

**TOPIC: PERFORMANCE  
EVALUATION FOR JUDICIAL  
OFFICERS: ROLE OF THE  
NATIONAL JUDICIAL COUNCIL**

**BEING THE TEXT OF A PAPER**

***PRESENTED BY***

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**President,**

**National Industrial Court Of Nigeria**

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And Kadis

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**THE NATIONAL JUDICIAL INSTITUTE**

## **TOPIC: PERFORMANCE EVALUATION FOR JUDICIAL OFFICERS: ROLE OF THE NATIONAL JUDICIAL COUNCIL**

### **INTRODUCTION**

I would like to commence my presentation by expressing sincere appreciation to the Hon. The Chief Justice of Nigeria; Chairman of the National Judicial Council and Board of the National Judicial Institute, Hon. Justice Sunday Walter Nnkanu Onnoghen, GCON, the Administrator of the National Judicial Institute, Hon. Justice R.P.I. Bozimo, OFR, (Rtd.) and the Management of the of the Institute, who have graciously deemed it fit to invite me to present this paper. Frankly speaking, My Lords, the initial temptation was to decline the invitation considering the enormity of the workload before me in the last few months. However, I also thought about the cost of missed opportunity to interact and rob minds with my brother Judges who have been recently appointed as Judges and Kadis. It is always an honour to stand before a gathering of eminent personalities such that are here today to share experiences knowing fully well that we are bound to have differing perspectives on some of the burning issues relating to the discharge of our judicial responsibilities. It is for this overriding consideration that I decided to accept and honour the invitation to be here today. I am always proud to associate myself with the activities of the National Judicial Institute [NJI]. It is always an honour to be part of your highly intellectually rewarding refresher courses for Judicial Officers and Kadis. From this standpoint, I once again would like to immensely thank the Administrator of this Institute for this great honour.

At this juncture, it is apt to observe that the topic slated for discussion is as topical as it is vexed. I say this, bearing in mind that only very few employees or appointees, as the case may be, like their performances to be gauged or evaluated. This is particularly so where there are consequences, including dismissal, flowing from such routine evaluation. Yet, evaluation is one of the most important yardsticks used to determine the continued relevance or otherwise of an employee or appointee. It is also remarkable that evaluation of Judicial Officers is one important role that the National Judicial Council [NJC] plays within the context of the Nigerian Judiciary. I will return to this point later in the course of this paper.

The topic for discussion is particularly vexed because there are many instances where the NJC has had to met out serious sanctions against Judicial Officers adjudged to be nonperforming. Viewed from this standpoint, the tendency is for many Judicial Officers, including Kadis, to view the NJC Committee on Evaluation of Judicial Officers with huge skepticism. I have heard comments suggestive of the fact that it is wrong for the NJC to set performance thresholds for Judicial Officers. Whether or not it is desirable to evaluate the performance of Judicial Officers will be examined in the course of this presentation.

Against the backdrop of the comments I have made above, it is commendable that the National Judicial Institute has considered it necessary to put together a forum like this where issues bothering on performance evaluation of Judicial Officers and Kadis could be discussed, analysed, dissected. This, I believe, will lead to better appreciation and understanding of the essence of judicial evaluation. The sole purpose of an educational forum such as this is to clear grey areas and illuminate our understanding onthe critical role of the NJC in evaluation the performance of Judicial Officers so that there will be no misgivings. For the purpose of emphasis, the topic before me is “Performance Evaluation for Judicial Officers: The Role of the National Judicial Council”. In discussing the topic, it is important to understand some of itskey terms. I shall therefore proceed to examine key terms critical to conceptual understanding of the topic for discussion.

## **UNDERSTANDING KEY TERMS:**

### **A. PERFORMANCE:**

In everyday parlance, performance connotes the carrying out of a task, duty or assignment imposed by law or some established authority within an organization or establishment. It is better and more useful to treat and understand this term from this common perspective. An appointee or employee is generally required to perform duties or responsibilities within the hierarchical setup of the organization. Hence, people are appointed to carry out defined duties within an organization or enterprise.

