

**CODE OF CONDUCT FOR MAGISTRATES AND OTHER JUDGES
OF THE LOWER COURTS**

BY

ADAEZE OBY AZIWE, ESQ

**OVERSEER, RESEARCH DEPARTMENT, NATIONAL JUDICIAL
INSTITUTE**

**A PAPER PRESENTED AT THE INDUCTION COURSE FOR NEWLY
APPOINTED MAGISTRATES ON FRIDAY, 24 MAY, 2024**

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1.0 Introduction

I am very humbled and delighted to speak on this Topic that is of great relevance to the Judiciary of our great nation, Nigeria. My sincere gratitude goes humbly to my Lord, the Honourable Chief Justice of Nigeria and Chairman Board of Governors of the National Judicial Institute, Hon. Justice Olukayode Ariwoola, GCON, the Chairman Education Committee of the National Judicial Institute, Hon. Justice K. M. O. Kekere-Ekun, JSC, CFR and the esteemed Administrator of the National Judicial Institute, Hon. Justice Salisu Garba Abdullahi, for granting me the privilege to deliver a Paper at this Workshop.

1.1 Scope of Discussion

It is common to observe that every profession has its Code of Conduct and Professional Ethics, written or unwritten, for the regulation, control and management of the conduct of its members. The legal profession, for instance, one of the oldest in the world, is not an exception¹. In both practice and principle, the

*Overseer, Research Department, National Judicial Institute, Mohammed Bello Centre, Abuja.

¹ The profession has well established code of conduct and professional ethics governing the conduct of its members.

legal profession in Nigeria falls into two neat categories: the Bench and the Bar², and until recently, only the Bar had written ethics governing its members³.

Prior to the publication of the *Code of Conduct for Judicial Officers of the Federal Republic of Nigeria*, the operation of an unwritten code of conduct for Judicial Officers gave rise to speculation as to what amounted to unruly behaviour and vice versa. However with the publication of the said Code, arguments, disagreements and disputes as to whether certain behaviours are punishable as unethical or not have been laid to rest.

The publication of the Code of Conduct is regarded as a major breakthrough in the legal profession because it provides in a single handy pamphlet a document containing the “dos” and “don’ts” of members of the Nigerian Judiciary and this goes to the credit of the Hon. Justice M. L. Uwais, GCON who by the publication of the Code realised the dreams of the profession which had been in incubation for some years.⁴

This paper will discuss in full the Rules which govern the daily conduct of Judicial Officers both in their judicial and personal capacities. These Rules are sub-divided into sub-rules and paragraphs. In addition, this Paper will examine the spheres of ideal form of life and conduct set up by the profession to govern its members. They are the “supreme good” of the profession because they are good in themselves. Thus, every Judicial Officer is expected to aspire to their attainment, and to succeed in attaining them. Where a Judicial Officer is found wanting with regard to

² The Bench consists of judicial officers while the Bar consists of lawyers.

³ See *The Rules of Professional conduct in Legal Profession*, which dates as far back as 1980; this has constantly been revised. Additionally, being public officers, the members of the Bench are governed by the Code of Conduct for Public Officers set out in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria, 1999. There were at times disagreements and disputes as to whether certain behaviours were punishable as unethical, particularly in borderline or hybrid situations. This and other reasons led to the publication of the *Code of Conduct for Judicial Officers of the Federal Republic of Nigeria* in 1998 by the National Judicial Institute under the erstwhile chairmanship of the Honourable, the Chief Justice of Nigeria, Hon. Justice M.L. Uwais, GCON.; this has been revised in 2016.

⁴ One of the dreams of the profession is provided for in the preamble to the Code of Conduct for Court Employees in the following terms “And whereas it is desirable that a standard of conduct which a Court Employee should observe be prescribed and published for the information of the Court Employee and the public in general so that the objectives set out in this preamble may be achieved”.

any of the Rules in the Code of Conduct for Judicial Officers, he stands the risk of professional discipline⁵.

