

REVIEW OF THE JUDICIAL CODE OF CONDUCT AND INFRACTIONS



❖ 1. INTRODUCTION

Public confidence in the judiciary can only be maintained where the judiciary is independent and impartial.

Needless to say public confidence in the judiciary is essential to the judicial process.¹ Public confidence in the judiciary can only be maintained where the judiciary is independent and impartial.² The independence of the judiciary must manifest not only in the autonomy of the judiciary as an institution but also in the individual behaviour of judicial officers.³ Judicial officers are first and foremost human beings harbouring all inherent vulnerabilities as such and susceptible to the (corrupting) influence of the society or environment in which they live. Hence, the imperative to ensure a rule-based behaviour for judicial officers. Such that would guarantee the enjoyment of their human rights, allow them maximum access to interact with their social environment while ensuring that such interactions do not compromise the independence and impartiality of the judiciary, which are the cornerstone of democracy and rule of law. However, despite the subsistence of the Code of Conduct for Judicial Officers which regulates the behaviour of judges in Nigeria, compromised and unethical judicial behaviour remains a cause of concern.⁴ This paper reviews the Code of Conduct for Judicial Officers in Nigeria with the view to highlighting infractions thereof, suggesting an implementation plan and communication strategy, and proffering measures to enhance transparency and accountability of judicial behaviour.

❖ 2. LEGAL FRAMEWORK REGULATING JUDICIAL BEHAVIOUR IN NIGERIA

Some of the major legal frameworks that regulate judicial behaviour in Nigeria include, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) (“the Constitution”), the National Judicial Policy, and the Code of Conduct for Judicial Officers.

❖ 2.1. CONSTITUTION

The Constitution is the grund norm and the highest law in Nigeria upon which all other laws and policies derive their validity.⁵ The Constitution does not only create the instituting of the judiciary as the Third Arm of Government but also seeks to regulate judicial behaviour by establishing the National Judicial Council (NJC) with the power to appoint and discipline judicial officers upon recommendation by the Federal Judicial Service Commission (FJSC), Federal Capital Territory Judicial Service Committee, and State Judicial Service Commission in respect of judicial officers serving in the courts of the Federation, Federal Capital Territory, Abuja, and state courts respectively.⁶ Judicial officers are bound to uphold the Constitution.⁷

❖ 2.2. NATIONAL JUDICIAL POLICY

The National Judicial Policy was formulated by the NJC. It subsumes the provisions of the National Judicial Policy earlier formulated by the National Judicial Institute in 2013 pursuant to Section 3(2)(e) of the National Judicial Institute Act.⁸ Its “objective is to promote and ensure the highest possible standard of qualitative justice delivery.”⁹ It lays down the general and implementation framework in respect of various aspects of the judicial process, including judicial behaviour. In providing general guidance on the Revised Judicial Code of Conduct do Judicial Officers, the National Judicial Policy provides that the Code will contain the following, *inter alia*,

- ❖ A clear distinction between provisions that are merely exhortatory and those that are intended to attract disciplinary sanction when infringed shall be clearly specified wherever possible;¹⁰
- ❖ Mechanism for monitoring compliance with the Code of Conduct to the end of which the National Judicial Council will require each Head of Court to devise and periodically report appropriate compliance mechanism to the Council.
- ❖ Provision for proactive regulatory enforcement of standards and targets in the Code of Conduct; to the end of which National Judicial Council shall design reporting requirements that each Judge would agree and need to comply with periodically.
- ❖ Provisions relating to the responsibility of Judicial Officers so as to avoid inordinate and excessive length of proceedings causing delay in justice delivery; to this end. the Judicial Performance and Evaluation Committee of the National Judicial Council will be mandated to request each Judiciary to compile and submit regular statistics of ages of pending cases.
- ❖ Text BoxSanctions for persistent under performance, inability to utilize time efficiently, low standard of judicial management and persistent failure to comply with sitting requirements; to this end efforts would be made to devise effective means of judicial skill evaluation in the several areas mentioned.
- ❖ Provision for financial disclosure before and after participating in sensitive and highly visible trials such as election petitions proceedings; to this end, Judges entrusted with such assignment may be required to submit themselves to dedicated assets declaration.
- ❖ Subject to Rule 4.1 of the Code, prohibition of discussion of merits of pending matters with parties or persons who may be interested in the outcome of the case or their known agents;
- ❖ Any other conduct that may bring the administration of justice into disrepute, damage or weaken public trust in and satisfaction with standard of justice delivery; to this end, the National Judicial Council will continually publish detailed reminders of the acts that may be deemed to amount to such conduct; encourage each judiciary to discuss in-house what would be taken as such conduct.¹¹

❖ 2.3. CODE OF CONDUCT FOR PUBLIC OFFICERS¹²

Judicial officers, being public officers, are you the Code of Conduct for Judicial officers contained in the Fifth Schedule of the Constitution. This is the import of the Judicial Oath under which judicial officers “do solemnly swear/affirm” to “faithful and bear true allegiance to the Federal Republic of Nigeria” and to “discharge my duties, and perform my functions honestly, to the best of my ability and faithfully in accordance with the Constitution of the Federal Republic of Nigeria and the law, that I will abide by the Code of Conduct contained in the Fifth Schedule to the Constitution of the Federal Republic of Nigeria...”¹³ The Code makes salient general provisions, including requiring judicial officers to avoid conflicts of interests, double emoluments, and acceptance of gift (except as recognise by custom.¹⁴ The Conduct of Conduct Tribunal is the court tasked with enforcing this Code.¹⁵

❖ 2.4. CODE OF CONDUCT FOR JUDICIAL OFFICERS¹⁶

The Code of Conduct for Judicial Officers is similar to the Code of Conduct for United States Judges.¹⁷ And like the latter, “the Code is not designed or intended as a basis for civil liability or criminal prosecution”.¹⁸ Recognising that “[I]t is the duty of every Judicial Officer to actively participate in establishing, maintaining, enforcing, and himself observing a high standard of conduct that will ensure and preserve transparently, the integrity and respect for the independence of the Judiciary,” the Code of Conduct for Judicial Officers sets the minimum standard of behaviour expected from a judicial officer.¹⁹ The Code applies to all judicial officers of the Federation and violation of any of the Rules contained therein shall constitute judicial misconduct and/or misbehavior and shall attract disciplinary action.²⁰ The Code contains 15 Rules as follows:

RULE 1: Propriety and the appearance of propriety, both professional and personal

1.1 Propriety and the appearance of propriety, both professional and personal, are essential elements of a Judge’s life. As members of the public expect a high

standard of conduct from a Judge, he or she must, when in doubt about attending an event or receiving a gift, however small, ask himself or herself the question - "How might this look in the eyes of the public?"

