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ETHICS IN THE JUDICIARY

INTRODUCTION

You shall appoint judges and officers in all your towns which the Lord your God gives you, according to your tribes, and they shall judge the people with righteous judgment.

You shall not misinterpret or misapply judgment; you shall not be partial, or take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous.

Follow what is altogether just (uncompromisingly righteous), that you may live and inherit the land which your God gives you.

- Deuteronomy 16: 18-20 ¹

The relevance of the judiciary can be traced back to the Biblical era, when the Israelites were commanded to appoint judges to adjudicate in their matters, pursuant to the Mosaic Law, saying, “You shall appoint judges and officers in all your towns which the Lord your God gives you, according to your tribes, and they shall judge the people with righteous judgment”.² It has been argued that the sole purpose of law is to legislate morality,³ for at a time when there was no one to judge the children of Israel, they did evil in the sight of the

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¹ The Amplified Version.
² Deuteronomy 16:18, the Amplified Version.
³ RC Sproul, “The Basis of Ethics”, http://www.ligonier.org/learn/devotionals/basis-ethics/ accessed 6 October 2015; this of course does not oppose the theory that the law and morals are separate.
Lord and served Baal.\textsuperscript{4} The absence of adjudicators led to chaos, as the people did what was right in their own eyes.\textsuperscript{5}

The judiciary is an integral arm of the government in any society, whether primitive or modern. Over the decades, the tests of coups and counter-coups around the world have proven that arm to be an indispensable tool in governance. Experience has it that while a junta may choose to suspend the legislative arm of the government as well as alter the arrangement of the executive, it is doubtful that the suspension of the judiciary has ever been heard of.

Various legal scholars have come up with aphorisms to portray the judiciary as, “the most critical leg of the tripod on which democracy rests”, “the last hope of the common man”, “the temple of justice, with the judge as the high priest”, “the institution vested with the power to play god”, and, “the sentinel of justice”; to mention but a few.\textsuperscript{6} Being of a solemn disposition,\textsuperscript{7} the sensitive nature of the judiciary’s functions makes it the only arm of government which is career based as against other arms of government which are purely political.

The role of the judiciary in governance is not only critical but underscores the centrality of law in a polity. For one, sustainable economic growth and human development can only be effectuated in an environment founded upon reasonable laws, totally devoid of arbitrariness.

\textsuperscript{4} Judges 2:11, the Amplified Version.
\textsuperscript{5} Judges 21:25, the Amplified Version.
\textsuperscript{7} “Finding the Right Balance in Judicial Reforms: The Duty Not to Impair the Judicial Oath” being a paper presented by Dr. F. Ajogwu at the Annual Conference of Judges of the Federal High Court, at Rockview Hotel, Owerri, September 16-18, 2014.
Section 6 (1)-(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) vests judicial power in the courts established for the Federation.\(^8\)

Consequently, the functions of the courts include interpretation of the law and ensuring that the affairs of State are conducted in accordance with the law. The judiciary serves as a counterpoise to executive malfeasance. Above every other consideration, the judiciary provides a veritable platform for the espousal of constitutionally guaranteed rights.

WHAT IS ETHICS?

Derived from the Latin word, ‘ethicus’, and the Greek word ‘ethikos’, ethics is a set of moral principles, particularly those relating to or affirming a specified group, field or form of conduct.\(^9\) In the words of RC Solomon, ethics has been described as,

... the quest for a life worth living: putting every activity and goal in its place, knowing what is worth doing and what is not worth doing. It is also, within business itself, keeping in mind what is ultimately important and essential and what is not, what serves our overall career goals and what does not, what is part of business and what is forbidden to business, even when increased profit – the most obvious measure of business success – is at stake.\(^{10}\)

In relation to the judiciary, it can be best defined as the set of moral principles or standard required of judicial officers.

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\(^8\) Ibid.
While it is conceded that the definition of ethics is descriptive in nature, it must also be added that it is not faultless. Defining ethics as a set of ‘moral principles’, seems to render the whole idea lacking in any force of law, as law is separate from morals. However, considering the fact that certain ethical requirements have become codified, it could therefore be better defined as ‘a set of moral and/or legal principles’.