1.2 Preamble

The Preamble to the Code of Conduct for Judicial Officers submits that the provisions of the Code should be adopted by all Judicial Officers to serve as the minimum standard of conduct to be observed by each and every Judicial Officer⁶. Furthermore, the preamble admonishes Judicial Officers that their judicial duties prescribed by law takes precedence over all other activities⁷.

1.2.1 Explanatory notes- The explanatory notes which immediately follow the Preamble expressly outline the category of persons whom this Code applies to. In this light the explanatory notes provide:

“In this code, the term “Judicial Officer” shall mean a holder of the Office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge Of the Federal High Court, the President or Judge of National Industrial Court of Nigeria, the Chief Judge or Judge of High Court of a State and of the Federal Capital Territory, Abuja, the Grand Kadi or Kadi of a Sharia Court of Appeal of a State and the Federal Capital Territory, Abuja and Every holder of similar office in any office and tribunal where the duties Involves adjudication of any dispute or disagreement between person and Person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person.”

1.3 Applicability

A Judicial Officer, for the purposes of the Code of Conduct, means all categories of Judges of Superior Courts involved in the day-to-day adjudication of cases in those Courts. As it is, the definition of a Judicial Officer in the Code is comprehensive.

⁵ Judges of Superior Courts of Record are disciplined by the National Judicial Council while Magistrates are answerable to the Judicial Service Commissions of their various states.

⁶ Paragraph 4, Preamble of the Code of Conduct for Judicial Officers 2016

⁷ See Paragraph 3, Preamble of the Code of Conduct for Judicial Officers 2016

It also includes holders of similar offices of all Special Courts, Tribunals, Commissions of Enquiry; as well as such other bodies set up to perform judicial and quasi-judicial functions.⁸ The comprehensive definition in the Code is commendable.

By implication therefore the Code of Conduct for Judicial Officers applies to Magistrates because as stated in the explanatory notes, the term “Judicial Officer” includes every holder of office where the duties involves adjudication of any dispute or disagreement between person and person (natural or legal) or person and Government at Federal, State and Local Government levels including the agents and privies of any such person⁹.

1.4 Propriety and the appearance of propriety, both professional and personal

Rule 1 of the Code of Conduct provides for the avoidance of impropriety and not just impropriety but also the appearance of impropriety in all of the Judge’s activities both in his professional and private life¹⁰.

In essence, propriety and the appearance of propriety, both professional and personal, are essential elements of a Judge’s life; as members of the public expect a high standard of conduct from a Judge, he or she must, when in doubt about attending an event or receiving a gift, however small, ask himself or herself the question –“*How might this look in the eyes of the public?*”¹¹. The Code of Conduct even stipulates that where applicable, a Judicial Officer must be sensitive to the need to avoid contacts or social interactions that may lead people to speculate that there is a special relationship between him and someone whom the Judge may be tempted to favour in some way in the course of his judicial duties.¹²

Furthermore, Judicial Officers are strictly prohibited from gambling as a leisure activity¹³.

⁸ See Explanatory notes

⁹ Explanatory notes, Revised Code of Conduct for Judicial Officers February 2016

¹⁰ See Rule 1 (2) of the Code of Conduct for Judicial Officers .

¹¹ See Rule 1 (1)

¹² See Rule 1 (4)

¹³ See Rule 1 (7)

1.5 Personal Relations with Individual Members of the Legal Profession

Judicial Officers are required by the Code to not accept gifts from lawyers who might appear in a case before him if the gift is not one given to Judicial Officers generally at festive seasons such as Christmas or Salah gifts; provided always that the gift is not more than that ordinarily given or is not of pecuniary nature.¹⁴.

In addition, the Code of Conduct prohibits Judicial Officers from belonging to any social union or group where lawyers who appear before him or her are also members.¹⁵

Although, social contact between members of the judiciary and members of the legal profession is a long standing tradition and proper, a Judicial Officer should act on the basis of common sense and exercise caution in this aspect of his social contact with members of the profession.¹⁶

1.6 Fidelity to the Constitution and the Law

Rule 3 urges Judicial Officers to uphold the provisions of the 1999 Constitution (as amended) as well as other extant Laws. For example, Rule 3.4 provides:

“A Judicial Officer shall ensure strict compliance with the Provisions of the Constitution which require that a copy of Judgment of the Superior Court of Record be given to parties in the cause within seven days of the delivery thereof.”¹⁷

The principle of fair hearing as enshrined in the 1999 Constitution¹⁸ is protected as can be seen in Rule 3.3 which says that a Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full

¹⁴ See Rule 2 (5)

¹⁵ See Rule 2 (9)

¹⁶ Rule 2 (2)

¹⁷ See S. 294 (1) of the 1999 Constitution which provides that Judgement must be delivered not later than 90 days after the conclusion of evidence and all parties to the matter must be furnished with duly authenticated copies of the decision within seven days of the delivery thereof.

