

**THE NATIONAL JUDICIAL INSTITUTE.
CONFERENCE OF ALL NIGERIA JUDGES
OF THE LOWER COURTS.**

**THEME: The Lower Courts as Veritable Instruments
for Justice and Peace in a Democratic
Society.**

**PAPER: Accountability and Transparency in the
Judicial Process: Understanding Judicial
Ethics and Code of Conduct for Judicial
Officers in Nigeria.**

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1. INTRODUCTION

The topic of this presentation can be rephrased as follows:

How can a knowledge of judicial ethics and code of conduct for Judicial Officers enhance/ensure accountability and transparency in the Judicial process?

This must be situated within the theme of this conference which is **The Lower Courts as veritable instruments for Justice and Peace in a democratic society**. There is no doubt that a transparent and therefore an accountable judiciary is *sine qua non* for a just and peaceful democratic society.

There are two important elements in this discussion. The first is:

- **Judicial Ethics**

The second is:

- **Code of Conduct for Judicial Officers**

1.1 Ethics and the Code:

This dichotomy seems to suggest that the code of conduct is not exhaustive on matters concerning ethics. That may be so because the word *ethics* is a wide

expression which covers good ethical behavior, doing the right things and avoiding the wrong things or avoiding the appearance of doing the wrong things.

This probably explains why rule 1 of the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (**The Code**) is all-embracing since it appeals to ethical standards.

The rule provides:

*A judicial officer should avoid
impropriety and the avoidance of
impropriety in all his activities.*

In my view, what amounts to impropriety is a question of fact based on the facts and circumstances of each case though there seem to be universal standards. Rule 1 is thus a wrap-up provision.

The ethical pillars as deducible from the Holy Books emphasize the fear of God as both the Holy Bible and the Holy Quran emphasize the need for Judges and indeed all believers to stand firm for justice regardless of who is involved and not follow the lusts of the heart which could make one swerve or decline to do justice. Principal amongst these lusts is bribery which blinds the eyes of even the wise and honest thus making them to arrive at the wrong decision.

Indeed corruption is the bane of not only the Judiciary but the entire country, Nigeria. Happily, Nigeria is not the only country with the problem though it seems to be hydra-headed in Nigeria.

The issue of Ethics permeates the code. This discussion will therefore focus on the unwritten Code of Ethics on the one hand and the written Code of Conduct on the other. It is however instructive to note that the violation of any of the rules in the Code amounts to judicial misconduct or misbehavior and may entail disciplinary action.

Rule 1 has however, in my view incorporated the unwritten rules of ethics.

It is good to have a written code or standards of conduct as this fosters a culture of judicial independence as it states the ideals in terms of conduct expected from Judges in their interface with members of the public, the legal system and profession. Even though important to the judiciary, the English attitude has been **‘the less definition attempted, the better; that if you pick judges who know how to behave, then all will be well as if you do not, no amount of analysis of ethical problems will help’**. English Judges were guided by conventions, traditions and understandings established over the years. The English Judiciary has since 2002 had a Guide to Judicial Conduct (**which was revised in 2011**). This was in response to international and national texts setting appropriate standards of

judicial conduct so that the independence and impartiality of judges can be demonstrably seen.

For more: see: Judges on trial, the independence and accountability of the English Judiciary 2nd Edition by Simon Shetreet and Sophie Turenne; Cambridge University press 2013, 184 – 186. The Code of Judicial Conduct replaced the magna carta 1215 and the Judicial Oath (*I will do right by all manner of people , after the law and usages of this realm, without fear or favour, affection or ill will*) *op cit @ 185.*

The Code is a precursor to the Bangalore principles having been first published in 1998.

Our code was first published in 1998.

The six principles asserted in the Bangalore Principles of Judicial Conduct (The Bangalore Principles) are:

- Independence
- Impartiality
- Integrity
- Propriety
- Equality
- Competence and diligence

The code is a defining component of public trust in the Judiciary since it contains written rules of guidance for Judges. It thus ensures transparency in the affairs of the Judiciary and since it also presents penalty for its breach, the code makes Judges accountable for their conducts both to the Judiciary itself as an institution as well as the public at large. By setting standards the impartiality and independence of Judges is demonstrated for all to see. Where there is a departure from those principles therefore, the conduct in question is clearly seen for what it is: a breach of the rules of accountability and transparency. Understanding the written and unwritten codes of conduct for Judges is thus essential for transparency and accountability in the judicial process. Transparency and accountability in the judicial process are some of the issues militating against a credible judicial system. See *National Judicial Council Policy of the National Judicial Council, April 2016 page 3 paragraph 1.6.*

The unwritten code seems focused on matters of propriety which basically speaking is a moral issue. The written code i.e. The Code of Conduct for Judicial Officers is divided into 3.

Rule 1 deals with respect and compliance with the laws of the land and conduct that promotes confidence in the integrity and impartiality of the judiciary.

Rule 2 deals with adjudication duties, administrative duties, disqualification and waiver of disqualification.

Rule 3 deals with extra-judicial activities.

Since the administration of Justice is one of the cardinal functions of society and Judges are entrusted with wide and sometimes unreviewable powers it is important to know the principles of conduct that bind Judges. *See: The business of judging selected essays and speeches – Tom Bingham Senior Law Lord, Oxford University Press, 2000, 69 – 70.*

2. The Unwritten Code:

The ethics (unwritten rules) would quite naturally cover a wide spectrum like the obvious e.g. accepting a gift from a current litigant to that which is ‘*not done*’ but carries no sanction like using official writing paper to conduct an argument with one’s insurers. In between are those acts which would derive colour based on the degree of the conduct e.g. intemperate conduct depending on whether frequent or isolated or even sleeping in court – which could be evidence of occasional ill-health, isolated tiredness or even lack of fitness for the job – or ripe old age.

Even though the need to acquire and maintain professional competence is a written rule (**Rule 2 (A)(1)**) over-familiarity could itself lead to errors.

Because Judges exercise great powers based on discretion, they are expected to exercise an even higher level of discretion in their day to day conduct, in or out of Court. This to me, is the crux of the unwritten code.

In his book, Judicial Ethics in Australia (quoted by *Lord Bingham* in the business of Judging), *Mr. Justice Thomas* of the Queensland Supreme Court identified the following principles highlighting the social constraints to which a Judge is subject:

- **A judge should not have particularly close contact with anyone who regularly appears in his Court.**
- **There seems to be no general expectation that Judges should never go into a public bar. Indeed Judges are not expected to be seen in public houses about a mile away from the law Courts in the strand or where they actually sit. They can however have drinks with a friend in a respectable bar in their neighbourhood.**
- **Even though a Judge need not necessarily conduct his private life in accordance with the highest standards of morality, he must at least do so in such a way as to avert the possibility of scandal and respect the law.**

Personally, I do not think Judges should drive themselves especially in these days of reckless driving. This calls to mind a case *in Lagos* in which a commercial bus driver drove recklessly and incurred the wrath of a Judge who was driving his car. The driver ended up in Court on a criminal charge. Quite naturally adverse comments attended the proceedings. This is a personal view which is not meant to deny Judges of the pleasures of driving themselves.

- **Judges should display ordinary good manners as that enhances the dignity of the office.**

Indeed, *Sir Robert Megarry Judges and Judging, Child & Co. lecture, 3rd March 1977. 5* brought the point home when he said ‘**the most important person in Court is not the Judge or the advocate or the witness but the litigant who is going to lose**’.

