

**INDUCTION COURSE FOR NEWLY APPOINTED JUDGES AND KADIS ON  
INCULCATING JUDICIAL EXCELLENCE IN NEWLY APPOINTED JUDICIAL OFFICERS  
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PAPER DELIVERED BY HON. JUSTICE R.B. HAASTRUP  
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PERFORMANCE MANAGEMENT AND EVALUATION: PRACTICAL HINTS,  
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**INTRODUCTION**

I am honoured to have been recognized and invited to present a paper at this conference whose main theme is ***“Inculcating Judicial Excellence in Newly Appointed Judicial Officers.”***

I wish to thank the Honourable the Chief Justice of Nigeria, Chairman Board of Governors of the National Judicial Institute Hon. Justice Mahmud Mohammed, GCON, the Administrator of the National Judicial Institute, Hon. Justice R.P.I. Bozimo, OFR and the support staff, for the privilege to have been given this opportunity of sharing my thoughts and experience on this subject. I must congratulate the Administrator of this institute and her team for the well chosen theme for this course, which is apt and relevant; more so presently when the judiciary has now become the spotlight in the public glare that so much is expected of us. We must therefore, as Judicial officers strive to live up to our responsibilities and restore confidence in the rule of law and delivery of justice.

The judiciary is and has always been the fulcrum of good governance in any country, and has a major role to play in upholding Constitutional democracy, to ensure that justice is not only done but is seen to be done. To accomplish the goal of enhancing our democracy, judicial accountability and discipline must be tackled against the backdrop of Code of Conduct for Judicial Officers in Nigeria, and the institutions constitutionally

established to enforce accountability and discipline in the judiciary. The topic: ***Performance Management and Evaluation*** would be better discussed with reference to the Code of Conduct, which are the Rules which prescribe the minimum standard of acceptable behaviour by Judicial Officers; in terms of what is permissible or not permissible conducts by members of the Bench; as the violation of the provisions of the code constitutes judicial misconduct or misbehaviour and may attract disciplinary action.

### **THE CONCEPT OF PERFORMANCE MANAGEMENT**

Without losing focus; the principal objective of this course is geared towards the performance by the Judicial Officer of all judicial duties, including delivery of decisions, efficiently, fairly and with reasonable promptness. I will start by giving the definitions of performance, management and evaluation, and in relation to the judicial functions of the judge.

Oxford Advanced Learner's Dictionary, 6<sup>th</sup> Edition defines 'Performance' *as how well or badly you do something; or how well or badly something works.* For the Chambers 21<sup>st</sup> Century Dictionary Revised Edition, 'Performance' is defined as *a level of achievement, success.....manner or efficiency of functioning.....an instance of outrageous behavior, especially in public.*

A more comprehensive view of performance is achieved if it is defined as embracing both behavior and outcomes. This was well put by *Brumbach (1988)*:

*"Performance means both behaviors and results. Behaviors emanate from the performer and transform performance from abstraction to action. Not just the instruments for results, behaviors are also outcomes in their own right – the product of mental and physical effort applied to tasks – and can be judged apart from results.*

Management on the other hand by the Chambers dictionary definition is *the skill or practice of controlling, directing or planning something.....*For Oxford dictionary, it is the act or skill of dealing with people or situations in a successful way.

Performance Management, it is said is an HRM (Human Resource Management) process, which has become increasingly popular since the 1980s. It is concerned with getting the best performance from individuals in an organization, as well as getting the best performance from teams, and the organization as a whole. See Michael Armstrong Taylor's handbook of Human Resource Management Practice, 2014 - Kogan Page Publishers. Armstrong in his book sets out to explore the new realities of how organizations are approaching the vital tasks of managing for performance and developing the capabilities of their people, at the same time offering some stimulating insights and guidance towards achieving success or meeting the set standards. Effective performance management involves sharing an understanding of what needs to be achieved and then managing and developing people in a way that enables such shared objectives to be achieved. People need both ability and motivation to perform well, and if either ability or motivation is zero, there will be no effective performance. *Blumberg and Pringle (1982)* originated another formula for performance. Their equation was  $\text{Performance} = \text{Individual Attributes} \times \text{Work Effort} \times \text{Organizational Support}$ . Organizational support introduced in this context is a factor affecting performance. Individual performance however, is developed through performance management systems, which provide the framework for improving performance through the agreement of performance expectations and the formulation of performance development plans. As vehicles for feedback and recognition they have a major role in performance and reward system. The purpose of performance management therefore, is to get better results from the organization, teams and individuals by understanding and managing performance within an agreed framework of planned goals, standards and competency requirements. Performance management

