

JUDICIAL PERFORMANCE EVALUATION: A CIVIL SOCIETY APPRAISAL OF THE ADEQUACY OF CURRENT PROCEDURES

BEING THE TEXT OF AN ADDRESS PRESENTED BY ADESINA OGUNLANA ESQ., PUBLISHER, THE *SQUIB* MAGAZINE AT THE JUDICIAL REFORMS CONFERENCE IN THE FEDERAL CAPITAL TERRITORY ABUJA ON TUESDAY 8TH JULY, 2014

I beg the leave of the organizers to rework the topic to read:

‘Is the evaluation of the performance of judicial officers in Nigeria good enough?’

This reformulation and the original cast assume two positions *ab initio*:

1. Judges’ performance should be evaluated
2. Judges’ performance are already being evaluated

The question remains; is the evaluation good enough?

To answer the question then, it is necessary to examine the current procedures used for the evaluation;

I submit that we have two evaluation procedures; the formal and the informal.

The formal procedure is facilitated and conducted by the National Judicial Council – the dread Abuja god of many judges in Nigeria. Forms with various indices to assess the performance of judges are sent back to the NJC as “Returns.”

The informal procedure is the one conducted with the aid of invisible gadgets and equipment of opinions, rumours, gossip, etc. by the members of the public, particularly the litigating sector and gentlemen of the society of the Bar.

On what parameters should the performance of a judge be evaluated?

In my humble view, this question cannot be answered unless we first consider what merits and qualities a judicial officer should possess. These virtues may be legion but the foremost four again in my humble view, are (i) INTEGRITY (ii) COMPETENCE [knowledge and ability] (iii) COMPORTMENT and (iv) INDUSTRY.

I have had the privilege of receiving from the organizers of this Conference the Performance Evaluation templates of the forms of the National Judicial Service Commission to the High Courts (State and Federal) and the Court of Appeal.

The indices of evaluation of these forms appear to focus appraisal wise, only on the “work rate” of these judicial officers such as, ‘date of filing, date of assignment, date of commencement of hearing, date of judgement and duration, etc.’

It is a situation of *how many cases were you able to start and finish within a given period*. It would appear then that that the more work or the ‘proof’ of the more work the judex is able to furnish, then the more productive a judicial officer he is deemed.

This is a serious error or inadequacy of evaluation.

Firstly, the procedure is incapable of evaluating the three other necessary aspects of the judicial officer to wit: INTEGRITY, COMPORTMENT AND KNOWLEDGEABILITY.

Secondly, the procedure is very open to manipulation and artifice. In my preparation for this presentation, I was most reliably informed by a former judiciary administrator - a Chief Judge, that what the judges send back to the NJC as ‘returns’ to wit the completed forms is never their own handiwork but those of their secretaries and registrars. “Most of the judges don’t even know how to fill the forms!” was the Chief Judge’s shocking revelation.

Thirdly, the appraisal procedure as presently constituted has pushed many incompetent judges, especially in busy judiciaries like that of Lagos State to frog march the pace of adjudication, short circuiting justice inevitably on the altar of speed and expediency all in a bid to satisfy the NJC via the returns.

What such judges do is to prevent court room arguments, advocacy, etc., as much as possible and force settlement down the throats of litigants all again in a bid to see the end of a case at the soonest time and impress/deceive the NJC that the judge in question is industrious and productive.

Fourthly, on account of the vastness of the details required in the Performance Evaluation forms and its quantum, not a few judges have been driven to distraction. Some now take as much as two days off the working week, quitting adjudication to devote time to “fill NJC forms and send returns.” At least in Lagos state my base, judges have been known to make such declarations in open court on occasion.

The current appraisal procedures have been on for some years now, certainly no less than five years, but one is yet to notice any positive impact it has had on the quality of the work of our judges. Life is pretty much the same today as it was yesterday!

In consequence of the above assessment of the extant judicial performance evaluation procedure, it becomes necessary to advocate for a change, not only in methods but also in vision.

May I respectfully at this juncture bring to the attention of dear colleagues and seniors, that there is a fundamental challenge to achieving adequate and proper appraisal of the performance of our judicial officers.

This challenge is the very incongruous existence of the National Judicial Council itself. With great respect I say even though the National Judicial Council is a creation of the Constitution, it cannot have a valid existence in a truly Federal Republic that Nigeria by the same Constitution purports to be.

An examination of the placement of the National Judicial Council in the Constitution, courtesy of **Section 153 of the 1999 Constitution** as amended locates it very interestingly in **Part 1 of Chapter VI** of the Constitution, exclusively reserved ordinarily for the FEDERAL EXECUTIVE.

And when you go to **Section 20 (c and d)** of the **Third Schedule** of the Constitution you will sooner than later come to the realization that there is no State Judiciary in Nigeria.

What we in fact have is “Judiciary for the States” and not “Judiciary of the States.” This is because the appointment and discipline of judges of the State Judiciaries do not lie in the Judicial Service Commission of the states but in the aberrant and anomalous National Judicial Council.

As the situation lies, how can one seriously then expect such an un-federal centrality like the NJC with its extremely limited personnel to properly cope with the appraisal of the performance of the judges of the State High Courts, the Federal High Courts, the Court of Appeal and Customary Court of Appeal?

A modest estimate of the number of all judges will be in the region of 1,200-1,500! I think the problem is apparent now. To all intents, the present appraisal of judges’ performance may be nothing more than the quixotic and the Sisyphean.

Thus the first solution may be to dig a big constitutional grave for the National Judicial Council and to bury it. There may not be any meaningful federalism in the country until the judiciaries for the states become the judiciaries of the states.

In the meanwhile, the Judicial Service Commission for each of the states should be entrusted with the task of conducting appraisal procedures of the performance of judicial officers. Even the busiest judiciary in the Federation which is Lagos, will be better monitored, because the monitoring scope of the Monitors will be much less – just 55 judges, thereabouts.

Secondly, a Judicial Inspectorate Division should be created. The J.I.D should include elements of integrity outside of the legal community and discreet surveillance of judges’ performance, devoid of witch-hunting should be employed.

Thirdly, ingenious and creative appraisal formats should be designed by the monitors that will effectively evaluate the key characterization of good judges, beyond mere industry.

For example, the monitoring format of the **Attendance and Punctuality to Work of Judges** of the Lagos Based *Squib* Magazine can be copied and improved upon.

Also the famous but unused prescription of the late Honourable Justice Kayode Eso, formerly of the Supreme Court to wit, **Integrity Test By Reputation** (ITR) for judges and magistrates should be used.

Kayode Eso's ITR goes thus:

“Where a Judge has a persistent reputation for corruption, such a Judge should be sacked.”

Finally I respectfully suggest that judges should be subjected to **Periodic 7-year Eligibility Test** by members of the Bar on their continued suitability on the Bench. Any judge or magistrate who attracts less than 50% of the votes cast by eligible persons should be relieved of his judicial post, but not prevented from taking up work ordinarily open to other members of the Bar.

I thank you all for your kind patience.

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