



**JUDICIAL  
CODE OF CONDUCT**



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# I. PURPOSE

- 1.1. The purpose of this document is to provide guidelines for and prescribe ethical conduct of all Judicial Officers in Botswana which includes all Judges of the Court of Appeal, the High Court and all such other Courts as may be established by law and all Magistrates. This Code does not propose to set out an exhaustive set of ethical conduct or acts of misconduct of Judicial Officers.
- 1.2. The Statements and Rules contained in this Code describe the very high standards toward which all Judicial Officers strive. They are principles of reason to be applied in light of all the relevant circumstances and consistently with the requirements of judicial independence and the law.
- 1.3. The Statements and Rules are binding on all Judicial Officers. Their ultimate goal is to assist Judicial Officers with the difficult ethical and professional issues which confront them and to assist members of the public to better understand the judicial role.
- 1.4. Judicial independence is the right of every person in Botswana. A Judicial Officer must be free and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear or interference from anyone. Nothing in these Statements and Rules can, or is intended to limit or restrict judicial independence in any manner. Judicial Officers have the duty to uphold and defend judicial independence, not as a privilege

of judicial office but as the constitutionally guaranteed right of everyone to have their disputes heard and decided by impartial Judicial Officers.

## 2. JUDICIAL INDEPENDENCE

### **Statement:**

An independent judiciary is indispensable to impartial justice under law. Judicial Officers must, therefore, uphold and exemplify judicial independence in both its individual and institutional aspects to reinforce public confidence which is the cornerstone of judicial independence.

### **Rules:**

- 2.1. A Judicial Officer must exercise his/her judicial functions independently and free of extraneous influence.
- 2.2. A Judicial Officer must firmly reject any attempt to influence his/her decisions in any matter before the Court outside the proper process of the Court.
- 2.3. A Judicial Officer must encourage and uphold arrangements and safeguards to maintain and enhance the institutional and operational independence of the judiciary.
- 2.4. A Judicial Officer must exhibit and promote high standards of judicial conduct.

## 3. INTEGRITY

### **Statement:**

Judicial Officers must conduct themselves with integrity so as to sustain and enhance public confidence in the judiciary.

### **Rules:**

- 3.1. A Judicial Officer must ensure that his/her conduct is above reproach, in his/her public or private life.
- 3.2. A Judicial Officer in addition to observing this high standard personally, must encourage and support its observance by his/her judicial colleagues.
- 3.3. A Judicial Officer or member of his/her family must not accept a gift, bequest, favour or loan from any person for purposes of a bribe or corrupt practice or which is calculated to influence the officer in the execution of his/her duties:
  - provided that - a gift, award or benefit which cannot reasonably be perceived as a bribe or corrupt practice or one accompanied by intention to influence the judicial officer in the performance of his duties shall be excluded.
- 3.4. A Judicial Officer must not give legal or investment advice, except to members of his/her immediate family (being a spouse, child, grand child, parent, great grand parent, sibling, uncle, aunt, niece, nephew or any person living in the same household as a family member of the Judicial Officer) and for no fee.

- 3.5. A Judicial Officer must not issue any statement or criticism or argument on the judiciary.

## 4. DILIGENCE

### **Statement:**

Judicial Officers must be diligent in the performance of their judicial duties.

### **Rules:**

- 4.1. A Judicial Officer must devote his/her professional activity to judicial duties broadly defined, which include not only presiding in Court and making decisions, but other judicial tasks essential to the Court's operation including administrative work.
- 4.2. A Judicial Officer must take reasonable steps to develop, maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
- 4.3. A Judicial Officer must perform all judicial duties, including the delivery of reserved Judgments, with promptness and professionalism at all times except in exceptional circumstances. A Judicial Officer must insist that legal practitioners, litigants and court personnel before him/her must co-operate in that regard.
- 4.4. A Judicial Officer must not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues and staff.

## 5. EQUALITY

### **Statement:**

Judicial Officers must conduct themselves and proceedings before them so as to ensure equality before the law.

### **Rules:**

- 5.1. A Judicial Officer must carry out his/her duties with appropriate consideration for all persons i.e. parties, witnesses, Court personnel, legal practitioners and judicial colleagues without discrimination on any ground.
- 5.2. A Judicial Officer must strive to be aware of and understand differences arising from gender, race, religion, culture, ethnic background, sexual orientation, disability or health condition and must not discriminate on these or any other bases.
- 5.3. A Judicial Officer must not be a member of any organization that practices any form of discrimination that contravenes the law, or that brings disrepute to the judiciary.
- 5.4. In the course of proceedings before him/her, a Judicial Officer must disassociate himself/herself from and disapprove of any clearly irrelevant comments or conduct by Court staff, legal practitioners or anyone subject to the Judicial Officer's direction which are sexist, racist or otherwise demonstrate discrimination on grounds prohibited by law, or frowned upon in a judicial atmosphere.



## 6. IMPARTIALITY

### **Statement:**

Judicial Officers must be seen to be impartial with respect to their decisions and decision-making.