enhances the engagement of people by providing the foundation upon which many non-financial motivation approaches can be built. Performance in the context of this discourse is only achievable only by promoting or abiding by Judicial Ethics. Some of the judicial virtues are – the integrity and independence of the judge, passion for hard work, patience, good manners, incorruptibility and fearlessness. Excellence, as attributable to a member of the bench requires more of these virtues; without which, judicial decisions are hardly possible. These qualities are found both in the Bangalore Principles of Judicial Conduct (2002) and equally the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (1998).

The entire Judicial Officer's career is mainly measured by the standard of the Judicial Officer's output, particularly as exhibited in the skills and competence displayed in the judgments delivered. In the discharge of adjudicative duties, the Judicial Officer must uphold the course of justice by abiding with the provisions of the Constitution and the law and must acquire and maintain professional competence, while steering clear of untoward behavior. The competence to know that the otherwise unfettered discretion conferred on a judge in the exercise of his judicial powers is delineated by the terms 'judicial' and 'judicious' which means that he must employ good judgment, restraint and caution in the application of judicial powers and must always have at the core of his consideration, the exercise of justice and equity to both parties.

Every activity in an organization is directed towards the realization of its set goals and objectives. As a result, organizations get pre-occupied with efforts to use the men and resources available to them to achieve the highest results. But man who is a technical factor in the organization is human with subjective and changeable qualitative and dynamic aspects that vary with cultural and personal backgrounds, economic events and with the passage of time.

Therefore, to increase efficiency and effectiveness in the personnel system without undermining the human aspects of man, most organizations resort to the use of a functioning performance appraisal/evaluation system. The use of performance evaluation cuts across sectoral demarcations. It is used both in private organizations, government and quasi government establishments and agencies, educational institutions, social institutions, e.t.c. The main objective of performance appraisal is to bring out the strengths, and weaknesses of the worker on his job, and provides the guides for challenging or directing staff development efforts. It is a system of measuring workers output or productivity or efficiency either quantitatively or qualitatively. The information gathered is what is utilized by the management in planning how to help the worker improve his performance on the job. This information is vital in planning and cannot be ignored, or else the whole efforts of the evaluation become wasted.

### **Meaning of Performance Evaluation**

Performance Evaluation or appraisal, also known as employee appraisal is a method by which the performance of an employee is evaluated (generally in terms of quality, quantity, cost and time). Performance appraisal is a part of career development. It enables the management and monitoring of responsibilities and tasks.

Hackett (1979) is of the view that performance appraisal is the name given to the regular (usually six monthly or annually) formalized and recorded review of the way an individual is performing his job. According to this author, the appraisal should be regular, formal and recorded.

Michel (1971) in his own view described performance appraisal as the act of estimating the worth of employees in order to first, determine rewards and penalties, and second, provide a basis for counseling.

It is sometimes fashionable in the 'modern age' to dismiss traditional processes such as performance appraisals or evaluation as being irrelevant or unhelpful. One must be very wary however if considering removing appraisals from organizational practices. It is likely that the critics of the appraisal process are the people who can't conduct them very well. It's a common human response to, want to jettison something that one finds difficult. Appraisals in whatever form, have been a mainstay of management for decades. In fact, performance evaluations of all types are effective if they are conducted properly. Some of the benefits of performance evaluation are:

1. It increases efficiency and effectiveness in the organization.
2. It reveals the strength and weaknesses of the employee and provides the guides for channeling or directing staff development efforts.
3. It provides the basis for taking appropriate actions in determining monetary rewards, merit awards, retention, reassignment, promotion or demotion and dismissal as the case may be.
4. Motivation through achievements and feedbacks.
5. Counseling and feedback.
6. Training needs and learning desires-assessment and agreements.

