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Office on Drugs and Crime



JUDICIAL ETHICS TRAINING MANUAL FOR THE NIGERIAN JUDICIARY



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**Judicial Ethics Training Manual
for the Nigerian Judiciary**

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This publication has been made possible thanks to a contribution by the European Commission.

This publication has not been formally edited.

Image on cover page designed by Ms. Nancy Cao, UNODC

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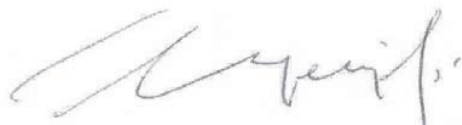
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Foreword

In modern society, the ethical challenges Judicial Officers are exposed to seem to have rather increased than decreased. Significant efforts have been made, starting with the adoption of the Code of Conduct for Judicial Officers in 2000 under the able leadership of the then Honourable Chief Justice of Nigeria, M.L. Uwais, GCON, and the subsequent actions taken by both the National Judicial Commission as well as the State Judicial Service Commissions to ensure the compliance of Judicial Officers. Yet, unfortunately, we were not always successful in upholding the highest standards of integrity in our judiciary. In recent years, a significant number of judicial officers had to be removed from the bench because they had been found violating the rules and principles enshrined in the Code.

Under the leadership of the Honourable Chief Justice of Nigeria, Idris Legbo Kutigi, CON, the drive towards holding Judicial Officers to the highest standards of professional and personal conduct has continued. This convinced the National Judicial Institute to develop, with the assistance of the United Nations Office on Drugs and Crime and with the financial support of the European Commission, a training course on judicial ethics. The course materials are drawing not only from our Code of Conduct for Judicial Officers, but also other relevant resources, in particular, the Bangalore Principles of Judicial Conduct, which have become the international model for professional ethics of judges (ECOSOC Res. 2006/23).

More than 400 Judicial Officers have already benefited from such ethics training and the response from participants has been very positive. We, therefore, feel encouraged to further expand this programme with a view to assisting you in the identification of ethical challenges in your daily work, and in resolving them in line with the relevant rules and standards of conduct. This in turn will further help us to enhance the trust and confidence of our citizens.



Hon. Justice Timothy A. Oyeyipo, OFR
Administrator of the National Judicial Institute

Acknowledgement

Our warm thanks go to Dr Nihal Jayawickrama, Coordinator of the Judicial Integrity Group and to Justice Nkemdilim Amelia Izuako, authors of this manual. We would also like to express our gratitude to the many who provided thoughtful comments on successive drafts and those who contributed to the development of this manual, in particular, Ms. Phoebe Ayua, Ms. Julcit Daudu, Ms. Hadiza Saeed and Mr. Gilbert Tor, all staff of the National Judicial Institute (NJI) as well as Ms. Ugonna Ezekwem, Ms. Queen Kanu and Mr. Oliver Stolpe, all staff of the United Nations Office on Drugs and Crime (UNODC).

Special thanks also go to Ms. Nancy Cao and Ms. Jouhaida Hanano from UNODC for their contribution to the design and layout of this manual.

JUDICIAL ETHICS TRAINING CURRICULUM FOR THE NIGERIAN JUDICIARY

This course is intended not to “teach” judicial ethics but to create a forum for judges to consider a variety of ethical problems and to discuss appropriate responses. It is intended to be participatory: the judges are expected to participate actively, with the course presenter assuming the role principally of a facilitator. The purpose of the course is to provide the judges with a framework for analysing and resolving ethical issues that may arise in the future. The “teaching” element in respect of the content of judicial ethics is intended only to assist a judge to choose the most prudent course of action when faced with an ethical issue.

The case studies will have a local context and will take account of the court involved. The issues that may arise in a trial court will be different from those in an appellate court. Similarly, ethical issues that face a magistrate may be different from those that confront a superior court judge. It is preferable if the participating judges were to propose the specific case studies for discussion, drawing on their own experience in areas of relevance to them. The hypothetical issues suggested below are merely for guidance.

This manual contains basic reading material which should be read before the course commences.

DAY ONE

Session 1

INTRODUCTION

(i) Distinguish between disciplinary rules (eg. Code of Conduct for Judicial Officers of the Federal Republic of Nigeria) and a statement of basic ethical principles (Bangalore Principles of Judicial Conduct).

- Violation of a disciplinary rule may constitute misconduct or misbehaviour and may entail disciplinary action, while ethical principles are self-regulatory standards of conduct. While there may be an overlap or an interplay, the latter are independent of the former in the sense that failure to observe such principles does not of itself constitute either misconduct or misbehaviour.
- Principles of judicial conduct are drawn up by the judges themselves, and are intended to be used to improve conduct and to help judges to perform more effectively.
- Such principles are usually complemented by the establishment within the judiciary or a judges’ association of a committee or other body of persons having a consultative or advisory role and which is available to

a judge whenever some uncertainty arises as to whether a particular activity is compatible with the status of a judge. Such a body would be separate from one that is responsible for imposing disciplinary sanctions.

- Judicial independence cannot be protected solely by principles of judicial conduct, but require also appropriate constitutional, statutory and administrative rules.
- Ethical issues usually arise:
 - (a) in the courtroom
 - (b) outside the courtroom
 - (c) in judgment writing

(ii) Identifying ethical principles:

(a) International standards of judicial conduct

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- UN Basic Principles on the Independence of the Judiciary
- The Bangalore Principles of Judicial Conduct
- African Charter on Human and Peoples' Rights
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa.
- Commonwealth Principles on the Accountability of, and the Relationship between, the Three Branches of Government.

(b) Domestic standards of Judicial Conduct:

- The Constitution of the Federal Republic of Nigeria
- Code of Conduct for Judicial Officers of the Federal Republic of Nigeria

(iii) In resolving an ethical issue, the following steps are recommended:

- define the ethical dilemma
- identify any specific codes, rules, guidelines and principles that are relevant
- consult colleagues
- identify permissible options, outlining the strengths and weaknesses of each
- identify the preferred option, justify it, and adopt it.

Session 2

Value 1: INDEPENDENCE

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Undue influence exerted by the Executive
 - Pressure from the Legislature
 - Previous political connections
 - Interference by senior colleagues
 - Influence of the corporate sector
 - Effect of family or social relationships

Session 3

Value 2: IMPARTIALITY

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Strong personal feelings about the subject matter or the parties
 - Family's financial interests
 - Personal knowledge
 - Ex parte orders and communications
 - Public statements
 - Offers of post-retirement employment
 - Applications for recusal

Session 4

Value 3: INTEGRITY

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Private life
 - Conforming to community standards
 - Transgressing the law
 - Conduct in court

DAY TWO

Session 5

Value 4: PROPRIETY

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Use of clubs and social facilities
 - Gambling
 - Social contact with the legal profession
 - Ordinary social hospitality
 - Family members in the legal profession
 - Exercise of the freedom of expression
 - Misuse of the prestige of judicial office
 - Disclosure of confidential information
 - Participation in community activities
 - Membership of a commission of inquiry
 - Acceptance of gifts

Session 6

Value 5: EQUALITY

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Applying international standards
 - Stereotyping
 - Responding to cultural diversity
 - Gender discrimination
 - Manifestations of bias or prejudice by court staff and lawyers

Session 7

Value 6: COMPETENCE AND DILIGENCE

- (i) Content of the Value and the Principle derived therefrom
- (ii) Hypothetical ethical issues:
 - Maintaining professional competence
 - Punctuality and prompt disposition of court business

- Delivery of reserved judgments
- Transparency
- Corruption in the court-house
- Applying international standards in human rights law

Session 8

Summing-up

Other issues

Implementation and Responsibilities

THE ROLE OF THE JUDGE

The following remarks were once addressed by a Chief Justice¹ to newly-appointed judges in his jurisdiction:

I must begin by offering to each of the newly-appointed judges my congratulations - not, as is ordinarily said, on your elevation but on your acceptance of an office which is of pivotal social importance and your willingness to expend much of your time and energy and all your talents in performing its duties. You have been appointed to your respective courts because you have demonstrated the capacities which are needed to be a judge and your attendance at this programme of induction is a tribute both to your desire to fulfil your office with distinction and to that humility of mind that is essential to your being able to do so.

I suppose you have all experienced the sense of novelty in sitting when others stand, in presiding rather than participating and in finding yourself alone with your own thoughts when the time for decision arrives. Sometimes the new judge finds the transition too rapid, forgetting for the moment his or her position on the other side of the bar table. As you know, those incidents give the profession a good story or, in cases where the judge keeps on the mantle of the advocate, grounds for much headshaking and mutterings of foreboding.

...

A judge's role is to serve the community in the pivotal role of administering justice according to law. Your office gives you that opportunity and that is a privilege. Your office requires you so to serve, and that is a duty. No doubt there were a number of other reasons, personal and professional, for accepting appointment, but the judge will not succeed and will not find satisfaction in his or her duties unless there is a continual realisation of the importance of the community service that is rendered. Freedom, peace, order and good government - the essentials of the society we treasure - depend in the ultimate analysis on the faithful performance of judicial duty. It is only when the community has confidence in the integrity and capacity of the judiciary that the community is governed by the rule of law. Knowing this, you must have a high conceit of the importance of your office. When the work loses its novelty, when the case load resembles the burdens of Sisyphus, when the tyranny of reserved judgments palls, the only permanently sustaining motivation to strive onwards is the realisation that what you are called on to do is essential to the society in which you live.

You are privileged to discharge the responsibilities of office and you are obliged to leave it unsullied when the time comes to lay it down. What you say and what you do, in public and to some extent, in private, will affect the public

¹ Sir Gerard Brennan, Chief Justice of Australia, addressing the National Judicial Orientation Programme, Wollongong, Australia, 13 October 1996, www.hcourt.gov.au

appreciation of your office and the respect which it ought to command. The running of the risk of being arrested while driving home from a dinner party or a minor understatement of income in a tax return could have public significance. The standards of Caesar's wife are the standards that others will rightly apply to what you say and do and, having a high conceit of your judicial office, they are the standards you will apply to yourself. These standards apply to matters great and small. In some respects, the management of petty cash or the acquittal of expenditure can be a matter of great moment.

Hand in hand with a high conceit of the office is a humility about one's capacity to live up to the standards set by one's predecessors and expected of the present incumbent. There are few judges who are sufficiently self-confident not to entertain a doubt about their ability to achieve the expected level of performance - and, so far as I know, none of those possessed of that self-confidence has done so. Of course, with growing experience the anxiety about one's capacity to perform the duties of office abates. But this is not attributable so much to self-satisfaction as it is to a realistic acceptance of the limits of one's capacity. Provided one does one's best, anxiety about any shortfall in capacity can be counter-productive. Intellectual humility (even if it does not show), a sense of duty and self-esteem, the exposure of every step in the judicial process to public examination and peer group pressure are the factors which inspire a judge to the best achievement of which he or she is capable.

The first role of the judge is to preside and to hear. It is your court and, unless you are sitting on a collegiate bench, the atmosphere of the court is chiefly in your hands. From time to time, you will experience a mounting frustration as a bumbling counsel fails to tell you what the case is about, or a witness prevaricates, or the key issue in the case is missed or some idiosyncrasy of counsel, party or witness proves bothersome. At such times, judicial sang froid is sorely tested. You may find it helpful quietly to set yourself a test: can I stay calm or shall I yield to the temptation to put an end to the source of the frustration? The desirable answer is obvious, but the technique of how to achieve it depends on the individual personality of the judge. A sense of humour helps. I do not mean the bon mot that extracts a dutiful show of mirth from counsel nor the flippancy that might lead a litigant to think that the trial is regarded as a mere entertainment. I mean a sense of humour that allows the mind to concentrate on the issues without taking oneself and one's preconceptions too seriously. If humour fails, the situation is ameliorated by a certain remoteness created by the physical separation of the bench from the well of the court and the wearing of the judicial robe. Although both of these features undergo critical evaluation from time to time, I doubt whether curial decorum could be so easily preserved without them.

It is not necessary for a judge to demonstrate mastery of the issues by the making of informed comments on the running of the case. The hearing is for the purpose of informing the judicial mind about the material required for judgment, not for the purpose of staging a debate or providing a public and privileged platform. That is not to say that judicial silence should mask the

issues on which the judgment might turn; it is to say that exchanges should have some point and that silence is the appropriate alternative if they do not.

A second, and more important, point can be made about the function of presiding at a trial. A trial - including a criminal trial - is not the occasion for diminishing the dignity of any person in the courtroom. It is an occasion for the dispassionate finding of facts and application of law, not for the humiliation of any of the trial's participants. At the end of the trial - even a trial in which an accused has been convicted and sentenced - the participants in the trial should be able to leave the courtroom with their dignity unaffronted. That is not to say that a judge should not comment, and comment forcefully, on the conduct of a participant in the proceedings as revealed in the courtroom where such a comment is relevant to the imposition of a sentence, the credibility of a witness or the professional conduct of an advocate, provided the comment does not exceed what is necessary for the purpose of the decision and the object of any adverse comment has been given an opportunity to deal with the ground of criticism.

As you know, unrepresented litigants constitute an increasing percentage of those appearing in the courts. The trend is likely to continue. Unrepresented litigants often present a real obstacle to the efficient disposition of the court's lists, as the judge must take additional care to ensure that, even if they be incapable of adequately advancing their own case, no points of merit are buried in what is oftentimes a mass of distracting irrelevancies. There is a tendency to want to even the scales by assisting the unrepresented litigant to develop his or her case or to attack the opponent's case. That is a tendency to be detected and resisted. The judge's role is to keep the ring, not to enter the fight. By all means let the relevant rules be understood, but then the judicial duty is to retreat to the calm isolation of the judgment seat.