- **Apart from pecuniary interests, a Judge should disqualify himself from hearing a case if for any reason he is unable to or it seems, to him he is reasonably unable to hear the case**
- **A Judge should not make disparaging comments, about parties in any case he is currently trying.**

- **It is improper for a Judge to court publicity or seek public acclaim or newspaper headlines. The best Judge is he whose name is unknown to the average newspaper reader.**

Popular applause or distaste or thinking about what men would think has no place in judicial affairs.

- **Judges can consult one another with regards to their work but not Judges exercising appellate jurisdiction over their courts.**
- **Judges must not by their conduct obstruct any arguable appeal either by making findings or fact more conclusive than the evidence warrants or by passing an unduly lenient sentence in the hope of deterring an appeal.**
- **Judges should not from the bench or otherwise answer public criticism of their decisions. That is better left to the appellate courts, academic commentators or public opinion. See Bingham: the business of Judging 69 – 86.**
- ***Should Judges go in public transport?* This is unthinkable in Nigeria even though English Judges go in public transport, probably to show that they are ordinary citizens.**
- ***Should Judges attend parties hosted by Legal Practitioners?* That could be inappropriate if the practitioner or a member of his firm is**

- currently appearing before the particular Judge, has appeared in the past or is likely to appear in the future or the Judge's appearance will advance the practitioner's private interests.
- Judges should definitely not attend strip-tease shows, brothels, casinos or entertainments of that sort. They should by their private conduct avoid situations that might expose them to charges of hypocrisy. Conduct which is done by a non-Judge may if done by a Judge be seen as unacceptable from someone who by reason of the office of a Judge has to pass Judgment on the behavior of others.
 - *Should Judges be on social media?* Social Media could expose Judges to risks to the dignity and integrity of their office. Judges should therefore be careful how they disclose information about their personal life, and home address. This is because bits and pieces of information can, like a jigsaw, be pieced together to form a whole and thus jeopardizing the Judge's security.

Care must also be taken not to say anything which may give any impression of bias or prejudice concerning any issue, party or lawyer appearing before the Judge in his Court.

Should a Judge add a lawyer or persons who appear before him regularly as a friend on social media?

I think the answer should be whether or not such a relationship would be proper in the real world. If it is not then it cannot be proper in the virtual environment. The information and communication that are prescribed in the real world have the same treatment on social media.

Is blogging allowed for Judges?

It seems not prohibited in the UK but the blogger must not identify himself as a Judge. See *Judges on Trial op cit 262 – 267.*

3. The Written Code:

The written rules of ethics are contained in the **Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (*The Code*)**. The Code was resource material for the Bangalore Principles of Judicial Conduct. There are 6 principles listed therein. They are:

- **Independence**
- **Impartiality**
- **Integrity**
- **Propriety**
- **Equality**
- **Competence and Diligence**

The United Nations Office on Drugs and Crime in 2007 published a commentary on the Bangalore Principles (**the commentary**). It is note-worthy that ***Hon. Justice M.L Uwais (then Chief Justice of Nigeria)*** participated in midwifing the Bangalore Principles.

Because of the increasing challenges Judges, as part of the society, face on a daily basis, there is the need for constant review of the Code. The National Judicial Policy thus set up the Judicial Ethics Committee to perform the following functions:

- **Preparation of amendments to the Judicial Code of Conduct as the need arises. (There is already a draft of the Revised Code of Conduct for Judicial Officers which is included as an appendix to this Policy awaiting its adoption)**
- **Undertake the responsibility to elaborate the provisions of the Code, explain and remind judicial officers of the provisions of the Code and, generally, do all such things**

necessary to ensure a continuous high standard of judicial accountability and probity.

- Conduct periodic surveys on behalf of Council to measure public perception of level of compliance with ethical standards by the Judiciary.**
- Monitor and report on laxity by Judicial Officers in observance of ethical standards in the performance of judicial duties.**

3.1 Does the code apply to Lower Court Judges?

I am not unmindful of the fact that this is a conference for Lower Court Judges. The Code applies to the holders of offices similar to that of Judges of Courts of Record i.e. from the High Court to the Supreme Court. The Code also applies to all categories of Judicial Officers throughout Nigeria.

There is also a code of conduct for judicial employees. This is because Judiciary Staff play a critical role in the administration of Justice.

3. 1. 1 The contents of the Code.

The Code is divided into 3 parts by rules.

3.1.2 Rule 1:

Rule 1 provides:

A Judicial Officer shall avoid impropriety and the appearance of impropriety in all his activities. The Bangalore principles adopted a positive tone to wit: Propriety and the appearance of propriety are essential to the performance of the activities of a Judge.

What matters is how might the Judge's conduct look in the eyes of the public?

The Commentary states:

Propriety and the appearance of propriety, both professional and personal, are essential elements of a judge's life. What matters more is not what a judge does or does not do, but what others think the judge has done or might do. For example, a judge who speaks privately and at length with a

litigant in a pending case will appear to be giving that party an advantage, even if in fact the conversation is completely unrelated to the case. Since the public expects 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 the question, “How might this look in the eyes of the public?” Paragraph 111 of the commentary.

Rule 4.1 (Bangalore Principles) is a replication of rule 1 of the code.

The test for impropriety is whether the conduct compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence, or whether it is likely to create, in the mind of a reasonable observer, a perception that the judge’s ability to carry out judicial responsibilities in that manner is impaired. For example, treating a State official differently from any other member of the public by giving that official preferential

seating creates the appearance to the average observer that the official has special access to the court and its decision-making processes. On the other hand, school children often tour the courts and are seated in special places, at times on the bench.

Children are not in a position of power and, therefore, do not create an appearance of exerting improper influence, especially when it is explained that they are present for educational reasons. See: paragraph 112 of the commentary.

Social relationships are dealt with in *Rule 1(2)(a) of the Code*. It reads:

(a) A judicial officer must avoid social relationships that are improper or give rise to an appearance of impropriety, that cast doubt on the judicial official ability to decide cases impartially or that bring the judiciary to disrepute.

The Commentary states at Paragraphs 113, 115 – 123 and 126

Inappropriate Contacts:

The judge must be sensitive to the need to avoid contacts that may lead people to speculate that there is a special relationship between him or her and someone whom the judge may be tempted to favour in some way. For example, a judge must ordinarily avoid being transported by police officers or lawyers and, when using public transport, must avoid sitting next to a litigant or witness.

Requirement of an exemplary life:

A judge is required to live an exemplary life off the bench as on it. A judge must behave in public with the sensitivity and self-control demanded of judicial office, because a display of injudicious temperament is demeaning to the processes of justice and inconsistent with the dignity of judicial office.

Visits to public venues such as bars:

Today, at least in most countries, there is no prohibition against a judge visiting pubs, bars, or

similar venues, but discretion should be exercised. A judge should consider how such visits are likely to be perceived by a reasonable observer in the community and in the light, for example, of the reputation of the place visited, the persons likely to frequent it, and any concern that may exist as to the place not being operated in accordance with law.

My Comment: A clear example of such a place is a brothel or red light district.