Performance evaluation in any organization cannot be ignored; as every good appraisal system rewards excellence in performance and counsels the employees with low performance on how to improve in their performance.

Performance is said to be a complicated notion. As Bates and Holton (1995) emphasized, 'Performance is a multi-dimensional construct'. It was pointed out by Campbell *et al* (1993) that the components of performance, to mention a few are:

- Job-specific task proficiency;
- Demonstration of effort;

- Maintenance of personal discipline;
- Supervision/leadership;
- Management/administration.

This concept of performance leads to the conclusion that when managing performance of individuals or teams, a number of factors have to be considered including both inputs (behavior) and outputs (results), which are concerned with developing a high-performance culture; where people become aware of the need to perform well, and behave accordingly in order to meet or exceed expectations. Such a culture embraces a number of interrelated processes which together make an impact on the performance of the organization through its people. The Judicial Officers in the context of this discussion have thus become the most important determinant of organizational excellence or success.

All the definitions above have exposed us to the rudiments of performance management and appraisal /evaluation; and therefore, for this study, a sufficient understanding of what it constitutes has been demonstrated.

The discussions will therefore, be limited to performance in relation to adjudicative duties; which will be approached from the following perspectives:

1. Performance Evaluation in the Nigerian Judiciary
2. Developing a high performance culture; how achievable/challenges that may impede optimal performance.
3. Conclusion.

## **PERFORMANCE EVALUATION IN THE NIGERIAN JUDICIARY**

It is quite in place that judges should be accountable to the application of their oath of office without fear or favour by taking decisions in accordance with the provisions of the law and not otherwise; and to the public at large whom they have sworn to serve. After

all, in the performance of judicial duties, the Judicial Officer shall not only do justice, but justice must be manifestly seen to be done by the common man on the street. It is when judges are accountable for their actions, that the judicial systems can become more efficient, with judges providing a quicker and fairer approach in the resolution of cases thereby, promoting an efficient and effective Judiciary in any democratic setting.

It is due to the non performance of some judges in the discharge of their duties, that some mechanisms have been adopted by the National Judicial Council (NJC) for the purpose of monitoring the performance of Judicial Officers, by an assessment or evaluation of the productivity level of every Judicial Officer, to ensure accountability and discipline such that public confidence will be restored in the system. The performance Evaluation Committee was set up by the NJC in 2003 for this purpose, to encourage hard work, competence and skills, e.t.c of the judicial officer, in the performance of his judicial duties. The committee assesses the performance of the judicial officers in relation to the number of cases, rulings and judgements, not unmindful also, on the quality of judgements given; which is done on a quarterly basis. A bench mark has been set for judges, with a minimum of 20 judgements returned per quarter in contested cases. Anything falling short of this benchmark cannot be recorded as an excellent performance. By this feedback on returns of cases, judges are able to know whether he/she has performed well or not. I have annexed a copy of the form designed by the committee for assessing the performance of judicial officers in Nigeria. This is one of such forms for the National Industrial Court of Nigeria. This would encourage further improvement and growth on the job. By this, judges are kept on their toes not only of their judicial performance but also that of their individual conduct.

The committee is now poised to insist on using each aspect of the judicial code to bring erring judicial officers to justice. One may wonder if the benchmark set for judicial officers is achievable. My answer is simply Yes! Here, the industry, competence and skill,

hard work, commitment and dedication to duties by the judicial officer come to bear, in attaining excellence in judicial administration. Thus, an excellent judge makes an excellent judiciary. A judge must therefore, be seen to perform his judicial duties skilfully and expeditiously without bias or prejudice, and must always remember that every 'justice delayed is justice equally denied'. A slothful Judicial Officer is a clog in the wheel of justice, cannot also be productive; and is unfit for the bench.

The judge who is in the centre of the furore, as an impartial arbiter, must use everything at his/her disposal to do a good job. He/she must conduct the matter very dispassionately and carefully as to do justice to all parties in the context of the enabling law.