### **Rules:**

#### **A. General:-**

1. A Judicial Officer must ensure that his/her conduct, both in and out of Court, maintains and enhances confidence in the impartiality of the judiciary.
2. A Judicial Officer must conduct his/her personal and private affairs so as to minimise the occasions on which it will be necessary to be disqualified or to recuse himself/herself from hearing cases.

#### **B. Civic and Charitable Activity:-**

1. A Judicial Officer is free to participate in civic and charitable activities subject to the following considerations:
  - (a) A Judicial Officer must avoid any activity or association that could reflect adversely on his/her impartiality or interfere with the performance of judicial duties.
  - (b) A Judicial Officer must not solicit funds or lend prestige of judicial office to such solicitations except for appropriate purposes.

- (c) A Judicial Officer must not be involved in causes or organizations that are to his/her knowledge likely to be engaged in litigation.
- 2. Subject to the provisions of this Code, a Judicial Officer may engage in writing and participate in activities concerning the law, the legal system, the administration of justice and related matters.
- 3. Subject to the provisions of this Code, a Judicial Officer may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like recreational activities, if such activities do not detract from the dignity of the Judicial Office or otherwise interfere with the performance of judicial duties.
- 4. A Judicial Officer must not be a member of groups or organizations or participate in public discussions which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in the Judicial Officer's impartiality with respect to issues that could come before the Courts.

**C. Political Activity:-**

- 1. A Judicial Officer must cease all partisan political activity upon appointment. A Judicial Officer must refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the Judicial Officer is engaged in political activity.
- 2. A Judicial Officer must refrain from:

- (a) membership in political parties and political fund raising;
- (b) attendance at political gatherings and political fund raising events;
- (c) contributing to political parties or campaigns;
- (d) taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the judiciary or fundamental aspects of the administration of justice;
- (e) Signing petitions to influence a political decision.

3. Although members of a Judicial Officer's family have every right to be politically active, a Judicial Officer must recognize that such activities of immediate family members (being a spouse, child, grand child, parent, grand parent, great grand parent, sibling, uncle aunt, niece or nephew or any person living in the same household as a family member of the Judicial Officer) may, even if erroneously, affect the public perception of a Judicial Officer's impartiality. A Judicial Officer may not sit in any case before the Court in which there could reasonably be such a perception.

**D. Conflicts of Interest:-**

- 1. A Judicial Officer must disqualify himself/herself in any case in which he/she believes he/she will be unable to adjudicate impartially.

2. A Judicial Officer must disqualify himself/herself in any case in which he/she believes that a reasonable, fair minded and informed person, would have a reasoned suspicion of conflict between a Judicial Officer's personal interest or that of a Judicial Officer's immediate family (being a spouse, child, grand child, parent, grand parent, great grand parent, sibling, uncle, aunt, niece or nephew or any person living in the same household as a family member of the Judicial Officer).
3. Disqualification is not appropriate if:
  - (a) the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification; or
  - (b) no other Judicial Officer can deal with the case, or because of urgent circumstances, failure to act could lead to a miscarriage of justice.

E. **Judicial Demeanour:-**

A Judicial Officer must, while acting decisively, maintain firm control of the process and ensure expedition and treat everyone before the Court with appropriate courtesy.

## 7. ENFORCEMENT

The Chief Justice shall establish a committee to be known as the Ethics Committee which shall investigate any complaint or allegation of misconduct or breach of this Code by a Judicial Officer for conduct not impeachable under section 97 of the Constitution, and take appropriate action against such Judicial Officer, subject to the provisions of the

Constitution and any other written law. The Ethics Committee shall be made up of three Senior Judges (excluding the Chief Justice), with powers to co-opt a regional magistrate, and shall regulate its own procedure. Where such a complaint is against the Head of Court (excluding the Chief Justice) it shall be addressed directly to the Ethics Committee. Where it is against the Chief Justice, it shall be addressed to the Judicial Service Commission.

1. Any member of the public, a Judicial Officer or Legal Practitioner, who has a complaint of misconduct against a Judicial Officer or who alleges that a Judicial Officer has breached this Code shall forward such complaint in writing to the Head of Court where such alleged errant Judicial Officer presides. Where such a complaint is against the Head of Court, then it shall be addressed directly to the Ethics Committee or the Judicial Service Commission in the case of the Chief Justice.
2. Upon receipt of any complaint against a Judicial Officer, the Head of Court shall forthwith deal with the complaint where such complaint is trifling or of a minor nature. Where the complaint is in respect of a serious misconduct or where the Head of Court is of the view that disciplinary action be taken against the Judicial Officer, the Head of Court shall forward the complaint to the Ethics Committee to deal with.
3. Where the Ethics Committee determines that disciplinary action be taken against a Judicial Officer, it shall forthwith notify the affected Judicial Officer of the same including the nature of the allegations against such Judicial Officer, who shall be afforded a fair hearing.

4. Subject to the Constitution and any other written law, the Ethics Committee may inflict one or more of the following penalties upon any Judicial Officer for violation of this Code or for committing any of the acts of misconduct specified herein:
  - (a) severe reprimand;
  - (b) such other sanction as the Ethics Committee may deem fit.
  
5. A Judicial Officer aggrieved by the decision of the Ethics Committee may appeal to the Judicial Service Commission within 14 days of notification of the decision appealed from.



