JUDICIAL ETHICS AND CODE OF CONDUCT FOR MAGISTRATES: ACHIEVING JUDICIAL EXCELLENCE IN THE LOWER COURTS

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1. Introductory perspectives

It is axiomatic that every vocation, profession or calling has its own rules of conduct [or dos and don'ts] applicable to its members; and the judicial calling is no exception. The road to success on the judicial bench is not a bed of roses even for the experienced lawyer: every new judicial officer must learn to be a judge.[1] But aside from the imperative of acquainting new entrants with the ethical standards and behavioural expectations of judgeship on and off the Bench to enable them function effectively in their new estate, a proper appreciation of the underlying principles and standards of conduct that bind judges is necessary because the administration of justice by these unelected judges [who are entrusted with wide, and sometimes unreviewable powers] is one of the cardinal functions of modern society.[2]

Judicial standards of conduct enhance confidence in the judicial process as well as foster a culture of judicial independence by providing an idealised account of the conduct expected from judges in their relationship with the public, with the judicial system and with the legal profession.[3] The topic of this presentation, '***Judicial Ethics and Code of Conduct for Magistrates: Achieving Judicial Excellence in the Lower***

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[1] Chukwudifu Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* in C. C. Nweze (ed.), *Justice in the Judicial Process (Essays in Honour of Honourable Justice Eugene Ubaezonu, JCA),* [Enugu: Fourth Dimension Publishing Co. Ltd, 2002], p. 205-206

[2] Tom Bingham, *The Business of Judging: Selected Essays and Speeches* (Oxford University Press, 2000), pp. 69 – 70.

[3] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* 2nd ed., (Cambridge University Press, 2013), p. 184

Courts', in the context of the theme of this Workshop, ***'Promoting Judicial Excellence in Administration of Justice'*** is therefore not only apt but of steadily increasing relevance. Indeed, the need to identify standards of conduct appropriate to judicial office has been explained by a notable jurist in the following terms:

> *"No one doubts that Judges are expected to behave according to certain standards both in and out of Court. Are these mere expectations of voluntary decency to be exercised on a personal level or are they expectations that a certain standard of conduct needs to be observed by a particular professional group in the interest of itself and the community?*
>
> *As this is a fundamental question, it is necessary to make some elementary observations. We [i.e. judges] form a particular group in the community. We comprise a select part of a honourable profession. We are entrusted, day after day, with exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us.*
>
> *Citizens cannot be sure that they or their fortunes will not, someday depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standard are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations.* [4]

The two components of the present dissertation are 'judicial ethics' and 'code of conduct'. Whilst the extant *Revised Code of Conduct for Judicial Officers in the Federal Republic of Nigeria* [which entered into force on February 24, 2016] is an improvement on the old Code,[5] it has been

[4] J. B. Thomas, *Judicial Ethics in Australia* (Sydney Law Book Company, 1988), p. 7.

[5] Although the majority of conferees [117 at the 1978 All Nigeria Judges Conference opted for an unwritten convention [see C.C. Nweze, Note 7 below], the Code was first adopted in 2000 and revised on 24 February 2016. It is noteworthy that in order to reduce friction in the court as a work place, a *Code of Conduct for Court Employees of the Federal Republic of Nigeria* was equally adopted and it came into effect on March 1, 2004. 'Court employees' mean all categories of employees involved in the

observed that even the Revised Code "*is not exhaustive on matters concerning ethics, which is a wide expression encompassing good ethical behavior, doing the right things and avoiding the wrong things or avoiding the appearance of doing the wrong things*".[6] Judicial ethics is no doubt a wide and diverse theme, and its entire ramifications can scarcely be captured in a written code, but the interrelationship between the two is quite obvious. The overriding objective for adopting a written code of ethics for judges is the promotion of judicial ethics, which "*explains why the Code drips with copious references to judicial ethics, a great deal of which are judge-made*".[7] The Code seeks to regulate judicial conduct on and off the Bench, circumstances in which a judicial officer is obligated to recuse himself from handling a case, as well as the proper scope of his extra-judicial endeavours, etc., which are all aspects of judicial ethics.

As is the case with most socio-legal concepts, judicial ethics is more easily recognised than defined. But it generally implies the accepted way of life of judicial officers; the basic moral injunctions applicable to occupants or holders of judicial office; the behavioural and attitudinal expectations on the part of judges; a system of professional regulations that govern the conduct of judges on and off the Bench; the standard of ethical conduct for members of the judiciary;[8] or the eternal verities of judicial adjudication. Judicial ethics are "*the 'supreme good' of the*

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day-to-day administration of the court other than judicial officers, and includes employees of Special Courts, Tribunals, Commissions of Enquiry, staff of the respective Federal and State Judicial Service Commissions and Federal Capital Territory Judicial Service Committee, and such other bodies set up to perform judicial and quasi-judicial functions. –see B. B. kanyip, *An Appraisal of the Code of Conduct for Court Employees,* being a Paper presented at a Workshop for Court Employees organised by the National Judicial Institute, Abuja.

[6] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial Officers in Nigeria* –being a Paper presented at the Conference of all Nigeria Judges of the Lower Courts, on the theme: *The Lower Courts as Veritable Instruments for Justice and Peace in a Democratic Society*, held at the National Judicial Institute, Abuja on 21/11/16. The Hon. Justice Olayinka Faji, *FCI Arb (UK)* is currently in the Lagos Division of the Federal High Court.

[7] C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper- Dispensation of Justice In a Democracy: Judicial Ethics and Conduct On and Off The Bench,* in Hon. Justice Umaru Eri, OFR (ed.) *–Proceedings of 2009 All Nigeria Judges' Conference* (National Judicial Institute, Abuja), 2011.

[8] Niki Tobi, *The Nigerian Judge* (A&T Professional Publishers, 1992), p. 68.

professional Bench because they are good in themselves".[9] The sources of judicial ethics in Nigeria include the Revised Code of Conduct for Judicial Officers, the National Judicial Policy, scriptural injunctions drawn from the Holy Bible and the Quran, constitutional and statutory provisions as well as the Judicial Oath contained in the 7th Schedule to the Constitution of the Federal Republic of Nigeria 1999 (as amended). Violation of the Code of Conduct constitutes judicial misconduct which could give rise to disciplinary action.[10] As his Lordship *W. S. N. Onnoghen, JSC (now CJN)* put it: *"Those who … refuse or fail to abide by the Code should be swiftly dealt with by being shown the way out of the Judiciary as has been the practice. The court is the temple of justice and we must do everything possible to ensure that it remains so".*[11] The standard required in determining whether a judicial officer is guilty of misconduct warranting dismissal is the same standard to be taken into account if he were being considered for appointment to the office he occupies.[12]

The point has already been made that judicial ethics and code of conduct are interrelated and interwoven. We shall therefore treat them in this presentation not as autonomous units, but as part of an integral whole. But let us first grapple with whether the Code applies to magistrates.

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[9] Ibid. (p. 69).

[10] See Item 2 under the subhead 'Application of the Rule'. To make for transparency in the disciplinary process, Judicial Discipline Regulations were adopted by the National Judicial Council on 3 November 2014.

[11] W. S. N. Onnoghen, JSC, CON – "Dispensation of Justice in a Democracy: Judicial Ethics and Conduct on and off the Bench" in Umaru Eri, OFR (ed.) – *Proceedings of 2009 All Nigeria Judges' Conference* (National Judicial Institute: Abuja), 2011, p. 30.

[12] See A-G, Cross River State v Esin [1991] 6 NWLR (PT. 197) 365 at 376. *"Each case must however depend upon its peculiar facts, for there is no rule of law defining the degree of misconduct which will justify dismissal. The sufficiency of the justification for removal depends largely upon the degree of misconduct…I think that misconduct in his private life by a Judge of a nature which tends to erode his authority and confidence in his relations with the public amounts to misconduct which will justify dismissal. A judge must be above suspicion in the eyes of the public. He should be able to do his work in complete independence and free from fear. He is not to be plagued with allegations of malice or ill-will or bias or anything of the kind. He should give no cause for scandal"* –per *Katsina-Alu, JCA* (as he then was) at p. 375.

2. Is the Code of Conduct for Judicial Officers applicable to Magistrates?

There is some controversy as to whether the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria applies to Magistrates and other categories of adjudicators in the Lower Courts. This controversy stems from the rather restrictive constitutional definition of the term 'judicial officer' as a reference to Judges/Justices of Superior Courts of Record to the exclusion of Lower Courts;[13] as well as the import of s. 153 (1) of the Constitution which invests the National Judicial Council with power 'to appoint and exercise disciplinary control over judicial officers'. The disputation therefore is that because Magistrates and other categories of adjudicators in the Lower Courts are not 'judicial officers' within the meaning and intendment of the Constitution, it is *ultra vires* the National Judicial Council to engraft them into the province of its oversight and disciplinary control by enlarging the definition of 'judicial officer' in the Code to encompass "*every holder of similar office in any office and tribunal where the duties involve adjudication of any dispute or disagreement between person and person (natural or legal) or person and government at federal, states and local government levels including the agents and privies any such person*".[14]

But whilst the above argument could be of some academic interest, it donates very little utilitarian value or benefit to anyone saddled with the onerous responsibilities of judgeship, whether as a magistrate or

[13] By s. 318(1) of the 1999 Constitution (as amended), '*Judicial office' means the office of Chief Justice of Nigeria or a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the office of the Chief Judge or Judge of the federal High Court, the office of the President and 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, a President or Judge of the Customary Court of Appeal of the Federal Capital Territory Abuja, a Grand Kadi or Kadi of the Sharia Court of Appeal of a State, a President or Judge of the Customary Court of Appeal of a State: and a reference to a 'judicial officer' is a reference to the holder of any such office.* See also Paragraph 21, Part 1 of the 3rd Schedule of the Constitution.

[14] Explanatory Note (1), Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (2016).

judge of an Area Court or Customary Court. *Firstly*, even if, *arguendo*, the disciplinary jurisdiction of the National Judicial Council is confined to judicial officers as defined in the Constitution and does not *strictu sensu* extend to Magistrates and other adjudicators in the Lower Courts, there is no gainsaying that they are nevertheless bound to observe and ensure the observance of basic ethical standards in the discharge of their judicial duties. And because these ethical standards are substantially embodied in the Code, if for nothing else, it readily serves as a Bench Book of guidance for proper behaviour on and off the Bench. *Secondly*, since it is the legitimate aspiration [or ambition] of [almost] every Magistrate to metamorphose from '*His Worship*' into 'His Lordship' sooner or later, the earlier Magistrates got acquainted with, or accustomed to, the dos and don'ts of the high office of Judge to which they aspire, the better for them and the administration of justice in general. We should therefore not suffer ourselves to be detained by this needless controversy. But then, what does judging actually entail?

3. **The Business of Judging**

In Nigeria, as in other countries of the world, judges [and this includes magistrates and other categories of adjudicators in the Lower Courts] occupy a privileged position which springs from public recognition that democratic governance and society as a whole can only function fairly and properly within a framework of laws administered *justly* and *fairly* by men and women who owe obligation to nothing other than justice itself. This demands that Judges/Magistrates must not be subjected to disciplinary sanctions or premature retirement on account of reaching decisions that do not find favour with the powers that be or with

powerful vested interests, or even with prevailing public opinion.[15] This is, of course, not a *carte blanche* for Judges to give vent to their whims and caprices. Quite the contrary, Judges must come to terms with the fact that they are conferred with certain important privileges for the greater good of the public; and society legitimately expects of them very high standards of propriety, integrity, assiduity and personal conduct as complementary aspects of the judicial role.

An independent judiciary has been described as the *"lifeblood of constitutionalism":*[16] a prerequisite to the rule of law and a fundamental guarantee of fair trial.[17] This implies that disputes are adjudicated on the basis of their factual and legal merits, and Judges being free to act on their *'own convictions without any apprehension of personal consequences'*[18] to themselves or members of their families. Fair trial in a fair tribunal is the first test of due process, and this requires both institutional and individual [or decisional] independence.[19] The Judiciary has the responsibility of not only ensuring transparency and consistency in deciding disputes; it must also ensure timeliness in the disposal of such disputes.[20] One basic truth we cannot shy away from is that unless Judges discharge their roles *"properly, none of the objectives of a democratic society can be realised".*[21] Judges must therefore apply the law firmly, transparently and consistently '*without fear or favour,*

[15] In 2013, a Judge of the FCT High Court [*Talba, J.*] was suspended for twelve (12) months without pay on the basis of prevailing public opinion for exercising a judicial discretion which the law under which the accused person was charged allowed him.
[16] See *Beauregard v Canada* 1986 CarswellNat 1004 at para 24.
[17] The Preamble of the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria (2016) asserts that: "*An independent, strong, respected and respectable judiciary is indispensable for the impartial administration of justice in a democratic State.*"
[18] Bradley v Fisher (1871) 80 US 335 at 347. See also the soft law principles enunciated in the UN Basic Principles on the Independence of the Judiciary adopted by the 7th UN Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August – September 6 1985 and endorsed by the UN General Assembly Resolutions 40/43 of 29/9/85 and 40/146 of 13/12/85, para 2.
[19] Value 1, Bangalore Principles of Judicial Conduct.
[20] Section 36 of the 1999 Constitution (as amended) enshrines and guarantees the right to fair hearing within a reasonable time by a court or other tribunal established law and constituted in such manner as to secure its independence and impartiality.
[21] Julius Nyerere, *Freedom and Socialism* (Oxford University Press, 1968) at p. 110.

affection or ill will' in keeping with the judicial oath and the Code of Conduct for Judicial Officers: they must demonstrate impartiality, unquestionable integrity, and avoid impropriety and the appearance of impropriety in all of their activities.

