



## **LEGAL REPRESENTATION IN ISLAMIC LAW AND MUSLIM LAWYERS IN NIGERIA: AN ASSESSMENT**

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&

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### **Abstract**

The legal profession is a noble profession and it plays an important role in attainment of justice according to the rule of law and the task of ensuring the attainment of substantive justice is more onerous on Muslims who are lawyers as this is an obligation both in the religion and in the profession. Generally, legal representation is the discharge of a specialist duty by a professional who in his representation can serve an attorney, counselor, solicitors, barrister, advocate or agent. The paper compared the concept of legal representation under the Shariah and Common law wherein it consulted writings and opinions of scholars and Islamic jurists on the basis for legal representation in Islam making recourse to the concept of *wakalah* (agency) and rights and duties of a *Wakeel* (agent) and *Mutawakeel* (principal). The paper with the aid of doctrinal method observed that though traces of legal representation cannot be clearly found in explicit words in the shariah but deduction from happenings and actions of prophets of Islam will lead to the just conclusion that legal representation has its roots in Shariah. The paper recommends that scholars should be firm in their resolve as to the presence of Legal representation in the Shariah through the concept of *Wakalah*.

**KEYWORDS: LEGAL REPRESENTATION, MUSLIM LAWYERS, NIGERIA, WAKALAH**

## INTRODUCTION

The nomenclature of legal representation seems foreign to the Islamic note though representation is found conspicuously captured in both the Qur'an and the prophet traditions notable among which is where Allah (SWT) said in the Glorious Qur'an "so be not a pleader for the treacherous"<sup>1</sup> and in another verse Allah said:

Help you one another in *Al-Birr* and *At-Taqwa* (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment<sup>2</sup>.

This is perhaps because none of the foremost, famous and pristine books on Islamic law has mentioned the phrase 'legal representation'. A Muslim is allowed to practice as a lawyer in as much as he is going to say the truth even if it will hurt his client. In the rules of English legal profession, a lawyer is expected to speak the truth and direct the court to the path of upholding substantial justice. This is in tandem with the Islamic standpoint on the administration of justice. It is against this background that this work looks at the historical development of legal representation and compare same with what is obtainable under Islamic law. This work also explores the qualities and ethical guidelines of a lawyer under Islamic law, including his roles in the administration of justice. The work concludes by discussing the rights of a lawyer over his client and his corresponding duties to his client from the Islamic law perspective.

## ORIGIN OF LEGAL REPRESENTATION UNDER ISLAMIC LAW

In tracing the evolution of legal representation in Islam, recourse needs to made to the concept of *wakālah* (contract of agency) is examined. During the time of the Prophet SAW, the practice of *wakalah* can be seen when he sent his representatives such as Muadz bin Jabal to Yemen as a Judge.<sup>3</sup> The Prophet also asked *Unais* to determine conviction and enforcement of *hudud* punishment on an adultery offender.<sup>4</sup> Historically, Ali Ibn Abi Talib was known as the best representative amongst the companion. For instance, in case of *zina* where a pregnant woman who had been married confessed that she has committed *zina* and asked Umar RA to stone her to death. Ali was assigned to investigate and he found that the pregnant woman had an

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<sup>1</sup> Qur'an Chapter 4 verse 105

<sup>2</sup> Qur'an Chapter 5 verse 2

<sup>3</sup> Abu Dawud . *Sunan Abu Dawud: Kitab al-Aqdiyah* (Sh. Muhammad Ashraf Publishers, 1984) 1016-1019.

<sup>4</sup> Abdul Munir Yaacob. *Etika Peguam Menurut Perspektif Islam* in Abd Munir Yaacob (ed). *Etika Hakim dan Peguam*. 1996. Kuala Lumpur: IKIM. P. 122.

unwilling sexual intercourse with a man in a state of extreme hunger and thirsty. Umar RA accepted view of Ali RA and freed the woman.<sup>5</sup>

