journals.unizik.edu.ng/jcpl/index ISSN: 2736-0342
NNAMDI AZIKIWE UNIVERSITY, AWKA
JOURNAL OF COMMERCIAL AND PROPERTY LAW Vol. 12(2), May, 2025

SOME THOUGHTS ON THE LEGAL PRACTITIONERS (REMUNERATION FOR BUSINESS, LEGAL SERVICES AND REPRESENTATION) ORDER 2023

YYD Dadem*

Abstract

The question of what should be a fair remuneration for legal businesses and services has been a recurring matter in the relationship between the Legal practitioner and his client. The issue has always been how to realise, between the two, at different times, on different transactions, what is a fair and reasonable fee for particular services rendered? Leaving it to the whims of the Legal practitioner will be exploitative; while ridiculously low fees will disincentivise the diligent deployment of professional skills by the Legal practitioner to meet the client's instructions. The need for some regulation and benchmark for particular services rendered that informs the client on what to expect or pay has become imperative. After three decades of the old Remuneration Order, the enacting authority promulgated a new remuneration order in 2023. While nascent, the question has arisen as to the tenor and viability of the new order? Using a doctrinal research methodology, this paper discusses and interrogates certain provisions of the new order and highlights some implementation challenges.

Keywords: *Remuneration, state band, legal services, withholding tax, terms of engagement.*

1.Introduction

The Legal Practitioners (Remuneration for Business, Legal Services and Representation) Order 2023,[1] was enacted by the Honourable Attorney General of the Federation in May 2023 and gazetted in June 2023.[2] It replaces the Legal Practitioners (Remuneration for Legal Documentation and Land Matters) Order 1991.[3] The 2023 Remuneration Order is made up of 15 paragraphs and 14 rules applicable to Scale 4. A major difference between the 1991 and the 2023 Remuneration Orders is that the latter deals with a wider range of legal services, while the former was limited to legal documentation and land matters. No principle has explained a departure from the 1991 arrangement. Presumably, the intention might be to streamline and standardise the uncertainties of charges by Legal practitioners on a range of legal businesses and services, which is often inexact, characterised by undercutting of other professional colleagues and at times exploitative of clients. The 2023 Remuneration Order essentially encapsulates the contractual and regulatory principles of legal remuneration. A legal service is essentially a service to the client who is contracting the Legal practitioner, in lieu of consideration paid by the client; the terms of engagement (TOE) in the order reflects that understanding. The regulatory principle reflects the need to lay down guideline on charging legal fees, to tamper the prospect of exploiting the beneficiary of such service. Unlike the 1991 Remuneration Order, which essentially reflects the contractual principle, the 2023 Remuneration Order strikes a balance between the two principles. The overall objective of the 2023 Remuneration Order aims to guarantee adequate remuneration for legal services offered by Legal

***YYD Dadem**, PhD, lecturer, Property Law Practice Department, Nigerian Law School, Kano Campus, Bagauda. yusufdadem@yahoo.com; yusufu.dadem@nigerianlawschool.edu.ng.

[1] Hereinafter referred to as "the 2023 Remuneration Order"

[2] Gazzette No. 0102, Vol. 110 of 5th June 2023. The authority to enact an order on remuneration of legal practitioners in Nigeria flows from the provisions of section 15 of the Legal Practitioners Act, which constitutes a Legal Practitioners Remuneration Committee, with powers "to make orders regulating generally the charges of legal practitioners"; paragraph 15 (3). This power is extensive to cover a whole range of regulation guiding legal businesses and services a Legal practitioner is engaged in.

[3] The 1991 Remuneration Order replaced the Legal practitioners (Remuneration for Conveyancing Matters) Order, 1971; YYD Dadem, *Property Law Practice in Nigeria* (Jos: Jos University Press Limited, 2009) 341. The continuous enactment of remuneration orders for legal businesses and services takes into cognisance changing realities in the legal services sector and to regulate expanding areas of legal services and businesses.

practitioners while also protecting clients against exploitation. The paper attempts to highlight the major themes of the 2023 Remuneration Order and to interrogate some issues that may constitute challenges to its implementation.

