

## Code of Judicial Conduct

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Adopted in terms of section 12 of the Judicial Service Commission Act 9 of 1994

### Preamble

Whereas-

(1) the supremacy of the Constitution, the rule of law, and the rights and freedoms enshrined in the Bill of Rights are the foundation of the democracy established by the Constitution;

(2) section 165(1) of the Constitution provides that the judicial authority of the Republic vests in the courts;

(3) section 165(2) of the Constitution provides that the courts are independent and subject only to the Constitution and the law, which they must apply without fear, favour or prejudice;

(4) section 174(8) of the Constitution provides that before judicial officers begin to perform their functions, they must take an oath, or affirm, in accordance with paragraph 6(1) of Schedule 2, that they 'will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.';

(5) section 180(b) of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers;

(6) the Judicial Service Commission Act, 1994 (Act 9 of 1994) (hereinafter referred to as the Act), seeks to maintain and promote the independence of the office of judge and judiciary as a whole, while at the same time acknowledging that it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, judges as defined in section 7(1)(g) of the Act, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;

(7) it is necessary for public acceptance of its authority and integrity in order to fulfil its constitutional obligations that the judiciary should conform to ethical standards that are internationally generally accepted, more particularly as set out in the Bangalore Principles of Judicial Conduct (2001) as revised at the Hague (2002);

(8) Part II of Chapter 2 of the Act provides the legal framework for judicial conduct which judicial officers in South Africa must adhere to, and Part[s] III and IV of Chapter 2 of the Act, particularly sections 14, 15, 16, 17, 18, 19 and 20 specify mechanisms, structures and procedures to be applied if a judge acts in a manner unbecoming a judge in respect of any of the five grounds spelt out in section 14(4) of the Act;

(9) section 12 of the Act provides that the Chief Justice, acting in consultation with the Minister, must compile and maintain a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval; and

(10) section 12(5), read with section 14(4)(b) of the Act, specifically provides that the Code of Judicial Conduct shall serve as the prevailing standard judicial conduct, which judges must adhere to and that any wilful or grossly negligent breach of the Code may amount to misconduct which will lead to disciplinary action in terms of section 14 of the Act;

**PARLIAMENT** of the Republic of South Africa therefore approves the Code of Judicial Conduct for Judges as follows:-

#### Article 1: Definitions

In this Code, unless the context otherwise indicates-

- (a) **'the Act'** means the Judicial Service Commission Act, 1994 (Act 9 of 1994); and  
(b) any word or expression to which a meaning has been assigned in the Act shall bear the meaning so assigned to it.

#### Article 2: Application

(1) This Code applies to every judge referred to in section 7(1)(g) of the Act who is performing active service and, unless the context indicates otherwise, also to-

(a) a judge released from active service and who is liable to be called upon to perform judicial duties; and

(b) an acting judge.

(2) A Judge not on active service is bound by this Code insofar as applicable.

(3) Any wilful or grossly negligent breach of this Code is a ground upon which a complaint against a judge may be lodged in terms of section 14(4)(b) of the Act.

(4) Complaints must be dealt with in accordance with section 14, read with sections 15, 16 or 17 of the Act.

#### Article 3: Objects and interpretation

(1) The object of this Code is to assist every judge in dealing with ethical and professional issues, and to inform the public about the judicial ethos of the Republic.

(2) This Code must-

(a) be applied consistently with the Constitution and the law as embodied in the common law, statute, and precedent, having due regard to the relevant circumstances;

(b) not be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any judge or on the separation of powers; and

(c) not be interpreted as absolute, precise, or exhaustive. Conduct may therefore be unethical which, on a strict reading of this Code, may appear to be permitted and the converse also applies.

(3) Although international standards and those applied in comparable foreign jurisdictions may not be directly applicable, they do provide a useful source of reference for interpreting, understanding and applying this Code.

(4) Notes to Articles of this Code are for the purpose of elucidation, explanation and guidance with respect to the purpose and meaning of the Articles.

#### Article 4: Judicial independence

A judge must-

(a) uphold the independence and integrity of the judiciary and the authority of the courts;

(b) maintain an independence of mind in the performance of judicial duties;

(c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts; and

(d) not ask for nor accept any special favour or dispensation from the executive or any interest group.