When the hearing is complete, the lonely moment of decision-making has arrived. Nobody but you can make the decision or frame the reasons. Yours is the sole responsibility. Help may be sought from more experienced or more learned judicial colleagues but ultimately there is only one judicial mind that must assent to each step in the reasoning and to each part of the order made. In formulating the reasons for decision, you give a public account of the reasons which have led you to exercise the coercive powers of the State - the powers which the State has vested in you - by making the orders on which you have decided. Of course, the parties are those most immediately interested in your reasons, and the unsuccessful party is the one who is primarily entitled to a fair statement of the reasons why you have exercised your powers against that party's interests or contentions.

Read, and be comforted by, Sir Frank Kitto's "Why Write Judgments?" in 66 Australian Law Journal 787. There are two passages that bear repetition in this context. The first is this (at 790):

"The process of reasoning which has decided the case must itself be exposed to the light of day, so that all concerned may understand what principles and practice of law and logic are guiding the courts, and so that full publicity may be achieved which provides, on the one hand, a powerful protection against any tendency to

judicial autocracy and against any erroneous suspicion of judicial wrongdoing and, on the other hand, an effective stimulant to judicial high performance."

Later, Sir Frank said:

"Every Judge worthy of the name recognises that he must take each man's censure; he knows full well that as a Judge he is born to censure as the sparks fly upwards; but neither in preparing a judgment nor in retrospect may it weigh with him that the harvest he gleans is praise or blame, approval or scorn. He will reply to neither; he will defend himself not at all."

The finding of facts is perhaps the most difficult aspect of judgment. What is needed is a finding on every constituent element of the charge, the claim or the defence which is not conceded expressly or impliedly. It is no use reciting the submissions on either side without reaching the conclusion. That might give an impression that the judge was attending to the argument, but it is not judging. Be cautious in the use of the umbrella phrases: "I prefer the evidence of X to the evidence of Y where their evidence conflicts". That smacks more of a formula than it does of reasoning, especially when the real choice may be - 'as it often is - between two defective recollections. There are some tell tale phrases that can alert you to a part of the judgment that requires further consideration: "clearly" is a word that contains more of an assertion than a reasoning to a conclusion, and the assurance that "after giving the matter earnest consideration, I have come to the conclusion that" says nothing about the reasons for the conclusion. Rather, it conveys an uneasy impression of a failure to give the matter the consideration it deserves.

Provided the essential facts of charge, claim or defence are found, a lengthy judgment is seldom required. To be sure, an argument that is being rejected should be rejected with reasons but a distinction should be drawn between a judgment and an academic exposition of the law. There are occasions, especially in courts of appeal, where extensive examination of authority is required or desirable, but that is seldom the situation in a trial court. Thinking, rather than writing and, even more, rather than dictating, is the critical factor in judgment

The competent and conscientious performance by judges of the duties of their office is the most effective way to maintain respect for the rule of law. It is hard and not glamorous work, but judges are not public relations officers and it is a false priority to try to put the fostering of our public image ahead of the sheer hard work of judging. There is no prohibition against a judge giving, or authorising the giving, to the media and the public information about the function of judging provided, of course, the discussion does not trespass upon the decision of a particular case or an issue that might have to be judicially decided. And, I should add, provided the discussion is not an exercise in self-promotion. Judicial inability to control editorial treatment of an interview and to engage in media controversy may point towards a prudent reticence, but that is a matter of discretion. Because the media are often willing to report a judge's observations on matters of contemporary interest, some few judges choose to make public statements on subjects outside their judicial expertise. If they be experts on other subjects, their expertise in those subjects may warrant the making and publication of the statements, but if their authority

derives solely from the judicial office and the judicial office is used as a descriptive badge of authority, the privileges of the office are misused.

I should say something about impartiality, the supreme judicial virtue, and the appearance of impartiality. They can be impaired in a variety of ways, some of which are too obvious to require comment. Those ways include too close a connection with, or expressions of support for, causes - albeit the causes are laudable. Impartiality and its appearance can be impaired by such an intellectual predilection for one view of an issue falling for determination as precludes, or appears to preclude, a fair consideration of contrary argument. And beware of expressions that emphasise forward-looking, right-thinking or politically-correct attitudes, for such expressions might be thought to trim a judgment to the breeze of public or political approval.

A bastion of impartiality is independence - independence not only from the Executive Government but from other centres of power. I need not dwell on that topic. Independence is not only essential to the judiciary; it is one of its greatest attractions. Nothing to fear, nothing to gain by the performance of the judicial office. That leads me to say something about the prospects of judicial promotion. There is nothing dishonourable about hoping for promotion when an appropriate vacancy occurs; but it is dishonourable actively to seek a promotion. Ambition and its twin, envy, can corrode a character and destroy the harmony of a court. Judicial appointment is not a stepping stone in a career; it is prima facie a dead-end job of the highest importance. If promotion should come, it should be supported by those who have had an opportunity to form an opinion on the quality of the work done and the judicial demeanour manifested in doing it.

Finally, I should mention intra-curial relationships. Although each judge should have and retain a fierce sense of personal independence and be prepared to accept the consequences and the criticisms of his or her own judgments, a court cannot operate efficiently without a shared objective of getting the work done to a standard that enhances public confidence in the Court as a whole. Life on the bench is a sheer delight when one's colleagues command unfeigned respect. Let there be the gravest divisions of legal opinion, or of judicial style, of expedition or even of native ability, among the members of a Court provided only that each member is genuinely respectful of each other and extends co-operation and camaraderie to those who share the burden of the Court's caseload. None of us chooses his or her judicial colleagues; that is the prerogative of the Executive Government. But overall the Executive Governments of this country have appointed judges with the requisite competence and experience, and for that we may be truly grateful. Sometimes you may think another judge is not up to standard. Then it is necessary to remember that one's own reputation is not advanced by derogating from the reputation of another judge of the Court; rather, individual reputation is enhanced with the enhancing of the reputation of the Court to which the judge belongs.

Be not uncaring about the small courtesies and conventions of judicial life. They are the natural incidents of a civilised elite who are conscious of the

importance of their service to the community and who desire to give and to receive the respect which their office demands and which their efforts merit. You have joined or you are joining that elite - an elite of service, not of social grandeur - and your membership of it can be a source of great personal satisfaction and no little pride. You will not grow affluent on the remuneration that you will receive; you will work harder and longer than most of your non-judicial friends; your every judicial word and action and some other words and actions as well will be open to public criticism and the public esteem of the judiciary may be eroded by attacks that are both unjustified and unanswered. But if, at the end of the day, you share with colleagues whom you highly esteem a sense of service to the community by administering justice according to law, you will have a life of enormous satisfaction. Be of good and honourable heart, and all will be well. You have made a major decision. On behalf of the institution of the judiciary, I thank you for your commitment. It will be for you, in the fullness of time, to decide whether you have made the right decision. I am sure you will find that it was.

THE NEED FOR STANDARDS OF CONDUCT

The necessity to identify standards of conduct appropriate to judicial office has been explained by a judge in the following terms²:

No one doubts that judges are expected to behave according to certain standards both in and out of court. Are these mere expectations of voluntary decency to be exercised on a personal level, or are they expectations that a certain standard of conduct needs to be observed by a particular professional group in the interests of itself and the community?

As this is a fundamental question, it is necessary to make some elementary observations. We form a particular group in the community. We comprise a select part of an honourable profession. We are entrusted, day after day, with the exercise of considerable power. Its exercise has dramatic effects upon the lives and fortunes of those who come before us. Citizens cannot be sure that they or their fortunes will not some day depend upon our judgment. They will not wish such power to be reposed in anyone whose honesty, ability or personal standards are questionable. It is necessary for the continuity of the system of law as we know it, that there be standards of conduct, both in and out of court, which are designed to maintain confidence in those expectations.

² J.B. Thomas, *Judicial Ethics in Australia*, Sydney, Law Book Company, 1988, p.7.

INTERNATIONAL STANDARDS

I. The United Nations

A. Universal Declaration of Human Rights 1948

19. Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

The Universal Declaration of Human Rights was adopted without a dissenting vote, and represents “a common understanding” of those rights which the member states of the United Nations had pledged in the Charter of the United Nations to respect and to observe. It is the first comprehensive statement of human rights of universal applicability. The Universal Declaration was not in itself intended to be a legally binding instrument; it is a declaration, not a treaty. However, it is regarded as the legitimate aid to the interpretation of the expression “human rights and fundamental freedoms” in the Charter. Indeed, as early as 1971, it was judicially recognized that “although the affirmations in the Declaration are not binding *qua* international convention . . . they can bind the states on the basis of custom . . . whether because they constituted a codification of customary law . . . or because they have acquired the force of custom through a general practice accepted as law.”³

B. International Covenant on Civil and Political Rights 1966

14(1). All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The right to a fair hearing embraces a concept of “substantive fairness” and includes respect for the principles of adversarial proceedings, of equality of arms, of expeditious proceedings and, in criminal cases, an impartial prosecutor.⁴

Article 14(2) to (7) and Article 15 of the International Covenant on Civil and Political Rights contain specific applications, in respect of criminal proceedings, of the general principle of a fair trial stated in Article 14(1). These, however, are minimum

³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) Notwithstanding Security Council Resolution 276 (1970)*, ICJ Reports 1971, separate opinion of Vice-President Ammoun, at 76.

⁴ *Fei v Columbia*, Human Rights Committee, Communication No.514/1992, HRC 1995 Report, Annex X.J.

guarantees, the observance of which is not always sufficient to ensure the fairness of a hearing. They are:

1. The right to be presumed innocent until proved guilty according to law.
2. The right not to be tried again for an offence for which he has already been finally convicted or acquitted.
3. The right to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.
4. The right to have adequate time and facilities for the preparation of his defence.
5. The right to communicate with counsel of his own choosing.
6. The right to be tried without undue delay.
7. The right to be tried in his presence.
8. The right to defend himself in person or through legal assistance of his own choosing; and to be informed, if he does not have legal assistance, of this right.
9. The right to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.
10. The right to examine, or have examined, the witnesses against him.
11. The right to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him.
12. The right to have the assistance of an interpreter if he cannot understand or speak the language used in court.
13. The right not to be compelled to testify against himself or to confess guilt.
14. The right of a juvenile person to a procedure that takes account of his age and the desirability of promoting his rehabilitation.
15. The right not to be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed.
16. The right to a judgment rendered in public.
17. The right of a person convicted of a crime to have his conviction and sentence reviewed by a higher tribunal according to law

Articles 6(5), 7, 14(7), and 15 of the International Covenant recognize the following rights of convicted persons which apply at the stage of sentencing:

1. The right not to be imposed a heavier penalty than the one that was applicable at the time when the criminal offence was committed.
2. The right not to be punished again for an offence for which he has already been finally convicted or acquitted.
3. The right not to be subjected to cruel, inhuman or degrading punishment.
4. In those countries which have not yet abolished the death penalty, the right not to be sentenced to death if below 18 years of age, and that too only for the most serious crimes, and if prescribed by the law in force at the time of the commission of the crime

When a state ratifies or accedes to the International Covenant, it undertakes three domestic obligations. The first is “to respect and to ensure to all individuals within its territory and subject to its jurisdiction” the rights recognized in the ICCPR, “without discrimination of any kind, such as race, colour, sex, language religion, political or other opinion, national or social origin, property, birth or other status”. The second is to take the necessary steps, in accordance with its constitutional processes and with the provisions of the ICCPR, to adopt such legislative measures as may be necessary to give effect to these rights and freedoms. The third is to ensure that any person whose rights or freedoms are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; to ensure that any person claiming such a remedy shall have his rights thereto determined by competent judicial, administrative or legislative authorities, or by the legal system, and to develop the possibilities of judicial review; and to ensure that the competent authorities shall enforce such remedies when granted.

C. UN Basic Principles on the Independence of the Judiciary 1985

The United Nations Basic Principles on the Independence of the Judiciary were “endorsed” by the United Nations General Assembly in November 1985. In the following month, the General Assembly “welcomed” the Principles and invited governments “to respect them and to take them into account within the framework of their national legislation and practice”. The Basic Principles, which were “formulated to assist Member States in their task of securing and promoting the independence of the judiciary”, also contain provisions which are relevant to judicial conduct.

INDEPENDENCE OF THE JUDICIARY

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the laws of the country. It is the duty of all governments and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before it impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.
3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.
4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.
5. Everyone shall have the right to be tried by ordinary courts or tribunals using established procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.
6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.
7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

FREEDOM OF EXPRESSION AND ASSOCIATION

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly, provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.
9. Judges 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.

QUALIFICATIONS, SELECTION AND TRAINING

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a

requirement that a candidate for judicial office must be a national of the country concerned shall not be considered discriminatory.

11. The terms of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their terms of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration.

PROFESSIONAL SECRECY AND IMMUNITY

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

DISCIPLINE, SUSPENSION AND REMOVAL

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter in its initial stage shall be kept confidential unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

D. The Bangalore Principles of Judicial Conduct 2002

The Bangalore Principles of Judicial Conduct are a comprehensive statement of ethical principles. By resolution 2006/23, the United Nations Economic and Social Council emphasized that the Bangalore Principles of Judicial Conduct “represent a further development and are complementary to the Basic Principles on the Independence of the Judiciary”, and invited Member States, “consistent with their domestic legal systems, to encourage their judiciaries to take into account the Bangalore Principles of Judicial Conduct when reviewing or developing rules with respect to the professional and ethical conduct of members of the judiciary”.

Preamble

WHEREAS the Universal Declaration of Human Rights recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the International Covenant on Civil and Political Rights guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the United Nations Basic Principles on the Independence of the Judiciary are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:

IMPARTIALITY

Principle:

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

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5.1 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
- 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
- 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:

INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:

PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

- 4.4 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.
- 4.5 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.
- 4.6 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 or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.
- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests 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.
- 4.10 Confidential information acquired by a judge 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.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4 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.
- 4.12 A judge shall not practise law whilst the holder of judicial office.