¹⁸ See s.36 1999 Constitution

right to be heard according to law. Thus, granting of *ex-parte* applications should be done with caution.

1.7 *Duty to abstain from comments about a pending or impending proceeding in any Court in this country*

There are only two sub-rules under Rule 4; Rule 4.1 urges Judicial Officers to abstain from comments about pending or impending proceedings in any court in Nigeria, while Rule 4.2 stipulates that Judicial Officers are bound by professional secrecy with regard to their deliberations and to confidential information acquired by virtue of their official capacity. Thus, such confidential information should not be used or disclosed by the Judicial officer for purposes not related to the performance of his judicial duties.

1.8 *Right to Freedom of expression*

Rule 5 urges Judicial Officers in the exercise of their freedom of expression to adhere strictly to political silence and conduct themselves in such manner as to preserve the dignity of the judicial office and the impartiality of the Judiciary. This Rule emphasises that a Judicial officer like any other citizen, is entitled to freedom of expression, belief, association and assembly; but must avoid involvement in public discussions if his or her involvement could reasonably undermine confidence in his or her impartiality.

1.9 *Duty to abstain from involvement in public controversies*

Under Rule 6, Judicial officers are reminded that their duties are not consistent with any involvement in public controversies; in this regard Judicial officers should not enter the political arena or participate in public debates, either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government¹⁹. However, Judicial officers may participate in discussion of the law for educational purposes or to point out weaknesses in the law. Judicial commentary should be limited to

¹⁹ Rule 6 (b)

practical implications or drafting deficiencies and should be made as part of a collective or institutionalized effort by the Judiciary, not of an individual²⁰.

2.0 Duty in Regard to personal and fiduciary financial interest

Judicial officers must be aware of their personal and fiduciary financial interests, as well as those of their family members in respect of matters for adjudication before him.²¹

If it appears that a Judicial officer, a family member or someone in a fiduciary relationship with him is likely to benefit financially from a case before him, he has no alternative but to withdraw from the case.²² The Code defined Fiduciary relationships to include roles such as executor, administrator, trustee and guardian²³

2.1 Duty in regard to the Judge's family, social or political relationship

This Rule generally addresses the use of a Court position to secure “privileges” or “exemptions” by a Judicial Officer himself or by his family, friends or other associates. Generally these would be special considerations given by others to the Judicial Officer specifically because of his position as a Judge. The solicitation or acceptance of a gift with the understanding that something will be done in return contravenes the ideals expressed in this Rule. Public service should be delivered impartially, with equal service to all users. The administration of justice is subverted if Judicial officers appear to deliver service in exchange for a reward. All users of the justice system must be treated equally.

Thus a Judicial Officer shall not use or accept to use or lend the prestige of the judicial office to advance his private interest, that of his family members or of anyone else, nor shall a Judicial officer convey or permit others to convey the

²⁰ Rule 6 (f)

²¹ Rule 7 (1)

²² Rule 7 (2)

²³ Rule 7.3.2 (a)

impression that anyone is in a special position improperly to influence the performance of his judicial duties.²⁴

In addition a Judicial Officer is prohibited from soliciting, requesting or attempting to use his or her position to reach or contact any colleague or any other adjudicator in the judicial system with a view to influencing the outcome of any case in any court on any ground.²⁵

A Judicial Officer may not abuse his or her position by using the resources, property and funds under his control for purposes other than those for which they are meant.²⁶ In this regard, judicial stationery should not be used in a way that amounts to abuse of the prestige of judicial office. Judicial stationery is intended for use when a Judge wishes to write in an official capacity. Care should be taken in the use of judicial stationery when writing in a private capacity. It would not be objectionable to send a thank you note after a social occasion using judicial stationery. But it is inappropriate to use judicial stationery if there may be a reasonable perception that the Judicial officer is seeking to draw attention to his position as a Judge in order to influence the recipient of the letter²⁷. A Judicial officer may however write a letter of reference²⁸ if it is a kind that would be written in the ordinary course of business²⁹ for example a court staff seeking a reference with regard to work history; but Judicial officers are prohibited from writing letters of reference for persons who they do not know³⁰.

