DISCIPLINE OF NOTARYS PUBLIC FOR ETHICAL VIOLATIONS AND NBA's PURSUIT OF A CHIMERA

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Abstract

The office of the notary public is of great antiquity, and is recognized in all civilized countries. By the law of nations, the acts of the public notary have credit everywhere. Contemporary occurrences in Nigeria's jurisprudence compels a study to develop and set out the legal theory pertaining to aspects of the office of the notary. This paper examined the authority, power and competence of the Nigeria Bar Association (NBA) to sanction and discipline an erring notary public. The paper defined and classified the office of the public notary into its several divisions, and set out the appointing authority for each division of the office. From this classification, we established that the Chief Justice of the Federation is the appointing authority of the general notary public, and the appointment is made from members of the Bar in good standing. Thereafter, we set out the different permutations the discipline of the notary could take, and established from these that invariably, the ultimate authority to sanction and discipline an erring notary lies in the appointor. The foregoing led to our conclusion that while the NBA is competent to invoke statutory provisions to discipline a legal practitioner, who though is a notary, is guilty of professional misconduct, the scope of the discipline is limited to his status as a legal practitioner. In this regard, the NBA lacks statutory competence and

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authority to discipline a notary by either removing or suspending him from office.

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1. Introduction

The immediate context for this paper is provided by the incident of 26th May, 2021, when a Nigerian notary public, sitting as a public notary, assumed judicial powers and made a 'Reversal Order' directing a commercial bank to reverse funds allegedly erroneously paid into a customer's account. A public notary in Nigeria is not competent to exercise such judicial powers. The NBA disapproved of the unlawful assumption and exercise of judicial powers by the notary public, and promised to investigate the actions of the notary and take such further actions as may be necessary.[1] The declaration of the NBA of its resolve to take further necessary actions against the delinquent notary creates a topical issue and compels an inquiry into the nature, functions and obligations of a public notary within the Nigerian legal system. This would as a necessary corollary compel an investigation of the limit and extent of the powers of NBA, if any, over its members who are public notaries. In the section next, we would detail the definition, meaning, essence and purpose of the office of the notary. In the section thereafter, we would set out the taxonomy of the office of the notary

[1] <https://thenigerialawyer.com/nba-to-investigate-notary-public-anthony-eruaga-esq-for-professional-misconduct-over-reversal-order/> Accessed on May 5, 2022; <https://barristerng.com/nba-to-investigate-notary-public-anthony-eruaga-esq-for-professional-misconduct-over-reversal-court-order/> Accessed on May 5, 2022

and the different permutations attaching to the classification. This will lead up to the section on a full exposition of discipline and sanction of the notary by the appointor. From the perspective that the NBA is not the notary's appointor, we would in the penultimate section inquire into whether the NBA possesses any powers of discipline and control over its members who are notaries public. We would thereafter conclude.

2. Definition and Meaning of the Office of Notary Public

Most common law systems have what is called the office of a notary public (also called 'notaries' or 'public notaries'), a public official who authenticates legal documents and who can also administer and take oaths and affirmations, among other tasks.[2] He is a duly appointed officer whose public office it is, amongst other matters to draw, attest or certify, usually under his official seal, deeds and other documents, including conveyances of real and personal property, and powers of attorney relating to real and personal property situate locally or overseas, to note or certify transactions relating to negotiable instruments, to prepare wills or other testamentary documents, to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as carriage of cargo in ships.[3]

[2] Alfred E. Piombino, *Notary Public Handbook: Principles, Practices & Cases*, (East Coast Pub. 1st edn. 2011); see generally, Chike B. Okosa, *Notaries Public: The Law & The Practise*, (Opinio Juris, 2022)

