Judges, 12 years³⁶ in the case of

²⁸ Joe-Kyari Gadzama (n 6)

²⁹ Cap. C38 LFN 2004.

³⁰ Cap. C41 LFN 2004

³¹ Cap. P3 LFN 2004

³² Now repealed and known as Administration of Criminal Justice Act 2015.

³³ Cap. C20 LFN 2004.

³⁴ For Example High Court (Civil Procedure Rules of Lagos State 2012 and High Court of Federal Capital Territory (Civil Procedure) Rules 2004.

³⁵ Constitution of Federal Republic of Nigeria 1999 (as amended), s 271(3)

³⁶ Constitution of Federal Republic of Nigeria 1999 (as amended), s 238

Court of Appeal Judges and 15 years³⁷ in the case of Supreme Court Judges. Those who prefer to stay at the Bar, may after fulfilling the conditions, apply to be made Senior Advocates of Nigeria (SANs).³⁸ Generally, it is the Rules of Professional Conduct 2007 that regulates ethical conduct of legal practitioners and the practice of law in Nigeria. It is this Rule that form the bulk of the analysis of this paper as it relates to improper attraction of business.

Unlike some jurisdictions such as Unites States of America, lawyers are prohibited to advertise, solicit for brief, tout or make publicity about their legal services in Nigeria except in some permitted circumstances.³⁹ This guide comes from the provisions of Rules of Professional Conduct (RPC), 2007. The words ‘advertisement, ‘touting’, ‘publicity’ and ‘soliciting’ are often used interchangeably. However, there exist slight differences among them. We shall attempt to describe the words with or without the use of dictionary so as to understand the acts that can be held to constitute improper attraction of business as used in the RPC. It should be noted that regardless of these differentiation in the use of the word mentioned above, the RPC generally refers to them as acts constituting ‘improper attraction of business.’

Advertising

Advertising can be described as a form of communication for marketing products and used to encourage, persuade, or manipulate an audience (viewers, readers or listeners; sometimes a specific group) to continue or take some new action geared towards patronising such products. Most commonly, the desired result is to drive clients’ behavior with respect to legal services. Commercial advertisers often seek to generate increased demand for their services or products through packaging and branding. This of course does involve associating a product name or service with certain qualities in the minds of clients. Advertising is at the front of delivering the proper message to customers and prospective customers. The purpose of advertising is to convince customers that the company products are the best, enhance the image of the company, point out and create a need for products or services, demonstrate new uses for established products, announce new products and programs, reinforce the salespeople’s individual messages, draw customers to the business, and to hold existing customers.⁴⁰

The category of advertising can be determined by the medium used for advertising. Commercial advertising medium can include wall painting, billboards, street furniture components, printed flyers and rack cards, radio, cinema and television adverts, web banner, mobile telephone screens, shopping carts, web popups, skywriting, bus stop benches, forehead advertising, magazines, newspapers, town criers, sides of buses, banners attached to or sides of airplanes, in-flight on seatback tray tables or overhead storage bins, taxicab doors, roof mounts and passenger screens, musical stage shows, subway platforms and trains, elastic bands on disposable diapers, doors of bathroom stalls, stickers on apples in supermarkets, shopping cart handles, opening section of streaming audio and video.⁴¹ As a matter of fact, any place a sponsor pays to deliver a message about their product or services through a medium is advertising.⁴² According to Clow, ‘originally developed in the personal-selling literature, the hierarchy-

³⁷ Constitution of Federal Republic of Nigeria 1999 (as amended), s 231(3)

³⁸ See Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria, 2011, Federal Republic of Nigeria Official Gazette, Government Notice No. 30.

³⁹ Rules of Professional Conduct (RPC) 2007, r 39

⁴⁰ See Taylor John, *How to start and Succeed in a Business of your Own*, (1978) 293.

⁴¹ *ibid*.

⁴² See also Littlejohn Stephen W., ed., ‘Advertising Theories’, *Encyclopedia of Communication Theory I* (Sage, 2009) 19.

of-effects model has undergone various modifications in its historical development such that today we use it in the plural form, indicating that competing models exist.⁴³

Touting – (Unfair Attraction of Business)

Touting is defined to mean ‘to solicit customers, votes, or patronage, especially in a brazen way. It is ‘to obtain and deal in information on racehorses.’⁴⁴ According to the Health Professions Act, 1974 South Africa,⁴⁵ touting means any conduct which draws attention, either verbally or by means of printed or electronic media, to one’s offers, guarantees or material benefits that do not fall in the categories of professional services or items, but are linked to the rendering of a professional service or designed to entice the public to the professional practice. One can see that touting is similar to advertisement in terms of how it is carried out especially when both concepts are interpreted in the light of professional ethics. Why advertisement in the legal profession may be legal, the paper holds that it is unethical. Touting on the other hand appears to be both illegal and unethical.

