

ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS: PERFORMANCE MANAGEMENT AND EVALUATION

DELIVERED BY

HON. JUSTICE B. A. ADEJUMO, OFR

MCIArb (UK), GFISMN, CFIAR, FCIArb, FNILS

President,

National Industrial Court Of Nigeria

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***Theme: 'PROMOTING JUDICIAL PERFORMANCE THROUGH
INNOVATIONS AND REFORMS'***

Organised By

THE NATIONAL JUDICIAL INSTITUTE

**TOPIC: ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS,
PERFORMANCE MANAGEMENT AND EVALUATION**

INTRODUCTION

Let me begin this presentation by expressing my profound gratitude and appreciation to the Chief Justice of Nigeria, the Chairman Board of Governors of National Judicial Institute (NJI), the Administrator and staffers of the Institute for giving me the opportunity to make this presentation before Honourable Judges and Khadis of superior courts of record here present. I am particularly honoured to be requested to make this presentation before an assemblage of eminent jurists and erudite Judicial Officers of this great country.

I received this invitation with mixed reactions realising that delivering a paper of this nature before this distinguished gathering is by no means a small feat. I was almost tempted to decline the offer to make this presentation because of my tight schedule of work; both in court as well as other judicial and administrative assignments. However, on a second thought, I realised that sharing knowledge with one's peers and colleagues is rare privilege and an act of great honour for which I am grateful. I also remembered that when I was appointed a Judicial Officer a little above 18 years ago in Ondo State Judiciary, some eminent Jurists were invited to deliver papers at a refresher course for newly appointed Judicial Officers of which I was one. A combination of consideration, coupled with the rare privilege to stand before your Lordships prompted my acceptance to write and deliver this paper.

Once again I express my sincere appreciation to the Administrator of the Institute and the organisers of this refresher course for the opportunity accorded me to write and present this paper.

For the purpose of emphasis, the topic before me is "ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS: PERFORMANCE MANAGEMENT AND EVALUATION". I shall make my presentation by way of a review of the establishment and roles of the Performance Evaluation of Judicial Officers' Committee of the National Judicial Council. My presentation of this paper would be both abstract and clinical.

ESTABLISHMENT OF THE COUNCIL

History is made up of past events; what is on ground is story. Before the 1999 Constitution (as amended), enough provisions were not made for a body to have powers on judicial policies, control and standard. In a bid to address this and the deterioration in the ethical standard and performance of Judicial Officers in the Nigeria, the General Abacha administration set up a Commission in 1993 to probe the conduct of Judicial Officers in the country and make recommendations thereof. Section 153 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) established for the Federation some executive bodies one of which is the National Judicial Council (NJC). The composition and powers of the Council are provided in items 20 and 21 of Part 1 of the Third Schedule to the said Constitution.

The National Judicial Council is charged with the power to recommend the appointment of Judicial Officers throughout the country, collect and disburse budgetary provisions of the judiciary and judicial bodies as mandated by the Constitution, pay their salaries and allowances of Judicial Officers and judicial staff, as well as discipline erring officers. However, the primary objective of establishing the Council is to ensure that Judicial Officers discharge their functions independently and insulated from interference from other arms of the government. The Council also ensures efficient performance and maximum productivity of Judicial Officers.

The Committee set up by the General Abacha administration to probe Judges which was headed by Hon. Justice Kayode Esho, CON (JSC as he then was and of blessed memory) found 28 Judges culpable for various offences ranging from corruption to low productivity. The report Hon Justice Eso's Committee Report was referred to the NJC in 2001 for necessary actions. A review panel was set up by the NJC to revisit the cases of the indicted Judicial Officers.

ESTABLISHMENT OF THE PERFORMANCE EVALUATION COMMITTEE OF THE NATIONAL JUDICIAL COUNCIL

The Performance Evaluation Committee of Judicial Officers of NJC was set up in 2003 by the Council after the Council observed the efficacy in the Hon Justice Kayode Eso's Committee Report. Thus the Council recommended that there should be in the Country a Performance Assessment Committee to monitor the performance of all Judicial Officers in the Country. Hence, in 2003 the Performance Evaluation Committee of Judicial Officers of Superior

Courts of Records was set up pursuant to the wide powers of the Council as enshrined in item 21 of Part 1 of the Third Schedule to the 1999 Constitution. The Committee comprised of 5 pioneer members and a Secretary. The inaugural members were:

1. Hon. Justice B.O. Babalakin, CON (JSC rtd)	Chairman
2. Hon. Justice Owolabi Kolawole, OFR	Member
3. Mr. A.N. Anyamene, SAN	Member
4. Alh. Murtala Aminu, OFR, Galadima of Adamawa	Member
5. Dr. Abigail Ajoku, KSM	Member
6. Alh. Muktari A. Tambawel (DD, PRS, NJC)	Secretary

MANDATES OF THE COMMITTEE

The various mandates of the Performance Evaluation of Judicial Officers of Superior Courts of Record includes evaluating, assessing, monitoring and supervising the performance and general conduct of Judicial Officers in the discharge of their judicial functions and administration of justice.

Consequent upon the terms of establishment of the Committee, it owes it a duty to ensure that a minimum standard of performance expected of a Judicial Officer is attained. The evaluation and assessment of the performance of Judges is one of the yardsticks of measuring which Judicial Officer based on his /her performance report, deserves to be commended and recommended for appointment or elevation to a higher Bench whenever the need arises. It also recommends on regular basis to the Council, measures to be taken against low or non-performing Judicial Officer.

Membership of the Committee is constituted at the plenary of the Council under the Chairmanship of the Council. Whenever there is vacancy on the Committee either by completion of tenure or retirement of a member, a replacement is made at the plenary by the Chairman of the Council who is also the Chief Justice of Nigeria.

The Committee comprises of a Chairman and 8 members. The membership comprises of retired Supreme Court Justices, retired Court of Appeal Justices, some Heads of Superior Courts of Records (Federal and State Courts), selected Grand Khadi of Sharia Court of Appeal and selected Presidents of Customary Court of Appeal. From the records, the Committee was first chaired by a retired Justice of the Supreme Court – in the person of Hon. Justice B.O. Babalakin, CON (JSC rtd) between 2003 and 2010, thereafter Hon. Justice Emmanuel O. Ayoola, CON (JSC rtd) took over the chairmanship of the Committee from 2010 till date. The present Committee

composed of 9 members which includes the Chairman and a Secretary. Members of the Committee could be retired Judges, serving Judges and one or two other persons from backgrounds other than law.

MODE OF OPERATION OF THE COMMITTEE

The Committee sits to evaluate and consider the performance of Judicial Officers of various Courts starting from the Court of Appeal, Federal High Court, National Industrial Court of Nigeria, High Court of the Federal Capital Territory, High Court of States, Sharia Court of Appeal of the FCT, Sharia Court of Appeal of States, Customary Courts of Appeal of FCT and Customary Court of Appeal of States.

It is the standing order and practice of the Committee that at every first week of a new quarter, Judicial Officers of the above stated courts of records should make quarterly returns by filling and submitting their Performance Evaluation Form to the Secretariat of the Committee through their Heads of Court who are expected to thoroughly peruse the forms before countersigning same.

The Secretariat of the Committee thereafter sorts all forms submitted by Judicial Officers in accordance with designed format and compliance guidelines which will be seen later in this presentation.

The purpose of the Committee is not to witch-hunt, intimidate, oppress or create fear in the mind of Judicial Officers in the course of performing their Constitutional and Statutory judicial duties. Rather, the Committee ensures that Judicial Officers are upright in the discharge of their responsibilities by doing their best competently, diligently and in accordance with their oath of office. Moreso, Judicial Officers are to bear in mind the need to discharge their judicial duties without delay or interference. Judicial Officers of superior courts of record should therefore not be scared of the Committee. They should see the Committee as fellow Judicial Officers/Nigerians who perform same functions and understand the challenges and the conditions under which they operate. Members of the Committee are human beings with human faces, even in the face of critical situations where a decision is to be taken on the non-performance of a Judicial Officer. It should be noted that in some instances of non-performance or non-submission of returns, the Committee sees a defaulting Judicial Officers as colleagues and thereby tempers justice with mercy. In view of this, a Judicial Officer has nothing to fear when he or she is up and alive to his or her duties.

What the Committee does not tolerate and would not tolerate under any circumstance is a repeated act of non-performance as a result of indolence, nonchalant attitude and impunity where it can be inferred from the submission made by a Judicial Officer or where he or she recklessly makes a false submission. Impunity and/or recklessness occur where a Judicial Officer relinquishes his or her responsibilities of collating and submission of the quarterly performance return to his or her subordinate without perusing same before signing for submission to the Head of Court for onward transmission to the Committee. It should be noted that a Judicial Officer may be sanctioned where he/she carelessly or without proper scrutiny signs a return made to him before submitting it to the Committee. In view of the above, the Committee has mandated all Heads of Court to ensure that correct submissions are made by all Judicial Officers under them.