#### Notes:

Note 4(i): A judge acts fearlessly and according to his or her conscience because a judge is only accountable to the law.

Note 4(ii): Judges do not pay any heed to political parties or pressure groups and perform all professional duties free from outside influence.

Note 4(iii): Judges do not appear at public hearings or otherwise consult with an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice.

Note 4(iv): Judicial independence is not a private right or a principle for the benefit of judges as individuals. It denotes freedom of conscience for judges and non-interference in the performance of their decision-making. It does not justify judicial misbehaviour and does not provide an excuse for failing to perform judicial functions with due diligence or for otherwise acting contrary to this Code.

Note 4(v): Organs of state are constitutionally mandated to assist and protect the courts to ensure their independence, impartiality, dignity, accessibility, and effectiveness. The correlative is the right of every judge not to have his or her independence of mind disturbed by any person or organ of state.

#### Article 5: To act honourably

(1) A judge must always, and not only in the discharge of official duties, act honourably and in a manner befitting judicial office.

(2) All activities of a judge must be compatible with the status of judicial office.

#### Notes:

Note 5(i): A judge behaves in his or her professional and private life in a manner that enhances public trust in, or respect for, the judiciary and the judicial system.

Note 5(ii): A judge avoids impropriety and the appearance of impropriety in all the judge's activities.

Note 5(iii): A judge does not engage in conduct that is prejudicial to the effective and expeditious administration of the business of the court.

Note 5(iv): Judicial conduct is to be assessed objectively through the eyes of the reasonable person.

#### Article 6: Compliance with the law

A judge must at all times, also in relation to extra-judicial conduct, comply with the law of the land.

#### Article 7: Equality

A judge must at all times-

- (a) personally avoid and dissociate him- or herself from comments or conduct by persons subject to his or her control that are racist, sexist or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution;
- (b) in court and in chambers act courteously and respect the dignity of others;
- (c) in conducting judicial proceedings, give special attention to the right to equality before the law and the right of equal protection and benefit of the law; and
- (d) in the performance of judicial duties refrain from being biased or prejudiced.

#### Notes:

Note 7(i): These provisions are aimed at promoting courtesy and ensuring a degree of decorum.

Note 7(ii): Judges strive to be aware of and understand the many differences between persons and to remain informed about changing social attitudes and values.

Note 7(iii): The multi-cultural nature of South African society calls for special sensitivity for the perceptions and sensibilities of all who are affected by court proceedings.

#### Article 8: Transparency

A judge must-

- (a) take reasonable steps to enhance the accessibility of the courts and to improve public understanding of judicial proceedings; and
- (b) unless special circumstances require otherwise-
  - (i) conduct judicial proceedings; and
  - (ii) make known his or her decisions and supporting reasoning, in open court.

#### Notes:

Note 8(i): The legitimacy of the judiciary depends on the public understanding of and confidence in the judicial process.

Note 8(ii): The function of the judiciary fails if its proceedings are not understood.

Note 8(iii): Judges are conscious of the desirability of complying with the spirit of the requirement that proceedings should take place in open court.

Note 8(iv): A judge avoids unnecessary discussion in chambers (i.e. with the legal representatives in the absence of the parties) of matters that may be relevant to the merits of the case.

Note 8(v): If what has happened in chambers has any effect on the proceedings, those facts are to be placed on record in open court.

#### Article 9: Fair trial

A judge must-

- (a) resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to-
  - (i) observe the letter and spirit of the *audi alteram partem* rule;
  - (ii) remain manifestly impartial; and
  - (iii) give adequate reasons for any decision;
- (b) in conducting judicial proceedings-
  - (i) maintain order;
  - (ii) act in accordance with commonly accepted decorum; and

- (iii) remain patient and courteous to legal practitioners, parties and the public, and require them to act likewise;
- (c) manage legal proceedings in such a way as to-
  - (i) expedite their conclusion as cost-effectively as possible; and
  - (ii) not shift the responsibility to hear and decide a matter to another judge; and
- (d) not exert undue influence in order to promote a settlement or obtain a concession from any party.

**Notes:**

Note 9(i): The duty to grant a party a fair hearing does not preclude a judge from keeping a firm hand on proceedings. In general-

- (a) reasonable time limits may be laid down for argument, which may also be cut short when the judge is satisfied that further argument would not be of material assistance;
- (b) the examination and cross-examination of witnesses should be curtailed if it exceeds reasonable bounds; and
- (c) applications for postponement and the like must be scrutinised for real merit and must be dealt with firmly and fairly.