### **B. EVALUATION:**

Simply put, evaluation is a formal determination of the worth, value or merit of an employee on the basis of parameters or criteria that are pre-determined.

Therefore, evaluation to my mind is universally viewed as a tool that enables an organization or enterprise to gain insight into existing initiatives and identify areas for future changes. One point that I need to stress is that the parameters or basis of such evaluation should be predetermined and made known. In other words, there should be no ambush or surprises.

### **C. JUDICIAL OFFICERS**

By the provision of Section 318 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), a judicial officer is defined as:

*the holder of the office of Chief Justice of Nigeria, or a Justice of the Supreme Court, the President of the Court of Appeal or Justice of the Court of Appeal, the office of the Chief Judge of or a Judge of the Federal High Court, the **office of the President or Judge of the National Industrial Court**, the office of the Chief Judge or Judge of the High court of the Federal Capital Territory, Abuja, the office of the Chief judge of a State and Judge of the High Court of a state, a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja; or President or Judge of the Customary Court of Appeal of a State.*

Furthermore the Judicial Oath for Judicial Officers of the Federal Republic of Nigeria expressly affirms and corroborates the classification of the above class of persons as Judicial Officers. The code of Conduct for Judicial Officers of the federal Republic in its explanatory section also states that:

*In this code the term “**judicial officer**” shall mean a holder of the office of Chief judge of a State and Judge of the High Court of a state, a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja; or President or Judge of the Customary Court of Appeal of a State.*

### **ESTABLISHMENT OF THE COUNCIL**

History is made up of past events: what is on ground is story. Before the 1999 Constitution (as amended), adequate provisions were not made for a body to have powers on judicial policies, control and setting of standards. In a bid to address this coupled with the need to arrest the deterioration in the ethical standard and performance of Judicial Officers in Nigeria, the General Abacha

administration set up a commission in 1993 to probe the conduct of Judicial Officers in the country. It was empowered to make recommendations on how to shore up ethical standard and performance in the Nigerian Judiciary. It suffices here to state that a major fall out of this probe and related matters wasthe insertion of section 153 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).This section establishesfor the Federation some executive bodies one of which is the National Judicial Council (NJC). The composition and powers of the Council are provided for in items 20 and 21 of Part 1 of the Third Schedule to the 1999 Constitution.

The National Judicial Council is vested with the power to recommend the appointment of Judicial Officers throughout the country, collect and disburse budgetary provisions for the judiciary and judicial bodies as mandated by the Constitution, pay the salaries and allowances of Judicial Officers and judicial staff, as well as the power to discipline erring officers. However, the primary objective of establishing the NJC is to ensure that Judicial Officers discharge their functions independently and to ensure that in doing this, they are insulated from interference from other arms of government. In order to achieve this, the NJC also needs to ensure that Judicial Official Officers perform optimally.

The Committee set up by the General Abacha administration to probe Judges which was headed by Hon. Justice Kayode Eso, JSC, CON (of blessed memory) found 28 Judges culpable for various offences ranging from corruption to low productivity. The 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. I have earlier stated that the establishment of the NJC as an Executive Body amongst other ones was a significant step in enforcing the independence of the judiciary.

### **ESTABLISHMENT OF THE PERFORMANCE EVALUATION COMMITTEE OF THE NATIONAL JUDICIAL COUNCIL**

Let me take you back to the point I have made earlier that the Hon. Justice KayodeEso's Committee in its recommended the urgent need to improve the performance and ethical conduct of Judicial Officers across the country. In order to achieve this very important goal, the NJC in 2003 set up the Performance Evaluation Committee of Judicial Officers after due consideration

of the Report submitted by Hon Justice Kayode Eso's Committee. 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 record was set up pursuant to the wide powers of the NJC 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 |

### **MANDATE OF THE COMMITTEE**

The various mandates of the Performance Evaluation Committee include 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 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 higher Benches 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 an incumbent Chief Justice of Nigeria. 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.