The court system implies that citizens should freely approach the courts with the conviction of obtaining justice, which further implies that the courts are not inhibited by factors such as ignorance, corruption, favouritism, prejudice, fear or favour from delivering just decisions; or tied to the apron strings of the executive or other concentration of power: courts that are free from legislative pressure, political pressure, big business pressure or, worse still, mob pressure. It is the removal of these extrinsic and unnecessary influences or pressures that helps to ensure the independence of the judiciary[22] which is crucial because without a judiciary which can and will administer law fairly and fearlessly between parties, no other guarantee given to litigants by the law is likely to be of value.[23]

Judges must constantly be reminded that they are God's deputies on this earthly plane: they preside over the destinies of fellow men and women alike; and the judicial pen can do infinite good just as it can cause incalculable harm. That is why judgeship is at once a position of power and one of grave responsibility: a public trust that demands of its holders the finest societal values there ever can be.[24] Whereas the exercise of discretion is a thread that runs across the entire gamut of

[22] See generally, P. O. Affen, *Judicialism in Nigeria: Gasping for Breath under Our Watch* [2015] 7 Court of Appeal Reports, pp. 336 - 363.
[23] *Preamble*, Montreal Declaration on the Independence of Justice.
[24] P.O. Affen, *Judicialism in Nigeria: Gasping For Breath Under Our Watch,* op. cit.

judicial function,[25] the judicial role is not self-activating and Judges can only act when a *justiciable* dispute is presented before them by lawyers or litigants-in-person. But in order to avoid the arbitrariness of an unpredictable personal decision,[26] the exercise of discretion is subject to the concurrent requirements of what is 'judicial' and 'judicious'.[27] Because the proper exercise of judicial discretion is a *sine qua non* for the effective discharge of the judicial role, it is of crucial significance that the discretion of a Judge *qua judex* is neither fettered by extraneous considerations nor exercised whimsically or erratically; and there are always ethical considerations to bear in mind.

3. **Ethical standards of judicial conduct**

The *Bangalore Principles of Judicial Conduct* (2002) highlight six (6) core values of judicial conduct, namely: independence, impartiality, integrity, propriety, equality, and competence/diligence. Although our old Code predates the *Bangalore Principles*, the Revised Code of Conduct for Judicial Officers (2016) has drawn heavily from the latter. A judicial officer must always have at the back of his mind that his judicial duties as prescribed by law take precedence over all other activities; and that he is enjoined to actively participate in establishing, maintaining, enforcing and observing a high degree of conduct that will ensure and preserve transparently, the integrity and respect for the independence

[25] In matters of judicial discretion, no one case can be an authority for the other, for if it were otherwise that would put an end to the exercise of discretion –see Odusote v Odusote [1971] 1 ALL NLR 219; ICAN v A-G, Federation [2004] 3 NWLR (PT. 859) 186; Bello v Yakubu [2008] 14 NWLR (PT. 1106) 104 at 121.

[26] Bingham, *The Discretion of a Judge*, Royal Bank of Scotland Lecture, Oxford University delivered on 17/5/90, Denning Law Journal 27. *"To remit the maintenance of a constitutional right to the region of judicial discretion is to shift the foundation of freedom from the rock to the sand"* –see Scott v Scott [1913] A.C. 417 at 477 (per Lord Shaw).

[27] *"Discretion is not an indulgence of a judicial whim, but the exercise of judicial judgment based on facts and guided by the law and equitable decisions; it is the court's epistemological tool for winnowing solid truth from windy falsehood; for dichotomising between shadow and substance, and distilling equity from colourable glosses and pretences. By its very character, judicial discretion does not brook any capricious exercise of power according to private fancies and affections"* –see *Udotim & Ors v Idiong (2013) LPELR-22132 (CA) 13-14 (per Nweze JCA, as he then was)*. Generally, appellate courts do not make a practice of interfering with the discretion exercised by a trial court save in circumstances where it is perverse, oppressive or arbitrary –see *University of Lagos v Aigoro [1985] 1 NWLR (Pt. 1) 143 at 148-149*

of the Judiciary.[28] Judicial officers are expected to exercise a higher level of discretion in their day-to-day conduct on or off the Bench because they exert considerable power based on discretion, and that is the crux of judicial ethics.[29]

It has been observed that a written code of ethics for judges is a defining component of public trust in the judiciary;[30] and serves as a companion and guide to the newly appointed judge as well as the veteran. By setting out broad rules of guidance for judges and prescribing penalty for the violation or breach of its emphatic ethos, the Revised Code seeks to ensure transparency in the affairs of the Judiciary as well as hold judicial officers accountable for their conduct both to the judiciary [as an institution] and the public at large.[31] Against the backdrop of the foregoing, we shall proceed presently to examine the core values of judicial conduct.

(i) **Propriety[32] [and Appearance of Propriety]**

Propriety as a canon of judicial conduct is consecrated in Rule 1 of the Revised Code for Judicial Officers (2016). Rule 1.1 underscores the supreme importance of propriety and the appearance of propriety as essential elements of a Judge's life, whilst Rule 1.2 specifically enjoins judicial officers to not only avoid impropriety but also the appearance of impropriety in all endeavours both in professional and private life. Judicial officers are equally enjoined to avoid social contacts that may fuel speculation as to the existence of a special relationship between

[28] Preamble of the Revised Code of Conduct for Judicial Officers of the Federal Republic of Nigeria
[29] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., p. 7.
[30] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* 2nd ed., (Cambridge University Press, 2013), p. 184.
[31] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., p. 5.
[32] Value 4, Bangalore Principles of Judicial Conduct.

them and someone they may be tempted to confer an advantage in the course of their duties [Rule 1.3].

The measure of propriety is not the legality of the judicial officer's conduct: what matters most is not what a judge does or does not do, but what others think he has done or might do. A judge who speaks at length with a litigant in a cause before him will no doubt appear to be conferring an advantage on that party even if, in fact, the conversation is unrelated to the case. A judge must behave in public with the sensitivity and self-control demanded by judicial office, because a display of injudicious temperament is demeaning to the processes of justice and inconsistent with the dignity of judicial office. Impropriety connotes improper behaviour relative to circumstance or status, and proper conduct that appears improper is in fact improper conduct. For example, a flamboyant and extravagant lifestyle may be as unacceptable as a particularly frugal existence. Generally, conduct that may not be improper when done by others may not be proper if done by a judicial officer. In England, for instance:

> *"It is understood that appointment to judicial office brings with its limitations under Private and public conduct of the judge and the standards in private life are necessarily high. Judges go to public houses (pubs) provided they are decent and not near the court. There is no objection to a judge going to a respectable pub in his neighbourhood in London or near his country home and having a beer with a friend. However, a judge is not expected to be seen in pubs frequently. In the town where a crown court or a county court is situated judges are not expected to go to pubs or other places of that kind.*

Similarly we should be surprised to learn that any judge visits striptease shows, brothels or casinos or entertainments of that sort".[33]

A judicial officer should avoid situations that might expose him to charges of hypocrisy by reason of things done in their private life. Rule 1.7 of the Revised Code prohibits a judge from engaging in gambling as a leisure activity; just as he must not engage in sexual harassment [Rule 11(iv). The rule against sexual harassment applies with equal force to both male and female judges. Also, in order to avoid being unduly tempted, judicial officers are required not to be members of a Tenders Board or to engage in the award of contracts. And by Rule 11(iii), a judicial officer on becoming aware of reliable evidence of unethical or unprofessional conduct by another judicial officer or a legal practitioner should immediately take adequate steps to report the same to the appropriate body seised with disciplinary powers in respect of the matter complained of. Although the Revised Code does not specifically mention litigants, there is nothing prohibiting judicial officers from reporting litigants who make overtures aimed at corrupting them or perverting the course of justice to the appropriate law enforcement agencies. Indeed, if judicial officers take this duty seriously many of the ills, including the menace of corruption that is threatening to drag the judiciary in the mud will be largely curtailed. It has however been observed that "*whether judicial officers will gladly report their colleagues is a matter that may not arise except of course where the conduct would have an adverse effect on the officer who fails to report*", and it is equally unlikely that a judicial officer would be held liable for misprison

[33] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary*, op. cit., pp. 263-264.

of felony for failing to report as he may not be aware of such unethical conduct in that his colleague is not likely to have discussed it with him.[34]

Notwithstanding that what may constitute impropriety is dependent on the peculiar facts of each case, there are certain conducts that are universally accepted as improper irrespective of circumstance. An obvious example is demanding or accepting bribe or other form of inducement as consideration for discharging official duties. The old Code did not expressly refer to that obnoxious word "*bribe*", which has been identified as one of four main manifestations of corruption in Africa[35] and "*Nigeria's prime economic malady*"[36] expressing itself in subtle and not-so-subtle ways. The conspicuous absence of the word 'bribe' in the old Code was decried as not only '*curious*' but "*an embarrassing omission in a code targeted against corruption, the most conspicuous manifestation of which is the very vice of bribery*" and made a case for addressing the omission as a matter of urgency.[37]

The Revised Code seems to have responded to that clarion call with an express provision in Rule 10.1(iii) to the effect that "*a judge shall not give or take and shall not encourage or condone the giving or taking of any benefit, advantage [or] bribe however disguised for anything done or to be done in the discharge of a judicial duty*". This is closely related to Rule 13.1 which provides that "*a judicial officer and members of his family shall neither ask nor accept any gift, bequest, favourable or low on*

[34] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., p. 42.

[35] Bribery, prebendalism, graft and nepotism have been characterised as the main manifestations of corruption in Africa –see R. B. Joseph, *Democracy and Prebendal Politics in Nigeria* (Ibadan: Spectrum Books, 1991) p. 8 –referenced in C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper- Dispensation of Justice In a Democracy: Judicial Ethics and Conduct On and Off The Bench,* in Hon. Justice Umaru Eri, OFR (ed.) – *Proceedings of 2009 All Nigeria Judges' Conference* (National Judicial Institute, Abuja), 2011.

[36] See *Episiotomy of Nigeria's Economic Malady: Its Depth And The Way Out* –being an Inaugural Lecture delivered in January 2014 by Prof. Ishmael Ogboru, Department of Economics, University of Jos, Nigeria, at p. 6

[37] C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper,* op cit.

account of anything done or omitted to be done by him in the discharge of his duties". He is however not prohibited from accepting personal gifts or benefits from relatives or personal friends to such extent and in such occasions as are recognised by custom, complimentary copies of books supplied by the publisher, loans from lending institutions on the same terms and conditions available to members of the public, or scholarships/fellowships awarded on the same terms applied to other applicants [Rule 13.5 (2) (i)-(iv)].

Rule 2.5 prohibits acceptance of gift from a lawyer who might appear in a matter before him if such gift is not one given to Judges generally at festive seasons; and even at that, the gift must not be pecuniary in nature or not more than what is ordinarily given. Indeed, Rule 1.1 enjoins a judge to caution himself whenever he is in doubt about the propriety of receiving a gift however small or attending an event by asking the question – "*How might this look in the eyes of the public?*"

The imperative of shunning bribery and corruption for the plagues they are in the discharge of judicial duties is traceable to the divine roots and 'scriptural evolution of the mandate of the judicature'.[38] Let us take a peep into the injunctions of the Holy Books.

> "You shall appoint judges and officers at your gates… and they shall judge the people with just judgment. You shall not pervert justice; you shall not show partiality, nor take a bribe for a bribe blinds the eyes of the wise and twists the words of the righteous" –*The Holy Bible, Deuteronomy 16: 18-19 (NKJV)*

> "Then he set judges in the land throughout all the fortified cities of Judah city by city, and said to the judges: Take heed to what you

[38] Ibid.

are doing, for you do not judge for man but for the LORD, who is with you in the judgment. Now therefore, let the fear of the LORD be upon you; take care and do it, for there is no iniquity with the LORD our God, no partiality, nor taking of bribes" –*The Holy Bible, 2 Chronicles 19: 6-7 (NKJV)*

"O ye who believe, stand out firmly for justice, as witnesses to God even as against yourselves, or your parents or your kin, and whether it be rich of poor; for God best protect both. Follow not the lusts [of your hearts] lest ye swerve, and if ye distort or decline to do justice, verily God is well acquainted with all that you do" –*Holy Quran Chapter 4 Verse 16*

Fortunately, we are a highly religious people and should ordinarily not have any difficulty streamlining our actions in conformity with these scriptural injunctions of judicial ethics! It has however been observed that in the face of increasing public scrutiny and the welter of new decisions, even the best intentioned judges can find themselves at a loss. Thus, in determining impropriety, the inquiry is not whether or not an act or conduct is morally reprehensible, or whether it is acceptable or unacceptable by community standards (as this could lead to arbitrary and capricious imposition of narrow morality), but how the act or conduct reflects upon the central components of the judge's ability to perform the role for which he has been empowered: fairness, independence and respect for the public. Accordingly, it has been suggested that in making a judgment in such a matter, the following six factors should be taken into consideration in order to strike the necessary delicate balance between public expectations and the judge's rights:

(i) The public or private nature of the act;
(ii) The extent to which the conduct is protected as an individual right;

(iii) The degree of discretion exercised by the judge;

(iv) Whether the conduct was harmful or offensive to others;

(v) The degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates; and

(vi) The degree to which the conduct is indicative of bias, prejudice, or improper influence.[39]

(ii) **Independence and Impartiality**

These imperishable judicial values are accorded pride of place in the *Bangalore Principles,*[40] the Revised Code and the National Judicial Policy (April 2016). Independence and impartiality are essential components of the right to fair hearing, hence s. 36(1) of the 1999 Constitution (as amended) peremptorily declares that every person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its *independence* and *impartiality*.[41] They are principles of eternal justice and any court or judge that lacks them is hardly deserving of the name. As stated hereinbefore, there are institutional and individual [or decisional] dimensions of judicial independence. The policy thrust in this regard is set out in Clause 7.1 (a) – (e) of the *National Judicial Policy (April 2016)* in the following emphatic terms:

(a) The independence of the judge is sacrosanct and very necessary to impartial justice delivery. All institutions and authorities must respect, protect and defend that independence;

(b) In the performance of judicial functions, the judge is subject only to the law and must consider only the law;

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[39] Shaman, Lubet and Alfini, *Judicial Conduct and Ethics*, 2nd ed., (Michie Law Publishers, Charlottesville, V.A, 1995), pp. 335-353

[40] Independence and Impartiality are Values 1 and 2 respectively, of the *Bangalore Principles of Judicial Conduct*.