Note 9(ii): Reasons for decisions must be clear, cogent, complete and succinct. A number of decisions do not necessarily require reasons, e.g. unopposed cases and interlocutory rulings, because the reasons are usually self evident. If reasons in such cases are later reasonably required, they must be given within a reasonable time.

Note 9(iii): Judgments may be written in a style and manner the judge thinks best.

Note 9(iv): A judge may have occasion to express critical views about people during the course of argument or in judgments, e.g. by using unflattering adjectives in regard to a recalcitrant or overzealous party, an uncooperative lawyer, a foot-dragging witness and the like. However, harsh language should be avoided if possible and a judge may not, under the guise of performing judicial functions, make defamatory or derogatory statements actuated by personal spite, ill will, or improper, unlawful or ulterior motive.

Note 9(v): Since judges are fallible and can err in relation to fact or law, such errors are to be dealt with through the normal appeal and review procedures. Such errors, even if made by courts of final instance, cannot give rise to valid complaints. Complaints against judges that are related to the merits of a decision or procedural ruling are to be dismissed at the outset. Disenchantment about a judicial decision does not justify disciplinary proceedings. Section 15(2)(c) of the Act specifically provides that a complaint against a judge must be dismissed if it is solely related to the merits of a judgment or order.

Note 9(vi): A judge may in appropriate instances advise parties to consider settlement of a case or put a provisional view in the course of argument. Justice may, however, require that a party be afforded the opportunity to deal with such view.

Article 10: Diligence

(1) A judge must-

- (a) perform all assigned judicial duties diligently;
- (b) investigate the matter at hand thoroughly;
- (c) dispose of the business of the court promptly and in an efficient and businesslike manner;
- (d) give judgment or any ruling in a case promptly and without undue delay;
- (e) not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court;
- (f) attend chambers during normal office hours and attend court during normal court hours, unless such attendance is not reasonably required in order to perform any official duties;
- (g) perform all official duties properly, timeously, and in an orderly manner;
- (h) respect and comply with, the administrative requests of the head of court or the relevant senior judge;
- (i) take reasonable steps to maintain the necessary level of professional competence in the law; and
- (j) upon resignation, discharge from active service, or the expiry of an acting appointment, complete all part-heard cases and deliver all reserved judgments as soon as possible.

- (2) A judge must deliver all reserved judgments before the end of the term in which the hearing of a matter was completed, but may-
- (a) in respect of a matter that was heard within two weeks of the end of that term; or
  - (b) where a reserved judgment is of a complex nature or for any other cogent and sound reason and with the consent of the head of the court, deliver that reserved judgment during the course of the next term.

**Notes:**

Note 10(i): Unnecessary postponements, point-taking, undue formality and the like must be avoided.

Note 10(ii): Litigants are entitled to judgment as soon as reasonably possible.

Note 10(iii): Criminal proceedings, especially automatic reviews, applications for leave to appeal, and matters where personal liberty is involved, must be dealt with expeditiously.

Note 10(iv): A judge keeps a record of all outstanding judgments and reports to the head of the particular court thereon if and when requested.

Note 10(v): A pattern of intemperate or intimidating treatment of lawyers and others, or of conduct evidencing arbitrariness and abusiveness is prejudicial to the effective administration of justice and should be avoided.

Article 11: Restraint

- (1) A judge must-
- (a) save in the discharge of judicial office, not comment publicly on the merits of any case pending before, or determined by, that judge or any other court;
  - (b) not enter into a public debate about a case irrespective of criticism levelled against the judge, the judgment, or any other aspect of the case;
  - (c) refrain from any action which may be construed as designed to stifle legitimate criticism of that or any other judge;
  - (d) not disclose or use non-public information acquired in a judicial capacity for any purpose unrelated to his or her judicial duties;
  - (e) avoid any personality issues with colleagues, lawyers and parties, and seeks [sic] to foster collegiality; and
  - (f) unless it is germane to judicial proceedings before the judge concerned, or to scholarly presentation that is made for the purpose of advancing the study of law, refrain from public criticism of another judge or branch of the judiciary.

