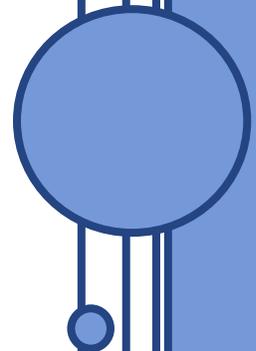


JAMAICA

JUDICIAL CONDUCT GUIDELINES

This document is directed at all judges of the Court of Appeal and the Supreme Court, Masters of the Supreme and Resident Magistrates and is intended to provide them with ethical guidelines in order to safeguard the right of everyone to justice administered by a fair and independent judiciary.



JAMAICA – JUDICIAL CONDUCT GUIDELINES

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JAMAICA – JUDICIAL CONDUCT GUIDELINES

1. PURPOSE

Statement

The purpose of this document is to provide ethical guidance for judges of the Court of Appeal and the Supreme Court, Masters of the Supreme Court and Resident Magistrates.¹

Principles:

1.1 The Statements and Principles describe the very high standards toward which all judges strive. They are principles of reason to be applied in light of all of the relevant circumstances and consistently with the requirements of the Constitution of Jamaica, judicial independence and the law. Setting out the very best in these Statements and Principles does not preclude reasonable disagreements about their application or imply that departures from them necessarily warrant disapproval.

1.2 The Statements and Principles are advisory in nature. Their goals are to assist judges with the difficult ethical and professional issues which may confront them from time to time and to assist members of the public to better understand the judicial role. They are not intended to be and shall not be used as a code or a list of prohibited forms of behaviour and they do not set out standards defining judicial misconduct.

Commentary:

1) Nothing in these Statements, Principles and Commentaries can, or is intended to limit or restrict judicial independence, because to do so would deny what this document seeks to safeguard: the rights of everyone to equal justice administered by fair and impartial judges.

¹ Hereinafter, judges of the Court of Appeal and the Supreme Court, Masters of the Supreme Court and Resident Magistrates will be collectively referred to as “judges”.

2. JUDICIAL INDEPENDENCE

Statement

Independence being the foundation on which judges should exercise their functions in a free, thoughtful and autonomous fashion, free from any influence, an independent judiciary is indispensable to impartial justice under law. Judges should therefore strive to uphold and exemplify judicial independence in both its individual and institutional aspects.

Principles:

- 2.1 Judges must exercise their judicial functions independently, fearlessly and free of extraneous influence.
- 2.2 Judges must firmly reject any attempt to influence their decisions in any matter before the court outside of the proper processes of the court.
- 2.3 Judges should encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary.
- 2.4 Judges should exhibit and encourage high standards of judicial conduct so as to promote public confidence, which is the cornerstone of judicial independence.

Commentaries:

- 1) The independent judge is one who, based on the law in force, arrives at a just decision, without any extraneous influence, and without submitting to any pressure, threats or intimidation.
- 2) Judges' attitudes and conduct should indicate that they are in no way influenced by any private or public authority.
- 3) Judges must bear in mind that the principle of judicial independence extends beyond the traditional separation of powers and requires that judges be, and be seen to be, independent of all sources of power, influence or outside interests.

- 4) Judges must at all times be alert to, and wary of, improper attempts to influence them. Any attempt to influence a court must only be made by advocates or litigants in accordance with applicable law and procedure (i.e., persuasive advocacy).
- 5) Judges must be, and must be seen to be, immune to the effects of publicity, whether favourable or unfavourable.
- 6) Judges must, of course, reject attempts by all persons, be they litigants, politicians, officials, other judges or others, to improperly influence their decisions. They must also take care that communications with other persons do not raise reasonable concerns about their independence.
- 7) Occasionally, judges receive letters or other intimidating communications containing threats to the safety or welfare of themselves or members of their family, by or on behalf of disgruntled parties, or special interest groups, to influence a judicial decision. While conduct of this nature must not have any effect on judges, it should not be ignored. Any such threat should be promptly reported.
- 8) Consultation with colleagues is important when points of difficulty arise. However, in performing judicial duties, a judge's decision must be independent of the opinion of colleagues.
- 9) In courts with several judges, deliberations should be conducted in respectful terms and in good faith. The right of a judge to dissent from the majority opinion should be respected.
- 10) Judges must not interfere with the independence of colleagues.
- 11) The relationship between the judiciary and the other branches of government should be one of mutual respect, each recognising the role of the others. An appropriate distance should especially be maintained between the Judiciary and the Executive, bearing in mind the frequency with which the Executive is a litigant before the courts.
- 12) Judges should be staunch defenders of their own independence.
- 13) Not everyone is familiar with the concept of judicial independence, so judges should avail themselves of appropriate opportunities to help the public understand its fundamental importance.

