

# JUDICIAL AND LEGAL SERVICES COMMISSION



# Code of Conduct

for the Cayman Islands judiciary

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This code is drawn up by the Cayman Islands Judicial and Legal Services Commission pursuant to Section 106(10)(a) of the Cayman Islands Constitution Order 2009.

9 March 2012

## A. INTRODUCTION

- [1] Section 106(10)(a) of the Cayman Islands Constitution Order 2009 (“the Constitution”) requires the Judicial and Legal Services Commission to draw up a code of conduct for the judiciary. The Commission has approached that task on the basis that such a Code should be founded on the commonly-accepted values which were adopted by the international judicial community some twenty years ago and have become known as the *Bangalore Principles of Judicial Conduct*. The Commission believes that those who accept appointment as judges and magistrates in the Cayman Islands will recognise those principles as fundamental to the proper discharge of the duties of their office, and that adherence to those principles is essential if public confidence in the judiciary is to be maintained.

The terms “judge” and “judiciary” as used herein include magistrates, save where indicated otherwise.

- [2] The stated purpose of the *Bangalore Principles* is:

**“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”.**

The Commission adopts that statement as the purpose of this Code.

- [3] The *Bangalore Principles* are enshrined in a succinct statement of six core values:

- **Judicial independence is a prerequisite 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.**
- **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.**
- **Integrity is essential to the proper discharge of the judicial office.**
- **Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.**
- **Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.**
- **Competence and diligence are prerequisites to the due performance of judicial office.**

This Code is intended to embody those core values. It should be understood and applied accordingly.

- [4] The Commission recognises that it is impossible to foresee, or to make provision for, the whole spectrum of circumstances to which those principles may fall to be applied in practice. It recognises, also, that the application of the principles to particular circumstances may give rise to difficult questions on which there is room for reasonable differences in view. Those questions will need to be resolved as and when they arise. Nevertheless the Commission believes that the purpose of this Code will be served by setting out, under each of the six *Bangalore Principles*, propositions which are likely to command general acceptance in the Cayman Islands. Those propositions should be seen as establishing standards by reference to which judges will regulate their conduct. Conduct which falls below those standards will not meet legitimate public expectation.
- [5] The Commission may from time to time revise or vary this Code as circumstances shall require. Judges, whenever appointed, will be expected to adhere to the Code as so revised or varied.

## **B. INDEPENDENCE**

- [6] It is a fundamental principle of the rule of law under a democratic constitution that the judiciary is, and is seen to be, independent of both the Legislature and the Executive. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas in fact it is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary, whether viewed as an entity or by its individual membership, is and must be seen to be independent of the legislative and executive arms of government. The relationship between the judiciary and the other arms should be one of mutual respect, each recognising the proper role of the others. Judicial independence is underpinned by security of tenure and remuneration, and by the constitutional convention under which the Executive neither directs nor criticises the Judiciary. The Legislature acts only through measures passed in the Legislative Assembly.
- [7] The independence of the judiciary imposes obligations upon the judges to respect the proper role of the Legislature and the Executive. Judges cannot avoid determining politically contentious disputes if those are properly brought before them in legal proceedings; but they should take care not to express views in a judicial capacity which go beyond what is necessary for that purpose.
- [8] A judge should not make extra-judicial statements upon politically contentious matters. The general rule is that if a matter of public controversy calls for a response from the judiciary or a particular court, it should come from the Chief Justice or with his or her approval. There will be cases in which it may assist public debate if individual judges provide information relating to the administration of justice and the functions of the judiciary, as explained in paragraph 26.8 below. But such cases are likely to be rare and the participation of individual judges in public debate requires careful consideration.

In particular:

- [8.1] If matters which affect the judiciary directly (for example, terms of service) become the subject of public comment or debate, the response (if any) on behalf of the judiciary should be made through the Chief Justice.
- [8.2] Communication with the Executive on behalf of the judiciary is the responsibility of the Chief Justice. Such communication should be open and formal.