2.2 Acceptance of Gifts

Acceptance of gifts of any sort raises a question as to the independence of the Judicial Officer, and is therefore prohibited. An understanding may be tacit on the part of the donor that the Judicial Officer will look favourably upon the donor in the future. It will certainly seem so to observers. Seemingly small and innocent gifts may soon lead to larger ones, more and more threatening the integrity of the

²⁴ Rule 8.4

²⁵ Rule 8.5 (iv)

²⁶ Rule 8.6

²⁷ Rule 8.6 *ibid*

²⁸ Rule 8.7

²⁹ Rule 8.7 (ii)

³⁰ Rule 8.7 (i)

Judicial officer. The compensation of Judicial Officers is to be provided by their funding unit through their salaries and benefits. A Judicial Officer should not request or accept any additional compensation for performing his judicial duty.

Thus a Judicial Officer, as a condition for the performance of his duties, or members of his family shall neither ask for nor accept, for himself or on behalf of any person, any gift or benefit of any kind on account of anything done or omitted to be done by him in the discharge of the duties of his office.³¹

A Judicial Officer is however permitted to accept:

- (a) Personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom, this refers to ordinary social hospitality that is common in his community, extended for a non-business and limited to the provision of modest items such as food and refreshments;
- (b) Books supplied by publishers on a complimentary basis;
- (c) A loan from lending institutions in its regular course of business on the same terms generally available to people who are not Judicial officers;
- (d) A scholarship or fellowship award on the same terms applied to other applicants who are not Judicial officers; and
- (e) Reimbursement or waiver or charges for travel-related expenses, including the cost of transportation, lodging and meals for him and a relative, incident to his attendance at a function or activity devoted to the improvement of the law, the legal system or the administration of justice.³²

2.3 Practice of Law

A Judicial Officer should not practise law whilst a holder of judicial office³³ nor act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity³⁴. A Judicial Officer is prohibited from soliciting patronage from litigants or members of the public for purposes of preparing affidavits or other processes for

³¹ Rule 10 (1) (i)

³² Rule 10.2 (vii)

³³ Rule 9.4

³⁴ Rule 9.4 (b)

monetary consideration or utilize the Court's resources or property for such purposes.³⁵

Judicial Officers are not permitted to practice law, with the exception of those employees in the court registry who are qualified legal practitioners required by their statutory duties to offer legal guidance. However, the general prohibition against the giving of legal advice does not mean that Judicial officers should be afraid to provide excellent and accurate information about the Court and Court process as authorised by law.

Consequently, a Judicial officer may not offer legal advice, canvass, tout, and or present himself in such a manner as to give the impression of being capable of influencing the course of justice. Furthermore, in respect of personal issues, Judicial officers are urged to be circumspect about becoming involved in personal litigation. Personal litigation must be a last resort.³⁶

2.4 Conflict of Interest.

A Conflict of Interest exists when the Judicial Officer's ability to perform his duty is impaired or when the Judicial Officer, his family or business would derive some benefits as a result of his position within the Court System.

It is therefore required that Judicial Officers avoid situations that would interfere with the performance of their judicial duties³⁷.

The Judicial Officer like every other Nigerian, has the constitutional right of freedom of association. Though he has such constitutional freedom, the ethics of his chosen profession seem to place some restrictions on his freedom of association as he or she is required to only participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties³⁸. A Judicial Officer could be seen in public but not in every public

³⁵ Rule 9.4 (a)

³⁶ Rule 9.4 (c)

³⁷ Rule 13.1

³⁸ Rule 13.1 (ii)

place. He could be seen in public but not regularly, as a matter of daily routine. A Judicial Officer could be seen in public but not to tell the immediate world around that he is a Judicial Officer. In other words, a Judicial Officer should on no account, attract attention of the public to his presence.

