

ESTABLISHMENT, MANAGEMENT AND STRUCTURE OF PARTNERSHIP
(WITH REFERENCE TO LAW FIRMS)

Introduction

The most common form of legal practice in Nigeria is the one-man practice – this could be in the form of either a sole practitioner or a sole proprietorship arrangement. In the sole practitioner arrangement, there is only one lawyer who is the owner of the firm while all other staff in the office are not lawyers but support staff. In the sole proprietorship arrangement, the lawyer - owner employs other legal practitioners to assist him in his practice. The firm can range in size from one lawyer with one junior, to one lawyer owner and up to twelve juniors. Most litigation focused lawyers practice as sole practitioners or sole proprietors, perhaps because of the belief that clients retain litigation lawyers based on their individual advocacy skills. Our British colonial heritage from where we inherited the practice of barristers and solicitors also encouraged the sole practitioner structure. In contrast, American law firms and British solicitors practised in law firms under a partnership structure.

The advantages of the one-man practice arrangement cannot be undermined; these include fast decision making, lack of friction, smooth running of the practice and sole entitlement to profits from the business, amongst others. However, in my humble view the disadvantages associated with this kind of arrangement far outweigh the positives. Depending on whether the lawyer practises as a sole practitioner or sole proprietor, the disadvantages may include a reduced ability to handle so many clients at the same time, reduced knowledge sharing and reduction in time available for work scrutiny to ensure quality output, lack of succession arrangements, etc.

It is organization, in the way in which law is practiced, which multiplies a one-man enterprise into a larger operation. There is a limit to what the ablest of lawyers can do alone. With organization and the controlled and directed teamwork of others, the effectiveness of one man can be multiplied. The difference between the corner shop,

which provides goods for a local clientele, and a supermarket chain, which is located all over the country, is organization. The sole-proprietor in the corner shop is both the cashier, the salesman, the manager, the store keeper and the re-stocker of goods; in contrast the chief executive of the supermarket chain, has a purchasing department, an accounting department, a marketing department and a sales and delivery department, all to ensure the delivery of its goods throughout the country. The income of each is as far apart as peanuts from peanut butter! Exchange that picture with the sole proprietor of a law firm and the board of partners of a law firm. One provides legal services to a restricted clientele [either within his country or even abroad], the others provide a wide range of services to a wide range of clients in different locations. As we say, the difference is clear!

I am therefore of the view that this workshop with the theme “Enhancing Legal Practice Through Partnership” is a very timely event and I commend the Eastern Bar Forum for their initiative in this respect. I hope other regional Fora within the profession will borrow a leaf from this event.

What is Partnership?

Partnership is the relationship which subsists between persons carrying on a business in common with a view to making profit.¹ The Companies and Allied Matters Act, describes a partnership arrangement as a “firm”, and defines it as “*an unincorporated body of two or more individuals or one or more individuals and one or more corporations, or two or more corporations, who or which have entered into partnership with one another with a view to carrying on business for profit*”.² It is also a form of business organisation in which two or more individuals pool together their money, skills and other resources, and share profits and losses in accordance with the terms of the partnership agreement.

¹ Section 1(1) of the English Partnership Act 1890 ; Section 3(1) of the Partnership Law of Lagos State 2009

² Section 588(1) of CAMA, Cap. C20 Laws of the Federation of Nigeria 2004

In the absence of such agreement, a partnership is assumed to exist where the participants in an enterprise agree to share the risks and rewards proportionately.³

With respect to partnership in legal practice, there are 2 forms as follows:

(1) Associateship;

and

(2) Partnership.

Associateship

This is an arrangement where two or more lawyers pull resources together to rent an office space, provide facilities and hire staff but each of them retain his respective independent practice. They have separate clients and do not share profits or fees. This therefore does not in itself constitute a partnership in the strict sense of the legal definition of partnership as stated above. This is due to the fact the practitioners run their independent practice and do not share profits. They are only bound together by shared resources and nothing more.

