I take this opportunity to extend my profound gratitude to the Chairman, Exco and members of the Nigerian Bar Association (NBA) Lafia Branch, for the honour done me to present this paper on an important subject, as captioned above. The topic assigned to me for discussion as conveyed in a letter dated 8th March, 2012, is “The general state of practice in Nigeria”. For me this topic is sufficiently too broad, that we cannot do justice to it without spending some two or three days of discussion. I will however examine the state of our practice as it relates to litigation, since time will not allow me to cover the entire field of law practice in Nigeria. This is because, I can say without fear of contradiction that members of this branch, who are the target audience, are deeply involved in litigations in our courts and it will be better if we share our litigation experiences. I shall discuss the state of practice in our courts as it relates basically to Civil and Criminal litigation and how effectively we have been able to engage in practice within the parameters of the Rules of Professional Conduct. I will dwell in the area of litigation for this paper because
as I said, am aware that most of us at this gathering are primarily litigation lawyers.

**PRACTICE IN NIGERIA: LITIGATION:**
I must note that with the rising number of lawyers being called to the Nigerian Bar, which has now led to a situation of two (2) or three (3) call to Bar ceremonies within one year, this paper and topic bothering on the state of practice in Nigeria becomes of utmost importance. For those of us who are practitioners in our courts, we experience on daily basis legal practitioners whose conduct, character, Candour, mien, and integrity are of great concern, both to the Bar, the Bench and the general public.

There is no doubt however that some legal practitioners have made great sacrifices to make the legal profession an enviable one. Be that as it may, I hold the view that there is more to be done to uphold the Honour of law practice in Nigeria. We need to address certain ugly trends that have become common place in our Courts today. For instance, mode of dressing. Several lawyers go to courts with dressing that does not conform to the regulation dress, dirty and untidy dressing; manners that are discourteous both to professional colleagues and the Bench; unprofessional dealings with clients and the disdain in which we regard the Rules of Professional conduct generally.

Under the Rules of Professional conduct, Counsel has a duty to the Court, to Colleagues or Counsel and to his Client. Thus, in examining the general state of practice in Nigeria, we shall look at the state of counsel’s duty to court, to colleagues and to Clients and examine what we
ought to do to be at our best in the discharge of these duties.

In the Course of preparing this paper, I recalled that in 2009, I was at a conference\(^1\) where my Learned Brothers, Ocholi James, SAN and late Suleiman Abdulkadir, SAN delivered papers that dealt with the subject of lawyers and professional ethics. I shall extensively quote from my learned brothers in this paper because I hold similar views to the ones contained in their papers\(^2\). I enjoin practitioners to subject themselves to such papers in the interest of the profession in Nigeria.

**DUTIES OF COUNSEL TO COURT**

A counsel must be properly dressed to court and must always be attired in a proper and dignified manner and not to attract attention by his/her dressing. He must be punctual in attending court but could obtain leave of the court to be absent or be properly represented\(^3\).

Furthermore, as put by Ocholi James, SAN “there are undoubtedly enormous duties that an Advocate owes to the Court”. Below are just a few:

1. A counsel has a duty to draw the attention of Court to relevant previous decision\(^4\).
2. Duty of counsel to offer his client the best defence\(^5\).

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\(^1\) Symposium on Ethics, Rules of Conduct and Discipline of Lawyers organized by the NBA, Abuja Branch from 7\(^{th}\) – 8\(^{th}\) September, 2009

\(^2\) Ethics, Rules of Conduct and Discipline of Lawyers: an overview, By Suleiman Abdulkadir, SAN and Protecting our courts: what are the advocates duty towards the courts? By Ocholi James, SAN

\(^3\) Abdulkadir, SAN (supra) at P.4, see also the case of FRN V. Abiola (1997)2 NWLR (Part 488)444 at 467.