I need not remind us as Judicial Officers that we must be conscious of the oath of office we swore to on our appointment as Judicial Officers. This is provided in the 1999 Constitution (as amended), particularly in the Seventh Schedule to the Constitution, which states thus:

“I, do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Chief Justice of Nigeria/Justice of the Supreme Court/President/Justice of the Court of Appeal/Chief Judge/Judge of the Federal High Court/President/Judge of the National Industrial Court/Chief Judge/Judge of the High Court of the Federal Capital Territory, Abuja/Chief Judge of State/Judge of the High Court of State/Grand Kadi/Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja/ Grand Kadi/Kadi of the Sharia Court of Appeal of State/President/Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja/President/Judge of the Customary Court of Appeal ofState. I will discharge my duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law, that I will abide by the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria; that I will not allow

my personal interest to influence my official conduct or my official decisions; that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria. So help me God.”

SIGNIFICANCE OF THE COMMITTEE

The Committee amongst other things has been effective in playing its crucial role in its evaluation and supervisory capacity.

1. Records have proved that since its inception, the Committee has been serving as a watchdog and guide towards ensuring that Judicial Officers are not lazy, idle, indolent, reckless and incompetent or perform their duties with impunity. It has thereby ensured that Judges are diligent.
2. The Committee has contributed in no small measure to the improvement of performance and the standard of performance of Judicial Officers.
3. It has also contributed immensely to the indirect decongestion of the dockets of our Courts.
4. It has also through its visits to various jurisdictions found out the problems or causes of delay in the dispensation of justice or non-performance of Judicial Officers.
5. It has helped the Council in no small measure in the discharge of its duties by coming up with rules, procedures and guidelines as to the way of moving the Nigeria Judiciary forward.
6. It has helped the Council in the selection of very good and competent hands for elevation to higher Bench in the sense that whenever an appointment is to be made to the higher Bench, the record of the Performance Evaluation Committee is looked into, and the performance of Judicial Officers will be considered from the record. That is why in some cases a junior Judicial Officer whose performance report is better than that of his or her senior is eventually elevated to higher Bench. This is one of the considerations in the assessment of Judicial Officers for elevation to higher Bench.
7. The Committee has a gamut of scoring or assessing of Judicial Officers. The chart below depicts the guidelines as laid down by the Committee for assessing Judicial Officers.

(See attached pages 8(i)–8(ix) for prototype of Performance Evaluation Assessment Forms of superior courts of record), which are tagged in the following order:

- A – Court of Appeal
- B – Federal High Court
- C – National Industrial Court
- D – High Court of the FCT
- E – Sharia Court of Appeal of the FCT
- F – Customary Court of Appeal of FCT
- G – States High Courts
- H – Sharia Court of Appeal of States
- I – Customary Court of Appeal of States;

While the attached pages 8(x) – 8(xiii) which are tagged ‘L’ – ‘O’ represent the charts for personal monitoring of performance as will be elucidated later in this presentation.

From the charts above, assessments are compartmentalized. A column may be dedicated to Civil, Criminal, Motion, Fundamental Rights Enforcement or for Appeal cases. The columns are required to be conscientiously and fairly completed for making returns as expected of Judicial Officers. The minimum numbers of cases that may guide for assessment, grading or scoring of Judicial Officers’ performance are as shown in the successive chart here under.

This Assessment Score Sheet serves as guidelines for assessing and scoring the performance of Chief Judges of superior courts of record over a period of three months, which makes a quarter.

NATIONAL JUDICIAL COUNCIL

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PERFORMANCE EVALUATION COMMITTEE OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD

REVIEWED ASSESSMENT GUIDELINES BASED ON CONTESTED CASES AND MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN A PERIOD OF THREE MONTHS FOR CHIEF JUDGES

****(EFFECTIVE FROM 1ST QUARTER, 2014)

S/NO	NO OF CONTESTED CASES & MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN 3 MONTHS	COMMITTEE'S GRADING
1.	0 – 1	No Performance
2.	2 -3	Marginal Performance
3.	4 – 6	Fair
4.	7 – 9	Good
5.	10 – 11	Very Good
6.	12 and above	Excellent

The Assessment Score Sheet tabulated below serves as guidelines for assessing and scoring the performance of individual Judges and Appellate Courts' Judges over a period of three months (one quarter).

NATIONAL JUDICIAL COUNCIL

PERFORMANCE EVALUATION COMMITTEE OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD

REVIEWED ASSESSMENT GUIDELINES BASED ON CONTESTED CASES AND MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN A PERIOD OF THREE MONTHS FOR INDIVIDUAL JUDGES & APPELLATE COURTS

****(EFFECTIVE FROM 1ST QUARTER, 2014)

S/NO	NO OF CONTESTED CASES & MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN 3 MONTHS	COMMITTEE’S GRADING
1.	0 – 3	No Performance
2.	4 - 5	Marginal Performance
3.	6 – 11	Fair
4.	12 – 18	Good
5.	19 – 23	Very Good
6.	24 and above	Excellent

We may observe from the charts, the numbers of cases disposed of up to conclusion; numbers of motions taken, numbers of fundamental right enforcement taken, etc. will be listed and scored. Also the numbers of appeal cases taken. All these speak for themselves. However, a Judicial Officer is expected to perform up to standard as required of a diligent Judicial Officer. The minimum standard expected of a performing Judge is between 6 – 11 cases in which he delivers judgment within a period of three months. Anything less of this, will amount to marginal or no performance.

OUTCOME OF ASSESMENT ON QUARTERLY BASIS

Any division of the Court of Appeal that delivers and submits its decision up to the satisfactory numbers is graded according to the chart above. This

grading system is also applicable to Heads of Courts and Judges of other courts of record.

OUTCOME OF PERFORMANCE EVALUATION ON NON-PERFORMING JUDICIAL OFFICER

A Judicial Officer who had performed very well would be written a letter of commendation either stating that he had performed excellently or very well. In like manner, a non-performing Judicial Officer will also be written a query to state why he or she is not performing. If Judicial Officer's response to the query is not satisfactory to the Committee, the Committee will issue a warning letter to him or her. If he/she persists in non-performing, the Committee may recommend to the Council at the plenary to consider placing the affected Judicial Officer on a watch-list or to be reprimanded or placed on suspension and removal in line with the Constitution. The Committee may also recommend to the Council that such a Judicial Officer should not be considered for elevation to a higher Bench.

On the other hand, where a performing Judicial Officer suddenly drops to a non-performing Judicial Officer, the Committee would inquire into the challenges such a Judge is facing that may cause the decline in his or her performance. The Committee also puts into consideration issues of health conditions of work environment such as lack or low power supply and proximity between workplace (Court) and the residence of the Judge. Any of these factors could be responsible for his diminishing performance. Besides, where a non-performing Judicial Officer persists in non-performing, the Committee will also inquire into why he or she is still not performing. His explanation will guide the Committee as to what to do. In some cases, if the fault of the Judge is linked to the judiciary itself, recommendation would be made to the plenary as to possible remedy of such situation.

To make things easier for newly appointed Judicial Officers, the Committee usually gives them up to two (2) quarters grace period before strict assessment bearing it in mind that cases before the new Judges might not have matured up to trial or decision stages. Therefore, a Judge is expected to have developed his case management acumen and be in tune with the realities of the dictates of his or her judicial office. These are some of the ways the Committee has employed to ensure fairness in assessment and evaluation of Judicial Officers. For instance, where a Judicial Officer is on national assignment such as Election Petition Tribunal and he or she is unable to sit in Court, the Committee will take into consideration the duration of the period of the Tribunal in assessing him or her.

If the Performance Evaluation Committee discovers that a Judiciary is not performing fairly, it may recommend to the Council that such Judiciary be kept in the frozen list. That is, even when there are vacancies to be filled, Judicial Officers from such Judiciary will not be considered for filling the vacancies unless there is improvement on the performance of that Judiciary. Where the Committee discovers that the performance of a state Judiciary is not satisfactory, it may decide to visit such Judiciary. A Judiciary may remain on frozen list if the judiciary persists in non-performance.

JUDGES FEAR OR APPREHENSION FOR THE PERFORMANCE EVALUATION COMMITTEE

It is common these days for one to hear Judicial Officer say that the fear of the Performance Evaluation Committee is the beginning of wisdom. Judges should not be afraid of the Committee. Rather, they should sit and settle to work in order to meet the required standard of the Committee. Hardworking Judges have nothing to fear about the Committee. With due respect, it is only indolent Judges that get apprehensive whenever they remember the Performance Evaluation Committee.

The Committee is established to find out the challenges Judicial Officers face in the course of work, assess the performances of Judicial Officers and proffer corrections where they are not performing. The Committee counsels Judicial Officers on their shortcomings and advise the Council on what to do to ease the work of Judicial Officers. The Committee ensures that the public sees the judiciary as diligent, free and independent, as well as strengthens their believe in the judiciary as the last hope of the common man.

