



Evaluating Judicial Performance

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D) INTRODUCTION

The constitutional amendment No. 45, of December 8th 2004, which promoted the Reform of the Judicial Power in Brazil, considered as one of the supports of quality of jurisdictional delivery to the formation of the magistrate, constituting the two National Schools of Formation and Improvement of Magistrates: one linked to the Superior Court of Justice – STJ (CF, art. 105, Single Paragraph, I), and the other linked to the Superior Court of Labor – TST (CF, art. 111-A, § 2º, I).

My distinguished colleagues/team in TST honored me with the mission to initiate and direct in its first steps the ENAMAT – School of Formation and Improvement of Magistrates of Labor, which was constituted by the Resolution 1.140/TST of June 1st 2006, and effectively located on September 18th 2006, starting to promote the courses of initial formation for the magistrates of labor who were joining the career, besides coordinating the activity of the Regional Schools and organizing courses of improvement for the already veteran magistrate laborites.

STJ, following the progress of the TST, established its ENFAM, School of Formation and Improvement of Magistrates, through the Resolution 3, of November 30th 2006, but with the feature more of a coordinator part of the Regional and State Schools, defining the basic guidelines of development of the federal and state magistrates.

The fundamental difference between the two schools is that STJ's school is limited to coordinating and parameterization of the courses offered by the Regional and State Schools, while the TST's, in addition to this coordinative activity, provides the courses of initial formation for the new magistrates of labor that engage in the career all over Brazil.

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Today, Brazil has 11 ministers in its Supreme Court (4th Instance), 77 ministers in its Superior Courts (3rd Instance), 2.166 judges (“desembargadores”) in its Courts of Law, and Federal, Electoral and Labor Courts (2nd Instance) and 13.661 judges (1st Instance) in a total of 15.815 magistrates, who require the continuous education as mentioned in art. 93, IV, of the Federal Constitution. Only from the labor party there are 27 ministers (Superior Court), 454 “desembargadores” (24 Regional Courts) and 2.691 judges (Labor Courts).

With a 193.000.000 population, Brazil counts nowadays with over 60.000.000 legal actions in process, which it is an alarming average: 1 in 3 Brazilians take legal actions or are called to attend to a law of court. Therefore, there’s an average of 1 judge for each 12.600 habitants and approximately an average of 4.000 actions per judge.

The chart below is vastly illustrative with respect to the Brazilian reality related to the judicial demand and the aptitude of confronting it (excluding the Military and Electoral Justices, in a reduced judicial demand):

JUSTICE IN NUMBERS– 2008 (CNJ data)				
Branches of the Judiciary	N° of Judges	N° of servants	Actions in process	Outgoing in R\$ (half in US\$)
<i>Federal Justice</i>	1.478	34.000	6.000.000	5.200.000.000,00
<i>Labor Justice</i>	3.145	43.000	7.000.000	9.300.000.000,00
<i>State Justice</i>	11.108	216.000	48.500.000	19.100.000.000,00
TOTAL	15.731	293.000	61.500.000	33.600.000.000,00

For the purpose to administrate a demand of that magnitude, EC 45/04 created the National Justice Council, not only as a disciplinary part regarding all the national magistracy but, mainly, as a managerial and strategical planning part of the Brazilian Judicial Power (CF, art. 103-B, § 4º). By means of, it has issued rules that regulate the issues that have an effect to the national magistracy, among those which are related to a selective processes and career promotion criteria.

II) THE COURSES OF INITIAL AND IMPROVEMENT FORMATION

In the realm of the Labor Supreme Court, the Administrative Resolution 1158/2006 which approved the Statutes of ENAMAT, established a formation integrated system of the labor magistrature, headed by the National School and integrated by the 24 Regional Schools (art. 19). This formation includes activities of initial formation and continuous formation (art.22). The goal of the initial formation course of the labor magistrature is to harmonize the acquired knowledge in Law School with the professional formation to put into practice the magistracy, in such way that will appease a judgment delivery technically right, unbiased and in a timely manner (art. 23).

The accepted candidates in the selective process, after taking over the labor judge mandate, will be automatically registered on the initial formation course given by ENAMAT, which appoints one of the steps of perpetuity (art. 24). The initial formation

consists of a national module, minimum length of four weeks, taken place in Brasilia, constituted of theoretical classes and a supervised internship, with visits to public institutions related with the jurisdictional activity, and regional modules, organized by the Regional Schools, with the purpose of a better introduction of the new magistrates in the local reality (art. 25).

