

# **JUDICIAL CODE OF CONDUCT**

## **FOREWORD**

**by**

**The Honourable Mr Justice Fatiaki  
Chief Justice of Fiji**

Since 1972 almost every major judiciary has adopted a code of conduct or ethical principles for the guidance of its judges and magistrates.

Notable examples of these include the statement of Ethical Principles for Judges adopted in Canada in 1998, the European Charter on the Statute for Judges in the same year, the Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India in 1999, the Guidelines for Judges of South Africa issued in March 2000 and the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002.

In November 2002 a Round Table Conference of 17 Chief Justices held in the Peace Palace at The Hague, adopted the Bangalore Principles of Judicial Conduct which are now widely accepted as defining the international standards for ethical conduct by members of the judiciary.

In 2002 Fiji's judiciary decided that it too should adopt and publish a clear open and transparent statement of the ethical principles by which it holds itself to be bound, based on the Bangalore Principles.

The promulgation of these guidelines is also done as a gesture of goodwill and in recognition of the concerns that have been raised, from time to time, by members of the public about the declining standards of conduct and integrity of judicial officers.

These guidelines have had a lengthy gestation since they were first mooted in the year 2000. There have been several drafts circulated and discussed and submissions were received from judges and magistrates. I am confident that these guidelines reflects the collective wisdom and support of the entire judiciary.

I wish to record my appreciation to the Fiji Law & Justice Sector Program for its assistance in bringing this booklet to fruition.

It is my pleasure to formally publish these Guideline Principles for Judicial Officers in the Fiji Islands.

## **PREAMBLE**

**WHEREAS** the judicial power of the State is vested in the judiciary which is independent of the legislative and executive branches of government ;

**WHEREAS** every person charged with a criminal offence has the right to a fair trial before a court of law within a reasonable time ;

**WHEREAS** every party to a civil dispute has the right to have the matter determined by a court of law ;

**WHEREAS** a competent, independent and impartial judiciary is essential for the protection of human rights and in upholding the rule of law in a democratic society;

**WHEREAS** judicial officers are required to be persons of the highest quality and integrity;

**WHEREAS** judicial officers are bound by judicial oath in all things to uphold the Constitution and do right to all manner of people without fear or favour, affection or ill will ;

**WHEREAS** the foregoing principles and rights are recognized and reflected in international and regional instruments, judicial conventions and traditions

**NOW THEREFORE** the following guidelines are **ADOPTED** to provide guidance to judicial officers and to afford a framework for regulating judicial conduct **AND** to assist members of the executive, legislature and the public in general, to better understand and support the judiciary.

**THE GUIDELINES PRESUPPOSE** that judicial officers are accountable for their conduct in the discharge of their professional duties and functions, **AND** **ARE INTENDED** to supplement and not to derogate from existing rules of law and conduct which bind judicial officers.

## **DEFINITIONS**

In these Guidelines, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used :

“Court staff” includes the personal staff of the judicial officer including law clerks.

“Judicial officer” means any person exercising judicial functions, however designated.

“Judicial officer’s family” means a judicial officer’s spouse, son, daughter, and any other close relative, or employee of the judicial officer who resides in the judicial officer’s household.

“Irrelevant grounds” includes the grounds of race, colour, sex, religion, national origin, disability, age, marital status, sexual orientation, social and economic status and other like grounds.

### **1.0 INDEPENDENCE**

#### **Principle**

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

#### **Application**

1.1 A judicial officer should exercise the judicial function independently on the basis of an assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judicial officer should be independent in relation to society in general and in relation to the particular parties to a dispute which the judicial officer has to adjudicate.

1.3 In performing judicial duties, a judicial officer should be independent of colleagues in respect of judicial decisions which the judicial officer is obliged to make independently.

1.4 A judicial officer should encourage and uphold safeguards to maintain and enhance the institutional and operational independence of the judiciary.

1.5 A judicial officer should exhibit and promote high standards of judicial conduct in order to sustain and reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

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## **2.0 IMPARTIALITY**

### **Principle**

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the judicial decision itself but also to the process by which the decision is arrived at. A judicial officer shall perform judicial duties, without fear, bias or prejudice.

### **Application**

2.1 A judicial officer should 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 his/her impartiality and that of the judiciary.

2.2 A judicial officer should so conduct himself or herself as to minimize the occasions on which it might be necessary for the judicial officer to be disqualified from hearing or deciding cases.