In another distinct case where a young lady fell deeply in love with a young man but was unlucky and the young man rejected her love. The young lady was very angry and nursed a plan to harm him. The young lady broke an egg, threw away the yolk and purred the white over her dress and upper legs. She cried out and presented herself to Umar RA and accused the young man of molesting her and showed her body for traces of his semen on her dress and upper legs. Umar RA once again asked view of Ali RA who took boiling water and poured on the woman's dress. The liquid solidified and became white and when Ali RA tasted it, he found that it tasted like egg and was not semen.<sup>6</sup>

Another traceable history to the contractual concept of agency can be found in an episode involving two prominent *sahābah*<sup>7</sup> namely: Hassan bn Thābit and ʿAbdullah bn ʿAbbas during the reign of ʿUthmān bn ʿAffān. Hassan bn Thābit had an issue with some people and the matter was slated for adjudication before the caliph (ʿUthmān bn ʿAffān). The caliph entered judgment against bn Thābit whereas he had overwhelming evidence to support his claim but perhaps, he was not able to present his case clearly. When Hassan bn Thābit narrated this ordeal to ʿAbdullah bn ʿAbbas, the latter was dissatisfied and urged the former to let them appeal the judgment before the caliph. Eventually, because of his fluency and oratory prowess, he was able to cause the judgment to be annulled by the caliph and subsequently, the caliph entered the judgment in favor of bn Thābit.

Very happy with this development, Hassan bn Thābit remarked:

إذا ما ابن عباس بدالك وجهه\* رأيت له في كل أحواله فضلا  
إذا قال لم يترك مقال لقال\* بمننظمات لا ترى بينها فضلا  
كفى وشفى ما في النفوس فلم يدع\* لذي إربة في القول جدولا هزلا

### Translation

Whenever bn ʿAbbas exposes his face to you  
You shall see him all through in honour  
When he speaks, he leaves nothing for other speakers  
So much that his speeches are devoid of any defect  
His speeches sooth and heal souls  
And leave no room for doubt<sup>8</sup>

The Quran mentions a concept which can be likened to that of a legal representative in the following verse: “*He (God) hath created man from a drop of fluid; yet . . . he (man) is a clear adversary.*”<sup>9</sup>

<sup>5</sup> In the case above, Ali RA can be considered as the legal representative of the accused i.e. the pregnant woman. See Ahmad Ibrahim and Mahmud Saedon. *Judges and Lawyers under the Shariah* in Aidit Ghazali (ed). *Islam and Justice*. (IKIM, 1993) 139-143.

<sup>6</sup> *Ibid* quoted from Ibnu Qayyim al-Jauziyyah. *Al-Turuq Hukmiah*, 70.

<sup>7</sup> Companions of the Prophets (SAW)

<sup>8</sup> Ibn ABdulbarr, *Al-Istiʿāb fi Maʿrifatil Al-Ashāb* (NP, ND)

<sup>9</sup> QURAN, *sura an-Nahl* 16:4, in THE MESSAGE OF THE QURʿĀN 394 (Muhammad Asad trans., E. J. Brill 1980). Muhammad Asad, relying on the authority of past jurists, translates the phrase *khaseemun mubeenun* as a person endowed “with the power to think and to argue”.

Al-Ghazali explains that the relationship between *wakeel* and *mutawakel* is anchored in trust. This relationship of trust is possible only if *wakeel* has qualities that generate trust and *mutawakel* has the heart to trust. An incompetent or devious *wakeel*, primarily interested in gathering fees, fails to beget trust.<sup>10</sup>

## ORIGIN OF LEGAL REPRESENTATION (PRACTICE) UNDER COMMON LAW

Okonkwo<sup>11</sup> opined the emergence of legal practice can be said to be a post 1862 occurrence. The British has two branches of legal profession *viz* barristers and solicitors, mentioning the differences inherent in the duo. According to him, by virtue of the Legal Practitioners Decree,<sup>12</sup> a person must be called to bar and be placed on the roll of legal practitioners before he could practice<sup>13</sup>. He added that the law permits for non-Nigerians to be licensed and also to be admitted to the Nigeria Bar upon meeting certain fundamental and foundational requirements.<sup>14</sup>

Notwithstanding the above, it needs to be mentioned that that the conceptual meaning of legal representation as pictured by the Common law is foreign to the Islamic law guide. Legal representation which can be described as the offshoot of the contract of *wakālah* requires little or no complexities as against its Common law derivative.