[3] *Halsbury's Laws of the England*, (4th edition), vol. 34, para 201

3. Classification of Notaries

The Notaries Public Act creates two classes of notaries public. The first class of notaries public are general notaries public. He has the powers to perform the same duties, and exercise the same functions as a notary in England.[4] The second class of notaries public in Nigeria are the notaries public *ex-officio*.[5] There is yet a bifurcation in this class of notaries public *ex-officio*. The first group of notaries public *ex-officio* comprises magistrates. The Notaries Public Act, empowers and authorizes all magistrates to act as notaries public *virtute officii*.[6] The second group of notaries public *ex-officio* is created by the Notaries Public Act, and these are the collectors of customs and excise duties.[7] They are appointed notaries public and strictly limited to exercise their powers and duties in respect of minuting or noting or extending ships' protests. Two further limitations are that these powers shall only be exercised at the ports, and only at ports where a general notary public appointed by the Chief Justice of Nigeria is not available. The Oaths Act creates a third class of notaries public *ex-officio*. This Act authorizes any Nigerian official of the rank of Secretary or above in a Nigeria Embassy or Legation to, in the country where he exercises his functions, do any notarial act which a notary public can do within Nigeria, and that the same shall be as effectual as if duly sworn or done by or before any lawful authority in any part of Nigeria.[8]

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[4] s. 2(1) of Notaries Public Act

[5] s. 17 (ibid.)

[6] s. 17 (ibid.)

[7] s. 17(1) (ibid.)

[8] s. 12 of Oaths Act, 1963; under s. 6 of Commissioners for Oaths Act, 1889, which is a statute of general application in Nigeria: *Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-*

4. Discipline and Sanction of Notaries Public by the Appointor

4.1 The Notary as an Officer of the Supreme Court

The Notaries Public Act provides that every notary shall be deemed to be an officer of the Supreme Court.[9] The Supreme Court Act provides that, the Federal Judicial Service Committee may appoint a Chief Registrar of the Supreme Court and such registrars, deputy registrars and other officers as may be deemed necessary. The Chief Registrar and other officers appointed under this section shall exercise such powers and perform such duties, as may be conferred or imposed upon them, by any act or rules of the Supreme Court, and subject thereto by any directions of the Chief Justice of Nigeria.[10] The 1999 Constitution defines public service of the Federation, to mean, service of the Federation in any capacity in respect of the Government of the Federation, and includes service amongst others, as a member of staff of the Supreme Court.[11] The 1999 Constitution further specifies that, for the purposes of the Code of Conduct Bureau and Tribunal, public

consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.

[9] s. 6 (n 4)

[10] s. 6 of Supreme Court Act

[11] s. 318 of 1999 Constitution of the Federal Republic of Nigeria (CFRN)

officers include all other all judicial officers and all staffs of courts of law.[12] In the light of the fact, that s. 6 of Notaries Public Act grants to the notary, a deemed status as an officer of the Supreme Court, it is necessary to consider whether by that fact, the notary acquires the status of a public officer. The Interpretation Act defines a public officer to mean, a member of the public service of the Federation, within the meaning of the constitution.[13] It is obvious that, except for notaries' *ex-officio*, and possibly for the occasional general notaries employed in ministries, parastatals and statutory corporations, the large class of private legal practitioners, from which most of the appointments are made, are not normally members of the public service of the federation or of a state. It is instructive that s. 6 of Notaries Public Act does not state that notaries on appointment thereby become officers of the Supreme Court. It only states that they shall be *deemed* to be officers of the Supreme Court. In ordinary language which is reflected in legislation, when a thing is deemed to be something, it is not meant to be the thing it is deemed to be. It is an admission that it is not that other thing, but should be regarded as that thing. The word '*deem'* or the phrase '*as if* 'are used to extend the meaning of a subject matter that they do not properly designate. Where a thing is to be deemed something else, it is to be treated as that something else with the attendant consequences, but it is not that something else.[14] Thus, the

[12] Article 5, Part II of Fifth Schedule (ibid.)