[41] The imperative of demonstrating impartiality cannot be overemphasised: Judges must hold the scales of justice fairly and evenly, *for justice must be rooted in confidence, and that confidence is destroyed when right minded people go away thinking: 'The Judge was biased'* – see *Metropolitan Properties Ltd v Lannon* [1969] 1 QB 577.

(c) A judge must not take or attempt to take orders or instructions of any kind from anyone that may influence his decisions in the performance of his judicial functions;

(d) In the performance of judicial functions the judge must be impartial and must be seen to be so; *and*

(e) A judge shall in discharging his functions ensure the rights of everyone to a fair trial.

These principles reflect the essential status of the courts and judges in the overall judicial schema. In determining whether a court is independent, account should be taken of how judges are appointed, the length of appointment, what guarantees there are regarding external influence and if there are circumstances that generate doubt regarding their independence.[42] There is therefore a direct correlation between the quality of judicial appointments and the core judicial values of independence and impartiality; and it must always be borne in mind that the qualities of confidence and courage on which the assertion of true judicial independence not infrequently depends, tend to be the product of professional success and not the hallmark of professional mediocrity.[43] That probably explains why the English attitude until as recent as 2002 when the *Guide to Judicial Conduct*[44] was adopted had been '*that if you pick judges who know how to behave, then all will be well as if you do not, no amount of analysis of ethical problems will help*'.[45] According to Lord Bingham of Cornhill: "*The practice of*

[42] Cynthia Gray, *Key Issues in Judicial Ethics – Ethical Issues for New Judges*. www.ethics.calbar.gov

[43] Tom Bingham, *The Business of Judging, Selected Essays and Speeches (1985 -1999)* (Oxford University Press, 2000), pp. 65-66

[44] The *Guide to Judicial Conduct* was revised in 2011

[45] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary*, op. cit., p. 184. According to the authors, prior to adopting of the *Guide to Judicial Conduct*, English Judges "*were guided by conventions, traditions, practices and understandings established over the years*" and "*until 2002, the [only] written canons of judicial conduct were the Magna 1215 ('To no one will we sell deny, to none deny or delay right or justice') and the judicial oath ('I will do right by all manner of people, after the law and usages of the realm, without fear or favour, affection or ill will)* –At pp. 184 -185. But, at p. 67 of Tom Bingham's *The Business of Judging* (see Note 40 above), the Law Lord wrote: "*Apart from the Kilmuir Rules which were very limited in their scope and have now been to some extent relaxed, I know of no recent attempt to state the rules which govern, or should govern the conduct of judges…*" which seems to suggest that the said Kilmuir Rules also regulated judicial conduct alongside the Magna Carta and the Judicial Oath prior to 2002.

appointing judges from a small pool of candidates, sharing a common professional background, and known personally or by professional refuge to those making and advising on appointments has enabled much to be taken for granted".[46]

The National Judicial Policy is emphatic that the Constitution sufficiently provides the framework of judicial independence and that "*there is no indication that judges lack decisional independence.*[47] But whilst conceding that accountability and independence are not mutually exclusive and that '*judicial independence is not synonymous with absolute immunity*', a learned commentator[48] has nevertheless cautioned that "*the issue of the discipline of Judges is a call for a delicate balancing of the twin values of judicial accountability and judicial independence*" in order not to undermine the decisional independence of judges. According to him:

> "Judicial independence is not only institutional; it also relates to the individual judge. In other words, we can talk of institutional judicial independence as much as we would of the individual judge's independence in terms of his work as a judge. Globally, if judges misconduct themselves, they become subject to discipline by the mechanisms provided under the law. Beyond these parameters, however, they are generally not held accountable for their judgments except through the supervisory or appellate processes of higher courts,[49] as the case may be. This is because judicial accountability stretched too far can seriously harm judicial independence… The problem, however … is that 'judicial independence is most gravely threatened when judges face sanctions for 'decisional conduct', which

[46] Tom Bingham, *The Business of Judging, Selected Essays and Speeches,* op. cit., p. 69,

[47] See Clause 7.4 of the National Judicial Policy.

[48] See B. B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* –Paper presented at the 2013 All Nigeria Judges' Conference, which held at the National Judicial Institute, Abuja from 9th – 13th December 2013. B. B. Kanyip Ph.D is the Presiding Judge, National Industrial Court (Lagos Division), formerly Associate Research Professor of Law Nigerian Institute of Advanced Legal Studies, Lagos.

[49] In Nafiu v State [1980] 12 NSCC 291 at 310, the Supreme Court (per Irekefe, JSC) observed thus: *"The possibility that decisions by an inferior court may be scrutinised on appeal by a higher court, at the instance of an aggrieved party …is itself a safe-guard against injustice, by acting as it were, as a curb against capriciousness or arbitrariness".*

> may be defined as discipline based upon the merits of a ruling'. Under our Code of Conduct in Nigeria, the "canons on adjudicative duties" … may conveniently fall under the mould of 'decisional conduct' …[T]here are situations in which the possibility of discipline most definitely does endanger the independence of the judiciary. The most serious threat arises when sanctions are imposed based upon the content of a judge's decision."[50]

The cogency of the foregoing is buttressed by instances [albeit few] where disciplinary actions have been taken against judicial officers on account of the content of their judicial decisions [as in the example of *Talba, J*],[51] notwithstanding that the need to ensure that a judge "*should be able to do his work in complete independence and free from fear*" has been judicially acknowledged.[52] This does not however suggest that disciplinary sanction may not attend particularly egregious decisional conduct. A ready example is the abuse or misuse of the power to grant *ex parte* injunction, which became such a grave concern that it is specifically provided in Rule 3.5 of the Revised Code [which is a verbatim reproduction of Rule 2(2) of the old Code] that: "*A judicial Officer shall avoid the abuse of the power of issuing interim injunctions, ex parte*"[53] On the flipside, some judges now avoid entertaining, let alone

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[50] B. B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op cit.

[51] See Note 15. *Kanyip* referred to a rather intriguing disciplinary proceeding against an American Judge, which brings the issue of judicial accounting vis-à-vis judicial independence into sharp focus. The California Commission on Judicial Performance (CCJP) served a formal complaint of willful misconduct in office against Judge Broadman on the ground that he had abused the rights of defendants and acted in excess of judicial authority by placing a woman [previously convicted on drug charges and had lost custody of all five of her children] on probation for five years subject to the condition that she "not get pregnant" during that time, saying: "*I'm afraid that if you get pregnant we're going to get a cocaine or heroin addicted baby*". On one hand, the CCJP, supported by many civil liberties and women's groups, charged that Judge Broadman had flouted clear legal mandates, and violating the most intimate rights of several defendants in the process. On the other hand, Judge Broadman, supported by an *amicus* brief from the California Judges Association, argued that the disciplinary charge itself impinged upon his own exercise of judicial [decisional] independence. But as matters developed, the "improper sentencing" charges against Judge Broadman were dismissed –see B. B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op cit.

[52] See *A-G, Cross River State v Esin* [1991] 6 NWLR (PT. 197) 365

[53] Justification for the inclusion of this prohibition is contained in the following admonition of the erstwhile CJN, *Mohammed Bello*:
"*The decisions of some of our courts on ex parte injunction seem to put individual interest over and above the collective national interest in Nigeria. Public functionaries have been restrained without being given a hearing from performing the constitutional and statutory duties at the instance of an exuberant individual…*
It was only in Nigeria that the court of law would restrain a University by other of ex parte injunction from holding convocation to award degrees to over 8000 students were passed the examinations. A court of law denied the deserving

grant, *ex parte* applications for interim injunction altogether even in deserving cases out fear of disciplinary action, which reinforces the imperative of balancing the twin values of judicial accountability and judicial independence. In this regard, it has been suggested that a number of issues including the following should be noted:

> "*First*, where Judges are punished for speaking their minds, the judiciary will necessarily become timid and unimaginative. In the worst case, the disciplinary authorities may use such power to enforce a judicial orthodoxy, limiting the way in which the law may be interpreted or understood. *Judges who must rule in the shadow of personal jeopardy are the very antithesis of independent, as fear and doubt may cause them to steer a safe course rather than a true one.*
>
> *Secondly*, while everyone believes in judicial independence, it may turn out to be much harder to appreciate independent judges; especially when their rulings are objectionable or ill-conceived. But independence is intended to protect a Judge's freedom of conscience, not to guarantee popular, or even uniformly appropriate, outcomes.
>
> *Thirdly*, there is the issue of criticism in the press, which is a fact of life for Judges. In extreme situations, it is possible that such criticism may actually threaten judicial independence, but there is no solution to that problem as the press must be free. The same cannot be said of politicians, however, who may seize upon press reports to launch their own attacks on unpopular Judges.
>
> *Lastly*, one should not press the case for independence too far. There is some conduct (even "decisional" conduct) that must merit

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students the degrees because two students who had faced the examination had applied to the court for a declaration that they had to be entitled to be awarded degrees.
The National Electric Power Authority was restrained by an ex parte injunction from commissioning a powerhouse to supply electricity to a town because there was a dispute between two contractors as to the authority should pay the costs of a minor walk done in the construction of the powerhouse. A court of law denied electricity to the town simply because of the dispute between two contractors.
There is urgent need among some of us, the judges, to appreciate that ex parte injunction which was devised as a vehicle for the carriage of instant justice in proper cases should not be converted into a bulldozer for the demolition of substantial justice."

See *1985 All Nigeria Judges Conference Papers,* cited in A. Babalola, *Injunction and Enforcement of Orders* (Ile-Ife: Obafemi Awolowo University Press, 2000), p.10, in C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper,* op cit.

> punishment, if for no other reason than to preserve the honor and integrity of the judiciary. Judges especially in the West have been known to use ethnic slurs in the course of their judgments and even to announce cruel stereotypes as the basis for a ruling. Some judges demonstrate utter ignorance of the law, or sheer disregard for it as in the case of *Cassell & Co. Ltd v. Broome*[54] where a Judge was censured for disloyalty to the decision of superior courts. Coming back home, Hon. Justice Chima Centus Nweze, JCA noted the report of the *Nation* Newspaper of March 5, 2009 [that] the President of the Federal Republic of Nigeria approved the dismissal of a Federal High Court Judge serving in Katsina, who assumed jurisdiction over a matter concluded at the Port Harcourt Division of the Court of Appeal and then set aside the Court of Appeal judgment. Absolute immunity for all decision-making behavior would, therefore, surely go too far. Still, some method must be found that will draw the correct line between actual misconduct and mere error or unpopularity." [55]

So much for judicial independence. The imperative of judicial impartiality cannot be overemphasised: it is said to be '*the fundamental principle of justice*'. Public confidence in the judicial process is rooted in the belief or expectation of impartial adjudication, as such anything capable of eroding that confidence must be scrupulously eschewed. But, as noted by the Canadian Judicial Council, "*true impartiality does not require that the judge have no sympathies or opinions; it requires that the judge nevertheless be free to entertain and act upon different points of view with an open mind*".[56] Rule 12.1 of the Revised Code regulates circumstances in which a judicial officer is required to disqualify or recuse himself from proceedings where his impartiality may genuinely

[54] [1972] AC 1027.
[55] B.B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op.cit.
[56] The Canadian Judicial Council, *Commentaries on Judicial Conduct* (Cowansville, Quebec: Yvon Blais, 1991), p. 12, cited in Rv. S (R.D.) [1997] 3 SCR 484,35 and 119 –referenced in S. Shetreet & S. Turenne, *Judges on Trial:The Independence and Accountability of the English Judiciary,* op. cit., p. 213.

be questioned. Factors to be taken into account include [but by no means limited to] the following:

(a) Personal bias or prejudice concerning the party for personal knowledge of facts in dispute;

(b) Previous engagement as counsel in the matter or where a legal practitioner with whom the judicial officer previously practiced law acted as counsel or has been a material witness in the matter during the period of such association;

(c) Knowledge on the part of a judicial officer that he or his spouse or child has a financial stake or other interests that will be substantially affected by the outcome of the proceeding;

(d) Where a judicial officer or his spouse, or a relative of either of them or the spouse of such a person is a party to the proceedings or an officer, director or trustee of a party; or is acting as a legal practitioner in the proceedings; or is known to have an interest that could be substantially affected by the outcome of the proceedings; or is to the knowledge of the judicial officer likely to be a material witness in the proceedings. [See also Rule 2.10 of the Revised Code].

