

PERFORMANCE EVALUATION STANDARDS: THE USE OF CASE MANAGEMENT IN IMPROVING PERFORMANCE OF JUDICIAL OFFICERS.

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I wish to quickly express my sincere gratitude for the privilege of presenting a paper in this Refresher Course for Judges and Kadis. I want to specially thank the Ag. Chairman, Board of Governors and Chairman Education Committee of the Institute, the Honourable the Ag. Chief Justice of Nigeria, the Honourable Justice I.T. Muhammad, CFR, FNJI, for the honor and privilege to me as a resource person to deliver a paper on the topic on performance evaluation. I also want to thank the indefatigable Administrator of the Institute Hon. Justice R.P.I. Bozimo OFR and Staff of the Institute, for the continuous education programmes of the Institute.

1. CONCEPTUAL CLARIFICATIONS

a) PERFORMANCE – It connotes the carrying out of a task, duty or assignment imposed by law or some established authority within an organization or establishment. It can also be construed as an accomplishment. It is the act of performing; of doing things successfully; using knowledge as distinguished from merely possessing it. Thus, within the context of this paper, it is the successful execution of the task or duty imposed on judicial officers, using their knowledge of the law.

b) EVALUATION – This is a formal determination of the worth, value or merit of an employee on the basis of the criteria that are set for such. It can also denote an assessment or an appraisal. In the context of this paper, it is the assignment of the functionality of a judicial officer towards ascertaining his/her efficiency or otherwise.

c) STANDARD – It is a model to be followed, a degree of quality that is regarded as desirable and necessary for a purpose. Thus, in the context of this paper, it connotes the model or degree of expectation to be met by a judicial officer in the performance of his/her judicial function.

d) CASE MANAGEMENT – A case is a criminal or civil proceeding, action, suit or controversy, while management is the exercise of control over something or an affair. In the context of this paper, case management therefore, connotes the exercise of control over judicial proceedings.

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

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

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

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

2. THE PURPORT AND SIGNIFICANCE OF CASE MANAGEMENT IN IMPROVING PERFORMANCE EVALUATION OF JUDICIAL OFFICERS.

Case management strategies entail the techniques and skills deployed by a judicial officer in the control and handling of the proceeding that are pending before his/her court. The ability of a Judicial Officer to engage in the effective and efficient case management techniques determines substantially the output of such Judge and this serves essentially as a barometer for gauging the performance level of such Judicial Officer. Consequently, a Judge whose case management techniques are below the appreciable standard will most likely be rated low in the quest for performance evaluation.

Court case management refers to the methods the judicial system deploys to move cases through its system efficiently. Individuals, businesses and government agencies file various types of lawsuits and other legal actions daily. Judges must deliver rulings on these matters fairly, in a timely manner, and in accordance with the law. Court Case management also include methods such as computer pre-trial conferences and computer software programmes. The data generated from such computer software may help the judiciary to improve its court case management policy.

A court must supervise the progress of a case from the time a person or organization files a case until its final disposition to judgment settlement, dismissal or withdrawal. Court case management, therefore, allows the court to begin monitoring a case as soon as the necessary documents are filed with the court clerk who ensures that documents conform to court requirement. A clerk may also classify a case by subject matter, assign docket number for tracking and encode the case into the court's computer tracking system.

Case management techniques also include the use of management software which allows the court to monitor the progress of a case. It allows the court to track when a case was filed, what issues in the case may be pending, deadlines, how old the case is and other important information. The software programme may also generate reports with information on the number of cases being dismissed on technicalities, cases settled prior to a judgement, cases going to mediation, or cases withdrawn by parties. This helps the court to make

modification on how it processes a case. It also helps to reduce the court's costs and ensures that Judges render timely decisions, thereby improving the public's confidence in the judicial process.