This form of arrangement has its own benefits which it confers on the parties involved. These include the ability to hire more expensive office spaces, pay higher salaries to juniors and the provision of more office facilities due to the sharing of overhead, maintenance and other incidental costs, also knowledge sharing with lawyers involved in different areas of law etc. However, this form of arrangement requires a lot of understanding for it to succeed. Where this is lacking, it may result in envy, jealousy, gossip and bickering between the parties. For example, arguments may arise where one lawyer feels the other colleague is utilising more than his fair share of the office resources, based on a heavier workload. Another likely situation is that the parties may begin to poach **each other's** clients. This may lead to unhealthy competition and rivalry.

³ Online Business Dictionary (<http://www.businessdictionary.com/definition/partnership.html>)

However, an associateship arrangement can be the start off point for a full partnership. It allows the parties to relate in a working environment and get to know each other's work habits and ethics.

Partnership

In a partnership, two or more legal practitioners pull resources together, source for clients together and share profit according to their agreed terms. Some of the benefits of operating a law practice under a partnership structure are as follows:

1. Pooling resources together eases the financial burden of practice on the individual lawyer.
2. The opportunity for higher returns on investment in the practice through legal work coming into the firm through the different partners.
3. The partners can pull in their individual goodwill, experience and social influence **into the firm which in turn builds the firm's clients base and capacity.**
4. Partners can take vacations in turn and in cases of illness or death the office need not be closed down.
5. Opportunity for growth, if associates in the firm can grow into the partnership, therefore ensuring the posterity of the firm.
6. There is opportunity for knowledge sharing and development.
7. There is a high likelihood that clients will have their needs attended to at all times.

It is important to note however that there are no perfect human relationships; consequently there are also disadvantages to a law firm partnership structure. Some of them are:

1. Loss of personal independence – decisions you take in your personal life [travel plans, conference attendance etc] may impact upon your law firm partners, so you need to take them into consideration.

2. Loss of financial independence – financial decisions regarding the firm will affect all partners, so agreement required on spending, distribution of funds etc.
3. Joint liability - the partners are jointly and individually liable for the actions of other partners in respect of the business of the partnership.
4. Delay in decision making - This is due to the fact that in some instances, all the partners must take certain decisions with respect to the practice.
5. Disagreements and frictions **between the partners may slow down the firm's** progress and where there is distrust between the partners, there is a likelihood of division and eventual collapse of the firm.

Failures of law firm partnerships in Nigeria are usually a result of either ego or greed. Therefore, it is desirable that the partnership agreement should be carefully drawn up as to leave no doubt about the rights and duties of the parties. The provisions dealing with finance, e.g., signing of cheques, payment of money, keeping and rendering accounts, should be particularly detailed and unambiguous.⁴

Establishment

Rule 5(1) of the Rules of Professional Conduct for Legal Practitioners 2007 (RPC) provide with respect to the establishment of a legal practice as follows:

“A lawyer shall not form a partnership with a non-lawyer or with a lawyer who is not admitted to practice law in Nigeria, if any of the activities of the partnership consists of the practice of law”

Further, Rule 5(3) of the RPC provides that where a member of a law firm becomes a Judge and is thereby precluded from practising law, his name, if it appears, shall be removed from the partnership name.

⁴ Orojo: *Conduct and Etiquette for Legal Practitioners*, 1979 (Sweet and Maxwell). page 39

Although a partnership agreement may be in writing, or oral or even by the conduct of the parties, it is a more efficient approach to have the terms of the partnership in writing and signed by the parties to the partnership. This is to avoid any doubt as to the terms of the partnership in the event of dissolution of the partnership or retirement of any of the partners as well as for income tax purposes. In the event that there is no partnership agreement, the arrangement between the parties will be governed by the partnership law in force in the jurisdiction where the partnership is set up.

