

GUIDELINES FOR JUDICIAL CONDUCT

Notice is hereby given that the following Guidelines for Judicial Conduct have been made and approved by the Judiciary and are hereby published for general information.

23 December 2002.

Chief Justice

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A. PREAMBLE

WHEREAS the *Universal Declaration of Human Rights* and the Constitution of Mauritius recognize 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 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 an independent judiciary is likewise essential if the courts are to fulfill their roles as guardians of the rule of law and thereby to assure good governance.

WHEREAS the real source of judicial power is public acceptance of, and confidence in, the moral authority and integrity of the judiciary.

AND WHEREAS consistently with the *United Nations Principles on the Independence of the Judiciary* 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.

B. GENERAL PRINCIPLES

The following Guidelines and principles are intended to establish standards of ethical conduct of judges. They are Guidelines to be applied in the light of all relevant circumstances and consistently with the requirements of judicial independence and the law. They are designed to provide guidance to judges and to afford a structure for regulating judicial conduct. They are intended to supplement, and not to derogate from, existing principles which bind the judge.

The values which these Guidelines uphold are :

- (a) propriety;
- (b) independence;
- (c) integrity;
- (d) impartiality;
- (e) equality; and
- (f) competence and diligence.

C. DEFINITIONS

In these Guidelines, unless the context otherwise requires -

"Commission of Inquiry" means a Commission of Inquiry set up under the Commissions of Inquiry Act.

"Court staff" includes the personal staff of the judge, Court officers and judge's clerks;

"irrelevant ground" includes a ground relating to race, colour, sex, religion, national origin, caste, political opinion, disability, age, marital status, sexual orientation, social and economic status and any other like cause;

"Judge" includes a magistrate or any other person exercising judicial office, however designated.

"Judge's family" includes a judge's spouse, son, daughter, son-in-law or daughter-in-law and any other close relative or person who lives in the judge's household;

"Judge's spouse" includes a partner of the judge or any other person in a close personal relationship with the judge; and

"judicial duties" includes not only the performance of judicial duties in Court and the making of decisions but also other tasks relevant to the Court's operations or to the judicial office.

D. PROPRIETY

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

- 1.1 A judge shall avoid impropriety and the appearance of impropriety in all of his or her judicial activities.
- 1.2 As a subject of constant public scrutiny, a judge shall freely and willingly accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 1.3 A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's Court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality in the mind of a reasonable, fair-minded and informed person.
- 1.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or has an interest in the case.
- 1.5 A judge shall avoid the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge.
- 1.6 A judge shall refrain from conduct such as membership of groups or organizations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before Court.

- 1.7 A judge shall, upon appointment, cease to be involved in any political activity. A judge shall refrain from conduct that, in the mind of a reasonable, fair-minded and informed person, might give rise to the appearance that the judge is engaged in political activity.
- 1.8 A judge shall refrain from -
(a) membership of political parties;
(b) political fund-raising;
(c) attendance at political gatherings and political fund-raising events;
(d) contributing to political parties or campaigns; and
(e) taking part publicly in controversial discussions of a partisan political character.
- 1.9 A judge shall not allow the judge's family, social or other relationships to influence improperly the judge's judicial conduct and judgment as a judge.
- 1.10 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 to influence improperly the judge in the performance of judicial duties.
- 1.11 A judge shall not testify voluntarily as a character witness, except that a judge may testify as a witness in criminal proceedings if the judge or a member of the judge's family is a victim of the offence or if the defendant is a member of the judge's family or in like exceptional circumstances.
- 1.12 Subject to the proper performance of judicial duties, a judge may engage in activities such as:
(a) writing, lecturing, teaching and participating in activities concerning the law, the legal system, the protection of human rights, the administration of justice and related matters;
(b) appearing at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; and
(c) serving as Chairman of a Commission of Inquiry and as a member of any body devoted to the improvement of the law, the legal system, the protection of human rights, the administration of justice, the public service or related matters.
- 1.13 A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties in accordance with these Guidelines.
- 1.14 A judge may participate in civic and charitable activities that do not reflect adversely on the judge's impartiality or interfere with the performance of judicial duties. A judge shall not be involved in fund-raising or membership solicitation.
- 1.15 A judge shall not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person connected with a member of the judge's family and then only if such service will not interfere with the proper performance of judicial duties.