Judges may also schedule a pretrial conference which provides for effective court case management. During a pretrial conference, the judge meets with the lawyers representing the parties or with the parties themselves if not represented by counsel. Certain issues may be clarified and deadlines are set for completing discovery, filing other documents such as motions or designating the case for mediation. Pre trial conference therefore, provides for good court case management because all the parties are aware of the court's timeframe to get a case resolved. The Judge may also encourage the parties to settle the case before setting a trial date.

The importance of knowledge of case management techniques cannot be over emphasized. Some Judges are industrious, but by insufficient knowledge of case management, they may work very hard, yet have no cases to present to the Performance Evaluation Committee of the National Judicial Council at the time of the assessment. A "hardworking" Judge that opens a lot of case files and has large number of part heard matters and adopts a lot of final written addresses for judgment, forgetting that time is of essence, may not have enough cases to file as return at the end of the quarter. Judicial Officers should, therefore, avoid tardiness and deploy effective management of their cases.

Many judicial officers must manage and control their support staff as experience has shown and frustrating that some of the support staff compromise effective discharge of judicial duties as a result of their lack of training, illiteracy, laziness and inability to learn.

Towards attaining excellence in the use of case management to improve the performance of Judicial Officers, I have identified the following factors as the strategies for attaining the desired goal. These include (a) Maintenance of control over the courtroom, (b) Punctuality and preparation for court, (c) Enforcement of court rules, orders and deadlines, (d) Maintenance of calendar efficiency with a view of making decision and rulings in a prompt and timely manner, (e) Usage of settlement conference and alternative dispute resolution mechanisms as appropriate (f) Demonstration of appropriate innovation in using technology to improve the administration of justice (g) Acting to ensure that disabilities and linguistic and cultural differences do not limit access to the justice system, and (h) Lack of adequate knowledge of the law and procedure.

(a) Maintenance of control over the courtroom: Managerial responsibilities are key to case management. Judges must possess good managerial skills in order to be productive. A judge cannot be effective without the ability to organize, manage and effectively control judicial proceedings. Allowing lawyers and litigants to dictate

the rate at which matters progress should not be imbibed by Judges. A Judge is said to be the master and controller of his court. However, some Judicial Officers are fond of allowing counsel and litigants dictate the pace of a matter pending before them. This is the situation where a Judicial Officer allows a lawyer to take adjournments at will or where he allows a lawyer to take over the course of proceedings. Such allowance will make the possibility of concluding such a case timeously to be slowed down by the antics of counsel. Judges should eschew temptation of falling for the antics of lawyers who are out to frustrate expeditious hearing of cases. He must in fact, have control over his courtroom; he must not have a congested daily docket and the Bar and Public Gallery brimming over. This is because, psychology suggests that crowding can inhibit cognition and performance. Where he has a number of cases for trial, the Judge can adopt the spaced presentation time for cases; cases for trial are fixed for specific hours of the day so that parties and their lawyers come to court shortly before the time of the day fixed for their cases. This is the option I observed being practiced in Singapore when I visited in 2014.

(b) Punctuality and preparation for court: It is a notorious fact that some judicial officers would commence court sitting at the recommended time which is 9 'o' clock in the morning while some are in the habit of commencing sittings as late as 12 noon without any cogent reason. This has in no small way compromised effective performance of the Judicial Officers concerned. It must be noted that promptness includes starting judicial proceeding on time and ending them on time.

(c) Enforcement of court rules, orders and deadlines: There are court rules and constitutional provisions that regulate a Judge in his case management strategies. Many Judges fail to adhere strictly to such stipulations which has the resultant effect of dampening their efficient performance. The rules of court spell out the time limit within which certain steps should be taken and prescribed sanctions for non-compliance. This effort is geared towards enhancing the justice delivery system. The 1999 Constitution, also in section 294 (1) –(6) explicitly prescribe the time within which to deliver judgment after the conclusion of evidence and adoption of final addresses by counsel as well as the time that parties are to be availed with duly authenticated copies of judgment delivered by the court. The Constitution also prescribes the steps to be taken where judgment is delivered outside the period prescribed by the Constitution. It must be emphasized that failure to comply with these provisions amounts to misconduct. It is observed that some Judges are fond of not delivering their decisions within time and they circumvent the situation by recalling counsel to re-adopt his final written address in order to renew the time within which to deliver the decision of the court in the case when it appears to them that they would not meet up with the 90 days prescribed by the constitution. This practice is unconstitutional and it has no place in our jurisprudence. It is, therefore a pure act of misconduct for any Judicial Officer to indulge in such flagrant manipulation of the due process of law.