In Islamic law, *Wakālah*<sup>15</sup> in its lexicographic sense denotes agency. Technically however, it connotes a contractual relationship wherein a party called ‘*Al-Muwakkil*’ (Principal) delegates his rights, duties and privileges to a person called *Al-Wakeel* (Agent) for the purpose of a particular transaction. The principal is thus bound by the actions of the agent where the latter does not act *ultra vires* the scope of his duty. Ibn ‘Arafah adds that agency arises where one person authorizes another to replace him in the exercise of his civil rights.<sup>16</sup> It has also been defined in another treatise to mean an act which a legally accountable person appoints a legally accountable person to act on his behalf in a certain matter in which such authorization is permissible.<sup>17</sup>

In another definition, *Wakalah* was defined in its literal term to mean looking after, delegation, authorization, preservation and performing a task on behalf

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<sup>10</sup> Abu Hamid Al-Ghazali, *Revival of Religious Learning (IHYA ULUM-ID-DIN)* 97–98 (Fazl-Ul-Karim trans., Durul-Ishat 1993), available at <http://www.ghazali.org/books/ihya-v3.pdf> This book is one of the most influential in Islamic legal literature. It consists of four volumes and has been translated in numerous languages, including English. 210–211.

<sup>11</sup> Okonkwo C.C *Introduction to Nigerian Law* (Sweet and Maxwell, London 1980) p.165

<sup>12</sup> (No. 15 of 1975)

<sup>13</sup> Okonkwo C.C... p. 165-166

<sup>14</sup> Ibid.

<sup>15</sup> otherwise known as *wikālah*, *wakālah*. *The word wakeel (or vekil) is a pre-Quranic Arabic word. The words wakeel and wakalat are derived from the stem wkl, which means to trust, appoint, authorize, empower, or put in charge.*

<sup>16</sup> Ruxton F.H *Maliki Law* Cairo (Egypt); (Elnahar Printing Press, Cairo, 2004)201

<sup>17</sup> Salih F., *A Summary of Islamic Jurisprudence* (Al-Maiman Publishing House, Riyadh 2005) 83

of other. Technically, *wakalah* refers to a type of contract in which a person (the principal) delegates another person to perform some tasks on behalf of him.<sup>18</sup> In other words, it's an agency contract which authorizes an agent to perform and undertake some dealings on behalf of a principal. There are two contracting parties in *wakalah* contract: the principal (also known as *muwakkil*) and the agent (also termed as *wakeel*). Basically, *wakalah* is a kind of responsibility whereas the agent has to discharge his delegated task in the way the trustee discharges his responsibility.<sup>19</sup>

In his words, Zaidan with respect to the forgoing discourse has this to say: "Appointment of a person (called the agent) to represent the other (called the principal) in certain well-known conducts which belong to the principal which are susceptible to representation."<sup>20</sup>

Specifically, Zubair A., classified legal representation as a special form of agency. He asserts:

1. Special agency is where the principal authorize the agent to handle definite business transaction or to do a specific act. For example, if a person is authorized by another to purchase a particular house or to take up a specific litigation, the person is a special agent<sup>21</sup>

It is discernible from the above that agency is the delegation of one's' rights and duties to another provided that the delegator, delegate and the subject matter of delegation fulfill the provisions of Islamic law.<sup>22</sup>

### **Types of *Wakalah***

By the consensus of scholars, *Wakalah* is divided into two type's i.e. general agency and specific agency

#### **General agency (Unrestricted *wakalah*)**

A general agency is a type of contract in which a principal delegates full authority to an agent to perform a series of transactions on his behalf. For example, a principal may delegate an agent to purchase the house, lease it to others and collect the rental on monthly basis. A director of a company could be an example of general agency. Because he has full authority to perform a series of tasks on behalf of the company.<sup>23</sup>

#### **Specific agency (Restricted *wakalah*)**

It's a type of agency in which a principal authorizes an agent to do a specific task on behalf of him. For example, someone delegates an agent to sell his car

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<sup>18</sup> Introduction to Wakalah (agency) Contracts, <https://www.blossomfinance.com/posts/introduction-to-wakalah-agency-contracts> accessed 16th December, 2023.