The subjects of the national module of initial formation are (art. 28):

1) Juridical Deontology – study of the ethical aspects that embody the judicial activity, posture of the magistrate and the juridical-philosophical fundamentals of the juridical order.

2) Juridical Logic – study of the logical-juridical proceedings for decision making, in its several standpoints (formal logic, topical, dialectic, rhetoric and philosophy of the language);

3) Judicial System – the study on the judiciary structure and labor proceedings, in order to provide to the magistrate a vision of the whole capable of embedding it in a bigger context of the judicial laborite;

4) Juridical Language – Portuguese language course focused on the formulation of judicial and administrative acts.

5) Judiciary Administration – study the managerial aspects of the judiciary activity (administration and economics);

6) Technique of Conciliatory Judgment – study of the proceedings, attitudes, behaviors and mechanisms capable of achieving the conciliated solution of the labor conflicts;

7) Psychology and Communication – study of the interpersonal relationship, of the social communication means and the relationship of the magistrate with society and media;

8) Actual Topics of Law and Labor Action– study of the most relevant matters discussed nowadays on the Labor Justice.

This school discipline central core is focused on the knowledge acquisition and abilities that are not developed on the academic course follow on the tradition of *trivium* and *quadrivium* scholastics, of liberal arts, seeing on the jurisdictional delivery the art of judging (*ars equum et bonum*). To verify the absorption of these know ledges and abilities, in order to know if the candidate to judge recently approved on the selective process is able to fulfill this *munus publicum*, as well as to ascend on the career to higher responsibilities, is a task that is covered with a considerable degree of complexity.

Regarding ENFAM, National School that works together with STJ, there are no courses directly organized by it, we can take by example of subjects and improvement

courses given on the precincts of the State Justice, those listed on the basic module of the Justice Court of Minas Gerais, of fundamental importance for the judicial formation:

- a) Ethic and Contemporaneous Culture;
- b) Human Rights and Judicial Practice;
- c) Update in Juridical Hermeneutics;
- d) Capacity in Judiciary Power.

On the present-day study will pursue to disclose the Brazilian practice and more, particularly, on the Labor Justice, about criteria and evaluation methods of judges, for the purpose of perpetuity and promotion.

III) EVALUATION SYSTEMS OF THE INITIAL FORMATION

One of the most difficult and complex tasks is the evaluation of the specific formation assimilation received by the magistrate for the assignment of the jurisdictional activity as well as his performance for the purpose of perpetuity or promotion.

Granting that the Statutes of ENAMAT foresee in its art. 31 that “*by the end of the national module of the initial formation course, there will be an evaluation of the progress of the students through tests of the subjects and trainee report, as an component element of the perpetuity of the magistrate*” (our emphasis), the School Council, fell upon the pressure of the first-year magistrates, who argued against the new evaluation, insisting that they have been tested on the exam of the selective process, resulted the mentioned article to be dead, once it discharged the new tests of checking the assimilation of the given subjects on the initial formation course and change the reports of the trainees into reports of evaluation of the course by the judges’ students. The certainty of having built a judicial formation model does not justify, in any way, judges to be to give a score to the teachers and not effectively be evaluated.

The fact of the matter is, after a 7 class completion, the Substituted Labor Judges by ENAMAT, from 2006 to 2009, make a total of 440 judges, changed in a certain way, with the recognition by the School Council, under the direction of Min. Barros Levenhagen, monitoring the objectionable conduct of certain students, the necessity of some form of evaluation, reacquainting the production reports of assimilation of the subjects by some students. It’s absent, however, the effective evaluation of the assimilation of the formation received, through tests of knowledge that bear witness to the surplus from everything that was seen, heard and read about the science of judging, which is not taught in the Law Schools.

The traditional model of standardization of cognition has not been surpassed yet by any other version more efficient. In conformity with the §1º of the art. 31 of the Statutes of ENAMAT, “*the tests and the report’s goal is to evaluate the capability of the students to the jurisdictional prosecution role*”. In effect, one thing is the public selective process exam for the purpose to verify the understanding of the juridical disciplines, an additional one is the verification of the assimilation of the science of judging, specific from the magistrature, taught on the initial formation course. This is vital to the enactment and the perpetuity magistrate.

