

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

BY

**MRS. V.L. KOBANI BUZUGBE,
CHIEF REGISTRAR,
HIGH COURT OF JUSTICE,
PORT HARCOURT,
RIVERS STATE.**

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I am very grateful to the able Administrator of the National Judicial Institute, Hon. Justice R.P.I. Bozimo, *OFR* for nominating me to be a resource person at this Workshop. The target audience of this Workshop are Magistrates of all grades in the Federation.

I also thank my Lord, the Hon. Justice A. Iyayi-Lamikanra, Honourable Chief Judge of Rivers State for granting me the permission to serve as a resource person and share my thoughts with you on the topic: “Enhancing the Productivity of Judicial Officers: Performance Management and Evaluation”, to be discussed within the context of the theme of this Workshop; “Promoting Judicial Performance through Innovations and Reforms”.

That said, I now turn to consider some preliminary issues.

1.0 Preliminary Considerations

It may be thought, here, to ventilate on some preliminary considerations; a premiss of conceptual clarification and terminological analysis. We begin with:

1.1 Meaning of Judicial Officer

Section 318(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) defines “judicial officer” to mean the holder of 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 a Judge of the Federal High 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, or President or a Judge of the Customary Court of Appeal of a State.

It is obvious and overt that the definition of “judicial officer” in section 318(1) of the 1999 Constitution (as amended) excludes Magistrates. Put differently, section 318(1) puts out Magistrates in the classification or taxonomy of judicial officers.

Here, a school of thought postulates that only the Judges of the Superior Courts specified in section 6(5)(a) – (i) of the 1999 Constitution (as amended) are termed “judicial officers”. According to this school, the Superior Courts listed in section 6(5)(a) – (i) are directly established under section 6(3).¹

This school of thought proffers (and, prefers) a narrow, restrictive, interpretation of the term “judicial officer” in section 318(1) of the 1999 Constitution (as amended). Notable legal *illuminati* consider this narrow approach as discomfiting. Honourable Justice C.C. Nweje, JSC, in his Address to the Annual Conference of the Magistrates’ Association of Nigeria, Anambra State Branch on the 24th of March, 2004, considered the narrow and liberal interpretations of the term “judicial officer” and came to the conclusion that the constitutional exclusion of the Magistracy from the precinct of the judicial officer was anomalous.²

¹ Hon. Justice C.E. Kalajine Anigbogu, “The Nigerian Magistrate: An Endangered Specie”, vol. 6, *NJI Law Journal* (2012) 70.

² Hon. Justice C.C. Nweze, “The Hermeneutic Dimension: The Narrow versus Liberal Interpretation of the term, Judicial Officer”, quoted in Kalajine Anigbogu, *op.cit* at p. 83.

In our view, His Lordship's views are unassailable. The definition of "judicial officer" in section 318(1) of the 1999 Constitution (as amended) failed to take into consideration the provisions of section 6(2) of the same Constitution, which states:

6(2) – the judicial powers of a State shall be vested in the Courts to which this section relates, being courts established, subject as provided by this Constitution, for a State.

In *Akintokun v. L.P.D.C.*,³ the Supreme Court rightly held the view that section 6 of the 1999 Constitution (as amended) defines the judicial powers of the Courts in Nigeria. The ratiocination of the Supreme Court in *Akintokun v. L.P.D.C.* is to the effect (or, implied) that Magistrates exercise judicial powers in the contemplation of section 6 of the 1999 Constitution. Our inexorable contention, therefore, is that the definition of the term "judicial officer" in section 318(1) of the 1999 Constitution (as amended) which excludes the Magistracy is anomalous and unhelpful. The hermeneutic or definitional exclusion (or, omission) of the Magistracy in section 318(1) has placed the Nigerian Magistrate in a not too comfortable position in the scheme of affairs of the Nigerian judicature. The net consequence of section 318(1) is this: the Nigerian Magistrate is neither here nor there; the Nigerian Magistrate is here and there. In point of fact, the Magistrates' Association of Nigeria, Anambra State Branch in 2004, published her (or, their) Journal and titled it: "**Neither Bird Nor Mammal**".⁴ The title of that Journal captures the predicament of the Nigerian Magistrate; it mirrors the lamentable narrative of the Magistracy.

Now, the Code of Conduct for Judicial Officers of the Federal Republic of Nigeria in its Explanatory Section states:

- (i) In this Code, the term "Judicial Officer" shall mean a holder of the office of Chief Justice of Nigeria, a Justice of the Supreme Court, the President or Justice of the Court of Appeal, the Chief Judge or Judge of the Federal High Court of a State and of the Federal Capital Territory, Abuja, the Grand Khadi or Khadi of a Sharia Court of Appeal of a State and of the Federal Capital Territory, Abuja, the President or Judge of a Customary Court of a State and of the Federal Capital Territory, Abuja and includes the holder of a similar office in any inferior court whatsoever.
- (ii) The Code applies to all categories of judicial officers throughout the Federation.