<sup>19</sup> Ibid.

<sup>20</sup> A. Zaidan, 'Al-Madkhal li Dirasat al-Shari'ah al-Islamiyyah (1981) 339.

<sup>21</sup> A. Zubair, *Principles of Islamic Law of Contract* (1991) 215.

<sup>22</sup> The Delegator must be a *mukallaf* (legally accountable for all his deeds under the Shari'ah. This also applies to the delegate. The subject matter of the delegation should not be a prohibited act. For example, killing, buying of swine or liquor cannot be a subject matter of any delegation.

<sup>23</sup> Introduction to Wakalah (agency) Contracts, <https://www.blossomfinance.com/posts/introduction-to-wakalah-agency-contracts> accessed 16th December, 2023.

at certain price. In this case, the agent's authority is limited to sell that particular car at given price.<sup>24</sup>

### **PROPRIETY OF LEGAL REPRESENTATION UNDER ISLAMIC LAW**

The contract of agency enjoys legal backing from the Qur<sup>c</sup>ān and Sunnah. The consensus of the classical jurists is also in favour of *wikālah* as a contractual concept. To start with, Allah says:

and send one of you with this silver coin of yours to the town, and let him find out which is the good lawful food, and bring some of that to you<sup>25</sup>

In addition, He stated elsewhere thus: “Yusuf (Joseph) said: “*Set me over the store-houses of the land; I will indeed guard them with full knowledge*”<sup>26</sup>

Furthermore, another passage of the Glorious Book reads: “...*and those who employed to collect (the funds)...*”<sup>27</sup>

From the above Qur'anic provisions, Islamic scholars were able to deduce a legal basis for the operation of contract of agency. In the first of the three verses cited, a person among some people in a cave was sent on behalf of others to get food, which connoted delegation of their rights to him. The second renders the account of how Prophet Yusuf was appointed as an agent (Minister) by the king of Egypt and the last of the verses confirms the collectors of *zakāh* as a *bona fide* recipient of *zakāh*. All the above verses point directly to scenarios of agency which was practiced in earlier days and those roles were discharged as agents. It is also on record that the Prophet (SAW) delegated certain duties and responsibilities during his life time. He delegated ʿUrwah Al-Jaʿad to purchase a sheep<sup>28</sup> on his behalf. Abu Rāfiʿ was his agent involved during the course of his marriage to Maimunah.<sup>29</sup> He also delegated people to collect *zakāh* on his behalf.

Al-Muwaffaq and other scholars maintain that there is a consensus on the permissibility of the contract of agency. The wisdom and rationale behind this is that people's needs and wants necessitate the legality of agency since not everybody can do himself whatever he needs.<sup>30</sup>

From the above therefore, it can be submitted that the contract of agency enjoys legal backing from Islamic law.

### **ETHICAL GUIDELINES OF LEGAL REPRESENTATION UNDER ISLAMIC LAW**

If the legal representation is an offshoot of the contract of agency, it follows therefore that the ethical guidelines of an agent must amount to that of a legal

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<sup>24</sup> Ibid.

<sup>25</sup> Qur'an Chapter 18 verse 19

<sup>26</sup> Qur'an Chapter 12 verse 55

<sup>27</sup> Qur'an Chapter 9 verse 60

<sup>28</sup> Al-Bukhari (3642) [6/772]

<sup>29</sup> At-Tirmidhi (841) [3/200]

<sup>30</sup> Salih F...p.84

representative (lawyer) under Islamic law. These ethical guidelines can be summed up as follow:

1. A muslim lawyer is expected to be of good behavior, he should be courteous and fair in discharging his professional responsibilities. The prophet was reported to have said “*the best of you are those who have the most excellent morals*”<sup>31</sup>. This Hadith underscores the importance of excellent morals in all human facets, legal representation inclusive.
2. A muslim lawyer is expected to uphold and defend the interest of his client at all times but same must be within the Islamic legal framework. He should see his service to his client as a commercial agreement which must be religiously fulfilled. Allah says “*O you believers! Fulfil all obligations...*”<sup>32</sup>
3. In criminal and civil suits, a legal representative is not expected to secure conviction or acquittal at all cost. He should just try his best for his client and such must be within the ambit of the golden principle of justice. In other words, his duty is simply to direct the court towards the path of ensuring substantial justice.
4. He is expected to be up and doing in the course of discharging his duties as required by his client. For example, a lawyer who combines his appearance for his client with any other things<sup>33</sup> may likely jeopardize the interest of his client. He is therefore expected to be diligent, faithful and responsive to his client.
5. He is also expected to comply with the directives as may be prescribed by his client.

