

EXAMINING THE REQUIREMENTS FOR CONFERMENT OF THE RANK OF SENIOR ADVOCATE OF NIGERIA VIS-À-VIS DECONGESTION OF COURTS*

Abstract

The prestigious rank of Senior Advocate of Nigeria (SAN) in the legal profession is an enviable one. Considering the privileges accorded persons in this class and the attendant respect they command, aspirants to the Bar, young lawyers as well as some senior lawyers' desire to attain such rank. Thus, such persons desirous of the rank of Senior Advocate of Nigeria would intend to remain at the Bar and not move to the Bench. This paper considers the requirements for the conferment of this prestigious rank to deserving members of the legal profession who are not in the academia, as provided in the Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria. The paper identifies a challenge posed by the requirements. Does the requirement for conferment impact positively or negatively on the courts; that is, in the light of court decongestion. Is there any measure that can be put in place to check the negative impact of the requirements on the courts (if any)? How do the requirements for conferment of the rank of SAN affect the ethical conduct of some lawyers that aspire to the enviable rank? These and other ensuing questions will be considered in this paper.

Keywords: Senior Advocate of Nigeria, Conferment of, Requirements, Decongestion of Courts

1. Introduction

The award of the rank of Senior Advocate of Nigeria (SAN) is a privilege that is awarded as a mark of excellence to members of the legal profession who are in full time legal practice, who have distinguished themselves as advocates and have made significant contribution to the development of the legal profession in Nigeria.¹ One of the regulatory bodies in the legal profession, the Legal Practitioners' Privileges Committee, confers the rank of SAN on deserving members of the profession.² Although the rank of SAN is primarily awarded to legal practitioners who have distinguished themselves as advocates, the Legal Practitioners' Privileges Committee usually awards the rank of SAN to members of the legal profession who have distinguished themselves as academics by making substantial contributions to the practice of law through teaching, research and publications that have become a major source of reference by legal practitioners, judges, law teachers as well as law students.³ This paper focuses on the award of the rank of SAN to legal practitioners who are not academics. Persons accorded this prestigious position enjoy certain privileges which are enshrined in the rules made by the Legal Practitioners' Privileges Committee, with the approval of the Body of Benchers⁴ which is the body of legal practitioners of the highest distinction in the legal profession in Nigeria⁵ or the most esteemed body in the legal profession in Nigeria.⁶ The Body of Benchers is also a regulatory body and is composed of a few members of the Bench and the Bar. The privileges accorded Senior Advocates of Nigeria include the right to sit in the inner bar or on the front row of seats in court where there are no facilities for inner bar, the right to mention out of turn his case which is

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¹ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 1.

² Legal Practitioners Act (Cap. L 11) Laws of the Federation of Nigeria 2004 s. 5(1).

³ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 paras. 2(e) and 18(1).

⁴ Legal Practitioners Act (Cap. L 11) Laws of the Federation of Nigeria 2004 s. 5(7).

⁵ *ibid*, s. 3(1).

⁶ A L Haruna, M Chiroma and M A Abubakar, 'Legal Education and Social Change in Nigeria' in O Oyewo and E Ojomo (eds), *Law, Democratization and Social Change* (Lagos: Nigeria Association of Law Teachers, 2012) p. 303.

slated either for Motion or Mention on the cause list,⁷ the right to wear Senior Advocate's robe (silk robe) which is a mode of appearance before courts for ensuring the respectability or dignity of the rank of Senior Advocate of Nigeria. Being conferred with the rank of SAN is a mark of honour for vast legal knowledge and experience, indefatigable display of advocacy skill and great industry in deep research for the development of the legal profession in Nigeria. Consequently, the above privileges and more as provided in the Senior Advocates of Nigeria (Privileges and Functions) Rules are accorded Senior Advocates. Although the right to sit in the inner bar and mention cases slated for motion or mention out of turn on the cause list can also be enjoyed by certain legal practitioners by virtue of their position (Law Officers),⁸ the right to wear Senior Advocate's robe is exclusively for Senior Advocates.

Conferment of the rank of SAN is not as of right. Certain requirements have to be met and an application has to be made to the Legal Practitioners' Privileges Committee.⁹ The screening process would have to take place and successful candidates would be shortlisted. The issue that comes to mind when considering the requirements for conferment of SAN to practising legal practitioners who are not academics, is the impact of the requirements on the court; the issue of congestion of court with cases and resultant effect on Judicial Officers. The problem of delay in justice delivery is confronting courts in Nigeria. The courts are trying hard to cope with the number of cases needing urgent determination or conclusion. The Courts are congested and this is attributable to myriad of litigated cases as well as the technicality of litigation.¹⁰ This paper deeply considers some of the criteria for the award of Senior Advocates of Nigeria who are not in the academia, impact of the requirements for conferment on courts, members of the Bench and legal practitioners; particularly future aspirants to the rank or esteemed status of SAN. Recommendation is made in the course of discussing the issues in the paper, and then the conclusion.