The Black’s Law Dictionary\(^\text{11}\) has no definition for the word ‘ethics’. Rather, it defines ‘legal ethics’ as,

> Standards of professional conduct applicable to members of the legal profession; ...a lawyer’s practical observance of or conformity to established standards of professional conduct... “in one sense, the term ‘legal ethics’ refers narrowly to the system of professional regulations governing the conduct of lawyers. In a broader sense, however, legal ethics is simply a special case of ethics in general, as ethics is understood in the central traditions of philosophy and religion. From this broader perspective, legal ethics cuts more deeply than legal regulation; it concerns the fundamentals of our moral lives as lawyers.”


ETHICS IN THE JUDICIARY / CODE OF CONDUCT FOR JUDICIAL OFFICERS\(^\text{12}\)

In Nigeria, the Rules of Professional Conduct for Legal Practitioners 2007 (“the Rules”) regulate the conduct of legal practitioners and ensure that legal practitioners conform to the ethical standards in the profession. The Rules stipulate, amongst other things, that it is the general responsibility of a lawyer to uphold and observe the rule of law, promote and foster

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\(^{11}\) Bryan A. Garner ed., Black’s Law Dictionary, (9\text{th} edn.) (Boston, West, 2009) 976

the course of justice, maintain a high standard of professional conduct, and not engage in any conduct which is unbecoming of a legal practitioner. In the same vein, the *Code of Conduct for Judicial Officers* stipulates the ethical standards expected of a judicial officer.

In modern society, the ethical challenges judicial officers are exposed to seem to have rather increased than decreased. Significant efforts have been made, starting with the adoption of the *Code of Conduct for Judicial Officers* (“the Code”) in 2000 under the leadership of the Honourable Chief Justice of Nigeria, M.L. Uwais, (as he then was) and the subsequent actions taken by both the National Judicial Commission (NJC) and the State Judicial Service Commissions, to ensure compliance by judicial officers. The promulgated *Code of Conduct for Judicial Officers* serves to provide a minimum guide as to the conduct of judicial officers and to ensure sound ethical and professional standards in the discharge of their functions.

The *Code* requires judicial officers to avoid impropriety and exhibit proper decorum in all their activities; to respect and comply with the laws of the land and to conduct themselves at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary. Judicial officers are also expected to avoid social relationships that are improper or which give rise to the appearance of impropriety, cast doubt in the judicial officer’s ability to decide cases impartially, or bring disrepute to the judiciary.

The necessity to identify standards of conduct appropriate to the judicial office has been explained by a judge in the following terms:

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14 Rule 1 of the Code of Conduct for Judicial Officers.
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 interests if itself and the community? As this is a fundamental question, it is necessary to make some elementary observations. We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the 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 standards 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.\(^\text{15}\)

**Conduct On and Off Duty**

Rule 1 of the *Code* requires a judicial officer to be compliant with extant laws and to always act in ways that would encourage the confidence of the public in the integrity and impartiality of the judiciary. This is very essential because it is only when there is faith in the judiciary that parties will resort to bringing their matters for the determination of the court. Where however the confidence of the public gets totally eroded as is unfortunately becoming the case, the entire legal profession comprising the Bar and the Bench will be in jeopardy. In giving effect to this, the rule further provides that the judicial officer must be circumspect in his social relationships and is prohibited from membership of societies or organizations that

\(^{15}\text{Mr Justice Thomas, *Judicial Ethics in Australia* (2nd ed) (Law Book Company, 1997) 9.}\)
practice invidious discrimination on the basis of race, sex, religion or ethnic origin or whose aims and objectives are incompatible with the functions or dignity of his office.