The disqualification rule applies with equal force to matters involving a lawyer with whom a judicial officer has a dating relationship or family members of such a lawyer [Rule 2.1]. The English *Guide to Judicial Conduct* requires a judge to disqualify himself from a case in which their personal physician, solicitor, accountant or other professional adviser is a party; but friendship or past professional association with counsel or solicitor acting for a party is not generally to be regarded as a sufficient reason for disqualification.[57] The Canadian Judicial Council *Ethical Principles for Judges*[58] underscores the point that although

[57] See Rules 7.2.3 and 7.2.4 of the English *Guide to Judicial Conduct*.
[58] *Available at: http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf.*

members of a Judge's family have every right to be politically active, Judges should recognize that such activities of close family members may, even if erroneously, adversely affect the public perception of a judge's impartiality. Therefore, the Judge should not sit in any case in which there could reasonably be such a perception. Secondly, a judge should disqualify himself in any case in which he believes that a reasonable, fair minded and informed person would have a reasoned suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends/associates) and his judicial duties.

The basis for disqualification is that principle of ancient ancestry which precludes a person from being a judge in his own cause –*Nemo judex in causa sua*: one of "*the inveterate canons of natural justice;*"[59] "*the twin pillars of justice for the modern society or welfare or egalitarian state…the rule or principles of eternal justice*".[60] The principle applies in virtually every situation where a person's rights or liabilities are to be determined in a judicial or quasi-judicial tribunal, panel of enquiry or other administrative body.[61] Impartiality of the adjudicating tribunal is a necessary adjunct to a fair trial[62] and the test is whether having regard to all the circumstances, an impartial or disinterested observer will conclude that justice has been done or the tribunal was fair to all the parties involved.[63] If a reasonable, disinterested observer were to come to the conclusion that justice has not been done in a given case,

[59] C. C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper*, op. cit.
[60] See *Olaniyan v University of Lagos* [1985] 2 NWLR (Pt. 9) 599 at 623 –per Oputa, JSC; "A fair hearing must of course be a hearing that does not contravene the principles of natural justice" – *Deduwa v. Okorodudu* (1976) 1 NMLR 236 at 246; "*The principle of fair hearing or fair trial is a large and gigantic term which is provided for not only in the Constitution of the land but also at common law as adumbrated in the twin rules of natural justice…*" –*Okeke v Nwokoye* [1999] 13 NWLR (Pt. 635) 495 at 508 (per *Niki Tobi, JCA as he then was*).
[61] *Garba v University of Maiduguri* [1986] 1 NWLR (Pt. 18) 550
[62] *Okoduwa v State* [1988] NWLR (Pt. 76) 333
[63] *Kenom v Tekam* (2001) 7 SC (PT III) 49 at 56.

then an infraction or breach of the right to fair hearing may have ensued.[64] In practical terms, this principle translates into a requirement that there should be no evidence of "bias" or "real likelihood of bias" in the person called upon to adjudicate;[65] but the divide between the two is tiny and tenuous for, indeed, bias subsumes into real likelihood of bias.[66]

Bias is 'an inclination or bent or predisposition to decide a cause or an issue in a certain way, which does not leave the mind perfectly open to conviction'.[67] It may be 'an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so'.[68] In *Legal Practitioners Disciplinary Committee v Fawehinmi,*[69] the Supreme Court noted that real likelihood of bias must mean at least "a substantial possibility of bias". This may arise because of personal attitude and relationships such as personal liability, personal friendship, family relationship, professional and vocational relationship, employer and employee relationship, partisanship in relation to the issue at stake, and an infinite miscellany of other circumstances from which inference of real likelihood of bias may be drawn. Probability of bias is a rather nebulous and vague expression, and there must be evidence to show that the probability exists in any given case. The mere fact that a court referred to and relied on

[64] See generally: P.O. Affen, *The Principles of Fair Hearing and Powers of Arrest and Sanctions by Law Enforcing Agencies in Nigeria,* (2009) 2 NJPL 258 - 273.
[65] *Brifina Limited v Intercontinental Bank Limited* (2003) 5 NWLR (Part 814) 540
[66] S. T. Hon, *Constitutional Law and Jurisprudence in Nigeria* [Port Harcourt: Pearl Publishers, 2004], pp. 346 – 354
[67] *Ekanem v. Akpan* (1991) 8 NWLR (Part 211) 616 at 633 CA
[68] Per Devlin LJ in *R v. Barnsley Licensing Justices, ex parte Barnsley and District LicencedVictuallers'Assn.* [1960]2 QB 167 at 187.
[69] [1985] 2 NWLR (Pt. 7) 300 at 333 –per Aniagolu, JSC. See also *Metropolitan Properties Co. Ltd v Lannon* [1969] QB 577 at 598 Per Lord Denning MR quoted with approval in *FRN v Abiola* (1995) 7 SCNJ 283 at 292 -293, *Olue v Enenwali* (1976) All NLR 70 at 76 and *Deduwa v Okorodudu* (1976) 1 NMLR 236.

statutory provisions or cases not referred to by the parties does not raise such a probability. [70]

In practice, bias or likelihood of bias is often alleged for a variety of reasons, from the sublime to the bizarre. In one case, objection was taken on the ground that the trial judge and counsel for one of the parties hail from Benue State; as such there was likelihood of bias in favour of the party represented by that counsel! In *FRN v Tony Amokeodo & Ors.,*[71] the defendants [who are journalists/publisher of the Leadership newspaper] were charged with forgery and using as genuine a forged presidential memo contrary to s. 363 of the Penal Code. The case was reassigned and hearing notice was served against 26/11/13 when the case was to come before the new judge. However, the defendants caused to be published in the Daily Post of 25/11/13 a story with the headline "*Chief Judge Transfers FG/Leadership forgery case to Justice Affen*". There were similar publications in *The Nation* newspaper of 24/11/13 and various online platforms, including *Sahara Reporters*. The publication alleged that the Judge to whom the case was reassigned is a kinsman of the former President of Nigeria, Goodluck Jonathan [whose memo was allegedly forged] since both of them hail from Bayelsa State, and that "*findings have revealed that the new Justice has great interest in the case*",[72] as such there was likelihood of bias. When the matter came up in court, the Judge drew the attention of learned counsel on both sides to the publication and sought their opinion. Counsel dissociated themselves from the publication which they conceded was made in bad faith, but suggested that the case should be remitted back to the Chief Judge for reassignment to another judge. In

[70] See *Okonji v Njokanma* (1999) 12 SCNJ 259, [1999] 14 NWLR (Pt. 638) 250.
[71] Charge No: FCT/HC/CR/141/2013 (Unreported). The matter was reassigned to Affen, J.
[72] Daily Post, 25/11/13.

recusing himself, the Judge noted that the "*implication and ramifications of the publications are far too damaging for this court to ignore*" as the defendants "*have craned to establish a rather far-fetched affinity between the Hon. Justice Affen and the President of Nigeria*"*;* and that because "*justice is rooted in confidence and must not only be done but manifestly and undoubtedly seen to have been done*" the case file would be remitted "*back to the Honourable Chief Judge for reassignment to another Judge who does not hail from the same State as Mr President, even though the only thing that remotely connects the two of us is that our roots are traceable to the oily creeks of the Niger Delta*".[73]

The point to underscore is that whenever a judge's impartiality is questioned, owing to the fact that the distinction between appearance and reality is often blurred, this creates judicial tension that puts the hapless judge under intense pressure even if the allegation of impartiality is eventually dismissed as unfounded. Rule 12.2 of the Revised Code gives a judicial officer who is otherwise disqualified on account of personal relationship or financial interest the option of disclosing on the record the basis of his disqualification in lieu of recusing himself, and he may continue to participate in the proceedings where the parties or their representatives/counsel independently agree that the relationship is immaterial or his financial interest is insubstantial. Generally, once appropriate disclosure has been made, and a party raises no objection to the judge hearing or continuing to hear a case, that party cannot thereafter complain of the matter disclosed as giving

[73]If the Judge had not recused himself, the outcome of the case would scarcely have portrayed the court in any good light: a verdict of guilt would certainly have been greeted with wild accusations of bias, just as an acquittal would have been attributed to the fact that the trial judge was cautious because he had been forewarned by the publications.

rise to a real danger of bias.[74] It would be unjust to the other party and undermine the reality and appearance of justice to allow him to do so.[75]

But there must be a fair opportunity for the parties to reach an independent, unpressurised decision; and even at that, the matter could still be quite tricky. *First*, the decision not to object is oftentimes taken by, or based on the advice of, "*counsel [who] may also wish to stay on good terms with the judge before whom he may appear in many future cases*".[76] The waiver may therefore not be as objective and independent as it may appear. *Second*, notwithstanding that the very fact of disclosure can be a 'barge of impartiality' showing that he has nothing to hide,[77] the judicial officer may develop 'unconscious bias' against the party with whom he has the disclosed relationship in a bid to demonstrate his impartiality. *Third*, the very fact of disclosure itself unnecessarily raises an implication that the relationship or interest could affect the judgment and approach of the judge, for if this is not the position; no purpose is served by mentioning it.[78] Thus, notwithstanding the disclosure of relationship/financial interest and the parties' consent, complaints of bias may still arise, especially if the party with whom the judge has a relationship eventually wins.

This scenario played itself out in relation to an arbitrator in the recent case of *Addax Petroleum Exploration (Nig) Ltd & Anor v Peacegate Oil & Gas Ltd.*[79] Prior to the hearing, one of the arbitrators disclosed that he had previously acted for *Addax SA of Geneva* and sought to know if the appellants were affiliated to the said company in which case it may be

[74] See *Olue v Enewali* (1976) 2 SC 23.
[75] See *Locabail (UK) v Bayfield Properties Ltd* [2000] QB 451, para. 26; also *Olue v Enewali* (1976) 2 SC 23.
[76] S. Shetreet & S. Turenne, *Judges on Trial:The Independence and Accountability of the English Judiciary,* op. cit., p. 193
[77] See *Davidson v Scottish Ministers (No. 2)* [2005] 1 SC (HL) 7 at pp. 19 and 54.
[78] See *Lawrence v Thomas* [2003] QB 528, para. 64
[79] Appeal No. CA/L/765/14 delivered on 10/3/17 –per Ogakwu, JCA (unreported).

necessary for him to recuse himself, but the parties expressed confidence in the arbitrator and the arbitration proceeded without any objection. An award was eventually made in favour of the respondent, which proceeded to file two applications at the lower court: the one was to enforce part of the award, whilst the other was for an order setting aside part of the award on the ground that the participation of the arbitrator who indicated that he had acted previously for Addax SA of Geneva was in breach of the principle of *Nemo judex in causa sua*. The Lower Court granted an order for enforcement of part of the award [which was promptly settled by the appellant]; and subsequently set aside the entire arbitral award on the ground that the participation of that arbitrator amounted to a breach of *Nemo judex in causa sua* notwithstanding that the respondent had earlier expressed confidence in the arbitrator and consented to his participation in the arbitration. The decision was reversed on appeal; but the case underscores the point that disclosure of relationship/financial interest may not necessarily put an end to assertions of bias/impartiality. The safer course therefore is for a judicial officer to recuse himself once he is aware of any disqualifying relationship or interest irrespective of consent by the parties as his motives may still be misconstrued. This is consistent with the English attitude [as summarised in the *Guide to Judicial Conduct*] that even where the parties consent to the judge sitting, if the judge, on balance, considers that recusal is the proper course, the judge should so act'.[80]

Aside from bias or likelihood of bias resulting from a judicial officer's personal knowledge of facts in controversy or his personal relationships and financial interests, concerns of impartiality and ethical dilemmas

[80] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* op. cit., p. 188.

quite often arise from judicial proactivity during trial.[81] The judicial function of dealing with cases fairly in an adversarial system requires a first instance judge 'to hear and determine the issues raised by the parties, but not to conduct an investigation or examination on behalf of society at large'.[82] The role of a judge is that of a relatively passive umpire in a forensic contest between litigants rather than seeker of truth. As such, the judge should not appear to be a participant in the contest; otherwise he will not be seen or perceived to be holding the scales of justice fairly, evenly and impartially.[83] The task of the court is to do, and be seen to be doing, justice, and no additional duty is imposed to ascertain some independent truth.[84] It has even been said that '*justice comes before truth*'.[85] But there is no qualm that a judge is eminently entitled to ask questions of witnesses and raise points of law *suo motu*. He may pose questions for a variety of reasons, including but not limited to situations in which he thinks there is a loose end in the evidence which ought to be cleared up, or the judge did not quite understand what the witness meant, or if the judge thinks that there has been a misunderstanding between cross-examiner and witness, etc.[86] However, the tricky question is how much interference is acceptable. In the 1950s, an English High Court Judge had to resign after he was twice heavily criticised by the Court of Appeal for interrupting counsel during cross-examination and taking over counsel's role in the questioning of witnesses.[87] As Lord Neuberger has pointed out, "*the appropriateness of*

[81] Lord Neuberger, *The Role of the Judge: Umpire in a Contest, Seeker of the Truth or Something in Between?* –being Opening Remarks at the Singapore Panel on Judicial Ethics and Dilemmas on the Bench on 19 August, 2016. ** I am grateful *to Folabi Kuti, Esq.* for his commitment to legal scholarship, and for aiding my research by making this and other materials available to me.

[82] See *Jones v National Coal Board* [1957] 2 QB 55 –per Lord Denning

[83] See *Onuoha v. State* (1989) 2 SC (Pt. II) 115, [1989] NWLR (Pt.101) 23, *Grace Akinfe v The State* [1988] 3 NWLR (Pt. 85) 729 and *Okoduwa v State* [1988] NWLR (Pt. 76) 333.

[84] *Air Canada v Secretary of State for Trade* [1983] 2 AC 394 at 438 –per Lord Wilberforce.

[85] Former Lord Chancellor, Viscount Kilmuir's rather pithy comment in an article in [1960] LQR 41 at 43 is quoted in Lord Neuberger, *The Role of the Judge: Umpire in a Contest, Seeker of the Truth or Something in Between?,* op.cit.