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1.2 A Judge shall avoid impropriety and the appearance of impropriety in all of the Judge's activities both in his professional and private life.



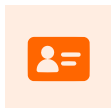
1.3 A Judicial Officer should respect and comply with the laws of the land and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the Judiciary.



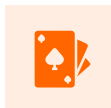
1.4 The Judge must be sensitive to the need to avoid contacts that may lead people to speculate that there is a special relationship between him and someone whom the Judge may be tempted to favour in some way in the course of his judicial duties.



1.5 A Judicial Officer must avoid social relationships that are improper or may give rise to an appearance of impropriety or that may cast doubt on the ability of a Judicial Officer to decide cases impartially.



1.6 A Judge shall not hold membership in any organization that discriminates on the basis of race, sex, religion, ethnicity, national origin or other irrelevant cause contrary to fundamental human rights and/or the Fundamental Objectives and Directive Principles of State Policy under the Nigerian Constitution.



1.7 A Judge shall not engage in gambling as a leisure activity.

Commentary

The Code of Conduct for Judicial Officers for the Federal Republic of Nigeria provides that "propriety and the appearance of propriety, both professional and personal, are essential elements of a Judge's life".²¹ Hence, in the conduct of their

professional duties and personal affairs, judicial officers should always ask and conscientiously answer the overriding question – “How might this look in the eyes of the public?”²² Answering this question requires the test of reasonability.²³ How would a reasonable man perceive the proposed action?

Judges hold a very high position in society and are always in the eyes of the public. “A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by an ordinary citizen”.²⁴ It has said that judicial integrity also includes intellectual honesty, discretion in personal relationships, social contracts and activities.²⁵

Also, Judicial impartiality should manifest in a Judicial officer’s adjudicative responsibilities – no partisan interest, neutrality; be respectful and courteous to litigants,²⁶ administrative responsibilities – exercise the power of appointment fairly and only on the basis of merit, avoid nepotism, favoritism, and unnecessary appointments,²⁷ and a judge should always recuse himself or herself in a proceeding in which the judges impartiality might be reasonably be questioned.²⁸

RULE 2: Personal relations with individual members of the legal profession

2.1 A Judge shall in his or her personal relations with individual members of the legal profession, who practice regularly in the Judge’s Court, avoid situations which might reasonably give rise to the suspicion of or appearance of favoritism or partiality.

A Judge should act on the basis of common sense and exercise caution in this aspect of his social contact with members of the profession.



2.2 Although, social contact between members of the judiciary and members of legal profession is a long standing tradition and is proper, a Judge should act on the basis of common sense and exercise caution in this aspect of his social contact with members of the profession. A Judge would therefore be wise to avoid recurrent contacts with a lawyer appearing before him in the course of a particular case if this could lead to a reasonable perception that the Judge and the lawyer have a close personal relationship.

A Judge shall not allow the use of the Judge's residence by a member of the legal profession to receive clients or other members of the legal profession. It is inappropriate for a Judge to permit a lawyer to use his or her residence to meet clients or use the Judge's telephone in connection with that lawyer's legal practice.



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2.4 Depending on the circumstances, some degree of socializing is acceptable, provided the Judge does not create either the need for frequent contacts or the reasonable appearance that his impartiality might be compromised.



2.5 A Judge shall not accept gifts from a lawyer who might appear in a case before him if the gift is not one given to Judges generally at festive seasons such as Christmas or Salah gifts; provided always that the gift is not more than that ordinarily given or is not of pecuniary nature.



2.6 A Judge shall not in or outside Nigeria accept accommodation provided by a lawyer either in his house or in a hotel paid for by the lawyer or allow to be hosted by a lawyer who is or is likely to appear in his Court.



2.7 Whether a Judge may attend a party given by a law firm depends upon who is giving the party and who else might attend, as well as on the nature of the party. Special care should be taken where a particular law firm may be seen as marketing itself or its services to clients or potential clients. The Judge must ensure that his or her presence at the party of a law firm will not affect the Judge's appearance of impartiality or give the impression that the law firm enjoys open or tacit approval of the Judge.



2.8 A Judge shall avoid developing excessively close relationship with frequent litigants – such as government ministers or their officials, municipal officials, police prosecutors in any Court where the Judge often sits, if such relationship could reasonably create an appearance of partiality.

A Judge shall not belong to a social union or group where lawyers who appear before him or her are also members.



2.9 A Judge shall not belong to a social union or group where lawyers who appear before him or her are also members.



2.10 A Judge shall not participate in the determination of a case in which any member of the Judge's family represents a litigant or is associated in any manner with the case.



2.11 Where a Judge is socially involved in a dating relationship with lawyer, the Judge should not ordinarily, sit on cases involving that lawyer or members of his family.

Commentary

This rule requires judicial officers to maintain respectful and professional social distance with legal practitioners. While judges are usually lawyers, it is impressive that a judge's personal relationship with lawyers do not give the appearance of an impropriety, however minutely suspicious.

RULE 3: Fidelity to the Constitution and the Law

3.1 A Judicial Officer should be true and faithful to the Constitution and the Law, uphold the course of justice by abiding with provisions of Constitution and the Law and should acquire and maintain professional competence.

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3.2 A Judicial Officer should be patient, dignified and courteous to accused persons and litigants, assessors, witnesses, legal practitioners and all others with whom he has to deal in his official capacity and should demand similar conduct of legal practitioners, his staff and others under his direction and control.



3.3 A Judicial Officer should accord to every person who is legally interested in a proceeding, or his legal representative full right to be heard according to law, and except as authorized by law, neither initiate, encourage, nor consider ex parte or other communications concerning a pending or impending proceeding.

Unless ill or unable, for good reason, to come to Court, a Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the Court.

For the purpose of this sub-rule an “ex parte communication” is any communication involving less than all the parties who have a legal interest in the case, whether oral or written, about a pending or impending case, made to or initiated or entertained by the Judicial Officer presiding over the case.