\(^5\) Obeten V. The State (2007)All FWLR (Part 376)711 at 722
3. A counsel has duty to refrain from using abusive and insulting language and castigating Judges in their briefs of argument. A counsel has duty to refrain from using abusive and insulting language and castigating Judges in their briefs of argument.

4. Duty on counsel not to make unsubstantiated allegations against the court.

5. Duty of counsel to study the grievances of their client and give sincere advice to them.

6. Duty of counsel to properly examine facts of a case before approaching the court.

7. Duty of counsel to maintain rules of professional conduct in the legal profession.

8. Duty of counsel not to walk out on the Court.


In appearing before a court to conduct his case, counsel must know that his first duty is to the course of Justice. According to late Abdulkadhir, SAN, counsel “is an officer of the court, to render assistance to it in the administration of justice and to observe court decorum. Crampton J in the case of R.V.O Connel had this to say:-

“This court in which we sit is a temple of Justice, and the advocates of the bar, as well as the judge upon the bench, are equally ministers in that temple. The object of all equally should be the attainment of justice....”

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7 PDP V. Kwara State Independent Electoral Commission and Ors (2005) 15 NWLR (Part 948) 230 at 254, C-F
8 Ezekiel V. WMDNL (2000) WRN 149 at 161–162
10 Magna Maritime Services Ltd. V. S. A. Oteju (2005) 14 NWLR (Part 945) 517 at 541
11 Magna Maritime Services Ltd. V. S. A. Oteju (Supra)
A legal practitioner must therefore not conduct himself in a manner to obstruct the court or to obstruct the course of justice by any antics. A legal practitioner must treat the Court with respect, honour and dignity. Late Abdulkadir SAN in his paper held the view which I share that:

“There may be instances when the court without justification hinders a counsel’s effort in defending his client’s interest and may find it difficult to bear the situation. At that moment patience, coupled with a sense of honour will be a useful asset”

I am constrained, with respect to say that many of us who practice in our Courts either in civil or criminal matters need to have a second look at the above view. I have witnessed diverse situations of complete let down by colleagues in the face of outright or implied provocation from the bench. I must however say that an Attorney cannot be vindicated for fighting dirty no matter the circumstance. The lawyer is sworn to honour the bench and to practice before it as the arbiter; to respect and honour its decision until set aside by a superior court or by itself. The lawyer must at all times and in all circumstances, strive not only to give regard to the bench, but to be seen to do so. Even when a judge insults you in the conduct of proceedings, you have no right to return fire for fire. I was a direct victim. In Mbah vs Mbah (2002) FWLR (Pt. 135) 619, the learned trial judge used highly intemperate language and or adjective against my person in his ruling. In the brief of argument which I filed, I used the same style against his Lordship. The Court of Appeal did not take it kindly with me. Hear
what their Lordships said: “I think it only remains for me to say a word on the manner the learned counsel for the appellant put his attacks on the learned trial Judge. In his brief on issue No (iii) learned counsel for the appellant commented inter alia: with due respect, the respondent could not have had a better and well articulate advocate than the Learned Trial Judge, who decided to take on the duty of raising a point the respondent’s counsel did not complain of …..the learned trial Judge is the one complaining for the respondent that her fundamental right of fair hearing is being infringed upon by the manner the objection was couched……..with tremendous respect to the learned trial Judge it is not the duty of a judge in the administration of justice to do a cloister justice by adopting ‘Guerrilla tactics, rooted in the style of surprise and attacks,’ in a ruling or judgment in the form (sic) of raising issue *suo motu* without affording counsel to the parties to address him on the point. In discharging his responsibilities, a counsel can be as courageous and bold in presenting arguments against any ruling he deems erroneous and should not be deterred, like was the case of Joseph Egerton Shyngle, one of the first indigenous counsel, referred to in 1920s as ‘The Lion of the Bar’, by any fear of judicial displeasure or even punishment. A counsel should, whether at trial stage or on appeal, always gauge the words he utters and the language he uses in portraying remarks made by Judge. He should display a dignified and respectful attitude towards a Judge.
whether in the Judge’s presence or at his back. This should not be for the sake of the temporary incumbent Judge and his person but for the maintenance of respect for and confidence in the Judicial Office, moreso when a Judge is not wholly free to defend his action on a case he decided when it goes on appeal. Thus, if a counsel cannot ward off unjust criticism and clamour against a Judge, he should not levy same on him. I think where, in course of proceedings a Judge uses an intemperate language on a counsel, the counsel should instantly develop a shock-absorber; employ tactics, patience, perseverance and sagacity in replying to that point and not returning fire for fire as done by learned counsel in this case as he returned the words, ‘guerrilla tactics, rooted in style of surprise and attacks’, used on him by the trial Judge. The words used by J.E. Shyngle: ‘I cannot borrow your intelligence to conduct my case, I must use my own’ on a Judge who appeared to be hostile and interrupted him too often in a criminal charge, was regarded to be a peremptory language not befitting of an advocate, (carried by the Nigerian Daily Times, 16th June 1926, under the title ‘The Late Hon. J. Egerton Shyngle: A Sketch by a ‘Blue Bag’’ quoted by Adewoye, O. (1977) *The Legal Profession in Nigeria, 1965-1962*, Longman Nigeria Ltd; Ikeja Lagos, page 127. These and many other rules of legal practice have for long been codified as forming part and parcel of professional conduct in the legal procession.”
It may sound elementary but it is unfortunate to admit that in certain cases I have observed the failure of counsel to know the appropriate name or language with which to address the Courts/Judges. *The manner of addressing the Judges, professional colleagues and dressing code form the integral part of this profession and there is need to emphasize on it.* For the avoidance of any doubt, I will now reproduce the appropriate names by which Courts should be properly addressed in Nigeria. They are:

1. **Magistrate/Area Courts in Criminal Proceedings:**
   - Your Worship.
2. **District Courts/Area Courts Judges in Civil Proceedings:**
   - Your Honour
3. **Judges of Superior Courts:**
   - My Lord.
4. **Court of Appeal/Supreme Court Justices:**
   - My Lords.
5. **Legal Practitioners:**
   - My Learned friend, or The Learned Senior advocate of Nigeria, or learned silk.
6. **Senior Advocates of Nigeria – Senior Advocates of Nigeria:**
   - My learned brother silk, or my learned brother.

**DUTIES OF COUNSEL TO HIS COLLEAGUES**

Counsel must see his colleague either appearing with him or on the other side as his friend. Counsel and all counsel in the matter with him are ministers in the same temple; their functions are not different simply because they are on different sides of the divide. Counsel therefore owes a duty to respect his colleagues and render his disagreement with the greatest respect. Counsel must not get drowned in his clients brief as to get emotional and react to his colleagues with disrespect.

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13 Abdulkadir, SAN (supra)
I have deliberately considered this duty which is not ordinarily emphasized because the ugly trend of a collapsing counsel to counsel relationship must be addressed. In my first year in practice, I had the fortune of being taken out for lunch by a colleague when as a young lawyer I appeared on the other side with him. He took interest in my submission and took me out. The cordiality that should exist between legal practitioners cannot be overemphasized as it forms the bedrock of this profession. As John Silher of Boston University put it:

“the lawyer’s contribution to the civilizing of humanity is evidenced in the capacity of lawyers to argue furiously in the court room then sit down as friends over a drink or dinner. This habit is often interpreted by the layman as a mark of corruption. In my view, it is their greatest moral achievement, it is a characteristic of human tolerance that is most, desperately needed at the present time”