- 4.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or 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.
- 4.15 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 or to be done or omitted to be done in connection with his or her duties or functions.
- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:

EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

- 5.5 A judge shall require lawyers 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 proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"Court staff" includes the personal staff of the judge including law clerks.

"Judge" means any person exercising judicial power, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law, 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.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Y. Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice M.L. Uwais of Nigeria, Deputy President Pius Langa of the Constitutional Court of South Africa, Chief Justice F.L. Nyalali of Tanzania, and Justice B.J. Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as Rapporteur, and with the participation of Dato' Param Kumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.

- (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.
- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.

- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

3. At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice P.V. Reddi of Karnataka State in India, Chief Justice Keshav Prasad Upadhyay of Nepal, Chief Justice M.L. Uwais of Nigeria, Deputy Chief Justice Pius Langa of South Africa, Chief Justice S.N. Silva of Sri Lanka, Chief Justice B.A. Samatta of Tanzania, and Chief Justice B.J. Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as Rapporteur, and with the participation of the UN Special Rapporteur and Justice P.N. Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

4. The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Gerhard Reissner of the Austrian Association of Judges, Judge Robert Fremr of the High Court in the Czech Republic, President Alain Lacabarats of the Cour d'Appel de Paris in France, Judge Otto Mallmann of the Federal Administrative Court of Germany, Magistrate Raffaele Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Jean-Claude Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Orlando Afonso of the Court of Appeal of Portugal, Justice Dusan Ogrizek of the Supreme Court of Slovenia, President Johan Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

5. The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

6. The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt (assisted by Justice Dr Adel Omar Sherif), Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines (assisted by Justice Reynato S. Puno). Also participating in one session were the following Judges of the International Court of Justice: Judge Raymond Ranjeva (Madagascar), Judge Geza Herczegh (Hungary), Judge Carl-August Fleischhauer (Germany), Judge Abdul G. Koroma (Sierra Leone), Judge Rosalyn Higgins (United Kingdom), Judge Francisco Rezek (Brazil), Judge Nabil Elaraby (Egypt), and Ad-Hoc Judge Thomas Frank (USA). The UN Special Rapporteur was in attendance. The Bangalore Principles of Judicial Conduct was the product of this meeting.

II. The African Commission on Human and Peoples' Rights

E. African Charter on Human and Peoples' Rights 1986

26. States Parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

F. Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa 2003

The African Commission on Human and Peoples' Rights;

Recalling its mandate under Article 45(c) of the African Charter on Human and Peoples' Rights (the Charter) "to formulate and lay down principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African states may base their legislation";

Recalling Articles 5, 6, 7 and 26 of the Charter, which contain provisions relevant to the right to a fair trial;

Recognising that it is necessary to formulate and lay down principles and rules to further strengthen and supplement the provisions relating to fair trial in the Charter and to reflect international standards;

Recalling the resolution on the Right to Recourse and Fair Trial adopted at its 11th ordinary session in March 1992, the resolution on the Respect and the Strengthening of the Independence of the Judiciary adopted at its 19th ordinary session in March 1996 and the resolution Urging States to Envisage a Moratorium on the Death Penalty adopted at its 26th ordinary session in November 1999;

Recalling also the resolution on the Right to a Fair Trial and Legal Assistance, adopted at its 26th session held in November 1999, in which it decided to prepare general principles and guidelines on the right to a fair trial and legal assistance under the African Charter;

Solemnly proclaims these Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa and urges that every effort is made so that they become generally known to everyone in Africa; are promoted and protected by civil society organisations, judges, lawyers, prosecutors, academics and their professional associations; are incorporated into their domestic legislation by State parties to the Charter and respected by them:

A. GENERAL PRINCIPLES APPLICABLE TO ALL LEGAL PROCEEDINGS:

1. Fair and Public Hearing

In the determination of any criminal charge against a person, or of a person's rights and obligations, everyone shall be entitled to a fair and public hearing by a legally constituted competent, independent and impartial judicial body.

2. Fair Hearing

The essential elements of a fair hearing include:

- (a) equality of arms between the parties to a proceedings, whether they be administrative, civil, criminal, or military;
- (b) equality of all persons before any judicial body without any distinction whatsoever as regards race, colour, ethnic origin, sex, gender, age, religion, creed, language, political or other convictions, national or social origin, means, disability, birth, status or other circumstances;
- (c) equality of access by women and men to judicial bodies and equality before the law in any legal proceedings;
- (d) respect for the inherent dignity of the human persons, especially of women who participate in legal proceedings as complainants, witnesses, victims or accused;
- (e) adequate opportunity to prepare a case, present arguments and evidence and to challenge or respond to opposing arguments or evidence;
- (f) an entitlement to consult and be represented by a legal representative or other qualified persons chosen by the party at all stages of the proceedings;
- (g) an entitlement to the assistance of an interpreter if he or she cannot understand or speak the language used in or by the judicial body;
- (h) an entitlement to have a party's rights and obligations affected only by a decision based solely on evidence presented to the judicial body;
- (i) an entitlement to a determination of their rights and obligations without undue delay and with adequate notice of and reasons for the decisions; and
- (j) an entitlement to an appeal to a higher judicial body.

3. Public hearing:

- (a) All the necessary information about the sittings of judicial bodies shall be made available to the public by the judicial body;
- (b) A permanent venue for proceedings by judicial bodies shall be established by the State and widely publicised. In the case of ad-hoc judicial bodies, the venue designated for the duration of their proceedings should be made public.
- (c) Adequate facilities shall be provided for attendance by interested members of the public;
- (d) No limitations shall be placed by the judicial body on the category of people allowed to attend its hearings where the merits of a case are being examined;
- (e) Representatives of the media shall be entitled to be present at and report on judicial proceedings except that a judge may restrict or limit the use of cameras during the hearings;
- (f) The public and the media may not be excluded from hearings before judicial bodies except if it is determined to be
 - 1. in the interest of justice for the protection of children, witnesses or the identity of victims of sexual violence
 - 2. for reasons of public order or national security in an open and democratic society that respects human rights and the rule of law.
- (g) Judicial bodies may take steps or order measures to be taken to protect the identity and dignity of victims of sexual violence, and the identity of witnesses and complainants who may be put at risk by reason of their participation in judicial proceedings.
- (h) Judicial bodies may take steps to protect the identity of accused persons, witnesses or complainants where it is in the best interest of a child.
- (i) Nothing in these Guidelines shall permit the use of anonymous witnesses, where the judge and the defence is unaware of the witness' identity at trial. Any judgement rendered in legal proceedings, whether civil or criminal, shall be pronounced in public.

4. Independent tribunal

- (a) The independence of judicial bodies and judicial officers shall be guaranteed by the constitution and laws of the country and respected by the government, its agencies and authorities;
- (b) Judicial bodies shall be established by law to have adjudicative functions to determine matters within their competence on the basis of the rule of law and in accordance with proceedings conducted in the prescribed manner;

- (c) The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for decision is within the competence of a judicial body as defined by law;
- (d) A judicial body's jurisdiction may be determined, *inter alia*, by considering where the events involved in the dispute or offence took place, where the property in dispute is located, the place of residence or domicile of the parties and the consent of the parties;
- (e) Military or other special tribunals that do not use the duly established procedure of the legal process shall not be created to displace the jurisdiction belonging to the ordinary judicial bodies;
- (f) There shall not be any inappropriate or unwarranted interference with the judicial process nor shall decisions by judicial bodies be subject to revision except through judicial review, or the mitigation or commutation of sentence by competent authorities, in accordance with the law;
- (g) All judicial bodies shall be independent from the executive branch.
- (h) The process for appointments to judicial bodies shall be transparent and accountable and the establishment of an independent body for this purpose is encouraged. Any method of judicial selection shall safeguard the independence and impartiality of the judiciary.
- (i) The sole criteria for appointment to judicial office shall be the suitability of a candidate for such office by reason of integrity, appropriate training or learning and ability.
- (j) Any person who meets the criteria shall be entitled to be considered for judicial office without discrimination on any grounds such as race, colour, ethnic origin, language, sex, gender, political or other opinion, religion, creed, disability, national or social origin, birth, economic or other status. However, it shall not be discriminatory for states to:
 - 1. prescribe a minimum age or experience for candidates for judicial office;
 - 2. prescribe a maximum or retirement age or duration of service for judicial officers;
 - 3. prescribe that such maximum or retirement age or duration of service may vary with different level of judges, magistrates or other officers in the judiciary;
 - 4. require that only nationals of the state concerned shall be eligible for appointment to judicial office.
- (k) No person shall be appointed to judicial office unless they have the appropriate training or learning that enables them to adequately fulfil their functions.
- (l) Judges or members of judicial bodies shall have security of tenure until a mandatory retirement age or the expiry of their term of office.

- (m) The tenure, adequate remuneration, pension, housing, transport, conditions of physical and social security, age of retirement, disciplinary and recourse mechanisms and other conditions of service of judicial officers shall be prescribed and guaranteed by law.
- (n) Judicial officers shall not be:
1. liable in civil or criminal proceedings for improper acts or omissions in the exercise of their judicial functions;
 2. removed from office or subject to other disciplinary or administrative procedures by reason only that their decision has been overturned on appeal or review by a higher judicial body;
 3. appointed under a contract for a fixed term.
- (o) Promotion of judicial officials shall be based on objective factors, in particular ability, integrity and experience.
- (p) Judicial officials may only be removed or suspended from office for gross misconduct incompatible with judicial office, or for physical or mental incapacity that prevents them from undertaking their judicial duties.
- (q) Judicial officials facing disciplinary, suspension or removal proceedings shall be entitled to guarantees of a fair hearing including the right to be represented by a legal representative of their choice and to an independent review of decisions of disciplinary, suspension or removal proceedings.
- (r) The procedures for complaints against and discipline of judicial officials shall be prescribed by law. Complaints against judicial officers shall be processed promptly, expeditiously and fairly.
- (s) Judicial officers are entitled to freedom of expression, belief, association and assembly. In exercising these rights, they shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
- (t) Judicial officers shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.
- (u) States may establish independent or administrative mechanisms for monitoring the performance of judicial officers and public reaction to the justice delivery processes of judicial bodies. Such mechanisms, which shall be constituted in equal part of members the judiciary and representatives of the Ministry responsible for judicial affairs, may include processes for judicial bodies receiving and processing complaints against its officers.
- (v) States shall endow judicial bodies with adequate resources for the performance of its their functions. The judiciary shall be consulted regarding the preparation of budget and its implementation.

5. Impartial Tribunal

- (a) A judicial body shall base its decision only on objective evidence, arguments and facts presented before it. Judicial officers shall decide matters before them without any restrictions, improper influence, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.
- (b) Any party to proceedings before a judicial body shall be entitled to challenge its impartiality on the basis of ascertainable facts that the fairness of the judge or judicial body appears to be in doubt.
- (c) The impartiality of a judicial body could be determined on the basis of three relevant facts:
 - 1. that the position of the judicial officer allows him or her to play a crucial role in the proceedings;
 - 2. the judicial officer may have expressed an opinion which would influence the decision-making ;
 - 3. the judicial official would have to rule on an action taken in a prior capacity.
- (d) The impartiality of a judicial body would be undermined when:
 - 1. a former public prosecutor or legal representative sits as a judicial officer in a case in which he or she prosecuted or represented a party;
 - 2. a judicial official secretly participated in the investigation of a case;
 - 3. a judicial official has some connection with the case or a party to the case;
 - 4. a judicial official sits as member of an appeal tribunal in a case which he or she decided or participated in a lower judicial body.

In any of these circumstances, a judicial official would be under an obligation to step down.
- (e) A judicial official may not consult a higher official authority before rendering a decision in order to ensure that his or her decision will be upheld.

B. *JUDICIAL TRAINING:*

- (a) States shall ensure that judicial officials have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of accused persons, victims and other litigants and of human rights and fundamental freedoms recognized by national and international law.
- (b) States shall establish, where they do not exist, specialised institutions for the education and training of judicial officials and encourage collaboration amongst such institutions in countries in the region and throughout Africa.
- (c) States shall ensure that judicial officials receive continuous training and education throughout their career including, where appropriate, in racial, cultural and gender sensitisation.

C. RIGHT TO AN EFFECTIVE REMEDY:

- (a) Everyone has the right to an effective remedy by competent national tribunals for acts violating the rights granted by the constitution, by law or by the Charter, notwithstanding that the acts were committed by persons in an official capacity.
- (b) The right to an effective remedy includes:
 - 1. access to justice;
 - 2. reparation for the harm suffered;
 - 3. access to the factual information concerning the violations.
- (c) Every State has an obligation to ensure that:
 - 1. any person whose rights have been violated, including by persons acting in an official capacity, has an effective remedy by a competent judicial body;
 - 2. any person claiming a right to remedy shall have such a right determined by competent judicial, administrative or legislative authorities;
 - 3. any remedy granted shall be enforced by competent authorities;
 - 4. any state body against which a judicial order or other remedy has been granted shall comply fully with such an order or remedy.
- (d) The granting of amnesty to absolve perpetrators of human rights violations from accountability violates the right of victims to an effective remedy.

D. COURT RECORDS AND PUBLIC ACCESS:

- (a) All information regarding judicial proceedings shall be accessible to the public, except information or documents that have been specifically determined by judicial officials not to be made public.
- (b) States must ensure that proper systems exist for recording all proceedings before judicial bodies, storing such information and making it accessible to the public.
- (c) All decisions of judicial bodies must be published and available to everyone throughout the country.
- (d) The cost to the public of obtaining records of judicial proceedings or decisions should be kept to a minimum and should not be so high as to amount to a denial of access.

E. LOCUS STANDI:

States must ensure, through adoption of national legislation, that in regard to human rights violations, which are matters of public concern, any individual, group of individuals or non-governmental organization is entitled to bring an issue before judicial bodies for determination.

