



CODE OF CONDUCT FOR JUDGES AND MAGISTRATES

JUDICIAL SERVICE OF GHANA

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CODE OF CONDUCT FOR JUDGES AND MAGISTRATES

THE CODE represents a concise yet comprehensive set of principles addressing the many difficult ethical issues that confront judges as they work and live in their communities.

THIS CODE defines the general principles of judicial ethics, rules and standards of judicial conduct that a judge must follow while fulfilling his official duties, as well as while engaged on other activities and even in private life.

THE PURPOSE of the Code therefore is to assist judges in carrying out their onerous responsibilities; support the independence, impartiality and unity of the judiciary, and establish and promote public trust and confidence towards the judiciary. It aims at protecting the prestige and authority of the judiciary and the position of a judge.

RULE 1

UPHOLDING THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved.

Commentary

Respect for the judgments and rulings of courts depend upon public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn upon their acting without fear or favour. Although judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence

in the judiciary and thereby does injury to the system of government under law.

RULE 2

AVOIDING IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES

A. A judge shall respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Commentary

Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen.

The prohibition against behaving with impropriety or the appearance of impropriety applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. The test for impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.

B. A judge shall not allow family, social, political, or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence

the judge. A judge shall not testify voluntarily as a character witness in adjudicatory proceedings.

Commentary

Maintaining the prestige of judicial office is essential to a system of government in which the judiciary functions independently of the executive and legislative branches. Respect for the judicial office facilitates the orderly conduct of legitimate judicial functions. Judges should distinguish between proper and improper use of the prestige of office in all of their activities. For example, it would be improper for a judge to allude to his or her judgeship to gain a personal advantage such as preferential treatment when stopped by a police officer for a traffic offence. Judicial letterhead and the judicial title may not be used in conducting a judge's personal business.

A judge must avoid lending the prestige of judicial office for the advancement of the private interests of the judge or of others. For example, a judge must not use the judge's judicial position to gain advantage in a civil suit involving a member of the judge's family. In contracts for publication of a judge's writing, a judge should retain control over the advertising to avoid exploitation of the judge's office.

A judge should be careful to avoid developing excessively close relationships with litigants, lawyers, police prosecutors etc., in any court where the judge often sits, if such relationships could reasonably tend to create an appearance of partiality.

Although a judge should be sensitive to possible abuse of the prestige of office, a judge may, based on the judge's personal knowledge, serve as a reference or provide a letter of recommendation. A recommendation, written or otherwise, should not be made if the person who is the subject of the letter is or is likely to be a litigant in a contested proceeding before the judge's court.

A judge must not testify voluntarily as a character witness in adjudicatory proceedings because to do so may lend the prestige of the judicial office in support of the party for whom the judge testifies. Moreover, when a judge testifies as a witness, a lawyer who regularly appears before the judge may be placed in the awkward position of cross-examining the judge. A judge may, however, testify when properly summoned. Except in circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness. Adjudicatory proceedings include not only proceedings before courts but also before administrative agencies, including disciplinary bodies.

C. A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, national origin, ethnicity, or sexual orientation.

Commentary

Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Whether an organization practices invidious discrimination is often a complex question to which judges must be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members that do not stigmatize any excluded persons as inferior and therefore unworthy of membership.

D. Where a judge has been guilty of any criminal offence or of any fraud or breach of trust, he shall be deemed to have breached this Code.

Commentary

This Rule is obviously wide enough to cover the entire gamut of crimes, from high treason and treason to other felonies and misdemeanours. But what the Rule seeks to prohibit are, of course, criminal offences such as stealing, murder, crimes savouring of moral turpitude like rape, narcotic-related drugs, fraud, breach of trust, etc, instead of minor infractions like motor offences.

RULE 3

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. The judicial duties of a judge take precedence over all the judge's other activities. In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities

(1) A judge shall hear and decide matters assigned to the judge except those in which the judge is disqualified.

Commentary

The obligation to hear and decide all assigned matters should not be construed to preclude a judge from requesting not to be assigned to a particular case in a class of cases because of strongly held personal or moral beliefs.

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor, or fear of criticism.

(3) A judge shall maintain order and decorum in proceedings before the judge.