2. Zoning: Legal Services, Scales & Principles

The 2023 Remuneration Order classifies the country into three zones for purposes of charging fees for legal businesses and services, which it describes as "State band" 1, "State band" 2 and "State band" 3, to mean "the state where the legal practitioner carries on his practice or the state where the business or service is to be carried out."[4] There are no ostensible criteria to explain the basis for the three categorisations, leaving the question open to criticism on grounds of arbitrary discrimination in remuneration of legal businesses and services based on geographical considerations. The grouping of Lagos State and Abuja the Federal Capital Territory under "State Band 3" may be explained by their similarity; the former being the erstwhile Federal Territory, while the latter is the current Federal Territory, both with high net individuals and legal transactions.

The 2023 Remuneration Order prescribes 5 types of legal services. The fees chargeable for any business or service conducted by a Legal Practitioner are as prescribed in Scales 1 to 5 set out in the Schedule to the 2023 Remuneration Order and they are not subject to negotiation except as prescribed in the order.[5] Scale 1 is charges for consultation and legal opinions; Scale 2 is charges for incorporations or registration of companies and business names; Scale 3 is charges for litigation; Scale 4 is charges for property transactions, including mortgages and related transactions; and Scale 5 is charges for commercial or other transactions that is percentage-based hourly rates.[6]

The 2023 Remuneration Order tabulates the minimum charges for legal services and representation in Scales 1- 3, by fixing the amount chargeable according to the years of call or standing at the bar, with lower years attracting lower fees and higher years attracting higher fees payable by clients.[7] The three (3) categories of standing at the bar in the scale are - Legal Practitioners with 9 years post qualification experience or less; Legal Practitioners with over 10 years post qualification experience; and Senior Advocates of Nigeria, a class whose charges operates regardless of the years of standing at the bar.[8] However, for hourly rate charges on commercial transactions in Scale 5, the years of call/ standing at the bar is different and the considerations are as follows: Associates (or Legal Practitioners between 0-6 years' experience); Senior Associates (or Legal Practitioners between 6-12 years' experience; and Partners (or Legal Practitioners over 12 years' experience including Senior Advocates of Nigeria). The hourly rates or fee for each category is listed; for example the minimum hourly rate for "State Band 1" for the first category is N10, 000 and the hourly rate for the 3rd category for "State Band 1" is N50, 000. By providing for the minimum that is chargeable according to the legal services rendered, it allows the Legal practitioner to charge

[4] Nigeria is a Federation of States and a Federal Capital Territory, Abuja; s 2 (2) CFRN, 1999. "State band 1" includes Abia, Adamawa, Anambra, Bauchi, Borno, Ebonyi, Enugu, Gombe, Imo, Jigawa, Kaduna, Kano, Kastina, Kebbi, Sokoto, Taraba, Yobe and Zamfara States. "State band 2" includes Akwa Ibom, Bayelsa, Benue, Cross River, Delta, Edo, Ekiti, Kwara, Kogi, Nasarawa, Niger, Ogun, Ondo, Osun, Oyo, Plateau and Rivers States; and "State band 3" includes Federal Capital Territory and Lagos State. While the phrases "include" may suggest that other states are to be reckoned with amongst the categories, but is not so since all the States have been exhaustively listed. The use of the phrase "includes" may thus be otiose.

[5] Paragraph 8 (1) 2023 Remuneration Order. The modalities for such negotiated fees are stated in paragraph 10 of the 2023 Remuneration Order; it requires an application by the Legal practitioner to the Remuneration Committee of the NBA detailing the circumstances justifying the reasons for the lower charges for approval by the committee. The circumstances are not listed leaving the duty to adumbrate them on the Legal practitioner. The power to accept or reject the request is vested on the Remuneration Committee, which is binding on the Legal practitioner.

[6] Paragraph 1, 2023 Remuneration Order.

[7] Scale 4 does not have such categorisation that is conditional on years of standing at the bar.

[8] Column 1 of scales 1, 2 & 3 of the 2023 Remuneration Order. The rank of a Senior Advocate of Nigeria is awarded to persons who have distinguished themselves in the Legal profession.

more than the least amount stated for the particular commercial transaction, but not less than the minimum. This leaves the client susceptible to exploitation though, considering that since the minimum is stated, the order should have also provided the maximum for the transaction.[9]

Scales 1, 2, 4 & 5 are specific of the class of legal businesses; litigation however (which is scale 3) is elastic to contemplate varying types of practice areas, such as civil litigation, criminal litigation, and appeals. Civil litigation encompasses matters such as labour disputes, contractual disputes, maritime and aviation disputes, energy and mining disputes and miscellaneous disputes (land, chieftaincy and other litigation matters). However, with respect to landlord/tenant litigations (given the variance of rental values), the remuneration of a Legal practitioner is as provided for in Paragraph 2, which requires such charges to be fair, having regards to the circumstances of each case and considering the factors set out.[10]Criminal litigation encompasses matters such as bail applications, misdemeanours and felonies. Appeals cover matters before the High Court, Sharia Court of Appeal/Customary Court of Appeal, Court of Appeal and the Supreme Court, regardless of whether they are civil or criminal disputes.