The Committee comprises of a Chairman and 8 members and a secretary. Membership of the Performance Evaluation Committee is drawn from among the ranks of retired Supreme Court Justices, retired Court of Appeal Justices,

Heads of Superior Courts of Records (Federal and State Courts), selected Grand Khadis of Sharia Courts of Appeal and selected Presidents of Customary Courts 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.) from 2003 to 2010. Thereafter, the lot fell on Hon. Justice Emmanuel O. Ayoola, CON JSC (Rtd) who took over the chairmanship of the Committee in 2010. My Lord, Hon. Justice Ayoola, CON, JSC (Rtd) has held the position from 2010 till date.

#### **A GLIMPSE INTO THE MODUS OPERANDI ADOPTED BY THE COMMITTEE**

The Committee sits to consider and evaluate the performance of Judicial Officers of all superior courts of record in Nigeria, excluding the Supreme Court. 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 record should make quarterly returns by filling and submitting their Performance Evaluation Form to the Secretariat of the Committee through their Heads of Court. The Heads of Courts are expected to thoroughly peruse the forms forwarded to them by their Judges or Kadis, as the case may be before countersigning same. The Secretariat of the Committee thereafter sorts out all forms submitted by Judicial Officers in accordance with designed format and compliance guidelines. I have taken the liberty to “exhibit” samples of this forms to this paper for the attention of all participants.

The purpose of the Committee is not to witch-hunt, intimidate, oppress or create fear in the minds of Judicial Officers in the course of performing their constitutional and statutory judicial duties. I can say with all the effort I can muster that the Committee does not indulge in any of such negative suggestions. 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. Judicial Officers are to bear in mind the need to discharge their judicial duties without delay or crass demonstration of lack of knowledge. Judicial Officers of superior courts of record should therefore not be scared of the Committee, and there is in fact, no reason to do so. They should see the Committee as fellow Judicial Officers who perform same functions and understand the challenges and the conditions under which judges operate. Members of the Committee are human beings with human

feelings. The truth is that the Committee still wears its human face even situations where it is confronted the need to make decisions in critical cases of non-performance. It should be noted that in some instances of non-performance or non-submission of returns, the Committee sees a defaulting Judicial Officer as a colleague 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 repeated acts of non-performance flowing from indolence, nonchalant attitude or impunity. Such trend may be inferred from the submissions made by such a Judicial Officer or where a Judicial Officer recklessly makes a false submission. Impunity and/or recklessness occurs where a Judicial Officer relinquishes his or her responsibilities of collating and submission of quarterly performance returns to his or her subordinate without perusing same before signing for submission to the appropriate 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 on his behalf before submitting it to the Committee. In view of the above, the Committee has mandated all Heads of Courts to ensure that all Judicial Officers under them take necessary precautions when preparing their quarterly returns for submission.

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. It is therefore apt to remind us of the judicial oath as provided for in the Seventh Schedule to the Constitution:

**“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 of .....State. 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 roles in the evaluation and supervision of judicial officers. Its achievements so far could be stated in the following terms:

1. Records have proved that since its inception, the Committee has been serving as a watchdog over Judicial Officers and Kadis. It has ensured that that Judicial Officers are not lazy, idle, indolent, reckless or incompetent. It has therefore ensured that Judges are diligent in the performance of their judicial functions.
2. The Committee has contributed in no small measure to the improvement of performance. It has obviously improved 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 Nigerian Judiciary forward.
6. It has helped the Council in the selection of very good and competent hands for elevation to higher Benches in the sense that, whenever an appointment is to be made to a higher Bench, the record of the Performance Evaluation Committee is looked into, and the performance of Judicial Officers will be considered from available records. 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 a higher Bench. This is one of the considerations in the assessment of Judicial Officers for elevation to higher Bench.
7. The Committee has produced a set of rules designed to objectively assess and score 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) tagged ‘L’ – ‘O’ represent the charts for personal monitoring of performance as will be elucidated upon 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 in making returns as expected of Judicial Officers. The minimum number of cases that may guide 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 1<sup>ST</sup> QUARTER, 2014)**