- **Conduct On Duty**

The conduct of a judicial officer in the course of the execution of his statutory duties does not only typify the person in question, but goes further to depict the institution in its entirety. In the performance of his functions, he must not only display absolute faithfulness to the constitution and the law, but must acquire and exercise competence at all times. A judicial officer is also required to maintain order and decorum in the court as well as exercise courtesy in dealing with all those interfacing with him, in the discharge of his duties. He must also be devoted to his duties to ensure an optimal disposal of all cases before him.\(^{16}\)

In the performance of his administrative duties as a judicial officer, he is required to maintain professional competence and should demand same of his staff. He is obligated to report all forms of unethical and unprofessional conducts, and avoid nepotism and favoritism. He must refrain from engaging in sexual harassment and shall not be a member of a tenders' board or engage in the award of contracts.\(^{17}\)

A judicial officer should disqualify himself from any matter before him where there is any likelihood of a conflict of interest. The purport of this is to give effect to one of the twin pillars of natural justice – *nemo judex in causa sua*.

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\(^{16}\) Rule 2 (A) of the Code of Conduct for Judicial Officers.

\(^{17}\) Rule 2 (B) of the Code of Conduct for Judicial Officers.
• **Conduct Off Duty**

The life of a judicial officer could be likened to that of a monk in the monastery. His conduct is regulated both within and outside the courtroom. He is required to modulate his extra-judicial activities in order to minimize the risk of conflict with his judicial duties. Though permitted to participate in avocational, civil and charitable activities, Rule 3 of the *Code* states that it must be such that will not reflect adversely on the performance of his functions.

*The Code* further guarantees the constitutional rights of a judicial officer to freedom of expression and association, albeit with a caution that same must be exercised in such a manner as to preserve the dignity of his office and the impartiality and independence of the judiciary.\(^\text{18}\) In addition, he is absolutely forbidden from taking or accepting any Chieftaincy title while in office.\(^\text{19}\) Fiduciary responsibilities should not be taken up by the judge except as it relates to members of his family and such service must not interfere with the proper performance of his judicial duties.\(^\text{20}\) A judicial officer, though allowed to own investments which do not subject his office to conflict, is precluded from serving as an employee or in any managerial office.\(^\text{21}\)

To guard against bribery and scandals, judicial officers and members of their families are also prohibited from asking for or accepting any gift, bequest, favor, or loan on account of anything done or omitted to be done by him in the discharge of his duties.\(^\text{22}\) Finally the *Code* prohibits a judicial officer from practicing law or acting as an arbitrator while still serving as

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\(^{18}\) Rule 3 (B) of the Code of Conduct for Judicial Officers.

\(^{19}\) Rule 3 (C) of the Code of Conduct for Judicial Officers.

\(^{20}\) Rule 3 (D) of the Code of Conduct for Judicial Officers.

\(^{21}\) Rule 3 (E) of the Code of Conduct for Judicial Officers.

\(^{22}\) Rule 3 (F) of the Code of Conduct for Judicial Officers.
a judge.\textsuperscript{23} The rationale for this seems very clear as providing otherwise would have opened wide the door for conflicts of interests in the exercise of his duties.

The idea of judicial ethics is not only a municipal issue; on the international scene, same is also emphasized. Thus the Code of Ethics for the International Criminal Court of Justice (ICC) was adopted to guide the activities of the judges of the court. The Code of Ethics emphasizes the independence of the judiciary as well as impartiality, integrity, confidentiality and diligence of the judges. In the course of the conduct of proceedings, judges are required to maintain order and decorum while ensuring best practices in the courts. While Judges of the ICC are not excluded from the enjoyment of the right to freedom of expression and association, they are equally to refrain from commenting on pending matters before the court. Their extra judicial activities must not be incompatible with their judicial functions. They are also prohibited from exercising any political functions.

Unlike the Nigerian code, the Code of Ethics for the ICC expressly states the Code to be advisory in nature and that nothing in the code is intended to restrict or limit the judicial independence of the judges.

**PRINCIPLES OF JUDICIAL ETHICS**

While speaking at an induction course organised by the National Judicial Institute (NJI), for newly appointed judges, Justice Mahmud Mohammed, Chief Justice of Nigeria outlined the

\textsuperscript{23} Rule 3(G) of the Code of Conduct for Judicial Officers.
core principles which all judges must possess to enable them dispense justice without fear or favour. Particular emphasis was placed on the strict observance of judicial ethics and code of conduct for judicial officers.