### **QUALITIES OF A LAWYER UNDER ISLAMIC LAW**

A legal representative (lawyer) under Islamic law is expected to possess certain important qualities. These qualities include but are not limited to:

1. Agents (inclusive of lawyers) are expected to be competent to make a valid statement albeit the fact that they are not expected to possess full legal capacity.<sup>34</sup>
2. An agent/lawyer is expected to have the required knowledge and skills. This is not only because thus attribute distinguishes him from his principal but because Shari’ah places a premium attention on knowledge. In other words, for a person to be appointed as a legal representative under Islamic law, he must not be found wanting of the Knowledge of *Usūl –fiqh* (Islamic Jurisprudence)<sup>35</sup>.

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<sup>31</sup> Ibn Hajar Al-Asqalani *Fathu al-Bari fi Sharh Sahih al-Bukhari* (Vol.10, Damsyik, Dar al-Faiha, Riyadh 2000) pp. 555-559

<sup>32</sup> Quran Chapter 5 verse 1

<sup>33</sup> For example, a teacher of law whose lecture clashes with his client’s assignment is likely to fall into this pit. This is simply because two employers are involved and on no ground should the interest of one to override another’s. A law teacher in this situation is thus expected to give preferential treatment to his client’s duties for the classroom assignment, if missed can be made up subsequently.

<sup>34</sup> A. Zubair (n16) 212.

<sup>35</sup> I. T. Muhammed ‘The Concept of Legal Practice and Representation Under Islamic Law and the Constitution of the Federal Republic of Nigeria 1999’ in I. O. Oloyede (ed), *Al- ‘Adl (The Just): Essays on Islam, Islamic Law and*

3. He must have the fear of Allah (*At-Taqwa*) i.e. he must be a pious person. A counsel with or without the directive of his client is not expected to win case by all means. Lies, frivolous technicalities and applications, unnecessary application for adjournments and unwarranted prayers do no befit a pious lawyer. Piety here is another reason why a Christian lawyer should not be allowed in Shariah Courts.

### **DUTIES OF A MUSLIM LAWYER TO HIS CLIENT**

Muslim lawyers by virtue of being a Muslim is expected to prefer the teachings and tenets of Islam to the various rules of professional ethics<sup>36</sup>. The lawyers must be honest and competent in order to ensure that judges are able to deal with the cases that come before them justly. The lawyers may find guidance as to their duties to be honest and to establish justice as enjoined by the Quran. Allah says:

Allah commands you to fulfill your trusts to those to whom they are due and when you judge between man and man that you judge with justice, verily how excellent is the teaching which Allah gives you for Allah is He who hears and sees all things<sup>37</sup>

In this verse, justice is Allah's attribute and to stand firm for justice is to be witness to Him, even if it is detrimental to personal interests or to the interest of those who are close allies.

The duties of a legal counsel can be explained under the following headings<sup>38</sup> viz:

#### **A. Duties to his Client:**

At the point of acceptance to the offer of his client, a counsel owes his client a fiduciary relationship.<sup>39</sup> He must be diligent in the assignment given to him and must also be faithful to his client. He must show honesty and sincerity in all matters relating to him and his client, particularly when finance is involved. He must assist the client in ensuring that injustice in anyway is not perpetrated by the client. The hadith of Ibn 'Umar who reported that the Messenger of Allāh said:

A Muslim is the brother of a Muslim; he does him no injustice, nor does he leave him alone (to be the victim of another's injustice); and whoever does the needful for his brother, Allāh does the needful for him; and whoever removes the distress of a Muslim, Allāh removes from him a distress out of the distresses of the day of resurrection; and whoever covers (the fault of) a Muslim, Allāh will cover his sins on the day of resurrection.