I hold the view that Counsel’s equality exists and must be regarded. But in talking about equality at the Bar, we must not lose sight of the fact of seniority at the Bar. We also must appreciate that in the legal profession, there is room for promotion. There is also the law to attain the rank of Senior Advocate of Nigeria. See S.5(3) of the Legal Practitioners Act. This rank is awarded as a mark of excellence in the legal profession to persons who are in full time practice and who have distinguished themselves as advocates and have made significant contributions to the development of the legal profession. However, the
attitude of certain colleagues to the members of the inner Bar or to senior lawyers has found its way to the spotlight in recent years. I think that respect must be accorded to seniority, age at the Bar and the members of the inner Bar. I must however point out that senior members of the bar and members of the inner Bar owe a duty to colleagues to show respect and lead by examples, I speak for myself. From the day I became a Senior Advocate of Nigeria, I made a solemn promise not to use it as a tool of oppression but as someone inducted into the inner Bar and attaining the status of a leader of the Bar, to do all I can to make the Bar better, stronger and more professional in approach. This includes showing respect to the Courts, to my Colleagues and leading by example. This I have been trying to do to the best of my ability even under extreme provocation. I think it is appropriate at this stage to refer and quote Rule 27 of the Rules of professional conduct. The duties we owe ourselves as lawyers are clearly set out there. It reads:

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27 (1) A lawyer shall observe good faith and fairness in dealing with other lawyers.
(2) Without prejudice to the generality of sub-rule (1) of this rule, a lawyer shall-
   (a) observe strictly all promises or agreements with other opposing lawyers whether oral or in writing and whether in or out of court, and shall adhere in good faith to all agreement implied by the circumstances of the case.
   (b) where he gives a personal undertaking and does not expressly or clearly
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disclaim personal liability thereunder, honour his undertaking promptly; and
(c) not take an undue advantage of the predicament or misfortune of the opposing lawyer or client.

(3) A lawyer shall not hand over his brief to another lawyer to hold, and that other shall not accept the brief, unless the brief is handed over in reasonable time for the receiving lawyer to acquire adequate grasp of the matter;

(4) Where a lawyer is aware, or ought reasonably to be aware, that a person is already represented by another lawyer in a particular matter, he shall not have any dealing with that person in respect of the same matter without giving prior notice to the other lawyer. The lawyer accepting the instruction shall use his best endeavours to ensure that all the fees due to the other lawyer in the matter are paid.

(5) During the course of his representation of a client, a lawyer shall not:
(a) communicate, or cause another to communicate, on the subject of the representation with the party he knows to be represented by a lawyer in the matter unless he has the prior consent of the lawyer representing such party or is authorized by law to do so; or
(b) give advice to a person who is not represented by a lawyer in the matter or cause”

DUTIES OF COUNSEL TO CLIENTS
We must also deal with the duty of Counsel to his clients. The Duties a Counsel owes to his clients have turned out to be a major area of concern in our profession. Counsel must discharge his client’s duty in good faith. He owes a great devotion to the brief of his client, to defend it with zeal and without fear within the law. Clients are entitled to every remedy and defence available by law, which is why he briefs the legal practitioner to defend him or prosecute his case. Thus, the duty of the legal practitioner to his Client is one of enormous trust and which sometimes involve the client placing his life or his livelihood in the hands of the legal practitioner. This cannot be a simple issue. A legal practitioner will therefore be most unfair if he:

a. Handles a matter he knows or ought to know that he is not competent to handle without associating himself with a complete lawyer.

b. Handles a matter without adequate preparation.

c. Neglects a matter entrusted to him.

d. Attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.

A legal practitioner must first and foremost take full and accurate instruction from the client before advising him or acting for him. Counsel must advice on merit and

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14 S. 16, rules of Professional Conduct, 2007
within the rules of the profession. Counsel should always inform the client of the progress of his case and where there is conflict between the client and Counsel in respect of the exact instruction given, the instruction of the client must prevail because the facts of the case flows from the client.

