

REPORT OF THE NIGERIA BAR ASSOCIATION'S REMUNERATION (WHITE PAPER) COMMITTEE TO NBA NEC HOLDING IN ILORIN THIS 9TH OF JUNE 2022

A. INTRODUCTION

The Remuneration (White Paper) Committee had two meetings to consider the remuneration committee's recommendations. The committee's first meeting was held in person, and its second meeting was held virtually. The White Paper committee's suggestions were thoroughly examined, and far-reaching decisions were made. The Members of the White Paper committee are:

- 1) Oluseun Abimbola, SAN, - **Chairman**
- 2) Abdullahi Yahya, SAN
- 3) John Aikpokpo Martins
- 4) Anthony Nwaochei
- 5) Oludayo Olorunfemi
- 6) Mr Attah Ochinke
- 7) Ovonlen Ebhohimhen- **Secretary**

The committee took a holistic view of the Remuneration Committee's report and the executive summary and commended the Remuneration Committee for a thorough and elaborate job well done. After a careful perusal of the remuneration committee's documents, the white paper committee came up with the following resolutions:

B. RESOLUTIONS

REMUNERATION OF LEGAL PRACTITIONERS AND CONDITIONS OF EMPLOYMENT.

On pages **44 to 50** of the Remuneration committee's report, the remuneration committee made the following recommendations on the remuneration of legal practitioners:

1. All lawyers hired must have written employment contracts.
2. Compulsory Participation in NBA Structured Health Insurance for Certain Categories of Firms and Lawyers: The NBA should make it compulsory for law firms and employers of lawyers who do not have the minimum number of employees required to register with an HMO to register their employees under the NHIS scheme presently being put together by the NBA at a premium of N15,000 per member and to pay the premium on behalf of each of their employees.
3. The Remuneration Committee also made the recommendation for a standard minimum wage for lawyers across various bands, set out on **page 50** of the remuneration committee's report, and also set out an alternative wage structure for employers who cannot meet this obligation. The alternative structure is set out on **Pages 51 and 52** of the Remuneration Committee's report.

4. That there should be a Standing NBA Remuneration Committee

Resolutions of the White Paper Committee Regarding Remuneration

1. The White paper committee accepts the recommendation on written employment letters/contracts for lawyers hired by law firms.
2. This Committee accepts as a conclusive finding that most young lawyers and lawyers in employment with law firms do not earn a living or fair wage, and many law firms do not pay a living or fair wage based on current economic realities.
3. This Committee accepts as a conclusive finding of the Remuneration Committee that many law firms do not comply with employer benefit regulations like PAYE, Pensions, Health Insurance, Group Life Insurance, and Housing contributions for employees as statutorily provided.
4. This Committee accepts the recommendation that the NBA should make it compulsory for law firms and employers of lawyers who do not have the minimum number of employees required to register with an HMO to register their employees under the NBA/NHIS scheme presently being put together by the NBA at a premium of N15,000 per member and to pay the premium on behalf of each of their employees
5. This Committee accepts the standard minimum remuneration scale recommended by the Remuneration Committee and observes that the categorization of states and regions across the bands proposed is realistic, given the current economic realities. The recommendation is therefore acceptable to the White Paper Committee.
6. The White paper committee has however further reviewed the Minimum Remuneration Alternative Structure proposed by the Remuneration Committee as follows:
 - a. Where a firm chooses to adopt the Alternative Remuneration Structure and is unable to match the recommended minimum salary scale, such law firm/Principal shall endeavour to pay monthly Salaries at not less than 70% of the recommended minimum wage plus one, or a combination of the recommended alternative remuneration options.
 - b. Whenever an alternative remuneration structure is agreed upon with an employee, the agreed terms should be included as a term in the letter of employment (e.g., profit sharing, appearance fees, part-time work, etc).
7. Alternative remuneration structure for employees is without prejudice to a pay-per-work arrangement for a freelance lawyer, who is not a staff member.
8. Compliance recommendations: All law firms and lawyers should ensure full compliance with statutory regulations on employee benefits.
9. Full compliance by Law firms concerning the recommendations on remuneration is expected to be achieved by **January 1st, 2023**.
10. The NBA National Executive shall provide relevant protocols to govern the full implementation of these recommendations.

