



CODE OF JUDICIAL CONDUCT FOR JUDGES

ADOPTED IN TERMS OF SECTION 12 OF THE JUDICIAL SERVICE COMMISSION ACT 9 OF 1994

Preamble:

Whereas 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;

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

And whereas 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;

And whereas 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.";

And whereas 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;

And whereas the Judicial Service Commission Act, 1994 (Act No 9 of 1994) (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 permeates the Constitution and that are equally applicable to judicial institutions and officers;

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

And whereas 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 III and IV of Chapter 2 of the Act, particularly sections 14, 15, 16 and 17, 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(3)(a) of the Act;

And whereas 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 whereas section 12(5), read with section 14(3)(a) 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 willful 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;

BE IT THEREFORE APPROVED by the Parliament of South Africa, a Code of Judicial Conduct for Judges, which judges must adhere to, as required in terms of section 12 read with section 14(4) of the Act, as follows:-

1. Application

- (1) Any willful 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.

- (7) 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 these rules.
- (8) These notes are in elucidation and provide explanation and guidance with respect to the purpose and meaning of the rules.

3. Judicial Independence

- (1) A judge upholds the independence and integrity of the judiciary and the authority of the courts, and maintains an independence of mind in the performance of judicial duties.
- (2) A judge takes all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts.
- (3) A judge does not ask for nor accept any special favour or dispensation from the executive or any interest group.

Note 3A: A judge acts fearlessly and according to his or her conscience because a judge is only accountable to the law. Judges do not pay any heed to political parties or pressure groups; and perform all professional duties free from outside influence.

Note 3B: Judges do not appear at public hearings before, 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 3C: 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 misbehavior and does not provide an excuse fro

failing to perform judicial functions with due diligence or for otherwise acting contrary to these rules.

Note 3D: 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.

4. To act honourably

- (1) A judge always, and not only in the discharge of official duties, acts honourably and in a manner befitting judicial office.
- (2) All activities of a judge must be compatible with the status of judicial office.

Note 4A: A judge behaves in his or her professional and private life in manner that enhances with public trust in or respect for the judiciary and the judicial system. A judge avoids impropriety and the appearance of impropriety in all the judge's activities.

Note 4B: A judge does not engage in conduct that is prejudicial to the effective and expeditious administration of the business of the court.

Note 4C: Judicial conduct is to be assessed objectively through the eyes of the reasonable person.

5. To comply with the law

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

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

2. Interpretation

In interpreting these rules the following apply:

- (1) Any willful or grossly negligent breach of this Code amounts to misconduct by the judge. However, disciplinary action is not appropriate for every infringement. Whether disciplinary action is appropriate, and the degree of discipline to be imposed, is determined by the provisions of the Act, and further through a reasonable application of the terms of the rule and depends on such factors as the seriousness of the violation, the intent of the judge, whether there is a pattern of improper activity, and the effect on the administration of justice.
- (2) These rules apply to all judges referred to in section 7(1)(g) of the Act performing active service and, unless the context indicates otherwise, also to judges released from active service and who are liable to be called upon to perform judicial duties, and to acting judges and judicial officers. Judges not on active service are bound by the rules insofar as applicable.
- (3) The object of these rules is to assist judges in dealing with ethical and professional issues, and to inform the public about the judicial ethos in the Republic.
- (4) The rules are rules of reason and must 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.
- (5) The rules are not to be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any judge; or on the separation of powers.
- (6) The rules are not absolute or precise, nor are they exhaustive. Conduct may therefore be unethical which, on a strict reading of a rule, may appear to be permitted; and the converse also applies.

Note 5A: Although they are independent, judges are pre-eminently obliged to comply with the law.

Note 5B: A judge complies with the laws and rules that apply to the Judge's office.

Note 5C: Offences involving moral turpitude are inexcusable.

6. Equality

- (1) In conducting judicial proceedings judges personally avoid and dissociate themselves from comments or conduct by persons subject to their control that are racist, sexist or otherwise manifest discrimination in violation of the equality guaranteed by the Constitution.
- (2) In court and in chambers, judges always act courteously and respect the dignity of others.
- (3) In conducting judicial proceedings, judges give special attention to the right of equality before the law and the right of equal protection and benefit of the law.
- (4) A judge does not in the performance of judicial duties manifest any bias or prejudice.

Note 6A: The rule is not only, or even so much, aimed at promoting courtesy but at ensuring the degree of decorum which is essential for maintaining and enhancing the dignity of the judiciary and its business.

Note 6B: Judges strive to be aware of and understand the many differences between persons and remain informed about changing social attitudes and values. 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.

7. Transparency

- (1) Judges take reasonable steps to enhance the accessibility of the courts and to improve public understanding of judicial proceedings.
- (2) Unless special circumstances require otherwise, judicial proceedings are conducted and judges announce their decisions and supporting reasoning in open court.

Note 7A: The legitimacy of the judiciary depends on the public understanding of and confidence in the judicial process. The function of the judiciary fails if its proceedings are not understood.