[86] See s. 246 of the Evidence Act spells out when and for what cause a judge may ask questions.

[87] See *Jones v National Coal Board* [1957] 2 QB 55. The judge, *Sir Hugh Imbert Periam Hallet* was described as "*a thoroughly Bad Judge*", and made the list of infamy in Graeme Williams QC's '*A Short Book of Bad Judges*' (London: Wildy, Simmonds & Hill Publishing, 2013), pp. 41-45.

a judge raising a question or *questions is such a fact-sensitive and discretionary matter, and a judge must be extremely careful to avoid taking over, or appearing to take over, a cross-examination*". Although a judge is allowed to ask questions, there are certain rules which control his action: notably, he must refrain from questioning any witnesses or an accused person in a way that because of its frequency, length, timing, form, tone, contents or otherwise, conveys or is likely to convey the opposite impression.[88]

The point to underscore is that the attribute of 'patience and gravity of hearing is an essential part of justice, and an over-speaking judge is no well-tuned cymbal'.[89] In his 2013 book with the intriguing title, *A Short Book of Bad Judges,*[90] Graeme Williams QC identified "*supposed omniscience and all-too-real pomposity*" as defects that can tarnish the judicial performance; and noted that "*another related failing, which has given rise to many successful appeals and quashed criminal convictions, is excessive intervention, especially in the questioning of witnesses*".[91] The habit of asking many questions may reveal a judge's partisanship or a manifestation of what has been described as the '*judge's disease*' with symptoms such as "*pomposity, irritability, talkativeness, proneness to obiter dicta, a tendency to take short cuts*"[92] – all of which could undermine the judicial role. A judge who takes over the examination of witnesses has descended into the arena of conflict and is liable to have his vision clouded by the dust of the conflict and he unconsciously

[88] Mapaure, Clever, Njodi, M.L. (eds.), *The Law of Pre-trial Criminal Procedure in Namibia* (University of Namibia Press, 2016), p. 80.
[89] Lord (Francis) Bacon, *Essayes or Counsels, Civill and Morall; Of Judicature* (3rd edition) –quoted in G. Williams QC, *A Short Book of Bad Judges* (London: Wildy, Simmonds & Hill Publishing, 2013), p.1.
[90] G. Williams QC, *A Short Book of Bad Judges,* op. cit. p. 3.
[91] Ibid.
[92] See Lord Hailsham, *The Door Wherein I Went* (1975)255, cited in S. H. Bailey and M. J. Gunn, *Smith and Bailey on the English Modern Legal System* (London: Sweet and Maxwell, 1996) 237 –referenced in C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper*, op. cit.

deprives himself of the advantage of a calm and dispassionate observation.[93] Since it is not a judge's function to conduct the trial or any part of it, such a course is always fraught with danger. An issue may have been avoided by both sides for good substantive or tactical reasons of which the judge may be unaware; and there is a real risk of justice not being seen to be done if the judge appears to be batting for one party, especially if that party eventually wins. If a judge does a lot of questioning of one party's witnesses, there is a real danger that the judge's mind will become biased because he or she has been thinking about the case through the prism of one party's case.[94] In *Onuoha v State*,[95] the trial judge called a witness *suo motu* after the close of the Prosecution's case pursuant to s. 200 of the Criminal Procedure Law[96] and cross-examined the witness at length by asking a total of 13 questions. The Supreme Court entertained no reluctance whatsoever in quashing the conviction on the ground that the trial Judge descended into the arena of conflict and compromised his impartial posture such that his resultant verdict cannot be regarded as "a just decision".[97]

Raising points of law *suo motu* is also somewhat tricky. Lord Neuberger suggests that when it comes to points of law, if a judge thinks that an argument which has not been raised by the parties could be raised; the right thing to do is normally to raise it, shortly and neutrally, as soon as

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[93] *Yuill v Yuill* [1945] All ER 183 at 189 –per Lord Green MR

[94] Lord Neuberger, *The Role of the Judge: Umpire in a Contest, Seeker of the Truth or Something in Between?*, op. cit.

[95] (1989) 2 SC (Pt. II) 115, [1989] NWLR (Pt.101) 23

[96] The court is conferred with similar powers under s. 256 of the Administration of Criminal Justice Act, 2015: *"The court may, at any stage of any trial, enquiry or other proceedings under this Act, either of its own motion or on application of either party to the proceeding call a person as a witness or recall and re-examine a person already examined where his evidence appears to the court to be essential to the just determination of the case"*

[97] See also *Grace Akinfe v The State* [1988] 3 NWLR (Pt. 85) 729. In *Okoduwa v State* [1988] NWLR (Pt. 76) 333, Nnaemeka Agu JSC held that: *"[W]hereas the power of a Judge…to examine or cross-examine a witness can be properly invoked to get a clarification of the answers given to questions asked by one of the parties (see Lawrence Agbaje v. The Republic (1964) 1 All N.L.R. 295, at p. 297); to clarify a point that has arisen ex improviso, such as where an accused person introduces a new issue (see Rex v. Asuquo Edem & Ors. (1943) 9 WACA 25; see also West v. Police (1952) 20 N.L.R. 71), also R. v. Liddle (1928) 21 Cr. App. R. 3; the rationale for the power under the section is that such a power is necessary in the interest of justice. But it would be wrong and contrary to the expected impartial role of a Judge in our adversary system and the spirit of fair hearing which means the same thing with fair trial if the Judge who is expected to play the role of an impartial umpire uses the section as a licence to descend into the arena of the conflict and act for one party or the other rather than holding the balance between the contending parties."*

possible with the parties. It should not be raised on the basis that it is the obvious answer to the whole case and the parties are idiots for not having seen it. That attitude smacks strongly of the judicial mind having been made up – and it carries the risk of judicial humiliation if the point turns out to be bad. Sometimes, however, it may be better to keep quiet if it is pretty plain that in order to enable the advocates to deal with the point, the hearing would have to be unacceptably adjourned. Again, a judge must be very careful of being prejudiced in favour of a point merely because he raised it and the parties missed it.[98]

(iii) **The Demand of Integrity, honesty and Probity**

Integrity is essential to the proper and effective discharge of the judicial role. As Daniel Webster once remarked: *"There is no character on earth more elevated and pure than that of a learned and upright judge, and he exerts an influence like the dews of heaven falling without observation.*"[99] An upright and honest judge will certainly command the confidence and respect of all, including even the accused person he convicts or the losing party in a civil cause. Whilst a judge must not necessarily be a saint, he is expected to be integrous. Like Caesar's wife, he must be above board: his conduct and behaviour on and off the Bench both in his professional and private life must reinforce faith in the integrity of the judiciary. The personal integrity of the judge and the process by which justice is done are as vitally important as the actual doing of justice, for it is essential that justice must not merely be done but it must manifestly and undoubtedly seen to be done. Whilst it is essential that a judge should possess proficiency in law in order to competently interpret and apply the law, it is equally crucial that the judge should act and

[98] Lord Neuberger, *The Role of the Judge: Umpire in a Contest, Seeker of the Truth or Something in Between?,* op. cit.
[99] Quoted in Chukwudifu Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* op. cit., p. 199.

behave in such a manner that the parties before the court should have confidence in his impartiality. The judge must therefore exude unimpeachable integrity, and comport himself with the dignity that judicial office commands: he must scrupulously eschew anything that may tarnish the dignity of his high office.

According to the Canadian Judicial Council *Ethical Principles for Judges*[100] the conduct of a judge both in and out of court is bound to be the subject of public scrutiny and comment. Judges must, therefore, accept some restrictions on their activities that might be viewed as burdensome by other members of the community, and should do so freely and willingly. It is needful for judges to strike a delicate balance between the requirements of judicial office and the legitimate demands of their personal life and family. The Court of Appeal held in *AG, Cross River State v Esin*[101] that a judge must be above suspicion in the eyes of the public and should give no cause for scandal, as any conduct in his private life which tends to erode his authority and confidence in his relations with the public constitutes misconduct which could justify dismissal.

It is however noteworthy that even though some form of isolation is an integral part of the judge's life, this is not without its own downsides. A study conducted in Australia[102] has shown that a substantial number of judges and magistrates are regularly losing sleep due to the nature of their work. Their spontaneous reaction (not in response to any leading questions regarding isolation) is graphically captured in a piece titled

[100] *Available at: http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf.*
[101] [1991] 6 NWLR (PT. 197) 365 at 375.
[102] Kathy Mack, Anne Wallace and Sharyn Roach Anleu – *Judicial Workload: Time, Tasks and Work Organisation* (Melbourne VIC: AIJA), 2012 –referenced in B.B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op.cit.

"*Isolation in the Judicial Career*" by a psychologist with 20 years of notes taken from his work with the Judiciary as a consultant or psychotherapist, as follows:

> "Before becoming a judge, I had no idea or warning, of how isolating it would be".
> "Except with very close, old friends, you cannot relax socially".
> "Judging is the most isolating and lonely of callings".
> "The isolation is gradual. Most of your friends are lawyers, and you can't carry on with them as before".
> "When you become a judge, you lose your first name!"
> "It was the isolation that I was not prepared for".
> "After all of these years on the bench, the isolation is my major disappointment".
> "The Chief Judge warned me: 'You're entering a monastery when you join this circuit'".
> "I live and work in a space capsule – alone with stacks of paper".
> "Your circle of friends certainly becomes much smaller".
> "Once you get on the appellate bench, you become anonymous".[103]

According to Kanyip, "*we only need to reflect on each of these voices and we will come to the inevitable conclusion that ours should be no different. However, given the visibility of a good number of our Judges in social events and social circles (an aberration that it may be), the fear of isolation and loneliness may be an exaggeration as far as Nigeria is concerned*".[104]

(iv) **The Imperative of Equality of Treatment**

The well-known depiction of justice as a blindfolded goddess wielding a sword in one hand and a scale on the other is a clear pointer to the

[103] Isaiah M. Zimmerman, *Isolation in the Judicial Career* –available at http://aja.ncsc.dni.us/courtrv/cr36-4/36-4Zimmerman.pdf as accessed on August 1, 2013 –referenced in B.B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op.cit.
[104] B.B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op. cit.

values of impartiality and equality of treatment that should be available to all who come before the courts of law in search of justice: to those who seek redress for wrongs suffered, as well as those for whom sanctions are a just dessert for desecrating the law. There is scriptural basis for the imperative of equality of treatment: "*You shall do no injustice in judgment. You shall not be partial to the poor nor honour the person of the mighty. In righteousness you shall judge your neighbour".*[105]

Equality before the law is a cardinal component of the Rule of Law and a judicial officer is enjoined to treat everyone equally and with dignity, patience and courtesy; he must appreciate, and be sensitive to, the diversity in society, and discharge his judicial duties with appropriate consideration for all persons without discrimination on irrelevant grounds. That explains why Rule 1.6 of the Revised Code fittingly prohibits a judicial officer from holding membership of any organization that discriminates on the basis of race, sex, religion, ethnicity, nationality or other irrelevant cause contrary to fundamental human rights and or the fundamental objectives and directive principles of state policy. He is enjoined to avoid nepotism and favouritism in the discharge of his administrative duties [Rule 11(iv)].

The bounden duty of fidelity to the Constitution and the Law imposed on judges under Rule 3.1 necessarily entails respect for fundamental human rights, including the right to freedom from discrimination on irrelevant grounds. Rule 3.3 specifically enjoins a judicial officer to accord every interested party or his counsel full right to be heard according to law,

[105] The Holy Bible, Leviticus Chapter 19 Verse 15 (NKJV). See also the Holy Quran, Chapter 4 Verse 16

and he can only achieve this by being patient, dignified, courteous and taking into account the dignity of litigants, assessors, counsel, witnesses and all others with whom he comes in contact in the course of his official duties [Rule 3.2]. There is much to be said for the view that a kindly and patient man who is not a profound lawyer will make a far better judge than an ill-tempered genius;[106] and we must not lose sight of the fact that the most important person in our courts is not the judge or the lawyer or even the witness but the losing litigant:[107] it is he who should be convinced that he lost fairly on the legal and factual merits of the case and not on the basis of any irrelevant grounds. The judge should set the right tone and create the appropriate environment for conducting a fair trial in his court. Disrespectful behavior and lack of courtesy towards a litigant not only infringes on his right to be heard and compromises the dignity and decorum of the courtroom, it affects a litigant's satisfaction with the handling of the case and creates a negative impression of the court system. It is therefore incumbent on the judge to eschew unequal or differential treatment of people appearing in his court by ensuring that everyone is protected from any display of prejudice based on race, gender, religion or other irrelevant grounds.

A judge should always act courteously and respect the dignity of all who have business in court, as well as require similar courtesy from those who appear before him, and from court staff and others subject to his direction or control. He must rise above personal animosities, and must not have favourites at the Bar. Unjustified reprimand of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm and

[106] The observation of Viscount Kilmuir, former Lord Chancellor of Great Britain is cited in Chukwudifu Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* op. cit., p. 197.

[90] Robert Meggary, *'Judges and Judging'*, Child & Co Lecture, delivered on 3rd March 1977, p. 5 –referenced in Tom Bingham, *The Business of Judging, Selected Essays & Speeches (1985-1999),* op. cit. p. 81. See also G. Williams QC, *A Short book of Bad Judges*, op. cit., p.1.

intemperate behaviour by a judge will certainly undermine order and decorum in the courtroom. When a judge intervenes, he or she should ensure that impartiality and the perception of impartiality are not adversely affected by the manner of intervention. It is however needful to underscore the point that the judge is *dominus litis* and is not required to condone abuse of the court's process or to listen without interruption to arguments that are manifestly without legal merit or to abusive remarks directed at the judge, opposing counsel, parties or witnesses.