3. INTEGRITY

Statement

Judges should strive to conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary. Not only must justice be done but it must also be seen to be done.

Principles:

3.1 Judges should ensure that, in both their personal and professional lives, their conduct is above reproach in the view of reasonable, fair minded and informed persons, and that their behaviour is such as to foster the confidence of the public in the integrity of the judiciary.

3.2 Judges, in addition to observing this high standard personally, should encourage and support its observance by their judicial colleagues.

Commentaries:

1) Judges must perform their duties according to law and avoid any suggestion that they seek or expect a benefit of any kind. In particular:

a) Judges must avoid all impropriety and appearance of impropriety in their professional and personal conduct. An appearance of impropriety occurs when a reasonable person, fully and properly informed, perceives that the judge's honesty, integrity, impartiality, demeanour, or fitness to serve as a judge is impaired.

b) Judges should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of judicial office to advance the private interests of the judge or others, nor convey the impression that there are individuals in a special position to influence the judge.

c) Accordingly, judges shall exercise discretion in personal relations, social contacts and activities, especially with counsel who appear before the court, and must avoid the inadvertent impression of favouritism in the mind of the reasonable person.

- 2) Judges must avoid ostentation or self-promotion so as not to discredit the proper discharge of their duties.
- 3) Judges must be mindful of the dignified and respectful manner in which they relate to peers, subordinates and all members of society with whom they come into contact, so as to maintain the trust and respect that all must have in the judicial role. Specifically,
 - a) As a general proposition, judges are entitled to exercise the rights and freedoms available to all citizens. While appointment to judicial office brings with it certain limitations on the private and public conduct of a judge, it is nonetheless true that judges may participate, insofar as their office permits, in the life and affairs of the community.
 - b) Judges must recognise that the nature of their office exposes them to public scrutiny and puts constraints on their behaviour. Judges should therefore avoid situations which might reasonably lower respect for their judicial office or might cast doubt upon their impartiality. They must also avoid situations that might expose them to criticism in their private lives. Behaviour that might be regarded as merely unfortunate if engaged in by someone who is not a judge might be seen as unacceptable if engaged in by a judge.
 - c) A judge should always be vigilant that his or her integrity will not be compromised. While the judge has control over his or her own actions, the same cannot be said of the actions of others. Thus, a judge should exercise extreme prudence in befriending or socialising with litigants.
- 4) In addition to judges observing high standards of conduct personally, they should also encourage and support their judicial colleagues to do the same, as questionable conduct by one judge reflects on the judiciary as a whole.
- 5) A judge who is aware of evidence that, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge should seek to ensure that appropriate action is taken. In some cases, this may simply involve speaking to the other judge, making further inquiries or speaking to the Chief Justice.
- 6) A judge should make clear to court personnel that they must not engage in conduct on the judge's behalf or as the judge's representative that would contravene the ethical precepts.
- 7) Generally speaking, a court is a collegial institution. Members of a court can be expected to care about the welfare of their colleagues, particularly if a colleague's health might affect the discharge of judicial duties. The issue here is one of appropriate care and concern, not of legal responsibility. It will usually be appropriate to inform the relevant judicial authority if there is cause for concern about the health of a colleague. There may be situations in which it will first be appropriate to consult with and/or offer assistance to the colleague in question.

4. PROPRIETY

Statement

Propriety is a precept that requires judges to behave in a manner consistent with all governing ethical principles. Propriety and the appearance of propriety are essential to the performance of all the activities of judges, both on and off the Bench.