IV) PERFORMANCE EVALUATION SYSTEMS FOR PROMOTION

Another chapter is the continuous formation of the magistrate and his evaluation for means of promotion. The art. 35 of Statutes of ENAMAT predict that, “*on the promotion by merit of the Labor Magistrate will be considered as elements of evaluation the attendance and the progress on the given courses by ENAMAT and by Regional Schools.*”

Throughout the course of the formulation of the Statutes of ENAMAT, under certain circumstance of the school’s dean, we proposed the following mechanism to be included, which determined clear criteria and objectives of standardization of merit by means of promotion:

Art. X. The promotion by merit of the labor magistrates will be done taking in consideration:

I – the productivity of the magistrate, measured by the quantity of ended actions (conciliated or sentenced);

II- the quality of decision taken, measured by the logic construction and objective and adequate facing of the questions raised;

III – the attendance to the official or recognized courses, of professional improvement;

IV – the score on the evaluation test for promotion, organized by ENAMAT.

Single paragraph – Each of the items will be valued 25% for the composition of the final evaluation, integrating the triple list the magistrates who were better classified, in order of classification”.

The proposition was not taken by the School Council, to which it looked too difficult to implement, mainly the submission of the permanent magistrates to tests of knowledge, as well as to the evaluation of the quality of the delivered decisions. However, because of the lack of these objective criteria of standardization of merit is that the promotion by merit continues in Brazil to disapprove of merely political decision, in a way that Karl Schmit would give to the word “*politic*”, which means, action between friends.

The National Conceal of Justice tried to establish objective criteria of evaluation of the merit for the means of promotion, reducing the political discretionarily of the Courts, when editing the Resolution 6, September 13th 2005, which disposes, among other regulations:

*“Art. 1º - The promotions by merit of magistrates are carried out in a public session, in a nominal, opened and well-founded voting,
(...)*

Art. 3º - The merit will be verified and checked according to the performance and through objective criteria of productivity and promptitude on the role of jurisdiction and by the attendance and progress in official or recognized courses of improvement.

Single Paragraph: The Courts will present to the voters, before the session, the list of subscribed magistrates including the necessary elements for the checking.

Art. 4º - Within 120 (one hundred and twenty) days, the Courts must edit administrative acts obligating:

I – the objective valorization of performance, productivity and promptitude on the role of jurisdiction, for the means of promotion by merit;

II – the attendance and the progress in official or recognized courses of improvement or promotion of magistrates that will be considered for rise by merit, with the respective degree” (our emphasis).

Regarding the definition of the terms presented in clause I of art. 4º of Res. 06/05 from CNJ, the 4º TRF (following in the same matter the 2º, 4º and 16º TRTs and TJAC) provided the following semantic contents:

a) performance – the accomplishment of duties native to the role, the observance of the functional bars, the quality of the work and the delivery of help without lesion of the ordinary jurisdiction of the magistrate;

b) productivity – the total practiced acts by the magistrate (trials, orders, sentences and conciliations), calculated comparatively with magistrates of the same aptitude and attributions (quantity);

c) promptitude – the average of time that the magistrate takes between the conclusion of the process and its effective verdict, as well as the assiduity and punctuality in the jurisdictional part that he operates (there should also be included the average time between the process distribution and the execution of the trial) (celerity)

Regarding art 4º of the Resolution, the regulations enacted by several courts (Justice Court – TJs, with the initials of the Federation unit; Federal Regional Courts – TRFs with the number of the Region; Labor Regional Courts – TRTs, with the number of the Region; Military Justice Courts – TJM, with the initials of the Federation unit) rendered the following elements of evaluation:

a) Number of processes in possession of the magistrate with a due date (TJAM, TJDF, TJES, TJPB, TJPR, 4º and 18ºTRTs);

b) number of trials made in the last 6(TJAM), 12 (TJDF, TJBA, TJRJ, TJRN, 4ºTRF, 15º e 22ºTRTs), 18 (6ºTRT), 24 (TJES, TJMA, TJPR, TJTO, 1ºTRF, 4º, 14º, 17º, 21º e 24ºTRTs) or 36 months (11ºTRT);

c) number of interlocutory decisions delivered in the last 6 (TJAM, TJPI), 12 (TJDF, TJBA, TJRJ, TJRN, 4ºTRF, 15º e 22ºTRTs), 18 (6ºTRT), 24 (TJES, TJMA, TJPB, TJPR, TJTO, 1ºTRF, 4º, 14º, 17º, 21º e 24º TRTs) or 36 months (11ºTRT);

d) number of sentences pronounced in the last 6 (TJAM, TJPI), 12 (TJDF, TJBA, TJRJ, TJRN, 4ºTRF, 15º e 22º TRTs), 18 (6ºTRT), 24 (TJES, TJMA, TJPB, TJPR, TJTO, 1ºTRF, 4º, 14º, 17º, 21º e 24º TRTs) or 36 months (11ºTRT);

d) number of conciliations completed in the last 6 (TJAM), 12 (TJDF, TJBA, 15º e 22ºTRTs), 18 (6ºTRT), 24 (TJES, TJTO, 1ºTRF, 4º, 14º, 17º, 21º e 24º TRTs) or 36 months (11ºTRT);

e) assiduity to the forensic shift (TJAM, TJDF, TJBA, TJES, TJPB, TJPI, TJRN, TJTO, TJPE, 4ºTRF, 6º, 12º and 21ºTRTs, TJMRS);