In preparing a partnership agreement, the following are some important points to be borne in mind:

1. The firm name.
2. The nature of the business. This should be clearly stated because a partner is deemed to be an agent of the firm and that of his partners only when he acts for the purpose of the partnership business.⁵
3. The place of business.
4. The commencement and duration of the partnership.
5. The capital contributions of the partners. Partners do not have to be equal partners, but the respective contributions of each lawyer must be clearly agreed and stated.
6. Allowances and remuneration of the partners – How will partners be paid? Monthly, quarterly, annually or a combination approach?
7. Expenses to be borne by the partnership, and any limits on expenses?
8. Accounts and banking. There should be provision for keeping of proper books of account, and the auditing of the accounts as this can be a potential cause of friction.
9. Conduct and powers of the partners. Detailed and adequate provisions ought to be made relating to good faith, hiring and dismissal of staff, any restrictions as to the powers of a single partner, the time and attention to be given to the work of the partnership, the taking of decisions and general management of the business.

⁵ Sections 5 and 7 of the Partnership Act, 1890 (This law is a statute of general application which governs partnerships except in Oyo, Ogun, Ondo and Bendel States where the Partnership Law 1958 is applicable. Lagos State has its own Partnership Law of Lagos State 2009).

10. Sharing of profits and bearing of losses. Unless other provisions are made, the profits will be shared equally regardless of the ratio of contribution and the losses will also be borne equally.
11. Retirement and death of partners. Entitlement to any benefits should be stated.
12. Admission, withdrawal and expulsion of partners.
13. Dissolution or winding up of the partnership.
14. Dispute resolution clause.

If the firm name consists of words or letters other than the true surnames of the partners or their true surname with their first names or initials, same must be registered with the Corporate Affairs Commission within 28 days from the commencement of the business.⁶ For instance, if the name of the partners are Chima Chikwe and Ngozi Nwachukwu and the name of the firm is “Chikwe, Nwachukwu & Co.” or even Chikwe and Nwachukwu”, they will be required to register the name, other words having been added. A Business Name Certificate is also required for opening bank accounts.

The Partnership Act also makes provisions for the rights and duties of the parties and these will be implied in the absence of a written agreement or where the terms of the document do not provide for such issues. Prospective partners should therefore draw up the partnership agreement in such a way as to reflect their own intentions as this will replace the relevant provisions of the Act.

Management

Alan Pannett, a lawyer and Professor of Professional Development, in his book “*Managing the Law Firm*”⁷ stated that the role of the partners in the law firm can be divided into the following heads:

- (i) The partners as owners.

⁶ Section 573(1)(a) and 574(1) of CAMA

⁷ 1992; Blackstone Press Limited

- (ii) The partners as fee-earners.
- (iii) The partners as policy makers.
- (iv) The partners as managers.⁸

i. The partners as owners

The partners are the owners of the firm. They are in the same position as shareholders in a company and are [unless a partnership agreement says otherwise] entitled to share in the profits from the practice whether or not they do any work.

However, the fact that they own the firm does not mean the lawyer is skilled in finding legal work, doing legal work, or making management decisions.

ii. The partners as fee-earners

The partners are also lawyers and have an obligation to fulfil the primary purpose of the legal practice, which is the provision of professional services to clients and in turn making profits for the partnership. Therefore, the partners must be willing to allocate sufficient time to the practice in order to fulfil this role.

iii. The partners as policy makers

The partners are responsible for the direction the law practice takes. They must decide whether the practice should be full service, or practice only certain types of law. In many practices the **firm's policy is often unstated and unclear**. Staff hiring and firing policies must be agreed upon in order to avoid friction among the partners. Policies regarding external relationships must also be agreed upon. Will the practice adopt a referral fee policy for work sent to it from other lawyers? Should Christmas gifts be given to clients and staff? Adhoc decisions on policy matters can be a source of tension and friction among lawyers and staff.

iv. The partners as managers

⁸ Supra, pages 11 - 13

Partners should not treat administrative matters with disdain simply because they do not directly impact on fee earning and the provision of professional service to clients. A badly managed practice will have a definite impact on the financial rewards to the partners.

Management skills are as important as legal skills in the establishment and running of a law practice; however in a law firm partnership, and depending on the size of the firm, management often requires more attention from the partners than in a sole practice. This is because in a law firm partnership, the partners may play different roles.