III. The Commonwealth

G. Commonwealth Principles on the Accountability of, and the Relationship between, the Three Branches of Government 2003

The following principles were adopted by Commonwealth Heads of Government at their meeting in Abuja, Nigeria, in 2003.

OBJECTIVE

The objective of these Principles is to provide, in accordance with the laws and customs of each Commonwealth country, an effective framework for the implementation by governments, parliaments and judiciaries of the Commonwealth's fundamental values.

I. THE THREE BRANCHES OF GOVERNMENT

Each Commonwealth country's Parliaments, Executives and Judiciaries are the guarantors in their respective spheres of the rule of law, the promotion and protection of fundamental human rights and the entrenchment of good governance based on the highest standards of honesty, probity and accountability.

II. PARLIAMENT AND THE JUDICIARY

(a) Relations between parliament and the judiciary should be governed by respect for parliament's primary responsibility for law making on the one hand and for the judiciary's responsibility for the interpretation and application of the law on the other hand.

(b) Judiciaries and parliaments should fulfill their respective but critical roles in the promotion of the rule of law in a complementary and constructive manner.

III. INDEPENDENCE OF PARLIAMENTARIANS

(a) Parliamentarians must be able to carry out their legislative and constitutional functions in accordance with the Constitution, free from unlawful interference.

(b) Criminal and defamation laws should not be used to restrict legitimate criticism of Parliament; the offence of contempt of parliament should be narrowly drawn and reporting of the proceedings of parliament should not be unduly restricted by narrow application of the defence of qualified privilege.

IV. INDEPENDENCE OF THE JUDICIARY

An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice. The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.

To secure these aims:

(a) Judicial appointments should be made on the basis of clearly defined criteria and by a publicly declared process. The process should ensure:

equality of opportunity for all who are eligible for judicial office;

appointment on merit; and

that appropriate consideration is given to the need for the progressive attainment of gender equity and the removal of other historic factors of discrimination;

(b) Arrangements for appropriate security of tenure and protection of levels of remuneration must be in place;

(c) Adequate resources should be provided for the judicial system to operate effectively without any undue constraints which may hamper the independence sought;

(d) Interaction, if any, between the executive and the judiciary should not compromise judicial independence. Judges should be subject to suspension or removal only for reasons of incapacity or misbehaviour that clearly renders them unfit to discharge their duties.

Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.

An independent, effective and competent legal profession is fundamental to the upholding of the rule of law and the independence of the judiciary.

V. PUBLIC OFFICE HOLDERS

(a) Merit and proven integrity, should be the criteria of eligibility for appointment to public office;

(b) Subject to (a), measures may be taken, where possible and appropriate, to ensure that the holders of all public offices generally reflect

the composition of the community in terms of gender, ethnicity, social and religious groups and regional balance.

VI. ETHICAL GOVERNANCE

Ministers, Members of Parliament, judicial officers and public office holders in each jurisdiction should respectively develop, adopt and periodically review appropriate guidelines for ethical conduct. These should address the issue of conflict of interest, whether actual or perceived, with a view to enhancing transparency, accountability and public confidence.

VII. ACCOUNTABILITY MECHANISMS

(a) Executive Accountability to Parliament

Parliaments and governments should maintain high standards of accountability, transparency and responsibility in the conduct of all public business.

Parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to Parliament.

(b) Judicial Accountability

Judges are accountable to the Constitution and to the law which they must apply honestly, independently and with integrity. The principles of judicial accountability and independence underpin public confidence in the judicial system and the importance of the judiciary as one of the three pillars upon which a responsible government relies.

In addition to providing proper procedures for the removal of judges on grounds of incapacity or misbehaviour that are required to support the principle of independence of the judiciary, any disciplinary procedures should be fairly and objectively administered. Disciplinary proceedings which might lead to the removal of a judicial officer should include appropriate safeguards to ensure fairness.

The criminal law and contempt proceedings should not be used to restrict legitimate criticism of the performance of judicial functions.

(c) Judicial review

Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.

VIII. THE LAW-MAKING PROCESS

In order to enhance the effectiveness of law making as an essential element of the good governance agenda:

There should be adequate parliamentary examination of proposed legislation;

Where appropriate, opportunity should be given for public input into the legislative process;

Parliaments should, where relevant, be given the opportunity to consider international instruments or regional conventions agreed to by governments.

IX. OVERSIGHT OF GOVERNMENT

The promotion of zero-tolerance for corruption is vital to good governance. A transparent and accountable government, together with freedom of expression, encourages the full participation of its citizens in the democratic process.

Steps which may be taken to encourage public sector accountability include:

(a) The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues. Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances,

(b) Government's transparency and accountability is promoted by an independent and vibrant media which is responsible, objective and impartial and which is protected by law in its freedom to report and comment upon public affairs.

X. CIVIL SOCIETY

Parliaments and governments should recognise the role that civil society plays in the implementation of the Commonwealth's fundamental values and should strive for a constructive relationship with civil society to ensure that there is broader opportunity for lawful participation in the democratic process.

JUDICIAL VALUES

1. INDEPENDENCE

Judicial independence

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

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

Separation of powers

At the core of the concept of judicial independence is the theory of the separation of powers: that the judiciary, which is one of three basic and equal pillars in the modern democratic state, should function independently of the other two: the legislature and the executive. The relationship between the three branches of government should be one of mutual respect, each recognizing and respecting the proper role of the others. This is necessary because the judiciary has an important role and functions in relation to the other two branches. It ensures that the government and the administration are held to account for their actions and, with regard to the legislature, it is involved in ensuring that duly enacted laws are enforced and, to a greater or lesser extent, in ensuring that they comply with the national constitution and, where appropriate, with regional and international treaties that form part of municipal law. To fulfil its role in these respects, and to ensure a completely free and unfettered exercise of its independent legal judgment, the judiciary must be free from inappropriate connections with and influences by the other branches of government. Independence thus serves as the guarantee of impartiality.

Independent of other influences

Any attempt to influence a court must only be made publicly in a court room by litigants or their advocates. However, a judge may occasionally be subjected to ex parte efforts by litigants or others to influence his or her decisions in matters pending before the court. Regardless of the source - ministerial, political, official, journalistic, family or other - all such efforts must, of course, be firmly rejected. These threats to judicial independence may sometimes take the form of subtle attempts to influence how a judge should approach a certain case or to curry favour with the judge in some way. Any such extraneous attempt, direct or indirect, to influence the judge, by any means in reaching his or her decisions, must be rejected. A judge must not allow family, social or political relationships to influence any judicial decision.

A case may have excited public controversy with extensive media publicity, and the judge may find himself or herself in what may be described as the eye of the storm. Sometimes the weight of the publicity may tend considerably towards one desired result. However, in the exercise of the judicial function, the judge must be immune from the effects of such publicity. A judge must have no regard to whether the laws to be applied, or the litigants before the court, are popular or unpopular with the public, the media, government officials, or the judge's own friends or family. A judge must not be swayed by partisan interests, public clamour, or fear of criticism. Judicial independence encompasses independence from all forms of outside influence. A judge should act fearlessly, irrespective of popular acclaim or criticism. For example, responding to a submission that South African society did not regard the death sentence for extreme cases of murder as a cruel, inhuman or degrading form of punishment, the President of the Constitutional Court of South Africa expressed himself thus:⁵

The question before us, however, is not what the majority of South Africans believe a proper sentence should be. It is whether the Constitution allows the sentence. Public opinion may have some relevance to the inquiry, but in itself, it is no substitute for the duty vested in the Courts to interpret the Constitution and to uphold its provisions without fear or favour. If public opinion were to be decisive, there would be no need for constitutional adjudication . . . The Court cannot allow itself to be diverted from its duty to act as the independent arbiter of the Constitution by making choices on the basis that they will find favour with the public.

Independent of colleagues

The task of judging implies a measure of autonomy which involves the judge's conscience alone. Therefore, judicial independence requires not only the independence of the judiciary as an institution from the other branches of government; it also requires judges being independent from each other. In other words, judicial independence depends not only on freedom from undue external influence, but also freedom from undue influence which might in some situations come from the actions or attitudes of other judges. A judge may sometimes find it helpful to "pick the brain" of a colleague on a hypothetical basis, but judicial decision-making is the responsibility of the individual judge, including each judge sitting in a collegiate appellate court. Conversely, a judge who is not a co-judge in a proceeding must not

⁵ *S v. Makwanyane*, Constitutional Court of South Africa, 1995 (3) S.A. 391, per Chaskalson P.

privately communicate with a judge on a pending case on any matter whatsoever. Any hierarchical organization of the judiciary and any difference in grade or rank shall, in no way, interfere with the right of a judge to pronounce the judgment freely.

Perception of independence

It is important that the judiciary should be perceived as independent, and that the test for independence should include that perception. It is a perception of whether a particular tribunal enjoys the essential objective conditions or guarantees of judicial independence, and not a perception of how it will in fact act, regardless of whether it enjoys such conditions or guarantees. An individual who wishes to challenge the independence of a tribunal need not prove an actual lack of independence. Instead, the test for this purpose is the same as the test for determining whether a decision-maker is biased. The question is whether a reasonable observer would perceive the tribunal as independent. Although judicial independence is a status or relationship resting on objective conditions or guarantees, as well as a state of mind or attitude in the actual exercise of judicial functions, the test for independence is whether the tribunal may be reasonably perceived as independent.

High standard of judicial conduct

Public acceptance of, and support for, court decisions depends upon public confidence in the integrity and independence of the judge. This, in turn, depends upon the judge upholding a high standard of conduct in court. The judge should, therefore, demonstrate and promote a high standard of judicial conduct as one element of assuring the independence of the judiciary. This high standard of judicial conduct requires the observance of the minimum guarantees of a fair trial.

The Test:

Are you able to exercise your judicial functions independently on the basis of your own assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason; and does it so appear to a reasonable observer?

Case Study 1

Judges X and Y are both serving judges in the State High Court. Judge X is the Chief Judge. He invites Judge Y into his chambers one afternoon and, after an exchange of pleasantries, mentions a case listed for the next day before Judge Y. He warns Judge Y of the consequences of annoying the Governor of the State who is interested in the outcome of that case. He even adds that a judge does not earn a commission on the

number of cases he disposes of, suggesting that if Judge Y was not prepared to oblige, he should return the case file to him for reassignment. What should Judge Y do?

Case Study 2

Should the Chief Judge of a state go to the airport to see the Governor off or to receive him on his return?

An Advisory Opinion⁶

Q: May a judge allow a state official of the executive or legislative branch to sit on the bench next to the judge or in-court clerk while observing court in session?

Providing any preferential seating to visiting state officials that is not available to the general public while court is in session impacts adversely on the principle of judicial independence. State officials hold positions of power within state government that, through the doctrine of separation of powers, is meant to be distinct from the role of state courts. Treating a state official differently from any other member of the public by giving that official preferential seating, creates the appearance to the average observer that the official has special access to the court and its decision-making processes. While state officials have a special interest in observing how the courts are run to assist in proper legislative or executive decision-making, any questions regarding the court process can be addressed to the judge in private outside of the official public court session. So too, special demonstrations of equipment can be arranged for private observation by state officials, separate from the official court proceeding or special seating arrangements can be provided to both the officials and the public generally to allow observation of court equipment during proceedings.

Other special observers may not necessarily come under this opinion. Often school children tour the courts and are seated in special places, at times on the bench. Children are not in a position of power and, therefore, do not create an appearance of improper influence especially when their presence is explained to be for an educational purpose.

⁶ This and other advisory opinions reproduced in this manual are edited versions of a random selection of advisory opinions provided by judicial ethics advisory committees in the United States of America.

2. IMPARTIALITY

Fundamental quality required of judge

Impartiality is the fundamental quality required of a judge. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. If partiality is reasonably perceived, that perception is likely to leave a sense of grievance and of injustice having been done, thereby destroying confidence in the judicial system. The perception of impartiality is measured by the standard of a reasonable observer. The test usually adopted is whether a reasonable observer, viewing the matter realistically and practically, would apprehend a lack of impartiality in the judge. The perception that a judge is not impartial may arise in a number of ways, for instance, by a perceived conflict of interest, by the judge's behaviour on the bench, or by the judge's out-of-court associations and activities.

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

Conduct in court

Bias may manifest either verbally or physically. Epithets, slurs, demeaning nicknames, negative stereotyping, attempted humour based on stereotypes, perhaps related to gender, culture or race, threatening, intimidating or hostile acts suggesting a connection between race or nationality and crime, and irrelevant references to personal characteristics, are some examples. Bias or prejudice may also manifest in body language. Physical demeanour may indicate disbelief of a witness, thereby improperly influencing the jury. Facial expression can convey to parties or lawyers in the proceeding, jurors, the media and others an appearance of bias. The bias or prejudice may be directed against a party, witness or attorney. Unjustified reprimands of counsel, insulting and improper remarks about litigants and witnesses, statements evidencing prejudgments and intemperate and impatient behaviour may destroy the appearance of impartiality, and must be avoided. The expectations of litigants are high. Some will be quick to perceive bias quite unjustifiably when a decision is not in their favour. Therefore, every effort should be made to ensure that reasonable grounds for such a perception are avoided or minimized.

Ex parte communications

There should be no communication concerning a case between the judge and any of the parties in the absence of the others unless the consent of those absent has been obtained. The principle of impartiality generally prohibits private communications between the judge and any of the parties, their legal representatives, witnesses or jurors. If the court receives such a private communication, it is important for it to ensure that the other parties concerned are fully and promptly informed.

Conduct outside court

Outside court too, a judge should avoid deliberate use of words or conduct that could reasonably give rise to a perception of an absence of impartiality. Everything from his or her associations or business interests to remarks which the judge may consider to be “harmless banter” may diminish the judge’s perceived impartiality. All partisan political activity and association must cease absolutely and unequivocally with the assumption of judicial office. Partisan political activity or out of court statements concerning issues of public controversy by a judge undermine impartiality. They are also likely to lead to public confusion about the nature of the relationship between the judiciary on the one hand and the executive and legislative branches on the other. Partisan actions and statements, by definition, involve a judge in publicly choosing one side of a debate over another. The perception of partiality will be reinforced if, as is almost inevitable, the judge’s activities attract criticism and/or rebuttal. In short, a judge who uses the privileged platform of judicial office to enter the political arena puts at risk public confidence in the impartiality of the judiciary.