- f) diplomas, titles or certificates of conclusion of juridical courses (TJAM, TJDF, TJBA, TJES, TJMA, TJPB, TJRN, TJSC, TJTO, 11°, 12°, 14°, 17° and 24°TRTs, STM);
- g) Effective residence of the magistrate in the county he operates (TJMA, TJPB, TJTO, TJPE, TJMRS);
- h) confirmation index of the delivered verdicts (TJAM, TJPB, TJRJ);
- i) public and private behavior of the magistrate (TJPB, TJPI, TJRN, TJRR, TJPE, 12°, 16°, 21° and 24°TRTs).

The originals show the following criteria adopted by some Courts:

- a) determine the promotion (by merit and seniority, as well as removal or barter) to be in accord with the service (except for a verified excess in the court or county) (TJSE, TJRJ), to attend daily in court (trials in every business day, except if there's no service for that), have regular attendance in the continuous formation courses (Res. 600-17/07 of the 1° TRF), to the ones summons upon and not having detained in an unjustifiable manner actions beyond the deadline (RITJMA, art. 145; Res. 495/06 of MG, art. 3°; in the case of Res. 16/07 do TJRJ, the requirement is the attendance of the courses of improvement of the Judicial School and not have conclusive transcripts over 30 days; 12°, 15° and 17° TRTs determine the non existence of the process with an unreasonably due date);
- b) non occurrence of annulment of sentences or decisions by lack of substantiation (RITJMA, art. 148, § 1°, VIII; Res. Adm. 07/06 of the 12°TRT, art. 2°, § 1°, II; Act GP 06/06 of the 21°, art. 6°, II; Res. Adm. 35/07 of the 10°TRT, art. 7°, and);
- c) average time between the distribution and the sentence (Res. 17/05 of the TJPB; Res. Adm. 26/06 of the 17°TRT; Res. 15/06 of the 5°TRF), as well as the distribution and the execution of the trials (Res. 13/06 of the TJRO);
- d) assignment of special duties by the magistrate, such as forum director, electoral judge, auxiliary judge of the Disciplinary Board, judge in Recursal Boards, judge called out to the Court (Res. 01/06 of the TJPI);
- e) superior teaching school in juridical area (Res. 01/06 of the TJPI);
- f) published juridical books of at least 50 pages with relevant contribution to the juridical debate (Res. 01/06 of TJPI);
- g) lost of points by warning (2,5 points), censorship (5 points) and mandatory removal (7,5 points, from the total of 8 which is the attainable limit for promotion) (Res. 01/06 of the TJPI);
- h) deliberation of the last 5 years for assessment of the productivity and punctuality in the jurisdictional delivery, adding the courses taken independently from the period they were attended (Res. 13/06 of the TJRO).
- i) the record by which the original process with the magistrate and the occurrences on TRT, such as representation, amendments, petitions for providence, court injunctions, and *habeas corpus* definitely wanted against the magistrate (Res. Adm 01/06 of 15° TRT);
- j) pronouncing of liquid sentences in trials submitted to the summary proceeding rite (Res. Adm. 24/09 of the 13°TRT and Res. Adm. 32/07 of the 20° TRT), besides the use of technological tools in order to guarantee the effectiveness of the executed process, such as the system of *online* pledge, such as criteria of promptitude when practicing the jurisdiction (Res. Adm. 93/08 of the 24° TRT);

k) the level of the supervision practiced by the magistrate in relation to the work developed by its office court (Res. Adm. 35/07 of the 10^oTRT);

The weighting of the elements varied according the following reckoning:

a) TJBA (Resolution 02/06) – limit of:

- 300 points for performance (60 for the excellence of work, 60 for punctuality and assiduity, 50 for functional behavior of the magistrate, 50 for the mannerliness, when dealing with divisions, lawyers and public servants, 40 for residence in the county and 40 for intellectual production of books and juridical articles),
- 400 for productivity (100 for merit sentences, 100 for conciliations, 100 for interlocutory decisions and 100 for audiences, taking in consideration the index of productivity of the courts and counties elaborated by the Disciplinary Board),
- 150 for promptitude (average time between receiving the process and the effective official impulse) and
- 150 for course commitments (100 for Juris Doctorate, 80 for doctorate in related areas or master in Law, 60 for master in related areas, 40 specializations in Law, 20 specializations in related areas, 5 for courses and events in Law or related areas),
- maximum total of 1.000 points.