WHY JUDICIAL OFFICERS FAIL TO PERFORM AS LAID DOWN IN THE GUIDELINES OF THE COMMITTEE

1. Lack of convenience of case knowledge management:

Some Judges are industrious but as a result of insufficient knowledge of case management, they may work all days but may not have cases to present to the Committee at the time of assessment. For example, a Judicial Officer that opens up a lot of case files and have large number of part-heard matters and adopts a lot of final written addresses for judgment forgetting that time is of essence may not have enough cases to file as return at the end of the quarter. Rule 2 (A), paragraph 6 of Code of Conduct for Judicial Officer of the Federal Republic of Nigeria provides that a Judicial Officer should promptly dispose of the business of Court. It further states that a Judicial Officer should devote adequate time to his duties, be punctual (unless

ill or unable, for good reason, to come to court) to Court and act expeditiously in bringing to a conclusion and determining matters under submission. Judicial Officers must avoid tardiness and maintain official hours of the court.

2. Lack of court administration and organisation:

Some Judges on appointment lacks judicial administration skills except those that started from the lower Bench. Others do not know how to manage and control their support staff. Such Judicial Officer's effort at meeting up with the Committee's deadline for filing of returns may be frustrated by his or her support staff knowingly or unknowingly.

A Judicial Officer's effort may be frustrated knowingly in the sense that some of their support staff may have personal interests rather than the official interest. He or she may have extraneous and personal interest than the interest of the court and the public which the office of the Judicial Officer seeks to protect. It may be frustrated unknowingly in that, some of the support staff as a result of illiteracy, laziness, lack of training and inability to learn may cause havoc to the Court and lead to non-performance of the Judicial Officer.

3. Laziness or Indolence:

With due respect, some Judicial Officers are quite naturally lazy even when you train, educate or correct them, they will never do well and the consequence will tell on their performance and the good name of the court. In some cases, some Judicial Officers who are not thirsty for elevation feel comfortable with their present position and as a result discharge their duties nonchalantly and at the pace they feel at home with without recourse to their need to meet up with quarterly evaluation.

4. Negative attitude to work:

Laziness and negative attitude to work are Siamese twins. Some of the support staff working in the chambers of Judicial Officers often comes late to work thereby holding Judges to ransom notwithstanding their penchant for closing early thereby affecting the productivity of Judicial Officers. At times, they also use the excuse of illness to absent themselves from work which negatively contributes to the Judge's performance. The litigation registry of the court which handles filing and prepares the daily cases to be heard by the court must be carefully monitored. In most cases, processes filed at the litigation

officer will not be kept in the case file before the hearing date while hearing notices may not be issued and served on parties and counsel as ordered or required by the Rules of the court. In consequence, the Judicial Officer will have to adjourn the hearing of such matter in that circumstance. All the above militate against the effective performance of Judicial Officers.

5. Disobedience to or non-compliance with relevant provisions of the Constitution, Acts, Laws or Rules of Courts which relate to what a Judge should do, how to do it and when to do it:

At times, Judges don't give attention to the provisions of the Constitution or relevant laws that state how things should be done. For example, where the Constitution has stipulated what should be done, such as the delivery of the decision of the court within a time stipulated by the Constitution as enshrined in section 294(1) of the 1999 Constitution (as amended) or the time within which to furnish all parties to the cause or matter determined with duly authenticated copies of the decision, a failure of which amounts to misconduct. Rule 2 (A) of the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, under adjudicative duties at paragraph 7, buttressed the later part of section 294(1) of the Constitution that duly authenticated copies of a court's decision be furnished on all parties to a cause. It may also be noted that some Judicial Officers such as Heads of Courts may also use the excuse of their busy schedule to disobey the provisions of section 294(1) (supra).

Section 294 (6) of the Constitution (as amended) enjoins such a Judicial Officer who is in default of section 294(1) to send a report through his/her presiding Judge to the Chairman of NJC, stating why the Judicial Officer was unable to comply with the provision of the section above.

Honourable Judges, arising from my personal experience in relation to non-compliance with section 294(1) of the Constitution, a copy of a letter in compliance with section 294(6) justifying my inability to comply with the provisions of section 294(1) is hereunder reproduced. In the letter below, you will observe the reasons why a decision could not be reached within the 90 days as stipulated by the Constitution were well tendered and presented to the Chairman of the Council. However, Judges should also strive to comply with the provisions of relevant laws in the discharge of their judicial duties to the provisions above.

**NATIONAL INDUSTRIAL COURT OF NIGERIA
PRESIDENT'S CHAMBERS**

**10, PORT-HARCOURT CRESCENT, AREA 11, PMB 623 GARKI,
ABUJA, NIGERIA**

Ref:

PNICN/ABJ/CJN/73



Date:

9th November, 2015

His Lordship,
The Hon. Justice Mahmud Mohammed, CJN, GCON,
The Hon. Chief Justice of Nigeria and Chairman,
National Judicial Council,
Chief Justice's Chambers,
Supreme Court Complex,
Three Arms Zone,
Abuja.

**SUBMISSION OF A REPORT PURSUANT TO SECTION 294(6)
OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA 1999 (AS AMENDED), IN RESPECT OF SUIT
NO.NICN/ABJ/112/2014: BETWEEN: MICHAEL NZEKWE V.
ECONOMIC AND FINANCIAL CRIMES COMMISSION**

It is with utmost respect and deep sense of responsibility that I write to Your Lordship in respect of the above captioned subject matter.

My Lord, 294(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), requires every court before which a matter is pending to deliver its decision in writing not later than ninety (90) days after the conclusion of evidence and final addresses.

However, subsection (6) of section 294 states as follows:

(6) As soon as possible after hearing and deciding any case in which it has been determined or observed that there was non-compliance with the provisions of sub-section (1) of this section, the person presiding at the sitting of the court shall send a report on the case to the Chairman of the National Judicial Council who shall keep the Council informed of such action as the Council may deem fit.

My Lord, it is clear that the above quoted constitutional provision requires a judge delivering judgment outside the ninety (90) days prescribed by the Constitution to submit a report to Your Lordship for the information of the National Judicial Council.

I wish to respectfully transmit this Report to Your Lordship in respect of the above mentioned case because judgment was not delivered within ninety days from the date it was adjourned for judgment as required by section 294(1) of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

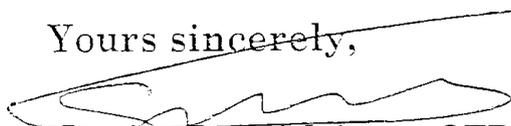
My Lord, the parties adopted their final written addresses on 14th July, 2015 and the case was adjourned to 22nd October, 2015 for delivery of judgment. In fixing a date on which judgment in the case was to be delivered, the attention of the Court was drawn to the fact that its 2015 Annual Vacation was schedule to commence on 20th July - 11th September, 2015. The Court was also guided by its Diary in fixing October 22, 2015 as the date on which the judgment was to be delivered.

My Lord, although the judgment was ready but could not be delivered on 22nd October, 2015 because I attended meetings of the Committees of the National Judicial Council from 19th October - 22nd October 2015. NJC. I am happy to humbly inform Your Lordship that the judgment was delivered on 29th October, 2015. Furthermore. authenticated copies of the said judgment have been made available to the parties in the matter. A copy of the judgment is herewith attached for the esteemed attention of Your Lordship.

This report is humbly submitted to Your Lordship in compliance with section 294(6) of the 1999 Constitution (as amended), and for the information of the National Judicial Council.

Your Lordship's usual support and understanding is highly appreciated.

Yours sincerely,



Hon. Justice B. A. Adejumo, OFR
MCI Arb, GFISMN, CFIAR, FCI Arb, FNILS
President,
National Industrial Court of Nigeria

The above scanned letter evinces a situation where a report was forwarded to the Chairman of the NJC to explain why a decision was reached outside the stipulated time. It is worthy of note to state that where the Council considers the letter, it may accept the excuse(s) tendered therein. I want to firmly state here that Judicial Officers regardless of status should always endeavour to comply with section 294(1) of the Constitution and all other relevant laws of the land in the discharge of their judicial duties. As a matter of fact, some Judges are fond of not delivering their decision within time. They usually circumvent this situation by calling or re-calling counsel to a case for re-adoption of their final written addresses in order to renew the time within which to deliver the decision of the court in the case when it

appears to them that they cannot meet up with the 90 days prescribed by the Constitution. This practice is unconstitutional. This act constitutes misconduct by Judicial Officers. Item 19 of Part 1 of the Fifth Schedule to the 1999 Constitution (as amended) defines Misconduct as follows:

“Breach of the Oath of Allegiance or oath of office of a member or breach of the provisions of this Constitution or a misconduct of such nature as amounts to bribery or corruption or false declaration of assets and liabilities.”