It must also be noted that Rule 2 (A) of the Code of Conduct for Judicial officers of the Federal Republic of Nigeria, under adjudicative duties at paragraph 7, buttressed the latter part of Section 294 (1) of the Constitution that duly authenticated copies of the judgment must be furnished to all parties to a cause. Section 294 (6) of the constitution (as amended) enjoins such judicial officer who is in default of Section 294 (1) to send a report through his/her presiding Judge to the Chairman of NJC stating why the judicial officer was unable to comply with the provisions of the above section. These are mandatory provisions which the Judges are under the obligation to comply with.

(d) Maintenance of Calendar efficiency with a view of making decisions and rulings in a prompt and timely manner: Productivity is a function of time management that has to do with how well the Judge uses his or her time. Efficient case management strategy will help a Judge assess his or her ability to settle cases, to be prompt in issuing decisions and to function both efficiently and effectively. Promptness in adjudication is essential and is equally important at both the appellate and trial levels. While an appellate Judge may be unable to control completely the promptness with which a case is decided and an opinion filed, a reasonably prompt decision in all cases is important. A trial court Judge is generally in a position to control the disposition of his cases without regard to the schedule of other Judges.

A jurisdiction that is developing evaluation programme for self-improvement can help determine specific time limits for completing specific assignment, where appropriate. Certain time limits of 90 days or 120 days can be set for completing certain tasks. Promptness includes starting judicial proceedings on time and ending them on time. The inability of some Judges to set a time limit for conclusion of cases is a major factor that greatly contributes to failure to perform optimally. Hence, if a Judicial Officer is diligent enough to set target/time limit within which to conclude cases and works towards meeting those target, then, it becomes easier to meet up with the set target.

(e) Usage of settlement conferences and alternatives to dispute resolution mechanisms as appropriate: A veritable aspect of efficient case management is promoting the use of settlement and other alternative dispute resolution mechanisms to resolve legal conflicts: At appropriate stages during pre trial proceedings and before the resolution of the case, and within ethical boundaries, Judges should encourage the parties to reach a settlement. It is also imperative that Judges make the parties to be aware of such options as mediation, arbitration and collaborative law. It is instructive to state here that some states have entrenched the settlement conferences and sometimes, centers, depending on the facts of such cases, in their court rules.

(f) Demonstration of appropriate innovation in using technology to improve the administration of justice: The use of technology in the courtrooms can enhance services and reduce costs for courts, lawyers and litigants. The innovative use of technology, with appropriate security controls, can improve the administration of justice. Examples include providing electronic access to court records, opinions and calendars, allowing electronic filing of court documents and enabling teleconferencing and video conferencing for pre trial proceedings (Lagos state has introduced the admissibility of teleconference evidence in its recently amended High Court Rules 2019) Judges have the responsibility of informing themselves about available technologies, to incorporate their use as appropriate and keep current on new developments

A welldesigned case management system will deliver core functionality that provides meaningful ancillary benefits to the courts, such as more efficient data entry, more effective data retrieval, better tools and enhanced bar and public access.

There are a number of trends and issues affecting courts that create an impetusfor greater use of available technology. As legal practice has become more technologically advanced, pressure mounts on the courts to join the flow of technological progress. A modern computerized case management system (CMS) can help the courts to address a lot of issues. For example, allowing electronic access to the court docket to counsel and the public through the CMS provides observable proof of the court’s technological progress. In addition, a

modern case management system provides the foundation for an e-filing system and can assist the court in meeting current demands for information by making access to case and court data more effective and efficient.