b) TJMA (Bylaw, art. 149) – the productivity of the magistrate is measured by the subtraction of the ruled trials regarding the received processes ($Op = Pj - Pr$), only being able to compete for the promotion the magistrate that has, in the last 24 months, equal result (normal) or above (positive) to zero (the judge that, in the limits of its work capacity, obtain negative index of productivity, must communicate the fact to the Disciplinary Board, for ascertainment comparatively to counties of similar quantity of received trials).

c) TJMG (Enclosure I of the Res. 495/06) – minimum numbers of sentences and trials to be made monthly in each court entity;

d) TJPA (Res. 04/06, art. 3^o) – measurement of the security on conducting the trial according to the following parameters (each one is worth one point, with a final positive grade between 7 and 10 points, normal between 5 and 7 points and negative if below 5 points):

- intelligible and right language on the vernacular and in concordance with the juridical technique;
- structure of the decisions and their substantiation;
- obedience to the procedural solemnity of each action;
- formalism, consistency, serenity and impartiality on conducting the trials;
- obedience to the essential requirements of the sentence;
- explicitness and exactness of the order of the court, with the relevant indication of the legal applicable mechanisms;
- pertinence of the principals mention and invocation of the jurisprudence;

- the analysis of the proof and answer to the arguments of the parties;
- the process of the appeal if interposed;
- collection of costs and payments due by the parties.

As for the same Court of justice, the estimation of the quality of administrator of the Court or County will be standardized taking into account the following factors (computing 2 points for each item with a positive balance of 8 to 10 points, normal from 4 to 8 points and negative when below 4):

- organization, conservation and hygiene of the chamber, presence chamber and office or forum, with updated payment of the water, electricity and telephone bills;
- orientation and control of the clerks of court and public servants;
- legal action about mistakes committed by the subordinate;
- accomplishment of the determinations of the Disciplinary Boards and other superior parts;
- delivery of monthly and annual maps and charts.

As far as the functional and private behavior of the magistrate, the Court of Pará elected the following parameters (punctuation equal as the one for administration):

- residence on the county
- absences of work without authorization;
- assiduity and punctuality on the forensic shift and trials;
- Treatment given to parties, attorneys, lawyers, witnesses, hierarchical superiors, servants.

With regard productivity, the detection will be done according to the level of difficulty of the trials (sentences of types A, B and C, described in its content for each type of court, with the first most difficult, the second in average degree and the last easiest), demanding one third of each type of Court (arts. 6º to 9º). For the promotion, he must produce the minimum amount of sentences required, being considered the higher productivity the judge with more a type sentences pronounced in the period.

Regarding the promptitude and quality in deciding, applying the Justice with celerity, the criteria are (with punctuation equal as the one from security when handling the trial):

- number of book party processes in the County;
- number or hearings made and people heard;
- number of conciliations made;
- number of ruled trials in the last 2 years;
- number of reminiscent trials;
- number of interlocutory decisions;
- number of conclusive processes monthly for sentence;
- number of ruled trials;
- actions taken for the judicial acts to happen on the legal deadlines;

- not to exceed unreasonably the deadlines to sentence or dispatch, as well as to fulfill diligences on 2° Instance Court.

e) TJRR (Res. 02/07) – assignment of the following reckoning for each of the items of the evaluation:

- productivity and promptitude (up to 4 points, with the reckoning already fixed by the minimum number of trials to obtain each of the four points related to each type of court);
- quality of the sentences (up to 2 points);
- behavior of the magistrate (up to 2 points);
- number of times he was on a list of merit (up to one point);
- participation in official or recognized courses, of juridical improvement (up to one point).

f) 2° (Res. Adm. 04/05), 14° (Res. Adm. 111/07) and 17° (Res. Adm. 2606) TRTs – the weighting of the factors received the following elaboration:

Factor	2nd TRT	14° TRT	17° TRT
Performance	25	-	20
Productivity	35	45	30
Promptness	35	45	30
Improvement	5	10	5
Quality of the sentences	-	-	10
Behavior of the magistrate	-	-	5
Total	100	100	100

g) 4° TRT (Res. 04/06) – categorization of the jurisdictional units by volume of trials in course:

- category 1 – up to 1000 actions
- category 2 – between 1.001 and 1.500 actions
- category 3 – between 1.501 and 2.000 actions
- category 4 – over 2.000 actions

h) 7° (Res 19/06) e 21° (Act GP 06/06) TRTs – linear weighting of the 4 criteria for promotion by merit listed in the art. 93, II, “c” of the CF (performance, productivity, promptitude and progress in courses), earning up to 10 points each one (losing 5 points in case of merit under penalty of warning), meaning, for the performance verification, the 10 points would be that way distributed;

- absence of the amendment claims considered proceeding against the magistrate: up to 2 points;
- inexistence of nullity of decisions by lack of grounding – up to 2 points (it will be the superior court judge responsibility to revoke the sentence to communicate the fact to the Disciplinary Board, for record and counting);

- civility and decorum – up to 2 points;
- punctuality and assiduity – up to 2 points;
- unearned refusal to the immediate accomplishment of the decisions of the Disciplinary Board or the Court – up to 2 points;

i) 23°TRT (RITRT, art. 183, § 5°) – the positive or negative reckoning, by accomplishments or defects, obeys the following parameters:

- figure in a triple list for merit: +0,2 points (up to the maximum of 0,8 points);
- each annulled sentence by lack of substantiation: -0,1 point;
- each amendment or power of attorney taken against the magistrate: -0,1 point;
- each group of 50 sentences late delivered in the last 3 years: -0,5 points;
- participation as a lecturer or a panelist in courses of improvement promoted by the Court: +0,1 points (until the maximum of 0,5 points);
- participation in commissions instituted to treat interests of the Court: +0,1 points (until the maximum of 0,5 points);
- juridical courses: Juris Doctor (1,0 point with thesis and 0,7 without thesis), master (0,9 with thesis and 0,7 without thesis), specialization (0,7 points);
- publications: books (0,5 per book), articles (0,05 per article);
- time of magistrature (not including the absences): +0,3 points per year;
- participation in board of contest of judge in Court: +0,3 points per board;
- convocations to act as a Supreme Court Judge or entitle of Court: +0,1 per month of convocation

j) 24° TRF ((Res. Adm. 93/08, art. 6°, § 2°) – the order of precedence of the listed criteria on art. 93, II, “c” of the CF (not considering the “performance” as a specific criteria):

- 1° - criterion of productivity
- 2° - criterion of promptitude
- 3° - criterion of improvement.

About the *modus operandi* of the evaluation, regarding the data collection, we have:

a) the Disciplinary Board of Justice (in 2°TRT, to the Vice Administrative Presidency) would be responsible for the evaluation of the candidates to promotion, informing about the quality, dedication and care of the accomplishment of the judicial role, being relater on the Court, that will debate the offered list by the counselor (Res 01/06 of the TJPR; in a similar way follows the Regimental Act 72/05 of the TJSC, Res. 024/06 of the TJTO, Res. 25/08 of the 4° TRF), besides collecting proper information about the personal behavior of the candidate to promotion (Res. 15/06 of the 5°TRF);

b) computerized control of the necessary data to the evaluation of the magistrate, establishing the ranking of the candidates according to the several established criteria (Res. 495/06 of the TJMG);

c) Proposal, by the magistrates, of a selection of given judgments (10) for the means of the appreciation of the jurisdictional delivery quality (Res. 02/07 of the TJRR);

d) proposal of evaluation forms for the magistrates that will select the candidates to be promoted, grading each item of the evaluation (system almost widely spreaded among the Courts);

e) The Judicial School linked to the Court must provide the data of the Judicial School referring to the official and recognized courses of improvement of the magistrates (Regimental Act 02/06 of the 3°TRT).

As seen on the findings made based on the analysis of the fixed rules by the Courts that regulate the Resolution 6 of the CNJ, the parameters and prudence are dissimilar, to recommend a national standardization.

V) RANKING OF THE EVALUATION MODELS

Rank the evaluation. Are the systems of performance evaluation of magistrates in Brazil efficient? As I see it the systems are still incipient, more than efficient, since:

a) there are no consistent criteria on the Brazilian judiciary, the ones that exist have been established not so long ago (from 2006), not being depurated the systems of measurement that show to be more efficient from the ones that are practically impossible in their practical application; a major part of the Courts have not regulated the issue (and from the ones that regulated, only a few were detailed);

b) It still governs, in practice, the promotion by political preference instead of by merit, since, by the lack of a higher objective criteria of promotion by merit in most of the Courts, the substantiation to be given by the evaluator magistrates ends up to be more rhetoric than a portrait of reality, constraining more or less, according as the decision to promote the candidate of a lower merit becomes more or less distant from the verifiable reality of performance and academic preparation of the candidates to the court;

c) It hasn't been established yet a balance point between the different reasons that will taken into account to examine the candidate that better answers the ideal of desired magistrate: just, prompt and confident.