2. Selected Criteria for Conferment of the Rank of SAN

The Guidelines for the Conferment of the Rank of SAN provide *inter alia* for the guiding principles and requirements for the conferment. The interest of this paper is the criteria expected to be met by legal practitioners who are not in the academia. The criteria are provided under different categories which include eligibility and competence. Fulfilment of the stipulated criteria for eligibility as defined and published from time to time by the Legal Practitioners' Privileges Committee shall be the primary basis for appointment.¹¹ Under eligibility, such candidate for the award of SAN must be a legal practitioner called to the Nigerian Bar and practising in Nigeria as an advocate and must have been in active current legal practice for at least 10 years immediately preceding the date of application.¹² This means that the minimum post-call qualification is 10 years and the legal practitioner must have been in active legal practice as an advocate and must have achieved distinction in the legal profession.¹³ Under competence, observance of the high standard of ethical conduct among other criteria is paramount. Thus, the focal points include full time legal practice, having distinguished himself as an advocate by demonstrating excellence in advocacy skill, having made significant contribution to the development of the legal profession in Nigeria, possessing sound knowledge

⁷ Senior Advocates of Nigeria (Privileges and Functions) Rules (Cap. 207) Laws of the Federation of Nigeria (LFN) 1990 r. 1. This regulation was excluded from LFN 2004.

⁸ Legal Practitioners Act (Cap. L 11) Laws of the Federation of Nigeria 2004 s. 6, read in conjunction with Senior Advocates of Nigeria (Privileges and Functions) Rules (Cap. 207) LFN 1990, rule 1.

⁹ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 9.

¹⁰ V E Nweke, 'An Overview of Conflict Resolution Strategies' in V E Nweke (ed), *Adjudication and other Strategies of Conflict Resolution in Nigeria: Essays in Honour of Honourable Justice Chukwunye Ichehbo Uriri; Retired Judge of High Court of Rivers* (Port Harcourt: Pearl Publishers International Ltd., 2016) p. 87.

¹¹ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 2(f).

¹² *ibid* para. 22(1).

¹³ Legal Practitioners Act (Cap. L 11) Laws of the Federation of Nigeria 2004 s. 5(2).

of the law and using such knowledge for the advancement of the administration of justice, having appeared in contested cases of significance coupled with demonstrating a high professional and personal integrity while complying with the etiquette at the Bar.¹⁴ Issues of professional and personal integrity, good character and reputation, relation with clients, colleagues, court as well as contribution to the profession, community, enhancement of law office and development of human capital are all considered and expressly provided in the Guidelines. In addition, a candidate for the award of SAN should demonstrate clear qualities of leadership and loyalty to the legal profession by *inter alia* providing at least three (3) *pro bono* legal services to indigent persons.¹⁵ The Guidelines for the Conferment of the Rank of Senior Advocates of Nigeria stipulates specific number of cases that should have been contested at the various hierarchies of superior courts of record. Paragraph 14 Guidelines for the Conferment of the Rank of SAN 2018 provides thus:

- (1) Every Applicant will be required to provide particulars of contested cases which he considers to be of particular significance to the evaluation of his competence in legal practice and contribution to the development of the law. The Applicant shall attach a certified true copy of all the judgments referred to in his application...
- (5) An Applicant shall provide particulars of cases as follows-
 - (a) 20 final judgments of the High Court or Superior Court of Records provided that in respect of such cases conducted at the High Court or Superior Court of Records, an Applicant shall provide certified true copies of complete record of trial proceedings and processes signed and filed by the Applicant... and a soft copy in at least twelve contested cases from trial stage to judgment, showing that the Applicant as counsel substantially conducted the trial. In addition, an Applicant shall provide letters of instruction from the client(s) as well as a letter from the Head of Court or Judge that delivered the judgment, confirming/verifying the Applicant as counsel that conducted the case from trial stage to judgment.
 - (b) 5 final judgments of the Court of Appeal supported by briefs along with valid notices of appeal duly settled and argued by the Applicant;
 - (c) 4 final judgments of the Supreme Court supported by briefs along with valid notices of appeal duly settled and argued by the Applicant; however, where it is manifest that the Applicant himself has conducted the case from the High Court up to the Supreme Court, he will be required to submit 3 final judgments of the Supreme Court supported by Appellant/Respondent briefs along with valid notices of appeal duly settled at appellate courts and argued at the three tiers of courts;...¹⁶