<b>S/NO</b>	<b>NO OF CONTESTED CASES &amp; MOTIONS IN WHICH JUDGMENTS WERE GIVEN IN 3 MONTHS</b>	<b>COMMITTEE’S GRADING</b>
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 1<sup>ST</sup> 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 number 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 OFFICERS**

A Judicial Officer who has 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 the 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-performance, 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 or removed 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 enquire into the challenges such a Judge is facing that might have caused the decline in his or her performance. The Committee also puts into consideration issues of health, conditions of work and environment such as lack or low power supply. In other instances, the distance between workplace (Court) and the residence of the Judge may also be a causal factor. Any of these factors could be responsible for his diminishing performance. Besides, where a non-performing Judicial Officer persists in non-performance, 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. Where it is such that the court itself is responsible for the inability of the Judicial Officer or Kadi to perform effectively, recommendation would be made to the plenary as to possible remedy to such situation.

To make things easier for newly appointed Judicial Officers, the Committee usually gives them a grace of up to two (2) quarters before strict assessment could be done. The reason for this approach or leniency is that the NJC

considers that cases before the new Judges might not have matured up to trial or decision stages.

For the above reasons, 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 Judges in a particular jurisdiction is not performing optimally, 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, Council will withhold its approval for the filling of the vacancies. 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. It is even gratifying to remark that in discharging its functions, the Committee uses objective as against subjective criteria. 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 solutions where they are not performing. The Committee counsels Judicial Officers on their shortcomings and advises 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. We shall now proceed to examine some of the reasons why judicial officers might perform below expectation.

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

### **1. Lack of knowledge of Case management:**

Some Judges are industrious but as a result of insufficient knowledge of case management, they may work very hard, yet have no cases to present to the Committee at the time of assessment. For example, a Judicial Officer that opens 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 Officers 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) in Court and act expeditiously in bringing to a conclusion cases before him. Judicial Officers must avoid tardiness and maintain official hours of the court.

### **2. Dearth of court administration and organisational Skills:**

Some Judges with the exemption of those appointed from the lower bench lack judicial administration and organizational skills which in turn undermines the discharge of judicial functions. It is common knowledge that many Judicial Officers find it difficult 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 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 serve. 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 compromise effective discharge of judicial duties.

### **3. Crass Indolence:**

With due respect, some Judicial Officers are naturally lazy in spite of efforts to train, educate or correct them. There are Judicial Officers who see the bench as a resting place. Once such persons are appointed as Judicial Officers, they do not have the motivation to work hard as expected of them. Such Judicial Officers feel so comfortable with their present positions to the extent that they do not desire to be elevated to a higher bench. They become nonchalant and lackadaisical in the discharge of their duties. The end result of all these is non-performance.

### **4. Negative attitude to work:**

Laziness and negative attitude to work are Siamese twins. This becomes noticeable when a Judicial Officer looks for any reason or excuse to be absent from work. The natural expectation is for Judicial Officers to come to work regularly and promptly too. It is only when Judicial Officers come to work regularly that they can exercise effective supervision over the support staff working under them. Many of Your Lordships will soon notice how difficult some support staff are. There are a lot of these support staff out there who are accustomed to truancy, come late to work, or frequently leave before official closing time. I have seen cases where workers in my chambers or registry feigned illness just to stay away from work. Where this is allowed to persist, Judges are held bogged down and it affects productivity. Let me be very clear on the need for Judicial Officers to effectively supervise the staff assigned to work with them. This is particularly true of registry staff and those assigned to the chambers of Your Lordships. Registry staff must be kept under close watch and supervision to avoid untoward happenings, which may produce intended and unintended consequences on administration of justice. I am sure that some of us must have witnessed situations where processes filed were not kept in the case file either deliberately or do to inadvertence before the date the case is slated for hearing. In other cases, services would not be effected as required by the rules or ordered by the court. In such situations, the Judicial Officer will have to adjourn the hearing of

such matter. All the above negate occurrences militate against effective performance by Judicial Officers.