It is crucial for a judicial officer to refrain from initiating, encouraging or considering e*x parte* or other communications concerning a pending or impending proceeding [Rule 3.3]. *Ex parte* communications between a judge and one of the parties in a case pending before that judge are inherently impartial and convey the impression of unequal treatment. We are all too familiar with the scandal revolving around e*x parte* telephone communications through MTN call logs and text messages exchanged between a Judge sitting as member of an Election Tribunal and a lawyer representing one of the parties in an election petition before the Tribunal. That was in extreme bad taste and the judge involved was rightly shown the way out. A judicial officer must eschew and resist such unethical conduct with all the vehemence at his disposal.

(v) **Diligence and Competence**

A judicial officer is expected to maintain professional competence and diligence in the discharge of his judicial duties [Rule 3.1 of the Revised Code]. Profound learning, sound and in-depth knowledge of the law, an analytical mind, solid reasoning, beauty of linguistic expression, courage, passion for justice, independence and quality of thought, a

liberal mind, geniality, and unfailing courtesy are attributes of a good judge.[108] But these attributes are the product of professional competence and not hallmarks of professional mediocrity. A judge must have the courage of his legal convictions and develop an objective attitude towards the appeal court: he should not be afraid of being reversed on appeal;[109] yet he must have healthy respect for judicial precedent as an indispensable foundation upon which to decide what the law is and its application in individual cases.[110] The old saying holds true: knowledge is power; and it is knowledge that confers courage and stands the judge in good stead in keeping cheeky lawyers in check. '*Wisdom is the principal thing, therefore get wisdom; and in all thy getting get understanding.*'[111] It is therefore imperative for a judicial officer to strive to have a good grasp of substantive and procedural law because, according to the Justinian Institutes, *ignorantia judicis est calamitas innocentis* (the ignorance of the judge is the misfortune of the innocent).[112]

In his 1958 satirical work with the intriguing title *Anatomy of a Murder*, a former American judge[113] wrote that: "*Judges like most people, may be roughly divided into four classes: Judges with neither head nor heart – they are to be avoided at all costs; Judges with head but no heart – they are almost as bad; then judges with heart but no head – risky but better*

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[108] P. Nnaemeka-Agu, *The Position and Role of A Judge in a Democratic State,* in C.C. Nweze (ed.), *Justice in the Judicial Process (Essays in Honour of Honourable Justice Eugene Ubaezonu, JCA)*, [Enugu: Fourth Dimension Publishing Co. Ltd, 2002], p. 234. See also Lord Hailsham, *Farewell to Lord Denning* (a Speech delivered at retirement of Lord Denning MR at the age of 83), published as an epilogue in *Lord Denning: The Judge and the Law* (Sweet & Maxwell: 1984), p. 475.

[109] Chukwudifu Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* op. cit., p. 207

[110] Practice Statement on Judicial Precedent made by Lord Gardiner LC on 26 July 1966 (House of Lords) [1966] 3 All ER 77, [1966] 1 WLR 1234.

[111] Holy Bible, Proverbs Chapter 4 Verse 7 (NKJV)

[112] 2 Inst. 591

[113] John D. Voelker, better known by his pen name *Robert Traver,* was an attorney, then a judge of the Michigan Supreme Court, and later a writer. Published by St. Martins' Press, *Anatomy of a Murder* was inspired by a 1952 murder case in which he was the defense attorney. It was made into a courtroom crime drama movie of the same title in 1959 and selected in 2012 by the Library of Congress for preservation in the US National Film Registry as being *"culturally, historically, or aesthetically significant*" – see Susan King, *National Film Registry selects 25 films for preservation*, Los Angeles Times December 19, 2012.

than the first two; and finally, those rare Judges who possess both head and heart". An ignorant judge is a judge without head, which makes him a bad judge notwithstanding that he is otherwise a patient and honest man; an embarrassment not only to himself but also the judicial system which is under ever-increasing public scrutiny. Such a judicial officer must either shape up or ship out. As much as possible, a judicial officer should avoid going into open court to sit without studying a case file.

Rule 3.6 of the Revised Code enjoins a judicial officer to maintain order and decorum in judicial proceedings over which he presides, and to promptly dispose of the business of court by devoting adequate time to his duties, being punctual in attending court and expeditious [or business-like] in determining matters in court [Rule 3.7]. What this implies is that a judicial officer must ensure that he sits promptly at 9 o'clock in the forenoon [or so soon thereafter] and attend to his duties with diligence; and where he is unable to do so for good reason [such as ill-health], this should immediately be communicated to counsel/litigants through the Court Registrar; he should be gracious enough to apologise to counsel and litigants whenever he is late to court, and this should not be a regular occurrence. A judicial officer is required to report regularly at work, avoid tardiness and maintain official hours, which is usually 8am – 4pm. The fact that he rises early from sitting in open court does not mean that the day's business is over. But a caveat may be necessary here: For judges/magistrates manning courts located in remote and secluded areas, being alone in the court premises after litigants and lawyers have all left could pose security risks. Adequate steps should therefore be taken to beef up security in and around court premises.

A judicial officer should endeavour to deliver reserved judgments as soon as reasonably possible, having due regard to the urgency of the matter and other special circumstances, and taking into account the length or complexity of the case and other work commitments. He must ensure strict compliance with the constitutional 90-day timeframe for delivering judgments, and make copies of his judgments available to the parties/counsel within seven (7) days [Rule 3.4]. The practice of inviting counsel to readopt final addresses with a view to prolonging the time for delivery of judgments has been described as is a '*façade*' and *'mere window-dressing designed to circumvent the stipulations of section 294(1) of the Constitution'*.[114] In recent times, some judges have been relieved of their appointments for violating this requirement. The rule therefore is *judex emptor*!

A judge is equally required to maintain professional competence and diligence in the discharge of his administrative duties and to facilitate the performance of the administrative duties of other judicial officers and court officials [Rule 11(i)]. He must also require his staff and other court officials under his control to observe the standards of integrity and diligence applicable to him [Rule 11(ii)]. In regard to the imperative of exercising diligence in the discharge of administrative duties, a commentator[115] has drawn specific attention to the following:

(i) In considering whether or not the conditions of bail have been fulfilled, a judicial officer should attend to same promptly as

[114] Per Ogakwu JCA in *Olusanya v UBA Plc* (Unreported, Appeal No. CA/L/1165/11, delivered on 12/5/17). See also *Awoyale v Ogunbayo* (1985) LPELR-661 (SC), the Supreme Court (per Nnamani JSC) held that "*…if a suit set down for judgment after final address is to be reopened such that the 3 months deadline will start to run, such a reopening must be … to enable the court take, in the interest of justice, important points of law and facts relating to the case … [but] not [merely] to achieve a prolongation of the 3 months period*

[115] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., p. 40.

this could lead to unnecessary prolongation of the defendant's stay in custody.

(ii) A judge should ensure that Orders made are promptly drawn up and signed. In the case of judgments, he must sign a Judgment Order at the time he signs his judgment and make same available within seven (7) days of delivery.

(iii) An Administrative Judge/Magistrate should put in place a mechanism for ensuring that new cases are assigned immediately they are filed.

(iv) There should be no delay in fixing dates for motions or other interlocutory applications.

(v) Witness summons, subpoenas and production warrants, etc. must be signed promptly.

(vi) The judge/magistrate must instill in his staff the imperative of serving court processes, and in particular hearing notices, promptly, and discourage the practice of 'mobilizing' bailiffs to serve court processes.[116]

Also, in regard to diligence in the discharge of judicial duties, a foremost Nigerian jurist admonished new judges *inter alia* that:

> "The road to success on the Bench is the same as in any other fields of human endeavor. That road is not a bed of roses. Rather it is the narrow path, thorny and difficult. It must be conquered by relentless exertion, continuous assiduity and hard work. Some people, including

[116] In *United Bank of Africa v. Ujor* [2001] 10 NWLR (Pt. 722) 589 at 607 – 608, Opene, JCA noted that *"It is not the duty of counsel after filing a suit, or motion or any document in the High Court Registry and also paying the necessary fees to see that those processes are in the Judge's file"* and that "*When a litigant files a document in the Court Registry and pays all the fees, it is not his duty to pay the bailiff any money for transport or otherwise so that he could effect service on the other party, if he gives the bailiff any money it is only to speed up the service on the other party*". The above dictum is an interesting commentary on the vexed issue of mobilising court officials to serve court process and the opaqueness, if not arbitrariness, associated with it. But it is more theoretical than practical, and fraught with many practical challenges as there are several variables that might have been overlooked: (1) The fees assessed at the Registry at the point of filing is usually minimal, unrealistic and insufficient to effect service beyond 3km radius from the court house; (2) Even if it were sufficient to effect service and the bailiff visits the address for service but is unable to effect service because the party sought to be served is absent, who will pay for the repeat trip(s)? (3) Would court proceedings not grind to a halt if things remain in abeyance anytime this happens and we are required to wait until a fresh assessment is made by the Registry and paid for before the bailiff may effect service?; and (4) What is the purport/effect of Order 11 Rule 29 of the 2004 FCT High Court Rules which provides that: *"The costs incidental to the execution of process(es) in a suit shall be paid in the first place by the party requiring the execution, and the bailiff shall not (except by order of the court) be bound to serve or execute any process unless the fees AND REASONABLE EXPENSES have been paid".* It would seem that the above Order draws a distinction between fees (as assessed at the Registry) and reasonable expenses, which probably explains why the fee assessed is usually minimal.

> many members of the Bar, saying that judgeship is a sinecure, a form of retirement for the hard-working practitioner: to such people "a judge is only a barrister who is invited to *sit* and *rest* on the bench when he has had a lot of standing at the Bar". But that is very far from being the case.
>
> The truth, every new judge will soon discover to his disillusionment, and may be, to his utter discomfiture, is that you must learn to be a judge. It takes much time, much effort and patient study to learn to be a judge…
>
> The first lesson a new judge will learn is that a lazy judge is a poor judge. A clever but lazy judge is an encumbrance which may seriously erode public confidence in the efficacy of the judicial process. The independence of the judiciary does not imply that judges have the freedom to sit when they like, rise when they like and thus leave trailing behind them, an unreasonable backlog of cases, either un-heard or part-heard or both. That will be judicial irresponsibility… The judge should therefore, be prompt, businesslike in the performance of his judicial duties recognising that time is precious to counsel, to litigants and to witnesses."[117]

It has however been observed that "*notwithstanding the imperatives of prompt disposal of cases, the institutional, behavioural and sociological factors that conduce to delay of cases must be urgently addressed. If this is not done, the rules will remain as mere ornaments in the* Code".[118] This observation coincides, approximately, with comments in the Canadian Judicial Council's *Ethical Principles for Judges*[119] to the effect that while judges should exhibit diligence in the performance of their judicial duties, their ability to do so will depend on the burden of work, the adequacy of resources including staff, technical assistance and time for

[117] Chukwudifu Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* op. cit., p. 205-206.
[118] C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper*, op. cit.
[119] Available at *http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf*.

research, deliberation, writing and other judicial duties apart from sitting in court; and that the importance of the judge's responsibility to his/her family must be recognized: Judges should have sufficient vacation and leisure time to permit the maintenance of physical and mental wellness and reasonable opportunities to enhance the skill and knowledge necessary for effective judging. But the *Office of the Commissioner for Federal Judicial Affairs* [in Canada] has cautioned that:

> "Anyone considering a judicial appointment should have as much information as possible on what becoming a judge entails, and should enter upon the responsibilities of judicial office only if he or she is fully prepared to accept the substantial changes which it will bring, not just to the judge's own life, but to the lives of the members of his or her family. Among the factors to consider are moving from one city to another, buying and selling a house, career disruption of a spouse, children changing schools, and other inconveniences. The decision to seek and to accept a judicial appointment should be taken only after full consultation with all those who will be intimately affected by the changes it will bring. As well, while training programs are provided to new judges, and continuing education is available, judges are by and large on their own".[120]

The National Judicial Policy endorses continuing judicial education and training as indispensable tools for efficient and qualitative justice [Clause 2.4.2], which falls within the province of the "*National Judicial Institute [as] the national institution for judicial education delivery*" [Clause 2.4.6]. The National Judicial Policy enjoins all judicial officers to undertake mandatory training on the use and application of information technology systems including electronic and digital recording and

[120] See http://www.fja-cmf.gc.ca/appointments-nominations/considerations-eng.html#tphp –referenced in B. B. Kanyip, *A Global Overview of Labour Standards in the Judiciary,* op. cit. According to Kanyip, the note of caution sounded by the Office of the Commissioner for Federal Judicial Affairs describes what the position is in Nigeria but does not tally with the ILO prescription on workers with family responsibilities.

transcription of court proceedings and process [Clause 2.4.10(c)]. In this connection, we must lend a voice of commendation to the National Judicial Institute for keeping faith with its judicial education mandate over the years. However, we venture to suggest that in the light of ample innovations introduced in the new regime of Rules of Court requiring trial Judges to shirk their traditional common law adversarial orientation as they "…*are no longer adjudicators and/or umpires in the trial of disputes in the courtroom only, but have become managerial Judges who must effectively utilise the technique and tools of case management and judicial control to achieve/facilitate just, efficient and speedy dispensation of justice,*[121] [which is in keeping with the judge's obligation under the Revised Code of Conduct for Judicial Officers to maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of court officials, which entails case management, prompt disposal of cases, record-keeping, management of funds, supervision of court staff, etc.], it may not be out of place to introduce training courses on the art of management with a view to sharpening the managerial acumen of individual judges.