Principle:

4.1 Judges shall avoid impropriety and the appearance of impropriety in all their activities.

Commentaries:

- 1) As subjects of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges should conduct themselves in a way that is consistent with the dignity of judicial office.
- 2) Judges should, in their personal relations with individual members of the legal profession, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 3) Save in exceptional circumstances, or out of necessity, judges should not participate in the determination of a case in which any member of the individual judge's family represents a litigant or is associated in any manner with such a litigant.
- 4) For the purposes of these guidelines, the phrase 'judge's family' (or any variation of it) refers to a judge's spouse (or former spouse), domestic partner (or former domestic partner), son, daughter, son-in-law and daughter-in-law and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.
- 5) Judges shall, as far as is practicable, avoid the use of their residence by members of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety.

6) Judges, like all other citizens, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, judges should always conduct themselves in such a manner as to preserve the dignity of judicial office and the impartiality and independence of the judiciary. Judges should never make any comment in public or otherwise that might affect the fair trial of any person or issue.

7) Judges shall not allow their family, social or other relationships to improperly influence their judicial conduct and judgment.

8) Judges should inform themselves about their personal and fiduciary financial interests and should make reasonable efforts to be informed about the financial interests of members of their family. Judges may hold and manage appropriate personal and/or family investments, but should refrain from financial and/or business dealings which tend to reflect adversely on their impartiality, interfere with the proper performance of judicial duties, exploit their judicial office, or involve them in frequent transactions with lawyers or persons likely to come before the court on which they serve.

9) Judges should refrain from conduct, such as membership in groups or organisations, or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in their impartiality with respect to any issue that may come before the courts.

10) Judges should refrain from conduct that might give rise to, in the mind of a reasonable, fair-minded and informed person, the appearance that they are engaged in political activity.

11) Judges should, upon appointment, cease all partisan political activity or involvement of any kind (including, but not limited to, membership in political parties, political fund-raising, attendance at political fund-raising events, contributing to political parties or campaigns, taking part publicly in controversial discussions of a partisan political character, holding any office in a political organisation, soliciting funds for a party or candidate or purchasing tickets for political party dinners or other functions).

12) Judges should not use or lend the prestige of judicial office to advance their own or anyone else's private interests. Nor should judges encourage or permit others to convey the impression that anyone is in a special position to influence them in the performance of judicial duties. Judges should be aware that letters attesting to the character of individuals may be considered as advancing the private interests of those individuals.

13) A judge should not testify voluntarily as a character witness. A judge may testify as a witness in a criminal proceeding if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances.

14) Confidential information acquired by a judge in his or her judicial capacity should not be disclosed or used by the judge for any purpose not related to the judge's judicial duties.

15) Subject to the proper performance of their judicial duties, judges may engage in activities such as:

a) speaking, writing, lecturing, teaching and participating in activities concerning the law, the legal system, the administration of justice and related matters;

b) appearing at public hearings before official bodies concerned with matters relating to the law, the legal system and the administration of justice or related matters; or

c) serving as members of official bodies devoted to the improvement of the law, the legal system, and the administration of justice or related matters.

16) Judges may receive reasonable compensation and reimbursement of expenses for the extra-judicial activities permitted under commentary 15 above, provided that such payments do not give the appearance of influencing them in the performance of judicial duties or otherwise give the appearance of impropriety.

17) Judges may speak and write publicly on non-legal subjects and engage in historical, educational, cultural, sporting or other social and recreational activities, provided that such activities do not detract from the dignity of judicial office or otherwise interfere with the performance of judicial duties in accordance with these Guidelines.

18) Judges may participate in civic and charitable activities that do not reflect adversely on their impartiality or otherwise interfere with the performance of judicial duties. Judges should not be involved in fund-raising or membership solicitation, but may solicit funds from judicial colleagues for appropriate causes.

19) Subject to the need to maintain the dignity of the office, judges may form or join associations of judges or participate in other organisations representing the interests of judges, to promote professional education and training and to protect judicial independence.

20) Judges, and members of judges' families, should neither ask for, nor accept, any gift, bequest, loan or any favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

21) Judges should 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 or to be done or omitted to be done in connection with their duties or functions.

22) Subject to law and to any legal requirements of public disclosure, judges may receive token gifts, awards or benefits as appropriate to the occasions on which they are made, provided that such gifts, awards or benefits might not reasonably be perceived as intended to influence them in the performance of judicial duties or otherwise give rise to the appearance of partiality.