**5. 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 do not give attention to the provisions of the Constitution or relevant laws that prescribe the way or time limit for carrying out certain duties. I need to be very clear on the need to always comply with legal requirements relating to the discharge of certain responsibilities. Let me take the liberty to comment on the provisions of section 294 (1) – (6) of the Constitution of the Federal Republic of Nigeria 1999 as amended. These provisions explicitly prescribe the time within which to deliver judgment after the conclusion of evidence and adoption of addresses by counsel as well as the time within which parties are to be availed with duly authenticated copies of the judgment delivered by the court. The provisions also prescribe the steps to be taken where judgment is delivered outside the period prescribe by the Constitution. Failure to comply with these provisions amounts misconduct.

Let me quickly point out that 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 the judgment must be furnished on all parties to a cause.

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 provisions of the section above. These are mandatory provisions which Your Lordships are under obligation to comply with.

**6. Late Sitting:** it is a notorious fact that some judicial officers would never commence court sitting at the recommended time, which is 9 O' clock in the morning. This has in no small way compromised effective performance of Judicial Officers and Kadis.

7. Poor infrastructural facilities/Lack of convenient work environment: The work of a judicial officer is undoubtedly a tedious one. It is desirable that the work environment should be reasonably convenient. This is however not the case. It is a notorious fact that courtrooms/chambers of Judicial officers, especially in state judiciaries, are in many cases deplorable and unfriendly. Such facilities are in such terrible and degrading conditions that make it impossible for Judges to perform optimally. For instance, some of the courtrooms in the state do not have ordinary fan snot to talk of air-conditioners. In such circumstance, the judicial officers cannot be expected to perform optimally; and if does, it would be at great risk to his or her health.
8. Failure to set targets from the date a matter is opened to its closing.

With due respect to our judicial officers, the inability of some judges to set a time limit for conclusion of cases is a major factor that greatly contributes to inability to perform optimally. If a judicial officer is diligent enough to set a target/time limit within which to conclude cases and works towards meeting those targets, then, it becomes easier to meet up with the set target.

9. Allowing Lawyers and litigants to dictate the rate at which matters progress:

It should be noted that a Judge is said to be the master and controller of his court. It is however the case that some judicial officers are fond of allowing counsel and litigants dictate the pace of a matter before them. This is the situation where a judicial officer allows a lawyer to take adjournments at will or where he allows a lawyer to take over the course of proceedings. In this instance, the possibility of concluding such a case timeously is slowed down by the antics of counsel. Judges should endeavour not to fall for the antics of lawyers who are out to frustrate expeditious hearing of cases.

My Lords, let me again return to the issue of mandatory compliance with section 294 of the 1999 Constitution as amended and draw from my personal experiences. In doing this, I have provided below a copy of the letter I once sent to the Honourable, the Chief Justice of Nigeria and Chairman of the National

Judicial Council in compliance with section 294(6) when I could not deliver a judgment within 90 days as envisaged by the Constitution. The said letter stated the reasons for my inability to comply with the provisions of section 294(1). In the letter below, you will observe the reasons given for not being able to deliver judgment within the 90 days stipulated by the Constitution. Judges should therefore strive to comply with the provisions of relevant laws in the discharge of their judicial duties.

**NATIONAL INDUSTRIAL COURT OF NIGERIA**  
**PRESIDENT'S CHAMBERS**  
10, PORT-HARCOURT CRESCENT, AREA 11, PMB 623 GARKI,  
ABUJA, NIGERIA

*Ref:*



*Date:*

PNICN/ABJ/CJN/73  
9<sup>th</sup> 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 Lords, 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).