- [8.3] Communication with political parties or members of the Legislative Assembly (other than purely social) or any appearance of political lobbying (for example, the signing of petitions) should be avoided.
- [8.4] A judge should not make submissions or give evidence before any committee or similar body on a matter affecting the legal system without first consulting the Chief Justice.
- [9] Invitations from the Executive to undertake non-judicial functions (for example, service on commissions and working parties) should not be accepted without careful consideration whether such functions are compatible with the judicial function. Relevant considerations will be the impact upon judicial strength during the time of the secondment and any implications for judicial independence. It is expected that such invitations will be communicated by the Executive through the Chief Justice. If that is not so in any particular case, then the judge receiving the invitation should refer it to him. In any event, a judge should consult the Chief Justice before accepting it.
- [10] A judge must protect his or her independence by rejecting any attempt to influence his or her judicial decision other than by public advocacy in the courtroom. In particular, no judge can be directed as to his or her own judicial decision by any other judge. Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.
- [11] Membership of, or association with, political organisations is inconsistent with judicial independence and should be avoided.
- [12] In the discharge of his or her judicial functions, a judge should keep in mind that collegiate support is an important element in the maintenance of judicial independence. He or she should show respect and support for his or her judicial colleagues, and should refrain from criticising or denigrating them in public or in private.

### **C. IMPARTIALITY**

- [13] Impartiality is essential to the proper discharge of the judicial function. Indeed, independence may be seen as a means to that end.
- [14] A judge must avoid both partiality (or bias) in fact and the appearance of partiality. Justice must both be done and be seen to be done.
- [15] A judge who has the least doubt as to his or her ability to decide the issues before him or her impartially - because, for example, he or she recognises that he or she has actual bias arising from personal knowledge of the disputed facts, or from personal knowledge of the credibility (or lack of credibility) of one of the parties or a witness, or from a pre-disposition to take an unfavourable view of one of the parties individually or, more generally, of a class of litigants to which one of the parties may belong - must disqualify himself or herself and decline to hear the case.
- [16] Appearance of partiality or bias can arise where bias does not exist in fact. The test is whether a reasonable, fair-minded and informed observer would reasonably conclude that there is a real possibility that the judge is not impartial. The appearance of partiality may be impossible to dispel:

leaving the litigant – and the informed observer – with a sense of injustice which is destructive of confidence in judicial decisions.

- [17] Circumstances which might lead a reasonable, fair-minded and informed observer reasonably to conclude that there is a real possibility that the judge is not impartial include (but are not limited to) an apparent conflict of interest, judicial behaviour on the Bench, or associations and activities off the Bench. In particular, a judge may give an appearance of bias by expressing views in relation to race, gender, religious belief or culture. Whether a judge's associations or conduct gives an appearance of bias may be very difficult for that judge to recognise or determine in advance or at the time. Where a judge concludes that (applying the relevant test) his or her associations or conduct may give an appearance of bias, he or she should disqualify himself or herself and decline to hear (or to continue hearing) the case.
- [18] Apparent conflicts of interest can arise in many different situations. A judge must be alert to any appearance of bias arising out of connections with litigants, witnesses or their legal advisors. The parties should always be informed by the judge of facts within his or her knowledge which might reasonably give rise to a perception of bias or conflict of interest.

In particular:

- [18.1] A judge should disqualify himself or herself where he or she or (while he or she was in practice) his or her firm acted as a legal advisor in connection with the subject matter of the dispute which has given rise to the proceedings.
- [18.2] A judge should disqualify himself or herself if in a close relationship to litigants, witnesses or the legal advisors in the case.
- [18.3] A judge should disqualify himself or herself if he or she or a close relative or member of his or her household has, directly or indirectly, a financial, beneficial or other similar interest in the outcome of the proceedings. Such conflicts may arise out of current commercial or business activities, financial investments (including shareholding in public or private companies) or membership of or involvement with educational, charitable or other community organisations which may be interested in the litigation. Shareholdings in litigant companies or companies associated with litigants should be disclosed. They should always lead to disqualification if the shareholding is large or if the value of the shareholding would be affected by the outcome of the litigation. Where the shareholding is small, full disclosure should still be made.
- [18.4] A judge should give most careful consideration whether to disqualify himself or herself if the case raises issues in relation to which he or she has made public statements of firm opinion after appointment.
- [19] The question whether to disqualify himself or herself on the grounds of actual or apparent bias is, in the first instance, for the judge to consider and determine. A judge should be careful to avoid giving encouragement to attempts by a party to use procedures for disqualification illegitimately. There is a need to avoid the practice of "forum shopping" by litigants who raise objections on the ground of apparent bias without good reason to do so. Additionally, a judge will need to have in mind, amongst other matters: (i) the burden which will fall on other judges if he or she disqualifies himself or herself without good reason; (ii) the burden that will be imposed on the litigants if an appellate court reverses his or her decision not to disqualify himself or herself; and (iii) the

possibility that a decision not to disqualify himself or herself may (if reversed on appeal) lead to an erosion of confidence in the judiciary. In the latter context a judge should have in mind that, although the fact that the appellate court reverses the judge's decision not to disqualify himself or herself does not, of itself, imply that he or she lacked impartiality, that may not be the perception of the litigant or of the public. If the issue of apparent bias is raised before the judge has embarked on the hearing, it may be sensible for the judge to decline to sit in order to avoid adding that issue to the other contentious issues in the case.

#### **D. INTEGRITY**

- [20] Lack of integrity in private dealings and financial affairs, such as would expose the judge to the censure of reasonable, fair-minded and informed persons, is incompatible with judicial office.
- [21] Judgments once finally delivered and released for publication must stand without further clarification or explanation. Where a decision is subject to inaccurate comment, any appropriate response should be from the Chief Justice. Generally the most effective response is to get the full text of the judgment into the public arena promptly.

#### **E. PROPRIETY**

- [22] Judges should not behave in such a manner as would or might, in the eyes of a right-minded member of the public, bring themselves, the judiciary or the administration of justice into disrepute.
- [23] Appointment to the judiciary should not lead to social and civic isolation. Judges are not effective if isolated from the community which they serve; and the community is not well-served by judges whose personal development is arrested by judicial appointment. Judges are entitled to private and civic lives which are not stunted or disadvantaged by office. And, generally, judges should not be denied the right to act in protection of rights of property and other personal interests: nor, without good reason, should they be denied the freedoms of association and expression which they would otherwise enjoy.
- [24] Nevertheless a judge's conduct, both in and out of court, inevitably attracts closer public scrutiny than that of most other members of the community; and the standing of the judiciary as a whole may be adversely affected by conduct which, in others, would not attract serious criticism. Judges must accept some restrictions on conduct and activities as a consequence of appointment.
- [25] Those restrictions include the following:
  - [25.1] Breaches of the law are incompatible with the judicial obligation to uphold the law.
  - [25.2] A judge who deals judicially with the effects of alcohol abuse may well be seen as compromised if he or she is, himself or herself, an abuser of alcohol.
  - [25.3] A judge should not be a member of any social organisation which discriminates on the basis of race, sex, religion or national origin.
  - [25.4] A judge should not be involved in the management or direction of charitable or civic organisations, the activities of which might reflect adversely upon his or her

impartiality or standing or the discharge of his or her judicial duties. In particular, he or she should not be involved in an organisation in circumstances where (i) it is likely to be regularly involved in contested proceedings before the courts, (ii) its finances are unsound, (iii) his or her standing as a judge could be used to solicit funds; or (iv) its objectives include law reform or political change.