It is important to note that the process of performance evaluation should be a continuous one. Once objectives have been set, which is the call for judicial excellence in the administration of justice, the National Judicial Council and other bodies responsible for the recommendation and appointment of judges, must consider only those who have the knowledge, skills and qualities needed to achieve these objectives in the appointment of persons to the bench. This is because, where the wrong people are appointed to the bench, the result is nothing other than low output, which makes the set objectives merely a dream unrealizable.

### **DEVELOPING A HIGH PERFORMANCE CULTURE IN ADJUDICATIVE DUTIES – HOW ACHIEVABLE/ CHALLENGES; PRACTICAL HINTS.**

I referred earlier on to the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (1998), which are the Rules which prescribe the minimum standard of acceptable behaviour by Judicial Officers; in terms of what is permissible or not permissible conducts by members of the Bench, in the exercise of judicial functions. What then can enhance the performance of a judicial officer in terms of adjudicative

responsibilities? This would depend on how well the judge is able to manage and control the proceedings in his court. How quickly cases are processed by the justice system and the extent to which this process is conducted in a way that protects the individual's rights. The judicial officer must inculcate an attitude of doing a self appraisal of his performance more frequently this will enable him/her to keep track of the cases, whether they are being well managed or not. There shouldn't be any delay in the assignment of cases from when they are being filed and a date for mention of the case should be fixed with hearing notices sent to parties, without any delays. A judicial officer must not be ignorant of the total number of cases in his docket (cases assigned) as opposed to the number of decided cases (cases disposed of); this would put him/her on the track on how the cases are being handled. The uniform civil procedure rules of court, which I assume we are all conversant with in our respective jurisdictions, have helped a great deal if properly applied to curb the excesses that may be an impediment or clog in the wheel of justice, thereby allowing the fast-track of proceedings. A judge must not therefore allow deliberate and improper use of procedure by counsel to undermine speedy administration of justice. Lawyers, both prosecutors and defence must not be allowed to engage in gimmicks of manipulating the rules of court to attain narrow selfish objectives that do not promote the cause of justice.

I must stress on the need for discipline in the Judiciary, which cannot be over-emphasised. Judges need to exhibit or demonstrate a clear understanding or sufficient knowledge of the law, rules of practice and procedure in their courts for the discharge of their judicial functions. A judge must be passionate, hardworking, firm, courageous and unbiased; must discharge his duties without sentiments or fear of being criticised; which are some of the virtues also entrapped in the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, 2005.

Also, the proper management of court personnel and application of time in case processing cannot be ignored. Case management in the courts should be designed in such a way to allow for a timely movement of cases at every stage in the proceeding, i.e. sorting out the complex cases from the less complex ones, develop a time management strategy for expeditious processing of the cases. It is necessary to also, adopt procedures that would ensure that all relevant documents are promptly compiled in the case file, to allow the judge to have insight of the legal and factual issues involved and the positions of the parties, such that it would be handled expeditiously. This strategy may be quite useful also in the expeditious hearing and disposition of preliminary matters before the court. A judge should strive to give bench rulings on preliminary matters where the legal issues are straight forward, without the need for deferring such matters for ruling, such that the substantive matter would be attended to speedily. It is noteworthy, that some of these preliminary matters may be such that would eventually terminate the case at that stage.

The foregoing case management process if properly applied will encourage a prompt, efficient and inexpensive adjudication of proceedings.

The above hints are of course not without some challenges, which a judge is bound to encounter in the course of exercising his/her judicial functions; which if not properly or promptly addressed could call to question the integrity of the judicial officer. Some of these impediments are the gimmicks by counsel to undermine the speedy administration of justice; failure to file processes on time, asking for unnecessary adjournments, ceaseless applications for amendment of processes, and filing of matters on preliminary issues which are merely technical or academic in nature, frequent change of counsel in a matter. Some of these impediments could equally be self inflicted, i.e. from the bench; where the judicial officer is indolent, incompetent,

dispassionate and not punctual at court sittings. All these factors could affect the productivity of a judge. The list cannot be exhausted.