23) Judges may accept invitations to privately hosted functions and events, provided that their presence at such functions or events does not demean their office and might not reasonably be perceived as intended to influence them in the performance of judicial duties or otherwise give rise to the appearance of partiality.

24) Judges should not serve as executors, administrators, trustees, guardians or other fiduciaries, save in respect of the estate, trust or persons connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties.

25) Except as is consistent with, or as provided for by, the Constitution or any other law, and with the approval of the Chief Justice, judges should not accept appointment to a government commission, committee or to a position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, the administration of justice or related matters. However, judges may represent the country on ceremonial occasions or in connection with historical, educational, cultural, sporting or like activities.

26) Judges should not sign petitions to influence political decisions.

27) Judges should not make use of a judicial letterhead in correspondence unrelated to their official duties in circumstances where the use of the letterhead might be taken to suggest a request for, or expectation of, some form of preferential treatment.

28) A judge speaks once through his or her judgment. It is well established that a judge does not comment publicly once reasons for judgment have been published, even to clarify ambiguity.

29) Judges should be circumspect about becoming involved in personal litigation, even if the litigation is in another court. Good sense must prevail and although this does not mean that a judge should abandon the legitimate pursuit or defence of private interests, their protection needs to be conducted with great caution to avoid creating any impression that the judge is taking improper advantage of his or her position.

5. COMPETENCE AND DILIGENCE

Statement | *Judges should regard competence and diligence as vital to the due performance of their judicial duties.*

Principles:

5.1 Judges should diligently perform their judicial duties, which, broadly defined, include not only the adjudicative function, but other judicial and administrative tasks essential to the proper operation of the courts.

5.2 Judges should contribute to the improved development of the law and the administration of justice.

5.3 Judges should take all reasonable steps to maintain and enhance the knowledge, skills and the personal qualities necessary for the proper performance of judicial duties.

Commentaries:

1) Judges should endeavour to perform all judicial duties, including the delivery of reserved judgments, efficiently and with reasonable promptness. In exceptional cases and where, for good and sufficient reasons, a judge believes that a judgment is likely to be reserved for more than three months, it shall be the responsibility of the judge to inform the Chief Justice (in the case of judges of the Supreme Court, Masters and Resident Magistrates) or the President (in the case of judges of the Court of Appeal) of the circumstances causing or contributing to the delay.

2) A judge should strive to maintain order and decorum in all proceedings in which he/she is involved. He/she should be patient, dignified and courteous to all lawyers, litigants, witnesses and others with whom he/she is called upon to deal in an official capacity and should require similar conduct from lawyers, court staff and all others subject to the judge's influence, direction or control.

3) Whilst always remembering the principles set out at clauses 7.1 and 7.2 below, a judge should always be prepared to show particular consideration for the needs of self represented litigants and to assist them as much as possible in the presentation of their cases, wherever necessary or appropriate.

4) In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge must make every effort to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

5) Timely disposition of the court's business requires judges to devote themselves to their judicial duties, to be punctual in attending court and related conferences and meetings with counsel, to be expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

6) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

7) Particular care should be taken to avoid causing unnecessary hurt in the exercise of the judicial function. This includes taking care about comments made in and outside court and observations made in reasons for judgment or in remarks on sentence. The privacy interests of those involved in litigation and of third parties should also be borne in mind.

8) Excellence in judicial decision-making cannot be achieved unless the judge properly explains his or her decision. Reasons for decision are necessary because they: (1) focus the mind by directing the judge's attention to the salient issues and lessen the possibility of overlooking or under-emphasising important points of law or fact; (2) allow both sides to the dispute to understand why the dispute was resolved in a particular way; (3) allow for meaningful appellate review, in the sense that the Court of Appeal is better able to determine whether the trial judge turned his or her mind to the live issues in the case; (4) serve to increase public respect and confidence in the judicial system, by enabling the public to understand why a particular result was reached; and, (5) may serve a law-making function in the sense of serving as a precedent in other cases.