[13] s. 18 of Interpretation Act

[14] *Savannah Bank of Nigeria Ltd v. Ajilo*, [1989] 1 NWLR Part 97, 305, here, the meaning of the word '*deemed'* came up for interpretation. At issue was the provision of s. 34(2) of Land Use Act 1978, which provides that: - *Where the land is developed, the land shall continue to be held by the person in whom it was vested immediately before the commencement of this Decree* ***as if*** *the holder of the land was the holder of a statutory right of occupancy issued by the Governor*. The

notary does not by s. 6 of Notaries Public Act acquire the status of a public officer. He is by that section merely regarded as a public officer, solely for purposes of the Act. The need to regard him as an officer of the Supreme Court is for the purposes of enabling the Supreme Court exercise powers of discipline and control over him. This would be impossible if to all intents and purposes, he is regarded and treated as a private person.

4.2 General Grounds for Discipline and Sanction

The Notaries Public Act provides that, if a notary is convicted of any offence, or is adjudged guilty of any misconduct, whether in his capacity as a notary or otherwise, the Court before which he is so convicted or by which he is so adjudged, shall make a report thereof to the Chief Justice of Nigeria, and the Supreme Court may revoke his appointment, and direct the Chief Registrar to remove the name of the notary from the register.[15] The 1999 Constitution of the Federal Republic of Nigeria provides that a person shall not be convicted of a

section of the law referred to did not use the word *deemed* but the parties to the appeal freely used the word *deemed* apparently having borrowed the same from s. 39(1) of the Act to describe and qualify the interest held by the first respondent in the mortgaged property. Justice Karibi–Whyte, JSC in his concurring judgment quoted from the English case of *East End Dwellings Co. v. Finsbury BC*, [1952] AC 109 at 132 where Asquith, LN said to an *"as if"* clause: *If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine the real consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from, or accompanied it.* His Lordship also considered the dictum of Lord Simonds in the case of *Barclays Bank Ltd v. IRC*, [1961] AC 509 at 523: *I bear in mind what Lord Radcliffe said in St. Aubyn's case (supra) about the word "deem", but nevertheless regard its primary function as, to bring in something which would otherwise be excluded.'*

[15] s. 7 (n 4)

criminal offence, unless that offence is defined, and the penalty therefore is prescribed in a written law.[16] It further provides that, no person shall be held guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence.[17] The Criminal Code provides that, no person shall be liable to be tried or punished in any Court in Nigeria, for an offence except under the express provisions of the Code of some Act, or Law, which is force in, or forms part of the law of Nigeria.[18] The Criminal Procedure Act defines offence to mean, an offence against any enactment in force in a state.[19] In relation to s. 7 of the Notaries Public Act, the notary cannot be validly regarded as having been convicted of an offence, unless, the above statutory requirements, have been satisfied. The written law creating an offence must define the offence with sufficient precision that a man of common intelligence is able to determine whether or not he is committing an offence. In *Aoko v. Fagbemi*[20] a conviction for adultery was quashed, since adultery was not defined as an offence under a written law. Consequently, for a conviction of the notary to constitute the basis for any contemplated disciplinary action pursuant to s. 7 of the Notaries Public Act, the said conviction must satisfy all constitutional and legal requirements of due process, otherwise, it could be challenged collaterally.

[16] s. 36(12) (n 11)
[17] s. 36(8) (ibid.)
[18] s 4 of Criminal Code Act
[19] s. 2(1) of Criminal Procedure Act
[20] [1961] All NLR 400

4.3 Discipline and Sanction on Finding of Misconduct

Other than being convicted of an offence, s. 7 also makes provision for the notary to be sanctioned on being adjudged guilty of any misconduct. Misconduct is a *transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour.*[21] The word *misconduct* used in s. 7 of the Notaries Public Act is not a word that is capable of precise and exact meaning, but can be amplified and extended to cover and include a wide range of disagreeable conduct, whether it is an infraction of the law, or a breach of etiquette.[22] It may then be seen that the word guilt, like the word