The ideal situation is for a Judicial Officer to be seen mainly in three places: his residence, his office (the court) and his place of worship. Since this is humanly impossible, he has to use his discretion to the extent that he is scarcely seen in public and only when it is absolutely necessary to do so. He should try as much as possible to avoid parties. He should also be able to choose wisely which parties to attend whether official or domestic. On no account should a Judicial Officer attend any party, official or domestic, where he has to compromise his position as a Judicial Officer either immediately after the party or in the future. His best suggested attitude ought to be to politely reject the invitation. It is in his interest and in the interest of the job that he does so.

The Judicial Officer's life of isolation means so much to him and his work. It extends to keeping less friends and acquaintances. Judicial Officers are well advised to select the company they keep and on no account should they keep the company of people of low moral virtue.

The Judicial Officer's position within the Court system must be his primary employment. Outside employment³⁹ must be fulfilled outside the normal working hours of the Court and must not be in conflict or interfere with the performance of his judicial duties and responsibilities in the Court.

Considering the demands of their office, Judicial Officers are prohibited from taking or accepting Chieftaincy titles while in office⁴⁰. Judicial Officers may however engage in the arts, sports and other charitable or social and recreational activities; provided such vocational activities do not adversely affect the dignity of his office or interfere with the performance of his judicial duties⁴¹.

³⁹ Outside employment here would refer to farming/agro allied ventures as public servants are only allowed to venture into agriculture aside their paid employment.

⁴⁰ Rule 13.2

⁴¹ Rule 13.1 (i)

2.5 Disqualification

A Judicial Officer is required to disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned, including but not limited to instances where he has a personal bias or prejudice concerning a party or personal knowledge of the facts in dispute⁴², or if he previously served as a legal practitioner in the matter in controversy, or a legal practitioner with whom he previously practiced law, served during such association as a legal practitioner concerning the matter or the Judicial Officer or such legal practitioner has been a material witness in the matter⁴³; and especially if he or his spouse, or a person related to either of them is a party to the proceedings⁴⁴

In the event that a Judicial Officer discloses on the record the basis of his disqualification, if based on such disclosure, the parties, their representatives and/or their legal practitioners, independently of the Judicial Officer's participation, all agree that the Judicial Officer's relationship is immaterial or that his financial interest is insubstantial, the Judicial Officer shall continue to participate in the proceeding⁴⁵.

2.6 Administrative Duties

A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of Judicial Officers as well as court officials⁴⁶.

Judicial Officers must also ensure that their staff and other court officials under their direction and control observe the same standards of integrity and diligence that apply to them⁴⁷.

⁴² Rule 12.1 (a)

⁴³ Rule 12.1 (b)

⁴⁴ Rule 12.1 (d)

⁴⁵ Rule 12.2 (Waiver of Disqualification)

⁴⁶ Rule 11 (i)

⁴⁷ Rule 11 (ii)

A Judicial Officer on becoming aware on reliable evidence of unethical or unprofessional conduct of another Judicial Officer or a legal practitioner should immediately take adequate steps to report the same to the appropriate body bestowed with disciplinary powers on the matter complained of.⁴⁸

In the exercise of his administrative duties, a Judicial Officer must avoid any form of nepotism and favouritism⁴⁹; as well as refrain from engaging in sexual harassment of a colleague or some other subordinate junior officer⁵⁰.

Judicial Officers can neither be members of a Tenders Board nor engage in the award of contracts⁵¹.

2.7 *Duty of a Judicial Officer in regard to travels within and outside Nigeria*

Judicial Officers are required by the Code of Conduct to obtain permission from the Chief Justice of Nigeria for travels outside the country. The intent is to curb delays in the administration of justice⁵². In the event of court vacation season when courts are on recess, it is required for Judicial Officers to leave contact addresses with the Chief Registrars⁵³.