Gambling:

There is no prohibition against a judge engaging in occasional gambling as a leisure activity, but discretion should be exercised, bearing in mind the perception of a reasonable observer in the community. It is one thing to pay an occasional visit to the horse races, or to a casino when abroad during a holiday, or to play cards with friends and family. It may be quite another for a judge to stand too frequently at the betting windows of race tracks, or to become an

inveterate gambler or a dangerously heavy punter.

Frequenting clubs:

A judge should exercise care in going to clubs and other social facilities.

For example, he or she should be cautious about attending venues run by or for members of the police force, the anti-corruption agency and the customs and excise department, whose members are likely to appear frequently before the courts.

While there is no objection to a judge accepting an occasional invitation to dine at a police mess, it is undesirable for the judge to frequent or become a member of such clubs, or to be a regular user of such facilities. In most societies, it is normal for judges to attend venues organized by the practising legal profession and to mix with advocates on a social basis.

Social contact with the legal profession:

Social contact between members of the judiciary and members of the legal profession is a long-standing tradition and is proper. Since judges do not live in ivory towers but in the real world, they cannot be expected to sever all of their ties with the legal profession upon assuming judicial office. Nor would it be entirely beneficial to the judicial process for judges to isolate themselves from the rest of society, including from school friends, former associates and colleagues in the legal profession. Indeed, a judge's attendance at social functions with lawyers offers some benefits. The informal exchanges that such functions allow may help to reduce tensions between the judiciary and advocates, and alleviate some of the isolation from former colleagues that a judge experiences upon elevation to the judicial office. Nonetheless, a

*judge should act on the basis of common sense
and exercise caution.*

My comment: **Should Judges attend private parties of individual lawyers?**

Social relationships with individual lawyers:

*Having a social relationship with a lawyer who
regularly appears before a judge is fraught with
danger and entails a balancing process. On the
one hand, the judge should not be discouraged
from having social or extrajudicial relationships.
On the other hand, the obvious problem of the
appearance of bias and favouritism exists when a
friend or associate appears before the judge. The
judge is the ultimate arbiter of whether he or she
has an excessively close or personal relationship
with a lawyer, or has created that appearance.
The judge will have to decide where to draw the
line. The test is whether the social relationship
interferes with the discharge of judicial
responsibilities, and whether a disinterested
observer, fully informed of the nature of the*

social relationship, might reasonably entertain significant doubt that justice will be done. The Judge must also be mindful of the enhanced danger of inadvertently being exposed to extrajudicial information concerning a case that the Judge is hearing or one with which the Judge may become involved. A Judge would therefore be wise to avoid recurrent contacts with a lawyer appearing before him or her in the course of a particular case, if this could lead to a reasonable perception that the judge and the lawyer have a close personal relationship.

Social relationship with a lawyer who is also a neighbour:

A judge who has, as an immediate neighbour, a lawyer who appears regularly in the court in which the judge sits is not required to abstain from all social contact with the lawyer, except perhaps when the lawyer is appearing before the judge in an ongoing case. Depending on the circumstances, some degree of socializing is

acceptable, provided the judge does not create either the need for frequent recusal or the reasonable appearance that his or her impartiality might be compromised.

Participation in occasional gatherings of lawyers:

There can be no reasonable objection to a judge attending a large cocktail party given, for example, by newly appointed senior advocates to celebrate professional attainments. Although advocates appearing before the judge are likely to be present at such a function, direct social contact can readily be avoided while a case is pending. If such contact does take place, talk of the case should be avoided and, depending on the circumstances, the other parties to the hearing could be informed of the contact at the earliest opportunity. The overriding consideration is whether such social activity will create or contribute to the perception that the lawyer has a special relationship with the judge, and whether

such a special relationship implies a special willingness on the part of the judge to accept and rely on the lawyer's representations.

Ordinary social hospitality:

A judge is ordinarily permitted to accept invitations to social gatherings from advocates and other lawyers. Socializing with advocates under these circumstances is to be encouraged because of the benefits that derive from informal discussions which take place at social events. However, a judge may not receive a gift from a lawyer who might appear before the judge, and may not attend a social function given by a law firm where the degree of hospitality exceeds that which is ordinary and modest. The criterion is how the event might appear to a reasonable observer who may not be as tolerant of the conventions of the legal profession as its members are.

Social relationships with litigants:

A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as government ministers or their officials, municipal officials, police prosecutors, district attorneys, and public defenders – in any court where the judge often sits, if such relationships could reasonably create an appearance of partiality or the likely need for later disqualification. In deciding, it would be appropriate for the judge to consider the frequency with which the official or lawyer appears before him or her, the nature and degree of the judge’s social interaction with the individual, the culture of the legal community in which the judge presides, and the sensitivity and controversy of current or foreseeable litigation.

Rule 1(2)(b) of the Code appears peculiarly Nigerian. It states:

A judicial officer shall not be a member of any society or organization that practices invidious discrimination on the basis of race, sex, religion or ethnic origin or whose aims and objectives are incompatible with the functions or dignity of his office.

I think this rule speaks for itself. Invidious practices are definitely incompatible with the judicial oath and would seem to be barbaric. It also seems that such practices are fast losing ground in view of the rapid rate of civilization and the increasing role of religious bodies in every day Nigerian life.

3.1.3 Rule 2:

Rule 2 deals with 4 sub-heads to wit:

- **Adjudicative duties**
- **Administrative duties**
- **Disqualification**
- **Waiver of disqualification** which itself is an adjunct of disqualification.

3.1.3(1) Adjudicative duties:

This is the core of the Judge's function. The Judge must obey and enforce the Constitution and the law. He must observe the principles of natural justice as they pertain to fairness i.e. fair trial within a reasonable time, *audi alterem partem*

and *nemo judex in causa sua*. **He is also required to acquire and maintain professional competence.** The Judge must always remember that his adjudicative duties take priority over all other activities.

A judge must be aware of recent developments in the law particularly decisions of Superior Courts so as not to make decisions in ignorance of the Law. There is no excuse for a Judge who decides a case in ignorance of binding precedent. This requires adequately furnished libraries with recent books and periodicals and at least an electronic search engine like Law Pavilion and Legal Pedia. There is thus a need to do a lot more for Judges in this area.

Paragraphs 199, 200 and 204 of the commentary state:

Every judge should take advantage of further training opportunities

The independence of the judiciary confers rights on a judge, but also imposes ethical duties, including the duty to perform judicial work professionally and diligently. This implies that a judge should have substantial professional ability and that this ability should be acquired, maintained and regularly enhanced through further training opportunities, which the judge has a duty, as well as a right, to take. It is highly desirable, if not essential, for a judge to receive detailed, in-depth, diverse training appropriate to the judge's professional experience upon first appointment so that he or she is able to perform the judicial duties satisfactorily. The knowledge that is required may include not only aspects of

substantive and procedural law, but also the impact of the law and the courts on real life.

My comment: **The National Judicial Institute (NJI) has performed creditably in this area as it organizes induction courses for new Judges, refresher courses for older Judges and collaborates with government institutions to provide training in particular areas of law like Banking, Shipping, Telecommunications Law and Electricity Law.**

The trust that citizens place in the judicial system will be strengthened if a judge's knowledge is so deep and broad that it extends beyond the technical field of law to areas of important social concern, and if a judge possesses the kinds of personal skills and understanding (in and outside the courtroom) that enable him or her to manage cases and deal with all persons involved appropriately and sensitively. Training is, in short, essential for the objective, impartial and competent performance of judicial functions and to protect judges from inappropriate influences. Thus, a judge today will usually receive training on appointment in such courses as sensitivity to issues of gender, race, indigenous cultures, religious diversity, sexual orientation, HIV/AIDS status, disability and so forth. In the past, it was often assumed that a judge picked up such knowledge in the course of daily practice as a lawyer. However, experience has taught the value of such training – especially the value of allowing members of such groups and

minorities to speak directly to judges so that they have hearings and materials to help them handle such issues when they arise in practice later on.