[21] *Black's Law Dictionary*, (West, 6th edn.) 999; in *Isuegwu v. University of Port-Harcourt*, [1995] 8 NWLR Part 414, 419 the word '*misconduct*' came up for interpretation in relation to s. 17(1)(d) of University of Port – Harcourt Act 1979 which provides that: *Subject to the provisions of this section, when it appears to the Vice- Chancellor that any student of the University has been guilty of misconduct, the Vice-Chancellor may, without prejudice to any other disciplinary powers conferred on him by statute or regulations direct ……(d) that the student be expelled from the University.* Justice Muntaka-Coomasie, JCA delivering the judgment of the Court held that: *The phrase misconduct in my view does not require any elaborate legal definition. It simply means improper conduct. It can mean illegal action or action which is capable of harming someone.*

[22] The meaning of the word '*misconduct*' came up for deliberation in the case of *A. Savoia Ltd v. Sonubi*, [2000] FWLR Part 12, 1952 where the court had spelt out some conduct that would amount to misconduct within the law, some of which are - (i) Where the arbitrator fails to comply with the terms express or implied of the arbitration agreement. (ii) Where even if the arbitrator complies with the terms of the arbitration agreement, the arbitrator makes an award, which on grounds of public policy ought not to be enforced. (iii) Where the arbitrator has been bribed or corrupted. (iv) Technical misconduct, such as where the arbitrator makes mistakes as to the scope of the authority conferred by the agreement of reference. This however does not mean that every irregularity of procedure amounts to misconduct. (v) Where the arbitrator or umpire fails to decide all the matters, which were referred to him. (vi) Where the arbitrator or umpire has breached the rules of natural

misconduct, is capable to a wide range of application, both in penal and civil proceedings. It appears that, in the construction of s. 7 of the Notaries Public Act, the phrase *convicted of any offence* refers to conviction by a court of law in a criminal proceedings *strictu sensu*, while the phrase *adjudged guilty of any misconduct* refers to a finding of fault or liability in a non-penal proceedings. That the use of the two different phrases, refers to two categories of behaviour, is further borne out by the phrase in the same section that states; '*the Court before which he is so convicted or by which he is so adjudged'.* From the foregoing, it is clear that the phrase in s. 7 of the Notaries Public Act that states; *'convicted of any offence'* refers to criminal proceedings, while the phrase that says; '*be adjudged guilty of any misconduct'* refers to civil proceedings. To be subject to the sanction under s. 7 of the Notaries Public Act, the conviction or the adjudgment of misconduct is not required to have occurred in his capacity as a notary. Prohibited conducted is not required to be with inevitable reference to the notarial office.

4.4 Suspension or Striking-out by Supreme Court

Where there is a reasonable cause, the Supreme Court has power to suspend any notary from practicing as a notary during a definite specified period, or the Supreme Court may order his name to be struck off the Register of Notaries.[23] This power to suspend or strike off is exercisable by any three justices of the Supreme Court sitting together. Where the three Justices on the panel are unable to reach a unanimous

justice. (vii) If the arbitrator or umpire had failed to act fairly towards both parties as for example: by hearing one party but refusing to hear the other; or, by deciding the case on a point not put in by the parties.

[23] s. 8 (n 4)

decision on whether or not to suspend, strike off or forbear, the decision of the majority of the panel, shall be taken to be the decision of the Supreme Court. Pending a reference to the Supreme Court of a complaint against a notary, and the decision by the Supreme Court of the said complaint, any justice of the Supreme Court acting alone may suspend such a notary temporarily from practicing as a notary.[24]