With respect to Scale 4, the property transactions are listed as conveyances and assignments, mortgages, leases and tenancies. The minimum percentile charges of the Legal practitioner are determined by the "property value", the "mortgage value" and "annual rental value" - expressions that are not defined in the order, but presumably plain in their meaning.[11] Where however, the value goes higher, a minimal amount is chargeable, with a minimal percentile for every subsequent amount up to the maximum. The minimum or maximum charges are not determined by the years of standing or years of call by the Legal practitioner at the bar. Special rules are made to guide the operation of Scale 4.[12] With respect to Scale 5 (commercial or other transactions on hourly rates), the 2023 Remuneration Order states that without prejudice to any arrangement reached between a Legal practitioner and his client on a percentage-based fee in respect of commercial or other transaction or service, the remuneration of a Legal practitioner shall be as prescribed in Scale 5; provided that no percentage-based fee arrangement shall be lower than the minimum hourly rate prescribed in the scale.[13]

3. Rules Governing Charges for Property Transactions - Scale 4

The operation of Scales 1 to 5 in each case is subject to the rules attached, where applicable.[14] With respect to Scale 4, the rules are set out in both the table, but more extensively in rules 1 to 14 appending to the scale. The rules deal with matters such as the minimum and the percentile charges by the Legal practitioner where he represents a party, both parties, several parties, taxation for transactions on scale 4 and methods for payment of Legal practitioners' charges after taxation. The most important rules applicable to scale 4 are particularly set out. Thus, where a Legal practitioner

[9] Paragraph 15 (3) (a) mandates the Remuneration Committee to enact the "maximum charges which may be made in respect of any transaction or activity of a description specified by the order." Had both minimum and maximum been provided, the Legal practitioner and client would easily find a basis for negotiating what is a fair and reasonable rate for the particular business and service.

[10] These factors include the complexity of the matter or the difficulty or novelty of the questions raised; the skill, labour, experience, specialised knowledge and responsibility involved on the part of the legal practitioner; the number and importance of the documents prepared or perused, without regard to length; the time expended by the legal practitioner on the business or service; the place and the circumstances in which the business or service, or a part thereof is transacted or carried out; the turnaround time required by a client for completion of the business; the amount of money or value of property involved; and the importance attached to the business by the client.

[11] The property value would be the monetary value of the property being sold/assigned; the mortgage value would be the amount being borrowed as security on the property, while the rental value would be the amount paid as rent by the tenant to the landlord as money. In the last instance, the problem arises where the rent is paid in money's worth; the quantified amount would be reckoned with as the rental value.

[12] There are altogether 17 rules regulating the operation of Scale 4.

[13] Paragraph 1 (2) 2023 Remuneration Order.

[14] Paragraph 9 of the 2023 Remuneration Order. The rules in the scales 1, 2, 3 & 5 are set out in the tables to each.

is representing both (a) vendor and purchaser; (b) lessor and lessee; or (c) assignor and assignee, he is entitled to a minimum of 10 percent of the value or consideration as fees (the contribution rate to be agreed with both contracting parties). Where the lessor's or landlords' Legal practitioner prepares the agreement and same is reviewed by the lessee's or tenants' Legal practitioner, the lessor or landlord's Legal practitioner will be entitled to 7.5 percent of the value or consideration as fee, while the lessee's or tenant's Legal practitioner will be entitled to 2.5 percent of the value or consideration as fee.

Further, where an assignor or a vendor insists on his Legal practitioner preparing his land document, such Legal practitioner will be entitled to 2.5 percent of the value or consideration as fee, while the assignee or purchaser's Legal practitioner will be entitled to 7.5 Where a Legal practitioner peruses a draft on behalf of several parties having distinct interests which ought to be separately represented, he will be entitled to charge each party 5 percent of the value or consideration payable under the transaction. Where legal documents of the same property are completed at the same time and are prepared by the same Legal practitioner, he will be entitled to charge as provided for under rule 3. Finally, the commission/fees for deducing title, perusing and completing legal documentation on a sale by auction will be charged on each lot of property, but where a property held under the same title is divided into lots for convenience of sale and the same purchaser buys several lots and takes one legal document, the commission or fees will be charged upon the aggregate prices of the lots.