- [25.5] A judge should not provide legal or investment advice to charitable organisations.
- [25.6] A judge should not permit his or her name or title to appear on documents associated with an appeal for funds; nor should he or she personally solicit funds (or lend his or her name to fund-raising activities) on behalf of fund-raising organisations.
- [25.7] A judge should not give legal advice save, on a gratuitous basis, to close family members.
- [25.8] A judge should not act as advocate or negotiator for a family member in a legal dispute or matter.
- [25.9] A judge who chooses to act for himself or herself in a legal dispute or matter should not seek to advance the interests of himself or herself or his or her family by invoking his or her standing as the holder of judicial office.
- [25.10] A judge should not accept professional services (including, in particular, legal advice or representation) for no charge or at a charge that is less than the usual rate charged by the provider of those services.
- [25.11] A judge must not use his or her judicial office for personal advantage (whether financial, social or personal) or for the advantage or benefit of his or her family or friends.
- [25.12] A judge should not give character evidence in court proceedings save in response to a summons requiring him or her to attend as a witness.
- [25.13] A judge should not expect or accept a fee for the delivery of a paper at a legal conference.
- [25.14] A judge should not be a member of the committee of an extra-judicial body which exercises disciplinary powers, save in relation to members of the legal profession.
- [25.15] A judge must avoid personal and social relationships which are abusive or exploitative.
- [25.16] A judge should not associate with anyone whom he or she knows is likely not to observe the law. In particular, a judge should avoid circumstances in which he or she is present at a gathering or on premises which may contravene the law; or where there is a risk of associating with people who are involved in criminal activities.
- [25.17] A judge should not engage with the media without the prior approval of the Chief Justice.
- [25.18] A judge should avoid association with those who are engaged, whether as participants, witnesses, or otherwise, in cases currently before him or her.

- [25.19] A judge should not discuss with anyone (other than judicial colleagues) his or her cases, current or past.
- [26] Matters which are not to be seen as incompatible with judicial office, but where some degree of caution must be exercised, include the following:
- [26.1] A judge who is a trustee, board member or officer of an educational, religious or charitable organisation may participate in its decision-making, including decisions as to investments and legal rights and obligations. But a judge's primary responsibility is to fulfill his or her judicial duties. Extra-judicial responsibilities and interests should not be such as to interfere with the discharge of judicial duties; or of a scale which might detract from that primary responsibility.
- [26.2] A judge is not precluded from managing his or her own investments and those of his or her immediate family or a family trust; provided that he or she is not thereby distracted from his or her judicial duties. Caution is necessary if the investments are substantial or of a nature which is likely to give rise to controversy.
- [26.3] The delivery of papers on legal subjects at legal conferences should be seen as an obligation incidental to judicial office. A judge may accept reimbursement of travel and accommodation expenses incurred in providing and delivering such papers where the host organisation is an educational establishment or professional association. But care must be taken where the host is a private organisation associated with a particular cause or is a potential litigant before the courts or if the arrangements are unusually lavish. In such cases the judge should consult with the Chief Justice.
- [26.4] Acceptance of small gifts as a token of appreciation for participating in a public or private function is not, of itself, objectionable. But caution is necessary in respect of any significant benefit. A judge must be aware of the risks (i) that it may be suggested that he or she has exploited his or her standing as the holder of judicial office in order to obtain that benefit and (ii) that the benefit may be seen as an attempt to influence the judge in the performance of his or her judicial duties. In such cases the judge should consult with the Chief Justice.
- [26.5] Social contact between members of the Bench and the advocates who appear before them is a long-standing tradition. But a judge should avoid direct social contact with practitioners who are engaged in cases currently before him or her where that might give rise to the appearance of bias.
- [26.6] A judge is not precluded from providing a letter of recommendation based on his or her personal knowledge of the individual concerned. But he or she should be aware of the need for caution lest his or her recommendation be seen to indicate judicial endorsement of an applicant for an appointment; and should consider carefully whether it is appropriate for a letter of recommendation be written on judicial stationery.
- [26.7] A judge should attend as a witness in answer to a summons served upon him or her by a party; but, in giving evidence, he or she should be careful not to invoke the special standing which attaches to the holder of judicial office. In particular, he or she



should consider carefully whether it is appropriate for him or her to give evidence as to character; and, generally, should decline to do so unless that course would unfairly deprive a defendant to criminal proceedings of the ability to prove some fact which was within the special knowledge of the judge.