4.5 Removal of Notary's Name from Register

In Nigeria, where a notary is convicted of an offence, or is adjudged guilty of any misconduct, whether or not the offence or the misconduct occurred in his capacity as a notary, the court before which he is so convicted or by which he is so adjudged shall make a report thereof to the Chief Justice of Nigeria. Based upon this report to the Chief Justice, the Supreme Court may revoke the appointment of the notary. Where the Supreme Court revokes the appointment of the notary, it shall direct the Registrar of the Supreme Court to remove the name of the notary from the register.[25] In England, the Court of Faculties has inherent jurisdiction to remove a notary's name from the roll, on proof of misconduct. This power has been exercised in cases of fraudulent conversion and forgery. Where the Disciplinary Committee of the Law Society removes a Solicitor, who is also a notary from the roll of Solicitors, the Court of Faculties invariably regards itself as bound to accept the findings of fact reached by that Committee. [26]

[24] s. 10 (ibid.)
[25] s. 7 (ibid.)
[26] 31 *Halsbury's Statutes of England*, (Butterworths, 4th edn.)

4.6 Disbarring of Legal Practitioner

Where a legal practitioner, whose name is on the Register of Notaries Public, is sanctioned by the removal of his name from the roll of legal practitioners, that in itself provides sufficient cause to revoke his commission as a notary. S. 2(1) of the Notaries Public Act provides that the Chief Justice of the Nigeria may appoint any fit and proper person being a legal practitioner to be a notary public for Nigeria. Here it is obvious the primary qualification for the notarial appointment is the faculty of being a member of the bar in good standing. Where the notary loses this qualification, his continued employment as a notary may not continue. Furthermore, it is also likely that whatever misconduct led to his disbarment may constitute sufficient misconduct under s. 7 of the Notaries Public Act to entitle the Chief Justice to revoke his commission. Beyond this however, loss of the status of good standing at the bar should automatically lead to loss of the notarial commission. This is because one depends on the other.

5. Whether Legal Practitioner may be Disciplined by the Bar for Misconduct as Notary Public

It is clear from the foregoing that a notary may only be sanctioned as a notary by his appointor. The Notaries Public Act does not reserve any powers to the Nigeria Bar Association or any of its professional organs to sanction a notary *qua* notary. The question then is whether a notary may be sanctioned in his office as a legal practitioner for his misconduct in his office as a Notary? Generally, it is not compulsory that the misconduct in respect of which the attorney is sought to be disciplined must have been committed in a professional capacity in

order to sustain the disciplinary action.[27] This is because a Lawyer is in the main enjoined not to engage in any conduct which is unbecoming of a legal practitioner.[28] This provision of the rules regulates the conduct of the lawyer not just in the discharge of the functions of his professional employment, but also in consideration of his status as a legal practitioner and his general conduct as a person. Consequently, an attorney may be disbarred for conduct which shows that he is not a fit person to be an attorney, though such conduct is not official.[29] However, disbarment proceedings can be based on an attorney's misconduct outside of his profession, only in cases of such moral delinquency as renders him an unsafe person to manage the legal business of others.[30] The power to discipline an attorney extends to misconduct other than professional malfeasance when such conduct reflects adversely upon the legal profession and is not in accordance with the high standards imposed upon members of the bar.[31] When an attorney becomes a part-time businessman, he must observe the elemental obligations of honesty, uprightness and fair dealing demanded of attorneys in their professional life, and if he fails in this respect, he is properly subject to suspension,[32] so that fraudulent

[27] *Grace v Board of Commissioners of State Bar of Alabama*, 64 S Ct 78, 320 US 708, 88 L Ed 415

[28] Article 1 Rules of Professional Conduct for Legal Practitioners, 2007

[29] *Ex parte Burr*, 6 FD 345

[30] *Ex parte Wall*, 107 US 265, 2 S Ct 569, 27 L Ed 552

[31] *In Re Nixon*, 7 CJS 973

[32] *Re Carlsen*, 7 Am Jur 2d 130; in *Re Stodds*, 7 CJS 973, it was held that nothing less than the most scrupulous probity in dealing with funds of others is compatible with the admission to the practice of law; and this is a standard that does not permit the drawing of a line between an attorney's professional and his nonprofessional roles.