³ (2014) 13 NWLR (Part 1423) 1 at p. 74, paras. B – E (*per* I.T. Mohammed, JSC).

⁴ See, Kalajine Anigbogu, *op.cit* at p. 70.

As can be seen, **the Code of Conduct for Judicial Officers** defines the term “judicial officer” to include Magistrates. It is worth observing, here, that the **Code** is not Law; it is a **Code** that is not codified; the **Code** has no statutory labyrinth.

Next, in most Commonwealth jurisdictions and in Anglo-American Jurisprudence, the term “judicial officer” has been defined to include Magistrates. The *Black’s Law Dictionary*, defines the term “judicial officer” in its most comprehensive signification to mean: (1) A judge or magistrate; (2) Any officer of the Court, such as bailiff or court reporter; (3) A person usu. an attorney, who serves in an appointive capacity at the pleasure of an appointing judge, and whose actions and decisions are reviewed by that judge”.⁵

An *Online* legal source defines the term “judicial officer” to mean: “A Justice for the peace, Magistrate or Judge or any other officer of the Court”.⁶ In the context of our subject of discourse, we adopt the broad definition of the term “judicial officer” as put forward by the *Black’s Law Dictionary*. We submit that Magistrates are judicial officers. We note, here, that section 258(1) of the Evidence Act, 2011 defines “court” to include “all judges and magistrates”.

1.2 Suggestion

It is suggested that Laws be enacted to specifically provide for the pension rights of Magistrates. The Laws should provide that a Magistrate who has held office for a period of not less than fifteen years, should upon retirement, be entitled to pension for life at a rate equivalent to his last annual salary, the annual salaries of two of his domestic staff and all his allowances; in addition to any other retirement benefits to which he may be entitled.⁷

The suggestion, if implemented, would have the beneficial effect of enhancing the productivity of Magistrates.

2.0 Judicial Economy Explained

The term “judicial economy” simply means:

⁵ B.A. Garner, (ed.), *Black’s Law Dictionary*, 9th edn. (St. Paul, MN: West Publishing Co. 2009) 1193.

⁶ See, thelawdictionary.org/judicialofficer (Retrieved on 17th March, 2016).

⁷ Note that s. 291 of the 1999 Constitution (as amended) provides for pension rights of judicial officers of the superior courts of record.

See also, Pension Rights of Judges Act, Cap. P5, LFN, 2004, s. 2(1).

Efficiency in the operation of the Courts and the judicial system; esp., the efficient management of litigation as to minimize duplication of effort and to avoid wasting the judiciary's time and resources.⁸

Similarly, the *Wikipedia* states that “judicial economy refers broadly to the principle that the limited resources of the legal system of a given court should be conserved”.⁹

Here, we submit that performance management and evaluation promote judicial economy. That is to say that a key tenet or pertinent sub-theme of judicial economy is performance management/evaluation of judicial officers and court employees.¹⁰

2.1 Productivity Explained

The word “productivity” as a noun means – “the rate or efficiency of work, esp. in industrial production”.¹¹ Etymologically, the word “productivity” derived from two Latin words: *producere*, – *ductum*, from *pro* meaning – forward and *ducere* – to lead.

The Chambers 21st Century Dictionary, while echoing the definition of “productivity” proffered by *The Chambers Dictionary*, traced the origin of its verb variant to the 15th century Latin “*producere*” which means “to bring forth”.¹²

Added to the above, is the *Black's Law Dictionary* definition of the verb “produce” in both grammatical (or, lexical) and legal senses thus: (1) “To bring into existence, to create; (2) To provide (a document, witness *etc.*) in response to *Subpeona* or discovery request; (3) To yield (as revenue); and (4) To bring (oil, *etc.*) to the surface of the earth”.¹³

Now, (or, *pro facto*), the expression “productivity of judicial officers” would simply mean this: The rate at which judicial officers, including Magistrates perform or carry out their work; it denotes judicial performance.

⁸ B.A. Garner (ed.) – *Black's Law Dictionary*, *op.cit* at p. 923.

⁹ See, en.m.wikipedia.org/wiki/judicial_economy (Accessed on 18/03/16).

¹⁰ See generally, O. Yahaya, “Performance Monitoring and Evaluation of Court Employees: The Role of Judicial Administrators”, Paper delivered on 19th July, 2010 at the National Workshop for Judicial Administrators organized by the National Judicial Institute.

¹¹ *The Chambers Dictionary* (New Delhi: Allied Chambers India Ltd., 2005 (Repr.)) 1312.

¹² M. Robinson & G. Davidson (eds), *Chambers 21st Century Dictionary* (New Delhi: Allied Chambers (India) Ltd., 2006 (Repr.)) 1106.