9) Unless otherwise provided for by law, wherever a judge becomes involved in an alternative dispute resolution mechanism, such as mediation, in an attempt to resolve a matter pending before the court, the judge should: (i) ensure that all parties consent to the alternative dispute resolution mechanism; (ii) not pressure anyone to accede to any position they do not wish to accept voluntarily; (iii) not disclose the content of the alternative dispute resolution mechanism to anyone including any other judge; and (iv) ensure fairness of the alternative dispute resolution mechanism for all participants.

10) While judges should exhibit diligence in the performance of their judicial duties, their ability to do so will depend on the burden of work, the adequacy of resources including staff, technical assistance and time for research, deliberation, writing and other judicial duties apart from sitting in court. The importance of the judge's responsibility to his or her family is also recognised. Judges should have sufficient vacation and leisure time to permit the maintenance of physical and mental wellness and reasonable opportunities to enhance the skill and knowledge necessary for effective judging.

11) Judges are uniquely placed to make a variety of contributions to the administration of justice. Judges, to the extent that time permits and subject to the limitations imposed by judicial office, may contribute to the administration of justice by,

for example, taking part in continuing legal education programs for lawyers and judges and in activities to make the law and the legal process more understandable and accessible to the public.

12) Judges should be mindful of the professional responsibilities and ethical duties of counsel who appear before the court. There may be occasions where a lawyer's conduct falls short of such standards. If this occurs, a judge may take appropriate measures, having regard to the need to maintain the integrity of any ongoing proceedings.

13) "It is a judge's professional duty to do what he reasonably can to equip himself to discharge his judicial duties with a high degree of competence."² This requires the judge to take reasonable steps to maintain and enhance the knowledge and skills necessary for the proper performance of judicial duties, and not to engage in conduct incompatible with the diligent discharge of such duties.

14) The judge should maintain an attitude of active collaboration in all activities related to judicial training.

15) Excellence cannot be attained unless the judge is: (1) knowledgeable in both the law, rules of procedure and evidence, and binding jurisprudence; (2) able to undertake in-depth legal research; (3) able to articulate decisions that are clear and cogent; (4) able to make sound judgments; (5) able to make informed decisions that will stand up to close scrutiny; (6) fair and open-minded; (7) a good listener, but able, when required, to ask proper questions; and, (8) courteous but firm when necessary.

² Lord Bingham of Cornhill, 1993 lecture to the Society of Public Teachers of Law on the topic of Judicial Ethics.

6. EQUALITY

Statement

Respecting human dignity and ensuring equality of treatment for all persons who appear before the courts are essential to the due performance of the duties of judicial office.

Principles:

6.1 Judges should carry out their duties with appropriate consideration for all persons, be they lawyers, parties, witnesses, court staff or judicial colleagues, without differentiation on any irrelevant ground.

6.2 Judges should strive to be aware of and to understand diversity in society and differences arising from various sources, including, but not limited to gender, race, colour, national origin, religious conviction, culture, ethnic background, social and economic status, marital status, age, sexual orientation, disability and other like causes.

6.3 Judges should not, by words or conduct, manifest bias or prejudice towards or against any person or group.

6.4 Judges should not knowingly permit court staff or others subject to their influence, direction or control to differentiate between persons concerned in a matter which is before the court on any irrelevant ground.

6.5 Judges should require lawyers appearing in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in the proceedings and may be the subject of legitimate advocacy.

Commentaries:

1) Inappropriate conduct may arise from a judge being unfamiliar with cultural, racial or other traditions or failing to realise that certain conduct is hurtful to others. Judges should therefore attempt by appropriate means to remain informed about changing attitudes and social values.

2) It is part of the judge's role to ensure that proper accommodation is made for people who experience certain challenges, might have difficulties or be at a disadvantage.

- 3) Equality according to law is not only fundamental to justice, but is strongly linked to judicial impartiality. A judge who, for example, reaches a correct result but engages in stereotyping does so at the expense of the judge's impartiality, actual or perceived.
- 4) Judges should not be influenced by attitudes based on stereotype, myth or prejudice. They should, therefore, make every effort to recognise, demonstrate sensitivity to, and correct such attitudes.
- 5) Judges should not hold membership in any organisation that practices discrimination of any kind.
- 6) Judges shall not engage in speech, gestures, or other conduct that would reasonably be perceived as bias or prejudice, including bias or prejudice based upon ethnic or national origin, gender, age, disability, social status, health status, religion, opinions, preferences, marital status or any other discriminatory attitude or expression that violates human dignity or constitutes sexual harassment.
- 7) Judges must be firm but fair in the maintenance of decorum, and above all even-handed. This involves not only observance of legal principles, but the need to protect all parties, witnesses and counsel from any display of racial, sexual or religious bias or prejudice of any kind. Judges should inform themselves on these matters so that they do not inadvertently give offence.