The judiciary should be responsible for judicial training

While the State has a duty to provide the necessary resources and to meet the costs, with the support of the international community if required, the judiciary should play a major role in, or itself be responsible for, organising and supervising judicial training. In each country, these responsibilities should be entrusted to the judiciary itself or another independent body such as a judicial service commission, not to the ministry of justice or any other authority answerable to the legislature or the executive. Judges' associations can also play a valuable role in encouraging and facilitating ongoing training opportunities for Judges in office. Given the complexities of modern society, it can no longer be assumed that sitting in court nearly every day will prepare the Judge to deal optimally with all the problems that might arise. Technological changes in information systems have presented even highly experienced Judges with the need for re-training and support opportunities, which they should be encouraged to acknowledge and accept.

There is a growing demand for the use of research assistants. The Judge must however be careful not to leave the decision making to research assistants.

Rule 2(A)(2) of the Code:

A judicial officer must avoid the abuse of the power of issuing interim injunctions ex-parte. **The word is ‘abuse of the power’. Where there is a proper case for issuing an injunction ex-parte then the Judge must not shy away from it. The power to grant injunctions ex-parte is the exercise of an extraordinary jurisdiction and must be used sparingly. The Law Reports are replete with instances when this power has been abused. Indeed, some Judges have been dismissed for violating this Rule.**

Rule 2(A)(3) of the Code:

A Judicial officer must maintain order and decorum in judicial proceedings, avoid necessary interruptions in the argument of Counsel and the examination of witnesses. A Judge must not turn the proceedings into a circus show by unnecessary humour and must demand the same conduct from counsel, support staff and indeed everyone in the Court room.

Paragraphs 187-189, 211 and 212 – 215 of the commentary state:

Duty to refrain from making derogatory comments

A judge should strive to ensure that his or her conduct is such that any reasonable observer would have justifiable confidence in his or her impartiality. A judge should avoid comments, expressions, gestures or behaviour that may reasonably be interpreted as showing insensitivity or disrespect. **Examples include**

irrelevant or derogatory comments based on racial, cultural, sexual or other stereotypes, and other conduct implying that persons before the court will not be afforded equal consideration and respect. A judge's disparaging comments about ethnic origins, including the judge's own, are also undignified and discourteous. A judge should be particularly careful to ensure that his or her remarks do not have a racist overtone and that they do not, even unintentionally, offend minority groups in the community.

Judicial remarks must be tempered with caution and courtesy

A judge must not make improper and insulting remarks about litigants, advocates, parties and witnesses. There have been occasions when a judge, on sentencing a convicted person, has showered the prisoner with insulting remarks. While the judge may, depending on local convention, properly represent the outrage of the community concerning a serious crime, judicial remarks should always be tempered with caution, restraint and courtesy. Sentencing an accused person who has been convicted of a crime is a heavy responsibility involving the performance of a legal act on behalf of the community. It is not an occasion for the judge to vent personal emotions. Doing so tends to diminish the essential qualities of the judicial office.

People in court must be treated with dignity

It is the judge who sets the tone and creates the environment for a fair trial in his or her court. Unequal or differential treatment of people in court, whether real or perceived, is unacceptable. **All who appear in court – be they legal practitioners, litigants or witnesses - are entitled to be treated in a way that respects their human dignity and fundamental human rights.** The judge must ensure that all people in court are protected from any display of prejudice based on race, gender, religion, or other irrelevant grounds.

The role of the judge:

The role of the judge has been summed up by a senior judge in the following terms:

The judge's part . . . is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure, to see that the advocates behave themselves seemly and keep to the rules laid down by law, to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can

assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the robe of an advocate; and the change does not become him well. . . Such are our standards.

Duty to maintain order and decorum in court:

“Order” refers to the level of regularity and civility required to guarantee that the business of the court will be accomplished in conformity with the rules governing the proceeding. **“Decorum”** refers to the atmosphere of attentiveness and earnest endeavour which communicates, both to the participants and to the public, that the matter before the court is receiving serious and fair consideration. Individual judges may have differing ideas and standards concerning the appropriateness of particular behaviour, language and dress for the lawyers and litigants appearing before them. What one judge may perceive to be an obvious departure from propriety, another judge may deem a harmless eccentricity, an irrelevancy or no departure at all. Also, some proceedings call for more formality than others. Thus, at any given time, courtrooms across a country will inevitably manifest a broad range of “order” and “decorum”.

It is undesirable, and in any case impossible, to suggest a uniform standard of what constitutes “order” and “decorum”. Instead, what is required is for a

judge to take reasonable steps to achieve and maintain the level of order and decorum in court that is necessary to accomplish the business of the court in a manner that is both regular and manifestly fair, while at the same time giving lawyers, litigants and the public assurance of that regularity and fairness.

Conduct towards litigants:

A judge's demeanour is crucial to maintaining his or her impartiality because it is what others see. Improper demeanour can undermine the judicial process by conveying an impression of bias or indifference. Disrespectful behavior towards a litigant infringes on the litigant's right to be heard, and compromises the dignity and decorum of the courtroom. Lack of courtesy also affects a litigant's satisfaction with the handling of the case. It creates a negative impression of courts in general.

Conduct towards lawyers:

A judge must channel anger appropriately. No matter what the provocation, the judicial response must be a judicious one. Even if provoked by a lawyer's rude conduct, the judge must take appropriate steps to control the courtroom without retaliating. If a reprimand is warranted, it will sometimes be appropriate that it take place separately from the disposition of the hearing of the matter before the court. It is never appropriate for a judge to interrupt a lawyer repeatedly without justification, or be abusive or

ridiculing of the lawyer's conduct or argument. On the other hand, no judge is required to listen without interruption to abuse of the court's process or arguments manifestly without legal merit or abuse directed at the judge or other advocates, parties or witnesses..

Patience, dignity and courtesy are essential attributes

In court and in chambers, a judge should always act courteously and respect the dignity of all who have business there. A judge should also require similar courtesy from those who appear before him or her, and from court staff and others subject to the judge's direction or control. A judge should be above personal animosities, and must not have favourites amongst advocates appearing before the court. Unjustified reprimands of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm, and intemperate behaviour by a judge undermines both order and decorum in the court. When a judge intervenes, he or she should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of the intervention.

The dignity of the Court room must be maintained. The Court must be patient and courteous to everyone he interfaces with in the course of his official duties.

A Judge must ensure fair hearing and avoid ex-parte communications. So a Judge must not communicate with one party or his counsel in the absence of the other party or his counsel.

Rule 2(A)(6) of the Code:

A Judicial Officer should promptly dispose of the business of Court. In order to achieve this, the Judicial Officer is required to devote adequate time to his duties, to be punctual in attending Court and expeditious in bringing to a conclusion and determining matters under submission. Unless ill or unable, for good reason, to come to court, a Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the Court.