3.4 A Judicial Officer shall ensure strict compliance with the provisions of the Constitution which require that a copy of judgment of the Superior Court of Record be given to parties in the cause within seven days of the delivery therefore.



3.5 A Judicial Officer must avoid the abuse of the power of issuing interim injunctions, ex parte.



3.6 In judicial proceedings, a Judicial Officer should maintain order and decorum.



3.7 A Judicial Officer should promptly dispose of the business of Court. To achieve this, the Judicial Officer is to devote adequate time to his duties, to be punctual in attending Court and expeditious in determining matters in Court. Unless ill or unable, for good reason, to come to Court, a Judicial Officer must appear regularly for work, avoid tardiness, and maintain official hours of the Court.

Commentary

Judicial officers must abide by the oath of their office. A judge must uphold the Constitution and the rule of law, including abiding by the Code of Conduct for Public Officers contained in the Fifth Schedule of the Constitution.²⁹ The Oath of allegiance and the Judicial Oath are fundamental to the function of a Judicial officer without which a Judicial officer lawfully and constitutionally act as such.³⁰

RULE 4: Duty to abstain from comments about a pending or impending proceeding in any Court in this country

4.1 A Judicial Officer should abstain from comments about a pending or

impending proceeding in any Court in this country, and should require similar abstention on the part of the Court personnel under his direction and control, provided that this provision does not prohibit a Judicial Officer from making statements in the course of his official duties or from explaining for public or private information, the procedure of the Court so long as such statements are not prejudicial to his integrity of the Judiciary and the administration of justice.

A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties.



4.2 A Judicial Officer shall be bound by professional secrecy with regard to his deliberations and to confidential information acquired in the course of his duties. Accordingly, confidential information acquired in the Judge's judicial capacity shall not be used or disclosed by the Judge for any other purpose not related to the Judge's judicial duties.

Commentary

Judicial officers are required keep subjudice all matters before or that would come before the court and not make public comments in respect thereof, except as part of a Judicial process in a competent court.

RULE 5: Right to freedom of expression

A Judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly; but in exercising such rights, a Judge shall always conduct himself in such manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary. Accordingly, a Judge shall act with such restraint as is necessary to:

- a. maintain public confidence in the impartiality and independence of the judiciary;
- b. avoid involvement in public discussion or discourse if his or her involvement could reasonably undermine confidence in his or her impartiality;

- c. avoid such occasions and circumstances where such involvement may unnecessarily expose the Judge to political attacks or be inconsistent with the dignity of a Judicial officer; and/or
- d. adhere strictly to political silence.

Commentary

Judges are first humans and all fundamental rights avail them. Nevertheless, in claiming and/or enjoying these rights, Judges must be courteous to avoid circumstances that would undermine the independence and impartiality of the judiciary.

RULE 6: Duty to abstain from involvement in public controversies

The duties of Judges are not consistent with any involvement in public controversies:

- a. A Judge should not involve himself or herself inappropriately in public controversies.
- b. A Judge shall not enter the political arena or participate in public debates – either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government.
- c. The convention of political silence requires the Judge concerned not to ordinarily reply to public statement. Although, the right to criticize a Judge is subject to the rules relating to contempt, these are not to be invoked today to suppress or punish criticism of the judiciary or of a particular Judge. The better and wiser course is to ignore any scandalous attack or criticism outside the court room rather than to exacerbate the publicity by initiating proceedings.

d. Contempt ex facie curiae – is an attack on the integrity and authority of the court of law and the administration of justice. Though rule 6© requires the power to punish for contempt to be exercised with great caution, the power to punish for contempt committed ex facie curiae must be used to protect the Court from open attack aimed at discrediting the administration of justice.

e. A Judge may speak out on matters that affect the judiciary which directly affects the operation of the Courts, the independence of the judiciary, fundamental aspects of the administration of justice. On these matters, a Judge should act with great restraint. While a Judge may through his Head of Court properly make public representations to the government on these matters, he/she must not be seen as “lobbying” government or as indicating how he or she would rule if particular situations were to come before the Court.

f. A Judge may participate in discussion of the law for educational purposes or to point out weaknesses in the law. Judicial commentary should be limited to practical implications or drafting deficiencies and should be made as part of a collective or institutionalized effort by the Judiciary, not of an individual Judge.

Commentary

This rule requires Judges to refrain from giving opinions on controversial public issues that are not part of a Judicial process.

RULE 7: Duty in regard to the Judge’s personal and fiduciary financial interest

7.1 A Judge shall inform himself or herself about his or her personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the Judge’s family in respect of matters for adjudication before him.

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7.2 If it appears in respect of a matter before him or her, that the Judge, or a member of the Judge's family or other person in respect of which the Judge is in a fiduciary relationship, is likely to benefit financially, the Judge has no alternative but to withdraw from the case.



7.3 For the purpose of this rule, "Financial interest" includes ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of an institution or organisation. The following are not to be regarded as financial interests:

- 1.** The proprietary interest of a policy holder in a mutual insurance company, unless the outcome of any proceeding could substantially affect the value of the interest.
- 2.** Ownership of government securities unless if the outcome of any proceeding could substantially affect the value of the security.

Commentary

This rule requires Judges to avoid situations that would amount to or give appearance of financial impropriety. This includes administrative management of the finance of the judiciary.

RULE 8: Duty in regard to the Judge's family, social or political relationship

8.1 A Judge shall not allow the Judge's family, social or other political relationships improperly to influence the Judge's judicial conduct and judgment as a Judge.

Duty to avoid being improperly influenced

8.2 Judge's family, friends, and social, civic and professional colleagues with whom he or she associates regularly, communicates on matters of mutual interest

Judge's family, friends, and social, civic and professional colleagues with whom he or she associates regularly, communicates on matters of mutual interest or concern, and shares trust and confidence, are in a position to improperly influence, or to appear to influence, the Judge in the performance of his or her judicial functions. They may seek to do so on their own account or as peddlers of influence to litigants and counsel. A Judge will need to take special care to ensure that his or her judicial conduct or judgment is not even subconsciously influenced by these relationships.

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Duty to avoid pursuing self-interest



8.3 A Judge who takes advantage of the judicial office for personal gain or for gain by his or her relative or relation abuses power. A Judge must avoid all activity that suggests that his or her decisions are affected by self-interest or favoritism, since such abuse of power profoundly violates the public's trust in the judiciary.