Thus, a candidate who is applying for the award of SAN (i.e. non-academic SAN) is expected to have conducted to full conclusion 20 cases at the High Court or Superior Court of Record, 5 cases at the Court of Appeal, and 4 cases at the Supreme Court or 3 Supreme Court cases if the candidate (applicant) conducted the cases from the High Court to the Supreme Court. All these cases must have been conducted to full conclusion within a period of 10 years immediately preceding the date of application. These cases are provided in the 2018 Guidelines as against the 2016 Guidelines which required 20 cases at the High court or Courts of coordinate jurisdiction, 4 cases at the Court of Appeal, and 3 cases at the Supreme Court or 2 cases if the applicant conducted the cases from the High Court to the Supreme Court. Certified True Copies (CTC) of the judgments are expected to be provided as a proof that the candidate or applicant substantially conducted the cases as counsel. Paragraph 14(1) of the Guidelines provides that the applicant shall attach a certified true copy of all the judgments in the above cases, and a detailed table of appearances showing the

¹⁴A combined reading of paragraphs 1, 14, and 23 of the 2018 Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank.

¹⁵ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 23(7)(a) & (c).

¹⁶Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 p^{ara.} 14(1) & (5).

pages in which his participation in the cases was recorded on the certified true copies of the record of trial proceedings. Thus, substantial participation as counsel in the conduct of the cases is vital in order to qualify for the rank of SAN. More so, such cases must be considered ground breaking, or landmark decisions were made in respect of them. The cases should involve issues of significant legal or public interest, or decide novel points of law.¹⁷ Paragraph 23(5) of the Guidelines for the Conferment of the Rank of SAN provides thus:

For the purpose of evaluating professional competence of an Applicant, a case will be considered of significance if in the opinion of the Legal Practitioners' Privileges Committee it meets two or more of the following-

- (a) involves an issue of significant legal or public interest;
- (b) decides a novel point of law;
- (c) is considered ground breaking or a landmark decision; and
- (d) is frequently cited in the Law Courts.

Of all the above requirements for the award of SAN, there is no provision for cases or matters resolved outside the confines of courtroom litigation. Yet litigation is not the only means of dispute resolution recognised in Nigeria.¹⁸ Other dispute resolution mechanisms include *inter alia* negotiation, mediation, arbitration and conciliation. Involvement in any of these Alternative Dispute Resolution (ADR) mechanisms is not expressly mentioned in the Guidelines for the Conferment of the Rank of SAN despite the fact that ADR has been embraced and made part of our adjudicatory system through the instrumentality of the Multi-Door Courthouse. The Multi-Door Courthouse is an avenue or window for resolving disputes through other dispute resolution mechanisms in lieu of litigation process. The Nigerian legal system recognises and encourages the use of alternative dispute resolution as a mechanism for the amicable resolution of disputes particularly in commercial, labour and employment relations.¹⁹ Even in our criminal justice system, ADR has been applied through the principle of plea bargain. 'Plea bargaining is a process of abbreviated treatment of routine cases whereby a defendant who has been charged with the commission of an offence or offences agrees to plead guilty to the charges or any of them in exchange for a lesser punishment without going for trial'²⁰

The introduction of Multi-Door Courthouse is a great innovation. It helps decongest the courtrooms of myriad cases. Multi-Door Courthouse; a creation of Professor Frank E. A. Sander, is an innovative institution that routes incoming cases to the most appropriate methods of dispute resolution.²¹ Dispute resolution through Multi-Door Courthouse has been greatly explored and utilised by lawyers in jurisdictions within Nigeria that have established same, such as the Lagos Multi-Door Courthouse and the Abuja Multi-Door Courthouse. All ADR mechanisms including Arbitration are utilised in the Multi-Door Courthouse and this helps to reduce the congestion of courtrooms with cases. Arbitration is also a method of dispute resolution which has been given statutory and judicial backing.²² In the English case of *Afzal and Ors. v Ford Motor*

¹⁷ *ibid*, para. 23(5).

¹⁸ Rules of Professional Conduct for Legal Practitioners 2007 r. 15(3)(d).