Where a law stipulates what constitutes jurisdiction of the court or when the court does not have jurisdiction, if the court assumes jurisdiction thereto, it amounts to flagrant disobedience of the law and the consequence may be fatal to the court or the Judicial Officer involved. A Judicial Officer who is bereft of the knowledge of the law has no business remaining on the Bench. Judges have been removed or suspended in time past because of this.

It should be note that presiding on a case, one of the parties may believe that a Judge is wrong; this however does not mean that such a Judge is not abreast of the law. As such, a Judicial Officer should not be intimidated by any counsel whether by status or in numbers. The remedy available to an aggrieved party in this case is to appeal.

A lack of the knowledge of the law comes in when a Judicial Officer discharges his duties without taking the Constitution into account. This is an intentional or deliberate refusal to follow the Constitution and/or judicial precedents. This would amount to lack of knowledge of the law on the part of the Judicial Officer. Item 4 (i) (a) of Rule 4 of the 2014 Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria buttresses the suitability of a Judicial Officer to be considered for appointment to include good character, reputation, diligence, hard work, honesty, integrity, sound knowledge of the law and consistent adherence to professional ethics. The first scenario above (where a Judge act inadvertently), is pardonable and parties may go on appeal. The second scenario where Judges act intentionally to defile the provisions of the Constitution is grave and punishable. To avoid falling into the trap of lack of knowledge of the law, a Judicial Officer must research his/her laws and material, take judicial notice of what is expected of him/her and follow precedence. The principle as laid in the Latin maxim is *stares decisis et non quieta movere*, that is, *stand by decisions and do not disturb settled matters*. As Judicial Officers, we are expected to follow judicial precedents laid down by the apex court and consider them strictly in arriving at decisions except in few cases where we have to distinguish.

The above are some of the reasons why Judicial Officers are frightened when they hear of the Performance Evaluation Committee of the National Judicial Council (NJC).

In conclusion, Judges should not perceive the Performance Evaluation Committee of the Council as a body induces hypertension. Rather, they should do what the law expects from them and rightly too. They should also see the Performance Evaluation system as means to prepare them for higher opportunities. Thus, it is an avenue for meritorious consideration for higher appointment rather than hierarchical promotions. Judges should avoid what could lead them to be reprimanded, suspended or punished. On the other hand, a Judicial Officer should invest his or her resources and time in buying of books, journals and law reports that the court may not be able to afford for them. It works well for some Judges and it is working well for me for many years on the Bench. Buying and reading books will not only broaden your knowledge, it will add to your repository of knowledge and enlarge your personal library and keep you up to date after retirement.

It is suggested that a Judicial Officer should read other books outside law books alone. For example, books relating to administration, science, art and humanities, human resources and other field of endeavours. Knowledge acquired therefrom will enrich the Judges and contribute to his/her performance as a Judicial Officer.

The Performance Evaluation Committee had in the past travelled to various developed countries of the world to see, study and be trained in how Judicial Officers in these countries are performing and discharging their duties. This is to enable them avoid undue delay in the dispensation of justice and avoidance of miscarriage of justice. It is a common knowledge that justice delayed is justice denied. Furthermore, justice must not only be seen to have been done but must have been done judicially and judiciously. A Judge that is lazy but earning salary which he or she does not work for is a cheat because salaries and emoluments are paid from tax payers' money. My Lords and distinguished colleagues, this work is difficult to get as a Judicial Officer. It entails surmounting hurdles before getting it but it takes only one step to loose. Succinctly, I will encourage and advise all Judicial Officers to embrace the Committee's ways and mode of assessment of their performance and desist from misconstruing the Committee's duties and or seeing the Committee as a masquerade or monster threatening their offices. All the Committee is set up to do is to assess performances of Judicial Officers, see to the causes of whatever problems they are facing and proffer solutions where necessary. The Committee's assessment also serves as a

yardstick to measuring Judicial Officers' performance and competency. It is also to ensure that Judges are diligence in the discharge of their duties.

At this juncture, let me point out some factors or give us clues into various but inexhaustible dos and don'ts of a Judicial Officer who desires to perform excellently in the discharge of his or her responsibilities. This will go a long way in helping us as Judicial Officer attain maximum performance and consistency in the making of our quarterly returns to the Committee.

NUGGETS TO REMEMBER

1. **Strong Support Staff:** A Judicial Officer must ensure that he or she is well equipped with strong and diligent support staff with well defined duties. The support staff should work in continuous collaboration with the registry of the court. It is also suggested that there should be periodic and continuous training. In addition, Judicial Officers should cultivate the habit of motivating their support staff in order to shun indolence.
2. **Use of Personal Diary:** As Judicial Officers whose primary responsibility in the discharge of his judicial duties is to uphold the provisions of the Constitution, Rules of Court and observance of the rules contained in the Code of Conduct for Judicial Officers, it is imperative for us to design personal diary to keep record of our to do list in respect of cases assigned to us. This diary may help in documenting report of stages of proceedings in cases assigned to us, list of new matters assigned, list of hearing, list of cases for ruling and judgment. This diary may be in form of electronic organiser or notepad. In addition to this, for effective and optimum performance, a separate diary may be kept strictly to document list of files that are mature for ruling and judgment.
3. **Use of Board (Information or Notice Board):** To facilitate best performance of a Judicial Officer, the use of small information display board is recommended to provoke an improvement in his/her standard of performance. The board may be hung at a conspicuous place in the office and at the study at home wherein rosters of assignment of cases and other information would be displayed. This will enable a Judge to monitor cases assigned to you and keep an eye on the level of progression. It will ensure consistency and certainty in the filing of returns. It is however important to regularly update the information posted on the board and make checking it a daily routine.

4. **Good faith & fair dealing:** The Committee expects a true, fair, thorough and consistent quarterly return. A diligent Judge's watchword should always be that of good faith. Do not make a false return or perjure in the making of the returns. I urge you to desist from inserting fake figures in your Assessment Evaluation Form.

It is also expected of a Judicial Officer to shun fraudulent making of returns. That is, do not fill or use erstwhile judgment in your submission. It has been observed that some Judges submit old cases by changing the suit number and names of parties in the documentation of their quarterly returns. This is a fraudulent act, heinously committed by a Judicial Officer. It is unethical and against the code of conduct for Judicial Officers and the punishment for this could be fatal and may be regarded as misconduct.

5. Judicial Officers should not rely on the registrars of the court for the documentation and filing of their quarterly returns. It is solely the statutory responsibility of each Judicial Officer.
6. On the information board discussed above, make a roster for cases assigned to you or cases reserved for judgment and rulings to include the date of assignment, date of reservation, date of last adjournment, date of next adjournment and so on. This will update and promote your performance.
7. Do not adopt too many addresses for judgment within the same period of time. Doing this is dangerous; it may not allow you to meet up with deadlines. Returns are made quarterly and it is advisable that you round up your documentation a week to the deadline, i.e. first week of succeeding month.
8. **Avoid Late Submission/non-submission:** Punctuality is the soul of business, and it greases the engine of success. Late submission attracts a "no work done" comment. This implies no performance at all. Therefore, avoid late submission or non-performance.
9. It is expedient to fill in the numbers of witnesses; type of case; date of adoption, age of case and date of judgment as soon as judgment is delivered. This saves time and reduces the danger of later submission. See the attached Forms 'L' – 'O' on pages 8(x) – 8(xiii) (supra) for a sample chart of Form that may help in this case.
10. Ensure that no case of more than 5 years remain in your docket as at the time of making the returns.

11. Do not abandon criminal cases for civil cases. Cases should be disposed of within reasonable time. Criminal cases attract special conditions and as such, it must be prosecuted within limited time.

My Lord the Chief Justice of Nigeria – Hon. Justice Mahmud Mohammed, GCON; the Chairman Board of Governors of the Institute, My Lord the Administrator of National Judicial Institute – Hon. Justice R.P.I. Bozimo, OFR (rtd); My Lords, Justices of the Supreme Court here present; My Lords, Justices of the Court of Appeal here present; My Lords on the high table here present; My Lords, Heads of Courts here present; all Honourable Justices here present as participants, I thank you all for giving me the opportunity to present this paper and for listening to me.

I hope that this paper would assist and guide us in our performance as Judges and improve our standard of performance. Making use of this paper as a reference material will make you get over the saying that the fear of the Committee is the beginning of wisdom. The beginning of wisdom is to sit down, discharge your judicial duties diligently, promptly, constitutionally, fairly, judiciously and equitably. Remember; where there is no law, there is no sin.

Thank you.

HON. JUSTICE B. A. ADEJUMO, OFR

MCIArb (UK), GFISMN, CFIAR, FCIArb, FNILS

President,

National Industrial Court of Nigeria

ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS: PERFORMANCE MANAGEMENT AND EVALUATION

DELIVERED BY

HON. JUSTICE B. A. ADEJUMO, OFR

MCIArb (UK), GFISMN, CFIAR, FCIArb, FNILS

President,

National Industrial Court Of Nigeria

Being A Paper Presented

On The

16th Day of March, 2016.