8.4 A Judge shall not use or lend the prestige of the judicial office to advance the private interest of the Judge, a member of the Judge's family or of anyone else, nor shall a Judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the Judge in the performance of judicial duties.



8.5 A Judge should distinguish between propriety and improper use of the prestige of the judicial office. It is improper for a Judge to:

- (i) Use or attempt to use his or her position to gain personal advantage or preferential treatment of any kind;
- (ii) Use judicial stationery to gain an advantage in conducting his or her personal business;
- (iii) Use the fact of holding judicial office in an attempt, or what might reasonably be seen to be an attempt, to extricate himself or herself from legal or bureaucratic difficulties; and
- (iv) Use or attempt to use his or her position to reach or contact any colleague or any other adjudicator in the judicial system with a view to influencing the outcome of any case in any Court on any ground.

Judicial stationery should not be used in a way that amounts to abuse of the prestige of judicial office. Judicial stationery is intended for use when a Judge wishes to write in an official capacity. Care should be taken in the use of judicial stationery when writing in a private capacity. It would not be objectionable to send a thank you note after a social occasion using stationery.



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8.7 There is no objection to a Judge providing a letter of reference.

(i) Judge shall not write a letter of reference for a person he does not know.

(ii) A Judge may write a letter of reference if it is of a kind that would be written in the ordinary course of business (e.g. a Court employee seeking a reference with regard to work history). The letter should include a statement of the source and extent of the Judge's personal knowledge and should ordinarily be addressed and mailed directly to the person or organisation for whose information it is being written.

(iii) A Judge may write a letter of reference for someone whom the Judge knows personally but not professionally, such as a relative or close friend, if it is of a kind that he would normally be requested to write as a result of a personal relationship.

Commentary

A Judicial officer cannot be separated from his or her family. Nevertheless, a judicial officer should not allow family, social, or other political relationships to improperly influence their judicial behaviour or the outcomes of judicial processes, not even subconsciously. Judges in Nigeria are not to partisan or support any political party's ideology.

RULE 9: Responsibility of the Judge in regard to non-judicial activities

9.1 A Judge may engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

A Judge may represent the Judge's country, state or locality on ceremonial occasions or in connection with national, regional, historical, educational or cultural activities.



9.2 A Judge may represent the Judge's country, state or locality on ceremonial occasions or in connection with national, regional, historical, educational or cultural activities.



9.3 A Judge may participate in community, non-profit making organizations of various types by becoming a member of an organization and its governing body such as charitable organizations, University and School Councils, lay religious bodies, sporting organizations, and organizations promoting cultural or artistic interest. However, in relation to such participation, the following matters should be borne in mind. It is not appropriate for a Judicial Officer to participate.

- a. In an organization if its objects are political or if its activities are likely to expose the Judge to public controversy, or if the organization is likely to be regularly or frequently involved in litigation;
- b. In an organization likely to make excessive demands on his or her time;
- c. In a group to serve or appear to serve as legal adviser;
- d. In an organization involved in or lending his name to any fund raising activities; and
- e. In an organization requiring its members to solicit if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

- f. A Judge shall not practice law whilst a holder of judicial office.
- a. For the purpose of this rule, the practice of law includes work performed outside of a Court and that has no immediate relation to Court proceedings. It includes conveyance, giving legal advice on a wide range of subjects, preparing and executing legal instruments covering an extensive field of business and trust relations, and other affairs.
- b. A Judge shall not outside official duties, act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity.
- c. A Judge should be circumspect about becoming involved in personal litigation. Personal litigation must be a last resort.

Commentary

As rightly posited by [writer] “complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives”.³¹ Hence, this rule allows judges to participate in non-judicial functions that would not undermine the integrity, independence, and impartiality or otherwise transparency and a accountability of the judiciary.

RULE 10: Prohibition of acceptance of gift, bequest, loan, favour, benefit, advantage, bribe, etc.

10.1

- (i) A Judge shall not allow the Judge’s family, social or other political relationships improperly to influence the Judge’s judicial conduct and judgment as a Judge.
- (ii) A Judge shall not knowingly permit Court staff or others subject to the Judge’s influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done, to be done or omitted to be done in connection with his or her duties or functions.

(iii) A Judge shall not give or take and shall not encourage or condone the giving or taking of any benefit, advantage, bribe however disguised for anything done or to be done in the discharge of a judicial duty.

A Judge shall not knowingly permit Court staff or others subject to the Judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done, to be done or omitted to be done in connection with his or her duties or functions.



10.2 A Judge must inform those family members and court staff of the relevant ethical constraints upon the Judge in this regard and discourage the family members and staff from violating them. This prohibition does not include:

(i) Ordinary social hospitality that is common in the Judge's community, extended for a non-business and limited to the provision of modest items such as food and refreshments.

(ii) Items with little intrinsic value intended solely for presentation, such as plaques, certificates, trophies and greeting cards.

(iii) Loans from banks and other financial institutions given on normal terms based on the usual factors, without regard to judicial status.

(iv) Opportunities and benefits, including favourable rates and commercial discounts, that are available based on factors other than judicial status.

(v) Rewards and prizes given to competitors in random drawings, contests or other events that are open to the public and awarded based on factors other than judicial status.

Scholarships and fellowships awarded on the same terms and based on the same criteria applied to any applicant who is not a Judge.

Reimbursement or waiver or charges for travel-related expenses, including the cost of transportation, lodging and meals for the Judge and a relative, incident to the Judge's attendance at a function or activity devoted to the improvement of the law, the legal system or the administration of justice.

Commentary

This rule prohibits a Judicial officer from demanding or accepting gifts, bribes or

otherwise any gratification whether directly or indirectly.

RULE 11: Responsibility in regard to discharge of administrative duties.

11.1

(i) A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other Judicial Officers and court officials.

A Judicial Officer should diligently discharge his administrative duties, maintain professional competence in judicial administration and facilitate the performance of the administrative duties of other Judicial Officers and court officials.



(ii) A Judicial Officer should require his staff and other court officials under his direction and control to observe the standards of integrity and diligence that apply to him.

(iii) A Judicial Officer on becoming aware on reliable evidence of unethical or unprofessional conduct by another judicial officer or a legal practitioner should immediately take adequate steps to report the same to the appropriate body seized with disciplinary powers on the matter complained of.