11. The NBA shall endeavour to facilitate the amendment of the Rules of Professional Conduct and the NBA constitution to include the recommendations herein on minimum wage and employment term requirements for lawyers.
12. Non-compliance will result in a referral in the first place, to the NBA Disciplinary Committee, which may be done through a petition. The Disciplinary Committee may take necessary action at its discretion. If the NBA disciplinary committee makes a recommendation to the offending practitioner, the offending practitioner has 60 days to comply. Failure to comply will result in a further referral to the LPDC.
13. Non-compliance will result in the loss by a legal practitioner employer, of the enjoyment of due Bar privileges, among other things.
14. The NBA should engage the government at all levels and recommend a minimum entry level of level 10 and allowances due to lawyers in public service. The White paper Committee accepts the recommendation that there should be a Standing NBA Remuneration Committee
15. The White Paper Committee advises that the fact that the problem of lawyers' salaries has sparked widespread concern in the profession demonstrates that Nigerian law faculties and the Nigerian Law school are producing far more attorneys each year than the market and economy can absorb. As a result, the NBA should make a compelling case to the Council of Legal Education to revise the qualifications for admission to the profession.

FEES AND SCALE OF CHARGES

The remuneration committee proposed a scale of charges set out on **pages 59 to 71** of the report. This scale of charges also has some resolutions on how it should be implemented.

1. The Remuneration Committee recommended Enforcement procedures in disputes and litigation on **pages 25 to 26** of the report detailing legal practitioners to disclose their charges and file same in court
2. The Remuneration Committee made extensive recommendations of rates and fees on the Scale of Charges for Legal Practitioners on Consultation, Legal Opinions, Incorporations, and Litigation contained in the tables on **pages 60 to 68**.
3. The Committee made recommendations on rates for the scale of charges on property transactions on pages **68 to 69**
4. The Committee made recommendations on hourly rates for billing and other matters as well as on other considerations and criteria for billing on **page 70**

Having carefully studied the report, the White paper committee resolved as follows:

Resolutions of the White Paper Committee Regarding Fees and Scales of Charges

1. The White Paper Committee rejected the recommendation requiring legal practitioners to disclose in court papers their charges and fees in litigation cases or filing the same in court, as the idea is cumbersome, fraught with ambiguity and may be confusing for the NBA to implement with our courts at different hierarchies. The criteria for guiding charges in litigation suffice for practitioners

2. This Committee accepts the minimum scale of charges recommended by the Remuneration Committee on proposed fees for consultations, Opinions, Incorporation, and Litigation as contained in the report. The Committee however declined the further recommendation to fix the maximum chargeable fee for these services, but rather leave the same to market forces and negotiation of parties.
3. This Committee accepts the finding that the existing rules of computing legal fees in Conveyancing and other matters are outdated, never enforced, complicated, and limited to property transactions.
4. To avoid under-cutting, devaluation, and commoditization of legal services, a minimum legal fee regime is required as prescribed by the Committee. This is without prejudice to legal practitioners entering into a contingency fee arrangement with their clients, which shall not be less than the minimum fee recommended.
5. The recommended graded scale setting minimum fees chargeable, based on post-call years of experience proposed by the Remuneration Committee is accepted.
6. For commercial transactions not covered in the heads listed in the table in the report on pages **59–71**, the minimum hourly rates recommended for the post-call experience of lawyers are accepted. This is without prejudice to legal practitioners entering into a percentage (%) based fee arrangement based on the nature of the transaction, provided such an agreed rate shall not be less than the recommended minimum hourly rate required to provide the billed legal service by the lawyer.
7. This Committee accepts that as a rule of ethical practice, legal practitioners must issue written terms of engagement to their clients, setting out the scope of work and fees, before commencing work.
8. In any given instance where a legal practitioner intends to charge less than the recommended scale, he shall file an application to that effect before the NBA Remuneration Committee for approval, refusal, or modification which decision shall be issued within 7 days of filing. Where a decision is not issued within 7 days, it shall be deemed as approved.
9. The property transaction table of scenarios contained in the report is accepted, although the table does not conclusively cover all scenarios. For example, it omits the following scenarios which this Committee now proposes in addition to those covered in the table in the report:
 - a. Where the same lawyer acts for both the assignor and the assignee, he shall receive 10% as a fee.
 - b. Where the lessor's lawyer prepares the agreement received and reviewed by the lessee's lawyer, especially in respect of Tenancies and Leases, as is the current practice, the lessee should not, in fairness, be required to pay for both sets of lawyers.