With effect, using as an example the members of the Court to whom I take part of (Labor Superior Court), no more subject to any criteria of evaluation by means of promotion, once we integrate the last degree of the labor magistrates' career, there are three priorities that alternatively elect in the jurisdictional delivery:

a) Promptness – concern focused on productivity (raise on the quantity of resolved trials) and on stock (reduction of the over balance of processes to be verified, up to a present time with the jurisdictional activity, which became impossible throughout the current model, of triple review of decisions, with constant adding of appeals to be appreciated);

b) quality – concern focused on the decision contents (not only to give the best interpretation to the applicable law to the hypothesis but also to decide with justice the concrete case, substantiated in a solid way the engraved decision);

c) seniority – concern for respecting the chronological order of entry of the Court trials (be just up to the moment of the analysis of the trials, avoiding to give preference to the simplest trials or to requests from the more needy parties or better defended).

Thus, the preference or exclusive focus in any of the three criteria has generated the following distortions regarding the effectiveness of the jurisdictional delivery.

a) negligence of quality of the decisions, attempting in higher or lower degree of intensity against basic principals related to jurisdictional delivery, which are the jurisdiction undelegatability (end up being the assessors of ministry to effectively decide, without the adequate review of those to whom, the judicial system assigned exclusively the power of judging) and the collegiality (the huge volume of actions put in list, with generical synopsis of the subject in judgment, makes the decision not to be from Board or Section, but monochrome of the Relator, with mere appearance of collegiality);

b) excessive delay on the valuation of the demands, paying attention against the constitutional principal of the judicial celerity (CF, art. 5º, LXXVIII), which guarantees the reasonable duration of the trial, since the justice that takes too long is grievance (the problem of delay numerous times is managerial, of necessity conjugation to make choices that detect trials that can be resolved promptly by the simplicity of the matter that they unfold or owing to an appealed issue on the Court).

In this sense, it does not justify, by the exclusive priority of one of the criteria mentioned above, situations as: average of nearly 2.000 decisions executed monthly by only one judge (because it's humanly impossible the analysis of so numerous actions by one judge, as well as the verification of the proceedings adoption that limit to reproduce "*ipsis literis*" the reviewed decision); stock superior to 12.000 pending actions of judgment by the same relator (situation that interferes yet the location of the actions and the internal process of them inside the chamber); actions waiting for decision over 10 years with the same relator (that possibly gave emphasis to choices to attend the quantitative statistics).

Distortions like this will only be seen in a surpassed model of jurisdictional delivery, inappropriate for the disproportionate volume of trials in relation to the number of judges, knowing that, especially on the highest courts, in unifying character of jurisprudence, the reduced number of judges is a condition of efficiency for taking decisions and determination of jurisprudence.

VI) EVALUATION CRITERIA

The performance evaluation of the magistrate, either by means perpetuity, or by the means of promotion, must consider five criteria:

- a) productivity
- b) quality of the decisions,
- c) promptitude on the jurisdictional delivery,
- d) technical improvement
- e) ethical profile of the magistrate.

The easiest and fastest evaluation criteria of the magistrate are the ones mathematically measurable, linked to its productivity and promptitude in the jurisdictional delivery: check how many actions were judged and if there are late actions. It's the easiest but it is not and should not be the only one, yet it has significant importance.

It follows in complexity scale the technical improvement, measurable not only by the number of attended courses but also by the academic level of the institutions that offer them and the type of course. The attendance of these courses, when there is no jurisdictional absence, demonstrates the concern and commitment of the magistrate in its improvement and disposition and it deserves to be rewarded.

The quality of the verdicts is harder to measure and compare, for the purpose of promotion. However, the evaluation would be poor if quantity is only considered. The logical structure and objective and the suitable issues raise that seem to be parameters that objectify the analysis of judicial decisions to be examined by the judges of superior instance who will choose the magistrates to be promoted.

Ultimately, the ethical profile of the magistrate deep down, the hardest aspect to measure, since in a simplistic view, it would be a paradox to compare degrees of honesty of the judges. However, in an Ethical classical view, focused on the virtues and not on the duties, it would be really about verifying which magistrate better embodies the constant principals of the Judicial Ethical Codes (Iberia-American Ethical Judicial Code, 2006, and National Magistrature Ethical Code, 2008)

1) Independence – ability to decide only based on the Law, without being taken by any other improper influences (CEMN, arts. 4-7; CIEJ, arts. 1-8).