At The Refresher Course

For Judicial Officers on Current Trends In

Law and Administration of Justice.

***Theme: 'PROMOTING JUDICIAL PERFORMANCE THROUGH
INNOVATIONS AND REFORMS'***

Organised By

THE NATIONAL JUDICIAL INSTITUTE

**TOPIC: ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS,
PERFORMANCE MANAGEMENT AND EVALUATION**

INTRODUCTION

Let me begin this presentation by expressing my profound gratitude and appreciation to the Chief Justice of Nigeria, the Chairman Board of Governors of National Judicial Institute (NJI), the Administrator and staffers of the Institute for giving me the opportunity to make this presentation before Honourable Judges and Khadis of superior courts of record here present. I am particularly honoured to be requested to make this presentation before an assemblage of eminent jurists and erudite Judicial Officers of this great country.

I received this invitation with mixed reactions realising that delivering a paper of this nature before this distinguished gathering is by no means a small feat. I was almost tempted to decline the offer to make this presentation because of my tight schedule of work; both in court as well as other judicial and administrative assignments. However, on a second thought, I realised that sharing knowledge with one's peers and colleagues is rare privilege and an act of great honour for which I am grateful. I also remembered that when I was appointed a Judicial Officer a little above 18 years ago in Ondo State Judiciary, some eminent Jurists were invited to deliver papers at a refresher course for newly appointed Judicial Officers of which I was one. A combination of consideration, coupled with the rare privilege to stand before your Lordships prompted my acceptance to write and deliver this paper.

Once again I express my sincere appreciation to the Administrator of the Institute and the organisers of this refresher course for the opportunity accorded me to write and present this paper.

For the purpose of emphasis, the topic before me is "ENHANCING THE PRODUCTIVITY OF JUDICIAL OFFICERS: PERFORMANCE MANAGEMENT AND EVALUATION". I shall make my presentation by way of a review of the establishment and roles of the Performance Evaluation of Judicial Officers' Committee of the National Judicial Council. My presentation of this paper would be both abstract and clinical.

ESTABLISHMENT OF THE COUNCIL

History is made up of past events; what is on ground is story. Before the 1999 Constitution (as amended), enough provisions were not made for a body to have powers on judicial policies, control and standard. In a bid to address this and the deterioration in the ethical standard and performance of Judicial Officers in the Nigeria, the General Abacha administration set up a Commission in 1993 to probe the conduct of Judicial Officers in the country and make recommendations thereof. Section 153 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) established for the Federation some executive bodies one of which is the National Judicial Council (NJC). The composition and powers of the Council are provided in items 20 and 21 of Part 1 of the Third Schedule to the said Constitution.

The National Judicial Council is charged with the power to recommend the appointment of Judicial Officers throughout the country, collect and disburse budgetary provisions of the judiciary and judicial bodies as mandated by the Constitution, pay their salaries and allowances of Judicial Officers and judicial staff, as well as discipline erring officers. However, the primary objective of establishing the Council is to ensure that Judicial Officers discharge their functions independently and insulated from interference from other arms of the government. The Council also ensures efficient performance and maximum productivity of Judicial Officers.

The Committee set up by the General Abacha administration to probe Judges which was headed by Hon. Justice Kayode Esho, CON (JSC as he then was and of blessed memory) found 28 Judges culpable for various offences ranging from corruption to low productivity. The report Hon Justice Eso's Committee Report was referred to the NJC in 2001 for necessary actions. A review panel was set up by the NJC to revisit the cases of the indicted Judicial Officers.

ESTABLISHMENT OF THE PERFORMANCE EVALUATION COMMITTEE OF THE NATIONAL JUDICIAL COUNCIL

The Performance Evaluation Committee of Judicial Officers of NJC was set up in 2003 by the Council after the Council observed the efficacy in the Hon Justice Kayode Eso's Committee Report. Thus the Council recommended that there should be in the Country a Performance Assessment Committee to monitor the performance of all Judicial Officers in the Country. Hence, in 2003 the Performance Evaluation Committee of Judicial Officers of Superior

Courts of Records was set up pursuant to the wide powers of the Council as enshrined in item 21 of Part 1 of the Third Schedule to the 1999 Constitution. The Committee comprised of 5 pioneer members and a Secretary. The inaugural members were:

- | | |
|---|-----------|
| 1. Hon. Justice B.O. Babalakin, CON (JSC rtd) | Chairman |
| 2. Hon. Justice Owolabi Kolawole, OFR | Member |
| 3. Mr. A.N. Anyamene, SAN | Member |
| 4. Alh. Murtala Aminu, OFR, Galadima of Adamawa | Member |
| 5. Dr. Abigail Ajoku, KSM | Member |
| 6. Alh. Muktari A. Tambawel (DD, PRS, NJC) | Secretary |

MANDATES OF THE COMMITTEE

The various mandates of the Performance Evaluation of Judicial Officers of Superior Courts of Record includes evaluating, assessing, monitoring and supervising the performance and general conduct of Judicial Officers in the discharge of their judicial functions and administration of justice.

Consequent upon the terms of establishment of the Committee, it owes it a duty to ensure that a minimum standard of performance expected of a Judicial Officer is attained. The evaluation and assessment of the performance of Judges is one of the yardsticks of measuring which Judicial Officer based on his /her performance report, deserves to be commended and recommended for appointment or elevation to a higher Bench whenever the need arises. It also recommends on regular basis to the Council, measures to be taken against low or non-performing Judicial Officer.

Membership of the Committee is constituted at the plenary of the Council under the Chairmanship of the Council. Whenever there is vacancy on the Committee either by completion of tenure or retirement of a member, a replacement is made at the plenary by the Chairman of the Council who is also the Chief Justice of Nigeria.

The Committee comprises of a Chairman and 8 members. The membership comprises of retired Supreme Court Justices, retired Court of Appeal Justices, some Heads of Superior Courts of Records (Federal and State Courts), selected Grand Khadi of Sharia Court of Appeal and selected Presidents of Customary Court of Appeal. From the records, the Committee was first chaired by a retired Justice of the Supreme Court – in the person of Hon. Justice B.O. Babalakin, CON (JSC rtd) between 2003 and 2010, thereafter Hon. Justice Emmanuel O. Ayoola, CON (JSC rtd) took over the chairmanship of the Committee from 2010 till date. The present Committee

composed of 9 members which includes the Chairman and a Secretary. Members of the Committee could be retired Judges, serving Judges and one or two other persons from backgrounds other than law.

MODE OF OPERATION OF THE COMMITTEE

The Committee sits to evaluate and consider the performance of Judicial Officers of various Courts starting from the Court of Appeal, Federal High Court, National Industrial Court of Nigeria, High Court of the Federal Capital Territory, High Court of States, Sharia Court of Appeal of the FCT, Sharia Court of Appeal of States, Customary Courts of Appeal of FCT and Customary Court of Appeal of States.

It is the standing order and practice of the Committee that at every first week of a new quarter, Judicial Officers of the above stated courts of records should make quarterly returns by filling and submitting their Performance Evaluation Form to the Secretariat of the Committee through their Heads of Court who are expected to thoroughly peruse the forms before countersigning same.

The Secretariat of the Committee thereafter sorts all forms submitted by Judicial Officers in accordance with designed format and compliance guidelines which will be seen later in this presentation.

The purpose of the Committee is not to witch-hunt, intimidate, oppress or create fear in the mind of Judicial Officers in the course of performing their Constitutional and Statutory judicial duties. Rather, the Committee ensures that Judicial Officers are upright in the discharge of their responsibilities by doing their best competently, diligently and in accordance with their oath of office. Moreso, Judicial Officers are to bear in mind the need to discharge their judicial duties without delay or interference. Judicial Officers of superior courts of record should therefore not be scared of the Committee. They should see the Committee as fellow Judicial Officers/Nigerians who perform same functions and understand the challenges and the conditions under which they operate. Members of the Committee are human beings with human faces, even in the face of critical situations where a decision is to be taken on the non-performance of a Judicial Officer. It should be noted that in some instances of non-performance or non-submission of returns, the Committee sees a defaulting Judicial Officers as colleagues and thereby tempers justice with mercy. In view of this, a Judicial Officer has nothing to fear when he or she is up and alive to his or her duties.

What the Committee does not tolerate and would not tolerate under any circumstance is a repeated act of non-performance as a result of indolence, nonchalant attitude and impunity where it can be inferred from the submission made by a Judicial Officer or where he or she recklessly makes a false submission. Impunity and/or recklessness occur where a Judicial Officer relinquishes his or her responsibilities of collating and submission of the quarterly performance return to his or her subordinate without perusing same before signing for submission to the Head of Court for onward transmission to the Committee. It should be noted that a Judicial Officer may be sanctioned where he/she carelessly or without proper scrutiny signs a return made to him before submitting it to the Committee. In view of the above, the Committee has mandated all Heads of Court to ensure that correct submissions are made by all Judicial Officers under them.