(iv) In the exercise of his administrative duties, a Judicial Officer should avoid nepotism and favoritism.

(v) A Judicial Officer must refrain from engaging in sexual harassment.

(vi) A Judicial Officer shall not be a member of a Tenders Board or engage in the award of contracts.

Commentary

In carrying out his or her administrative functions, judicial officer must avoid situations of impropriety or appearance thereof, including the management of the finance of the judiciary and appointment, and discipline of judicial officers.

RULE 12:

Disqualification


12.1 A Judicial Officer should disqualify himself in a proceeding in which his impartiality may genuinely and reasonably be questioned, including but not limited to the instances where:

- a. he has a personal bias or prejudice concerning a party or personal knowledge of facts in dispute;
- b. he served as a legal practitioner in the matter in controversy, or a legal practitioner with whom he previously practiced law, served during such association as a legal practitioner concerning the matter or the Judicial Officer or such legal practitioner has been a material witness in the matter;
- c. he knows that he individually or as a Judicial Officer or his spouse or child; has a financial or any other interest that could be substantially affected by the outcome of the proceeding.
- d. he or his spouse, or a person related to either of them or the spouse of such person –
 - (i) is a party to the proceedings, or an officer, director or trustee of a party;
 - (ii) is acting as a legal practitioner in the proceedings;
 - (iii) is known by the Judicial Officer to have an interest which could be substantially affected by the outcome of the proceedings;
 - (iv) is to the Judicial Officer's knowledge likely to be a material witness in the proceedings.

12.2 Waiver of Disqualification

A Judicial Officer disqualified by the terms of Rule 12(1)(c) or Rule 12(1)(d) may, instead of withdrawing from the proceedings, disclose on the record the basis of his disqualification. If based on such disclosure, the parties, their representatives and/or their legal practitioners, independently of the Judicial Officer's all agree that the Judicial Officer's relationship is immaterial or that his financial interest is

or that his financial interest is insubstantial, the Judicial Officer shall continue to participate in the proceeding.

 **Commentary**

Impartiality and fair hearing are critical to the judicial process. Deference to the judgments and rulings of courts depends in public confidence in the integrity and independence of the judges”.³² This enjoins judicial officers to always recuse themselves from cases in which their impartiality would be questioned.

RULE 13:

Duty of a Judicial Officer to regulate his Extra-Judicial Activities

13.1 A Judicial Officer should regulate his Extra-Judicial Activities to minimize the risk of conflict with his judicial duties. A Judicial Officer, however,

(i) may engage in the arts, sports and other social and recreational activities, if such vocational activities do not adversely affect the dignity of his office or interfere with the performance of his judicial duties;

(ii) may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties.

(iii) Judicial Officers shall be free to form and join associations of Judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence but shall not join any trade union.

Judicial Officers shall be free to form and join associations of Judges or other organizations to represent their interests



13.2 A Judicial Officer shall not take or accept any Chieftaincy title while in office.



13.3 A Judicial Officer should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for estate, trust, or person of a member of his family, and that only if such service will not interfere with the proper performance of his judicial duties. While acting as a fiduciary, a Judicial Officer, is subject to the same restriction in financial activities which apply to him in his personal capacity.

A Judicial Officer should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for estate, trust, or person of a member of his family, and that only if such service will not interfere with the proper performance of his judicial duties.

While acting as a fiduciary, a Judicial Officer, is subject to the same restriction in financial activities which apply to him in his personal capacity.




13.4 Business and Financial Activities

- (i)** A Judicial Officer may own investments and real property PROVIDED that in the management of his investments, he shall not serve as an officer, director, manager, general partner, adviser or employee of any business entity.
- (ii)** Otherwise permissible investment or business activities are prohibited if they:
 - (a)** Tend to reflect adversely on judicial impartiality,
 - (b)** Interfere with the proper performance of judicial duties,
 - (c)** Exploit the judicial position; or
 - (d)** Involve the Judicial Officer in frequent transactions with legal practitioners or with people likely to come before the Judicial Officer's court.



13.5 Acceptance of Gifts

- (1)** A Judicial Officer and members of his family shall neither ask for nor accept any gift, bequest, favour or loan on account of anything done or omitted to be done by him in the discharge of his duties.
- (2)** A Judicial Officer is, however, permitted to accept:
 - (i)** Personal gifts or benefits from relatives or personal friends to such extent and on such occasions as are recognized by custom.
 - (ii)** Books supplied by publishers on a complimentary basis.
 - (iii)** A loan from lending institution in its regular course of business on the same terms generally available to people who are not Judicial Officers;
 - (iv)** A scholarship or fellowship awarded on the same terms applied to other applicants.

 **Commentary**

By this rule is reasonable, Rule 13.5 may be abused. In which case it would give judicial officers the leeway to undermine Rule 10, prohibits Judicial officers from accepting gifts personally or through family members. In any case, it is imperative that the totality of the circumstance of each case be justified or justifiable. Suffice to state that this rule conforms with the provision of the Code of Conduct for Public Officers established under the Fifth Schedule of the Constitution.

RULE 14: Duty of a Judicial Officer in regard to travels within and outside Nigeria

14.1 A Judicial Officer should regulate his travels within and outside Nigeria so as not to affect his judicial duties or cause delay in the administration of justice or detrimentally affect his performance or the overall performance of the judiciary. Travels outside Nigeria should be with the permission of the Chief Justice of Nigeria, after such application has been made.

Where it is strictly essential for a Judicial Officer to travel out of his duty station during working days on short notice such Officer shall as soon as possible before or immediately after he embarks on such journey inform and obtain clearance from his Head of Court.



14.2 Except during vacation a Judicial Officer should ensure that unless strictly essential, travels out of duty station on working days should not be undertaken except for special reasons.



14.3 Where it is strictly essential for a Judicial Officer to travel out of his duty station during working days on short notice such Officer shall as soon as possible before or immediately after he embarks on such journey inform and obtain clearance from his Head of Court.



14.4 Where a Judicial Officer sits in a Court constituted by a Panel he should make such arrangements that would ensure that the business of the Court as scheduled is not disrupted.



14.5 Where a Judicial Officer intends to spend any part of his vacation out of his duty station he should leave his contact address or addresses with the Chief Registrar.