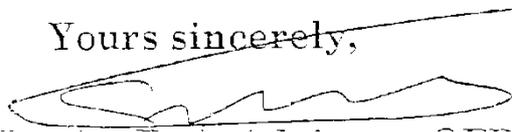
My Lord, the parties adopted their final written addresses on 14th July, 2015 and the case was adjourned to 22nd October, 2015 for delivery of judgment. In fixing a date on which judgment in the case was to be delivered, the attention of the Court was drawn to the fact that its 2015 Annual Vacation was scheduled 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. 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 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 cases 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 would not meet up with the 90 days prescribed by the Constitution. This practice is unconstitutional. And has no place in our jurisprudence Itis pure act of misconduct for any Judicial Officer to indulge in such flagrant manipulation of due process of law. This view is clearly supported by item 19 of Part 1 of the Fifth Schedule to the 1999 Constitution (as amended), which 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. [Underline supplied for emphasis]

I must repeat for the sake of emphasis that Judicial Officers MUST comply with the constitutional provisions that I have just cited above. Without mincing words, non-compliance with these provisions has grave consequences on erring Judicial Officers. Let me elucidate further on the concept of misconduct. Where a law stipulates what constitutes jurisdiction of the court or when the court does not have jurisdiction but nonetheless proceeds to assume jurisdiction, it amounts to flagrant disobedience of the law and the consequence may be fatal to 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 on this ground. Furthermore, lack of 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 what is now referred to in legal parlance as ‘judicial rascality’. 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 prescribes the

factors to be considered in appointing a Judicial Officer 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 acts inadvertently), is pardonable and parties may go on appeal. The second scenario where the Judge acts intentionally to defy 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 possess the capacity to conduct extensive research from legal and inter-disciplinary perspectives. Judicial Officers must also take judicial notice of what is so required and follow precedence. The principle as laid in the Latin maxim is *stares decisis et non quietamovere*, that is, *stand by decisions and do not disturb settled matters*. As Judicial Officers, we are expected to follow judicial precedents laid down by higher courts and consider them strictly in arriving at decisions except in few cases where we may be able to distinguish based on the facts of the case.

The above are some of the reasons why Judicial Officers are unable to perform effectively as expected of them. They are also some of the very reasons Judicial Officers are frightened when they hear of the Performance Evaluation Committee of the National Judicial Council (NJC). It follows that there are plethora of reasons why Judges fail to meet the standard of performance expected of them by the Performance Evaluation Committee of the NJC.

Let me pause to ask a salient question: who is to blame for the persistence of some or all of the factors that I have identified above? We certainly cannot put the blame at the doorstep of the Performance Evaluation Committee of the NJC. This Committee is merely playing the role expected of it by the NJC. It strives to make sure that Judges justify whatever they earn. The Committee assesses Judicial Officers using clearly defined thresholds. Courts are partly responsible for the creation of work environment that is not conducive for the discharge of judicial duties. As I have pointed out, many courtrooms lack necessary infrastructure. I have also heard that in some cases, state judiciaries do not release the Two Hundred Thousand Naira (N200,000.00) approved by the NJC to be released to each Judicial Officer across the country. It is also a notorious fact that many state judiciaries are not well funded resulting in shortage of facilities. I am not going to mince words in asserting that a huge part of the problem lies with Judicial Officers who do not see reasons why they should take

their work seriously. I have in an earlier portion of this paper noted the ways by which Judicial Officers are responsible for their own non-performance.

In essence, Judges should not perceive the Performance Evaluation Committee of the Council as a body, which induces hypertension. Rather, they should do what the law expects from them and rightly too. They should also see the Performance Evaluation system as a strategy to prepare them for higher responsibilities. Like I have said before, the Performance Evaluation Committee of the NJC relies on objective criteria or set standards. Thus, it does not act on the basis of its whims and caprices. Having said that, it is immensely important for me to state that we should not lose sight of one very significant point. The truth is that in deserving cases, Judicial Officers who are adjudged by the Committee and the NJC to have performed excellently well are issued written commendations as a morale booster. Hence, the NJC in assessing the performance of Judicial Officers uses the carrot and stick approach. Viewed from this standpoint, I would say that performance evaluation is one of the criteria considered in recommending suitable Judicial Officers for elevation to higher bench.