This is the solicitation of instructions and employment and is probably the most common and degrading example of unfair attraction of business. It lowers the prestige and reputation of the lawyer involved and the profession as a whole. It includes the following: solicitation for employment in Court premises, solicitation for conveyancing business, conducting search at the Land Registry to detect defects with a view to employment in litigation, instigating litigation, ambulance chasing, under association. This is an indirect form of touting. We could call it ‘class touting’. It is desirable for a legal practitioner to meet with people in clubs, restaurants and other social gatherings. However, it will not be desirable where the aim of such gathering is for a legal practitioner to associate unduly with other persons who are in a special position to assist him to obtain employment. It can be very dishonourable for a legal practitioner to distribute his cards in social gatherings to gain employment. This is very degrading.

Soliciting

Solicitation can be defined as the practice of making any request or appeal, either oral or written, or any endeavor to obtain, seek or plead for funds, property, financial assistance or other thing of value, including the promise or grant of any money or property of any kind or value. Soliciting in legal practice may be made in writing, in person, or by telephone and other electronic methods. They are usually for obtaining brief and business profit. The RPC 2007 prohibit soliciting by lawyers in Nigeria. By implication, the rule encourages a client’s right to rescind a solicited brief within a certain period.⁴⁶

Publicity

Publicity can be described as the deliberate attempt to manage the public's perception of a subject.⁴⁷ The subjects of publicity include people (for example, politicians and performing artists), products and services, organizations of all kinds, and works of art or entertainment. Publicity is the act of attracting the media attention and gaining visibility with the public, it necessarily needs the compliment of the media it cannot be done internally because it requires the attention of the publicist and it is the publicist that carries out publicity.⁴⁸ Public Relation is closely connected with publicity. It is the strategic

⁴³ C. E. Kenneth and Back Donald, *Integrated Advertising, Promotion, and Marketing Communications*, 3rd edition, (Pearson Education, 2007) 165–71.

⁴⁴ See ‘Touting’, <www.thefreedictionary.com> accessed 6 June 2016.

⁴⁵ Act No. 56 of 1974.

⁴⁶ See also ‘Solicitation’, <<http://definitions.uslegal.com/s/solicitation/>> accessed 16 April 2016.

⁴⁷ ‘Publicity’, <<https://en.wikipedia.org/wiki/Publicity>> Retrieved 7 June 2016.

⁴⁸ *ibid*.

management function that helps an organization communicate, establish and maintain relation with the important audiences. It can be done internally without the use of media.

From the view of a marketer, publicity is one component of promotion. Advertisement is another element of the promotion but it is doubtful if touting is.

4. Rules against Improper Attraction of Business

Rule 39 of Rules of Professional Conduct (RPC), 2007 provides that it is unprofessional for a lawyer to solicit professional employment by circulars, advertisement for professional employment such as furnishing or inspiring newspaper comments or procuring his photograph to be published in connection with causes in which the lawyer has been or is engaged in. However, a lawyer can make promotion in connection with his practice provided it is fair and proper in all circumstances.⁴⁹ Again, a lawyer is prohibited from soliciting professional employment either directly or indirectly:⁵⁰ 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 the 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 the 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 similar self-aggrandisement.⁵¹ However, a critical analysis of the consequential effect of this allowance is that a non-prohibition or restriction of attraction of business may in the practice of the law may always witness advertisement that are likely:

- a. is inaccurate or likely to mislead;
- b. is likely to diminish public confidence in the legal profession, or the Administration of Justice, or otherwise bring the legal profession into disrepute;
- c. makes comparison with or criticizes other lawyers or other professions or professionals;
- d. includes statement about the quality of the lawyer's work, the size of success of his practice or his success rate; or
- e. is so frequent or obstructive as to cause annoyance to those to whom it is directed.

In view of the trend of globalization, most jurisdictions have allowed a seemingly form of advert by law firms on the net. In the United States for example, law firms are allowed to advertise on the net to a certain degree.⁵²

Exception to the Rule on Advertisement

The rule prohibiting a legal practitioner from advertising however provides for exceptions. Under the rules of professional conduct, there are a list of items that a lawyer is permitted to engage in which would not amount to advertisement or soliciting. They include the following:

Publication in Journals:

The provision of rule 39(4) states that nothing in this rule shall preclude a lawyer from publishing in a reputable Law List or Law Directory, a brief biographical or informative data of himself, including all or any of his name or names of his professional association; his address, telephone number, telex number, e-mail address; the schools, colleges or other institutions attended with dates of graduation,

⁴⁹ Rule of Professional Conduct 2007, r 42

⁵⁰ Rules of Professional Conduct 2007, r 39(3)

⁵¹ *ibid.*

⁵² Canon 2 ABA Model Code of Professional Responsibility; Rule 7.2; ABA Model Code of Professional Responsibility (Amendment 2012).

degree and other educational or academic qualifications or distinctions; date and place of birth and admission to practice law; any public or quasi- public office, post of honour legal authorship; any legal teaching position; any National Honours he holds; membership and office in the Bar Association and duties thereon; and any position held in legal or scientific societies.