A judge must sit promptly and attend to his duties with seriousness. It is only illness or some other serious cause that can prevent a Judge from attending to his functions. The Judge must maintain official hours of the Court.

The Judge's work does not end in the Court room so he cannot close from work at 2pm simply because he rose from Court at that time. The official hours of work are 8am to 4pm.

Judges should always stick to those hours.

It is expected that Judges display an unparalleled level of responsible conduct. There can be no justification for absenteeism other than as prescribed. A Judge who grants himself unauthorized leave of absence, should have a re-think.

3.1.3(2) Section 294 of the Constitution :

Rule 2(A)(7) deals with compliance with *Section 294 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)*. A Judge must deliver his Judgment within 90 days of the delivery of final addresses in a case. If he is unable to do so, he must send a report through his/her Presiding Judge to the Chairman of the National Judicial Council (NJC) stating why he was unable to comply. The practice of calling Counsel to re-open addresses is unconstitutional. See: *Enhancing the productivity of Judicial officers: performance management and evaluation delivered by Hon. Justice B.A Adejumo OFR President, National Industrial Court of Nigeria at the Refresher Course for Judicial Officers on current trends in law and administration of justice. March, 2016.*

Many Judges have been reprimanded, sanctioned and in some cases dismissed for breaching this Rule.

It may be argued that *Section 294 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended)* does not apply to lower Courts since they are not created by the Constitution. However, the requirements of fair

hearing applies to Courts or tribunals established by Law, which Lower Courts are. Even then, the provisions of the code are clear on this point.

Rule 2(A) 8 – 10 bear a brief treatment as they relate to making comments on pending case, keeping of official secrets and prohibiting broadcasting so as to prevent a distortion or dramatization of the proceedings.

3.1.4 Administrative duties:

Rule 2(B) of the Code requires a judicial officer to be diligent in the discharge of his administrative duties. He must maintain professional confidence in judicial administration and require same from those working under him. He must also facilitate the performance of such duties by fellow judicial officers.

Diligence and fidelity must be observed.

Some of these administrative duties bear mention here. In considering whether or not the conditions of bail have been fulfilled, the Judge should attend to same promptly as this could lead to unnecessary prolongation of the Defendant's stay in custody.

Another area is in signing drawn up Orders. Orders must be signed once made. In the case of Judgments, the Judge must sign a Judgment Order at the time he signs his Judgment and make same available within 7 days of delivery. Where it involves urgency e.g. in cases of Orders for substituted

service or service outside jurisdiction, same must be signed as soon as it is made and made available.

Where a Judge is an administrative Judge who assigns cases, he must put in place a system whereby new cases filed are assigned immediately they are filed. He must also not delay in fixing dates for motions or interlocutory applications. Other areas are signing of witness summons, sub-poena and production warrants. The Judge must instill in his staff and registry staff the imperative of serving processes and in particular, hearing notices promptly and discourage the practice of ‘mobilizing’ bailiffs to serve court processes even though the fees paid for filing hardly ever pays for transportation beyond 3 kilometers of the Court.

Judicial officers must refrain from engaging in sexual harassment either towards Court staff, visitors or even litigants. This is clearly incompatible with the judicial function and is very akin to rape.

In order not to be unduly tempted, Judges are required not to be members of tenders board or engage in the award of contracts.

3.1.5 Disqualification:

Rule 2(B)(3) of the Code bears reproduction.

A Judicial Officer on becoming aware of reliable evidence of unethical or unprofessional conduct by another judicial officer or a legal practitioner

should immediately take adequate steps to report the same to the appropriate body seised with disciplinary powers on the matter complained of.

I will speak first on making reports of misconduct by legal practitioners. If this rule is properly applied, I am of the view that some of the issues relating to corruption in the Judiciary will be curtailed.

If Judges report lawyers or litigants who make overtures towards them aimed at corrupting them or perverting the course of justice many lawyers and litigants will be wary of doing so. It is also my view that more specific provisions should be made for giving effect to this rule to wit: the mode of the report and the steps which the appropriate disciplinary organ should take.

Judges should also be required to make reports of unethical or criminal conduct of litigants to the appropriate law enforcement organ.

Whether judicial officers will gladly report their colleagues is a matter that may not arise except of course where the conduct would have an adverse effect on the officer who fails to report. Would such an officer be liable for misprison of felony if he fails to report? It is however highly unlikely that a judicial officer would know of such unethical conduct since his colleague is not likely to have discussed it with him.

The rule should however in my view stay especially in these days where whistle blowing is being encouraged. Will our ‘brother’s keeper’ syndrome however allow it?

Rule 2(C) of the Code deals with disqualification. The parameters relate to the particular Judge even though certain principles apply universally especially in cases of bias. The Judge must therefore excuse himself where any of the disqualifying factors exist. The circumstances are:

- **In cases of personal bias or prejudice concerning a party**
- **Where the Judicial Officer has personal knowledge of the facts in dispute**
- **Where the Judge was once Counsel or practiced with a legal practitioner concerning the matter in dispute.**
- **Where the Judicial officer has been a material witness in the matter**
- **Where the Judicial Officer has a financial or other interest that could be substantially affected by the outcome of the proceedings: this applies to the Judge either as an individual or as a Judicial Officer, his spouse or child.**
- **Where the Judicial officer is:**
 - **A party to the proceeding or**
 - **An officer, director or trustee of a party.**

This applies to the Judicial Officer, his (her) spouse, or a person related to either of them or the spouse of such person.

Would this for instance include a Judge's brother-in-law's wife ? or his wife's sister-in-law's (i.e. his wife's brother's wife) brother?

Where the defined relative is:

- **Acting as a legal practitioner in the proceedings.**
- **Known to the Judicial Officer to have an interest that would be substantially affected by the outcome of the proceedings.**

The core issue here however is 'personal bias or prejudice'. This is more of a matter of perception.

Paragraphs 55 – 60 of the commentary state:

A perception of partiality erodes public confidence:

If a judge appears to be partial, public confidence in the judiciary is eroded. Therefore, a judge must avoid all activity that suggests that the judge's decision may be influenced by external factors such as a judge's personal relationship with a party or interest in the outcome of a case.

Apprehension of bias:

Impartiality is not only concerned with the actual absence of bias and prejudice, but also with the perception of their absence. This dual aspect is captured in the often repeated words that justice must not only be done, but

must manifestly be seen to be done. The test usually adopted is whether a reasonable observer, viewing the matter realistically and practically, would (or might) apprehend a lack of impartiality in the judge. **Whether there is an apprehension of bias is to be assessed from the point of view of a reasonable observer.**

Meaning of “bias or prejudice”:

Bias or prejudice has been defined as a leaning, inclination, bent or predisposition towards one side or another or a particular result. In its application to judicial proceedings, **it represents a predisposition to decide an issue or cause in a certain way which does not leave the judicial mind perfectly open to conviction. Bias is a condition or state of mind, an attitude or point of view, which sways or colours judgment and renders a judge unable to exercise his or her functions impartially in a particular case.** However, this cannot be stated without taking into account the exact nature of the bias. If, for example, a judge is inclined towards upholding fundamental human rights, unless the law clearly and validly requires a different course, that will not give rise to a reasonable perception of partiality forbidden by law.