(2) A judge may participate in public debate on matters pertaining to legal subjects, the judiciary, or the administration of justice, but does not express views in a manner which may undermine the standing and integrity of the judiciary.

(3) Formal deliberations as well as private consultations and debates among judges are and must remain confidential.

**Notes:**

Note 11(i): If it is necessary to comment on a judgment, the head of court must deal with the matter in order to protect the judiciary as a whole. If the head of court does not deal with the matter, the judge concerned may, under special circumstances, issue a statement in a reasoned and dignified manner, preferably in open court or through the registrar, to clarify the issue. These provisions do not prohibit academic debate of the legal issues that arose in a case.

Note 11(ii): Private consultations and debates between judges are necessary for the judiciary to perform its functions. However, these occasions may not be used to influence a judge as to how a particular case should be decided.

Note 11(iii): Personal criticism must be avoided unless it is necessary during the course of appeal proceedings.

Note 11(iv): Courtesy and collegiality towards colleagues are indispensable attributes of a judge.

Article 12: Association

- (1) A judge must not-
- (a) belong to any political party or secret organisation;
  - (b) unless it is necessary for the discharge of judicial office, become involved in any political controversy or activity;

- (c) take part in any activities that practise discrimination inconsistent with the Constitution; and
- (d) use or lend the prestige of the judicial office to advance the private interests of the judge or others.

(2) A judge must, upon permanent appointment, immediately sever all professional links and recover speedily all fees and other amounts outstanding and organise his or her personal business affairs to minimise the potential for conflicts of interest.

(3) A judge previously in private practice must not sit in any case in which he or she, or his or her former firm, is or was involved before the judge's appointment, and a judge must not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled.

(4) An acting judge who is a practising attorney does not sit in any case in which the acting judge's firm is or was involved as attorney of record or in any other capacity.

**Notes:**

Note 12(i): Social associations, including association with members of the legal profession, should be such as not to create the impression of favouritism or to enable the other party to abuse the relationship.

Note 12(ii): A judge does not ask for or receive any special favour or dispensation from potential litigants or members of the legal professions nor does a judge use the office for the attainment of personal benefit.

Article 13: Recusal

- (a) A judge must recuse him- or herself from a case if there is a real or reasonably perceived conflict of interest; or
- (b) reasonable suspicion of bias based upon objective facts, and shall not recuse him- or herself on insubstantial grounds.

**Notes:**

Note 13(i): Recusal is a matter regulated by the constitutional fair trial requirement, the common law and case law.

Note 13(ii): A judge hears and decides cases allocated to him or her, unless disqualified therefrom. Sensitivity, distaste for the litigation or annoyance at the suggestion to recuse him- or herself are not grounds for recusal.

Note 13(iii): A judge's ruling on an application for recusal and the reasons for the ruling must be stated in open court. A judge must, unless there are exceptional circumstances, give reasons for the decision.

Note 13(iv): If a judge is of the view that there are no grounds for recusal but believes that there are facts which, if known to a party, might result in an application for recusal, such facts must be made known timeously to the parties, either by informing counsel in chambers or in open court, and the parties are to be given adequate time to consider the matter.

Note 13(v): Whether a judge ought to recuse him- or herself is a matter to be decided by the judge concerned and a judge ought not to defer to the opinion of the parties or their legal representatives.

Article 14: Extra-judicial activities of judges on active service

- (1) A judge's judicial duties take precedence over all other duties and activities, statutory or otherwise.
- (2) A judge may be involved in extra-judicial activities, including those embodied in their rights as citizens, if such activities-
  - (a) are not incompatible with the confidence in, or the impartiality or the independence of the judge; or
  - (b) do not affect or are not perceived to affect the judge's availability to deal attentively and within a reasonable time with his or her judicial obligations.
- (3) A judge must not-
  - (a) accept any appointment that is inconsistent with or which is likely to be seen to be inconsistent with an independent judiciary, or that could undermine the separation of powers or the status of the judiciary;
  - (b) act as an advocate, attorney, or legal adviser but may give informal legal advice to family members, friends, charitable organisations and the like without compensation;

- (c) become involved in any undertaking, business, fundraising or other activity that affects the status, independence or impartiality of the judge or is incompatible with the judicial office;
- (d) engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position or are incompatible with the judicial office; and
- (e) sit as a private arbitrator.