I need not remind us as Judicial Officers that we must be conscious of the oath of office we swore to on our appointment as Judicial Officers. This is provided in the 1999 Constitution (as amended), particularly in the Seventh Schedule to the Constitution, which states thus:

“I, do solemnly swear/affirm that I will be faithful and bear true allegiance to the Federal Republic of Nigeria; that as Chief Justice of Nigeria/Justice of the Supreme Court/President/Justice of the Court of Appeal/Chief Judge/Judge of the Federal High Court/President/Judge of the National Industrial Court/Chief Judge/Judge of the High Court of the Federal Capital Territory, Abuja/Chief Judge of State/Judge of the High Court of State/Grand Kadi/Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja/ Grand Kadi/Kadi of the Sharia Court of Appeal of State/President/Judge of the Customary Court of Appeal of the Federal Capital Territory, Abuja/President/Judge of the Customary Court of Appeal ofState. I will discharge my duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law, that I will abide by the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria; that I will not allow

my personal interest to influence my official conduct or my official decisions; that I will preserve, protect and defend the Constitution of the Federal Republic of Nigeria. So help me God.”

SIGNIFICANCE OF THE COMMITTEE

The Committee amongst other things has been effective in playing its crucial role in its evaluation and supervisory capacity.

1. Records have proved that since its inception, the Committee has been serving as a watchdog and guide towards ensuring that Judicial Officers are not lazy, idle, indolent, reckless and incompetent or perform their duties with impunity. It has thereby ensured that Judges are diligent.
2. The Committee has contributed in no small measure to the improvement of performance and the standard of performance of Judicial Officers.
3. It has also contributed immensely to the indirect decongestion of the dockets of our Courts.
4. It has also through its visits to various jurisdictions found out the problems or causes of delay in the dispensation of justice or non-performance of Judicial Officers.
5. It has helped the Council in no small measure in the discharge of its duties by coming up with rules, procedures and guidelines as to the way of moving the Nigeria Judiciary forward.
6. It has helped the Council in the selection of very good and competent hands for elevation to higher Bench in the sense that whenever an appointment is to be made to the higher Bench, the record of the Performance Evaluation Committee is looked into, and the performance of Judicial Officers will be considered from the record. That is why in some cases a junior Judicial Officer whose performance report is better than that of his or her senior is eventually elevated to higher Bench. This is one of the considerations in the assessment of Judicial Officers for elevation to higher Bench.
7. The Committee has a gamut of scoring or assessing of Judicial Officers. The chart below depicts the guidelines as laid down by the Committee for assessing Judicial Officers.

(See attached pages 8(i)–8(ix) for prototype of Performance Evaluation Assessment Forms of superior courts of record), which are tagged in the following order:

- A – Court of Appeal
- B – Federal High Court
- C – National Industrial Court
- D – High Court of the FCT
- E – Sharia Court of Appeal of the FCT
- F – Customary Court of Appeal of FCT
- G – States High Courts
- H – Sharia Court of Appeal of States
- I – Customary Court of Appeal of States;

While the attached pages 8(x) – 8(xiii) which are tagged ‘L’ – ‘O’ represent the charts for personal monitoring of performance as will be elucidated later in this presentation.

From the charts above, assessments are compartmentalized. A column may be dedicated to Civil, Criminal, Motion, Fundamental Rights Enforcement or for Appeal cases. The columns are required to be conscientiously and fairly completed for making returns as expected of Judicial Officers. The minimum numbers of cases that may guide for assessment, grading or scoring of Judicial Officers’ performance are as shown in the successive chart here under.

This Assessment Score Sheet serves as guidelines for assessing and scoring the performance of Chief Judges of superior courts of record over a period of three months, which makes a quarter.

NATIONAL JUDICIAL COUNCIL

'J'

PERFORMANCE EVALUATION COMMITTEE OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD

REVIEWED ASSESSMENT GUIDELINES BASED ON CONTESTED CASES AND MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN A PERIOD OF THREE MONTHS FOR CHIEF JUDGES

****(EFFECTIVE FROM 1ST QUARTER, 2014)

S/NO	NO OF CONTESTED CASES & MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN 3 MONTHS	COMMITTEE'S GRADING
1.	0 – 1	No Performance
2.	2 -3	Marginal Performance
3.	4 – 6	Fair
4.	7 – 9	Good
5.	10 – 11	Very Good
6.	12 and above	Excellent

The Assessment Score Sheet tabulated below serves as guidelines for assessing and scoring the performance of individual Judges and Appellate Courts' Judges over a period of three months (one quarter).

NATIONAL JUDICIAL COUNCIL

PERFORMANCE EVALUATION COMMITTEE OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD

REVIEWED ASSESSMENT GUIDELINES BASED ON CONTESTED CASES AND MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN A PERIOD OF THREE MONTHS FOR INDIVIDUAL JUDGES & APPELLATE COURTS

****(EFFECTIVE FROM 1ST QUARTER, 2014)

S/NO	NO OF CONTESTED CASES & MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN 3 MONTHS	COMMITTEE’S GRADING
1.	0 – 3	No Performance
2.	4 - 5	Marginal Performance
3.	6 – 11	Fair
4.	12 – 18	Good
5.	19 – 23	Very Good
6.	24 and above	Excellent

We may observe from the charts, the numbers of cases disposed of up to conclusion; numbers of motions taken, numbers of fundamental right enforcement taken, etc. will be listed and scored. Also the numbers of appeal cases taken. All these speak for themselves. However, a Judicial Officer is expected to perform up to standard as required of a diligent Judicial Officer. The minimum standard expected of a performing Judge is between 6 – 11 cases in which he delivers judgment within a period of three months. Anything less of this, will amount to marginal or no performance.

OUTCOME OF ASSESMENT ON QUARTERLY BASIS

Any division of the Court of Appeal that delivers and submits its decision up to the satisfactory numbers is graded according to the chart above. This

grading system is also applicable to Heads of Courts and Judges of other courts of record.

OUTCOME OF PERFORMANCE EVALUATION ON NON-PERFORMING JUDICIAL OFFICER

A Judicial Officer who had performed very well would be written a letter of commendation either stating that he had performed excellently or very well. In like manner, a non-performing Judicial Officer will also be written a query to state why he or she is not performing. If Judicial Officer's response to the query is not satisfactory to the Committee, the Committee will issue a warning letter to him or her. If he/she persists in non-performing, the Committee may recommend to the Council at the plenary to consider placing the affected Judicial Officer on a watch-list or to be reprimanded or placed on suspension and removal in line with the Constitution. The Committee may also recommend to the Council that such a Judicial Officer should not be considered for elevation to a higher Bench.

On the other hand, where a performing Judicial Officer suddenly drops to a non-performing Judicial Officer, the Committee would inquire into the challenges such a Judge is facing that may cause the decline in his or her performance. The Committee also puts into consideration issues of health conditions of work environment such as lack or low power supply and proximity between workplace (Court) and the residence of the Judge. Any of these factors could be responsible for his diminishing performance. Besides, where a non-performing Judicial Officer persists in non-performing, the Committee will also inquire into why he or she is still not performing. His explanation will guide the Committee as to what to do. In some cases, if the fault of the Judge is linked to the judiciary itself, recommendation would be made to the plenary as to possible remedy of such situation.

To make things easier for newly appointed Judicial Officers, the Committee usually gives them up to two (2) quarters grace period before strict assessment bearing it in mind that cases before the new Judges might not have matured up to trial or decision stages. Therefore, a Judge is expected to have developed his case management acumen and be in tune with the realities of the dictates of his or her judicial office. These are some of the ways the Committee has employed to ensure fairness in assessment and evaluation of Judicial Officers. For instance, where a Judicial Officer is on national assignment such as Election Petition Tribunal and he or she is unable to sit in Court, the Committee will take into consideration the duration of the period of the Tribunal in assessing him or her.

If the Performance Evaluation Committee discovers that a Judiciary is not performing fairly, it may recommend to the Council that such Judiciary be kept in the frozen list. That is, even when there are vacancies to be filled, Judicial Officers from such Judiciary will not be considered for filling the vacancies unless there is improvement on the performance of that Judiciary. Where the Committee discovers that the performance of a state Judiciary is not satisfactory, it may decide to visit such Judiciary. A Judiciary may remain on frozen list if the judiciary persists in non-performance.

JUDGES FEAR OR APPREHENSION FOR THE PERFORMANCE EVALUATION COMMITTEE

It is common these days for one to hear Judicial Officer say that the fear of the Performance Evaluation Committee is the beginning of wisdom. Judges should not be afraid of the Committee. Rather, they should sit and settle to work in order to meet the required standard of the Committee. Hardworking Judges have nothing to fear about the Committee. With due respect, it is only indolent Judges that get apprehensive whenever they remember the Performance Evaluation Committee.