Manifestations of bias or prejudice:

Bias may manifest itself either verbally or physically. Some examples are epithets, slurs, demeaning nicknames, negative stereotyping, attempted

humour based on stereotypes (related to gender, culture or race, for example), threatening, intimidating or hostile acts that suggest a connection between race or nationality and crime, and irrelevant references to personal characteristics. Bias or prejudice may also manifest themselves in body language, appearance or behaviour in or out of court. Physical demeanour may indicate disbelief of a witness, thereby improperly influencing a jury. Facial expression can convey an appearance of bias to parties or lawyers in the proceeding, jurors, the media and others. The bias or prejudice may be directed against a party, witness or advocate.

Abuse of contempt powers is a manifestation of bias or prejudice:

The contempt jurisdiction, where it exists, enables a judge to control the courtroom and to maintain decorum. Because it carries penalties that are criminal in nature and effect, contempt should be used as a last resort, only for legally valid reasons and in strict conformity with procedural requirements. It is a power that should be used with great prudence and caution. The abuse of contempt power is a manifestation of bias. This may occur when a judge has lost control of his or her own composure and attempts to settle a personal score, especially in retaliation against a party, advocate or witness with whom the judge has been drawn into personal conflict.

What may not constitute bias or prejudice:

A judge's personal values, philosophy, or beliefs about the law may not constitute bias. The fact that a judge has a general opinion about a legal or social matter directly related to the case does not disqualify the judge from presiding.

See: Jeffrey M. Shaman, Steven Lubet and James J. Alfini, *Judicial Conduct and Ethics*, 3rd ed. (Charlottesville, Virginia, The Michie Company, 2000).

Opinion, which is acceptable, should be distinguished from bias, which is unacceptable. **It has been said that “proof that a judge’s mind is a *tabula rasa* (blank slate) would be evidence of a lack of qualification, not lack of bias”.**

Judicial rulings or comments on the evidence made during the course of proceedings do not fall within the prohibition, unless the judge appears to have a closed mind and is no longer considering all the evidence.

Justice *Kayode Eso* in *AKINFE VS. STATE (1988) 3 NWLR (Pt. 85) 729 @ 753* defined bias as showing an act of partiality. **Proof of bias is what an ordinary reasonable by-stander would regard as bias.**

‘What reasonable man would watch the trial as I have revealed who would go home and say that justice has been done to the accused?’

What reasonable man would not wonder what the concern of the Judge was in his display of forensic ability against an accused person who seeks justice before him? What reasonable man would not wonder which of the two, the State Counsel or the Judge was the Prosecutor in

this case? It is with respect a sham of trial and with respect an immature approach to the administration of justice to set out for a kill against any party that stands in the imaginary scale held by a judge.'

A Judge must free himself of prejudice and partiality and so conduct himself, in court and out of it, as to give no ground for doubting his ability and willingness to decide cases before him solely on their legal and factual merits as they appear to him in the exercise of an objective, independent, and impartial judgment. See also:

T. Bingham, 'The Judge as Lawmaker', in *The Judge* (Oxford University Press, 1981), p. 3, also in *the Business of Judging* (Oxford University Press, 2000), W. Lucy, 'The Possibility of Impartiality' (2005) OJLS 25,3.

Not every Judge would have the impartiality of Chief Justice Mansfield who presided at a treason trial even though he lost his house in the riots provoked by the treasonable act of one *Gordon*, who was acquitted. See: John Lord Campbell, *the lives of the Chief Justices of England* (3rd Edition 1874) Vol. 3 419 – 421.

We also do not expect the bizarre situation which took place in Texas in 1925 where the entire Supreme Court excused themselves from hearing a case involving a Masonic-style organization called Woodmen of the world, of which

they were all members. A special panel of women was therefore constituted by the Governor: *Johnson vs. Darr 272 SW 1098 (1925)*.

There was however another case concerning judicial salaries, the US Court of Claims held that although the Judges had a direct pecuniary interest in the result, they would hear the case under the doctrine of necessity – that is, a Judge is not disqualified from trying a case because of personal interest in the matter at issue if there is no other Judge available. *Atkins vs. US 556 F. 2d 1028 (1977)*

In England, it is not considered proper for a barrister to appear before his father or near relative in the High Court, Court of Appeal or in the House of Lords. No Judge of whom a Journalist had specifically criticized would dream of sitting on a case involving that journalist. *See: Judges by David Pannick Oxford University Press 1987 40.*

At all times however, Judges must not be seen as encouraging litigants to choose their own Judges on grounds of bias. Some of the recent high-profile cases have shown this trend. Counsel have also argued that because of comments in a ruling on a bail application, the trial Judge had made up his mind and thus was not in a position to be fair in deciding the Defendant's case. The Court of Appeal has always said that in a Ruling on a bail application, the Judge is expected to comment on the strength of the case.

The Judge must be careful in matters of bias as it is two-pronged:

- **He must not actually be biased towards a party in the case and**
- **He must not appear to be biased to the (hypothetical) fair minded observer.**

Should either be the case, he must disqualify himself.

A Judge should inform himself about his personal and fiduciary business interests. Those expressions are defined in *Rule 2(C)(3)*.

Paragraph 99 of the commentary states:

What does not constitute “economic interest”:

An economic interest does not extend to any holdings or interests that a judge might have, for example, in mutual or common investment funds, deposits a judge might maintain in financial institutions, mutual savings associations or credit unions, or government securities owned by a judge, unless the proceeding could substantially affect the value of such holdings or interests. Disqualification is also not required if a judge is merely a customer dealing in the ordinary course of business with a bank, insurance company, credit card company, or the like that is a party in a case, without there being pending any dispute or special transaction involving the judge. The fact that securities might be held by an educational, charitable, or civic organization in whose service a judge’s spouse, parent or child may serve as a director, officer, advisor or other participant does not, depending on

the circumstances, mean that a judge has an economic interest in such an organization. Similarly, in cases involving financial implications that are highly contingent and remote at the time of the decision, one would expect the application of the test generally not to result in disqualification. Nevertheless, in such cases it may be prudent for the judge to notify the parties of any such circumstances and have the matter recorded in open court so that the parties and not just the lawyers are made aware of them. Sometimes, lay clients are more suspicious and less trusting than the judge's professional colleagues.

Rule 2(D) of the Code deals with waiver or disqualification. It reads:

3.1.6 Waiver of Disqualification:

A Judicial Officer disqualified by the terms of Rule 2C(1)(c) or Rule 2C(1)(d) may, instead of withdrawing from the proceedings, disclose 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 is no longer disqualified and may participate in the proceedings. The consent by the parties, their representatives and/or their legal practitioners shall be recorded and shall form part of the record of proceedings.

It should be noted that the exact relationship must be disclosed. The parties and/or their legal practitioners must be allowed to give their consent independently of the Judicial Officer. There could be circumstances in which there is no other Judicial Officer to take the case e.g. where the matter is being heard and ought to be heard during vacation and there is no other judicial officer available to take the matter.

Can the doctrine of necessity under the Bangalore principles be relied on? It provides:

Provided that disqualification of a Judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Doctrine of necessity is explained thus:

Extraordinary circumstances may require departure from the principle discussed above. The doctrine of necessity enables a judge who is otherwise disqualified to hear and decide a case where failure to do so may result in an injustice. This may arise where there is no other judge reasonably available who is not similarly disqualified, or if an adjournment or mistrial will cause extremely severe hardship, or if a court cannot be constituted to hear and determine the matter in issue if the

judge in question does not sit. See: *The Judges v Attorney-General of Saskatchewan, Privy Council on appeal from the Supreme Court of Canada, (1937) 53 TLR 464; Ebner v Official Trustee in Bankruptcy, High Court of Australia, [2001] 2 LRC 369; Panton v Minister of Finance, Privy Council on appeal from the Court of Appeal of Jamaica, [2002] 5 LRC 132.* Such cases will, of course, be rare and special.