2) Impartiality – quality of treating in an equal form the parties and develop an intellectual habit and self-criticism righteousness, reformulating opinions, when noticing the unmaintainability of the thesis that embraces (CEMN, arts. 8-9; CIEJ, arts. 9-17).

3) Motivation – ability to give juridical reason of the verdict, legitimizing-it (CIEJ, arts. 18-27).

4) Cognition and capability – the practice of the constant study, in search to experience and manage not only the positive law but also the general principals of law, the essential human rights and the correlate sciences, for a quality jurisdictional delivery (CEMN, arts. 29-36; CIEJ, arts. 28-34).

5) Justice and equity – capability to execute justice through the law, but moderating it with equity, in attention to the personal, family and social consequences adverse to the parties (CIEJ, arts. 35-40).

6) Institutional responsibility – active commitment with a satisfactory steady motion of all the judicial system, not disturbing the service to favor the increase of unreasonable resources or demanding the parties the intervention of unnecessary appeals, which suggests to develop the virtue of judiciary discipline, which, makes an exception to eventual personal point of view, applies the pacific jurisprudence, to avoid the time dilatation of demands which final result is already known (CIEJ, arts. 41-47).

7) Courtesy – the practice of respect to parties, lawyers, servants and judge colleagues, in order to use an accessible language to the concerned ones (CEMN, arts. 22-23; CIEJ, arts. 48-52).

8) Integrity – decorum which imposes behavior on the private life compatible with the position in charged, which includes the fields of intimacy, that cannot shock a “reasonable observer” regarding values and feelings prevailing on the society he acts upon, must live in his private life the justice that he should distribute when wearing the toga (CIEJ, arts. 53-55).

9) Transparence – The practice of disclosing the verdicts, not withholding information to parties who have the right to, nor having the disproportionate desire of appearing and social recognition, especially regarding the social communication ways, reframing from expressing opinion about pending processes of judgment or depreciatory idea about judiciary verdicts in these ways (CEMN, arts. 10-14; CIEJ, arts. 56-60).

10) Professional Secrecy – The capability of discretion about what you perceive because of the judge function (CEMN, arts. 27-28; CIEJ, arts. 61-67).

11) Prudence – the practice to reinforce opinions rationally justified, after pondering and valuing the pros and cons of the assumptions deduced in law, which suggests the role of *consequence judgment*, reflecting over the social and politic impact of his acts and decisions (CEMN, arts. 24-26; CIEJ, arts. 68-72).

12) Diligence – The virtue of solving the processes in a timely manner and punish the dilatory practice, which also suggests not to take obligations or commitments that may damage the punctual fulfillment of the duty of judge (CEMN, arts. 20-21; CIEJ, arts. 73-78).

13) Professional Honesty – The virtue of not receiving benefits otherwise deserved and not taking advantage of the tactics offered as a professional practice (CIEJ, arts 79-82).

14) Dignity, Honor and Decorum – The practice of behaving in a way in accordance with the high value of the labor he occupies without, from other party, to let go by the position taken, acting in a discriminatory way regarding other people or institutions, as if he were above or better than others (CEMN, arts. 37-39).

VII) CONCLUSION

Each of these judicial virtues listed on the Ethical Codes of Magistrature is liable for being observed by the parties, lawyers and attorneys as well as for colleagues, superiors and public servants. Thereby, when the magistrates of the superior instance have to evaluate the performance and the profile of the judge that concurs to promotion for merit, they can do it well justifiably to:

a) Verify, through the analysis of the appeals against judgment given by the candidates to promotion, if they're well structured and founded, and if they respect the resumed jurisprudence of the superior instances, avoiding unnecessary and prorogated resources.

b) to report with the local community about the magistrate behavior service the parties and lawyers, permanency in the court house main office, leading and scheduling audiences, social behavior compatible with the dignity of the occupied job, etc.

c) inquire about the existence of late actions in the judgment, pending the decision besides the reasonable time, in face to the volume of existing processes, comparing with the statistics data of production and pending of judgment stock in the judgment;

d) verify if the candidate, in the measurable period (in other words, since the admission or the last promotion until the one he concurs), attended courses of improvement and updating, attempting to the level of the academic institution ministrants and the courses' genre, obviously without distancing from the jurisdiction.

To sum up, the evaluation of performance of the magistrates must consider the integral profile of the magistrate that has been evaluating, considering basically the justice, efficiency, celerity, capability and integrity in which he redeem the noble task of judging.