Furthermore, where a Judicial Officer is sitting as a member of a Panel he should make such arrangements that would ensure that the business of the Court as scheduled is not disrupted⁵⁴. Where it is strictly essential for a Judicial Officer to travel out of his duty station during working days on short notice such officer shall as soon as possible before or immediately after he embarks on such journey inform and obtain clearance from his Head of Court⁵⁵.

⁴⁸ Rule 11 (iii)

⁴⁹ Rule 11 (iv)

⁵⁰ Rule 11 (v)

⁵¹ Rule 11 (vi)

⁵² Rule 14.1

⁵³ Rule 14.5

⁵⁴ Rule 14.4

⁵⁵ Rule 14.3

2.8 Publication by a Judicial Officer while in Service

The Code of Conduct for Judicial Officers specifically in clear terms prohibits Judicial officers from publishing books or cause another person, group of persons, publishing houses, whosoever acting on their behalf to publish books until they cease to be Judicial Officers, where such publication may infringe in any manner the Code of Conduct for Judicial Officers⁵⁶.

Furthermore, where a Judicial Officer while in service publishes any book or causes another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book, he shall ensure that such publication is not used or prohibit such publication from being used, in any manner or form as a means of raising funds, beyond the normal cover or market price of such publication; or as donation or gift to him or to anyone on his behalf; or to any cause related to or connected with him⁵⁷.

The Code of Conduct for Judicial Officers, for the purpose of Rule 15, defines “Book” to include but not limited to biographies, essays, collection of judgments, textbooks, journals, articles and any publication which may attract financial benefits or otherwise to the Judicial Officer or author, if such author is different from the Judicial Officer⁵⁸.

2.9 Sanctions

The breach or violation of any Rule contained in the Code of Conduct for Judicial Officers constitutes gross misconduct or misbehaviour and shall attract disciplinary action. Furthermore any disciplinary action meted out to an erring Judicial Officer shall be without prejudice to the penalty which may be imposed by any law where the breach is also a criminal offence.⁵⁹

⁵⁶ Rule 15.1

⁵⁷ Rule 15.2

⁵⁸ Rule 15.3

⁵⁹ See the subhead ‘*Application of the Code*’ in the Code of Conduct for Judicial Officers. This subhead immediately follows the *Preamble* and the *Explanatory notes*.

3.0 Conclusion

We have examined in this Paper some specific aspects or areas of the Code of Conduct for Judicial Officers. It should be mentioned that Judicial Officers must ensure that they meet up with the standards expected of them as unethical behaviour obstructs the judicial process⁶⁰ Where a Judicial Officer is seen to behave in an unruly manner such behaviour detracts from the aura and dignity of the Judiciary. Indeed all that a Judicial Officer is expected to do is to uphold the age long conservative cum best tradition of the Judiciary in order that the institution is not disparaged or brought to public opprobrium and contempt.

In his Keynote address at the Induction Course for newly appointed Judges of the Superior Courts of Record held at the National Judicial Institute on 6 May, 2024 , my Lord the Chief Justice of Nigeria, Hon. Justice Olukayode Ariwoola, GCON aptly captured this expectation when he stated thus -

“You must remain steadfast in the face of whatever challenges that may arise by upholding and protecting the rule of law, your integrity and that of the judiciary, including the best traditions for which the judiciary is renowned. You must resist any influences that attempt to compromise our integrity and impartiality. Be humble in recognizing the limits of your knowledge. Be firm, decisive, open minded and develop attentive listening capabilities, be the master and leaders of your courtrooms but do not be carried away with the power of your judicial office. Seek guidance through continuing education and support, while learning from fellow judges, this way, the judiciary will be truly repositioned ”

Thank you for listening.

⁶⁰ See Paragraphs 1 & 2 of the Preamble which strongly allude to this submission; the first Paragraph to the Preamble posits that an independent, strong, respected and respectable Judiciary is indispensable for the impartial administration of Justice in a democratic State; while the second Paragraph provides that it is the duty of every Judicial Officer to actively participate in establishing, maintaining, enforcing, and himself observing a high standard of conduct that will ensure and preserve transparently, the integrity and respect for the independence of the Judiciary.