(4) A judge should be patient and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and shall require similar conduct of court personnel and others.

Commentary

The duty to conduct proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

- (i) A judge's patience may be taxed and trespassed upon not only by unreasonable and vexatious litigants, but sometimes by well-meaning and boring submissions of lawyers.
- (ii) A judge who makes it a habit of insulting or being rude to either litigants or lawyers may lose his self-respect and may encounter rude behaviour or rude language. To attempt to commit for contempt in such circumstances may tarnish the image of the judiciary and erode public confidence in the legal system.
- (iii) Unless the provocation has gone beyond commendable firmness in advocacy or unless it has passed the threshold of a mere breach of professional etiquette, contempt proceedings should be avoided. In such situations, a judge's best armour is reticence and patience. A tendency to be abrasive for what may be regarded as an affront to the judge's ruffled dignity may send the wrong signals to the public. The judge's impartiality may be suspect.
- (iv) The temptation to commit for contempt may be real if
 - (a) a lawyer refuses to be guided by a judge's direction in court, or

(b) a lawyer insists that a judge must adopt a certain course of action, particularly if the judge has complete discretion in the matter; or

(c) occasionally, a judge may ask the lawyer to resume his seat but the lawyer may refuse to do so, arguing that he is in court as an advocate for his client and that to resume his seat would not be in the best interests of his client.

In such situations, (and others of similar hue) the judge is faced with a real dilemma; how to strike a fair balance between the need for an independent and courageous bar and an equally important duty of the judge to control the proceedings in his court so that the lawyer does not abuse his privilege to appear as counsel for a litigant and thereby bring the administration of justice into disrepute.

(v) The summary power of punishing for contempt should be used sparingly and only in serious cases. Its usefulness depends on the wisdom and restraint with which it is exercised.

See Republic vrs Liberty Press Ltd., (1968) GLR 123

(vi) It is important to note that the fact that counsel's conduct in court may have been extremely discourteous, even perhaps offensive and deserving rebuke may not necessarily have amounted to contempt.

(vii) The judge has to weigh the scales as fairly as he can, uninfluenced by any rush of anger. If he decides that there is a need to apply the ultimate sanction of contempt, he should not flinch in his duty.

See a) *Ex p. Pater* 122 E. R. 84

b) *Carus Wilson's Case* (1845) 7 QB 984, (or 115 E. R. 759)

- (viii) Where the judge decides to charge the lawyer with contempt of court, committed in *facie curiae*, particulars of the specific nature of the contempt should generally be made plain to the alleged contemnor by the judge before he could be properly convicted and punished.

See *Maharaj vrs Attorney-General for Trinidad*

(1977) 1 All ER. 411

- (ix) It may be desirable if the alleged contemnor requests the services of counsel, for the judge to afford him the opportunity of consulting one before he is dealt with.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, and shall require court personnel and others not to do so.

Commentary

A Judge must refrain from speech, gestures, or other conduct that could reasonably be perceived as evidencing bias or prejudice and must require the same standard of conduct of others subject to the judge's direction and control, including those who are directly involved in courtroom proceedings.

A judge must perform judicial duties impartially and fairly. A judge who manifests any bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communications, can give to parties or lawyers in the proceeding, jurors, the media, and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as biased or prejudicial.

- (6) A judge shall require lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status, against parties, witnesses, counsel, or others.**

Commentary

This section does not preclude legitimate advocacy when race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status are issues in the proceeding.

- (7) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider any ex parte communication concerning a pending or impending proceeding, except that:**

- (a) Where circumstances require, an ex parte communication is authorized when it does not deal with substantive matters and is for scheduling or administrative purposes or emergencies provided:**

- (i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and**
- (ii) The judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows them an opportunity to respond.**

- (b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, subject to the following:**

- (i) **A judge shall take all reasonable steps to avoid receiving from court personnel or other judges, factual information concerning a case that is not part of the case record. Consultation is permitted between a judge, clerk or other appropriate court personnel and a judge taking over the same case or session in which the case is pending with regard to information learned from prior proceedings in the case that may assist in maintaining continuity in handling the case;**
- (ii) **when a judge consults with a probation officer about a party in a pending or impending criminal or juvenile case, the consultation shall take place in the presence of the parties who have availed themselves of the opportunity to appear and respond;**
- (iii) **no judge may consult with another judge about a case pending before one of them when the judge initiating the consultation knows the other judge has a financial, personal or other interest which would preclude the other judge from hearing the case, and no judge shall engage in such a consultation when the judge knows he or she has such an interest.**