¹⁹ L C Opara and N C Ogbuanya, 'Commercial Disputes in Employment and Labour Relations: A Case for Alternative Dispute Resolution in Nigeria' in G C Nwakoby and U B Odoh (eds), *Rule of Law, Governance Dispute Resolution and Contemporary Legal Issues in Nigeria: A Peer Reviewed Juridical Essays in Honour of His Excellency Barr. Eric Kelechi Igwe, Deputy Governor, Ebonyi State* (Abakiliki: Office of the Personal Assistant (Technical) to the Deputy Governor, 2016) p. 139.

²⁰ A O Alubo, 'Plea Bargaining and Nolle Prosequi in Criminal Justice Administration in Nigeria' (2015) 10 No.1 University of Jos Law Journal 5.

²¹ Pon Staff 'Multi-door Courthouse and the Benefit Negotiation Brings to Litigation' <<https://www.pon.harvard.edu/daily/international-negotiation-daily/a-discussion-with-frank-sander-about-the-multi-door-courthouse/>> accessed on 14 December 2018.

²² The Arbitration and Conciliation Act (Cap A18) Laws of Federation of Nigeria 2004 gives statutory backing to arbitration. For judicial backing of arbitration, the cases that are worthy of note amongst others are *Kano State*

Co. Ltd.,²³ the court opined that court-annexed arbitration was proposed as an alternative to court trial as a way of resolving modest legal dispute. That the main reason for seeking a less complex systems of resolving claims were the long delays due to congestion of cause list and burgeoning legal costs.

The question to be asked therefore is whether the requirements for conferment of SAN promote or encourage litigation over and against other dispute resolution mechanisms? If the answer to the question above is in the negative, then why is involvement in ADR not an express part of the requirements for conferment of SAN as provided in the Guidelines for the Conferment of the Rank of SAN? Rather the current Guidelines expressly excludes ‘consent judgment’ as one of such judgments to be recognised during evaluation. If the answer to the above question is in the affirmative, which this paper posits, then the requirements for conferment of SAN (i.e. non-academic SAN) breeds a problem which is the encouragement of court congestion with myriad of cases. This inference is drawn because, an aspirant to the rank of SAN who is expected to comply with paragraphs 14(5) and 23(5) of the Guidelines would be left with no option than to keep instituting cases since such aspirant is not certain which of all the cases contested in court would satisfy the conditions in the opinion of the Legal Practitioners’ Privileges Committee.

Although ADR has been embraced into our adjudicatory system, a lawyer who engages in more of dispute resolution mechanisms other than litigation is likely never to become a Senior Advocate of Nigeria if he is not in the academia. Consequently, since attaining the rank of SAN is an enviable position and a mark or an identification of excellence to the public, aspiring SAN who do not intend to delve into the academia would be forced to participate in more of courtroom litigation, thus relegating ADR. This would have an attendant effect which is the congestion of courts. This is the challenge posed by the requirements in the Guidelines.

More so, the specific number of contested cases expected of a candidate or an applicant for the conferment of the rank of SAN must not have been resolved by the various hierarchies of court in favour of the parties to the suit whom the candidate represented. What is material is that the candidate substantially conducted the cases to the stage of judgment. This criterion could impress on the mind of an ambitious aspirant to encourage clients to institute actions even when such cases can be amicably settled through any of the ADR mechanisms.

3. Advocacy Skill in Alternative Dispute Resolution

Advocacy whether traditional²⁴ or legal can be used as an instrument of social change. Outcomes that can be achieved through advocacy include the development of new laws or policies or changing of existing ones, increased visibility of an issue among various audience including politicians and the general public, and changing the general opinion around a particular issue.²⁵ Advocacy is about arguing for the cause of another person in a court of law or a tribunal.²⁶ Advocacy is also regarded as a means by which a legal practitioner presents his client’s case to the court which may be both in written or oral form. Oral advocacy is a specialised performance skill which requires the advocate to address the court persuasively and concisely. The presentation of the case has to be in a clear, well organised and efficient manner.²⁷ Oral advocacy is indispensable to the court system in order to illuminate complicated cases. The oral argument in advocacy

Urban Development Board v. Fanz Construction Co. Ltd (1990) 4 NWLR (pt 142) 1 and *Commerce Assurance Ltd v. Alhaji Buraimoh Alli* (1992) 3 NWLR (pt 232) 710; (1992) 1 NSCC 556.

²³ (1994) 4 All ER 702.

²⁴ Traditional advocacy methods include campaigns, protests, media enlightenment, letter writing, proposal writing, report writing.

²⁵ Child Rights International Network ‘Legal Advocacy’ <<https://www.crin.org/en/home/law/legal-advocacy>> accessed on 12 December 2018.