According to the Chief Justice of Nigeria and indeed, other legal scholars, the qualities and core values of a good and eminent Judicial Officer include:

i. **Independence:** In this context, independence means being free of any loyalties, duties or interests that might inappropriately influence the performance of a judicial officer’s functions. Judicial independence is not a privilege but a right to every court user in Nigeria that his cases are dealt with by a court whose independence is guaranteed in qualification, nature and character. Independence is therefore a core quality of an astute and eminent judicial officer.

Judicial independence is not a privilege or prerogative of judicial office, rather, it is the responsibility imposed on each judge to enable him or her to adjudicate a dispute honestly on the basis of the law and the evidence. It is important that the judge reaches his decisions without external pressure or influence and without fear of interference from anyone. The core principle of judicial independence is the complete liberty of the judge to hear and decide the cases that come before the court. No outsider - be it government, pressure group, individual or even another judge - should interfere, or attempt to interfere, with the way in which a judge conducts his or her case and makes his decision.

Judicial independence refers to both the individual and the institutional independence required for decision-making. Judicial independence is therefore, both a state of mind
and a set of institutional and operational arrangements. The former is concerned with the judge’s independence in fact while the latter is concerned with defining the relationships between the judiciary and others, particularly the other branches of government, so as to assure both the reality and the appearance of independence. The relationship between these two aspects of judicial independence is that an individual judge may possess an independent state of mind, but if the court over which he presides is not independent of the other branches of government in what is essential to its functions, the judge cannot be said to be independent.

ii. **Impartiality**: Another important principle of a good and eminent judicial officer is impartiality, which is closely aligned to independence. It lies at the heart of judicial function and it is reflected in the oath of office. All litigants must be treated equally without regard to wealth, influence, circumstances of birth or any other factor whatsoever. Impartiality guarantees the existence of rule of law. If a judicial officer compromises his functions so as to carry favour from the rich and powerful, or in order to receive positive media coverage, he would cease to be impartial and would certainly undermine and truncate the rule of law.

The Bible in Deuteronomy 16: 18-20 commands judges to be upright and impartial in their judgments:

> You shall appoint judges and officers in all your towns which the Lord your God gives you, according to your tribes, and they shall judge the people with righteous judgment.

> You shall not misinterpret or misapply judgment; you shall not be partial, or take a bribe, for a bribe blinds the eyes of the wise and perverts the words of the righteous.
Follow what is altogether just (uncompromisingly righteous), that you may live and inherit the land which your God gives you.24

Impartiality must exist both as a matter of fact and as a matter of reasonable perception. Where partiality is reasonably apparent, that perception is likely to leave a sense of injustice having been done in a case, thereby destroying confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable man. The test usually adopted is whether a reasonable observer, viewing the matter realistically and practically, would apprehend a lack of impartiality in the judge. The perception that a judge is partial may arise in a number of ways, for instance, by a perceived conflict of interest, by the judge’s behaviour on the bench, or by the judge’s out-of-court associations and activities.

The European Court of Human Rights has explained that there are two aspects to the requirement of impartiality. First, the Court or tribunal must be subjectively impartial, i.e. no member of the tribunal should hold any personal prejudice or bias. Secondly, the Court or tribunal must also be impartial from an objective viewpoint, i.e. it must offer sufficient guarantees to exclude any legitimate doubt in this respect. Under this test, it must be determined whether, irrespective of the judge’s personal conduct, there are ascertainable facts which may raise doubts as to his impartiality. What is at stake is the confidence which the courts in a democratic society must inspire in the public, including an accused person.25 Accordingly, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw.