- 1.16 Except *for* holding and managing appropriate personal or family investments, a judge shall refrain from being engaged in other financial or business dealings which may interfere with the proper performance of judicial duties or reflect adversely on the judge's impartiality.
- 1.17 Confidential information acquired by a judge in his -or her judicial capacity shall not be used or disclosed by the judge in financial dealings or *for* any other purpose not related to the judge's judicial duties.
- 1.18 A judge shall not practise law whilst being the holder of judicial office.
- 1.19 A judge may *form* or join associations of judges or participate in other organizations representing the interest- of judges to promote professional training and to protect judicial independence.
- 1.20 A judge shall neither ask *for*, nor accept, nor permit any member of the judge's family 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 by the judge in connection with the performance of judicial duties.

E. INDEPENDENCE

Since an independent judiciary is indispensable to impartial justice under law, a judge shall uphold and exemplify judicial independence in both its individual and institutional aspects.

- 2.1 A judge shall exercise independently his or her judicial functions on the basis of the judge's assessment of the facts and in accordance with a conscientious under- standing of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason whatsoever.
- 2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where such attempt arises outside the proper performance of judicial duties.
- 2.3 In performing judicial duties, a judge shall, within the judge's own Court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 2.4 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.
- 2.5 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence which is fundamental to the maintenance of judicial independence.

F. INTEGRITY

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

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of areas on able, fair-minded and informed person.

- 3.2 The behaviour and conduct of a judge shall be such as to 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.
- 3.3 A judge shall, in addition to observing personally the standards of these Guidelines, encourage and support their observance.

G. IMPARTIALITY

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

- 4.1 A judge shall perform his or her judicial duties without fear, favour, bias or prejudice.
- 4.2 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.
- 4.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 4.4 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.
- 4.5 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 a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially.
- 4.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception of a lack of impartiality of the judge including, but not limited to, instances where the judge -
- (a) has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - (b) previously served as a lawyer or was a material witness in the matter in dispute; or
 - (c) a member of the judge's family, has an economic interest in the outcome of the matter in dispute.
- 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 who would otherwise be disqualified on the grounds specified in paragraph 4.6 above may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such

disclosure, the parties, independently of the judge's participation, agree in writing or on the record, that the judge may participate, or continue to participate, in the proceedings, the judge may do so.

- 4.9 Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice. In such cases of necessity, the judge shall still be obliged to disclose to the parties in a timely way any cause of disqualification and ensure that such disclosure is included in the record.
- 4.10 Except as is otherwise provided in this Part, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

H. EQUALITY

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

- 5.1 A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to any irrelevant ground.
- 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 any irrelevant ground.
- 5.3 A judge shall carry out his or her duties with appropriate consideration for all people, including parties, witnesses, lawyers, court staff and judicial colleagues without unjust 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 which is before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before a Court to refrain from manifesting, by words or conduct, bias or prejudice based on any irrelevant ground. This requirement does not preclude legitimate advocacy where any such ground is legally relevant to an issue in the proceedings.
- 5.6 A judge shall not be a member of, nor associated with, any group, association or body that practices unjust discrimination on the basis of any irrelevant ground.
- 5.7 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.

I. COMPETENCE AND DILIGENCE

Competence and diligence are prerequisites to the due performance of judicial functions

- 6.1 The Judge shall give precedence to his or her judicial functions over any other activity.
- 6.2 A judge shall not engage in any activity which may adversely affect the diligent discharge of his or her judicial duties.
- 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.
- 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 and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and within a reasonable time.
- 6.6 A judge shall maintain order and decorum in all proceedings in which he or she is involved. He or she shall endeavour to adopt a calm, dignified and courteous approach 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.