Conflict of interest

The potential for conflict of interest arises when the personal interest of the judge (or of those close to him or her) conflicts with the judge’s duty to adjudicate impartially. Judicial impartiality is concerned both with impartiality in fact and impartiality in the perception of a reasonable observer. In judicial matters, the test for conflict of interest must include both actual conflicts between the judge’s self interest and the duty of impartial adjudication and circumstances in which a reasonable observer would reasonably apprehend a conflict. For example, although members of a judge’s family have every right to be politically active, the judge should recognize that such activities of close family members may, even if erroneously, adversely affect the public perception of the judge’s impartiality. Similarly, a judge must not allow his or her financial activities to interfere with the duty to preside over cases that come before the court. Although some disqualifications will be unavoidable, a judge must reduce unnecessary conflicts of interest that arise when the judge retains financial interests in organizations and other entities that appear regularly in court, by divesting himself or herself of such interests.

Judge in one’s own cause

The principle is that one may not be a judge in his or her own cause,. This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has an economic interest in its outcome then he or she is indeed sitting as a judge in his or her own cause. This is sufficient grounds for disqualification. Second, the principle can also be applied in cases where a judge is not a party to the suit and does not have an economic interest in its outcome, but behaves in such a way as to give rise to a suspicion that he or she is not impartial; for example, because of friendship with a party. This second case is not strictly speaking an application of the principle that one must not be a judge in one's own cause since the judge's perceived partiality does not normally benefit him or her but another person.

Test for disqualification

The generally accepted criterion for disqualification is the reasonable apprehension of bias. Different formulae have been applied to determine whether there is an apprehension of bias or prejudgment. These have ranged from "a high probability" of bias to "a real likelihood", "a substantial possibility", and "a reasonable suspicion" of bias. The apprehension of bias must be a reasonable one, held by reasonable, fair minded and informed persons, applying themselves to the question and obtaining thereon the required information. The test is "what would such a person, viewing the matter realistically and practically - and having thought the matter through - conclude. Would such person think that it is more likely than not that the judge, whether consciously or unconsciously, would (or might) not decide fairly". The hypothetical reasonable observer of the judge's conduct is postulated in order to emphasize that the test is objective, is founded in the need for public confidence in the judiciary, and is not based purely upon the assessment by other judges of the capacity or performance of a colleague.

A judge should not be unduly sensitive and ought not to regard an application for recusal as a personal affront. If the judge were to do so, his or her judgment is likely to become clouded and, should the judge openly convey that resentment to the parties, the result will most probably be to fuel the applicant's suspicion. Where a reasonable suspicion of bias is alleged, a judge is primarily concerned with the *perceptions* of the applicant for his or her recusal. It is equally important that the judge should ensure that justice is seen to be done, which is a fundamental principle of law and public policy. A judge whose recusal is sought should accordingly bear in mind that what is required, particularly in dealing with the application for recusal, is conspicuous impartiality.

Necessity

Extraordinary circumstances may require departure from the principle discussed above. The doctrine of necessity enables a judge who is otherwise disqualified to hear and decide a case where failure to do so may result in an injustice. This may arise where an adjournment or mistrial will work undue hardship or where there is no other judge reasonably available who is not similarly disqualified, and if the judge in

question does not sit, a court cannot be constituted to hear and determine the matter in issue. Such cases will, of course, be rare and special.

The test:

Are you able to ensure by your conduct both in and out of court that you perform your judicial duties without favour, bias or prejudice, and that you have not done anything that is likely to create in the mind of a reasonable observer an impression of a lack of impartiality?

Case Study 1

Barrister X is known to be flippant and claims in banter with his colleagues to know about the private lives of the high and mighty. On one occasion, while lawyers and members of the public are assembled in court 2 awaiting the arrival on the bench of Justice Q, he remarks that the judge might be late again that day if his wife had given him the usual beating that morning. Some lawyers laughed, but two of them met the judge separately at the end of the day to report what Barrister X had said to them. Thereafter, Judge Q develops a great dislike for Barrister X and interrupts him unnecessarily whenever he makes submissions in court, insults and humiliates him and his clients, and proceeds to rule against him most of the time. Finally, Barrister X asks Justice Q to recuse himself in cases in which the former appears. Advise Justice Q.

Case Study 2

A male judge who heard a divorce case subsequently (i.e. six months later) marries the plaintiff in that case. Was the judge's conduct ethical? Would it have made a difference if his future wife was the defendant? It has not been suggested that the judge demonstrated any bias during the course of the proceedings.

Case Study 3

A chief magistrate directs a junior magistrate to hear a case arising from an incident which occurred in court and in respect of which the latter was the virtual complainant. How does the magistrate deal with this situation which appears to him to be inconsistent with the principle of impartiality?

Advisory Opinions

Q: Judge's Pursuit of Post-Judicial Employment.

Judges considering retirement or resignation have sought advice as to measures they may appropriately take to explore post-judicial employment.

A judge contemplating retirement or resignation appropriately may explore a professional relationship with law firms or other employment relationships with other potential employers, provided that the judge proceeds in a dignified manner and complies with the canons. This opinion discusses exploration of employment opportunities with a law firm. The principles discussed would apply by analogy to other potential employers.

After the initiation of any discussions with a law firm, no matter how preliminary or tentative the exploration may be, the judge should recuse on any matter in which the firm appears. Absent such recusal, a judge's impartiality might reasonably be questioned.

In deciding what law firms to contact, a judge should be sensitive to the public perspective and to the relevant provisions of the canons. At one extreme, a judge steers far from any impropriety or appearance of impropriety when the judge negotiates only with firms which have not appeared before the judge. At the other extreme, a judge should refrain from negotiating with a firm if the firm's cases before the court are so frequent and so numerous that the judge's recusal in the law firm's cases (which would of course be required) would adversely affect the litigants and the court's ability to handle its docket. In such cases, the judge's judicial duties would have to take precedence over the legitimate personal interest in post-judicial employment. In this regard, the Committee believes that a judge properly may negotiate with a law firm which does appear before the court, but only if the judge's recusal in such cases would not unduly affect the litigants or the court's docket. For example, it may be feasible to shift those cases to other judges on the court without undue burden.

A judge should not explore employment opportunities with a law firm which has appeared before the judge until the passage of a reasonable interval of time, so that the judge's impartiality in the handling of the case cannot reasonably be questioned. The appropriate interval of time will depend upon all the particular facts and circumstances.

The Committee has approved the propriety of the procedure whereby the judge makes known a future retirement or resignation date, and during a reasonable time in the interim between the announcement and the projected retirement date, the judge would complete pending assignments but not take on new cases. However, in the case of an active judge, it would be inappropriate for a judge to withdraw from all judicial duties during the interim between such an announcement and the projected retirement date. That would violate the duty of an active judge to perform judicial duties and would violate the canon requirement that judicial duties take precedence over all other activities.

Q: Is it proper for a judge to sit when the spouse of a judge of the same judicial district appears in his or her attorney capacity in front of that judge?

A judge should avoid impropriety and the appearance of impropriety in all of the judge's activities. A judge should not allow social or other relationships to influence the judge's judicial conduct or judgment. A judge should disqualify himself or herself where the judge's impartiality might reasonably be questioned. The Committee's opinion is that the mere fact that a fellow judge's spouse appears in front of a judge does not require disqualification of the judge. Under some circumstances the relationship between fellow judges on the bench might give rise to a circumstance "in which the judge's impartiality might reasonably be questioned." The proper course of action for a judge faced with an appearance of counsel related by marriage to a fellow judge in the same judicial district would be to notify all the parties to the proceeding of that relationship and seriously consider a request for recusal if any party chooses to make such a request. The Committee does not believe that the size of the judiciary in a particular district or county and/or the availability of alternate judges to sit should affect the ethical requirements stated.

Q: The propriety of hearing cases in a particular district court within the county to which the judge's son, who has recently become a member of the bar, will be appointed as an assistant district attorney.

You have indicated that your "regular assignment" includes sitting for three days in the court in question and that your son would not be assigned to that session nor would he have any supervisory authority over the District Attorney's staff in that court.

This Committee has previously addressed the propriety of a judge hearing cases in district courts in the county where his father was a senior attorney in the office of the District Attorney. In that opinion, the Committee concluded that the disqualifying phrase "acting as a lawyer in the proceeding" prohibited the son from presiding over cases in which the father had had any substantial involvement at any stage of its preparation. Likewise, the Committee has also addressed the propriety of a district court judge presiding over criminal cases in a county where his/her spouse served as the First Assistant District Attorney. The scope of the District Attorney's spouse's responsibilities, including case assignment and attorney supervision, required the judge's recusal even though the District Attorney spouse did not actually try cases before the judge. In reaching its first conclusion, the Committee relied to some extent on, but ultimately distinguished, the advice rendered by the Federal Advisory Committee on Judicial Activities. That opinion concerned circumstances under which a federal judge was required to recuse himself from hearing criminal cases prosecuted by the Office of the United States Attorney where his son worked as an Assistant United States Attorney. In its opinion, the Federal Committee concluded that the father's automatic disqualification from all cases the Office prosecuted was not required because the son intended neither to appear before his father nor to perform any services in any case assigned to the father. Moreover, in the Federal Committee's view, the fact that the Federal Court worked on an individual assignment calendar made it possible to "avoid the appearance that the judge's son may have inadvertently worked on briefs or investigations in cases heard before his father."

The opinions just described show that conflict with the relevant Canons may arise not only from a family member's appearance before the judge or his/her supervision of lawyers who appear before the judge, but also from the family member's substantial involvement in any stage of the proceeding that produces the trial over which the judge is presiding. The fact that your son will not appear before you eliminates the possibility of his appearance as a potential avenue for violation of the Canons. Given the fact that your son was admitted to practice in June of this year, and will be a new employee in the District Attorney's office in question, it is unlikely that he will have any supervisory responsibilities in the near future regarding cases that come before you. In addition, however, you should not sit on any case involving the District Attorney's Office unless it is clear that your son has not had any substantial involvement with that case at any stage of its preparation.

As long as the conditions described in the previous paragraph are met, the mere fact of your son's employment in the prosecutor's office does not require recusal from criminal proceedings in which other attorneys from the same office appear. However, should your son ever participate substantially in any stage of any cases that come before you or should he assume an administrative or supervisory role in his office, you should revisit the opinions referred to above.

As the Committee concludes that there is no per se requirement for recusal, the question of whether you should nevertheless disqualify yourself from a case or a particular series of cases is left to your discretion. As regards the question of the exercise of judicial discretion, the Supreme Judicial Court has stated, if "faced ... with a question of his capacity to rule fairly, the judge should ... consult first his own emotions and conscience. If he passes the internal test of freedom from disabling prejudice, he must next attempt an objective appraisal of whether this is 'a proceeding in which his impartiality might reasonably be questioned.'" While the Committee does not believe that the Canons generally require disqualification under the circumstances you have related in your request, you should keep alert for particular circumstances that might raise problems.

3. INTEGRITY

Irreproachable conduct required

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

Applicable to both public and private life

A judge must maintain high standards in private as well as public life. The reason for this lies in the broad range of human experience and conduct upon which a judge may be called upon to pronounce judgment. If the judge is to condemn publicly what he or she practices privately, the judge will be seen as a hypocrite. This must inevitably lead to a loss of public confidence in the judiciary. A judge should, therefore, not violate community standards or engage in activities that clearly bring disrepute to the courts or the legal system. In attempting to strike the right balance, the judge must consider whether in the eyes of a reasonable, fair-minded and informed member of the community, the proposed conduct is likely to call his or her integrity into question or to diminish respect for him or her as a judge. If so, the proposed course of conduct should be avoided.

It has been suggested that the proper inquiry is not whether an act is moral or immoral, or whether it is acceptable or unacceptable by community standards (which could lead to arbitrary and capricious imposition of narrow morality), but how the act reflects upon the central components of the judge’s ability to do the job for which he or she has been empowered: fairness, independence and respect for the public. Accordingly, it has been suggested (Shaman, Lubet and Alfini, *Judicial Conduct and Ethics*, pp.335-353) that in making a judgment in such a matter, six factors must be considered:

- i. The public or private nature of the act;
- ii. The extent to which the conduct is protected as an individual right;
- iii. The degree of discretion exercised by the judge;

- iv. Whether the conduct was harmful or offensive to others;
- v. The degree of respect or lack of respect for the public or individual members of the public that the conduct demonstrates;
- vi. The degree to which the conduct is indicative of bias, prejudice, or improper influence.

It has been argued that the use of these factors would assist in striking a balance between public expectations and the judge's rights.

Integrity in court

Because appearance is as important as reality in the performance of judicial functions, a judge must be beyond suspicion. The judge must not only be honest, but also appear to be so. A judge has the duty not only to render a fair and impartial decision, but also to render it in such a manner as to be free from any suspicion as to its fairness and impartiality and also as to the judge's integrity. Therefore, while a judge should possess proficiency in law in order to competently interpret and apply the law, it is equally important that the judge should act and behave in such a manner that the parties before the court should have confidence in the judge's impartiality.

In court, a judge may not alter the substance of reasons for a decision given orally, while the correction of slips, poor expression, grammar or syntax and the inclusion of citations omitted at the time of delivery or oral judgments are acceptable. A judge should not communicate privately with an appellate court or appellate judge in respect of any pending appeal from that judge's determination. A judge should consider whether it is proper to employ a relative as a clerk and should ensure that proper employment principles are observed before giving any preference to a relative in official employment.