²⁶ C E Schjathvet and Z Hafez, *ILSA Guide to International Moot Court Competition* (USA: International Law Students Association, 2003) p. 110.

²⁷ ‘Advocacy Training: An Introduction’ <<https://www.icca.ac.uk/advocacy-training/what-is-advocacy>> accessed on 15 December 2018.

is a means to compliment the written argument before the court. The essence is to persuade the Bench of the advocate's position, taking into account the Bench's questions (if any) and the opposing counsel's arguments.²⁸ It is a known fact that for a legal practitioner to have excelled in advocacy means that he must have been seriously engaged in litigation over time, since advocacy skill is usually displayed in court in the course of representing clients. It is also a known fact that amongst the various dispute resolution mechanisms, litigation provides ample avenues for the demonstration of advocacy skill particularly during instances of arguing contentious motions, raising or replying to objections, examination of witnesses and presenting of final addresses.

Legal advocacy, also known as advocacy through the courts, uses the judicial system to advance social change goals.²⁹ Legal advocacy is a skill displayed by an advocate. The different definitions of an advocate include an individual who presents or argues another's case; one who gives legal advice and pleads the cause of another before a court or tribunal; a person admitted to the practice of law who advises clients of their legal rights and argues their cases in court.³⁰ Legal practitioners are trained to imbibe the necessary knowledge, values and skills that would transform them to a genuine advocate of change in the society.³¹ The role of legal practitioners in political, economic and social development of the country is most visible in litigation³² by the tactful display of advocacy skill in the court and tribunals. A tribunal is a type of court with the authority to deal with a particular problem or disagreement.³³ There are judicial tribunals such as Code of Conduct Tribunal, Investment and Securities Tribunal, Election Petition Tribunal which are avenues for exhibiting advocacy skill.

The Arbitration and Conciliation Act³⁴ which applies only to written arbitration agreements makes provision for the establishment of an Arbitral Tribunal for the resolution of commercially related disputes. Advocacy skill can be demonstrated in such established tribunal. No doubt adversarial system is the core of Nigerian legal system and as such the beauty of advocacy is portrayed in adversarial advocacy. However, it is not only in litigation that and adversarial advocacy can be used. Arbitration offers such opportunity.³⁵ Legal practitioners usually represent parties to arbitration.³⁶ Proceedings in arbitral tribunal constituted pursuant to the Arbitration and Conciliation Act may be by holding oral hearings for the presentation of evidence (oral arguments) or on the basis of presenting documents without oral hearing, or by both holding oral hearings and presentation of documents.³⁷ During arbitration in which oral hearing is permitted, objections can be raised³⁸ and advocacy skill can be displayed. Witnesses can also be examined,³⁹ issues of admissibility, relevance, materiality and weight of evidence offered are determined by arbitral tribunal⁴⁰ and the legal representatives of parties can be called upon to orally address the tribunal on the above issues.

²⁸ C E Schjatvet and Z Hafez (n 26).

²⁹ 'Legal Advocacy' (n 23).

³⁰ <<https://legal-dictionary.thefreedictionary.com>> accessed on 15 December 2018.

³¹ S Erugo, C K Nwankwo, N Ikeocha and E Okoroafo, 'Legal Education and Social Change in Nigeria' in O Oyewo and E Ojomo, (eds), *Law, Democratization and Social Change* (Lagos: Nigerian Association of Law Teachers, 2012) p. 215.

³² *ibid*, p. 214.

³³ A S Hornby, *Oxford Advanced Learner's Dictionary* (7th Ed, Oxford, New York: Oxford University Press) p. 1579.

³⁴ Cap A18 Laws of the Federation of Nigeria 2004.

³⁵ D Graham, 'Settlement vs. Adversarial Advocacy: 10 Tips for Effective Advocacy' <<http://blog.osgoodepd.ca/settlement-vs-adversarial-advocacy-10-tips-effective-advocacy/>> accessed on 13 December 2018.

³⁶ Arbitration Rules First Schedule to the Arbitration and Conciliation Act (Cap A18) Laws of the Federation of Nigeria 2004, r. 4.

³⁷ Arbitration and Conciliation Act (Cap A18) Laws of Federation of Nigeria 2004 s. 20.

³⁸ Arbitration Rules First Schedule to the Arbitration and Conciliation Act (Cap A18) Laws of the Federation of Nigeria 2004 r. 21.

³⁹ *ibid*, r. 25(5).

⁴⁰ *ibid*, r. 25(6).