[26.8] A judge may, with the prior approval of the Chief Justice, write articles or give interviews for the purpose of informing the public as to the administration of justice in general terms. In considering whether to accept an invitation to do so, he or she should ask himself or herself whether the proposed article or interview is likely to have the beneficial effect of raising public awareness of the judicial function. But he or she should not express views in articles and interviews which may be thought to pre-determine issues which may arise for judicial determination or which trespass into areas of political controversy. He or she should be aware of the risks associated with unscripted television and radio broadcasts; and should not take part in such broadcasts without the prior approval of the Chief Justice.

[26.9] A judge may write on legal topics for publication – provided that he or she is not thereby distracted from his or her judicial work – and may receive royalties or other payment for publication of his or her written work. Again, a judge should take care that, in his or her extra-judicial written work, he or she does not appear to pre-determine issues which may come before the court in litigation or to criticise the decisions of those who are currently his or her judicial colleagues.

[27] A judge should recognise and accept the need not only to observe high standards of personal conduct but also to encourage and support his or her judicial colleagues to observe similar standards. Questionable conduct by one judge reflects on the judiciary as a whole. A judge who becomes aware of evidence which, in his or her view, is reliable and indicates a strong likelihood of conduct by another judge which falls below the standards required by this Code must give serious consideration to the action which he or she should take; having regard to the overriding need to maintain the public interest in the due administration of justice. Appropriate action will depend on the particular circumstances; but may involve informal counselling, consultation with or a more formal report to the Chief Justice or the Judicial and Legal Services Commission. “Turning a blind eye” is not an acceptable option.

[28] Following his or her retirement from office, a judge shall not appear in court as an advocate. That prohibition shall not apply to magistrates.

## **F. EQUALITY OF TREATMENT**

[29] A judge must determine the cases before him or her according to law. He or she must not be deflected by desire for popularity or fear of criticism.

[30] A judge must hear a case on the evidence and in accordance with the principles of natural justice. He or she must not allow one party to make representations to him or her in the absence of, or to the exclusion of, the other; save where the circumstances require that, in the interests of justice, an application is made without notice.

[31] A judge must conduct himself or herself with courtesy to all, and must require similar courtesy of those appearing in court. He or she should be alert to protect parties or witnesses from

discourtesy or displays of prejudice based on racial, sexual, religious or other grounds. Punctuality, patience and tolerance are essential judicial qualities.

[32] A judge must be firm in maintaining proper conduct during a hearing before him or her. Judicial intervention should be limited to the minimum necessary to clarify the evidence or to elucidate the submissions made to the judge. A judge should take care that his or her interventions, where necessary for those purposes, do not lead to the perception that he or she has reached a conclusion without hearing all the evidence and all the submissions; or, in the case of criminal trials before a jury, that he or she has formed a view as to the guilt or innocence of the accused.

[33] A judge from whose decision or conduct of proceedings an appeal is pending or under consideration should have no private communication with the appellate court.

### **G. COMPETENCE AND DILIGENCE**

[34] A judge is expected to be competent in the discharge of his or her judicial duties, both generally and pursuant to Clause 7 of the Bill of Rights, Freedoms and Responsibilities comprising Part 1 of the Constitution of the Cayman Islands. Without prejudice to the generality of the foregoing, he or she must display intellectual honesty in the reasoning on which his or her decisions are based; he or she must strive to dispose of his or her work promptly, delivering his or her judgments in a timely manner; and he or she must be ready and willing to undertake a fair share of the work of the court.

[35] It is a judge's professional duty to do all he or she reasonably can to equip himself or herself to discharge his or her judicial duties with a high degree of competence and efficiency. This should include the attendance at judicial seminars and symposia where these are made available as part of continuing judicial education and training.

[36] A judge should strive to deliver reserved judgments as soon as possible and in any event within such period as may from time to time be prescribed by the Chief Justice or the President of the Court of Appeal, as the case may be. If the judge becomes aware that his or her judicial commitments (or other circumstances) may prevent him or her from delivering judgment within that time, he should alert the Chief Justice to that possibility.