Where a Judicial Officer intends to attend a conference outside Nigeria he shall apply for permission to do so through his Head of Court to the Chief Justice of Nigeria. Provided that where the Judicial Officer has been nominated or selected by his Head of Court to attend such conference he shall not be required to make any further application for permission to the Chief Justice, but his Head of Court shall seek such permission from the Chief Justice/Chairman of the Council of such nomination or selection.



14.6 A Judicial Officer shall not need to obtain permission of his Head of Court to travel out of Nigeria on vacation but shall leave his contact address or addresses with his Head of Court and Chief Registrar.



14.7 Where a Judicial Officer intends to attend a conference outside Nigeria he shall apply for permission to do so through his Head of Court to the Chief Justice of Nigeria. Provided that where the Judicial Officer has been nominated or selected by his Head of Court to attend such conference he shall not be required to make any further application for permission to the Chief Justice, but his Head of Court shall seek such permission from the Chief Justice/Chairman of the Council of such nomination or selection.




14.8 Where a Head of Court intends to organize a work study tour, performance improvement tour, or such similar tours outside the country, the Head of Court shall notify the Chief Justice/Chairman of Council informing him of the nature of the tour, the number of judges that shall be on the tour and the programme envisaged on the tour.

(a) Where the Chief Justice has any reservations about the tour, he shall invite the Head of Court for discussion of his reservation or of the number of Judges planned to embark on the tour or the utility of the tour.

(b) Where the Chief Justice and Head of Court cannot agree the tour shall be suspended for such duration as an agreement can be reached.

(c) The Chief Justice shall state from time to time the likely grounds of his reservation and thereafter submit to Council such likely grounds for Council approval.

 **Commentary**

This rule regulates the travel of judicial officers to ensure that judicial activities for not suffer as a result.

RULE 15: Publication by a Judicial Officer while in Service

15.1 A Judicial Officer while in service shall not publish any book or cause another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book until he ceases to be a Judicial Officer where such publication may infringe in any manner the Code of Conduct for Judicial Officers.

A Judicial Officer while in service shall not publish any book or cause another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book until he ceases to be a Judicial Officer where such publication may infringe in any manner the Code of Conduct for Judicial Officers.



15.2 Where a Judicial Officer while in service publishes any book or causes another person, group of persons, publishing house, whosoever, acting on his behalf to publish any book, he shall ensure that such publication is not used or prohibit such publication from being used, in any manner or form as a means of raising funds, beyond the normal cover or market price of such publication; or, as donation or gift to him or to anyone on his behalf; or, to any cause related to or connected with him.

Commentary

This rule ensures that publications by Judicial officer's while in a river serve do not undermine the judicial transparency and accountability.

3. SOME INFRACTIONS ON THE CODE OF CONDUCT FOR JUDICIAL OFFICERS

Compromised judicial behaviour continues to undermine Judicial independence and transparency in Nigeria. The discussion hereunder highlights some of the infractions on the Code of Conduct for Judicial Officers.

3.1. APPOINTMENT OF JUDICIAL OFFICERS

Family, social, and political connections have become the overwhelming factor in Judicial appointments in Nigeria. This is contrary to Rule 8 of the Code of Conduct for Judicial Officers which provides that “[a] Judge shall not allow the Judge’s family, social or other political relationships improperly to influence the Judge’s judicial conduct and judgment as a Judge”.³³ Judicial officers continue to relate corruptly with political actors, notwithstanding that a Judge is called to be

“sensitive to the need to avoid contacts that may lead to people to speculate that there is a special relationship between him and someone whom the judge may be tempted to favour in some way in the course of his judicial duties.”³⁴ More than anything, this compromised judicial behaviour is driven by the insatiable quest of political actors to secure their political interests both in the present and the future.³⁵

For instance, the Chief Justice of Nigeria who doubles as the Chairman of the National Judicial Council, Justice Olukayode Ariwoola’ has supervised the appointment of his family members to the judicial Bench. Justice Ariwoola's judicial family tree has grown quite some remarkable branches to now include a son – Justice Olukayode Ariwoola Jnr – as a Judge of the Federal High Court, a nephew – Justice Lateef Adebayo Ganiyu – as a Justice of the Court of Appeal, a younger brother – Adebayo Ariwoola as an Auditor of the National Judicial Council, and a daughter-in-law – Justice Victoria Oluwakemi Ariwoola – who is now on the verge of being appointed a justice of the High Court of Federal Capital Territory.³⁶ This also offends Rule 11, especially Rule 11 (iv) of the Code which provides that “[i]n the exercise of his administrative duties, a Judicial Officer should avoid nepotism and favoritism”.

❖ 3.2. APPOINTMENT OF JUDICIAL OFFICERS

Contrary to Rule 1 of the Code, which enjoins judges to eschew impartiality and any Conduct that may amount to impropriety or appearance of impropriety, Judicial officers continue to make conflicting ex parte order, especially in respect of political cases.³⁷ Also, Judicial officers often show manifest dislike and scorn against certain litigants before them, especially those of political opposition or those regarded as “political outsiders”. This was the case with the 2023 Presidential Election Petition Tribunal (PEPT) where beyond giving controversial judgements, the PEPT descended to ridiculing the petitioners.³⁸ This affects the integrity of the court and undermines public confidence in the judiciary.

❖ 3.3. IMPROPER/QUESTIONABLE SOCIAL/POLITICAL ASSOCIATIONS

Judicial officers continues to attend questionable political gatherings and are

often seen in the midst of politically exposed individuals. For instance, following the unprecedented controversial judgment of Justice Buba in 2007,³⁹ which granted perpetual immunity⁴⁰ to the former Governor of Rivers State (Peter Odili) from prosecution in respect of his time in office, Mr. Odili, on 27 May 2007, threw a valedictory party to mark the twilight of his 8 years as governor and the then Chairman of NJC, Justice Idris Legbo Kutigi (including his two predecessors, retired Justices Muhammadu Uwais and Alfa Belgore, among many other Judicial Officers) attended the event.⁴¹

This kind of judicial indiscretion is contrary to the duty of a Judicial officer to abstain from involvement in public controversies,⁴² regulate his/her extra-judicial activities to minimize the risk of conflict with his/her Judicial duties,⁴³ and endure that in attending non-judicial functions, such functions do not detract from the dignity of judicial office.⁴⁴ It is also against Rule 1 of the Code of Conduct for Judicial Officers which provides that a legal officer must avoid situations that would amplify the appearance of impropriety.