Also, since training is not only essential for the effective discharge of judicial functions, but also necessary to expose and wean judicial officers of prejudices and inappropriate influences, it is equally imperative to introduce courses on gender sensitivity, sexual orientation, HIV/AIDS, disability, security awareness, etc.[122] It is desirable that these trainings embrace all levels of the judiciary. Whenever feasible, the different levels should all be represented at the same sessions in order

[121] See *Olaniyan v Oyewole* [2008] 5 NWLR (Pt. 1079) 114 at 146 –per Agube, JCA.
[122] The '*Jurisprudence of Equity*' series of workshops organised by the National Judicial Institute are already achieving a lot in this regard.

to create the opportunity for exchange of views, dissolve hierarchical tendencies and keep all levels of the judiciary informed of each other's challenges/constraints, and ultimately engender a cohesive and consistent approach throughout the judiciary.

5. Other tenets of Judicial conduct

(i) Fidelity to the Constitution and the Law

As custodians of the law, judges are not merely to interpret and apply the law: they are also to exemplify the law. It cannot be otherwise. A former Lord Chancellor of England [Lord Mackay] is said to have made an overt policy statement to the effect 'that a judge, of whatever rank from lay magistrate upwards, who failed the Breathalyser test, or committed anything other than a very minor traffic offence was expected to resign or be dismissed'.[123] An English judge, who pleaded guilty to attempting illicitly to import a substantial quantity of whisky and cigarettes, was peremptorily dismissed having unsuccessfully tried to resign.[124] Rule 3.1 of the Revised Code enjoins a judicial officer to be true and faithful to the Constitution and the law, to uphold the cause of justice by abiding with the provisions of the Constitution and the law, and to acquire and maintain professional competence. This is consistent with the *Judicial Oath* he subscribed to at the point of assuming judicial office.[125]

A judge who transgresses the law he swore to uphold brings the judicial office into disrepute, encourages disrespect for the law, and impairs

[123] G. Williams QC, *A Short Book of Bad Judges,* op. cit., p.5.
[124] Ibid. (at p. 4)
[125] The Judicial Oath as contained in the 7th Schedule to the Constitution is: "*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.*"

public confidence in the integrity of the judiciary itself. A judicial officer must, therefore, have scrupulous respect for the law and its observance. What in others may be seen as a relatively minor infraction may well attract adverse publicity and raise questions regarding the integrity of the judge and his fitness for judicial office.

(ii) **Relationship with Lawyers/Litigants**

The human instinct for justice finds ready expression in the administration of law in our courts[126] where a symbiotic relationship exists between judges and lawyers such that one cannot talk about one to the exclusion of the other. That is why both are '*ministers in the temple of justice*': the main *dramatis personae* in the law courts: the theatre where the citizenry primarily feels the keen cutting edge of the law.[127] The Revised Code recognises that social contact between judges and lawyers as a '*proper long standing tradition*' and that '*some degree of socialisation is acceptable*'. Judges do not live in ivory towers but in the real world, and cannot be expected to sever all ties with the legal profession upon assuming judicial office; nor would it be entirely beneficial to the judicial process for judges to isolate themselves from the rest of society, including from school friends, former associates and colleagues in the legal profession. Indeed, a judge's attendance at social functions with lawyers offers some benefits: the informal exchanges that such functions allow may help reduce tension between the Bench and Bar and alleviate some of the isolation from former colleagues that a judge experiences upon elevation to the Bench. However, a judicial officer is enjoined to act on the basis of common sense and caution by avoiding

[126] Chukwudifu Oputa, *The Independence of the Judiciary in a Democratic Society, Its need, Its Positive and Negative Aspects*, in T. O. Elias & M. I. Jegede (eds.) Nigerian essays on Jurisprudence.
[127] Hon. Justice Author T. Vanderbilt – quoted in Olayide Adigun, *Enforcement of Judicial Decisions on Fundamental Right,* High Level Workshop for Judges (September, 1992).

recurrent contacts with a lawyer appearing before him in the course of a particular matter if this could lead to a reasonable perception that a close personal relationship exists between them [Rules 2.2 and 2.4]. Consistent with the canon of equality of treatment to all before the courts, the judge shall, in his personal relations with individual lawyers who practice regularly in his court, avoid situations that might reasonably generate suspicion, or the appearance, of favouritism or partiality [Rule2.1].

It hardly bears mention that it would be inappropriate for a judicial officer to permit a lawyer to use his residence to meet with clients or to use his telephone in connection with that lawyer's legal practice [Rule 2.4]. This restriction applies to a lawyer who is the judge's spouse or unmarried child living with him. These are modest sacrifices they are required to make in support of the judge's calling. And by Rule 2.5, it is improper for a judge to accept a gift from a lawyer who might appear in a matter before him if such gift is not one given to Judges generally at festive seasons; and even at that, the gift must not be pecuniary in nature or not more than what is ordinarily given. The prohibition extends to accommodation provided within or outside Nigeria either in his house or in a hotel paid for by a lawyer who is appearing or likely to appear before the judge [Rule 2.6].

A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as government ministers or their officials, municipal officials, police prosecutors, district attorneys, and public defenders – in any court where the judge often sits, if such relationships could reasonably create an appearance of partiality or the likely need for later disqualification [Rule 2.8].

Query: Whether the prevalent practice in most jurisdictions whereby prosecutors are assigned to particular Magistrates' Courts [and are almost always present in the courts to which they are assigned] is not likely to create an objectionable relationship?

Developing or having a social relationship with a lawyer who regularly appears before a judge is fraught with danger and entails a delicate balancing process. Whilst the judge should not be discouraged from having social or extrajudicial relationships, an obvious problem of appearance of bias and favouritism exists when a friend or associate appears before the judge. But the judge is the ultimate arbiter of whether he or she has an excessively close or personal relationship with a lawyer, or has created that appearance such that a need for recusal arises. The test is whether the social relationship interferes with the discharge of judicial responsibilities, and whether a disinterested observer, fully informed of the nature of the social relationship, is likely to entertain significant doubt that justice would be done. In deciding what constitutes an acceptable level of socialising, it would be appropriate for the judge to consider the frequency with which the official or lawyer appears before him, the nature and degree of the judge's social interaction with the individual, the culture of the legal community in which the judge presides, and the sensitivity and controversy of current or foreseeable litigation.[128]

Whilst a judicial officer may attend parties hosted by a law firm, the decision to attend or refrain from attending depends on the nature of the party, who is hosting the party and who else might attend. As the

[128] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., p. 27

law firm may be seen as marketing itself or its services to clients or potential clients, the judicial officer must exercise special care to ensure that his presence will not convey the impression of partiality, or that the law firm enjoys the judge's open or tacit approval [Rule 2.7]. This rule has good company in Clause 5.1(3), (8) and (9) of the English *Guide to Judicial Conduct,* which is to the effect that "*attending parties hosted by legal practitioners is less likely to be appropriate if the practitioner or a member of the practitioners firm is currently appearing before the judge, has appeared in the recent past or is likely to appear in the future; or if the Judge's appearance will advance the practitioner's private interests*".[129] And by Rule 2.9 of the Revised Code, a judge shall not belong to a social union or groups where lawyers who regularly appear before him are also members.[130]

In this age of social media and the internet, it is pertinent to interrogate whether judges should be on social media. It is the view of a learned commentator[131] that social media could expose judges to risks that might undermine the dignity and integrity of their office; that judges should therefore be careful how they disclose information about their personal life, and home address. This is because bits and pieces of information can, like a jigsaw, be pieced together to form a whole and thus jeopardize the judge's security. Care must also be taken not to say anything which may give any impression of bias or prejudice concerning any issue, party or lawyer appearing before the judge in court. Whether a judge should add a lawyer or persons who appear before

[129] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* op. cit., p.262.

[130] Query: What about resident associations, religious groups, etc. to which lawyers who appear before him are also members? It does not seem to me that the effect is any different!

[131] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit., pp. 10-11. It would seem that blogging by judges is not prohibited in the UK but judicial "office holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary". See generally: S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* op. cit., *pp. 262 – 267*.

him regularly as a friend on social media is dependent on if such a relationship would be proper in the real world. If it is not, then it cannot be proper in the virtual environment. Information and communications proscribed in the real world have the same treatment and effect on social media.[132]

(iii) Relationship with Family and Friends

It amounts to abuse of position for a judicial officer to take advantage of the judicial office either for personal gain or otherwise; as such he shall refrain from using or lending the prestige of his office to advance his private interests or that of a member of his family or of anyone else, nor shall a judicial officer convey or permit others to convey the impression that anyone is in a special position to improperly influence him in the discharge of his duties. It is incumbent on a judicial officer to distinguish between propriety and improper use of the prestige of his office [Rules 8.1, 8.2, 8.3, 8.4 and 8.5 of the Revised Code]. Specifically, it is improper for a judicial officer to use judicial stationery to conduct personal business or in any other way that amounts to abuse of the prestige of his office, or to use or attempt to use the fact of holding judicial office to extricate himself from legal or bureaucratic bottlenecks, or to use or attempt to use his position to contact another judicial officer or any other adjudicator in the public system with a view to influencing the outcome of any litigation [Rule 8.5(v)]. Whilst a judge need not conceal the fact of holding judicial office, he should take care to avoid giving any impression that the status of judge is being exploited to obtain some form of preferential treatment. For example, if a son or daughter were to be arrested, a judge would be subject to

[132] ibid

the same human emotions as any other parent and is entitled, as a parent, to respond to a felt unjust treatment of a child. But if the judge, directly or through intermediaries, were to contact law enforcement officials, referring to his position as a judge, and demand that the arresting officer should be disciplined, the line between parent and judge is being blurred. While the judge, as any parent, is entitled to provide parental help for the son or daughter, and has the right to take legal action to protect the child's interests, the judge is not at liberty to engage in any conduct that would be unavailable to a parent who does not hold judicial office. To use the judicial office in an attempt to influence other public officials in the performance of their lawful duties is to cross the thin line between reasonable parental protection and misuse of the prestige of judicial office.

Also, judicial officers must be conscious of the fact that court staff/employees are to assist them in the discharge of judicial/official duties and should not be directed or engaged to perform inappropriate and excessive personal services beyond minor matters that conform to established conventions. They should therefore guard against this manifestation of abuse of judicial authority either by themselves, their spouses or other family members in order not to place court staff/employees in an extremely difficult situation.

Whilst a judicial officer may write a letter of reference for a relative or close friend, he is not at liberty to do so for a person he does not know [Rule 8.7]. This is crucial because experience has shown that some judicial officers freely provide reference letters for people they either do not know or do not know enough merely because they do not wish to be seen as a 'bad person', thereby rendering the purpose of requiring a reference of non-effect. A newly appointed judicial officer would

invariably be seen by family members, friends, schoolmates, townspeople, church/mosque/shrine members, etc. as the latest 'big shot' in their circle of influence, and whether he likes it or not, there will be requests for notes or recommendations to government offices for employment, contracts, etc. or other forms of assistance which they believe the prestige of judicial office could facilitate. What this rule is saying is that a judicial officer will be abusing his position if he obliges such requests. So, again, the rule is *judex emptor!*

But quite apart from being contrary to the Code, there is another reason for a judicial officer to be circumspect in this regard. If a judicial officer asks for such favours, the odds are that it will be granted in consideration of his privileged position in the community. But then, the judicial officer would merely have succeeded in exposing himself to the prospect of prejudicial influence: he should be prepared to return the favour in kind when [not if] those who did the favour happen to '*know somebody who knows somebody*' having a matter before him. As the saying goes '*one good turn deserves another*', and they may be asking in return what the judicial officer cannot give. This is an awkward situation that should be avoided.

The Canadian Judicial Council *Ethical Principles for Judges*[133] lays down a number of principles relating to the families of judicial officers especially as regards integrity, diligence and impartiality. It is imperative for a Judge to strike a delicate balance between the requirements of judicial office and the legitimate demands of his personal life, development and family. A judge may act as an executor, administrator, trustee, guardian or fiduciary for the estate or trust of a

[133] Available at http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf.

member of his family if, and only if, such service will not impact adversely on the proper discharge of judicial duties [Rule 13.3]. A member of the family of a judicial officer will no doubt include a spouse, child, grandchild, parent, grandparent or any other relative or person with whom he maintains a close familial relationship.

(iv) **Freedom of expression and association, and abstinence from involvement in public controversies [Rules 5, 6, 7 and 8]**

The assumption of judicial office does not mean that a Judge has surrendered his rights to freedom of expression, association and assembly enjoyed by other members of the community, nor does he cease from having interest in issues of public interest. But, as stated hereinbefore, a judicial officer must accept restrictions on his activities that might ordinarily be viewed as burdensome to other citizens, and exercise the restraint that is necessary for maintaining public confidence in the impartiality and independence of the judiciary. Upon appointment, a judicial officer is expected to give up active participation in any kind of political activity and avoid political controversy. But some judicial officers may have taken things too far by, for instance, even refraining from voting at general elections so that their impartiality would be beyond reproach![134] Discretion should be the watchword.