Commentary

This Rule authorizes consultation between a judge and court personnel whose job entails or includes assisting the judge in performing the judge's adjudicative responsibilities, for example, clerk and their assistants, registrars and their assistants, and law clerks. But a judge may not solicit non-record factual information from court personnel about a case and must take reasonable steps to avoid receiving unsolicited non-record factual information from them. If, despite such efforts, the judge receives non-record factual

information about a pending or impending case from court personnel (or indeed from any source), the judge may not base any decision in the case in whole or in part on that information unless the judge first gives the parties notice and an opportunity to respond.

This rule permits a judge to consult with other judges, subject to the limitations set forth there. This is so whether or not the judges serve on the same court. A judge may not consult about a case with an appellate judge who might be called upon to review that case on appeal.

Consultation between or among judges, if otherwise permitted is appropriate only if the judge before whom the case is pending does not abrogate the responsibility personally to decide it.

Probation officers, like clerk, registrars and their assistants, are court personnel who assist the judge in performing the judge's adjudicative responsibilities. However, probation officers often work independently of the judge, since one of their most significant responsibilities is the community supervision of persons sentenced to probation by the court. From their work in the community, probation officers regularly obtain or receive factual information that is not part of a case record but that may have a direct bearing on a particular party in a case.

(c) (A judge may initiate, permit, or consider any ex parte communication when authorized by law to do so.

Commentary

For example ex parte applications permitted under the Rules of Court; the issuance of temporary orders related to child custody or vacation of the marital home where conditions warrant.

(8) A judge shall dispose of all judicial matters promptly, efficiently, and fairly.

Commentary

In disposing of matters promptly, efficiently, and fairly, a judge must give due regard to the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. When a judge encourages and seeks to facilitate settlement, the judge should not coerce the parties into surrendering the right to have their controversy resolved by the courts.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court personnel and litigants and their lawyers cooperate with the judge to that end.

(9) Except as otherwise provided in the section, a judge shall abstain from public comment about a pending or impending proceeding in any court, and shall require similar abstention on the part of court personnel.

(a) A judge is permitted to make public statements in the course of his or her official duties or to explain for public information the procedures of the court, general legal principles, or what may be learned from the public record in a case.

(b) This section does not apply to proceedings in which the judge is a litigant in a personal capacity.

Commentary

The requirement that a judge abstain from public comment regarding a pending proceeding continues during any appellate process and until final disposition. A case is impending for purposes of this section if it seems probable that a case will be filed, if charges are being investigated, or if someone has been arrested although not yet charged.

A judge may, consistent with this section, make public statements about a pending or impending case in the course of his or her official duties. "In the course of his or her official duties" includes statements made in the courtroom and on the public record as well as those statements made by a judge in the performance of his or her administrative duties.

A judge may, consistent with this section, explain what may be learned from the public record in a case, including pleadings, documentary evidence, and the tape recording of stenographic record of proceedings held in open court. The judge may not discuss the rationale for a decision, however, unless the judge is repeating what was already made part of the public record. Speaking to a journalist is public comment even where it is agreed that the statements are "off the record."

(10) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors for their service to the judicial system and the community.

Commentary

Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case. Commendations or criticism of verdicts may also call into question the judge's ability to rule impartially on any post-trial motions, or on remand, in the same case.

(11) A judge shall not disclose or use, for any purpose unrelated to judicial duties, information acquired in a judicial capacity that by law is not available to the public. When a judge, in a judicial capacity, acquires information, including material contained in the public record that is not yet generally known, the judge must not use the information in financial dealings for private gain. Notwithstanding the provisions of Rule 3B(9) above a judge shall not disclose or use,

for any purpose unrelated to judicial duties, information that, although part of the public record, is not yet generally known, if such information would be expected unnecessarily to embarrass or otherwise harm any person participating or mentioned in court proceedings.