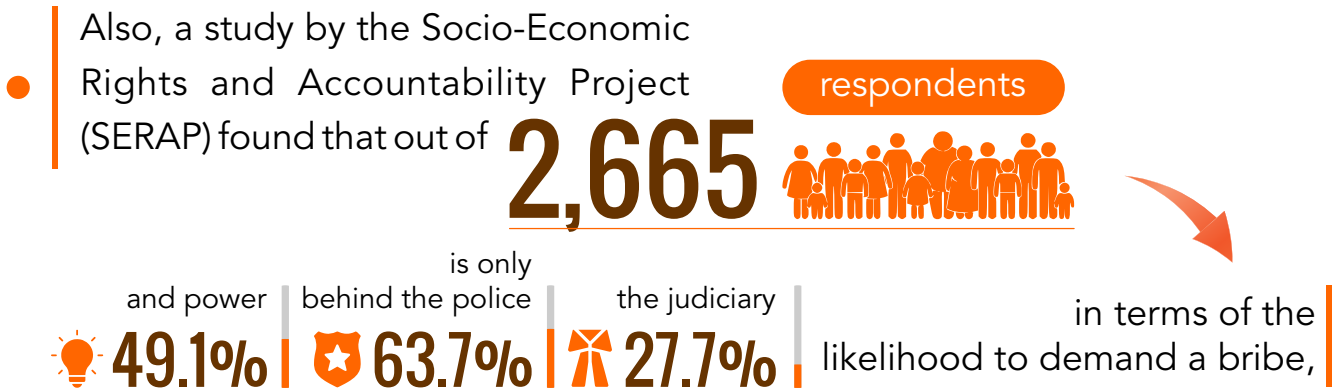
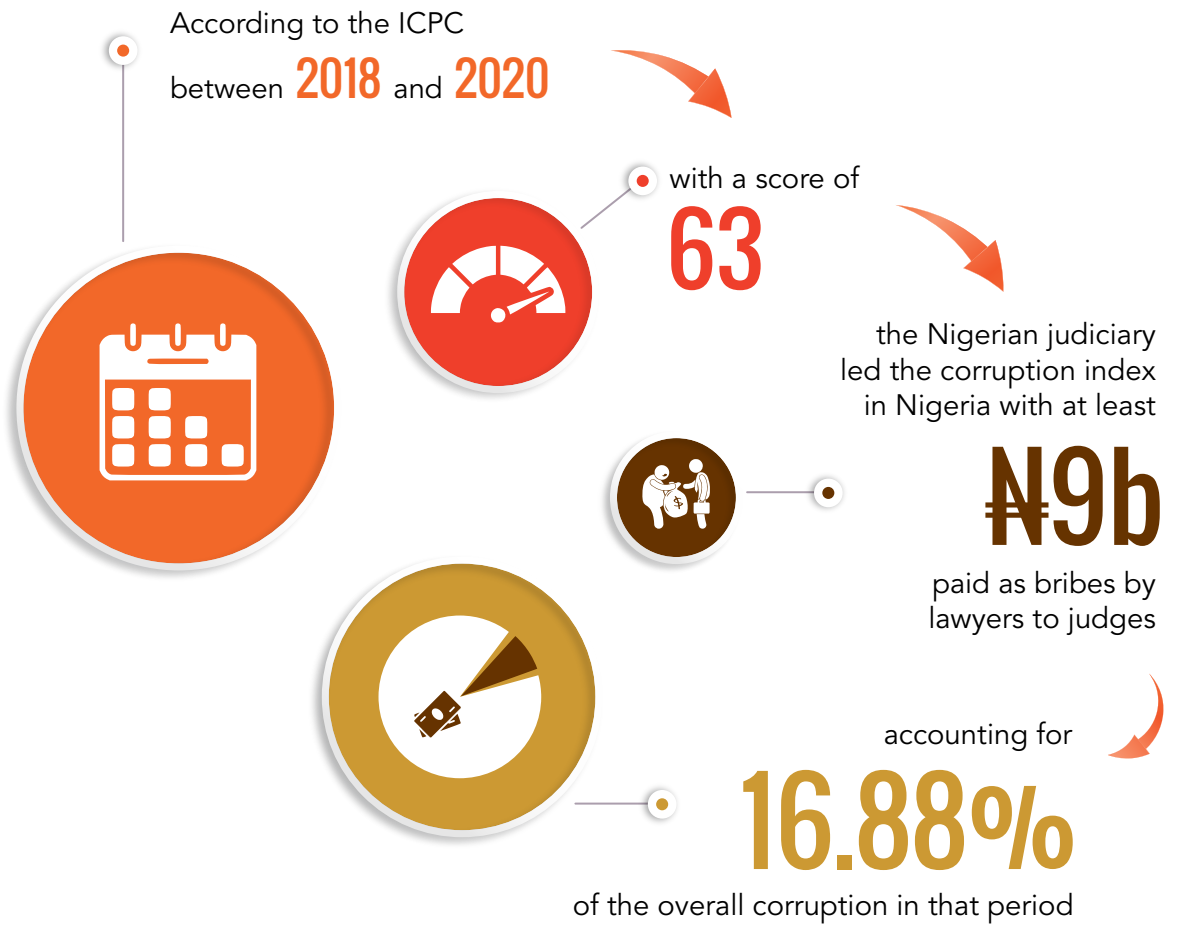
❖ 3.4. ACCEPTANCE OF GIFT, BRIBE, ETC.

The Judiciary in Nigeria is said to be the most corrupt of three arms of government in terms of the quantum of money demanded and/or received in bribery.⁴⁵ In 2023, the Independent Corrupt Practices and Other Related Offences Commission (ICPC) classified the Judiciary as “High Corruption Risk”.⁴⁶ According to the ICPC, between 2018 and 2020, with a score of 63, the Nigerian judiciary led the corruption index in Nigeria with at least N9 billion Naira paid as bribes by lawyers to judges, accounting for 16.88% of the overall corruption in that period.⁴⁷

Also, a study by the Socio-Economic Rights and Accountability Project (SERAP) found that out of 2,665 respondents, in terms of the likelihood to demand a bribe, the judiciary (27.7%) is only behind the police (63.7%) and power (49.1%).⁴⁸ The study also found that the judiciary is second only to the police in terms of the share of national bribes with 31.2% and 33.2% respectively.⁴⁹ And with N107,939.4, the judiciary accounted for the highest average size of national bribes.⁵⁰

This is an infraction on Rule 10 of the Code of Conduct for Judicial Officers, which

officers from accepting gifts, bribe or such other benefits of advantages in the course of their adjudicative duties.