It is important to draw a distinction between managing the delivery of professional services to the client and managing the business aspects of the office. The partners must take absolute responsibility for managing the quality of the delivery of **the firm's** professional services to clients. Managing the delivering of professional services covers areas such as external and client relationships, quality control and client care and **usually will be the responsibility of the law firm's Managing Partner.**

However, the management of the business aspect of the practice may be delegated. The business aspect covers areas such as relationships with external suppliers [landlords, utilities, consumables and supplies etc], personnel issues [hiring and firing of administrative staff, maintaining personnel records], and finance [payments and budgeting issues]. In many of the larger practices, one or more managers are employed to administer and develop these different business aspects of the firm and report to the partnership. This includes positions such as the Firm Accountant or Finance Manager, an Administration or Practice Manager, Personnel Manager, an Information Technology Manager, e.t.c. In smaller firms an Office Manager or even Accounts Clerk can take on some or all of these functions.

Effective management requires strategic planning. Partners need to meet regularly to analyse and discuss trends in the profession and the legal market so they can plan a reaction rather than simply reacting to particular circumstances as they occur. A one-

day retreat once a year is a good opportunity for partners to review the past year and decide on what needs to change.

Structure

Most commercial organisations have a pyramid type of management structure with the Managing Director/Chief Executive Officer at the apex and the line officers or their equivalent at the base. Most law firms on the other hand do not have a defined management structure. Therefore, in adopting a partnership form of legal practice it is important that there is a defined management structure in place to aid the work of partners and ensure that the resources within the firm are maximised.

There are various factors to be considered in developing an effective management structure. These include:

1. Ownership – the division of equity in the firm.
2. Size – The size of the practice.
3. Policy – The division of responsibility between partners in order to put into effect **the firm's policy.**
4. Skills – The skills of the individual partners.
5. Personalities – The particular interests, likes and dislikes of individual partners.
6. Training – The training of a particular partner to undertake specific responsibilities.⁹

The structure which could be adopted in a partnership is as follows:

- (1) The Partners.
- (2) The Practice Administrator – Management.
- (3) The Associates (Managing, Senior, Junior).

⁹ Alan Pannett: *Managing the Law Firm*, 1992 (Blackstone Press Limited) pages 13 and 14.

(4) The Support Staff.

The partners may also be given specific portfolios to manage which could also enhance the management of the practice. These portfolios include but are not limited to:

- a. The Managing Partner.
- b. The Finance Partner.
- c. The Marketing Partner.
- d. The Quality Control/Client Care Partner.
- e. The Staff and Training Partner.

Conclusion

Joseph T. Karcher, an American attorney when asked if he could recommend any basic rules for developing a successful law practice, stated thus:

*“It is well-known that knowledge alone is not the answer, nor is effort, nor energy, nor enterprise. Ambition plays an important part, but it is certainly not the critical ingredient. Experience, skill, reliability, dependability, tact, talent; every one of these characteristics contributes to developing the well rounded practitioner. The building of a successful practice flows from a judicious application of all these elements in the proper proportion”*¹⁰

He then proposed that the essential ingredients for success can be boiled down to ten fairly simple rules which he listed as follows:

1. Develop a genuine liking for your work.
2. Select the proper office and office staff.
3. Learn to organise, deputise and supervise.
4. Watch your desk-side manner (i.e. attitude to the work and clients).

¹⁰ The Practical Lawyer, Vol. 18, October 6, 1972, p. 95 (Referred to in Orojo: *Conduct and Etiquette for Legal Practitioners*, 1979 (Sweet and Maxwell) page 35

5. Continue your legal education.
6. Do not take a case unless you believe in it.
7. Learn how to use parliamentary procedure effectively.
8. Develop proficiency in public speaking.
9. Participate in social, civic and church affairs.
10. Cultivate a proper philosophy for living.¹¹

I believe the above words sound true for any form of law firm practice organisation, whether a sole practice or a law firm partnership. However, I hope that we can glean some wisdom from the words of the learned American attorney and make the most our legal practice through formidable and lasting partnerships.

Thank you.

REFERENCES

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