4. Terms of Engagement by Legal Practitioners

Unlike the 1991 Remuneration Order, the 2023 Remuneration Order mandates a Legal practitioner, before commencing work on any business or service and not later than 14 days of receipt of instructions, to issue a written TOE to his client. The TOE should contain the scope of work and the fees that is charged and payable.[15] The operative words "shall" requires some obligation on the Legal practitioner to issue the TOE. The objective is to remove any obfuscation between the parties on the agreement respecting the extent of engagement of the Legal practitioner commensurate to the service and remuneration. The TOE must be in writing as no verbal term or one from the conduct of the lawyer and the client will be deduced and reckoned with.

Due to the fact that it is difficult to determine exactly the extent of legal services that may be rendered after a Legal practitioner has been instructed, the 2023 Remuneration Order provides for a solution to take care of any contingency. These situations are where the Legal practitioner performs any work outside the stated scope of work; or the fees for the business or service becomes greater than what is mentioned in the TOE; or the fees for the business or service becomes ascertainable.[16] In any of these three events, the Legal practitioner may issue another engagement letter or TOE to cover the new services. It appears that in such a situation, the client will be obligated to comply with the new TOE, as the provisions makes no mention for any negotiation.[17] Where a Legal practitioner fails to issue a TOE to a client, he will be liable for unprofessional conduct and will be liable to such punishment as may be prescribed by the Legal Practitioners Disciplinary Committee.[18] Such failure will appear to be ground for a client to dispute the charges and the presumption on the exact fee payable would rest in favour of the client, being that the burden for the TOE was at the outset placed on the Legal practitioner and not the client.

4.1 Exclusion of certain expenses from Legal Practitioners' Remunerations

Certain expenses for the effective discharge of the instructions of the client by the Legal practitioner are excluded from the practitioner's remunerations and should be separately charged. They are the

[15] Provided that where certain fees are not ascertainable at the time of issuing the engagement letter or a written TOE, they must be expressly stated.
[16] Paragraph 7 (2) of the 2023 Remuneration Order.
[17] Ibid.
[18] Paragraph 7 (3).

necessary expenses to have the job done and should not be paid out of the remuneration of the Legal practitioner for the professional services he will render. "Remuneration" is defined to include professional fees, commissions, charges or rewards payable to a Legal practitioner for service rendered to a client, excepting such expenses.[19] The definition anticipates fees for the knowledge, skills and the values of the Legal practitioner as an expert and for his benefit and not expenses that are used for discharging the service.

It is important that in preparing the TOR, the Legal practitioner should explain these expenses to the client as being separate from the remunerations chargeable, to forestall confusions and conflicts. However, a different arrangement may be "agreed by the parties".[20] Except that is done, the remunerations of the Legal practitioner prescribed in Scales 1 to 5 in the 2023 Remuneration Order, does not include costs and disbursements associated with stamps, auctioneer's or valuer's charges, travelling expenses, fees paid on searches, fees paid to government or its agencies on registrations, costs of extracts or certified true copies of such from any register, court filing costs or other disbursements reasonably and properly paid; any extra work occasioned by changes occurring in the course of any business such as the death, insolvency or winding up of a party to the transaction; any application for first registration under any enactment relating to registration of any title to land or any other interest in land and associated filing costs necessitated by a transaction for which a scale of fee is payable to the Legal practitioner; and any application for consent required under the Land Use Act but will include any engrossing charge and allowance for the time of the Legal practitioner and his support staff and the copying and parchment and all other similar disbursements.[21]

4.2 Choice to opt-out of the Scales: Supremacy of Order 5

Paragraph 5 of the 2023 Remuneration Order provides that a Legal practitioner may elect to charge differently from the charges prescribed in the scales. It states that in all cases to which the remuneration prescribed in Scales 1 to 5 set out in the Schedule to the 2023 Remuneration Order is chargeable, a Legal practitioner may before commencing any business or service, by writing under his hand, communicated to the client, elect that his remuneration will be in accordance with the provisions of paragraph 2 and such remuneration will not be lower than the minimum set out in the relevant or appropriate scale.[22] The clause to opt out of being bound by the scales is one that is within the choice of the Legal practitioner and the client. In such a case, the charges would be determined by the factors listed in paragraph 2 and the Legal practitioner must not charge below the minimum set out in the scales. Certain conditions are required for the Legal practitioner to successfully operate this optional clause: he must communicate his intention to do so in writing; the communication must be made before commencing or rendering any service; and the remuneration will not be lower than the charges in the scales.[23]