¹³ B.A. Garner (ed.) – *Black's Law Dictionary*, 9th edn. *op.cit* at p. 1329.

2.2 Evaluation Defined

The *Chambers Dictionary* defines the verb “evaluate” to mean: “to determine or estimate the value of”. The verb “evaluate” derived from the French word, *évaluer*.¹⁴

Therefore, “evaluation” as a noun and as a process has been rightly described thus:

Evaluation is a systematic determination of a subject’s merit, worth and significance, using criteria governed by a set of standards. It can assist an organization, program, project or any other intervention or initiative to assess any aim or realizable concept/proposal or any other alternative, to help in decision-making; or to ascertain the degree of achievement or value in regard to the aims and objectives and result of any such action that has been completed. The primary purpose of evaluation, in addition to gaining insight into prior or existing initiatives, is to enable reflection and assist in the identification of future change.¹⁵

What can be said, here and now, is that periodic evaluation is one of the tools of performance management.

3.0 Performance Management

Managing job performance is a tool in any organization. Performance Management (PM) includes activities which ensure that goals are consistently being met in an effective and efficient manner. Performance management involves focusing on the performance of an organization, a department, employee, or even the processes to build a product as well as many other areas.¹⁶ Performance management is a process by which organizations align their resources, systems and employees to strategic objectives and priorities.¹⁷ Performance Management (PM) emphasizes on both quality and quantity in terms of organizational output.

That said, we ask: What are the different types of performance management tools?

¹⁴ *The Chambers Dictionary, op.cit* at p. 559.

¹⁵ See, <https://en.m.wikipedia.org/wiki/Evaluation>.

¹⁶ See, en.m.wikipedia.org/wiki/performance_management (Retrieved on 19th March, 2016).

¹⁷ *Loc.cit*

See also, P. Rausch, A. Sheta, A. Ayesh (eds.) – *Business Intelligence and Performance Management: Theory, Systems and Industrial Applications* (U.K: Springer Verlag, 2013); G. Cokins, *Performance Management – Integrating Strategy Execution, Methodologies, Risk and Analytics* (John Wiley and Sons, Inc., 2009); G.A. Rummter & A.P. Brache, *Improving Performance: How to Manage the White Space in the Organization*, 2nd edn. (Jossey – Bass: 1995).

3.1 Types of Performance Management

As noted, Performance Management (PM) helps an organization or entity to achieve efficiency, effectiveness and competence. This can be done at the individual level or at an organizational level. In order for this to happen, it is vital to concentrate on using good performance management tools.¹⁸ These include models of standards, self-review systems, and performance maintenance programs.

One of the most common performance management tools which can be found in many models is annual or quarterly performance evaluations. These are often undertaken at the organizational level especially when there are complaints of compliance, and at the individual level.¹⁹

The common view in contemporary performance management is:

Those organizations that use annual evaluations should strongly consider adding other tools. Self-review systems are commonly believed to have positive benefits. When members of an organization are given a set of standards or expectations and the tools to monitor their status at any given time, many respond positively. This is because such tools often prompt individuals to monitor and manage themselves.²⁰

In the performance management process, an employee is given a written warning of unsatisfactory performance and in some cases; additional training is required in order to help the employees raise their performance standards. Some staff require motivation to improve their performance standards.

3.2 Characteristics of an Ideal Performance Management System

The ideal performance management system consists of a plethora of elements: namely, job descriptions, performance expectations, appraisals, disciplinary policies, commendations, *etc.*²¹ These are further explained hereunder:

(a) Job Descriptions

A clear job description is a fundamental attribute of an ideal performance management system. Without a clear understanding of job duties or tasks, it is difficult, if not

¹⁸ m.wisegeek.org/what-are-the-different-types-of-performance-management-tools/ (Retrieved on March 19, 2016).

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ R. Mayhew, "Characteristics of an Ideal Performance Management System", *Demand Media*, @: smallbusiness.chron.com/characteristics-ideal-performance-management... (Accessed on 20/03/2016).

impossible, to know what the employee is supposed to be doing.

(b) Training

An ideal performance management system provides training for employees, explains how their performance will be measured and evaluated, as well as what actions or conduct are subject to disciplinary action and the disciplinary process.

(c) Timeliness

Performance appraisals – the annual or quarterly evaluation of employee performance must be timely. A timely performance appraisal seeks to address problems and deficiencies before they become uncontrollable. Likewise, employee performance worthy of commendation should be immediately recognized to reinforce positive behaviour and action.

(d) Compensation/Reward

An ideal performance management system has a tie-in with compensation, whether it is a raise in wages or promotion.

(e) Feedback and Participation

The employees should get information on their performance. The system should involve employees in the goal-setting process.²²

(f) Mutual Trust

An ideal performance management system should create a climate of mutual trust, co-operation and confidence. Under the system, the employee should be treated as a partner-in-progress.