conduct or unfair dealing by an attorney, in a transaction not directly connected with any professional employment and not operating to defraud a client or to deceive the court, is nevertheless ground for suspension or disbarment where it involves such moral delinquency as to show the attorney to be wanting in integrity;[33] and discipline would be properly imposed for acts involving moral turpitude whether or not they relate to the conduct of the attorney in his professional capacity.[34] Nonetheless, in order to justify disbarment, the misconduct of the attorney when it occurs, other than in his professional capacity, must have an element of dishonesty, or be of such character that there is a violation of private interests or public good.[35] However, the bar,

[33] *Healy v. Macauley*, 7 Am Jur 2d 130

[34] Re Bogart, 415 US 903, 39 L Ed 2d 460, 94 S Ct 1395; in *Libarian v. State Bar of California*, 7 CJS 973, it was held that professional services performed by one who is licensed to practice law are performed by him as an attorney, regardless of whether such services could also be rendered by one licensed in a different profession, and licensed attorney must conform with the standards of the legal profession in whatever capacity he may be acting.

[35] *People v Baker*, 31 ALR 737; in *Re March*, 7 CJS 975, it was held that the sale of his wife's stock to party for whom the attorney acted as financial advisor at a price substantially above its then market value, together with respondent's misrepresentation of the value of the stock, constituted fraud, deceit and misrepresentation, representation of conflicting interest to his own advantage and is unprofessional and unethical conduct. However, in *re Conduct of Steffen*, 7 CJS 975, it was held that the action of an attorney stopped for routine traffic violation, in falsely representing to the police officer that he was currently a member of the district attorney's office, while improper, did not rise to the dignity of requiring a formal reprimand; and in *Polk v State Bar of Texas*, 7 CJS 975, it was held that where statements made by an attorney to the news media critical of the actions of a judge and the district attorney were in response to the manner in which the attorney was treated as a citizen and not as an attorney, the state had no interest to punish the attorney for his conduct particularly where the speech is protected by the Constitution.

generally is not a censor of morals, it is not requisite that the morals of its members in their private lives shall be a subject of regulatory concern. Consequently, a licence to practice law will not be revoked on account of objectionable personal habits until it is shown that such habits have rendered the attorney unable to attend properly to his duties as a lawyer, or have rendered him unworthy of the great trust and confidence generally accorded to members of the profession, or that such habits have become so bad as to scandalize the profession or the courts in which he practices[36]. Generally, the bar may not attempt to establish guidelines for the sexual orientation, activities or proclivities of its members. Consequently, the seduction by an attorney of his young secretary may not present cause for disciplinary action against him, neither will frequenting a brothel, nor an attempt to exchange legal services for sexual favours. However, disciplinary measures may be taken against an attorney for sexual misconduct involving moral turpitude, unprofessional conduct, lack of good moral character, or lack of fitness to practice law[37].

The commission of an intentional and wilful criminal act indicates an unfitness to be entrusted with the administration of the law. However, a criminal act may not justify a disbarment, particularly, where it is one that does not indicate bad moral character with respect to the duties of the attorney's profession, although generally speaking, the conviction for an offence involving moral turpitude established prima facie the unfitness of the attorney to be continued on the rolls and is sufficient

[36] *Re Washington*, 7 Am Jur 2d 131

[37] 7 *Am Jur 2d* § 69, examples of such sexual misconduct as could provide grounds for sanction would include, rape, indecent assault, indecent exposure, paedophilia, etc

cause for disbarment[38]. Moral turpitude consists of an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man[39], or everything done contrary to justice, honesty, modesty, or good morals[40]. The question whether moral turpitude is involved is determined from a consideration of the offence as it bears on the attorney's moral fitness to continue in the practice of law[41]. In determining whether a crime committed by an attorney involves moral turpitude, consideration must be given to the fact that the illegal act was committed by an attorney as compared to a layman since an attorney must be held to a more strict standard than the layman because of the position of public trust which he enjoys[42].