The 2023 Remuneration Order does not provide if the client has an election on the matter, although inexorably, if the client refuses to accept the lawyer's offer, no terms can be arrived at on the matter. It appears also that where the Legal practitioner has already begun acting for the client, he cannot resort back to paragraph 2, regardless of any challenges he might have experienced after the

[19] Paragraph 15.

[20] The parties here are presumably the client and the Legal practitioner acting on his behalf; this conclusion is inexorably so because the listed services and costs are those routinely borne by a Legal practitioner in the course of his legal work and services. One can only imagine the arrangement under which the parties may agree to have such expenses not excluded? Would very high payments as legal fees cover such expenses? This is not advisable for taxation purposes.

[21] Paragraph 3 (1) of the 2023 Remuneration Order.

[22] Paragraph 5, ibid.

[23] The writing will be "under his hand", an expression that has not been defined in the Remuneration Order, which may simply signify his signature appended to the written communication. Paragraph 5 of the 2023 Remuneration Order.

commencement. Paragraph 5 advances the interest of the Legal practitioner, and puts the client at a disadvantageous position. The question arises whether paragraph 5 has not made otiose the scale of charges in Scales 1 to 5, since the Legal Practitioner may canvass reasons for electing to charge under paragraph 5, without an impartial intermediary to arbitrate on the question whether the matter is one that is really chargeable under paragraph 5?

5. Withholding Tax on Charges for Property Transactions: Monitoring and Enforcement Regime by the NBA

Generally, the withholding tax regime is a system of crediting taxpayers for incomes received pending final tax payments for a period. It has been defined as "an advance payment of income tax which may be used to offset tax liabilities…not a tax but a prepaid tax."[24] The 2023 Remuneration Order places certain obligations on Legal practitioners and clients concerning the withholding tax component on "the preparation of any deed or instrument relating to property transaction or mortgage", but not on other categories of legal businesses and services.[25] These obligations include the requirement that all monies due and payable to a Legal practitioner with respect to business or service provided to a client on property instruments and mortgages is paid in escrow by the client into a Legal Practitioners Remuneration Account with an approved commercial bank within the State or Federal Capital Territory where a Legal practitioner carries on business for the taxation of such charges before being paid out to the Legal practitioner.

Other requirements obligate the Legal practitioner to present the prepared deed at the appropriate tax office of the State within 7 days of the preparation of the deed for the purpose of assessment of the applicable withholding tax on the Legal practitioner's charges; that the client, upon the presentation of the deed to the tax office by the Legal practitioner, pays to the Remuneration Bank Account of the NBA Branch the amount endorsed on the Legal practitioner's invoice (upon verification of same) with the amount stated on the deed by the tax office; that the tax office will, upon the assessment of the instrument for due withholding tax payable on the verified invoice amount by the client, issue an assessment note to the Legal practitioner showing it had been assessed for withholding tax; that such due tax will be deductible from the legal fees/charges paid into the Remuneration Account for the Legal practitioner's fees, before the balance is paid out to the Legal practitioner within 7 days of the said assessment; and that upon payment of the due tax, the tax office of the relevant State or Federal Capital Territory, will affix on the copies of the deed a seal of the Board of Internal Revenue of the State Government to confirm the payment of the appropriate withholding tax.[26]

The outlined procedure for withholding tax assessment and deduction (which navigates and gravitates from the desk of the legal practitioner, client, the NBA, the Bank, the tax officer, the revenue board) demonstrates a procedure that is complex, cumbersome and expensive. Should such burdened and complex arrangement (on the client, solicitor and the NBA) been enacted to realise the objectives of appropriate remuneration of legal fees and withholding tax purposes or could other simpler arrangements have been enacted? The Legal practitioner, rather than concentrate on the duty of discharging the professional service, is additionally burdened with the task of running to these bodies, with time delays. Withholding tax for land instrument may be realised simply by requesting of the client paying for the legal service, to issue a tax credit note for that purpose in the name of the Legal practitioner, which he (client) in turn pays the withheld tax to the revenue boards. The objective of withholding tax for that head of legal service would still be realised. The requirement to affix on the copies of the deed a seal of the Board of Internal Revenue of the State Government seem superfluous and otiose

[24] Sourced at https://www.firs.gov.ng/withholding-tax-wht-faq/ on April 8, 2024.
[25] Rule 15 (1), Scale 4 of the 2023 Remuneration Order.
[26] Rules 14 & 15 of Scale 4, ibid.