Note-papers, envelopes and Visiting Cards:

A lawyer may cause to be printed on his note-papers, envelopes and visiting cards his name and address, his academic and professional qualifications and title including the words ‘Barrister-at-Law’, ‘Barrister and Solicitor’, ‘Solicitor and Advocate’, ‘Legal Practitioner’, ‘Attorney –at-Law’, and any National Honours.⁵³

Signs and Notices:

Rule 41 of the RPC allows a lawyer or a firm to display at the entrance of or outside any buildings or offices in which he or it carries on practice, a sign or notice containing his or its name and professional qualifications. The sign or notice shall be of reasonable size and sober design.

Books and Articles:

Where a lawyer writes a book or an article for publication in which he gives information on the law, he may add his professional qualification after his name.⁵⁴

Notification of Change of Address:

On a change of address, telephone number or other circumstances relating to his practice, a lawyer may send to his clients notice of a change and may insert an advertisement of such change in a newspaper or journal.

Associate and Consultant:

Where a lawyer is available to act as an associate of other lawyers, either generally or in a particular branch of the law or legal service, he may send to lawyers in his locality only and publish in his local journal, if any, a brief and dignified announcement of his availability to serve other lawyers in that connection as long as the announcement is not designed to attract business improperly.⁵⁵

Press, Radio and Television:

A lawyer may write articles for publications, or participate in radio and television programmes in which he gives information on the law, but he shall not accept employment from any such publication or programme to advise on inquiries in respect of their individual rights. However a lawyer shall not (a) insert in any newspaper, periodical or any other publication, an 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 expired on any matter in which he has been engaged as a lawyer; and (c) take steps to procure the publication of his photograph as a lawyer in the press or any periodical.⁵⁶ Where a lawyer is instructed by a client to publish an advertisement or notice, the lawyer may put his name, address and his academic professional qualifications.

⁵³ Rules of Professional Conduct 2007, r 40

⁵⁴ Rules of Professional Conduct 2007, r 42

⁵⁵ Rules of Professional Conduct 2007, r 44

⁵⁶ Rules of Professional Conduct 2007, r 46

5. Comparative Analysis of the Implications of Attraction of Business

A look at Ethical Rules in the United States reveals that a lawyer is permitted to advertise services through written, recorded or electronic communication, including public media. He is only restricted from giving anything of value to a person for recommending the lawyer's services except that a lawyer may pay the reasonable costs of advertisements or communications permitted by this Rule.⁵⁷ This position is the exact opposite of what is obtained in Nigeria legal practice rules as earlier pointed out. The explanation provided by the Rule is to that 'it will assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising.'⁵⁸ Meanwhile this permission to advertise involves an active quest for clients, which is contrary to the tradition of the legal profession everywhere that a lawyer should not seek clientele. Why the shifts to the present day practice whereby lawyers can now advertise to attract clients? According to the comments in the American Bar Association Model Code of Professional Responsibility⁵⁹, the focus is to satisfy clients' lack of information about the lawyers and for the lawyers to get their necessary information to the prospective client for patronage. This is quite reasonable, but along with it came a lot of consequential damage to the honour of the legal profession which ethical standard should protect. Contrary to this explanation, in the traditional history of legal profession and in the Nigerian context, attraction of clients is based on three basic elements: knowledge, skill and experience. It is should not be the duty of a lawyer to sell himself to the public with a view to attract clients but for the client who desire a good lawyer to find him out. The researcher asks further, do Doctors advertise to the sick or it is the sick that seek to meet the doctors for treatment.

As a result, where improper attraction of business is allowed by the Rule of Professional Conduct, the following consequences may likely result: One of the effects of breaching the rule on advertisement, touting and soliciting is the belief that the noble and sober nature of the profession will not be maintained since success will rather depends on effective advertisement and not on competence. A lawyer adverts tend to berate or belittle the other members of the profession. It creates unfair attraction of business. Briefs received will now depend on the financial capability of the lawyer to employ the best form of advert. It can also leads to unhealthy competition and rivalry among lawyers. It is believed that the dignity of the profession would be eroded by such practice. As a result of all of the above, the rule on advertisement, touting and soliciting in many jurisdictions should be reviewed and monitored. In Nigeria, where a legal practitioner concerned is found liable, he will be punished appropriately by the Legal Practitioners Disciplinary Committee (LPDC).⁶⁰

6. The Necessity for Globalization of the Concept through Legal Education and the Burden of Law Faculties and Law Schools

Legal Practice unlike legal theories in the classrooms is dynamic and evolving. Similarly, the ethics of the profession must equally develop alongside realities and positive results oriented practices. In achieving this, the institutions responsible for legal education particularly the faculties of law and Law Schools must always review their curriculums and step up with new ideas by way of comparative analysis with other jurisdictions.⁶¹ Ethics of the legal profession should assume unification to a large extent. Ethics is more or less moral issues. It is not a statutory provision but a rule of conduct which if

⁵⁷ ABA Model Code of Professional Responsibility (Amendment 2012), r 7.2.