- c. We propose that the fees payable on such a transaction be fixed as 10% to be shared between the lessor's and the lessee's lawyers on a ratio of 75% to 25%, respectively, in the event of scenario 'b' above.
- d. When the dynamics of the transaction do not require the assignor to pay legal fees (as in an outright sale) the legal practitioner shall receive 10% as a fee.

10. On property transaction

The Remuneration Committee makes the following recommendations on enforcement of the recommended fees payable to a legal practitioner:

- i. Option I is on **pages 26 to 28** of the Report and its limitations stated therein. It requires that the Client pays the fees directly to the legal practitioner.
- ii. Option 2 is on **pages 28 to 29** of the report with its limitations stated therein. It requires that the payment of due legal fees by the Client to the Legal Practitioner shall be made through the local branch of the NBA covering the locality of the transaction.

The White Paper Committee notes that this is perhaps the greatest avenue of earning for lawyers and makes the following resolutions on the mode of enforcement of payment of recommended fees in property transactions:

- i. Option 1 for compliance enforcement as proposed by the Remuneration Committee is not acceptable as it does not cure the mischief of undercutting by some legal practitioners in such transactions, which is one of the grounds for this exercise.
- ii. Option 2 is preferred, subject to modification as follows:
 - The White Paper committee notes that there might be a need to review the compliance/enforcement mechanism as a full NBA supervised compliance regime, which may come with the likely push back from practitioners/clients who still refuse to comply. In such a situation, can the NBA effectively enforce any sanction for non-compliance on such persons without the statutory power of a government agency involved? We think not.
 - The modified Option 2 recommended by the White paper Committee shall involve both the NBA and State/FCT governments' tax agency's joint supervision and enforcement: At the point of remittance to the lawyer via an escrow account established by the NBA Branch for this purpose, the state tax authority deducts withholding tax from the transaction costs. In collaboration with the state government agency, NBA branches in each state will centralize the monitoring structure, including the escrow account. Fees would be deposited in this account in the name of the instructed legal practitioner for later reimbursement to the instructed lawyer less the approved deductions to the NBA/Tax Authority who will make any advised deductions and withholding tax required.

- Members' concerns about involving government tax authorities are mitigated by the fact that most fee payment transactions, especially property transaction fee payments are ordinarily subject to withholding tax payments, which remains the only deductible tax to the State if only to ensure that clients pay the NBA-recommended legal fees, while the government is motivated with the increased revenues therefrom.
- The NBA National Executive shall provide relevant protocols to govern the full implementation of these recommendations, and the interface with relevant Government tax authorities

11. This White paper committee accepts the recommendations made on hourly rates for billing in other matters and other listed considerations and criteria for billing on **page 70**

Finally, save as amended or rejected in this white paper, the recommendations made in the Remuneration Report are hereby adopted by this white paper.

C. CONCLUSION

The White Paper Committee applauds the remuneration committee's extensive and laborious work, noting that the remuneration committee's work was all-encompassing and took into account numerous variables influencing the legal profession in Nigeria. The White Paper Committee expresses its gratitude to the President and the National Executive Council for the opportunity to serve on this committee to help birth this new effort for the benefit of Nigerian lawyers.



Oluseun Abimbola, SAN
Chairman



Ovonlen Ebhohimhen
Secretary