Commentary

Information that by law is not available to the public includes but is not limited to information that is sealed by statute, court rule, or court order, all of which is absolutely non-disclosable for any purpose unrelated to judicial duties.

Among the factors to be considered in determining whether the information “contained in the public record that is not generally known” would be expected unnecessarily to embarrass or otherwise harm a person are whether there is a valid public purpose for disclosure or whether the disclosure is idle chatter or gossip.

D Administrative Responsibilities (where applicable) e.g. supervising Judges

- (1) A judge shall diligently discharge the judge’s administrative responsibilities without bias or prejudice, maintain professional competence in judicial administration, and cooperate with other judges and court personnel.**
- (2) A judge shall require his staff and court personnel, including personnel who are directly involved in courtroom proceedings over which the judge presides, to observe the standards of fidelity and diligence that apply to judge.**
- (3) A judge with supervisory authority for the judicial performance of other judges shall take reasonable measures to assure the**

prompt disposition of matters before them and the proper performance of their other judicial responsibilities.

(No commentary)

E Self Policing

(1) A judge having knowledge of facts indicating a substantial likelihood that another judge has committed a violation of the Code that raises a significant question about that judge’s honesty, integrity, trustworthiness, or fitness for judicial office, may speak to the judge about it and invite him to consider his position and take appropriate action or request another judge to do so.

(2) If the judge remains adamant, then in extreme cases, the matter may be reported to the Chief Justice, having previously informed the judge that this is what is intended to be done.

(3) A judge having knowledge of facts in proceedings before him indicating a substantial likelihood that a lawyer has committed a violation of any of the rules in the Code of Ethics of the Ghana Bar Association that raises a significant question as to that lawyer’s honesty, integrity, trustworthiness, or fitness as a lawyer may inform the Secretary of the General legal Council or take other appropriate action.

Commentary

This Sub-Rule requires judges to report conduct indicating a substantial likelihood of a serious violation of professional conduct by colleagues and lawyers together with the factual basis for this conclusion. Even an apparently isolated violation may indicate a pattern of misconduct that only a disciplinary investigation can uncover. The word “significant” in the Sub-Rule refers to the seriousness of the possible offence and not the quantum of evidence of which

the judge is aware. Judges are required to participate actively in maintaining and preserving the integrity of the judicial system. The rule is necessary because judges make up a significant group that may have information about misconduct by colleagues and lawyers. For this reason, judges have an opportunity and a special duty to protect the public from the consequences of serious misconduct and the potential harmful results of other violations of the Code. The following examples are not exhaustive but include; tampering with or attempting to influence improperly a judicial action of a judge; giving false testimony under oath; tampering with or falsifying court papers to support judicial action; grossly abusing the bail statutes; use of injudicious or abusive language on the bench; using court employees during regular working hours for private benefit, or abuse of alcohol in public.

While a measure of judgment is required in complying with the Sub-Rule, a judge must report lawyer misconduct that, if proven and without regard to mitigation, would likely result in an order of suspension or disbarment, including knowingly making false statements of fact or law to a tribunal, suborning perjury, or engaging in misconduct that would constitute a serious crime. A serious crime is any felony, or a misdemeanor a necessary element of which includes misrepresentation, fraud, deceit, bribery, extortion, misappropriation, theft, or an attempt, conspiracy, or solicitation of another to commit the above crimes. If the lawyer is appearing before the judge, a judge may defer making a report until the matter has been concluded, but the report should be made as soon as practicable thereafter. However, an immediate report is compelled when a person will likely be injured by a delay in reporting, such as where the judge has knowledge that a lawyer has embezzled client or fiduciary funds and delay may impair the ability to recover the funds.