(g) Standardization

The format of appraisal, procedure and rules should be standardized. The performance criteria and standards should be well-defined. Importantly, employees should be made fully aware of these performance criteria and standards.

²² A. Banerjee, “10 Characteristics of Effective Performance Appraisal System”, @: preservatives.com/2012/051932538/10characteristics-of-effective...

(h) Help Focus

The appraisal should be seen as coaching and counseling. The appraisal should help employees reach their full potential.

(i) Post Appraisal Interview

An appraisal system provides an avenue for interview with the employee after appraising his/her performance. That is to say that a post appraisal talk should be arranged for employees.²³ This will help to know the difficulties of work and training needs of employees. At the interview, problems that inhibited the employee's performance can be identified and solutions put forward.

All-in-all, a management consultant and Human Resources Expert, Dick Grote recognizes the ideal performance management system as being able to “mobilize the energy of every employee in the enterprise toward the achievement of strategic goals”.²⁴

4.0 National Judicial Policy on Case-Flow Management

In discussing performance management and evaluation of Magistrates, we should consider it apposite to mention the Policy of the National Judiciary on Case-Flow Management.

Here, Article 7 of the **National Judicial Policy** states:

Art. 7(a) – The Judiciary should adopt measures designed to promote flexibility in the handling of cases, while reducing cost, delay and unnecessary burdens to litigants in the adjudication of cases.

(b) – It will be essential to also fix time frames for the disposal of civil and criminal cases. The criminal cases should be given priority because of the sub-human conditions in which persons awaiting trial or undergoing trial are kept. Fundamental Rights cases should also be on the fast track.

(c) – Courts in Nigeria should therefore develop a *Caseflow Matrix* as well as maintain a *Case Tracking Register* (where such do[es] not exist) to ensure effective management of cases within their

²³ “What are the characteristics of effective performance appraisal system?” @: blog.synergita.com/2013/10/what-are-the-characteristics-of-effective-...; see also, “3 Characteristics and Examples of Effective Performance Management Systems”, @: northcoast99.org/blog/post/3-Characteristics-and-Examples-of-Effective-...

²⁴ Quoted in R. Mayhew, *op.cit.*

respective jurisdictions. The *Caseflow Matrix* and *Case Tracking Register* could be manual, electronic or both.²⁵

Article 7 of the National Judicial Policy is lucid and self-explanatory. Article 7 implicates on performance of Judicial Officers, including Magistrates. Article 7 emphasizes time management in the adjudicatory process. Case-load can be managed by different means with a view to improving the productivity of courts or reducing the workload of Judges, Magistrates and Court Staff.²⁶

5.0 **Setting up of Performance Evaluation Committees by State Judicial Service Commissions/Committee (FCT)**

5.1 **Background**

In its *Circular* with **Ref. No NJC/CIR/HOC/1/182**,²⁷ dated 10th June, 2015, the NJC noted the low productivity of some Judicial Officers in the Federation and ascribed the reasons to include, the calibre of the candidates that were/are appointed to the bench. Therefore, the Council in the course of reviewing its guidelines on appointment of Judicial Officers in the Federation formulated a new rule, to interview all candidates for judicial appointments to ensure that only good and competent candidates are appointed.²⁸

The NJC then recommended that all the States' Judicial Service Commissions/Committee of the Federal Capital Territory should set up Performance Evaluation Committees to assess the performance of all lower Court Judges in the Federation. These include Magistrates, Area, Customary and Sharia Court Judges.

²⁵ Note that the National Judicial Policy came into effect on 30th September, 2013. It was approved by the Board of Governors of the National Judicial Institute under the leadership of the former Chief Justice of Nigeria, Hon. Justice Aloma Maryam Mukhtar, *GCON*.

²⁶ H. Saeed, "Time Management for Improved Adjudicatory Performance", vol. 16 *NJI Law Journal* (2012) 205, 222.

²⁷ *Circular*, Ref. No. NJC/CIR/HOC/1/182 dated 10th June, 2015, captioned – "SETTING UP OF PERFORMANCE EVALUATION COMMITTEES FOR LOWER COURTS IN THE FEDERATION BY THE JUDICIAL SERVICE COMMISSIONS/COMMITTEE FOR OPTIMUM SERVICE DELIVERY IN THE ADMINISTRATION OF JUSTICE".

²⁸ See, *Rule Six*, "Extant Revised NJC Guidelines & Procedural Rules for the Appointment of Judicial Officers of Superior Courts of Record in Nigeria, 3rd November, 2014".

Note that *Rule 4* states that a Magistrate to be appointed a Judge of a Superior Court, must in addition to other requirements, show "satisfactory and consistent display of sound and mature judgment in the office as a Chief Registrar or Chief Magistrate".