(4) A judge may-

- (a) act as a trustee of a family or public benefit trust but is not entitled to receive any remuneration for such services;
- (b) be a director of a private family company or member of a close corporation but if the company or close corporation conducts business the judge may [sic] not perform an executive function; and
- (c) be a director of a non-profit company.

**Notes:**

Note 14(i): A judge conducts extra-judicial activities in a manner which minimises the risk of conflict with judicial obligations. These activities may not impinge on the judge's availability to perform any judicial obligations.

Note 14(ii): While judges should be available to use their judicial skill and impartiality to further the public interest, they must respect the separation of powers and the independence of the judiciary when considering a request to perform non-judicial functions for or on behalf of the State, or when performing such function.

Note 14(iii): Judges who are not on active service but are liable to be called upon to perform judicial duties must arrange their affairs so as to be reasonably available for such duties if called upon.

Note 14(iv): Business or financial dealings with members of the legal professions are to be avoided.

Note 14(v): Serving on university councils or governing bodies or boards of trustees of charitable institutions and the like is acceptable.

Article 15: Extra-judicial income

(1) In terms of section 11(1) of the Act, a judge performing active service may not receive in respect of any service any fees, emoluments, or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge, except insofar as the position with regard to royalties is regulated in the Act.

(2) A judge must not-

- (a) receive any income or compensation that is incompatible with judicial office;
- (b) directly or indirectly negotiate or accept remuneration, gifts, advantages or privileges which are incompatible with judicial office or which can reasonably be perceived as being intended to influence the judge in the performance of his or her judicial duties, or to serve as a reward for them; and
- (c) accept, hold or perform any other office of profit, or receive in respect of any service any fees, emoluments or other remuneration apart from the salary and any allowances payable to the judge in a judicial capacity.

**Notes:**

Note 15(i): Section 11(1) provides that a judge may, with the written consent of the Minister acting in consultation with the Chief Justice, receive royalties for legal books written or edited by that judge.

Note 15(ii): Judges may deliver public lectures or papers on appropriate subjects or teach at academic institutions. Judges who had been discharged from active service may receive reasonable honoraria in respect thereof as well as subsistence and travel allowances or payments by way of reimbursement for such expenditure.

Article 16: Reporting inappropriate conduct

(1) A judge with clear and reliable evidence of serious professional misconduct or gross incompetence on the part of a legal practitioner or public prosecutor must inform the relevant professional body or a Director of Public Prosecutions of such misconduct or professional incompetence.

(2) Before commenting adversely on the conduct of a particular practitioner or prosecutor in a judgment, the judge must give that person the opportunity to deal with the allegation.

(3) A judge who reasonably believes that a colleague has been acting in a manner which is unbecoming of judicial office must raise the matter with that colleague or with the head of the court concerned.

**Notes:**

Note 16(i): The judge must usually await the conclusion of the proceedings before informing the relevant professional body or a Director of Public Prosecutions of such misconduct or professional incompetence.

Note 16(ii): The reference to the appropriate authority is to be made in a neutral fashion and may not be judgmental.

Article 17: Judges discharged from active service

(1) In terms of section 11(2) of the Act, a judge who has been discharged from active service may only with the written consent of the Minister, acting after consultation with the Chief Justice, hold or perform any other office of profit or receive in respect of any service any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as judge.

(2) A judge who is no longer on active service or liable to be called upon to perform judicial duties (herein referred to as a retired judge) shall always act honourably and in a manner befitting his or her status.

(3) All activities of a judge no longer on active service must be compatible with his or her status as a retired judge.

(4) A judge discharged from active service must not-

- (a) accept any appointment that is likely to affect or be seen to affect the independence of the judiciary, or which could undermine the separation of powers or the status of the judiciary and must not receive any income incompatible with judicial office;
- (b) act as an advocate, attorney or legal adviser; and
- (c) be involved in any undertaking, business, fundraising, or other activity that is incompatible with the status of a judge.

**Notes:**

Note 17(i): A retired judge may accept an appropriate appointment as a judge, whether as judge in another jurisdiction, or as an arbitrator or mediator, in professional or semi-professional disciplinary matters and the like.

Note 17(ii): A retired judge must not sit as a director of a public company.

Note 17(iii): A retired judge must not become a member of a professional partnership or body corporate.

Note 17(iv): A retired judge must not enter party politics.