Flowing from the foregoing, if a notary public, who is also a legal practitioner, in the course of his office as a notary, misconducts himself in such a manner and to such an extent that it reflects vilely on his status as a legal practitioner, he is properly subject to sanction as a legal practitioner by his professional body; and this is without regard to whether or not his appointing authority as a notary chooses to overlook the notarial misconduct. Accordingly, if the notary, in execution of his

[38] § 74 (ibid.)
[39] *Re Henry*, 7 Am Jur 2d 138
[40] *Re Alkow* 7 Am Jur 2d 138
[41] *Re Rothrock*, 7 Am Jur 2d 138, here it was held that the conviction of an assault with a deadly weapon, even of assault with intent to commit murder, does not justify disbarment if the assault was not committed under circumstances that indicate the attorney is unfit for the trust and confidence reposed in him as an attorney.
[42] *Muniz v State*, 7 Am Jur 2d 138

office as notary, conducts himself with such moral delinquency as renders him an unsafe person to manage the legal business of others, he may be disciplined as a legal practitioner. If in his office as a notary, he is deficient in the basic prerequisite integrity required of attorneys in their professional life, he is properly subject to sanction as an attorney. Thus, if in the discharge of his office as a notary, he is chargeable with fraud or forgery, which though not committed on his client as a legal practitioner or the court, but is practised on his constituent as a notary, he may not escape sanction from his professional body by pleading that the misconduct was not committed in his office as an attorney. Acts involving gross moral turpitude when committed by a legal practitioner are properly subject to sanction by his professional body, even if they were not committed while practicing his office as an attorney. It may thus not amount to a defence to plead that the same acts were committed in his office as a notary. While there is a division in the office of the notary and the attorney, there is no such division in the personality of the notary who is an attorney. Scandalous conduct and habits by a notary in the practice of his office as a notary reflects on his personality as a legal practitioner, and renders him undeserving of the great trust and confidence generally accorded to legal practitioners. It is thus sufficient cause for professional discipline. If a notary, while practicing his office as notary, commits an intentional and wilful criminal act involving moral turpitude, it establishes his unfitness not just as a notary, but also as an attorney, and is sufficient cause for disbarment. In the final analysis, although, the NBA and its organs do not possess any powers of discipline over a notary public for misconduct in his office as a notary, however, if the misconduct properly affects the person and the

character of the notary to such as an extent that it calls his fitness as a legal practitioner into question, his professional body may properly sanction. This is founded on the principle that it is not only misconduct committed in a professional capacity by a legal practitioner that is subject to sanction, but also, misconduct that reflects on his personal character, worthiness and fitness to continue as a legal practitioner, even if it was not committed while practising his office as an attorney.

6. Conclusion

Statutorily, where an enactment confers a power to appoint a person to an office or to exercise any functions, whether for a specified period or not, the power to appoint a person by name or to appoint the holder from time to time of a particular office, includes the power to remove or suspend him from the office.[43] Statutorily, the power to appoint a general notary public lies in the Chief Justice of the Federation. Statutory provisions for removal of the notary from office do not anticipate any exercise of authority, input or influence by the NBA. Clearly, the NBA has no competence to discipline a notary *qua* notary for misconduct in the office of notary public. On the other hand, the question whether the NBA possesses powers to censure a legal practitioner who is also a notary public for misconduct committed by him in his office as a notary may not be answered in stentorian absolutes. Simply put, the answer is relative to the act and occurrence. If the misconduct does not affect or relate to that fair character which every lawyer is required to possess in seasons or out of season, the NBA and its organs would have no authority. However, if the misconduct of the notary is such that it discloses moral turpitude, or a

[43] S. 11(a)&(b) (n 13)

complete absence of integrity, or establishes that in all ramifications, he is not a fit and proper person to enjoy the privileges of the Bar, a defence that the misconduct was committed while practicing his office as a notary may not avail him. In this regard, though his offices as notary and attorney maybe several, his personality and character relative to both offices is joint. The NBA in such an instance may properly discipline him as a legal practitioner, though, not as a notary public.