Advocacy skill can really be demonstrated in arbitration. Other than arbitration, advocacy skill can be displayed by a legal practitioner in other ADR mechanisms such as mediation, conciliation and negotiation. In order to mediate, conciliate or negotiate effectively, a person ought to have the power of persuasion. The power of persuasion is also what is required in advocacy.

The art of advocacy before a court or tribunal is about putting across a view point as precisely and as convincingly as the evidence will permit. The issue of persuasion is paramount in the art of advocacy in a judicial setting. The object of any advocacy in a court or tribunal is to persuade the judge or tribunal to accept the advocate's point of argument. Adversarial advocacy is that within the courtroom or in the context of litigation, but settlement advocacy is advocacy outside the courtroom or out-of-court dispute resolution. The adversarial advocate focuses on position, leverage and legal entitlements. The court is persuaded in the light of the client's entitlements in law. Settlement advocacy focuses on interest, mutual gain. In both adversarial and settlement advocacy, there are some level of persuasion. While the judge is the figure of persuasion in the former, the figure of persuasion in the latter is the party to the dispute or their agent or an arbiter. There has to be a combination of settlement advocacy; usually used during negotiation, and adversarial advocacy in order to strike a balance.⁴¹ The ability to exercise the skill and confidence to negotiate on behalf of a client is an essential part of advocacy. Thus, negotiation which is an ADR mechanism is a key part of effective advocacy. During the process of negotiation, both parties are trying to arrive at a mutually acceptable agreement⁴² by persuading and convincing each other of the merits of his position.

Although advocacy skill can be demonstrated in ADR, it is evident from the provisions of the Guidelines that promotion of skilful advocacy through contested cases in the courtroom (or litigation) is the major emphasis of the requirements for conferment of the rank of SAN. This, in the submission of this paper, encourages litigation over and above ADR; which has been a welcome development to aid the decongestion of our courtrooms. It is conceded that there are cases that are best settled via litigation, or that cannot be effectively settled by ADR. Examples of such cases include dispute involving the interpretation of the Constitution or other statutes, questions as to genuineness or otherwise of a Will, dispute arising from and founded on an illegal contract. Cases of such nature should be litigated upon. Advocacy skill can be demonstrated in such cases in court since it is obvious from the Guidelines that the award shall continue to be made primarily to legal practitioners who have distinguished themselves as advocates.⁴³ It is stated in the Guidelines that the award of SAN is to provide a public identification of advocates whose standing and achievements would justify an expectation on the part of clients, the judiciary and the public that they can provide outstanding services as advocates and advisers in the overall best interest of administration of justice.⁴⁴ The emphasis in the above provision is a public identification of distinguished legal practitioners that can provide excellent services as advocates and advisers. Thus, being excellent in rendering advice alone cannot qualify a legal practitioner to be awarded the rank of SAN. There must be advocacy. Nothing is expressly said of ADR. More so, a reading of the entire Guidelines shows that the advocacy referred to, is in relation to litigation only.

The question that comes to mind is whether advocacy skill can only be demonstrated in litigated cases. The answer is in the negative. To put it in another form: Is there no ADR mechanism that provides an avenue for the demonstration of advocacy skill? The answer to the above question is in the affirmative. Litigation is not the only avenue where advocacy skill can be displayed or tested. Advocacy skill can also be tested *inter alia* in arbitration which is an ADR mechanism. There are divergent views about the status of arbitration. One

⁴¹ D. Graham, 'Settlement vs. Adversarial Advocacy ...' (n 33).

⁴² 'The ABC's of Basic Advocacy and Negotiation Skills' <<https://www.autismspeaks.org>> accessed on 15 December 2018.

⁴³ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para 2(e).

⁴⁴ *ibid*, para 2(a).

school of thought propounds that because arbitration has a lot in common with litigation it cannot be properly referred to as a form of ADR since all the other ADR mechanisms, in comparison with arbitration, have more in common than with arbitration. The second school of thought on the other hand is of the view that arbitration is not litigation and that both of them have many dissimilarities; arbitration is more of an ADR mechanism than litigation. Thus, arbitration is a form of ADR.⁴⁵ In the case of *Awonusi v. Awonusi*,⁴⁶ the court defined arbitration as ‘... the determination of disputes by a person other than the regular court... Arbitration... is a legally effective adjudication of a dispute otherwise than by the ordinary procedure of the regular courts.’⁴⁷ The ordinary procedure of the regular courts referred to, is the rigid or bottle-neck procedure in litigation. It is thus submitted that if the emphasis for the attainment of the rank of Senior Advocate of Nigeria; the penultimate height obtainable at the Bar,⁴⁸ is on advocacy through courtroom litigation alone without considering advocacy through any ADR mechanism, then there will be no way of decongesting the courtrooms with myriad of cases. Consequently, Judicial Officers, especially those at the Court of first instance, would continue to be over burdened with litigated cases and this may affect their health and performance.