24 The Amplified Version.
iii. **Integrity:** Confidence in the judiciary is founded not only on the competence and diligence of its members, but also on their integrity and moral uprightness. A judge must not only be an “upright judge”, but must also be an “upright person”. From the public’s perspective, a judge has not only pledged to serve the ideals of justice and truth on which the rule of law and the foundations of democracy are built, but has also promised to embody them. Accordingly, the personal qualities, conduct and image that a judge projects affects those of the judicial system as a whole and, therefore, the confidence that the public places in it. The public demands from the judge, exemplary conduct which is far above what is demanded of their fellow citizens, standards of conduct much higher than those of society as a whole. This conduct is virtually irreproachable. It is as if the judicial function, which is to judge others, has imposed a requirement that the judge remain beyond the judgment of others.26

iv. **Propriety:** Propriety and the appearance of propriety, both professional and personal, are essential elements of a judge’s life. What matters more is not what a judge does or does not do, but what others think the judge has done or might do. For example, a judge who speaks at length with a litigant in a pending case will appear to be giving that party an advantage, even if in fact the conversation is unrelated to the case. As the public expects a high standard of conduct on the part of a judge, he or she must, when in doubt about engaging in an activity, attending an event or receiving a gift, ask the question, “How will this be perceived by members of the public?”.

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Judges are the subject of constant scrutiny, and as such, must live their lives with that consciousness. This applies to both the professional and the personal conduct of a judge. The legality of a judge’s conduct is not the measure of its propriety. 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.

Social contact between members of the judiciary and members of the legal profession is a long-standing tradition. Judges live in the real world and cannot be expected to sever all ties with it upon their assumption of office. Furthermore, it would not be entirely beneficial to the judicial process for judges to isolate themselves from the rest of society, including 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 at such functions may reduce tensions between the Bench and Bar; alleviate some of the isolation from former colleagues that a judge experiences upon elevation to the Bench and provide the opportunity for the judges to mentor young lawyers. These, the judge must however do in moderation.

The judge is the ultimate arbiter of whether he has an excessively close or personal relationship with a lawyer, or has created that appearance; where that line is to be drawn is a decision that the judge will have to make. The test is whether the social relationship interferes with the discharge of judicial responsibilities, and whether a

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disinterested observer, fully informed of the nature of the social relationship, is likely to entertain significant doubt that justice would be done.

v. **Patience:** Patience is a virtue. It is an important attribute of a sound judicial officer. A judicial officer needs to be patient on the Bench. This would not however, be an easy task, particularly when listening to implausible evidence or to dubious submissions presented in a case. Natural justice requires that the parties be given fair opportunity to present their cases before a decision is made. Even in situations where a litigant is not represented by counsel, a judge should be patient enough not to be put off by the inability or unwillingness of the litigant to comply with normal court processes and judicial directions.

In exercising patience however, the judge must not make himself subject to the delay tactics employed by counsel in a matter. Where the judge notices that a litigant is delaying the course of justice, he has the duty to see to it that justice is dispensed with speed.

vi. **Humility:** That a judge sits high above others to dispense justice should not give him cause to be proud. Where a judicial officer is assisted by counsel in the course of trial, it is appropriate to acknowledge this at that time or at the end of the trial. Likewise, where a judge has a misconception as to the facts of a case, it is not inappropriate to acknowledge the error and to thank the party that clarified the position. Such respect and cooperation strengthens the relationship between the Bar and the Bench and instills a sense of confidence in the humanity and integrity of the judiciary in the eyes of court users. A judge, while taking authority and exercising control over his courtroom, is not expected to lord himself over others.
vii. **Courtesy:** This is a necessary human quality which is also an important attribute for a judicial officer. The most respected judges today are the ones who are erudite yet approachable. Just as everyone has the right to dignity of his person under the Constitution, everyone who comes before the Court is entitled to be treated with courtesy and respect. The fact that an accused person has been charged with a heinous crime does not preclude him from being treated with respect, as even this would be against the presumption of innocence as guaranteed by the Constitution. Judicial Courtesy bolsters the authority of the Court, and earns the respect of the society it serves.

**CONCLUSION**

The importance of ethics in the judiciary cannot be over emphasized as judges are integral to the workings of the law, and the Rule of Law itself is founded on principles of justice, fairness and equity. Accordingly, if judges do not adhere to and promote ethical principles, the law will fall into disrepute; litigants would become disillusioned and there would be no legitimate hope for the common man. The issue of ethics must not only be reflective in the law books, but also in the actions and inactions of the subjects.

It has often been said that a profession's most valuable asset is its collective reputation and the confidence which that inspires. Consequently, judges as the patriarchs of the legal profession must earn and maintain the confidence of the community.
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