2.3 A judicial officer should not make any comment that might reasonably be expected to affect the outcome of any proceedings or impair the manifest fairness of the judicial process or trial of any person.

2.4 A judicial officer should disqualify himself or herself from participating in any proceedings in which the he/she is unable to decide the matter impartially or where it would appear to a reasonable informed observer that the judicial officer is unable to decide the matter impartially. Such proceedings include instances where :

2.4.1 the judicial officer has actual bias for or against a party or any personal knowledge of disputed evidentiary facts in the proceedings;

2.4.2 the judicial officer previously served as a lawyer or was a material witness in the matter in controversy;

2.4.3 the judicial officer, or a member of his/her family, has a financial or other close personal interest in the outcome of the proceedings.

Provided that disqualification of a judicial officer shall not be required if, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

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### **3.0 INGEGRITY**

#### **Principle**

Integrity is essential to the proper discharge of judicial duties. Justice must not merely be done but must also be seen to be done.

#### **Application**

3.1 a judicial officer should ensure that his or her conduct is above reproach in the view of a reasonable informed observer.

3.2 The behaviour and conduct of a judicial officer must reaffirm the public's faith in the integrity of the judiciary.

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## **4.0 PROPRIETY**

### **Principle**

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

### **Application**

4.1 A judicial officer should freely and willingly accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, a judicial officer should conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.2 A judicial officer should, in his or her personal relationship with members of the legal profession who practice regularly in his/her court, avoid situations which might give rise to a reasonable suspicion of favoritism or partiality.

4.3 A judicial officer should not participate in the determination of a case with which any member of the judicial officer's family is closely associated.

4.4 A judicial officer, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights and freedom, a judicial officer should always maintain and preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.5 A judicial officer should be well informed and knowledgeable about his or her own personal, fiduciary, and financial interests and should be reasonably informed about the financial interests of members of the judicial officer's family.

4.6 A judicial officer should not convey or permit others to convey the impression that anyone is in a special position improperly to influence him/her in the performance of judicial duties.

4.7 Confidential information acquired by a judicial officer in his or her official/judicial capacity must not be used or disclosed for any purpose unrelated to the officer's judicial duties.

4.8 Subject to the proper performance of judicial duties, a judicial officer may :

4.8.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters ;

4.8.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters ;

4.8.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judicial officer ; or

4.8.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.9 A judicial officer shall not practice law whilst holding judicial office.

4.10 A judicial officer may form or join associations representing the interests of judicial officers.

4.11 A judicial officer and members of the judicial officer's family, should neither ask for, nor accept, any gift, bequest, loan or favour in connection with the performance by the officer, of judicial duties.

4.12 A judicial officer should not permit court staff or others subject to the judicial officer's influence, direction, or authority, to ask for, or accept, any gift, bequest, loan or favour for the performance of his/her judicial duties.

4.13 Subject to law and to any requirements of public disclosure, a judicial officer may receive a token gift, award, or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit is unrelated to the actual performance of judicial duties.

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## **5.0 EQUALITY**

### **Principle**

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

### **Application**

5.1 A judicial officer should be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, culture and traditions, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).

5.2 A judicial officer should not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judicial officer should carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground.

5.4 A judicial officer should not permit court staff or others subject to the judicial officer’s influence, direction or control to differentiate between persons concerned in a matter before the judicial officer, on any irrelevant ground.

5.5 A judicial officer should require lawyers and/or parties in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds (except such as are relevant to an issue in the proceedings and may be the subject of legitimate advocacy).

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## **6.0 COMPETENCE AND DILIGENCE**



## **Principle**

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

### **Application**

6.1 A judicial officer should devote the judicial officer's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.2 A judicial officer should take reasonable steps to maintain and enhance his/her legal knowledge, judicial skills and personal qualities necessary for the proper performance of judicial duties. For this purpose training and other facilities should be made available, to judicial officers.

6.3 A judicial officer should perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.4 A judicial officer should maintain order and decorum in all proceedings in his/her court and should be patient, dignified and courteous towards litigants, assessors, witnesses, lawyers and other persons whom the judicial officers deals with in an official capacity. A judicial officer shall require similar conduct from legal representatives, court staff and others who are subject to the judicial officer's influence, direction or control.

6.5 A judicial officer should not engage in conduct incompatible with the diligent discharge of judicial duties.