4. Impact of the Requirements for Award of SAN on the Court

There are certain advantages of ADR. These include voluntariness, flexibility and party-control, time-saving, cost-saving. One other advantage which is germane to this discourse and which has been continuously emphasized is that ADR helps to reduce the number of cases flooding the courtrooms (decongestion of the courts), thus, minimizing the workload and resultant excess stress⁴⁹ suffered by Judicial Officers. Reduction of excess stress can improve the health of Judicial Officers as well as the spate and quality of work done by them, especially Judicial Officers in Courts of first instance. Judges write in long hand while sitting in open court for long hours. This can result in fatigue, and fatigue produces lower levels of performance.⁵⁰

Court decongestion and reduced stress can give Judicial Officers ample time to do in-depth work, write many more sound and well-reasoned judgments, thus, diminish the spate of contradictory judgments which are usually called for review subsequently. The less contradictory judgments given, the better for the judiciary which is regarded as the last hope of the common man. The more sound the court judgments, the more confidence the society would have on the judiciary. This can be achieved if *inter alia* the courtrooms are decongested with cases.

5. Inclusion of ADR in the Guidelines for Conferment of SAN

Litigation as well as advocacy through contested cases in Superior Courts of Record is what the Guidelines portray. It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included. *Expressio unius est exclusio alterius* is a rule of interpretation of statutes. It means that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied

⁴⁵ L C Opara and N C Ogbuanya (n 19).

⁴⁶ (2007) All FWLR 1642.

⁴⁷ *ibid*, p. 1661.

⁴⁸ The ultimate height that a member of the Bar can attain is being a member of the Body of Benchers. See section 3(1) Legal Practitioners Act (Cap. L 11) Laws of the Federation of Nigeria 2004.

⁴⁹ A person’s alertness can be influenced by stress. However excess stress is harmful to the human body. A person that has more work to do within a time frame will not work as efficiently as he can do when he has only fewer tasks to deal with. He is likely to work more slowly. If he continues to work at the same speed, he is likely to make mistakes. A person who misses sleep due to late night working may have brief lapses of consciousness if he has to sit still listening or reading the following day. The result is inefficient work. See C Poulton, ‘Skilled Performance and Stress’ in P B Warr (ed), *Psychology at Work* (Harmondsworth Middlesex England: Penguin Education, 1974) pp. 65-66.

⁵⁰ R Wilkinson, ‘Hours of Work and the Twenty-Four-Hour Cycle of Rest and Activity’ in P B Warr (ed), *Psychology at Work* (Harmondsworth Middlesex England: Penguin Education, 1974) p. 36.

by implication, with regard to the same issue.⁵¹ The express mention of ‘contested cases’ as a legal practitioner’s evaluation of his competence in legal practice and contribution to the development of the law⁵² excludes cases handled via ADR as a means to evaluate a legal practitioner’s competence in legal practice. With due respect, it appears that the connotation given is that a legal practitioner who is frequently engaged in ADR is not exhibiting competence, particularly in advocacy, in legal profession and would not qualify for the prestigious rank of SAN. As against the previous Guidelines, the current Guidelines tends to define ‘Final judgment’ as used in paragraph 14 to exclude Bench judgments or rulings, consent judgments, judgments in non-contested cases like default judgments in undefended suits.⁵³ It is suggested that an express inclusion of ADR would make an impact on the minds of some legal practitioners who are engrossed with improving on their advocacy skill through litigation and who barely engage in ADR, or who refer ADR matters to other lawyers in the law office.