The *Circular* noted that the States’ Judicial Service Commissions/Committee “are free to formulate their own guidelines on the operation of the performance evaluation committees for the Judges/Magistrates of lower courts in their respective states”.

It would be recalled that there has been in existence for the past ten years, a Committee of the NJC on assessment of performance of Judicial Officers of Superior Courts. The creation of the Committee was informed by the need to *inter-alia*:

- (i) Assess and monitor the Performance of Judicial Officers of all Superior Courts of Record in the Federation;
- (ii) To ascertain the number and ages of pending cases and to ensure that judges pay attention to such pending cases;
- (iii) To assist the council in determining the needs of Courts to appoint additional Judges; and creation of more Courts and Divisions; and
- (iv) The Report of the Committee has been used to recommend hardworking Judges for elevation to higher bench and for other National and International Judicial assignments.

The Committee formulated guidelines for evaluation; which guidelines are reviewed from time to time.²⁹ These guidelines are also adopted and modified by the States’ Judicial Service Commissions/Committee and applied to evaluate performance of Magistrates, Judges of the Customary Courts, Area Courts, *etc.*

5.2 Managing and Evaluating the Job Performance of Magistrates

5.2.1 Rivers State as a Case in Point

5.2.2 Preamble

Here, it is necessary to reproduce the Vision and Mission Statements of the Rivers State Judiciary. The Vision Statement of the Rivers State Judiciary reads:

Vision Statement

The development of a stronger judiciary, one truly independent and an empowered and fearless branch of government, providing a fair, impartial, effective and speedy administration of justice while

²⁹ See for example NJC Circular, Ref. No. NJC/PERF./EVAL./03/1/1/HOC/2 dated 27th March, 2012, captioned, “PERFORMANCE EVALUATION OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD: ADDITIONAL GUIDELINES”; NJC Circular, Ref. No. NJC/PERF./EVAL./03/1/11/HOC/136 dated 30th March, 2013, and captioned, “RE-PERFORMANCE EVALUATION OF JUDICIAL OFFICERS OF SUPERIOR COURTS OF RECORD”.

protecting the rights and liberties of all persons without fetters, favour, fear or ill-will and ensuring an effectively managed judiciary beyond the 21st Century.³⁰

Added to the above is the Mission Statement of the Rivers State Judiciary which reads:

Mission Statement

To achieve the core paramount values of independence, integrity, fairness, human resources and infrastructural development, quality justice delivery according to law and earn public confidence.³¹

Guided by the values in the Vision and Mission Statements of the Rivers State Judiciary, we shall now consider the model of evaluating job performance of Magistrates.

5.3 Performance Evaluation Committee for Lower Courts

The Rivers State Judiciary constituted a Performance Evaluation Committee for Lower Courts. While inaugurating the Committee, the former Chief Judge of Rivers State, Hon. Justice Daisy W. Okocha stated in *extenso*:

It is worth recalling that 10 years ago, the National Judicial Council (NJC) created the Performance Evaluation Committees for Judges of the Superior Courts of Record. Among other reasons, the Committees are intended to assess and monitor the performance of Judicial Officers for optimum service delivery in the administration and dispensation of justice. While reviewing the guidelines for the appointment of Judicial Officers in the Federation, the NJC recommended that all Judicial Service Commissions of States should set up Performance Evaluation Committees for Lower Courts in the Federation.

The Rivers State Judicial Service Commission (JSC) has therefore complied with this recommendation by setting up a Performance Evaluation Committee headed by a serving Judge of the State High Court. This would ensure that justice is delivered effectively, efficiently, and in good time at the Lower Courts which are presided over by Magistrates, Area and Customary Court Judges. Consequently, only candidates from the Lower Courts that are confirmed to be performing well in the assessment exercise will be recommended to the National Judicial Council (NJC) for appointment to Superior Courts of Record.

³⁰ *THE ADJUDICATOR*, vol. 1, October, 2015, p. 2, A Journal of the Rivers State Judiciary.

³¹ *Loc.cit.*

The parameters for evaluation are known to all the parties involved. It is expected that all judicial officers would regularly engage in personal self-evaluation, especially with regard to case management.³²

Prior to 2015, there has been in existence in the Rivers State Judiciary, a Monitoring Committee on the Performance of Magistrates/Chairmen of Customary Courts.

5.4 Quarterly Return of Cases Chart for Magistrates

RIVERS STATE JUDICIAL SERVICE COMMISSION
MONITORING COMMITTEE ON THE PERFORMANCE OF
MAGISTRATES/CHAIRMEN OF CUSTOMARY COURTS
QUARTERLY RETURN OF CASES FOR THE QUARTER ENDED _____ TO _____
RIVERS STATE JUDICIARY, PORT HARCOURT.