The challenges are not insurmountable, where a judge is passionate in the exercise of his duties and in total control of the court proceedings. A judge must not over indulge a counsel at the detriment of an adversary, and should not hesitate to strike out any matter on grounds of non diligent prosecution.

The rules of court applicable in our respective jurisdictions have helped a great deal to curb some of these challenges faced by judicial officers. At this juncture, I will briefly make some few remarks on the National Industrial Court, which is where I am presently serving as a judge. The National Industrial Court Rules, 2007 and the Practice Direction signed by the Hon. President of the Court, Hon. Justice B.A. Adejumo, OFR on 15<sup>th</sup> day of June, 2012, have in no small measure fast-tracked the proceedings in court; allowing matters to be heard and determined expeditiously. In the application of this Rules (National Industrial Court Rules, 2007), Order 19 deals generally with proceedings at trial. Rule 3 allows the court to *suo moto* close the case of a party, where he/she fails to conclude same within a reasonable time. Order 19 Rule 16 allows the Court to *suo moto* strike out any proceedings not being prosecuted diligently. Furthermore, time (20 minutes) is being allowed each party for oral argument, regarding written addresses filed by them at the conclusion of evidence. In my own case, I restrict the parties most often times to 5 – 10 minutes, since the arguments are already on record; this is because counsel tend to spend longer time in their arguments, and unmindful of other pending matters yet to be attended to as scheduled for the day. The front-loading system in the Court has equally facilitated the speedy dispensation of cases. Orders 3 Rule 4 and Order 9 Rule 1 of the NIC Rules, 2007 as amended by the Practice Direction 2012, deals with the filing and exchange of pleadings which includes the frontloading of all processes and documents to be relied upon at the trial, and in this case, voluminous

or bundle of documents are allowed to be treated and counted as one exhibit. All these are meant to save time and allow matters to move speedily. Adjournments in matters should be restricted and parties should be well informed before commencement of trial on the number of adjournments that would be allowed by the court in the course of trial.

Furthermore, Section 12 (2) (a) National Industrial Court Act, 2006 allows the court to regulate its practice and procedure as it thinks fit, with the view to doing substantial justice. By this, the excesses of counsel in most cases is controlled, particularly where they attempt to delay proceedings by filing unnecessary applications or even oral arguments on issues based on technicalities. Again, penalties are imposed on any party who fails to perform an act within the time authorized by the Court or under the rules, which is in form of default fees, as costs charged progressively; N50. 00 for each day of such default within the first thirty days, an additional N100.00 for each day for the next 30 days of default and thereafter an additional N200.00 for each day of such default at the time of compliance. See Order 25 Rule 4 (as amended by the practice Direction, 2012). This would encourage parties to conduct their cases with all seriousness.

Encouraging Alternative Dispute Resolution (ADR), can decrease the caseload, and cause the just, efficient and speedy dispensation of justice. In order to make this mechanism more result oriented, ADR centres were recently established in the geopolitical zones of the country. Although prior to the establishment of the centres, section 20 of the National Industrial Court Act, 2006 was adopted by the court in promoting reconciliation among the parties and encourage and also, facilitate the amicable settlement of disputes.

Greater use of information technology in communication and adjudication, such as the online library resources and other smart devices, would increase efficiency of a judge

and allow for the quicker research and delivery of rulings, with cases cited instantly checked to see if relevant to points raised by counsel.

## **CONCLUSION**

Having looked at the concept of performance management and evaluation, it is obvious that excellence is attainable by strict adherence with our code of conduct. As judicial officers, we must strive to maintain professional competence, order and decorum at all times. I must at this juncture commend the National Judicial Council through its committee on performance evaluation, whose focus recently is not only limited now to assessing the output of judicial officers but also their general conduct, and other pertinent structures upon which the business of justice depends. This is the hallmark of a progressive judiciary required in order to maintain the good orderliness of the drive towards a timely dispensation of justice. I must then, state here that the only means of maintaining and sustaining the judiciary lies on you all.

Finally, I thank you all for listening.

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31<sup>st</sup> May 2016.***

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