

## **ADVERSE INFLUENCE, CONFLICTING INTERESTS, AND CLIENT'S CONFIDENCE**

“Adverse influence”, “conflicting interests” and “client’s confidence” are three concepts that ought to govern the conduct of a lawyer in the course of professional duty. Are these concepts known to our Nigerian jurisdiction? Yes. These concepts are part and parcel of the Rules of Professional conduct in the Legal Profession made pursuant to the Legal Practitioners Act 1975 (“the Rules”). For obvious reasons now more than ever in Nigeria these concepts need to be re-awakened particularly as concerns the nearly sacred lawyerly duties foisted upon a lawyer from time to time.

### **How do we define these three concepts?**

As you would see shortly the Rules do not have classical definitions. They more or less couched in a duty modes: Mostly do’s and do’nts! We can however hazard a paraphrase or paint scenarios of these concepts from the key components as stated in the rules.

### **What is adverse influence?**

RULE 10 (a)

*“It is the duty of a lawyer at the time of Retainer to disclose to the client **all the circumstances** of his **relations** to the parties, and any **interests** or in **connection** with the controversy which might influence the client in selection of the counsel.”*

As a lawyer how do I define “adverse influence” from rule 10 (a) above? Let me try to put this in a scenario format. I would try to imagine that I am the client briefing a lawyer and as I sit before the lawyer I then try to think up any nexus (***relationships, interests, or connection***) between that lawyer and the subject matter of my brief and whether such a nexus may cause me to exercise restraint or refuse him the brief entirely. Note the use of the key phrase “all the circumstances” and the key words “relations”, “interests” and “connection”. These would seem wide enough to cover several things ranging from friendships to owning shares in a company or having relatives who are connected in the opposite camp and so on and so forth.

It is worthy of note that rule 10 (a) says “it is the duty of a lawyer to disclose to the client all the circumstances.....” It would seem therefore that the client is not under obligation to ask the lawyer if there is any circumstance that may disqualify him from the brief. Rather it is the lawyers’ duty to provide the client **unsolicited** information (if any) that may qualify as adverse influence.

### **What is conflicting interest?**

RULE 10 (b)

*“It is unprofessional conduct to represent conflicting interests, except by express consent of all concerned given **after full disclosure** of the facts. Within the meaning of*

*this rule, a lawyer represents conflicting interests when in respect of one client for whom he presently contends, **the interests of that client touch or concern confidences of another client** to whom the lawyer, at the same time, owes a duty of service”*

The simple ordinary meaning of conflicting interest would be a situation where a lawyer is acting for one client and the party on the other side happens also to be his/her client. It would seem that adverse influence dealt with above is wider than conflicting interest. Conflicting interest pictures a situation where the person on the other side is “another client”, whilst adverse influence deals with any other situation or circumstance past, present or anticipated that may constitute a clog in the way of your lawyerly duty.

### **What is client’s confidence?**

RULE 26 (a)

*“It is the duty of a lawyer to **preserve his client’s confidence**. This duty **outlasts the lawyer’s employment and it extends as well to his employees**, and none of them should accept employment which involves or may involve the disclosure or use of these confidences either for the private advantage of the lawyer or his employees or to the disadvantage of the client’s knowledge and consent, and even though there are other available sources of such information. **“A lawyer should not continue employment when he discovers that this obligation prevents the performance of his full duty to his former or new client”**”.*

The use of the phrase “**disclosure or use of these confidences**” connotes information which came into your domain as a lawyer by virtue of your dealings with that client. The duty to preserve such information subsists “even though there are other available sources of such information” and extends to other lawyers (“employees”) who worked with you at the time your firm serviced the client. In other words there is an obligation to refuse a brief if I have in the course of my work for a former client gathered some knowledge from them that I would invariably use to my advantage in dealing with a new client who is an adversary of my former client. Interestingly the rule envisages situations where such information may preclude the lawyer from performing his “**full duty**” even to the “**new client**”. So you may have information about a former client which makes it difficult for you to dutifully serve the new client. Let me try to paint a picture here. Let us assume that I worked for a client and knew the state of his finances and that he was near bankrupt and I was a party to selling all his assets, then a few weeks later I received a brief from a Bank to pursue this client for a huge debt running into millions. With the knowledge that I have of this former client (now bank debtor) there is a real likelihood that I would not pursue this debt with much gusto. I would wonder how the debtor would be able to pay! In which case I will not give my best to the bank client! However there is the other side to this coin. And that is where the information I had about my former client was about his largesse and his portfolio of real estate, bank accounts and the exact location of his ship etc then the question would be whether in working for the new client I would not be taking advantage of the previous knowledge and using it to know exactly how to enforce the debt owed. Does it not indeed get complicated? Perhaps we can get some instructions on how the Courts have interpreted these Rules.

### **How have our courts interpreted these rules?**

The cases seem to have laid some principles here and there. The Court of Appeal in *Ikeme vs Anakwe* (2003) 10 NWLR Part 829 dealt with a case where a lawyer had incorporated a company and drafted a partnership Deed for two medical doctors and when a dispute arose as to ownership of the medical practice the lawyer took out a court action acting for one doctor against the other. The court held that such a lawyer could be restrained from appearing as counsel in the suit because: (a) It would be a breach of confidence (b) It would place the other party in jeopardy (c) The lawyer did not obtain express consent of all the parties. In *Onyeke vs Harriclem Nig Ltd* 1998 7 NWLR Part 556 the Court of Appeal hinged its decision on the principle that “the services to be rendered flow out of or are closely connected with the previous services he had rendered to the opposing side”. A guiding principle was laid down in *Anatogu v Iweka* 1995 8 NWLR Part 415 which has been used in some of the cases which is that “a man ought to be restrained from doing any act contrary to the duty that he owes to another”. So where one is not sure then we should ask ourselves: What duty do I owe the client – present or former? Is there anything which would prevent me from carrying out that duty to the best of my ability?

A close look at the vagaries of these three concepts both from the Rules and Case Law still leave a lot of questions unanswered. For example: Is my client anyone I have worked for in the past? Is there a period of limitation in some situations? What if the relationship with the other side is old frosty or irreconcilable do I lose this new client on account of that person? Despite these gray areas some key principles are certain and from the clients perspective it may be advisable to borrow a leaf from several overseas jurisdictions where the client typically requests in his written brief to the lawyer for any disclosures on possible adverse influences or conflicting interests. Perhaps if this is adopted as a standard in Nigeria it may help to alert the lawyer of his existing duty to disclose. Surely it is better for the client to prompt than for all parties to be caught in a lurch!

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