Note 7B: Judges are conscious of the desirability of complying with the spirit of the requirement that proceedings should take place in open court.

Note 7C: Judges avoid unnecessary discussion in chambers (i.e. with the legal representatives in the absence of the parties) of matters that may be germane to the merits of the case. If what has happened in chambers has any effect on the course of the proceedings, those facts are placed on record in open court.

8. Fair trial

- (1) A judge resolves disputes by making findings of fact and applying the appropriate law in a fair hearing. This includes the duty to—
 - (a) observe the letter and spirit of the *audi alteram partem* rule;
 - (b) remain manifestly impartial; and
 - (c) give adequate reasons for any decision.
- (2) In conducting judicial proceedings, a judge maintains order, acts in accordance with commonly accepted decorum, remains patient and courteous to legal practitioners, parties and the public; and requires them to act likewise.

- (3) A judge manages legal proceedings in such a way as to expedite their conclusion as cost-effectively as possible and does not shift the responsibility to hear and decide a matter to another judge.
- (4) A judge does not exert undue influence in order to promote a settlement or obtain a concession from any party.

Note 8A: The duty to grant a party a fair hearing does not preclude a judge from keeping a firm hand. Reasonable time limits may be laid down for argument, which may also be cut short when the judge is satisfied that more would not be of material assistance; the examination of witnesses should be curtailed if it exceeds reasonable bounds; applications for postponement and the like must be scrutinised for real merit and must be dealt with firmly and fairly.

Note 8B: 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 with a reasonable time.

Note 8C: A judge has the right to write judgments in a style and manner the judge thinks best. At the heart of judge's task is the necessity to make findings as to people's motives, credibility, honesty and competence. 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 8D: 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 8E: A judge may in an appropriate case advise parties to consider settlement of a case; or put a provisional view in the course of argument. Justice may require that a party be afforded the opportunity to deal with such view.

9. Diligence

(1) A judge performs all assigned judicial duties diligently, investigates the matter at hand thoroughly and disposes of the business of the court promptly and in an efficient and businesslike manner.

(2) A judge gives judgment or any ruling in a case promptly and without undue delay.

(3) A judge does not engage in conduct that is prejudicial to the effective and expeditious administration of justice or the business of the court.

(4)

(a) A judge attends chambers during normal office hours and attends court during normal court hours, unless such attendance is not reasonably required in order to perform any official duties.

(b) All official duties are to be performed properly, timeously, and in an orderly manner.

(c) A judge respects, and complies with, the administrative requests of the head of court or the relevant senior judge.

- (5) A judge takes reasonable steps to maintain the necessary level of professional competence in the law.
- (6) Upon resignation, ceasing to on active service, or the expiry of an acting appointment, a judge is obliged to complete all part-heard cases and to deliver all reserved judgments as soon as possible as to do such work at the prescribed rate. If there is no prescribed rate, the remuneration does not exceed that of an acting appointment based on the time involved.

Note 9A: Unnecessary postponements, point-taking, undue formality and the like must be avoided.

Note 9B: Litigants are entitled to judgment as soon as reasonably possible. The ideal is to deliver all reserved judgments before the end of term, failing which, early the next term. Criminal proceedings, especially automatic reviews, applications for leave to appeal, and matters where personal liberty is involved, must be dealt with expeditiously.

Note 9C: A judge keeps a record of all outstanding judgments and reports to the head of the particular court thereon if and when requested.

Note 9D: 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.

10. Restraint

- (1) Save in the discharge of judicial office, a judge does not comment publicly on the merits of any case pending before, or determined by, that judge or any other court. A judge does not enter into a public debate about a case irrespective of criticism leveled against the judge, the judgment, or any other aspect of the case.
- (2) A judge refrains from any action which may be construed as designed to stifle legitimate criticism of that or any other judge.

- (3) A judge respects the confidences of colleagues and is bound by professional secrecy with regard to deliberations and to confidential information acquired in the course of his or her official duties.
- (4) A judge does not disclose or use non-public information acquired in a judicial capacity for any purpose unrelated to his or her judicial duties.
- (5) A judge avoids any personality issues with colleagues, lawyers and parties, and seeks to foster collegiality.
- (6) 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, a judge refrains from public criticism of another judge or branch of the judiciary.
- (7) 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.

Note 10A: If comment about a judgment is required, the head of court, in that capacity, reacts in order to protect the judiciary as a whole. If the head of court fails to act, 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. The rule does not prohibit academic debate of the legal issues that arose in a case.

Note 10B: Formal deliberations among judges are and must remain confidential. Private consultation and debate are inherent in the functioning of a judge; and often a mere sounding board is helpful and confidentiality is also essential for this benefit of collegiality to function. But such occasions may not be used to influence a judge as to how a particular case should be decided.

Note 10C: Criticising another judicial officer and criticising another judgment are separate matters. Personal criticism must be avoided unless necessary during the course of appeal proceedings.

Note 10D: Courtesy and collegiality towards colleagues are not merely good manners but indispensable attributes of a judge.