7. IMPARTIALITY

Statement

Impartiality is essential to the proper discharge of judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Principles:

- 7.1 Judges should perform their judicial duties without favour, bias or prejudice.
- 7.2 Judges should strive to ensure that their conduct, both in and out of court, maintains and enhances confidence in their impartiality and that of the judiciary.
- 7.3 Judges should, as much as reasonably possible, conduct their personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases.
- 7.4 Judges should disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially.

Commentaries:

- 1) Impartiality is concerned with both perception and the actual absence of bias and prejudice. This dual aspect of impartiality is captured in the often repeated words that justice must not only be done, but manifestly be seen to have been done. The test is whether a well-informed person, viewing the matter realistically and practically — and having thought the matter through — would apprehend a lack of impartiality in the decision maker. Whether there is a reasonable apprehension of bias is to be assessed from the point of view of a reasonable, fair minded and informed person.
- 2) Judges should not knowingly, while any proceedings are before, or could come before them, make any comment that might reasonably be viewed as likely to affect the outcome of such proceedings or impair the manifest fairness of the process.
- 3) Instances where a judge should be disqualified include, but are not limited to, the following:

- a) where the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary material concerning the proceedings;
- b) where the judge previously acted as a lawyer or was a material witness in the matter in controversy; or
- c) where the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy,

provided, however, that disqualification of a judge shall not be required: (a) if the matter giving rise to the perception of a possibility of conflict is trifling or would not support on close analysis a plausible argument in favour of disqualification; (b) where no other tribunal can be constituted to deal with the case; or (c) where, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

4) It is for the judge to make the decision on recusal, perhaps in consultation with a colleague. If the judge concludes that no reasonable, fair minded and informed person, considering the matter, would have a reasoned suspicion of a lack of impartiality, the matter should proceed before the judge. If the conclusion is the opposite, the judge should not sit. The judge should generally make disclosure on the record and invite submissions from the parties in only two situations. The first arises if the judge has any doubt about whether there are arguable grounds for disqualification. The second is if an unexpected issue arises shortly before or during a proceeding. The judge's request for submissions should emphasise that it is not counsel's consent that is being sought but assistance on the question of whether arguable grounds exist for disqualification.

5) In any case in which a judge decides, for good and sufficient reason, to disqualify him/herself from hearing the matter, he/she shall take all reasonable steps to ensure timely notification to the parties and to the registrar of the court, in order to ensure that appropriate alternative arrangements can be made within a reasonable time for the trial and ultimate disposal of the case.

6) Judges who are members of fraternal or similar bodies should be astute and sensitive to the need to disqualify themselves from hearing a case if the need arises.

7) After leaving judicial office, judges should be subject to a "cooling off period" before accepting a government appointment to a board or commission because, even in retirement, a former judge may still be regarded by the general public as a representative of the judiciary and any activity that might tarnish the reputation of the judiciary should be avoided. Related issues, requiring similar approaches, may arise in relation to overtures to the judge while still on the bench for post-judicial employment. Such overtures may come from law firms or prospective employers. There is a risk that the judge's self-interest and duty may be seen to conflict in the eyes of a reasonable, fair minded and informed person considering the matter. A judge should examine such overtures in this light. It should always be remembered that the conduct of former judges may affect public perception of the judiciary.

8) It is common for judges who lectured at law schools before their appointment to continue to do so after they are appointed. As long as this does not interfere with judicial duties, there is an advantage in having a judge continue to do so. In aspects of a course where there may be differing views, discretion will have to be exercised – particularly where the lecturer may later have to decide the question as a judge.