However, they may arise from time to time in final courts that have few judges and important constitutional and appellate functions that cannot be delegated to other judges.

My View:

In real life however, a lot depends on the integrity of the judicial officer because if at the end of the day he pronounces a verdict, that verdict could be interpreted in many ways. It may be said that he actually favoured the party he has a relationship with or he favoured the other side so as not to be seen as favouring the party he knows. It can even be said that he ruled against the known party because they have fallen out as friends.

It is always better to avoid a matter once the Judicial Officer is aware of disqualifying factors because even if the parties consent, the clear motive of the Judge can still be misconstrued.

3.1.7 Extra-Judicial Activities:

Rule 3 of the Code deals with Extra-judicial activities of the Judicial Officer.

Judicial Officers can take part in the arts, sports, and social and recreational activities so long as they do not adversely affect the dignity of his office or interfere with the performance of his judicial functions.

A Judicial Officer can be engaged in civic and charitable activities like educational, religious charitable or civil organization not carried out for economic or political advantage of its members. He can be an officer, director, trustee, but not a legal officer to such an organization.

If the organization is however likely to be involved in proceedings that ordinarily come before the Judicial officer, he should not be an officer of such an organization.

A judicial officer shall like every citizen exercise fundamental right of freedom of expression, belief association and assembly so long as he conducts himself in a manner that protects the dignity of his office and the impartiality and independence of the judiciary. Judges are also allowed to form and join association of Judges to promote their professional training and protect their judicial independence.

The commentary states at paragraphs 134 - 139

Judges enjoys rights in common with other citizens

A judge, on appointment, does not surrender the rights to freedom of expression, association and assembly enjoyed by other members in the community, nor does the judge abandon any former political beliefs and cease having any interest in political issues. However, restraint is necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement.

Incompatible activities:

A judge's duties are incompatible with certain political activities, such as membership of the national parliament or local council.

Judges should not be involved in public controversies:

A judge should not involve himself or herself inappropriately in public controversies. The reason is obvious. The very essence of being a judge is the ability to view the subjects of disputes in an objective and judicial manner. It is equally important for the judge to be seen by the public as exhibiting that

detached, unbiased, unprejudiced, impartial, open-minded, and even-handed approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates - either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government – he or she will not be seen to be acting judicially when presiding as a judge in court. The judge will also not be seen as impartial when deciding disputes that touch on the subjects about which the judge has expressed public opinions; nor, perhaps more importantly, will he or she be seen as impartial when public figures or government departments that the judge has previously criticized publicly appear as parties, litigants or even witnesses in cases that he or she must adjudicate.

3.1.7.1 Criticism of the judge by others:

Members of the public, the legislature and the executive may comment publicly on what they may view to be the limitations, faults or errors of a judge and his or her judgments. Owing to the convention of political silence, the judge concerned does not ordinarily reply. While the right to criticize a judge is subject to the rules relating to contempt, these are invoked more rarely today than they were formerly to suppress or punish criticism of the judiciary or of a particular judge.

The better and wiser course is to ignore any scandalous attack rather than to exacerbate the publicity by initiating contempt proceedings. As has been observed, “justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful, even if outspoken, comments of ordinary men”.

A judge may speak out on matters that affect the judiciary:

There are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice or the personal integrity of the judge. However, even on these matters, a judge should act with great restraint. While a judge may properly make public representations to the government on these matters, the judge must not be seen as “lobbying” government or as indicating how he or she would rule if particular situations were to come before the court. **Moreover, a judge must remember that his or her public comments may be taken as reflecting the views of the judiciary; it may sometimes be difficult for a judge to express an opinion that will be taken as purely personal and not that of the judiciary in general.**

A judge may participate in a discussion of the law

A judge may participate in discussion of the law for educational purposes or to point out weaknesses in the law. In certain special circumstances, a judge's comments on draft legislation may be helpful and appropriate, provided that the judge avoids offering informal interpretations or controversial opinions on constitutionality. Normally, judicial commentary on proposed legislation or on other questions of government policy should relate to practical implications or drafting deficiencies and should avoid issues of political controversy. In general, such judicial commentary should be made as part of a collective or institutionalized effort by the judiciary, not of an individual judge. See: *Ambard v. Attorney General for Trinidad and Tobago, Privy Council on appeal from the Court of Appeal of Trinidad and Tobago [1936]AC 322 at 335, per Lord Atkin.*

3.1.7.2 Chieftaincy Titles:

Rule 3C of the Code is every pertinent: A judicial Officer shall not take or accept any chieftaincy title while in office.

The rationale is clear. Apart from academic titles, no other title is compatible with the title Hon. Justice. So 'Hon. Justice (Chief)' is a total aberration. It is not only clumsy, there is clearly no way the prestige and power attached to the office of a Judge can be put on the same pedestal as a chieftaincy title. If a judicial officer prefers the Chieftaincy title then he should leave office and go for the chieftaincy

title. Even academic titles seem clumsy when subjoined to the judicial form of address and should in my view be avoided. Examples of **Dr. Elias, Prof Achike, Prof Tobi** who were all in the Supreme Court never put themselves out as such.

3.1.7.3 Fiduciary duties:

Rule 3D of the Code deals with fiduciary activities which have in a way been discussed when discussing **Rule 2(C)** on disqualification. The views expressed in that discussion equally apply. **Rule 3 (D)** provides:

A Judicial Officer should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust, or person of a member of his family, and that only if such service will not interfere with the proper performance of his judicial duties. “Member of his family” includes a spouse, child, grandchild, parent, grandparent, or other relative or person with whom the Judicial Officer maintains a close familiar relationship. In his capacity a Judicial Officer is subject to the following conditions:

- (i) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings which would ordinarily come before him, or if the estate, trust, or ward becomes involved in legal proceedings in the court to which he serves or one under its appellate jurisdiction;

- (ii) While acting as a fiduciary, a Judicial Officer is subject to the same restrictions in financial activities which apply to him in his personal capacity.

3.1.7.4 Business and financial activities:

Rule 3(E) of the Code deals with business and financial activities. A Judicial Officer can own investments and real property. He shall however not serve as an officer or employee of any business entity. **He must not be involved in investments which tend to reflect adversely on judicial impartiality, interfere with the proper performance of his judicial duties, exploit the judicial position, or involve the Judicial Officer in frequent transactions with legal practitioners or with persons who are likely to come before the Judicial Officer's Court.**

A Judicial Officer in my view, can therefore hold shares in publicly quoted companies, invest in treasury bills and government bonds and obtain loans and mortgages. He must however always advise himself about his financial activities at all times particularly as they concern live matters before him.

Paragraphs 141 and 142 of the commentary throw further light on this

Duty to be aware of financial interests:

If, consequent to his or her decision in a proceeding before the court, it appears that the judge, or a member of the judge's family, or other person in

respect of whom the judge is in a fiduciary relationship, **is likely to benefit financially, the judge has no alternative but to stand down.** Therefore, it is necessary that the judge should be always aware of his or her personal and fiduciary financial interests as well as those of his or her family. “Fiduciary” includes such relationships as executor, administrator, trustee, and guardian.