Different courts approach the same core work in different ways or using different ways of using different labels. Courts change their internal process and procedural rules over time and cases inevitably arise that necessitate deviation from the established processes. A modern court case management system will be able to easily adapt to court's needs to provide a system that is userfriendly and sustainable.

(g) Ensuring that disabilities and linguistic and cultural differences do not limit access to the justice system: Towards preserving the public trust and confidence in the judiciary, Judges should be vigilant in ensuring that disabilities and linguistic and cultural differences do not limit access to the courts. Judges should also take advantage of the steps available to them to promote meaningful diversification of the judicial branch.

(h) Lack of adequate knowledge of law and procedure: Judges have a duty to know and understand the law towards enhancing their case management skills. Judges must be knowledgeable in many areas of the law, procedure and evidence. Such knowledge requires that a Judge devote time to the study of recent legal developments, attend

judicial education programmes and continue the process of a Judge's self-education. Judges need constructive comment with respect to how others view their understanding and knowledge of the Law. A judicial valuation programme will assist the Judge in assessing his or her knowledge of the law and where appropriate, permit the Judge to devote further time to self-improvement with respect to the knowledge.

Good Judges must be able to decide cases on the basis of the applicable law and facts without favour or disfavor and without recourse to the identity of the parties or their counsel. They should also be willing to rule without regard to the popularity of their rulings and without concern for or fear of criticism.

All Judges must have good communicative skills. Judges must be able to communicate effectively, such that what is expressed either verbally or in writing is understood. The law of a case whether presented in written or spoken form, should be clear and concise, otherwise, it will remain ambiguous. Judges should also recognize the potential negative impact of verbal and non verbal communications such as tone of voice, facial expression, eye contact, hand motions and posture. These mannerisms can create appropriate or inappropriate atmosphere in a judicial proceeding.

Consequently, Judges should seek opportunities for and participate in professional development. These can take the forms of continuing

legal education or judicial education. The improvement and effective administration of the courts require judges to participate and provide leadership for an appreciable degree at both local and international levels.

A Judge who does not have an adequate knowledge of the law may assume jurisdiction on a matter where he has none. Thus, where a law stipulates what constitutes jurisdiction of the court and the court does not have such, but the judge proceeds to assume jurisdiction, it amounts to flagrant disobedience of the law and the consequence may be fatal to the judicial officer in question. A Judicial Officer who is bereft of the knowledge of the law has no business remaining on the Bench. Judges have been removed or suspended in time past on this ground.

It suffices to state that lack of Knowledge comes to fore when a judicial officer discharges his duties without taking the judicial precedents into account. This would amount to what is referred to as “judicial rascality”. Judges should be guided by the provisions of Item 4 (1) (a) of Rule 4 of the 2014 Revised NJC Guidelines and Procedural Rules for the Appointment of Judicial Officers of all Superior Courts of Record in Nigeria, which prescribe the factors to be considered in appointing a Judicial Officer to include *inter alia*, good character, reputation, diligence, hard work, honesty, integrity, sound knowledge of law, and consistent adherence to professional ethics.

Sequel to the foregoing, it is instructive to state that where a Judge acts intentionally to defy the provisions of the constitution or judicial precedent, the consequence is grave. Hence, to avoid falling into the trap of lack of knowledge of the law and procedure, a judicial officer must possess the capacity to conduct extensive research from legal and inter disciplinary perspectives. Judicial Officers are expected to follow judicial precedents laid down by the higher courts and consider them strictly in arriving at the decisions except in few cases where the judge may be able to distinguish, based on the peculiar facts of the case. Efficient case management skill without a sound knowledge of law and procedure is therefore not attainable.

Judicial specialization

While most Judges are generalists, I humbly suggest that in jurisdictions with a wide array of cases interrogating daily concerns, judicial specialization would put the Judge on top of the game, particularly with respect to knowledge of the law and procedure. Knowledge of the law and procedure arising from specialization will reduce the number adjournments in the trial of a case.