Counsel has a duty to inform his client that his claim or defence is hopeless if he considers it to be so. Where an action is statute-barred and counsel fails to advise his client not to take the action, he could be indemnified in costs\(^\text{15}\). It is settled that as *officers in the temple of Justice, counsel should be able to give their clients genuine legal advice as to the justiciability or not of their complaints whenever briefed*\(^\text{16}\). Counsel should also keep strictly within the law notwithstanding any plea or instruction from the client, and if the client insists on a breach of law, the lawyer shall withdraw his service. This is what is required of us as professionals and unlike certain trends that has become common, counsel should not accept a brief because it has the potential of a huge income and no more. Counsel also have the duty of trust and must be accountable to his client at all times while pursuing his clients brief\(^\text{17}\). The Rules are clear that a lawyer who collects money for his client, or is in position to deliver property on behalf of his client, shall promptly report and account for it and shall not mix such money or property with or use it as, his own. But as I will show now in this paper, Lawyers conduct with regard to client money and property need visiting. I will now deal with unprofessional

\(^{15}\text{Bello Rajiv s X (1946) 18 NLR 74.}\)

\(^{16}\text{Ojo vs A.G, Oyo State (2008) 15 NWLR (Pt.1110) 309}\)

\(^{17}\text{Rule 23(2) of the Rule of Professional Conduct for legal practitioners 2007}\)
approach lawyers make on trust account and the unfortunate result:

a. Mismanaging a trust account, this can have terrible consequences on a lawyer’s career, even sometimes to the point of being debarred. In the case of **Itoegu vs. The L.P.D.C**\(^{18}\). The Supreme Court held that: “a lawyer who collects compensation on behalf of his client and could not give proper account of it has conducted himself despicably and morally reprehensible as to bring the legal profession into disrepute if condoned or unpunished will amount to misconduct”.

b. Borrowing” money from the trust account. *There is no legitimate way to borrow from a trust account.* Sometimes lawyers use trust account funds before they have a right to do so, while in other situations they use funds that they would never acquire the right to use. Either approach opens the door for the lawyer to get into serious trouble as pointed out in the last point.

c. Combining lawyer’s funds with clients’ money: A second major mistake in lawyer trust account management, involves combining lawyer’s funds with client money. This often arises out of lack of understanding on how a trust account is supposed to work.

I shall not attempt to cover the field as to all the duties counsel owes to the professional but I must say that as enormous as they are, they are not overwhelming. The

\(^{18}\) *(2010) All FWLR (Pt.501) at 804*
duties of a counsel in all situations require sincerity to his training and deference to his conscience.

**CHANGE OF LAWYER**
There is no doubt that under the Rules of Professional Conduct, clients have the right to change their lawyers. But in the exercise of this right, the old and the new lawyers have duties and obligations to ensure that the Rules of professional conduct are maintained. What are these duties. Rule 29 set them out. The Rules says that:

“(1) When a client changes his lawyer on a pending matter, the new lawyer shall-
(a) Promptly give notice to the former lawyer; and
(b) Use his best endeavours to ensure that the former lawyer is paid his earned fees.

(2) Where in litigation, a client changes his lawyer, both the old lawyer and new lawyer shall give notice of the change to the court.

(3) When a client changes his lawyer-
(a) the client is entitled to-
(i) all letters written by the lawyer to other persons at the direction of the client;
(ii) copies of letters written by the lawyer to other persons at the direction of the client;
(iii) drafts and copies made in the course of business; and
(iv) documents prepared from such drafts; and
(b) the lawyer is entitled to—
(i) all letters written by the client to the lawyer;
(ii) copies of letters addressed by the lawyer to the client.
(iii) a lien on the papers or documents of his client in respect of unpaid fees.

Practical experience shows that the above rule is observed in breach by many lawyers in practice. Lawyers encourage clients to debrief their colleagues. Some lawyers charge fees as low as N500.00 or N5,000.00 just to earn a living. The profession is being cheapening by lawyers. These types of lawyers tout around. They call them charge and bail lawyers. They have lost the respect and the dignity of the profession.