Scrupulous respect for the law required

When a judge transgresses the law which he or she is sworn to uphold, the judge brings the judicial office into disrepute, encourages disrespect for the law, and impairs public confidence in the integrity of the judiciary itself. A judge must, therefore, have scrupulous respect for the law and its observance. What in others may be seen as a relatively minor transgression may well attract publicity, bringing the judge into disrepute, and raising questions regarding the integrity of the judge and the judiciary.

The test:

Do you always act, in the discharge of official duties as well as in your private life, honourably and free of fraud, deceit and falsehood, without engaging in any conduct that would be perceived by a reasonable observer as diminishing respect for you as a judge?

Case Study 1

G is a judicial officer. An interlocutory application was made before him in a land matter which he was trying. At the end of arguments for both sides, he made an oral ruling granting an interlocutory injunction. He gave reasons for his decision which counsel on both sides took note of. One week later, when copies of his oral ruling now reduced into writing were made available, it was evident that his reasons were not the same as in the oral ruling. In fact, issues which he had not addressed in his oral ruling had now received full treatment. Between the delivery of the oral ruling and the receipt of the written reasons, counsel for the party against whom the injunction had been issued had prepared an appeal petition based on the oral ruling which he had noted. He finds that the written reasons takes care of the grounds on which he had proposed to appeal. The disappointed counsel now resorts to swearing an affidavit and attaching his notes of the oral ruling. Discuss the issues of integrity that arise here.

Case Study 2

Magistrate P is a well-behaved, well-liked judicial officer. On his way to court each morning, he runs into traffic congestion because his residence is located in a very busy area of the town. In order to beat the traffic and ensure that His Worship gets to court in time, his driver has formed the habit of driving against the traffic, that is, on the left-hand side of the road, hooting furiously while the uniformed police orderly waves frantically, stopping on-coming vehicles to let them pass. His Worship sits out this daily ritual and trusts his driver and police orderly to ensure that he gets to court within fifteen minutes of leaving home. Do any issues of integrity arise here?

Case Study 3

Should a judge serve as a pastor?

4. PROPRIETY

Proper conduct in public and private

Propriety and the appearance of propriety, both professional and personal, are essential elements of a judge's life. What matters more is not what a judge does or does not do, but what others think the judge has done or might do. For example, a judge who speaks at length with a litigant in a pending case will appear to be giving that party an advantage, even if in fact the conversation is unrelated to the case. The judge must be sensitive to avoid contacts that may give rise to speculation that there is a special relationship with someone upon whom the judge may be tempted to confer an advantage. Since the public expects a high standard of conduct on the part of a judge, he or she must, when in doubt about engaging in an activity, attending an event or receiving a gift, ask the question, "How will this look in the eyes of the public?"

Restricted life-style

A judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept restrictions on his or her activities that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly. This applies to both the professional and the personal conduct of a judge. The legality of a judge's conduct is not the measure of its propriety. A judge must behave in public with the sensitivity and self-control demanded by judicial office, because a display of injudicious temperament is demeaning to the processes of justice and inconsistent with the dignity of judicial office. For example, a flamboyant manner and extravagant life style may be as unacceptable as a particularly frugal existence.

Relations with lawyers

Social contact between members of the judiciary and members of the legal profession is a long-standing tradition and is proper. Since judges do not live in ivory towers but in the real world, they cannot be expected to sever all their ties with it upon taking the judicial oath. Nor would it be entirely beneficial to the judicial process for judges to isolate themselves from the rest of society, including from school friends, former associates and colleagues in the legal profession. Indeed, a judge's attendance at social functions with lawyers offers some benefits. The informal exchanges that such functions allow may help reduce tensions between the Bench and Bar and alleviate some of the isolation from former colleagues that a judge experiences upon elevation to the Bench. However, as a matter of commonsense, a judge should exercise caution. For example, having a social relationship with a lawyer who regularly appears before a judge is fraught with danger and entails a balancing process. On the one hand, the judge should not be discouraged from having social or extrajudicial relationships. On the other hand, the obvious problem of the appearance of bias and favoritism exists when a friend or associate appears before the judge. The judge is the ultimate arbiter of whether he or she has an excessively close or personal relationship with a lawyer, or has created that appearance. Where that line is to be drawn is a decision that the

judge will have to make. The test is whether the social relationship interferes with the discharge of judicial responsibilities, and whether a disinterested observer, fully informed of the nature of the social relationship, is likely to entertain significant doubt that justice would be done.

It is inadvisable for a judge to belong to a secret society such as a Masonic Lodge where lawyers who habitually appear before him or her are also members, since it may be inferred that favours are given to those particular lawyers as part of the brotherhood code.

Relations with litigants

A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as municipal officials and police prosecutors – in any court where the judge often sits, if such relationships could reasonably tend to create either an appearance of partiality or the likely need for later disqualification. In making the decision, it is appropriate for the judge to consider the frequency with which the official appears before him or her, the nature and degree of the judge's social interaction, and the culture of the legal community where the judge presides.

Relations with family and friends

The 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 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 sub-consciously influenced by these relationships.

A judge is required to recuse himself or herself in a case in which any member of the judge's family (including a fiancé or fiancée) has participated or has entered an appearance as counsel. If consequent to his or her decision in a proceeding before the court, it appears that the judge, or a member of the judge's family, or other person in respect of whom the judge is in a fiduciary relationship, is likely to benefit financially, the judge has no alternative but to stand down. Therefore, it is necessary that the judge should be always aware of his or her personal and fiduciary financial interests as well as those of his or her family. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian.

Use of judge's residence by lawyer

It is wholly inappropriate for the judge to permit a lawyer (including the judge's spouse) to use the judge's residence to meet clients or lawyers in connection with that lawyer's legal practice. Where the judge's spouse or other member of the judge's family is a lawyer, the judge must not share a home telephone line with that person's

legal practice since to do so could lead to the perception that the judge is also practising law, and potentially to inadvertent ex parte communications.

Freedom of expression, of association and of assembly

A judge on appointment does not surrender the rights to freedom of expression, association and assembly enjoyed by other members in the community, nor does the judge abandon former political beliefs and cease having any interest in political issues. However, restraint is necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attack or be inconsistent with the dignity of judicial office. If either is the case the judge should avoid such involvement. The reason is obvious. The very essence of being a judge is being able to approach the various problems that are the subject of disputes in an objective and judicial manner.

It is equally important that the judge should be seen by the public as exhibiting that detached, unbiased, unprejudiced, impartial, open-minded, and even-handed approach which is the hallmark of a judge. If a judge enters into the political arena and participates in public debates, either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the government, the judge will not be seen to be acting judicially when presiding as a judge in court and deciding disputes which either touch the subjects in respect of which the judge has expressed public opinions, or perhaps more importantly, when the public figures or government departments that the judge has previously criticized publicly are parties or litigants or even witnesses in cases that he or she as a judge is adjudicating upon.

In the exercise of the freedom of association, a judge may join a trade union or, together with other judges, form a trade union. However, restrictions may be placed on the right to strike.

Improper use of the prestige of judicial office

A judge abuses power when he or she takes advantage of the judicial office for personal gain or retaliation. A judge must avoid all activity that suggests that the judge's decisions are affected by self-interest or favouritism, since such abuse of power profoundly violates the public's trust in the judiciary. A judge should, therefore, distinguish between proper and improper use of the prestige of the judicial office. It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business. Nor should a judge use the fact of holding judicial office in an attempt, or what may reasonably be seen to be an attempt, to extricate himself or herself from legal or bureaucratic difficulties. If stopped for an alleged traffic offence, a judge

should not volunteer his or her judicial status to the law enforcement officer. A judge who telephones a prosecutor to inquire “whether anything could be done” about a ticket that had been given to a court clerk for a traffic violation, is giving the appearance of impropriety even if no attempt is made to use the judicial position to influence the outcome of the case.

A judge does not need to conceal the fact of holding judicial office. But a judge should take care to avoid giving any impression that the status of judge is being used in order to obtain some form of preferential treatment. For example, if a son or daughter were to be arrested, a judge would be subject to the same human emotions as any other parent and is entitled, as a parent, to respond to a felt unjust treatment of a child. But if the judge, directly or through intermediaries, were to contact law enforcement officials, referring to his position as a judge, and demand that the arresting officer should be disciplined, the line between parent and judge is being blurred. While the judge, as any parent, is entitled to provide parental help for the son or daughter, and has the right to take legal action to protect the child’s interests, the judge has no right to engage in any conduct that would be unavailable to a parent who does not hold judicial office. To use the judicial office in an attempt to influence other public officials in the performance of their lawful duties is to cross the line of reasonable parental protection and intercession, and to misuse the prestige of the judicial office.

Use of judicial stationery

Judicial stationery should not be used in a way that amounts to an abuse of the prestige of judicial office. In general, 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. For example, it would not be objectionable to send a ‘thank you’ note after a social occasion using such stationery. But it would be inappropriate to use judicial stationery if there may be a reasonable perception that the judge is seeking to draw attention to his or her position as a judge in order to influence the recipient of the letter; for example, when writing to complain regarding a disputed claim on an insurance policy.

Letters of reference

There is no objection to a judge providing a letter of reference, but caution should be exercised. The following guidelines are offered:

1. A judge should not write a letter of reference for a person whom he or she does not know.
2. A judge may write a letter of reference if it is the type of letter that would be written in the ordinary course of business (eg. a court employee seeking a reference with regard to the employee’s 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 organization for whose information it is being written. In the case of a

personal employee of the judge, such as a law clerk who is seeking other employment, a general letter of reference may be provided and addressed 'To whom it may concern'.

3. 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 or she would normally be requested to write as a result of a personal relationship.

The judge as a character witness

The testimony of a judge as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be misunderstood to be an official testimonial. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in an awkward position of cross-examining the judge. Therefore, a judge should not volunteer to give character evidence in court. If requested, a judge should only agree to do so when to refuse would be manifestly unfair to the person seeking that character evidence. This, however, does not afford the judge a privilege against testifying in response to an official summons.

The judge as author

When a judge writes or contributes to a publication, whether related or unrelated to the law, he or she should not permit anyone associated with the publication to exploit the judge's office. In contracts for publication of a judge's writings, the judge should retain sufficient control over advertising to avoid exploitation of the judge's office. A judge should not allow the publisher to praise the judge's judicial accomplishments or, when the work is unrelated to the law, to emphasize the judge's position.

Misuse of confidential information

In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to judicial duties.

Participation in legal education

A judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, both within and outside the judge's jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extra-judicial activities. To the extent that time permits, a judge is encouraged to undertake such activities. A judge may contribute to legal and professional education by delivering lectures, participating in conferences and seminars, judging moots and acting as an examiner. A judge may also contribute to

legal literature as an author or editor. Such professional activities by judges are in the public interest and are to be encouraged. However, the judge should make it clear that comments made in an educational forum are not intended as advisory opinions or a commitment to a particular legal position in a court proceeding. Until evidence is presented, arguments heard and, when necessary, research completed, a judge cannot weigh the competing evidence and arguments impartially; nor can he or she form a definitive judicial opinion.

Appearance before official bodies

A judge may appear and give evidence before an official body to the extent that it would generally be perceived that the judge's judicial experience provides special expertise in the area to do so. A judge may appear before governmental bodies on matters that are likely to have special effect upon him or her as a private citizen, such as zoning proposals that will affect real property, or proposals having to do with the availability of local health services. The judge must exercise care, however, not to lend the prestige of judicial office to advance general causes with respect to which the judge possesses no special judicial competence.

Service on commissions of inquiry

Judges are often called upon to conduct inquiries and make reports on matters which are, or are deemed to be, of public importance but which fall outside the scope of the functions of the judiciary. In considering such a request, a judge should think carefully about the implications for judicial independence of accepting the assignment. There are examples of judges becoming embroiled in public controversy and being criticized and embarrassed following the publication of reports of commissions of inquiry on which they have served. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibility with the judicial function, bearing in mind that the function of a commission of inquiry belongs not to the judicial but to the executive sphere. That function is one of investigating and ascertaining for the information of the executive facts on which appropriate action may be taken. Such action may well involve proceedings in the courts of a civil or criminal nature against individuals whose conduct has been investigated by the commission. Like all executive action, the proceedings and findings of a commission of inquiry may properly be, and frequently are, the subject of public controversy.

Participation in community activities

A judge may participate in community, non-profit-making organizations of various types by becoming a member of an organization and its governing body. Examples include charitable organizations, university and school councils, lay religious bodies, hospital boards, social clubs, sporting organizations, and organizations promoting cultural or artistic interests. However, in relation to such participation, the following matters should be borne in mind:

- (a) It would not be appropriate for a judge to participate 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) A judge should ensure that it does not make excessive demands on his or her time.
- (c) A judge should not serve as legal adviser. This does not prevent a judge from expressing a view, purely as a member of the body in question, on a matter which may have legal implications; but it should be made clear that such views must not be treated as legal advice. Any legal advice required by the body should be professionally sought.
- (d) A judge should not personally become involved in, or lend his or her name to, any fund raising activities.
- (e) A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin, because such membership gives rise to perceptions that the judge's impartiality is impaired. Whether an organization's practices are invidiously discriminatory is often a complex question. In general, an organization is said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, gender, national origin, ethnicity or sexual orientation those individuals who would otherwise be admitted.

Representation of the State

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

Financial activities

A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor, or employee of any business other than a business closely held and controlled by members of the judge's family. A judge's participation in a closely held family business, while generally permissible, should be avoided if it takes too much time, or involves misuse of judicial prestige, or if the business is likely to come before the judge's court. It is, however, inappropriate for a judge to serve on the board of directors of a commercial enterprise, that is, a company whose objects are profit related. This applies to both public and private companies, whether the directorship is executive or non-executive, and whether it is remunerated or not.