- The study also found that the judiciary is second only to the police in terms of the share of national bribes with **31.2%** and **33.2%** respectively

And with **₦107,939.4** the judiciary accounted for the highest average size of national bribes

❖ 3.5. UNHOLY RELATIONSHIPS WITH MEMBERS OF THE LEGAL PROFESSION

Contrary to Rule 2 of the Code which calls on judges to be courteous in their personal relationship with members of the Legal Profession and “situations which might reasonably give rise to the suspicion of or appearance of favoritism or partiality,”⁵¹ judicial officers often demand and/or received monetary bribe from lawyers. A study by SERAP shows that users of judicial services, including lawyers, often pay bribes to Judicial Officers to receive favourable judgments or other judicial advantages.⁵²

❖ 3.6. (APPEARANCE OF) FINANCIAL MISAPPROPRIATION

The Code of Conduct for Judicial Officers requires to be effective and prudent administrators, in the management of judicial finances.⁵³ Contrary to the above, the judicial in Nigeria continues to exhibit the lack of prudent financial management and corruption, or at least appearance thereof. For instance, in 2022, the former CJN, Justice Ibrahim Tanko Muhammad was allegedly accused by 14 Supreme Courts Justices to have corruptly misappropriated or mismanaged the budget of the Supreme Court.⁵⁴ This was widely believed to have prompted his resignation (although the official statement stated it was as a result of ill-health).⁵⁵ Also, Mr. Adebayo Ariwoola, the younger brother of the current CJN, Justice Olukayode Ariwoola, is the substantive auditor of the National Judicial (NJC).⁵⁶ This raises ethical concerns and rightly so. Moreover, it is an infraction on Rule 1 of the Code as it gives an appearance of administrative impropriety.

❖ 3.7. IMPROPRIETY IN JUDICIAL DISCIPLINE

According to Rule 11 (iv) of the Code of Conduct for Judicial Officers, “[i]n the exercise of his administrative duties [including disciplinary duties], a Judicial Officer should avoid nepotism and favoritism”. Contrary to this rule, often the NJC exercises its disciplinary powers unequally and against Judicial officers that are expendable. The case of Justice Gladys Olotu is a good example.

In 2014, Justice Gladys Olotu was compulsorily retired from the Bench on the recommendation of the NJC, having been found guilty of gross misconduct when she gave judgment in a case outside the constitutional time of 90 days.⁵⁷

Although she was later reinstated after almost nine years,⁵⁸ Justice Olotu alleged that her traverse at the behest of “judiciary consultants” (a euphemism for influence peddlers) was a result of her refusal to “pervert the course of justice”.⁵⁹ Justice Olotu revealed that “her ordeal started because she did not accede to the request of a former CJN, Justice MSA Belgore, and Chief Gabriel Osawaru Igbinedion to pervert the course of justice in some cases....”

❖ 3.8. MANIFEST INVOLVEMENT IN PUBLIC CONTROVERSY

Following some controversial judgements in which the Court of Appeal overturned the election victories of at least 22 candidates of the opposition party (PDP) in Plateau state, there was public uproar as stakeholders struggled to understand what happened.⁶⁰ Nevertheless, one of the Court of Appeal Justices, Justice Abdul-Azeez Waziri in an unprecedented move in the judicial history of Nigeria was found discussing one of the judgements in a public event as though to rationalise it extra-judicially.⁶¹ This was/is contrary to Rule 6 of the Code of Conduct for Judicial Officers, which imposes a duty on Judicial officers to abstain from involvement in public controversies.

❖ 3.9. UNDUE INFLUENCE OF POLITICAL ACTORS ON JUDGES

Contrary to Rule 8.1 of the Code of Conduct for Judicial Officers which imposes a duty on Judicial officers not to the Judge’s family, social or other political relationships improperly to influence the Judge’s judicial conduct and judgment as Judge, political actors continue to influence Judicial process in Nigeria. For instance, following his sacking from the Senate by the Court of Appeal, Senator Elisha Abbo was reported to have “alleged that the President of the Senate, Godswill Akpabio, was behind the judgement of the Court of Appeal, which terminated his tenure abruptly in the Senate”.⁶² Although he has since retracted his statement and apologised,⁶³ the fact that statements such as this are frequent within public discourse is prima facie evidence of the ungodly and corrupt influence of politicians on judicial officers and political actors and an indictment on the Nigerian judiciary. Also, in the case of Yusuf Abba Kabir v All Progressive Congress (APC),⁶⁴ the Court of Appeal appeared to have been unduly influenced to change its original judgment with the delivered judgment showing manifest

inconsistencies, thereby being neither here nor there.⁶⁵

❖ 4. RECOMMENDATIONS

The following recommendations are proffered to enhance transparency and accountability of Judicial behaviour:

- Effective implementation plan: To ensure effective observance of the Code of Conduct for Judicial Officers, it is imperative to have an effective implementation plan in line with the Constitution and the National Judicial Policy.
- Effective, swift, and equal application of disciplinary measures for violations of the Code. This will help to achieve transparency/accountability in the judiciary.
- Effective prosecution of offenders where the violation is also amounts to a criminal offence such as bribery and financial mismanagement or imbursement of judicial funds
- The NJC should ensure continuous training and retaining of judicial officers on the Code of Conduct for Judicial Officers. The prevalence of violation of the Code could be as a result of inadequate knowledge or understanding of the Code. It is not unheard of that a Judge may not know all the laws.

❖ CONCLUSION

The Code of Conduct for Judicial Officers expands on the general provisions of the Code of Conduct for Public Officers to make specific provisions regulating the behaviour of judicial officers. However, the Code of Conduct is usually breached by Judicial officers with little to no consequences. To maintain the integrity, independence, and impartiality of the Judiciary and ensure judicial transparency and accountability, it is imperative to ensure monitoring and implementation or enforcement of the Code.

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