The Rules of professional conduct is the bible or the Quran of practitioners. But hardly do you see legal practitioners, putting them to use. For instance the duty of legal practitioners to the court, which is that:

“A lawyer is an officer of the court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice” is with respect, being observed in breach by many lawyers.

The manner in which our courts and Tribunals are treated with disdain and disrespect, these days, is a source of concern to me. In practice, it is the duty of lawyers to treat the court with respect, dignity and honour. See Rule 31 of the Rules of professional conducts. Where a lawyer has a proper ground to make complain, against judicial officers he must not do so on the pages of newspapers,
but to the appropriate authorities. In this case the National Judicial council, NJC. But today, you see partisan media complaint and reports. Lawyers now resort to all manner of antics to the detriment of the administration of justice.

**Magistrates, Area Court Judges and law officers in the Ministry of Justice engaging in private practice:**

Let me say without mincing words, that it is unprofessional for lawyers on the lower bench that is Magistrates, and Area Court Judges and law officers in the Ministry of Justice, to do both private and their official duties at the same time. In some states, it is reported that some magistrates, Area Court Judges and law officers in the Ministry of Justice, who are legal practitioners in paid employment or on magisterial Bench, go to the ridiculous extend of doing both their jobs and private practice in areas or jurisdictions where they are not known. This is not only unprofessional, but it is criminal and unconstitutional. There is no doubt that magistrates and Area Court Judges, and law officers in the State Ministries of Justice are public officers within the meaning of the constitution. Therefore by the **fifth schedule part I to the constitution of the Federal Republic of Nigeria as amended**, they above named persons cannot do private practice, and private businesses in addition to their jobs. Let me quote in extenso, paragraphs 1 and 2(a) and (b) of the Fifth schedule. It says:

“1. A public officer shall not put himself in a position where his personal interest conflicts with his duties and responsibilities.”
2. without prejudice to the generality of the foregoing paragraph, a public officer shall not-

(a) receive or be paid the emoluments of any public office at the same time as he receives or is paid the emoluments of any other public office; or

(b) except where he is not employed on full time basis, engage or participate in the management or running of any private business, profession or trade but nothing in this sub-paragraph shall prevent a public officer from engaging in farming”

CONCLUSION
There is no gainsaying that legal practice in Nigeria witnesses a dramatic growth with entrenchment of democracy in our polity, premised on the principle of rule of law. The importance of legal profession as an instrument for political, socio economic development of any society cannot be overemphasis. In conclusion let me say that the state of legal practice in Nigeria is dwindling. We need to do some thing urgently before we lose respect and dignity of the profession. Both the Bar and the Bench must do everything possible to reclaim the almost lost glory of practice. Lawyers must be the beacon of hope and we must pursue the object of continuous learning. The new and the old must learned. We must invest in knowledge. That is why we are called learned gentle men. As the preface to Coke report put it:
“There is no jewel in the world comparable to learning, no learning so excellent both for princes and subject, as knowledge of law...”

As lawyers, we must deal with ourselves in utmost good faith. Back stabbing is not a virtue of an advocate. An advocate is a man of honour and dignity. The words of an advocate are like an oath and binding. What a lawyer said to his colleague does not need to be in writing before it become binding on him.

And Alexander Stephens once remarked:

“No pursuit in life is more honourable or useful than that of the law when followed as it should be, none requires more rigidity, a stout adherence to all the precepts and principle of morality or the possession and practice of the highest and noblest virtues that elevates and adorns human nature. Not even the office of the holy minister opens up such a wide field for simply doing good to fellow men...”

There are rewards for hard work and industry in the profession. In the legal profession, there are many mansions. But only the serious and hard working practitioners can hope to occupy these mansions. That is why Chief Richard Akinjide, SAN said:

“Practically in all jurisdictions, the legal profession is like a pyramid. Nigeria is no exception. The base is very crowded, but there is plenty of room at the top. The top is refreshing and succulent. You have to work hard to get there; and you need to work even harder to remain there”.

I thank you all for giving me your attention.