The 2023 Remuneration Order provides a monitoring and enforcement regime for certain property transactions, that is, leases, tenancies, purchases, sales and mortgages for taxation purposes. The order mandates the establishment of a Legal Practitioners Remuneration Account by the branch of the Nigerian Bar Association with an approved commercial bank within the State where the Legal Practitioner carries on his business. The account is an "exclusive account" to be supervised by the Remuneration committee of the NBA, the relevant branch and State Tax Authority in the relevant state or FCT where the account is domiciled. It is not a domestic account of the NBA Branch but an escrow account of all Legal practitioners in a given state. Signatories to the account are the Chairman of the Remuneration Committee, a nominee of the Tax Authority of the State/FCT and the Treasurer of the branch of the NBA. Additionally, it requires clients to pay all monies due and payable to a Legal practitioner with respect to the business or service provided on property instruments and mortgages;[27] requires that the money be paid in escrow for the purposes of withholding taxation of legal charges before being paid out to the Legal practitioner;[28] and requires that withholding tax be assessed and the amount deductible from the legal fees/charges paid into the Remuneration Account for the Legal practitioner's fees, before the balance is paid out to the Legal practitioner within 7 days of assessment.[29]

To operate the 2023 Remuneration Order, some branches of the Nigerian Bar Association have enacted "Protocols for Preparation of Valid Agreements and Land Documents with NBA Authentication" to effectuate its provisions, notably the branches in Abia and Anambra States.[30] A preamble to the protocols restates that "any document not prepared in accordance with this protocol with the appropriate fees paid and duly authenticated with the seal of the NBA Branch where the property is located shall not be valid for any purposes".[31] The highlights of the protocols contain provisions such as - that the Legal practitioner makes available to the client the NBA designated account for the client to make the appropriate payment after which payment, the client will make available to the Legal practitioner the evidence of the payment; that the Legal practitioner obtains and fills the NBA Instrument and Agreement Preparation Form attaching the evidence of payment sent or given by the client; that the NBA branch shall issue to the Legal practitioner a Bar Instrument/Agreement Number (BAIN*)* which shall be peculiar to the document to be prepared; that the Legal practitioner shall then prepare the document and make it available to the client for execution; that the Legal practitioner after execution of the instrument, will present the document to the NBA branch where the property is located for authentication under the hand of the branch Chairman who will affix the special seal of the branch containing the peculiar BAIN of the instrument; that the Legal practitioner then delivers to the client the appropriate copies of the duly authenticated document; and that the NBA branch will then pay over to the Legal practitioner the fee paid by the client, less 5% handling charge.[32]

Although it may be contended that the branches of the NBA have the *vires* to enact the protocol to enforce the 2023 Remuneration Order, what is the extent of their power?[33] Do the branches possess the power to enact some of the provisions in the protocol (such as issuances of the *BAIN*, affixing the branch's special seal, deducting a handling charge fee and from whom)? Is the power to enact a protocol on remuneration for legal services by a branch of the NBA not and overreach of the

[27] Rules 14 & 15 of Scale 4, ibid.
[28] Ibid.
[29] Rule 15 (4) of Scale 4 to the 2023 Remuneration Order.
[30] There are 128 branches of the Nigerian Bar Association; sourced at https://nigerianbar.org.ng on 26 March 2024. It is most probable that other branches would follow suit in enacting similar protocols. The power of the branches to enact the protocols is hinged on Rule 14 (2) of the 2023 Remuneration Order.
[31] This is not an operative clause of the protocols; even if it were, it remains debatable whether such document will not be an instrument for registration purposes in the various land registries, which is regulated by the state land registry laws rather than remuneration protocols of the branches of the Nigerian Bar Association.
[32] The words in italics are for emphasis only.
[33] Rule 14 (ii) to Scale 4 of the 2023 Remuneration Order.

exhaustive powers of the Legal Practitioners Remuneration Committee? Does the above arrangement not abridge the confidentiality obligation of the Legal practitioner to his client, being that many persons not acting as solicitor to the client would become involved with the client's business? Where a Legal practitioner who prepares the transaction instrument affixes his seal, isn't a branch's special seal otiose and redundant? What is the legal foundation granting a branch of the NBA the power to issue a "special branch seal" to authenticate a land document?