E Disqualification

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- (a) the judge has a personal bias or prejudice concerning a party or a party's lawyer**
- (b) the judge served as a lawyer in the matter in controversy;**
- (c) a lawyer with whom the judge previously practised law served during such association as a lawyer concerning the matter in controversy;**
- (d) the judge has been, or is to the judge's knowledge likely to be, a material witness concerning the matter in controversy;**
- (e) the judge has personal knowledge of disputed evidentiary facts concerning the matter in controversy;**
- (f) the judge is a party to the proceeding or an officer, director, or trustee of a party, or the judge knows, or reasonably should know, that he or she, personally or as a fiduciary, has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than "de minimis" interest that could be substantially affected by the outcome of the proceeding;**
- (g) the judge knows, or reasonably should know, that the judge's spouse or child wherever residing, or any other member of the judge's family (residing in the judge's household), has (i) an economic interest in the subject matter in controversy or in a party to the proceeding, which interest could be substantially affected by the outcome of the proceeding, (ii) a relationship interest to a party to the proceeding where the party could be substantially affected by the outcome of the proceeding or (iii) any other more than "de minimis" interest that could be substantially affected by the outcome of the proceeding; or**
- (h) the judge's spouse or domestic partner, (i) is a party to the proceeding or an officer, director, or trustee of a party, (ii) is**

acting as a lawyer in the proceeding, (iii) is known by the judge to have any more than “de minimis” interest that could be substantially affected by the outcome of the proceeding, or (iv) is to the judge’s knowledge likely to be a material witness in the proceeding.

Commentary

Under this rule, a judge shall disqualify himself or herself whenever the judge’s impartiality might reasonably be questioned, regardless of whether any specific rules in this Code apply. A more than “de minimis” interest, may include non-financial interests; as an example, support by the judge of an organization advocating a particular position, where the interests of the organization could be substantially affected by the outcome of the proceedings.

If the judge believes there is no real basis for disqualification, a judge may, but is not required to, disclose on the record, information that the judge believes the parties or lawyers might consider relevant to the question of disqualification.

A judge is not necessarily disqualified if a lawyer in proceedings is affiliated with a legal organization with which the spouse or a relative of the judge is affiliated.

A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

In determining whether an interest could raise a reasonable question as to a judge’s impartiality, the judge should consider among other factors, the value of the interest and whether the interest comprises a substantial portion of the judge’s total economic holdings.

In particular circumstances, a judge may need to consider carefully relationships other than those specifically mentioned above, for example, a fiancé (or fiancée) or a very close friend – to determine whether disqualification is required.

The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge. Under appropriate circumstances, the fact that “his impartiality might reasonably be questioned” or that the lawyer-relative is known by the judge to have an interest in the law firm that could be “substantially affected by the outcome of the proceeding” may require his disqualification.

By case law the rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In the latter case, the judge must disclose on the record the basis for possible disqualification and, unless remittal is available, appropriate, and accomplished, use reasonable efforts to transfer the matter to another judge as soon as possible.

- (a) “fiduciary” includes such relationships as executor, administrator, trustee, and guardian;
- (b) “financial interest” means ownership of a legal or equitable interest, if substantial, or a relationship as director, advisor, or other active participant in the affairs of a party.

(2) Remittal of disqualification

A judge disqualified by the terms of Rule 3E (1) may, instead of withdrawing from the proceeding, disclose on the record the basis of the judge’s disqualification and ask the parties and their lawyers to consider, in the absence of the judge, whether to waive disqualification. If, following disclosure of any basis for

disqualification other than for cases in which remittal is not available, the parties and lawyers, without participation of the judge, all agree that the judge should not be disqualified, the judge may participate in the proceeding. The judge shall permit an opportunity for the attorneys to consult with their clients regarding this issue. The agreement shall be incorporated in the record of the proceeding. As a practical matter, a judge may wish to have all parties and their lawyers sign the remittal agreement

Remittal is not available in cases in which the judge is disqualified under Rule 3E (1) (a), (b), or (d).

Commentary

A remittal procedure provides the parties an opportunity to proceed without delay if they wish to waive the disqualification. Consideration of the question of remittal must be made by the parties with or without their lawyers in the absence of the judge. He must not hear any comments the parties may make during their deliberations unless they jointly propose remittal after such consultation.

RULE 4

JUDICIAL COMPORTMENT, HONOUR AND DIGNITY

A. A judge must be the embodiment of all that is honourable and dignified. A judge must live with decorum and propriety at all times and must be reticent about cases pending in his court and generally refrain from discussing them outside court.