Should a case settled through arbitration not be regarded as a contested case by the Legal Practitioners’ Privileges Committee? Should a final and valid arbitral award not be regarded as an alternative to one or more of the 20 judgments of High Court or Superior Courts of Record by the Legal Practitioners’ Privileges Committee? A duly constituted arbitral panel is a tribunal and an arbitral award is on par with a judgment of a court. By the provision of section 4(2) of Arbitration and Conciliation Act, an arbitral award when filed in court, takes the force of a judgment. Thus, for commercially related disputes in which reference to arbitration is provided in the contract or statute creating a body, a final and valid award filed in court can be part of the requirements for the award of SAN. An award filed in court by the parties to arbitration, for recognition and enforcement serves as a judgment. The Supreme Court held in *Ras Pal Gazi Construction Co. Ltd. v. Federal Capital Development Authority*⁵⁴ that nowhere in the Arbitration and Conciliation Act is the High Court given the power to covert an arbitration award into its own judgment. What this means is that an award is on *par* with a judgment of the court. It is in the light of this that a court cannot make the arbitrators award its own judgment. An arbitration award is not the same as a settlement agreement made pursuant to a negotiation for settlement which requires the blessing of the court by its adoption as the judgments of the court and the acquisition of the status of a consent judgment, in order for it to have a binding effect on the parties.

An award constitutes a final judgment in all matters referred to arbitrator(s). Such award has a binding effect and shall upon application in writing to the court be enforced by the court. Thus, if an award is not challenged then it becomes a final and binding determination of the matters between the parties. The Supreme Court, in the above case, upheld the decision of the Court of Appeal which opined that the provisions of Section 31 Arbitration and Conciliation Act has given an arbitral award the status of a judgment of a court of law and as such it does not require any act on the part of the trial court to make the arbitral award acquire that status which had already been conferred by law. The Supreme Court further held *per* Katsina Alu JSC delivering the lead judgment that an award is on *par* with a judgment of the court.

It is appropriate that the Legal Practitioners’ Privileges Committee recognises an arbitral award as equivalent to a High Court judgment in considering the applications of candidates for the rank of SAN.⁵⁵ It is suggested that the Legal Practitioners’ Privileges Committee in making subsequent Guidelines for the Conferment of

⁵¹ *Udoh v. Orthopaedic Hospitals Management Board* [1993] 7 NWLR (pt. 304) 139.

⁵² Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 14(1).

⁵³ *ibid*, para. 14(5)(d).

⁵⁴ (2001) 16 NWLR (pt. 722) 559.

⁵⁵ In the course of writing this paper, a few aspirants to the rank of SAN were privately interviewed. The 2016 Guidelines was the extant law when this paper was being written. It was discovered that a final and valid arbitral award under that Guideline was considered in the application forms given to the aspirants to fill. In the form, an arbitral award was considered as an alternative to one of the 20 judgments of the High Court or Superior Courts of Record. This was a great act deserving applause.

the Rank of Senior Advocate of Nigeria should incorporate the issue of final and valid award filed in court for recognition and enforcement as an alternative to one or more of the 20 judgments of the High Court or Superior Courts of Record so that aspirants to the Bar, young lawyers, senior lawyers and the general public would know that ADR is not for less distinguished or less excellent lawyers. This can result in attitudinal changes in some legal practitioners who do not regard ADR as a practice that should be taken seriously. More so, the courts would be less congested, Judicial Officers would have ample time to carry out their functions properly with improved performance.

6. Conclusion

A close look at the word ‘contested cases’ in the Guidelines for Conferment of the Rank of Senior Advocate of Nigerian signifies litigation and not ADR. Submission of certified true copies of judgments on contested cases which must show that the candidate’s name is reflected as having conducted the case,⁵⁶ certified true copies of complete record of proceedings at the High Court or Superior Court of Record, and briefs along with valid notices duly settled and argued by the applicant in contested cases at the appellate level⁵⁷ are indices that litigation and not ADR is what the Guidelines contemplates. Consequently, consent judgment obtained would not be acceptable by the Legal Practitioners’ Privileges Committee. The mere reading of the Guidelines for the Conferment of the Rank of SAN also reveals that it did not take into consideration that advocacy skills can be exhibited outside the regular courts, thus, no express provision for cases determined by ADR. This paper has shown that litigation is not the only platform or avenue for the demonstration of advocacy skill. There is adversarial advocacy and settlement advocacy. In other to strike a balance, both types of advocacy would have to be demonstrated by an advocate. The criteria for conferment of the rank of SAN as provided in the Guidelines were analytically considered in this paper. ADR which is the resolution of disputes outside the regular courtroom litigation is part of the adjudicatory system in Nigeria. It aids in the quick resolution of disputes. If courts in Nigeria would have to be decongested, there has to be a change of attitude from litigation as a mark of competence in legal practice. This can be achieved by the express inclusion of ADR or cases handled via ADR by legal practitioner as a mark of identification of excellence to members of the legal profession as provided in paragraph 1 Guidelines for the Conferment of the Rank of SAN.

⁵⁶ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 14(1) & (5).

⁵⁷ *ibid* para 14(5).