⁵⁸ *ibid.*

⁵⁹ *ibid.*

⁶⁰ Rules of Professional Conduct 2007, r 57

⁶¹ Ephiphazy Azenge, 'Foreword' in Joe-Kyari Gadzama, *Modernizing Legal Practice in Nigeria: Challenges and Prospects*, (Nigerian Institute of Legal Studies, Abuja 2013) iv.

the researcher believe should be view holistically and adopted as far as it is the same law that is being practice every. Ethical standards should not assume differentials. It should rather be a matter of whatever is good for the goose is good for the gander. Hence, restriction on the improper attraction of business needs to be accessed all over again most especially by all common law jurisdiction with a view to reach an internationally accepted model. Accepting, receiving and adopting the restriction rule on attraction of business and advertisement will no doubt promote professionalism and specialization in the numerous yet unexplored areas of law. There will also be prevention of possible rivalry and envy among lawyers who are supposed to be learned friends. Sometimes this rivalry and envious attitude is practically displayed by lawyers in and out of open court.

7. Solutions and Alternatives to Business Attraction: Exploring Entreprelaw Option

Entreprelaw is perhaps a new concept that the researcher evolved in the course of this study. It is simply aim at educating law students at any level the business opportunities that can be derived from each course being offered. It is not enough to teach Constitutional Law doctrines and concept. The question entreprelaw wants to answer is how can a student after graduation make money from being a constitutional law expert. The problems and challenges identified with constitutional law and development of a nation for example demands solution from which a student can research, develop a blue print of a reform and sell the idea to parliamentarians for a fee. I do not agree that he or she has to go under any pupillage to achieve this. It is discovered that many graduates come out of school whether University and Law School all over the world but cannot really offer skill that can fetch them job in the different areas of law that exists. This explains why many lawyers seek for government jobs, private jobs and engagements from other establishments just to be paid instead of earning. The colonial system of legal education in Nigerian and other countries in Africa and the rest of the world demand urgent change. How? Entreprelaw should now be taught as a new area of course of study, an important concept to be emphasized by law teachers in the teaching of all courses in the Universities and Law School all over the world.

Entreprelaw will silence the quest for the introduction of pupillage in many African countries like Nigeria and its existence in many other countries of the world if the legal education of the nations embrace it.⁶² It is the view of the researcher that it is a dent on the legal educators especially Law Schools all over the world to agree that a graduate of the Law School must go through pupillage before he can practice law. If you agree with pupillage, then, we need to ask the Law School what do they teach the student or why Law School? What makes a difference between a graduate of law whether with Bachelor Degree or Master Degree and graduate of Law is the volume of knowledge he has acquired to practice law. I am sure the curriculum of many Law School are designed to accommodate externship placement where by students will acquire practical experience from law firms and courts for practical knowledge of what obtains in practice.

8. Conclusion

This paper has explored some of the provisions of the Rules of Professional Conduct in Nigeria, which restrict the attraction of business in the practice of law with some exceptions. It has also compared the implications of the practice with other jurisdiction(s) specifically the United States in order to discover the value of it. The paper further advocates the globalization of the concept through legal education in global law faculties in the Universities and Law Schools. It agrees that advertisement may have its positive side which is mainly to educate the populace about the provisions of law that are available to

⁶² Joe-Kyari Gadzama (n 6) 41.

their issues especially where human rights issue is involved. It however maintains that advertisement in the legal profession should be globally curtailed especially where it is targeted at attracting unnecessary attention to the services of a Law Firm or legal practitioner without any benefit to the members of the public. It suggests that attraction of business, which consists of publicity, advertisement, soliciting, touting and the likes, should be restricted and monitored in all jurisdictions in order to preserve the nobility of the legal profession, promote hard work, integrity, knowledge and professionalism. Restriction on the improper attraction of business needs to be accessed all over again most especially by all common law jurisdiction with a view to reach an internationally accepted model. At the end, the paper proffered an alternative solution to unprofessional attraction of business and advertisement which is entreprelaw--a new course proposed for inclusion in the school's curriculum that will teach students the business angle of knowledge acquired in law, both during degrees and practising education at the Law Schools.