The Committee is established to find out the challenges Judicial Officers face in the course of work, assess the performances of Judicial Officers and proffer corrections where they are not performing. The Committee counsels Judicial Officers on their shortcomings and advise the Council on what to do to ease the work of Judicial Officers. The Committee ensures that the public sees the judiciary as diligent, free and independent, as well as strengthens their believe in the judiciary as the last hope of the common man.

WHY JUDICIAL OFFICERS FAIL TO PERFORM AS LAID DOWN IN THE GUIDELINES OF THE COMMITTEE

1. Lack of convenience of case knowledge management:

Some Judges are industrious but as a result of insufficient knowledge of case management, they may work all days but may not have cases to present to the Committee at the time of assessment. For example, a Judicial Officer that opens up a lot of case files and have large number of part-heard matters and adopts a lot of final written addresses for judgment forgetting that time is of essence may not have enough cases to file as return at the end of the quarter. Rule 2 (A), paragraph 6 of Code of Conduct for Judicial Officer of the Federal Republic of Nigeria provides that a Judicial Officer should promptly dispose of the business of Court. It further states that a Judicial Officer should devote adequate time to his duties, be punctual (unless

ill or unable, for good reason, to come to court) to Court and act expeditiously in bringing to a conclusion and determining matters under submission. Judicial Officers must avoid tardiness and maintain official hours of the court.

2. Lack of court administration and organisation:

Some Judges on appointment lacks judicial administration skills except those that started from the lower Bench. Others do not know how to manage and control their support staff. Such Judicial Officer's effort at meeting up with the Committee's deadline for filing of returns may be frustrated by his or her support staff knowingly or unknowingly.

A Judicial Officer's effort may be frustrated knowingly in the sense that some of their support staff may have personal interests rather than the official interest. He or she may have extraneous and personal interest than the interest of the court and the public which the office of the Judicial Officer seeks to protect. It may be frustrated unknowingly in that, some of the support staff as a result of illiteracy, laziness, lack of training and inability to learn may cause havoc to the Court and lead to non-performance of the Judicial Officer.

3. Laziness or Indolence:

With due respect, some Judicial Officers are quite naturally lazy even when you train, educate or correct them, they will never do well and the consequence will tell on their performance and the good name of the court. In some cases, some Judicial Officers who are not thirsty for elevation feel comfortable with their present position and as a result discharge their duties nonchalantly and at the pace they feel at home with without recourse to their need to meet up with quarterly evaluation.

4. Negative attitude to work:

Laziness and negative attitude to work are Siamese twins. Some of the support staff working in the chambers of Judicial Officers often comes late to work thereby holding Judges to ransom notwithstanding their penchant for closing early thereby affecting the productivity of Judicial Officers. At times, they also use the excuse of illness to absent themselves from work which negatively contributes to the Judge's performance. The litigation registry of the court which handles filing and prepares the daily cases to be heard by the court must be carefully monitored. In most cases, processes filed at the litigation

officer will not be kept in the case file before the hearing date while hearing notices may not be issued and served on parties and counsel as ordered or required by the Rules of the court. In consequence, the Judicial Officer will have to adjourn the hearing of such matter in that circumstance. All the above militate against the effective performance of Judicial Officers.

5. Disobedience to or non-compliance with relevant provisions of the Constitution, Acts, Laws or Rules of Courts which relate to what a Judge should do, how to do it and when to do it:

At times, Judges don't give attention to the provisions of the Constitution or relevant laws that state how things should be done. For example, where the Constitution has stipulated what should be done, such as the delivery of the decision of the court within a time stipulated by the Constitution as enshrined in section 294(1) of the 1999 Constitution (as amended) or the time within which to furnish all parties to the cause or matter determined with duly authenticated copies of the decision, a failure of which amounts to misconduct. Rule 2 (A) of the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria, under adjudicative duties at paragraph 7, buttressed the later part of section 294(1) of the Constitution that duly authenticated copies of a court's decision be furnished on all parties to a cause. It may also be noted that some Judicial Officers such as Heads of Courts may also use the excuse of their busy schedule to disobey the provisions of section 294(1) (supra).

Section 294 (6) of the Constitution (as amended) enjoins such a Judicial Officer who is in default of section 294(1) to send a report through his/her presiding Judge to the Chairman of NJC, stating why the Judicial Officer was unable to comply with the provision of the section above.

Honourable Judges, arising from my personal experience in relation to non-compliance with section 294(1) of the Constitution, a copy of a letter in compliance with section 294(6) justifying my inability to comply with the provisions of section 294(1) is hereunder reproduced. In the letter below, you will observe the reasons why a decision could not be reached within the 90 days as stipulated by the Constitution were well tendered and presented to the Chairman of the Council. However, Judges should also strive to comply with the provisions of relevant laws in the discharge of their judicial duties to the provisions above.

**NATIONAL INDUSTRIAL COURT OF NIGERIA
PRESIDENT'S CHAMBERS**

**10, PORT-HARCOURT CRESCENT, AREA 11, PMB 623 GARKI,
ABUJA, NIGERIA**

Ref:

PNICN/ABJ/CJN/73



Date:

9th November, 2015

His Lordship,
The Hon. Justice Mahmud Mohammed, CJN, GCON,
The Hon. Chief Justice of Nigeria and Chairman,
National Judicial Council,
Chief Justice's Chambers,
Supreme Court Complex,
Three Arms Zone,
Abuja.

**SUBMISSION OF A REPORT PURSUANT TO SECTION 294(6)
OF THE CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA 1999 (AS AMENDED), IN RESPECT OF SUIT
NO.NICN/ABJ/112/2014: BETWEEN: MICHAEL NZEKWE V.
ECONOMIC AND FINANCIAL CRIMES COMMISSION**

It is with utmost respect and deep sense of responsibility that I write to Your Lordship in respect of the above captioned subject matter.

My Lord, 294(1) of the 1999 Constitution of the Federal Republic of Nigeria (as amended), requires every court before which a matter is pending to deliver its decision in writing not later than ninety (90) days after the conclusion of evidence and final addresses.

However, subsection (6) of section 294 states as follows:

(6) As soon as possible after hearing and deciding any case in which it has been determined or observed that there was non-compliance with the provisions of sub-section (1) of this section, the person presiding at the sitting of the court shall send a report on the case to the Chairman of the National Judicial Council who shall keep the Council informed of such action as the Council may deem fit.

My Lord, it is clear that the above quoted constitutional provision requires a judge delivering judgment outside the ninety (90) days prescribed by the Constitution to submit a report to Your Lordship for the information of the National Judicial Council.

I wish to respectfully transmit this Report to Your Lordship in respect of the above mentioned case because judgment was not delivered within ninety days from the date it was adjourned for judgment as required by section 294(1) of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended).

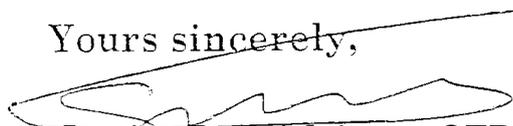
My Lord, the parties adopted their final written addresses on 14th July, 2015 and the case was adjourned to 22nd October, 2015 for delivery of judgment. In fixing a date on which judgment in the case was to be delivered, the attention of the Court was drawn to the fact that its 2015 Annual Vacation was schedule to commence on 20th July - 11th September, 2015. The Court was also guided by its Diary in fixing October 22, 2015 as the date on which the judgment was to be delivered.

My Lord, although the judgment was ready but could not be delivered on 22nd October, 2015 because I attended meetings of the Committees of the National Judicial Council from 19th October - 22nd October 2015. NJC. I am happy to humbly inform Your Lordship that the judgment was delivered on 29th October, 2015. Furthermore. authenticated copies of the said judgment have been made available to the parties in the matter. A copy of the judgment is herewith attached for the esteemed attention of Your Lordship.

This report is humbly submitted to Your Lordship in compliance with section 294(6) of the 1999 Constitution (as amended), and for the information of the National Judicial Council.

Your Lordship's usual support and understanding is highly appreciated.

Yours sincerely,



Hon. Justice B. A. Adejumo, OFR
MCI Arb, GFISMN, CFIAR, FCI Arb, FNILS
President,
National Industrial Court of Nigeria

The above scanned letter evinces a situation where a report was forwarded to the Chairman of the NJC to explain why a decision was reached outside the stipulated time. It is worthy of note to state that where the Council considers the letter, it may accept the excuse(s) tendered therein. I want to firmly state here that Judicial Officers regardless of status should always endeavour to comply with section 294(1) of the Constitution and all other relevant laws of the land in the discharge of their judicial duties. As a matter of fact, some Judges are fond of not delivering their decision within time. They usually circumvent this situation by calling or re-calling counsel to a case for re-adoption of their final written addresses in order to renew the time within which to deliver the decision of the court in the case when it

appears to them that they cannot meet up with the 90 days prescribed by the Constitution. This practice is unconstitutional. This act constitutes misconduct by Judicial Officers. Item 19 of Part 1 of the Fifth Schedule to the 1999 Constitution (as amended) defines Misconduct as follows:

“Breach of the Oath of Allegiance or oath of office of a member or breach of the provisions of this Constitution or a misconduct of such nature as amounts to bribery or corruption or false declaration of assets and liabilities.”