With a view to giving credibility to its work, 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 acquire knowledge and develop skills on how to evaluate Judicial Officers and provide useful guides on how to improve their performance. The sole of objective is to make sure that dispensation of justice in our various courts is not unduly bogged down. It is 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 non-performing Judicial Officer who regularly receives salaries and other emoluments is a cheat; bearing in mind that tax payers bear the burden of payments made to him.

My Lords and distinguished colleagues, I do not need to remind you of how difficult it is to be appointed a Judicial Officer. You are all aware of the rigours you went through before you were appointed. It entails surmounting hurdles before getting it but it is rather so easy to lose this exalted position as a Judge or Kadi; if adequate care is not taken. I will therefore advise and encourage all

Judicial Officers to be familiar with the Committee's standards and mode of assessment of their performances.

I will therefore say that it is not useful to keep misconstruing the Committee's duties or seeing the Committee as a monster that threatens their careers. The NJC in its wisdom set up the Committee to assess and evaluate the performance of Judicial Officers of all superior courts of record with the exception of Justices of the Supreme Court of Nigeria. The need to evaluate the performance of Judicial Officers like I have said before in this paper was borne out of the realization that many Judicial Officers were simply docile, lazy and non-performing. It is therefore a product of history. Flowing from its onerous task, the Performance Evaluation Committee of the NJC have on many occasions rendered reports to the NJC and suggested ways of improving the performance of Judicial Officers. It is gratifying to note that in discharging its constitutional mandate, the NJC have relied and acted on reports submitted to it by its Committee on Performance Evaluation.

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 determine the competence of Judicial Officers. It is also to ensure that Judges are diligent in the discharge of their duties.

Having examined the role of the NJC in performance evaluation with a view to promoting efficiency in the judiciary, it is now apt for me to ponder on, and prescribe some suggestions for improved performance in the judicature. This will go a long way in helping us as Judicial Officers to attain maximum performance and consistency in the making of our quarterly returns to the Committee.

### **SUGGESTIONS FOR IMPROVED PERFORMANCE**

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 for the support staff. 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 is to uphold the provisions of the Constitution, Rules of Court and 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 cases for 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 assigned cases and other information would be displayed. This will enable a Judge to monitor cases assigned to him/her and enable him/her to keep an eye on the level of progress made on each case. It will ensure consistency and certainty in the filing of returns. It is however important to regularly update the information posted on the board by ensuring it is checked on daily basis as a 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 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. It is unethical and against the Code of Conduct for Judicial Officers and the punishment for this could be fatal. It is serious misconduct and may be punished accordingly.

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, a judicial officer should make a roster for cases assigned to him/her or cases reserved for judgment and/or 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 performance and the filing of returns.
7. Judicial officers would do well not to call for adoption of too many written addresses for judgment within the same period of time. Doing this is dangerous; it may not allow the judicial officer to meet up with deadlines for delivery of judgments. Returns are made quarterly and it is advisable that you round off your documentation a week to the deadline, i.e. first week of succeeding month.
8. **AvoidLate 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 late 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. Criminal cases attract special conditions and as such, it must be prosecuted within limited time. In all situations, all types of cases should be disposed of within reasonable time.

It is my hope that if the above suggestions are followed, they would assist judicial officers in meeting with the demands of the Performance Evaluation Committee and in the better discharge of their duties. It is also very important at this point to remind all of us that the role of evaluating the performance of Judicial Officers is done by the NJC through its Committee on Performance Evaluation. The Performance Evaluation Committee submits its findings to the NJC. It is then the role of the NJC to take informed decisions based on the findings forwarded to it by its Committee on Performance Evaluation Committee. In essence, it is the NJC itself that plays the role of evaluating the performance of Judicial Officers and not the Committee.

My Lord, the Chief Justice of Nigeria, and Chairman of the NJI and Board of the NJI, Hon. Justice Sunday Walter Nnkanu Onnoghen, GCON; 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 the 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 particularly, in improving our standard of performance. Making use of this paper as a reference material will assist judicial officers to avoid the ire of the Committee. 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**  
MCI Arb (UK), GFISMN, CFIAR, FCI Arb, FNILS  
President,  
National Industrial Court of Nigeria