A judicial officer will do himself a world of good by avoiding the political arena, and refraining from being involved in disputes with public figures, or participating in public debates and expressing opinion on controversial subjects, or criticising the government publicly as these

[134] S. Shetreet, *Judges on Trial*, cited in D. Pannick, *Judges* (Oxford University Press, 1987) p. 170 –referenced in C.C. Nweze, *Commentary on Justice W. S. N. Onnoghen's Paper*, op. cit.

could undermine confidence in his impartiality and expose him to avoidable political attacks [Rules 5 and 6 of the Revised Code]. A judge will not be seen to be impartial when deciding disputes touching on matters in respect of which he has expressed public opinion, or perhaps more importantly, when the public figures or government departments the judge had previously criticised are parties or even witnesses in cases he is adjudicating upon. Thus, judicial officers are enjoined to adhere strictly to the culture of political silence [Rule 5(d)]. Recently, a Nigerian judge had her judicial career prematurely terminated for judicial misconduct by dabbling into the murky waters of public or political discourse and thereby failed "*to conduct herself in such a manner as to preserve the dignity of her office and impartiality and independence of the Judiciary when she wrote a petition against the Osun State Governor and his deputy letter to the State and circulated same to 36 persons/organisations*".[135]

Whereas judicial officers may speak out on matters directly affecting the operation of the courts, the independence of the judiciary and fundamental aspects of the administration of justice [Rule 6(e)]; participate in discussion of the law for educational purposes or point out weaknesses in the law such as practical implications or drafting deficiencies [Rule 6(f)]; and may form and join associations of judges or other organisations to represent their interests, enhance their professional training and protect their judicial independence, it is not permissible to join any trade union [Rule 13.1(iii)]. It would seem that the legal implication of this prohibition is that judicial officers are not in any

[135]See '*Misconduct: Why NJC sacked Justice Oloyede, others*', Vanguard Newspaper, 18 July 2016 (online edition) – last accessed on 27/6/17.

position to embark on strike since a trade union is the legal platform for doing so.[136]

In England, following the *Guide to Judicial Conduct*, a judge who has shown partisanship on topics relevant to issues in a case, or is shown to have strong convictions on the matter expressed extra-judicially by reason of public statements or other expression of opinion on such topics may have to recuse himself, whether or not the matter is raised by the parties.[137] But this does not seem to reflect the Nigerian position on extra-judicial legal opinions expressed by judicial officers. As stated hereinbefore, it is permissible under Rule 6(f) of the Revised Code for judicial officers to *inter alia* participate in discussion of the law for educational purposes. If this were not so, judicial officers would hardly honour invitations extended to them by even the National Judicial Institute to make presentations and deliver papers at conferences and workshops!

Being closer to the grassroots than Superior Courts of Record, Magistrates Courts are often confronted with the prospect of being treated with the contempt that familiarity breeds. Magistrates are therefore almost always tempted to invoke their disciplinary powers to commit for contempt. But Rule 6 (c) and (d) of the Revised Code regulate what should be done in such situations. Whilst sub-rule (c) cautions that the rules relating to contempt should not be invoked to suppress or punish criticism of the judiciary or of a particular judicial officer, and that the better and wiser course to adopt is to ignore any

[136] It was held in *A-G, Enugu State v. National Association of Government General Medical and Dental Practitioners (NAGGMDP) & Anor* (Unreported, Suit No. NIC/EN/16/2010 delivered on 20/6/11) that the right to strike is a right belonging to trade unions and not to individual workers.

[137] S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary*, op. cit., pp. 211.

such scandalous attack outside the courtroom rather than to exacerbate the publicity by initiating contempt proceedings, sub-rule (d) enjoins the court to apply the power to commit for contempt *ex curia facie* in order to protect the court from open attacks targeted at discrediting the administration of justice. It has been observed that judicial independence is actually not meant to make life easier for judges, or to protect them against the consequences of their own actions or inactions, or to insulate them against legitimate public criticism; rather it exists because '*an independent judiciary is recognised as being an essential feature of the free, democratic society and independence involves not only the doing and saying of things which attract public acclaim but also on occasion, the doing and saying of things that incur public opprobrium*'.[138] My fervent prayer [and hope] is that God will grant judicial officers the wisdom to know the difference!

(v) **Extra-judicial activities, personal and financial matters [Rules 9 and 13]**

It is permissible for a judicial officer to engage in extrajudicial activities which do not detract or derogate from the dignity of judicial office or interfere with the discharge of judicial duties [Rule 9.1]; and he may represent his country, state or locality on ceremonial locations or in connection with national, regional, historical, educational or cultural activities [Rule 9.2].[139] Subject to regulating his extrajudicial activities to minimise the risk of conflict with judicial duties which are paramount, a judge may engage in sports and other recreational activities [Rule 13.1], and participate fully in non-profit making organisations such as

[138] Sir Thomas Bingham MR, '*The Courts and the Constitution*' (1996- 1997), 7 KCLJ 12 at 13

[139] Two (2) serving judicial officers represented their respective States at the 2014 National Conference which was inaugurated by former president, Goodluck Jonathan on March 17, 2017. From the List of National Conference Delegates (as published in the March 6, 2014 edition of Vanguard Newspaper) , Hon Justice Adamu Aliyu was nominated to represent Taraba State, whilst Hon. Justice Bilkisu Bello Aliyu was nominated to represent Zamfara State.

charities, university and school councils, lay religious bodies, sporting organisations, etc., insofar as such organisation(s) are not likely to be frequently involved in litigation, and its objects are non-political and unlikely to expose the Judge to public controversy and such activities will not make excessive demands on his time. A judicial officer shall not serve or appear to serve as legal adviser, or lend his name to any fundraising activities embarked upon by such organisation(s) [Rules 9.3].

In regard to fundraising, Clause 8.4.2 of the English *Guide to Judicial Conduct* provides that care should be taken in considering whether, and if so to what extent a judge's name and title should be associated with an appeal for funds even for a charitable organisation. It could amount to an inappropriate use of judicial prestige in support of the organisation and may also be seen as creating a sense of obligation to donors. We think this applies to judicial officers in Nigeria as well. Because a judge is always looked upon as a judge even when he acts as an individual, he is inevitably using the prestige of his office in whatever he does. A duty is therefore imposed on judicial officers to avoid substantial involvement in activities which, in the public interest does not deserve the support of the prestige of judicial office.[140]

Restrictions are placed on judicial officers from practicing law under any form or guise, and/or from acting as an arbitrator, mediator or otherwise performing judicial functions in a private capacity [Rule 9.4 (a) and (b)]. He is also enjoined to be circumspect about becoming involved in personal litigation [Rule 9.4 (c)],[141] whilst Rule 13.2 prohibits

[140] S. Shereet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary*, op. cit., p.258.

[141] A judge of the FCT High Court once took out a personal suit against the FCT Minister and FCDA for wrongful revocation of land allocated to him. The defendants reacted by applying to the Chief Judge to transfer all cases pending before him in which they or their organs are parties on the ground that the judge was likely to be biased against them.

taking or accepting chieftaincy titles whilst in office. According to Faji: "*The rationale is clear. Apart from academic titles, no other title is compatible with the title Hon. Justice. So 'Hon. Justice (Chief)' is a total aberration. It is not only clumsy, there is clearly no way the prestige and power attached to the office of a Judge can be put on the same pedestal as a chieftaincy title. If a judicial officer prefers the chieftaincy title then he should leave office and go for the chieftaincy title. Even academic titles seem clumsy when subjoined to the judicial form of address and should… be avoided. Examples of Dr. Elias, Prof Achike [and] Prof Tobi who were all in the Supreme Court never put themselves out as such*".[142] We cannot agree more.

By Rule 7.1 of the Revised Code, judicial officers are required to inform themselves not only about their own personal and fiduciary financial interests, but also to exert reasonable effort to be informed of the financial interests of their family members; and are under obligation to recuse themselves in matters from which family members or other persons with whom they have a fiduciary relationship is likely to benefit financially [Rule 7.2]. But it has been held [in England] that only a '*significant financial interest*', that is, one which is not too remote or speculative will suffice to trigger automatic disqualification.[143] This seems to also be the position in Nigeria as "financial interest" is defined in Rule 7 of the Revised Code as "*ownership in a substantial manner of a legal or equitable interest*".

[142] Olayinka Faji, *Accountability and Transparency in the Judicial Process: Understanding Judicial Ethics and Code of Conduct for Judicial officers in Nigeria,* op. cit. p. 59

[143] See *R v Bristol Betting and Gaming Licensing Committee, ex parte O'Callaghan* [2000] QB 541. The contention that a judge should disqualify himself no matter how small and trivial the pecuniary interests or shareholding in the outcome of the proceedings may be was roundly rejected. However even though a judge's pecuniary interest may be so small as not to be capable of influencing his decision one way or the other, any doubt is to be resolved in favour of disqualification – see generally: S. Shetreet & S. Turenne, *Judges on Trial: The Independence and Accountability of the English Judiciary,* op. cit., pp. 203 -205

Although a judge may own investments and real property, he cannot be personally involved in the management of those investments [Rule 7.2]; but investments or business activities that are otherwise permissible are nevertheless prohibited if they tend to reflect adversely on judicial impartiality, interfere with the proper discharge of judicial duties, exploit the judicial position, or involve a judicial officer in frequent transactions with lawyers or other persons likely to appear before him [Rule 13.4].

(vi) **Travel within and outside Nigeria [Rule 14]**

This peculiarly Nigerian requirement is quite understandable as some judicial officers have formed the habit of travelling out of their stations for considerably long periods to the neglect of the judicial duties. Rule 14 of the Revised Code is intended to cure this mischief. Judicial officers are therefore enjoined to regulate travels within and outside the country so as not to occasion delay in the administration of justice or adversely affect the judge's individual performance as well as the overall performance of the judiciary. Where travelling out of station during working day becomes strictly essential on short notice, a judicial officer shall as soon as possible inform and obtain clearance from his Head of Court either before or immediately after embarking on such journey. In respect of travels outside Nigeria, whether for a conference or otherwise, the approval of the Chief Justice of Nigeria shall be sought and obtained, save during court vacations and public holidays when a judicial officer is merely required to leave his contact address with his Head of Court and/or the Chief Registrar.

(vii) **Publications while in office [Rule 15]**

This rule, which is also peculiarly Nigerian, prohibits a judicial officer from publishing any book or causing any other person acting on his behalf to publish any book until he ceases to be a judicial officer where such publications may infringe the Code of Conduct for Judicial Officers in any manner. By Rule 15.2 thereof, where any such work is published by or on behalf of a judicial officer whilst in office, he shall ensure that beyond the cover price of such publication, it shall not be used as a means of raising funds or as a donation or gift either to him or anyone else on his behalf. For this purpose, book is defined to include biographies, essays, collection of judgments, textbooks, journals, articles, and any publication which may attract financial benefit either to the judicial officer or the author [Rule 15.3].

6. In lieu of conclusion

We have attempted to highlight the core aspects of judicial ethics and Code of Conduct for Judicial Officers in Nigeria. It is by no means exhaustive and should not be mistaken as a substitute for studying the Revised Code and internalising its prescriptions. Magistrates are the image makers of the Judiciary because a vast majority of the citizenry primarily feels the keen cutting edge of the law at the level of the magistracy. Statistics [which, by the way, is very much like a bikini that conceals what is vital and reveals what is suggestive] validate this assertion. In the Federal Capital Territory, for instance, a total of 22,195 new cases were filed in the Magistrate Courts during the 2014/2015 Legal Year as against 8,260 new cases filed in the High

Court.[144] The rate of disposal of cases is an entirely different matter, but what this implies is that because Magistrates Courts enjoy more patronage than the High Court, the entire judiciary is often judged on the behaviour and attitudes of magistrates. As a result, if Magistrates Courts are seen or perceived as temples where justice is truly dispensed, that is how the judicial system would generally be seen or perceived; but if otherwise, *cadit quaestio!* A herculean burden therefore lies on the shoulders of magistrates who must reflect a beautiful image of our judiciary;[145] and whether or not magistrates will succeed [or are succeeding] in this regard is largely dependent on their unflinching commitment to, and strict observance of, the inveterate cannons of judicial ethics and standards of judicial conduct on and off the Bench.

We live in ominous times. At no other time in our national life has so much searchlight been beamed on the Judiciary, and it is not mere coincidence that our newly inaugurated magistrates have come on board the 'Judicial Ship' at this auspicious moment: *Thou art come into the kingdom for a time such as this!* Lord Denning's admonition[146] that '*when a Judge sits to try a case, he is himself on trial before his fellow countrymen*' holds true. The judge is often 'convicted' [or in very rare instances 'acquitted'] by that ambivalent court of public opinion with scant regard for, or appreciation of, the cold facts of the case, the applicable law, or even the tenets and *modus operandi* of the adversarial system of justice we operate.

[144] The above statistics is contained in the Annual Report of the FCT Judiciary presented by the Chief Judge of the FCT at the commencement of the 2015/2016 Legal /Year

[145] C. Oputa, *Judicial Ethics and Cannons of Judicial Conduct,* op. cit., p. 195.

[146] In *The Family Story* (p.162), Lord Denning MR wrote: "*When a Judge sits to try a case, he is himself on trial before his fellow countrymen (gathered in the Courtroom). It is on his behavior that they will form their opinion of our system of justice. He must be robed in the scarlet of the Red Judge – so as to show that he represents the majesty of the law. He must be dignified – so as to earn the respect of all who appear before him. He must be alert – to follow all that goes on. He must be understanding to show that he is aware of the temptations that beset everyone. He must be merciful so as to show that he too has that quality which 'droppeth as gentle rains from heaven upon the place beneath'*"

Also, a judicial officer must have at the back of his mind that with every judgment he renders, he makes at least one enemy, and probably no friends or admirers. The successful party walks away from the courtroom with an entitlement mentality, whilst the losing litigant would blame him for his woes and bear eternal grudge against him. Especially is this so in today's Nigeria where the perception [which is more wrong than right] is that cases are hardly won and lost on their legal or factual merits. It may therefore be necessary for a newly appointed judicial officer to learn the art of developing or growing a thick skin: not by displaying callous indifference to the societal impact of his judicial decisions, but by not losing precious sleep over the torrent of critical flaks that would almost certainly trail his every action, no matter how well-intentioned.

At this point, I will permit myself to say to our 'freshly minted' magistrates: *Bienvenue!* Welcome on board! I thank you for your kind attention.