11. Association

- (1) A judge does not belong to any political party or secret organisation. Except insofar as is necessary for the discharge of judicial office, a judge does not become involved in any political controversy or activity.
- (2) A judge does not take part in the activities of any organisation that practises discrimination inconsistent with the Constitution.
- (3) A judge does not lend the prestige of the judicial office to advance the private interests of the judge or others.
- (4) A judge does not use his or her judicial office to secure personal advancement or any personal benefit.
- (5) Upon appointment, a judge severs all professional links and recovers speedily all fees and other amounts outstanding and organises his or her personal business affairs to minimize the potential for conflicts of interest.
- (6) A judge previously in private practice does 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 does not sit in any case in which the former firm is involved until all indebtedness between the judge and the firm has been settled.
- (7) 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.

Note 11A: 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 11B: A judge does not ask for nor receives 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.

12. Recusal

- (1) A judge recuses him or herself from a case if there is a real or reasonably perceived conflict of interest or if there is a reasonable suspicion of bias based upon objective facts.
- (2) A judge does not recuse him or herself on insubstantial grounds.

Note 12A: Recusal is a matter regulated by the constitutional fair trial requirement, the common law and case law.

Note 12B: A judge hears and decides cases allocated to him or her, unless disqualified. Sensitivity, distaste for the litigation or annoyance at the suggestion to recuse are not grounds for recusal.

Note 12C: A judge's ruling on an application for recusal and the reasons for the ruling are stated in open court. A judge, unless there are exceptional circumstances, gives reasons for the decision.

Note 12D: If a judge is of the view that there are not grounds for recusal but believes that there are facts which, if known to a party, might result in an application for recusal, such facts are to be made known timely 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 12E: 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.

13. Extra-judicial activities of judges on active service

- (1) In terms of section 11(1) of the Act, a judge performing active service may not hold or perform any other office of profit.
- (2) A judge's judicial duties take precedence over all other duties and activities, statutory or otherwise.
- (3) Judges may be involved in extra-judicial activities, including those embodied in their rights as citizens, unless such activities are incompatible with the confidence in, or the impartiality or the independence of the judge, or affect or may be perceived to affect the judge's availability to deal attentively and within a reasonable time with his or her judicial obligations.
- (4) A judge does not 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 separations of powers or the status of the judiciary.
- (5) A judge does not act as advocate, attorney, or legal adviser but may give informal legal advice to family members, friends, charitable organisations and the like without compensation.
- (6) A judge is not 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.
- (7) A judge is not engaged in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position or are incompatible with the judicial office.
- (8) A judge does not sit as a private arbitrator.
- (9) A judge may act as a trustee of a family or public benefit trust but is not entitled to receive any remuneration for such services.

(10)A judge may 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 not perform an executive function.

(11)A judge may be a director of a section 21 company.

Note 13A: A judge conducts extra-judicial activities so as to minimize the risk of conflict with judicial obligations. These activities may not impinge on the judge's availability to perform any judicial obligations.

Note 13B: While judges should be available to use their judicial skill and impartiality to further the public interest, they 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 13C: judges who are not on active service but are liable to be called upon to perform judicial duties arrange their affairs so as to be reasonably available for such duties if called upon.

Note 13D: Business or financial dealings with members of the legal professions are to be avoided.

Note 13E: Serving on university councils or governing bodies or boards of trustees of charitable institutions and the like is acceptable.

14. 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 does not receive any income or compensation that is incompatible with judicial office.

- (3) A judge does not directly or indirectly negotiate or accept remuneration, gift, advantage, or privilege that is incompatible with judicial office or that 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.
- (4) A judge does not 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.

Note 14A: Section 11(1) further 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 14B: Judges may deliver public lectures or papers on appropriate subjects or teach at academic institutions and receive reasonable honorarium in respect thereof as well as subsistence and travel allowances or payments by way of reimbursement for such expenditure.

15. Informing

- (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 informs the relevant professional body or a Director of Public Prosecutions.
- (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 raises the matter with that colleague or with the head of the court concerned.

Note 15A: The judge must usually await the conclusion of the proceedings before acting.

Note 15B: The reference to the appropriate authority is to be made in a neutral fashion and may not be judgmental.

16. Judges not on active service

- (1) In terms of section 12(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 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) Judges who are not longer on active service or liable to be called upon to perform judicial duties (herein referred to as retired judges) always act honourably and in a manner befitting with their status.
- (3) All activities of judges no longer on active service must be compatible with their status as retired judges.
- (4) A judge discharged from active service does not 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 does not receive any income incompatible with judicial office.
- (5) A Judge discharged from active service does not act as advocate, attorney or legal adviser.
- (6) A judge discharged from active service is not involved in any undertaking, business, fundraising, or other activity that is incompatible with the status of a judge.

Note 16A: A retired judge may accept an appropriate appointment to judge, whether as judge in another jurisdiction; as an arbitrator or mediator; in professional or semi-professional disciplinary matters; and the like.

Note 16B: A retired judge does not sit as a director of a public company.

Note16C: A retired judge does not become a member of a professional partnership or body corporate.

Note 16D: A retired judge doe not enter party politics.