9) Legal textbooks frequently have prefaces written by judges and such an activity is unlikely to be open to any reasonable objection. In writing a preface for, approving the publishing of or agreeing to launch, a non-legal book, some care and discretion is called for. Both the subject matter of the work, and the relationship of the judge to the author, need to be weighed, in order to avoid any perception that the judge may be promoting a particular cause or taking a political stance.

10) Judges may, and frequently do, deliver papers at conferences. Participation in, or the giving of papers at conferences, without a fee, is not objectionable, but judges should not speak or write on controversial or politically sensitive topics or on matters pending before the courts or that are likely to come before the court.

11) Friendship with one of the lawyers or with a witness is not always a ground for removal. All the circumstances should be considered, including the degree of friendship, whether the credibility of the witness is in issue, and the nature of the particular matter. The judge must be certain the friendship will neither affect the decision nor be reasonably perceived as having done so.

12) It is not the role of the judge to enter the fray and take up the cause of one of the other participants in the process. A judge who acts in such a manner risks being perceived as partial and, whether the perception is justified or not, jeopardises the integrity of the trial process.

13) As the impartial arbiters of disputes, judges must conduct themselves in a manner that fosters respect and confidence. In the course of adversarial proceedings, judges must act in a reserved, composed and courteous manner, so as to ensure the public's perception of their impartiality is not negatively affected. Judges must refrain from (1) making public statements about cases or issues that may come before them; (2) lecturing the participants about facts and matters not in issue; (3) communicating with any participant about a matter without the presence of the other participants; (4) making aggressive remarks or interruptions in court; (5) treating trial participants harshly or angrily; and, (6) expressing frustration, demonstrating impatience or using brusque or sharp tones.

14) The duty to act in a reserved manner does not, however, prevent a judge from asking witnesses questions to clarify the evidence, provided the questions should be asked in the interests of justice. However, judges should be careful not to ask questions that may undermine the trial strategies of one of the participants or create the impression of favouring one of the participants, thereby eroding the appearance of impartiality.

15) In criminal law, judges are often required to hear matters involving an accused who has previously been before the judge charged on a separate matter. Provided the judge can keep an open mind and make the determinations that must be made solely on the evidence adduced at trial, actual bias is not engaged. However, the extent of the judge's previous interaction with the accused will have to be scrutinised to determine if a reasonable fair-minded and properly informed person, viewing the matter realistically and practically, would view the judge's prior involvement as a basis for apprehended bias.

8. TRANSPARENCY

Statement

Transparency is an essential condition in the exercise of the judicial function when conducting trials and rendering decisions.

Principle:

8.1 Judges should recognise that transparency assists in combating corruption and suspicion, and they should encourage judicial colleagues and court staff to assist in promoting the intrinsic merit of transparent conduct and infusing public confidence in the role, functions and operations of the courts.

Commentaries:

- 1) Judges must ensure trials are conducted in public, with mass media access, except as provided by law.
- 2) Judges must issue their decisions publicly and make them accessible to the mass media, except as provided by law.
- 3) A habit of reticence makes for good judges. A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press nor discuss individual cases.

9. ACCOUNTABILITY

Statement

Despite the need to preserve their independence, judges should always be mindful that they are ultimately accountable to the populace whom they serve.

Principles:

9.1 By the very nature of judicial office, judges are not, except in accordance with law, accountable to any organ or entity of the state for their judicial decisions, but they are accountable for their conduct and may be removed from office in accordance with the relevant provisions of the Constitution.

9.2 The implementation of these Guidelines shall take into account the legitimate needs of judges. Judges must be afforded protection from vexatious or unsubstantiated accusations. Any complaint against judges must be processed in a manner recognising both the unique position of a judge and the need for full due process.

9.3 Members of the judiciary shall promote awareness of the principles and the provisions set out in this document.

Commentary:

1) Although judges are not accountable for their judicial decisions except through the appeal process, they may nevertheless be accountable with respect to such administrative functions as judges may from time to time be required to perform.

22 August 2014

10. COMPLIANCE

Statement

Compliance of judges with the principles of these Guidelines is essential to the effective achievement of the objectives set out in them.

Principle:

10.1 Judges should read these guidelines from time to time as a means of reminding themselves of the obligation to conduct themselves in accordance with these Guidelines. By so doing, a judge is less likely to run afoul of judicial ethics.