A judge may act as executor, administrator, trustee, guardian or other fiduciary of the estate, trust or person of a family member or close friend if such service will not interfere with the proper performance of judicial duties, provided the judge does so without remuneration. While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

Practice of law

A judge should neither practice law nor give legal advice. However, in the case of close family members or close friends, the judge may offer personal advice on a friendly, informal basis, without remuneration, but making it clear that he or she must not be treated as giving legal advice and that any legal advice needed should be professionally sought. A judge has the right to act in the protection of his or her rights and interests, including by litigating in the courts. However, a judge should be circumspect about becoming involved in personal litigation. A judge, as a litigant, runs the risk of appearing to take advantage of his or her office and, conversely, of having his or her credibility adversely affected by judicial colleagues.

A judge should not act as arbitrator or mediator or otherwise perform judicial functions in a private capacity unless authorized by law. The integrity of the judiciary is undermined when a judge takes financial advantage of the judicial office by rendering private dispute resolution services for pecuniary gain as an extra-judicial activity. Even when performed without charge, such services may interfere with the proper performance of judicial functions.

Acceptance of gifts, etc

A judge (any every member of the judge's household) should neither ask for, nor accept, any gift, bequest, loan or 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. This prohibition does not include:

- (a) Ordinary social hospitality that is common in the judge's community, extended for a non-business purpose by an individual, not a corporation, and limited to the provision of modest items, such as food and refreshments;
- (b) Items with little intrinsic value intended solely for presentation, such as plaques, certificates, trophies and greeting cards;
- (c) Loans from banks and other financial institutions on terms that are available based on factors other than judicial status;
- (d) Opportunities and benefits, including favourable rates and commercial discounts, that are available based on factors other than judicial status;

- (e) 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;
- (f) Scholarships and fellowships awarded on the same terms and based on the same criteria applied to non-judge applicants;
- (g) Reimbursement or waiver of 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.
- (h) Compensation for legitimate extra-judicial activities.

The line between "ordinary social hospitality" and an improper attempt to gain the judge's favour is sometimes difficult to draw. The context is important, and no one factor may determine whether it is proper for the judge to attend the event. One question that should be asked is whether acceptance would adversely affect the judge's independence, integrity, the obligation to respect the law, impartiality, dignity, or the timely performance of judicial duties. Others should be: Is the person making the social contact an old friend or recent acquaintance? Does the person have an unsavoury reputation in the community? Is the gathering large or intimate? Is it spontaneous or prearranged? Does anyone attending have a case before the judge? Is the judge receiving a benefit not offered to others?

A judge is not prohibited from accepting honoraria or speaking fees provided that the compensation is reasonable and commensurate with the task performed. A judge should ensure, however, that no conflicts are created by the arrangement. A judge must not appear to use his or her judicial position for personal advantage. Nor should a judge spend significant time away from court duties to meet speaking or writing commitments for compensation. In addition, the source of the payment must not raise any question of undue influence or the judge's ability or willingness to be impartial.

The test:

Does the conduct compromise your ability to carry out your judicial responsibilities with integrity, impartiality, independence and competence, or is the conduct likely to create in the mind of a reasonable observer a perception that your ability to carry out judicial responsibilities in that manner is impaired?

Case Study 1

Losing a parent is a sad as well as an expensive event for the average adult Nigerian. It is usual for an obituary announcement to be made carrying the names of the children and other relatives of the deceased. It is not customary to send out invitations

for the funeral. Sympathizers troop in from various places and communities. Some may not be familiar with any of the relatives of the deceased, but they come to pay their respects bringing gifts and money, drinks and even live animals such as rams, goats and cows. A few litigants may use the opportunity to attract the attention of a bereaved judge and hope to curry his favour. What should a judge do when a litigant brings expensive gifts on such an occasion to the family, and has his name written down in the condolence register listing the gifts he has brought as is normally done? The gifts were presented to other members of the family and the judge either saw the presentation or discovered the fact later.

Case Study 2

During some Moslem feasts it is customary to exchange gifts of meat and food with friends and family. Should a judicial officer accept such gifts from lawyers appearing before him and from neighbours?

Case Study 3

Should a judge accept a Christmas hamper from the President, the Governor, or lawyers; or corporate gifts from such organizations as banks and insurance companies of which he or she is not a customer?

Case Study 4

During times of fuel scarcity (as is often the case in Nigeria), should a judicial officer jump a long queue at a filling station, explaining who he is, in order to be served ahead of the others? Would it make a difference if a long stay in the queue might constitute a security risk for him?

Case Study 5

Is it proper for a judicial officer to dance at the burial ceremony of a close relative?

Advisory Opinions

Q: Should a judge excuse himself in cases where one of the attorneys is a friend of long standing and is also a godfather of one of the judge's children?

Q: Should a judge sit in cases where a party is represented by a member or associate of such attorney's firm ?

Judges should, so far as their work permits, continue to have friends and participate in society. The twofold test is whether the judge feels capable of disregarding the relationship and whether others can reasonably be expected to believe that the relationship is disregarded. A godfather is not a "near relative". The relationship may have only historical significance, the obligation having been perfunctorily assumed, the godfather being merely within the wide circle of a judge's friendship. Or, the godfather may in some cases become a very close friend and almost part of the family. In the latter case the judge should excuse himself. The decision must of necessity be that of the judge. The judge should recuse in this circumstance only if "the judge's impartiality might reasonably be questioned".

The question regarding members or associates of the firm of the friend and godfather poses no problem. It cannot be that judges must recuse from all cases handled by a law firm simply because judges have firm members for friends. Here again there may be special circumstances dictating disqualification, but a friendly relationship is not sufficient reason in itself.

Q: Should a judge who serves on the board of directors and executive committee of a national charitable organization permit his or her name to appear on the reverse side of the organization's stationery. The judge renders no legal service and does not participate in any fund-raising activities. The judge's name is one of 112 directors and there is no indication of the judge's official position.

It is not improper for a judge to so serve provided the judge does not engage in the solicitation of funds or permit the influence of his or her name or office to be used in any solicitation and provided that the service will not interfere with the prompt and proper performance of official duties.

There is no impropriety in the judge permitting his or her name to be used on stationery and other material used for solicitation purposes provided that the judge's name and office are in no way selectively emphasized by the organization. It is recognized that many organizations, including universities and charitable organizations, periodically print and distribute the names of contributors. Judges are not prohibited from making contributions to such organizations for that reason so long as the judge's name (and title, if listed) is published in a manner similar to other contributors, and without undue emphasis.

Q: May a judge accept Public Testimonials or Awards ?

Judges who have achieved a pre-eminence such as to prompt public recognition should ordinarily be able to accept such honors. In addition to the personal gratification involved, the entire judiciary benefits from public praise of one of its members. Before accepting such recognition, however, a judge should take certain factors into consideration. Notwithstanding the spirit in which the award is proffered, it should not be accepted from an organization whose public image embodies a clearly defined point of view on controversial legal, social or political issues. Neither should an award be accepted from an organization which is apt to be before the courts as a litigant.

Finally, a judge must be cautious in the case of an award given in conjunction with a fund-raising dinner or event. It would seem quite likely that the recipient of an award would be either a "guest of honor" or a "speaker" at such an event. In addition to the nature of the organization involved, the judge should be concerned that his or her presence is not merely a device to promote publicity and the sale of tickets.

The nature of these cautions and the variety of situations to which they may be applied, make it clear that, consistent with the appearance of propriety and impartiality, the decision in each case must remain within the conscientious discretion of each judge.

Q: The political involvement of a judge's spouse.

A judge should, to the extent possible, disassociate himself or herself from the spouse's political involvement. For example, the judge should not:

- (a) accompany the spouse to any political function or any function that is likely to be considered political in nature;
- (b) join in the use of the marital home for political meetings or for fund-raising whether or not political;
- (c) join in or approve any reference to the relationship between the judge and spouse in any communication relating directly or indirectly to the spouse's political activity.

If a judge's spouse participates in politics, that participation will undoubtedly increase the number of situations in which the judge will be obliged to recuse. This is especially true where the spouse is a candidate for elective office. We suggest that the judge make his or her spouse aware of such problems.

Q: Gifts to Newly Appointed Judges.

Newly appointed judges frequently are offered gifts and benefits on the occasion of their investitures. These offers, arising at or near the time of the judge's appointment, warrant an early focus on ethical guidelines.

In no event do the provisions [of the code] permit a judge to solicit gifts on the occasion of an investiture or otherwise. Applicable statutory provisions and gift regulations both prohibit the solicitation of gifts. As with any gift, judges should be aware that financial reporting provisions may require the disclosure of certain information. Judges should take care to observe applicable requirements.

One common benefit offered to new judges is an offer by a private entity either to sponsor or to contribute to a reception in honor of the judge's investiture. Whether a judge may properly accept such an offer depends in part on the identity of the proposed donor and its relationship to the judge. If the donor or sponsor is a former law firm, corporate employer, business client, or colleagues, the gift regulations recognize that such an offer may properly be accepted as a gift from a friend on a special occasion, if the gift is fairly commensurate with the occasion and the relationship. It may also be accepted as a gift incident to a public testimonial. In addition, to the extent the judge plans to recuse for a period of time following appointment from cases in which the former employer, client, or colleagues appear, the judge will not be taking any official action affecting the donors and no appearance of impropriety should be created.

Likewise, receptions sponsored by bar associations generally do not present ethical concerns. They may properly be considered gifts incident to public testimonials, which may be accepted under the gift regulations. Also, when hospitality is extended by lawyer organizations, the risk of an appearance of impropriety is markedly reduced, compared to hospitality conferred by a particular law firm or lawyer.

Concerns may be presented with respect to other prospective donors. Where the proposed donor is a for-profit company that has no pre-existing or longstanding relationship with the judge, permitting the company to host an investiture reception would necessitate the judge's recusal from cases involving the company. This might also "permit others to convey the impression that they are in a special position to influence the judge," which would not be consistent with the Code of Conduct

Some gifts may be impermissible because acceptance would be interpreted as endorsement of a donor or its activities, which may be inconsistent with a judge's independence and impartiality. Judges are advised not to associate themselves with entities that are publicly identified with controversial legal, social, or political positions or that regularly engage in adversary proceedings in the courts. Judges are also advised to refrain from joining political organizations or engaging in political activities. Donors engaging in these sorts of activities should not be permitted to serve as host or sponsor of a reception.

It is also common for judges to receive tangible gifts and mementoes in connection with their appointment and investiture. Judges may properly accept such gifts, consistent with the provisions outlined above. The Code of Conduct and the gift regulations recognize the propriety of accepting appropriate gifts, from friends, relatives and colleagues, to mark this special occasion and serve as a form of public testimonial. Examples of gifts the Committee has found to be appropriate include: a judicial robe given by former law partners; a clock given by a bar association; a chair given by former state judicial colleagues; and a gavel and \$500 monetary gift from a former client.

Acceptance of a gift offered in connection with a judge's investiture may necessitate the judge's recusal from matters involving the donor. In many instances, the donors are likely to be persons whose appearance in a case would in any event necessitate the judge's recusal, at least for some period of time. These include former law partners, close friends, and former clients. Where the gift is given by a group and the cost is shared proportionately, recusal may not be required if the amount of each individual contribution is relatively small.

Q: May a judge participate as a celebrity judge in a fund-raising event for a charitable organization?

A judge has been asked to serve as a "VIP Celebrity Judge" at a fund-raising event for a non-profit charity. Eight or more prominent citizens, who are designated "Celebrity Judges," attend a "VIP Reception" at the start of this event. At this reception, the celebrity judges sample cuisine entered by participating restaurants, and award first, second, and third places to the restaurant chefs' entries. Photographs of the celebrity judges may be taken during the VIP reception. Immediately following the VIP reception, the fund-raising event continues with a public reception and an auction of food and entertainment packages provided by the same restaurants to raise money for the charity. The entire event is advertised to the public, takes place at a public location, and has corporate sponsorship. A program distributed to persons in attendance lists the celebrity judges by name, but not by title. It is the stated desire of the charity to promote this event through advertising and publicity.

Participation as an invited "VIP Celebrity Judge" at the "VIP Reception" constitutes personal participation in a fund-raising activity, since this reception is part of the same event whose main purpose is to raise funds for the organization. The only discernible purpose of the judge's participation in the "VIP Reception" is to enhance the prestige and public relations value of the event as a whole, thus improving the ability of the charity to raise money. Further, because those in attendance at the auction event immediately following the "VIP Reception" will be asked for contributions by purchasing the auctioned items, there is a linkage between the "VIP Reception" and subsequent solicitation of contributions.

The judge has been invited to attend this "VIP Reception" and is listed in the program because, in the words of the letter of invitation, he is one of a number of "high profile people." The Committee interprets this to mean that the judge has earned the invitation because of his status as a judge. Thus, participation in this activity would constitute use of the prestige of judicial office to enhance a fund-raising event. Admittedly, the proposed activity will not per se significantly enhance the ability of the organization to raise funds. However, to constitute a "de minimis" activity, use of the prestige of the judicial office must be avoided. Therefore, the proposed activity does not constitute a "de minimis fund-raising activity," and is proscribed.

Participation as a "VIP Celebrity Judge" is equivalent to being a guest of honor. Contributions at the event are solicited through the auction subsequent to the judge's presentation at the "VIP Reception" as a guest of honor; thus the proposed participation is proscribed.

At the “VIP Reception,” the “Celebrity Judges” participate in the awarding of first, second, and third places to participating restaurants. Receipt of such recognition could reasonably be acknowledged by the restaurants at a future time, since they are commercial enterprises and the fund-raising event is intended to be prestigious. The Committee has already established its belief that participation as a celebrity judge constitutes use of the prestige of judicial office. The Committee further concludes that the circumstances of the event could also result in use of the prestige of judicial office to advance the private interests of the restaurants receiving recognition. Although the awards are made as a result of the consensus of a group, of which the judge is part, the Committee does not believe that a judge may participate in an activity in a group when the same activity would be proscribed if the judge participated in it individually.