CASES	1	2	3	4	5	6	7	8	9
	Cases brought forward from last quarter	Cases assigned this quarter	Total of 1 & 2	No. of contested cases for which judgments have been given	Non-contested cases disposed of	Cases struck out	Total no. of cases disposed of during the quarter under columns 4,5 & 6	Cases pending at the end of the quarter	Remarks See attached sheet
CIVIL									
CRIMINAL									
MOTION									
TOTAL									

- Total number of cases disposed of during the quarter, column 7 above = columns 4 + 5 + 6
- Cases pending at the end of the quarter, column 8 above = 3 minus column 7

NAME OF MAGISTRATE

CONFIRMED BY ME: CHIEF REGISTRAR
NAME: _____
HIGH COURT OF JUSTICE,
PORT HARCOURT, RIVERS STATE.

SIGNATURE: DATE:

SIGNATURE: DATE:

³² *THE ADJUDICATOR, op.cit* at p. 9.

5.5 National Judicial Council's Performance Evaluation Grading *per* Quarter

No. of Judgments	Grading
0	– No performance.
1 - 3	– Very Low performance.
4 - 6	– Low performance.
7 - 11	– Fair performance.
12 - 18	– Good performance.
19 - 23	– Very Good performance.
24 - above	– Excellent performance.

It seems that the above NJC's Grading System is also applied by the State Judicial Service Commissions/Committee in evaluating performance of Magistrates.

5.6 Judicial Performance Evaluation Criteria in Select National Jurisdictions

5.6.1 The U.S.

The American Bar Association in February, 2005 developed guidelines for the Evaluation of Judicial Performance in the United States of America. These guidelines were termed, "**BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE**".³³

The goals of the **BLACK LETTER GUIDELINES** are these:

GOALS

Guideline 1 – 1 – Judicial evaluation programs improve the performance of individual judges and the Judiciary as a whole. All court systems should develop and implement a formal program for the evaluation of judicial performance.

Guideline 1 – 2 – In jurisdictions where judges are subject to reappointment, retention or reelection, judicial evaluation programs enable those responsible for continuing judges in office to make informed decisions.

Guideline 2 – 1 – Primary uses of judicial performance evaluation include promoting self-improvement, enhancing the quality of the

³³ American Bar Association, *BLACK LETTER GUIDELINES FOR THE EVALUATION OF JUDICIAL PERFORMANCE*, February, 2005, @: www.americanbar.org/content/dam/aba/migrated/jd/la.. (Last visited on 22nd March, 2016).

judiciary as a whole and providing relevant information to those responsible for continuing judges in office.

Guideline 2 – 2 – Additional uses that may be considered include the effective assignment of judges within the judiciary and the improved design of continuing education programs.

Guideline 2 – 3 – The uses of judicial performance evaluation do not include judicial discipline. The information developed in a judicial evaluation program should not be disseminated to authorities charged with disciplinary responsibility, unless required by law or by rules of professional conduct.

The evaluation criteria set out in the **BLACK LETTER GUIDELINES** are these:

CRITERIA

Guideline 5.1 – A judge should be evaluated on his or her **legal ability**, including the following criteria:

- 1.1 Legal reasoning ability.
- 1.2 Knowledge of substantive law.
- 1.3 Knowledge of rules of procedure and evidence.
- 1.4 Keeping current on developments in law, procedure and evidence.

Guideline 5.2 – A judge should be evaluated on his or her **integrity and impartiality**, including the following criteria:

- 2.1 Avoidance of impropriety and the appearance of impropriety.
- 2.2 Treating all people with dignity and respect.
- 2.3 Absence of favor or disfavor toward anyone, including but not limited to favor or disfavor based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status.
- 2.4 Acting fairly by giving people individual consideration.
- 2.5 Consideration of both sides of an argument before rendering a decision.
- 2.6 Basing decisions on the law and the facts without regard to the identity of the parties or counsel, and with an open mind in considering all issues.
- 2.7 Ability to make difficult or unpopular decisions.

Guideline 5.3 – A judge should be evaluated on his or her **communication skills**, including the following criteria:

- 3.1 Clear and logical oral communication while in court.
- 3.2 Clear and logical written decisions.

Guideline 5.4 – A judge should be evaluated on his or her **professionalism and temperament**, including the following criteria:

- 4.1 Acting in a dignified manner.
- 4.2 Treating people with courtesy.
- 4.3 Acting with patience and self-control.
- 4.4 Dealing with *pro.se* litigants and litigation fairly and effectively.
- 4.5 Participating and providing leadership to an appropriate degree in professional development activities and in jurisdiction-wide and state-wide court improvement and judicial education activities.
- 4.6 Promoting public understanding of and confidence in the courts.