6. Professional Breaches and Penalties for Breach of the Remuneration Order

The fees prescribed in the 2023 Remuneration Order are sacrosanct, except where the order makes room for negotiations.[34]Where a Legal practitioner charges a fee for business or service outside the prescription in the order without permission to do so, he will be liable for unprofessional conduct and will be prone to such punishment as may be prescribed by the Legal Practitioners Disciplinary Committee.[35] It is also obligatory on anyone who is aware of a breach of the 2023 Remuneration Order to make a report of the violation to the Legal Practitioners Disciplinary Committee.[36]A Legal practitioner who on his own volition or who conspires with his client to falsely endorse or state the value of professional fee, consideration, purchase price or value of a piece or parcel of land on an invoice, deed or any other document presented to the tax office; or who falsely endorses or states the date of the preparation of a land instrument or document on an invoice, deed and or any document presented to the tax office, will be guilty of unprofessional conduct.[37]The penalty for a breach is suspension from practice for not less than 3 years where the Legal Practitioners' Disciplinary Committee finds the Legal practitioner culpable.[38]

The power to suspend a Legal practitioner found liable for any unprofessional conduct is widely granted to the Legal Practitioners' Disciplinary Committee for any period it may direct.[39]The question arises whether by limiting the period of suspension in the 2023 Remuneration Order to 3 years it curtails the wide discretion of suspension conferred on the committee by the Legal Practitioners Act?[40] The appropriateness of the offence of false endorsement of the date of the preparation of a land instrument (more particularly deeds) also comes into question, since in practice, Legal practitioners would normally leave deeds undated, until all such requirements like the Governor's consent are obtained before postdating and registering it.[41] The courts have validated the practice as a practical necessity in conveyancing.[42] Is this practice equivalent to false endorsement of the date of the preparation of the deed to make such practice tantamount to unprofessional conduct of the Legal practitioner?

7. Conclusion

The enactment of the 2023 Remuneration Order is a welcome development. Many of its provisions are novel and not yet applied for an extended period, to decipher the strengths and weaknesses. The paper highlights some of its provisions such as the state divisions for types of legal services and

---

[34] Paragraph 8 (1) of the 2023 Remuneration Order. The modalities where the minimum fees may be negotiated are prescribed under Order 10 of the 2023 Remuneration Order. The "circumstances necessitating the intention to charge the lower remuneration" are not listed, making it opened to the determination of the Legal Practitioners Remuneration Committee.

[35] Paragraph 8 (2) of the 2023 Remuneration Order.

[36] Paragraph 11, ibid.

[37] Rule16 (1) (a & b) to scale 4 of the 2023 Remuneration Order. The practice of falsely endorsing the consideration on a land document is to aid money laundering and evade tax liabilities. This provision will not only discourage such actions, but also professionally penalise it.

[38] Rule 16 (1) (c) to scale 4 of the 2023 Remuneration Order.

[39] Section 11 (1) (C) ii Legal Practitioners Act.

[40] Ibid.

[41] Dadem (n 3) p 67.

[42] *Anuku v Standard Bank Limited (1972) UILR, 106; Awojugbagbe Light Industries v Chinuke (1995) 4SCNJ, 162.*

scales, the importance of the TOE, exclusion of certain expenses from legal practitioners' remuneration, rules on Scale 4 governing charges for property transactions and the supremacy of the opt-out provisions, the monitoring and enforcement regime and professional duty and sanctions. Some of the challenges that emanate from a review of the order include the onerous duty placed on the Legal practitioner with respect to withholding tax assessment and payment and the otherwise intrusive powers of the NBA on the professional fees due to a Legal practitioner (including the right to make deductions) and the unchecked powers granted a Legal practitioner where he elects to charge under Paragraph 5 of the 2023 Remuneration Order. Other problematic areas of the 2023 Remuneration Order include the liability placed for the endorsement of the date on a deed and the absence of standards and guidelines on when fees may be negotiated beyond the minimum, leaving that determination susceptible to the widest discretion even when the Legal Practitioners Remuneration Committee has the power to fix the maximum. These are some matters that an amended remuneration order may address in the future after lessons from the application of the 2023 Remuneration Order might have been deduced.