The Committee concludes that a judge may not participate in a “VIP Reception” as a “VIP Celebrity Judge” as part of a fund-raising event for a charitable organization.

Q: May a judicial officer read and respond to a letter or other written communication from an unrepresented criminal defendant asking the court to quash a bench warrant, modify conditions of release, rescind a no-contact order, release bail or bond, grant a continuance, modify a sentence, grant early release from custody or take any other action with regard to a matter which is either pending or on which the court is supervising probation?

How would the answer differ were the defendant represented by counsel?

How would the answer differ were the communication written by the defendant’s spouse, parent, or other relative or friend?

What may the court clerk do with regard to such communications to which a judge may not properly respond?

The Code requires that judges should avoid impropriety and the appearance of impropriety; should perform the duties of their office impartially and diligently; and should neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding.

A judicial officer may read and respond to a letter or other written communications from an unrepresented criminal defendant so long as copies of the letter or other written communication and the judicial officer’s response are provided to all parties in the case as soon as possible. The prohibition against ex parte communication is designed to make sure that all parties know what matters a court will be considering in a case and that all parties have a right to be heard. Judges should accord every person who is legally interested in a proceeding, or that person’s lawyer, full right to be heard.

Copies of any correspondence should be sent to all counsel of record and any parties unrepresented by counsel as soon as possible. Each judicial officer should determine the nature of the response required which in some cases may only be a form letter

advising the defendant that the judicial officer cannot respond to the questions posed and advises the defendant to contact a lawyer or schedule a hearing in accordance with the court rules and give the required notice and opportunity to be heard to all parties. All the correspondence should be retained in the court file.

The judicial officer may respond to a defendant represented by counsel by advising the defendant to contact his or her lawyer. Counsel should be furnished copies of both the defendant's letter and the judicial officer's response. Copies of all correspondence should be kept in the case file.

The judicial officer is not under any obligation to respond to a defendant's spouse, parent, or other relative or friend because those persons do not have a legal interest in the proceeding. The judicial officer may direct court staff to send a form response advising those individuals that the court will not discuss a case with a nonparty in the proceeding.

A judicial officer may direct the court clerk to send out a form letter to a defendant advising the defendant that the court will not act upon any information or request made in the letter and that the defendant should contact counsel immediately and/or schedule a hearing in accordance with court rules. Counsel, if any, should be provided copies of all correspondence and copies should be retained in the court file.

Q: Is it permissible for a judge to write a letter of recommendation for employment for an attorney who has, on numerous occasions, appeared before the judge? Is it permissible for a judge to allow an attorney to list the judge as a reference in employment applications and resumes?

It is permissible for a judge to write a letter of evaluation for an attorney who has, on numerous occasions, appeared before the judge. This should be an evaluation of the judge's observations of the professional performance of the attorney. The letter should also clearly state that it is based on the personal observations of the judge and the views expressed therein are not necessarily those of other members of the court.

Even though the judge may write a letter of recommendation for an attorney, it should include a disclaimer stating that the judge is not attempting to lend the prestige of the office to advance the private interests of others. In any situation involving a request to list the judge as a reference in employment applications and/or resumes for an attorney, the judge should weigh the circumstances to ascertain that he or she is personally familiar with the attorney's professional qualifications and abilities, and the comments should be confined to those personal observations.

5. EQUALITY

Responsive to diversity in society

Fair and equal treatment has long been regarded as an essential attribute of justice. 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. A judge should not be influenced by attitudes based on stereotype, myth or prejudice. The judge should, therefore, make every effort to recognize, demonstrate sensitivity to, and correct such attitudes.

A judge should have knowledge of the international and regional instruments that prohibit discrimination against vulnerable groups in the community, such as the International Convention on the Elimination of All Forms of Racial Discrimination 1965, the International Convention on the Elimination of All Forms of Discrimination against Women 1979, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief 1981, and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992. Equally, a judge must recognize that Article 14(1) of the International Covenant on Civil and Political Rights guarantees that 'All persons are equal before the courts'. Article 2(1) of the Covenant read with Article 14(1) recognizes the right of every individual to a fair trial without any distinction whatsoever as regards race, colour, sex, language, religion, political or other convictions, national or social origin, means, status or other circumstances. The phrase 'other circumstances' has been interpreted to include, for example, sexual orientation, disability and HIV status. It is, therefore, the duty of a judge to discharge the judicial functions with due respect for the principle of equal treatment of parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and ensuring that each receives a fair hearing.

Court users must be treated with dignity

It is the judge who sets the tone and creates the environment for a fair trial in his or her court. Unequal and disparate treatment of court users, whether real or merely perceived, is unacceptable. All who appear in court - legal practitioners, litigants and witnesses - are entitled to be dealt with in a way that respects their dignity. The judge must ensure that all such persons are protected from any display of prejudice based on race, gender, religion, or any of the other irrelevant grounds. Accordingly, a judge should avoid comments, expressions, gestures or behaviour that reasonably may be interpreted as showing insensitivity to, or disrespect for, anyone. Examples include irrelevant or derogatory comments based on racial, cultural, sexual or other stereotypes, and other conduct implying that persons before the court will not be afforded equal consideration and respect. A judge's comments about ethnic origins, including the judge's own, are also undignified and discourteous. A judge should be particularly careful that his or her remarks do not even unwittingly offend minority groups in the community.

The judge must address clearly irrelevant comments made by lawyers which are sexist or racist or otherwise inappropriate. Speech, gestures, or inaction that could reasonably be interpreted as implicit approval of such comments is also prohibited. This does not require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court. This is consistent with the judge's general duty to listen fairly but, when necessary, to assert firm control over the proceeding and to act with appropriate firmness to maintain an atmosphere of dignity, equality and order in the courtroom.

Judicial remarks must be tempered with caution and courtesy

A judge must not make improper and insulting remarks about litigants, advocates, parties or witnesses. When sentencing a convicted person, the judge must not shower the prisoner with insulting remarks. While properly representing the outrage of the community concerning a serious crime, a judge's remarks should always be tempered with caution, restraint and courtesy.

The test:

Are you familiar with, and do you recognize, cultural, racial and religious diversity in society, and do you discharge your judicial functions with due respect for the principle of equal treatment of parties by avoiding any bias or prejudice on irrelevant grounds such as sex, disability, age, illness, marital status or sexual orientation, and do you ensure that all persons who participate in proceedings before you in any capacity are treated by everyone with sensitivity and courtesy and in a manner that respects their human dignity and fundamental human rights?

Case Study 1

Judge M sits in a superior court. Mr R is a petitioner is a fundamental rights application. He is a person living with HIV, and seeks the enforcement of his freedom from discrimination against his employers who have terminated his services on account of his HIV status. As soon as the proceedings commence in open court, Judge M orders Mr R to leave the courtroom immediately so that he does not infect others, in the words of the judge, with "the disease of promiscuous people". What issues, if any, arise here?

Case Study 2

It is an accepted tradition that senior advocates of Nigeria are recognized and well respected in court. They are accorded the front seats at the Bar, which are vacated by others as soon as they arrive in court. Their matters are also called up and heard before those of others. Does this tradition have implications for the value of equality?

6. COMPETENCE AND DILIGENCE

Primary obligation of the judge

A judge's primary duty is the due performance of the judicial function, the principal elements of which are the interpretation and application of the law. But a judge must manage as well as decide cases. The judge is responsible for the efficient administration of justice in his or her court. This involves case management, including the prompt disposition of cases, record-keeping, management of funds, and supervision of court staff. If the judge is not diligent in monitoring and disposing of cases, the resulting inefficiency will increase costs and undermine the administration of justice. A judge should therefore maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of court officials.

Obligation to undergo judicial training

The independence of the judiciary confers rights on a judge, but also imposes ethical duties. The latter include the duty to perform judicial work professionally and diligently. This implies that the judge should have substantial professional ability, acquired, maintained and enhanced by the training which the judge has a duty, as well as a right, to undertake. It is essential that a judge receive detailed, in-depth, diversified training so that he or she is able to perform the judicial duties satisfactorily. The knowledge that is required may include not only substantive and procedural law, but also the impact of the law on real life. The trust that citizens place in the judicial system will be strengthened if a judge has a depth and diversity of knowledge which extends beyond the technical field of law to areas of important social concern, as well as courtroom and personal skills and understanding that enable the judge to manage cases and deal with all persons involved appropriately and with sensitivity. This would include such courses as sensitivity to issues of gender, sexual orientation, HIV/AIDS, disability and so forth. Training is, in short, essential for the objective, impartial and competent performance of judicial functions, and to protect judges from inappropriate influences.

The performance of judicial duties is a new profession for both the young recruit and the experienced lawyer, and involves a particular approach in many areas, notably with respect to the professional ethics of judges, procedure, and relations with all persons involved in court proceedings. The training should not consist only of instruction in the techniques involved in the handling of cases by judges, but should also take into consideration the need for social awareness and an extensive understanding of different subjects reflecting the complexity of life in society. On the other hand, it is important to take the specific features of recruitment methods into account so as to target and adapt the training programmes appropriately. An experienced lawyer needs to be trained only in what is required for the new profession. But even such a lawyer may never have met a person living with HIV/AIDS or considered the special legal and other needs of that person.

In addition to the basic knowledge which a judge needs to acquire at the commencement of his or her judicial career, a judge is committed to perpetual study and learning. Such training is made indispensable by changes in the law, technology and the possibility that in many countries a judge will acquire new responsibilities when he or she takes up a new post. In-service programmes should therefore offer the possibility of training in the event of a career change, such as a move between criminal and civil courts, the assumption of a specialist jurisdiction (eg. in a family or juvenile court) or the assumption of a post such as that of chief magistrate or judge. It is desirable that continuous training embraces all levels of the judiciary. Whenever feasible, the different levels should all be represented at the same sessions, giving the opportunity for an exchange of views between them. This assists to break-down hierarchical tendencies, keeps all levels of the judiciary informed of each other's problems and concerns, and promotes a more cohesive and consistent approach throughout the judiciary.

Relevance of international human rights law

In the context of the growing internationalisation of societies and the increasing relevance of international law in relations between the individual and the State, it is necessary that the powers entrusted to a judge must be exercised, not only in accordance with domestic law, but also, to the full extent that domestic law permits, consistent with the principles of international law recognized in modern democratic societies. Whatever the nature of his or her duties, a judge cannot ignore, or claim ignorance of, international law, including the international law of human rights, be it derived from customary international law, the applicable international treaties or the regional human rights conventions. In order to promote this essential facet of a judge's obligation, the study of human rights law should be included in the initial and in-service training programmes proposed for judges, with particular reference to the practical application of such law in the regular work of a judge.

Duty to dispose of matters with reasonable promptness

Prompt disposition of the court's business requires a judge to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with the judge to that end. Since irregular or non-existent hours contribute to delay and create a negative impression of the courts, a judge should ordinarily sit in court each working day during the hours prescribed by law or by rules of court for that purpose.

A judge should deliver his or her reserved judgments, having due regard to the urgency of the matter and other special circumstances, as soon as reasonably possible, taking into account the length or complexity of the case and other work commitments. In particular, the reasons for a decision should be declared by the judge without delay.

Importance of transparency

A judge should institute transparent mechanisms to allow lawyers and litigants to know the status of court proceedings.

Duty to maintain order and decorum in court

A judge should take reasonable steps to achieve and maintain the level of order and decorum necessary to accomplish the business of the court in a manner that is both regular and fair, while at the same time giving lawyers, litigants and the public assurance of that regularity and fairness. ‘Order’ refers to the level of regularity and civility required to guarantee that the business of the court will be accomplished in conformity with the rules governing the proceeding. ‘Decorum’ refers to the atmosphere of attentiveness and earnest endeavour which communicates, both to the participants and to the public, that the matter before the court is receiving serious and fair consideration.

Patience, dignity and courtesy are essential attributes

In court and in chambers, a judge should always act courteously and respect the dignity of all who have business there. A judge should also require similar courtesy from those who appear before him or her, and from court staff and others subject to the judge’s direction or control. A judge should be above personal animosities, and must not have favourites at the Bar. Unjustified reprimands of counsel, offensive remarks about litigants or witnesses, cruel jokes, sarcasm, and intemperate behaviour by a judge undermines both order and decorum in the court. When a judge intervenes, he or she should ensure that impartiality, and the perception of impartiality, are not adversely affected by the manner of the intervention.

Fair and equitable distribution of work

A judge who is responsible for the distribution of cases should not be influenced by the wishes of any party to a case or any person concerned with the results of the case. Such distribution may, for instance, be made by drawing of lots or a system for automatic distribution according to alphabetical order or some similar system. A case should not be withdrawn from a particular judge without valid reasons, such as serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law or rules of court, and may not be influenced by any interest of the executive.

Misuse of court staff

The inappropriate use of court staff is an abuse of judicial authority that places the employee in an extremely difficult situation. Court staff should not be directed to perform inappropriate and excessive personal services for a judge beyond minor matters that conform with established conventions.

The test:

Do you recognize that your primary duty is the due performance of the judicial function (including case management), and do you take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for the proper performance of that function, taking advantage for this purpose of training and other facilities that are made available?

Case Study 1

P is a judicial officer. A case comes up before him in which a widow is suing two of her brothers-in-law for converting her late husband's property to their own use to her detriment and that of her children. In arguing her case, plaintiff's counsel cites several authorities including the International Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. The judge promptly retorts that his courtroom is not in Beijing and that he is not a human rights judge. This evokes laughter in court, while the judge insists that as long as these conventions are not domestic laws he would not waste his energies in reading or considering them. Do you consider this judicial officer to have shown due diligence and competence? What other aspects of his conduct, if any, do you consider to be unethical?

Case Study 2

A woman carrying an infant who has appeared in court in response to summons begins to breast-feed the infant while seated in court. Should the judge intervene, and if so, in what manner?