Financial interest:

“Financial interest” means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of an institution or organization. The following are exceptions:

- (i) Ownership in a mutual or common investment fund that holds securities is not a “financial interest” in securities held by that organization;**
- (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by that organization;**
- (iii) The proprietary interest of a policy holder in a mutual insurance company, a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of any proceeding could substantially affect the value of the interest;**

(iv) Ownership of government securities is a “financial interest” in the issuer only if the outcome of any proceeding could substantially affect the value of the securities.

A Judicial Officer also has a duty to inform family members and Court Staff of ethical constraints.

Paragraphs 177 and 178 are instructive on this.

Duty to inform family members and court staff of ethical constraints

A gift, bequest, loan or favour to a member of the judge’s family or other persons residing in the judge’s household might be, or appear to be, intended to influence the judge. Accordingly, a judge must inform those family members of the relevant ethical constraints upon the judge in this regard and discourage the family members from violating them. A judge cannot, however, reasonably be expected to know, still less control, all of the financial or business activities of all the family members residing in the judge’s household.

The same considerations apply to court staff and others who are subject to the judge’s influence, direction or authority.

3.1.7.5 Practice of Law and acting as an arbitrator:

I will consider **Rule 3 G of the Code** on the practice of law and acting as an arbitrator.

Again the **commentary’s paragraphs 172 – 175 are instructive.**

Meaning of “practice law”:

The practice of law includes work performed outside of a court and that has no immediate relation to court proceedings. It includes conveyancing, giving legal advice on a wide range of subjects, preparing and executing legal instruments covering an extensive field of business and trust relations, and other affairs. For a judge to be employed full-time, during a sabbatical year, in a branch of the government as a special adviser on matters related to courts and the administration of justice, may amount to “practising law”. **Views about the scope of this prohibition vary according to different local traditions.** In some civil law countries even judges serving in a final court are allowed to perform work as arbitrators or mediators. At times, in anticipation of retirement, a judge in a common law country has been permitted to participate in remunerated work as an international arbitrator in a body established by a foreign government.

Acting as an arbitrator or mediator:

Ordinarily, at least in common law jurisdictions, a judge should not act as arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law. The integrity of the judiciary is commonly thought to be undermined if a judge takes financial advantage of the judicial office by rendering private dispute resolution services for pecuniary gain as an

extrajudicial activity. Even when performed without charge, such services may interfere with the proper performance of judicial functions.

In the UK, commercial court Judges are allowed to act as arbitrators, more or less in the line of the normal duties as Judges. Any income derived there from however goes into government coffers.

Legal advice to family members:

A judge should not give legal advice. However, in the case of close family members or close friends, the judge may offer personal advice on a friendly, informal basis, without remuneration, while making it clear that he or she must not be treated as giving legal advice and that, if necessary, any legal advice needed should be professionally sought.

Protecting the judge's own interests:

A judge has the right to act in the protection of his or her rights and interests, including by litigating in the courts. **However, a judge should be circumspect about becoming involved in personal litigation. As a litigant, a judge runs the risk of giving the impression that he or she is taking advantage of his or her office. The judge also risks having his or her credibility adversely affected by the findings of judicial colleagues.**

3.1.7.6 Acceptance of gifts:

This has been topical in recent times. The Chief Justice of Nigeria has further defined the boundaries of this rule by reminding Judges not to ask for nor accept gifts from the executive or the legislature.

Paragraph 2.3.2. of the Judicial Policy provides:

The Code of conduct for Judicial Officers and Code of Conduct for Court Employees, with the amendment discouraging acceptance of gifts from other arms of Government, should be such as would be adequate. Compliance with their provisions shall be mandatory.

Rule 3 F of the Code provides:

1. A Judicial Officer and members of his family shall neither ask for nor accept any gift, bequest, favour, or loan on account of anything done or omitted to be done by him in the discharge of his duties.
2. A Judicial Officer is, however permitted to accept:
 - i. Personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom;
 - ii. Books supplied by publishers on a complimentary basis.

- iii. A loan from lending institution in its regular course of business on the same terms generally available to people who are not Judicial Officers.
- iv. A scholarship or fellowship awarded on the same terms applied to their Applicants.

Indeed, the Holy Books prohibit those in Judicial positions from accepting gifts. Quite naturally, if my blood brother or cousin gives me a gift, even if monetary, during the celebration of a landmark birthday, I personally see nothing wrong with it. It should be and it is an occasion recognized by custom. If my old school mate or my child-hood friend, or even my colleague on the bench gives me a gift on such an occasion, it is in order.

However, if my brother whose income I know, presents a sum equivalent to his monthly salary as a gift to me on such an occasion, I should be wary even though I might construe it as a sacrificial gift on his part. If a childhood friend of mine however rich he may be decided to give my new-born baby a million naira, that calls for circumspection, indeed it is a red light.

The phrase ‘relatives or personal friends’ does not and cannot include litigants. If a litigant decides at Christmas to deliver a hamper to a Judge’s chambers it raises questions:

- **What would the other party in the case involving that litigant think?**

- **What would be the reaction of people in Court if that information is revealed in open Court.**
- **What would the public say? Will such a conduct be condemned or applauded?**

Judges should at all times be circumspect in all their dealings.

3.1.7.7 Declaration of Assets:

Finally, Judicial Officers must always be conscious of the requirement for declaration of assets to the code of conduct bureau.

3.1.7.8 Mode of Dressing/Appearance:

Perhaps, it is also pertinent to remind this gathering of the circular issued by the Administrator of the National Judicial Institute (NJI) dated 7th September, 2016.

By that circular was conveyed the issue of inappropriate and unprofessional dressing among the Judicial Officers and other Court employees who participate at various programmes of the National Judicial Institute (NJI).

The professionalism of the legal profession is reflected both in our appearance as well as our actual job performance, thus conveying an atmosphere of competence, respect, dignity and efficiency.

For any of the programmes of the National Judicial Institute (NJI) therefore, participants should dress in a way and manner a Judicial Officer per excellence and Judiciary Staff should appear.

For men, a suit, shirt and tie worn appropriately and visibly. For women, suit, dresses and skirts of moderate length and dress blouse will be appropriate. This is clearly one of the unwritten rules of ethics which has now had to be restated because it has been observed more in the breach.

4. CONCLUSION

The ethics and code of conduct require transparency and accountability in almost every facet of a Judicial Officer's life. Conduct in a Judicial capacity as well as in extra-judicial capacity invariably have bearing on the perception of the Judiciary as an Institution. Like clergyman, there are many things Judges must not do either in public or in private which private individuals can do with aplomb.

This is because such conduct invariably says a lot about the type of individual that has been entrusted with the task of dispensing justice. That is a task reserved only for God's representatives on earth. God himself in the various religious books ordained the role and office of 'Judge'.

In carrying out that role therefore, Judges must be God-fearing both in public and private conduct. That way, transparency and accountability will be assured because the Judge would have complied not only with the unwritten ethical

rules and the written code but also with the dictates of morality, justice and fairness.

**Hon. Justice O. Faji
Judge,
Federal High Court,
Asaba, Delta State.
3rd November, 2016.**