In another hadith Anas reported that the Prophet SAW said:

Help thy brother whether he is the doer of wrong or wrong is done to him." They (his companions) said, O Messenger of Allāh! We can help a man to whom wrong is done, but

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*jurisprudence in Honour of Hon. Justice Tijani Bolarinwa Babalakin, JSC (Rtd)* (National association of Muslim Law Students, University of Ibadan, 2009) 187

<sup>36</sup> A. A. Oba 'Legal Practice in Nigeria and Islamic Ethics' in Y. A. Lawal (ed), 'The Learned': *Essays on in Honour of Alhaji Saka A. Isau (SAN)* (Law Students Association, Kwara State College of Arabic and Islamic Legal Studies, Ilorin, 2009) 37

<sup>37</sup> Qur'an Chapter 4 verse 58. Syed Vickar Ahameed, *Interpretation of the Meaning of the Glorious al-Quran*. (TR Group of Companies, 1999) 100.

<sup>38</sup> *Ibid*, 189.

<sup>39</sup> This simply means a legal or ethical relationship.

how could we help him when he is the doer of wrong? He said: "Take hold of his hands from doing wrong."<sup>40</sup>

These two hadith confirm the ethical principle of protecting the client's interest as well as justice. Thus, the lawyers shall not be very selective of their clients and they must be ready to take a case without payment if circumstances demanded so as part of their social responsibilities.

### **B. Duties to the Court:**

A counsel is expected to be punctual and respectful in his dealing with the court. He should assist the court to attain justice even if it will be at the expense of his client for justice must be attained at all cost. While cautioning himself from unnecessary adjournments, he should obey all court rules and ensure he is familiar with these rules.

In the context of the Prophet's tradition, there are a lot of hadith mentioned the ethical principles of the lawyers towards the courts and judges and one of the most famous hadith is narrated by Ummu Salamah where the Prophet SAW said:

I am only a human being and you bring your disputes to me, some perhaps being more eloquent in their plea than others, so that I give my judgment on their behalf according to what I hear from them. Therefore, whatever I decide for anyone who by rights belongs to his brother, he must not take anything for I am granting him a portion of hell.<sup>41</sup>

This hadith laid down the principles for advocacy in court and places a heavy burden on legal representatives not to use their eloquence and expertise in luring or convincing the judge who heavily relies on the arguments and submission made by them.

### **C. Duties to others:**

His opposing counsel, court staff and other stakeholders must enjoy his cooperation in a bid to attain substantial justice.

## **RIGHTS OF A LAWYER OVER HIS CLIENT**

The rights of a lawyer over his client simply mean the duties of the client to counsel. The rights of a lawyer over his client include but are not limited to:

1. A lawyer is entitled to his professional fee from his client. Where a client fails to remunerate his agent (lawyer), he may be liable for breach of contract.
2. He can invite his client at anytime for meeting/interview when the need be.
3. He is also entitled to such rights as may be provided by the terms of contract between him and his client.

## **CONCLUSION**

The concept of legal representation, though not know in such words to the Shari'ah can be safely married to the concept of *Wakalah* which has its roots in the shari'ah from time immemorial. In both traditions (Islamic and Common Law) legal representation (agency) requires that the advocates

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<sup>40</sup> Muhammad Ali, *Ethics: A Manual of Hadith*. (Lahore, 1944).

<sup>41</sup> Abu Dawud, *Sunan Abu Dawud: Kitab Aqdiyah*, 1016: in Farid Sufian Shuaib, Tajul Aris Ahmad Bustami & Mohd Hisham Mohd Kamal, 'Administration of Islamic Law in Malaysia Text and Materials' [2001] *Malayan Law Journal*, 293.

striving for justice should be courageous but courteous. The representative must be courageous to challenge injustices even if it is power-based. The agent (representative) must be courteous because to drive the cause of the representative, excessive aggression will defeat effective and efficient advocacy.

In essence, Islam places premium attention of lawyers' mannerism. Muslim lawyers, therefore, are expected to preserve high standard of moral conduct, observe good professional ethics within the ambit of Islamic law and above all, exhibit piety in the course of discharge of their professional duties.