Guideline 5.5 – A judge should be evaluated on his or her **administrative capacity**, including the following criteria:

- 5.1 Punctuality and preparation for court.
- 5.2 Maintaining control over the courtroom.
- 5.3 Appropriate enforcement of court rules, orders, and deadlines.
- 5.4 Making decisions and rulings in a prompt, timely manner.
- 5.5 Managing his or her calendar efficiently.
- 5.6 Using settlement conferences and alternative dispute resolution mechanisms as appropriate.
- 5.7 Demonstrating appropriate innovation in using technology to improve the administration of justice.
- 5.8 Fostering a productive work environment with other judges and court staff.
- 5.9 Utilizing recruitment, hiring, and promotion policies and practices to ensure that the pool of qualified applicants for court employment is broad and diverse.
- 5.10 Acting to ensure that disabilities and linguistic and cultural differences do not limit access to the justice system.

Guideline 5.6 – Additional criteria should be developed reflective of jurisdiction (specialized versus general) and level of court (trial versus appellate).

- 6.1 A specialized court judge should be evaluated according to whether he or she demonstrates the knowledge and skills necessary.
- 6.2 An appellate court judge should be evaluated on the quality of his or her preparation for and participation in oral argument and on his or her effectiveness in working with other judges of the court.

As noted, the criteria for evaluation of judicial performance outlined in the **BLACK LETTER GUIDELINES** are broad and diverse. The criteria range from

legal ability, integrity/impartiality, communication skills, professionalism and temperament, administrative capacity, *etc.*

On methodology for the evaluation, **Guideline 6.1** states that “the judicial evaluation process is comprised of data collection, synthesis and analysis, and its usage”.

Guidelines 6 – (1) – (5) listed the sources of information to be: data collection, potential sources of information include attorneys, jurors, litigants, and witnesses who have appeared before the judge; non-judicial court staff, social service personnel, and law enforcement officials who have had regular contact with the judge; other appellate judges, and trial court judges whose decisions have been reviewed by the judge. Another method listed is the use of *Questionnaire*.

Guidelines 6.8 states that “Judges should be evaluated periodically”. And that “the frequency of judicial evaluations should be related to such factors as the length of time the judge has served on the bench and when the judge will be considered for reappointment, retention, or reelection”.

It is to be significantly noted that many jurisdictions³⁴ in the U.S. adopted the evaluation criteria stated in the **BLACK LETTER GUIDELINES**.

5.7 Factors Responsible for Low Productivity of Magistrates

The identified causes of low performance of Magistrates include, *inter-alia*:

- Poor case management (judicial management) knowledge/skills.
- Lack of administrative skills.
- Indolence/no hard work/negative attitude to work.
- Indulging in grant of needless adjournments to lawyers, litigants and prosecutors.
- Late sittings.
- Too many cases and lack of Sessions (in some jurisdictions).
- Few cases for some Magistrates in some Districts.
- Poor infrastructural facilities/lack of convenient workplace.
- Lack of official vehicles (in some jurisdictions).
- Failure to control Registry/Court Staff to enhance productivity.
- Failure to set targets from trial dates to disposal of cases. No specified time standard/time limit/timetable for commencement and conclusion of cases in the Magistrates’ Courts.

³⁴ See for *e.g.*, Rule 56, Rules of the Supreme Court of the State of New Hampshire, @: courts.state.nh.us/rules/scr (Last visited: 22/3/16). Rule 56(1) is on: “Administration and Implementation of a Performance Evaluation Program”.

- Allowing Lawyers and Litigants to dictate the rate of progress of cases.³⁵

5.8 Possible Sanctions for Low Productivity

5.8.1 The Individual Judge/Magistrate

Low productivity may attract disciplinary actions. The likely sanctions for low productivity of a judicial officer may be compulsory retirement, warning or even suspension. The NJC or a State JSC/Committee, may summon an under-performing Judge or Magistrate, as the case may be, to give explanation. For example, the NJC at its 73rd meeting in 2015, considered the report submitted by its Committee on Performance Evaluation of Judicial Officers of Superior Courts of Record in the Federation and decided to invite three High Court Judges from two states to appear before it for **low performance** and show cause why disciplinary action should not be taken against them.³⁶ Specifically, a Magistrate who is under-performing may not be recommended by the State JSC/Committee for elevation to the higher bench.

5.8.2 The Court

Consistent low productivity may compel the NJC to place an embargo on appointment of new judges for that Court. An example was where the NJC at its 73rd meeting, placed embargo on appointment of judges for a total of 25 (twenty-five) Courts due to insufficient workload and placed those courts on the NJC's **Freeze List**.³⁷

5.9 Suggestions to Enhance the Productivity of Magistrates

In addition to other suggestions earlier made hereinabove, the following suggestions are put forward to improve the productivity of Magistrates:

- (a) Improved welfare for Magistrates.
- (b) Provision of official accommodation for Magistrates.

³⁵ See, Hon. Justice D. Hope, “Judges ought to be Active Referees and not mere Spectators”, vol. 20, No. 2, *Journal of the Commonwealth Magistrates’ and Judges’ Association* (2012) pp. 4 – 10.