Where a law stipulates what constitutes jurisdiction of the court or when the court does not have jurisdiction, if the court assumes jurisdiction thereto, it amounts to flagrant disobedience of the law and the consequence may be fatal to the court or the Judicial Officer involved. A Judicial Officer who is bereft of the knowledge of the law has no business remaining on the Bench. Judges have been removed or suspended in time past because of this.

It should be note that presiding on a case, one of the parties may believe that a Judge is wrong; this however does not mean that such a Judge is not abreast of the law. As such, a Judicial Officer should not be intimidated by any counsel whether by status or in numbers. The remedy available to an aggrieved party in this case is to appeal.

A lack of the knowledge of the law comes in when a Judicial Officer discharges his duties without taking the Constitution into account. This is an intentional or deliberate refusal to follow the Constitution and/or judicial precedents. This would amount to lack of knowledge of the law on the part of the Judicial Officer. Item 4 (i) (a) of Rule 4 of the 2014 Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria buttresses the suitability of a Judicial Officer to be considered for appointment to include good character, reputation, diligence, hard work, honesty, integrity, sound knowledge of the law and consistent adherence to professional ethics. The first scenario above (where a Judge act inadvertently), is pardonable and parties may go on appeal. The second scenario where Judges act intentionally to defile the provisions of the Constitution is grave and punishable. To avoid falling into the trap of lack of knowledge of the law, a Judicial Officer must research his/her laws and material, take judicial notice of what is expected of him/her and follow precedence. The principle as laid in the Latin maxim is *stares decisis et non quieta movere*, that is, *stand by decisions and do not disturb settled matters*. As Judicial Officers, we are expected to follow judicial precedents laid down by the apex court and consider them strictly in arriving at decisions except in few cases where we have to distinguish.

The above are some of the reasons why Judicial Officers are frightened when they hear of the Performance Evaluation Committee of the National Judicial Council (NJC).

In conclusion, Judges should not perceive the Performance Evaluation Committee of the Council as a body induces hypertension. Rather, they should do what the law expects from them and rightly too. They should also see the Performance Evaluation system as means to prepare them for higher opportunities. Thus, it is an avenue for meritorious consideration for higher appointment rather than hierarchical promotions. Judges should avoid what could lead them to be reprimanded, suspended or punished. On the other hand, a Judicial Officer should invest his or her resources and time in buying of books, journals and law reports that the court may not be able to afford for them. It works well for some Judges and it is working well for me for many years on the Bench. Buying and reading books will not only broaden your knowledge, it will add to your repository of knowledge and enlarge your personal library and keep you up to date after retirement.

It is suggested that a Judicial Officer should read other books outside law books alone. For example, books relating to administration, science, art and humanities, human resources and other field of endeavours. Knowledge acquired therefrom will enrich the Judges and contribute to his/her performance as a Judicial Officer.

The Performance Evaluation Committee had in the past travelled to various developed countries of the world to see, study and be trained in how Judicial Officers in these countries are performing and discharging their duties. This is to enable them avoid undue delay in the dispensation of justice and avoidance of miscarriage of justice. It is a common knowledge that justice delayed is justice denied. Furthermore, justice must not only be seen to have been done but must have been done judicially and judiciously. A Judge that is lazy but earning salary which he or she does not work for is a cheat because salaries and emoluments are paid from tax payers' money. My Lords and distinguished colleagues, this work is difficult to get as a Judicial Officer. It entails surmounting hurdles before getting it but it takes only one step to loose. Succinctly, I will encourage and advise all Judicial Officers to embrace the Committee's ways and mode of assessment of their performance and desist from misconstruing the Committee's duties and or seeing the Committee as a masquerade or monster threatening their offices. All the Committee is set up to do is to assess performances of Judicial Officers, see to the causes of whatever problems they are facing and proffer solutions where necessary. The Committee's assessment also serves as a

yardstick to measuring Judicial Officers' performance and competency. It is also to ensure that Judges are diligence in the discharge of their duties.

At this juncture, let me point out some factors or give us clues into various but inexhaustible dos and don'ts of a Judicial Officer who desires to perform excellently in the discharge of his or her responsibilities. This will go a long way in helping us as Judicial Officer attain maximum performance and consistency in the making of our quarterly returns to the Committee.

NUGGETS TO REMEMBER

1. **Strong Support Staff:** A Judicial Officer must ensure that he or she is well equipped with strong and diligent support staff with well defined duties. The support staff should work in continuous collaboration with the registry of the court. It is also suggested that there should be periodic and continuous training. In addition, Judicial Officers should cultivate the habit of motivating their support staff in order to shun indolence.
2. **Use of Personal Diary:** As Judicial Officers whose primary responsibility in the discharge of his judicial duties is to uphold the provisions of the Constitution, Rules of Court and observance of the rules contained in the Code of Conduct for Judicial Officers, it is imperative for us to design personal diary to keep record of our to do list in respect of cases assigned to us. This diary may help in documenting report of stages of proceedings in cases assigned to us, list of new matters assigned, list of hearing, list of cases for ruling and judgment. This diary may be in form of electronic organiser or notepad. In addition to this, for effective and optimum performance, a separate diary may be kept strictly to document list of files that are mature for ruling and judgment.
3. **Use of Board (Information or Notice Board):** To facilitate best performance of a Judicial Officer, the use of small information display board is recommended to provoke an improvement in his/her standard of performance. The board may be hung at a conspicuous place in the office and at the study at home wherein rosters of assignment of cases and other information would be displayed. This will enable a Judge to monitor cases assigned to you and keep an eye on the level of progression. It will ensure consistency and certainty in the filing of returns. It is however important to regularly update the information posted on the board and make checking it a daily routine.

4. **Good faith & fair dealing:** The Committee expects a true, fair, thorough and consistent quarterly return. A diligent Judge's watchword should always be that of good faith. Do not make a false return or perjure in the making of the returns. I urge you to desist from inserting fake figures in your Assessment Evaluation Form.

It is also expected of a Judicial Officer to shun fraudulent making of returns. That is, do not fill or use erstwhile judgment in your submission. It has been observed that some Judges submit old cases by changing the suit number and names of parties in the documentation of their quarterly returns. This is a fraudulent act, heinously committed by a Judicial Officer. It is unethical and against the code of conduct for Judicial Officers and the punishment for this could be fatal and may be regarded as misconduct.

5. Judicial Officers should not rely on the registrars of the court for the documentation and filing of their quarterly returns. It is solely the statutory responsibility of each Judicial Officer.
6. On the information board discussed above, make a roster for cases assigned to you or cases reserved for judgment and rulings to include the date of assignment, date of reservation, date of last adjournment, date of next adjournment and so on. This will update and promote your performance.
7. Do not adopt too many addresses for judgment within the same period of time. Doing this is dangerous; it may not allow you to meet up with deadlines. Returns are made quarterly and it is advisable that you round up your documentation a week to the deadline, i.e. first week of succeeding month.
8. **Avoid Late Submission/non-submission:** Punctuality is the soul of business, and it greases the engine of success. Late submission attracts a "no work done" comment. This implies no performance at all. Therefore, avoid late submission or non-performance.
9. It is expedient to fill in the numbers of witnesses; type of case; date of adoption, age of case and date of judgment as soon as judgment is delivered. This saves time and reduces the danger of later submission. See the attached Forms 'L' – 'O' on pages 8(x) – 8(xiii) (supra) for a sample chart of Form that may help in this case.
10. Ensure that no case of more than 5 years remain in your docket as at the time of making the returns.

11. Do not abandon criminal cases for civil cases. Cases should be disposed of within reasonable time. Criminal cases attract special conditions and as such, it must be prosecuted within limited time.

My Lord the Chief Justice of Nigeria – Hon. Justice Mahmud Mohammed, GCON; the Chairman Board of Governors of the Institute, My Lord the Administrator of National Judicial Institute – Hon. Justice R.P.I. Bozimo, OFR (rtd); My Lords, Justices of the Supreme Court here present; My Lords, Justices of the Court of Appeal here present; My Lords on the high table here present; My Lords, Heads of Courts here present; all Honourable Justices here present as participants, I thank you all for giving me the opportunity to present this paper and for listening to me.

I hope that this paper would assist and guide us in our performance as Judges and improve our standard of performance. Making use of this paper as a reference material will make you get over the saying that the fear of the Committee is the beginning of wisdom. The beginning of wisdom is to sit down, discharge your judicial duties diligently, promptly, constitutionally, fairly, judiciously and equitably. Remember; where there is no law, there is no sin.

Thank you.

HON. JUSTICE B. A. ADEJUMO, OFR

MCIArb (UK), GFISMN, CFIAR, FCIArb, FNILS

President,

National Industrial Court of Nigeria