3. THE INSTITUTIONAL FRAMEWORK FOR THE IMPLEMENTATION OF PERFORMANCE EVALUATION STANDARDS.

The National Judicial Council is vested with the powers to recommend the appointment of judicial officers throughout the country, collect and disburse budgetary provisions for the judiciary

and judicial bodies as mandated by the constitution, pay the salaries and allowances of judicial officers and judicial staff, as well as the power to discipline erring officers. However, the primary objective of establishing the NJC is to ensure that Judicial Officers discharge their functions independently and to ensure that in doing so, they are insulated from interference from other arms of government. Hence the NJC needs to ensure that the judicial officers perform optimally.

In order to achieve the above important goals of ensuring optimal performance of judicial officers, the NJC set up the Performance Evaluation Committee of Judicial Officers in 2003 after due consideration of the Hon justice kayoed Eso's Committee's recommendation, to monitor the performance of all Judicial Officers in the country. This was done pursuant to the wide powers of the NJC as enshrined in Item 21 of part 1 of the Third Schedule to the 1999 Constitution.

The mandates of the Committee include evaluating, assessing, monitoring and supervising the performance and general conduct of judicial officers in the discharge of their judicial functions and administration of justice. It suffices to state that the evaluation report of a judicial officer determines which Judicial Officer deserves to be commended or recommended for elevation to higher Benches when the need arises. The Committee also recommends to the Council on regular basis, measures to be taken against low or non performing Judicial Officer.

Essentially, the Committee ensures that Judicial Officers are upright in the discharge of their responsibilities by doing their best competently, diligently and in accordance with their oath of office. Judicial Officers are to discharge their duties without delay or crassdemonstration of lack of knowledge.

The Committee does not tolerate, repeated acts of non-performance flowing from indolence, non chalant attitude or impunity under any guise. Such impunity may arise where the Judicial Officer recklessly makes a false submission of quarterly performance returns to his or her subordinate without perusing same before signing for submission to the appropriate Head of Court for onward transmission to the Committee.

The Committee has greatly ensured that Judicial Officers are not lazy, idle, indolent, recklessor incompetent and that has tremendously improved the standard of performance of Judicial Officers. The Committee has also produced a set of forms designed to objectively assess and score Judicial Officersdescribedas Performance Evaluation Assessment Form of Superior Courts of Record. The columns are required to be conscientiously and fairly completed in making returns as expected of judicial officers.

Sequel to the foregoing, a Judge is expected to have developed his case management acumen and be in tune with the realities of the dictates of his or her judicial office.

4. CONCLUSION AND RECOMMENDATIONS

There is no doubt about the fact that the purpose of the use of performance evaluation standards in the appraisal of Judicial Officers is geared towards attaining optimal performance level from the Judges. It has also been revealed in this paper that the initiative is also premised on discouragement of laziness, recklessness, indolence and abdication of duties from the Judicial Officers, since anyone found wanting will be meted with applicable sanction as stipulated by the enabling law.

This paper has also beamed a search light onto the incidence of the use of case management strategies towards enhancing optimal performance of modern court case management system which is in vogue in the United States of America vis-a-vis its technological advancement. There is no gainsaying the fact, therefore, that efficient case management system plays a major role in enhancing the performance standard of a Judicial Officer. Consequently, I hereby proffer the following recommendations.

- 1. Judges should be made to undergo advanced technology driven courses where they would be introduced to the use of modern hi-tech gadgets that**

will enable them to embrace the modern court case management system.

- 2. Judges are to adhere strictly to the provisions of the rules, regulations and the constitution in the discharge of their judicial functions. This will enhance their case management skill, especially in the aspect of promptness and time management.**
- 3. There should be heavier recourse to alternative dispute resolution mechanism towards decongesting the overburdened cause lists.**

There is so much to say in this paper, but I will like to stop so far, for discussions and contributions. Thank you all for your kind attention and wish us all fruitful deliberation.

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