³⁶ See, “National Judicial Council Summoned 3 High Court Judges to explain under-performance”, June 11, 2015, @: dailytimes.com.ng.

Note that the identities of the Judges and the States involved were not disclosed.

³⁷ *Ibid.*

See further, NJC *Circular*, Ref. No. NJC/CIR/HOC/1/02, dated 7th October 2013, captioned, “RE: REPORT OF THE JUDGES’ PERFORMANCE EVALUATION COMMITTEE OF THE NATIONAL JUDICIAL COUNCIL” Appendix I – *Appointments Freeze List*. Appendix II – *Courts with Low Performances on Criminal Cases Judgment*. Appendix III – *Much Improved Courts*.

- (c) Provision of computer, laptops and other ICT infrastructure for Magistrates and other support staff.

Here, States' Judiciaries are called upon to implement NJC's ICT Policy and Action Plan.

- (d) Training and retraining particularly refresher courses on case management.
- (e) Payment of hazard allowances to Magistrates.³⁸
Here, note that the Chief Judge of Anambra State, Hon. Justice Peter Umeadi once called for the payment of hazard allowance of N150,000.00 (one hundred and fifty thousand naira) *per month per* Magistrate.
- (f) Magistrates are enjoined to place great emphasis on the disposal of criminal cases because of its effect on prison congestion and number of persons awaiting trial.
- (g) Concept of self-evaluation should be introduced to enable each Magistrate evaluate himself/herself every quarter, with a view to achieving self-improvement.

5.10 Some Practical Tips on Filling Return of Cases Form

- (1) Completion of forms should be done by the Magistrate himself/herself and not his/her clerk(s). This is to avoid mistakes often blamed on the clerk. **The signature of the Magistrate implies the Magistrate's certification of the accuracy and veracity of the Return.**
- (2) Cross-check and proof-read Returns before appending your signature.
- (3) Avoid delays in the submission of the Returns. Usually, Quarterly Returns of Cases are required to be submitted by the 2nd week after the end of the quarter. Quarterly Returns submitted outside the time limit are regarded as **nil returns**.
- (4) Bail application should not be counted as full case as the main case on which the suspect (accused) is being held subsists. Where the bail application is not in a pending case, that fact should be expressly stated.³⁹
- (5) Consent Judgment delivered pursuant to Terms of Settlement filed by the Parties should be entered as a judgment.
- (6) Explanations where necessary can only be made in the Column for Remarks.

³⁸ See, "Judge seeks hazard allowance for magistrates", *THE NATION*, Tuesday April 15, 2014.

³⁹ See, NJC *Circular* Ref. No. NJC/PERF./EVAL./03/1/1/HOC/2, dated 27th March, 2012.

(7) Keep a personal copy of every completed Return of Cases Form.

5.11 Observation

It is pertinent to observe that in Nigeria, the institutions responsible for judicial discipline are also in charge of judicial performance evaluation. So, the NJC and States JSCs/Committee are responsible for both judicial discipline and judicial performance evaluation. This institutional arrangement seems to be working, but it does not reflect global best practices. In many national and sub-national jurisdictions, separate institutions are responsible for judicial discipline and judicial performance evaluation.⁴⁰ Whether or not such institutional arrangement promotes or stymies progress towards an efficient and effective judicial performance evaluation system in Nigeria, is beside the point here.

6.0 Conclusion

In the foregoing narration, we have discussed Performance Management and Evaluation, with particular reference to judicial officers, including Magistrates.

Performance management and evaluation in the judicial sector are aimed at optimum service delivery in the administration of justice. As noted, judicial performance evaluation helps courts to achieve a variety of central goals, *viz*: more informed judicial appointments, retention, and/or assignment of some judicial duties (national and international), improvements in judicial quality; greater transparency and so forth.⁴¹

There is need for Magistrates to work hard and improve their performance. There is also need to provide the tools and conducive environment for magistrates to attain optimum performance in their adjudicative duties.

Thank you, Your Worships for listening.

Key Words: Judicial Officers, Judges, Magistrates, Superior Courts of Record, Lower Courts, Performance Management, Judicial Performance Evaluation, Productivity.

⁴⁰ See, Greenstein, Marla, Hall & Howell, "Improving the Judiciary through Performance Evaluation" (2001) @: nsc.contentdm.oclc/cdm/ref/collection/judicial/id/375; "The Bench Speaks on Judicial Performance Evaluation: A Survey of Colorado Judges", (March, 2009), University of Denver Institute for the Advancement of the American Legal System @: papers.ssm.com/so/3/papers.cfm?abstract_id=1365256; J.K. Elek, D.B. Rottman & B.L. Cutler, "Judicial Performance Evaluation – Steps to Improve Survey Process and Measurement", @: [65-75. Elek_962.pdf](#).

⁴¹ *Ibid.*