Commentary

Public indulgence in excess of any kind is not the hallmark of a judge. Judges should be cautiously selective about the places they visit and the persons with whom they associate. Judges should be mindful of the common saying among our ordinary citizenry to wit “Birds of the same feathers flock together”, and “Show me your friend and I will show you your character”.

B. Judges shall wear official clothing as has been prescribed by the Judicial Service during Court sessions (except at inspection in loco). Suitable clothes are to be worn with the gown and wig.

Commentary

A judge is also required to dress in an appropriate manner befitting all occasions as any person who dresses improperly does not command public respect.

A judge dresses appropriately if his/her clothes are decent and not calculated to draw undue attention or adverse comment to himself or herself.

RULE 5

A JUDGE SHALL SO CONDUCT THE JUDGE'S EXTRA JUDICIAL ACTIVITIES AS TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL OBLIGATIONS

A. Extra-Judicial Activities in General

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- (1) Cast reasonable doubt on the judge's capacity to act impartially as a judge;**
- (2) Demean the judicial office; or**
- (3) Interfere with the proper performance of judicial duties.**

Commentary

Complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives. Nevertheless, such activities must not be undertaken in such a way as to cast reasonable doubt on the impartiality of the judge.

Expressions of bias or prejudice by a judge, even outside the judge's judicial activities, may cast reasonable doubt on the judge's capacity to act impartially as a judge. Expressions that may do so include jokes or other remarks, made in public setting, that demean individuals on the basis of their race, sex, religion, national origin, disability, age, sexual orientation, or socioeconomic status. Moreover the appropriateness of undertaking extra judicial activities or accepting extra-judicial assignments must be assessed in the light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial.

B. Avocational activities

A judge may engage in activities to improve the law, the legal system, and the administration of justice if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

- a. He may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.**
- (vii) He may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice.**
- (viii) He may serve as a member, officer, or director of an organization of governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such**

an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system, and the administration of justice.

Commentary

As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the improvement of the law. The reference to judges speaking about non-legal subjects and participation in non-legal activities is added for the sake of completeness to make it clear that ordinarily a judge's social and recreational activities do not raise an issue under this code.

C. Civic and Charitable Activities

A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee, or non-legal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

- (1) A judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court.**
- (2) A judge should not solicit funds for any educational, religious, charitable, fraternal, or civic organization, or use or permit the use of the prestige of his office for that purpose, but he may be listed as an officer, director, or trustee of such an organization.**

Commentary

Solicitation of funds for an organization and solicitation of memberships involve the danger that the person solicited will feel obliged to respond favourably to the judge as the judge is in a position of influence or control. A judge may solicit membership, for or endorse or encourage membership efforts of an organization devoted to the improvement of the law, the legal system, or the administration of justice or a nonprofit educational, religious, charitable, fraternal or civic organization as long as the solicitation cannot reasonably be perceived as coercive and is not essentially fund-raising mechanism.

- (3) A judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.**

Commentary

The changing nature of some organizations and of their relationship to the law makes it necessary for judges regularly to re-examine the activities of each organization with which they are affiliated as an officer, director, trustee and non-legal advisor to determine if it is proper for them to continue their relationship with it.

D. Financial activities

- (1) A judge should refrain from financial and business dealings with lawyers, litigants, and others that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position, or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.**
- (2) Subject to the requirement of sub-rule (1), a judge may hold and manage investments, including real estate, but may not engage in other remunerative activity including the operation of a family business.**

- (3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.**
- (4) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.**

Commentary

A judge shall manage the judge's investments and other financial interests to minimize the number of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge shall dispose of investments and other financial interests that might require frequent disqualification.

Judges are not required by this section to disclose their income, debts, or investments, except as provided in this Code. Rule 3 E requires judges to disqualify themselves in any proceeding in which they have a financial interest; Rule 5 D requires judges to refrain from financial activities that might interfere with the impartial performance of their judicial duties. Judges have rights of an ordinary citizen, including the right to privacy in their financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of their duties. Owning and receiving income from the investments do not as such affect the performance of a judge's duties.

- (5) Neither judges nor members of their families residing in their households shall accept a substantial GIFT, bequest, favour, or loan from anyone except as follows:**
 - (a) judges may accept gifts incident to a public testimonial to them; books supplied by publishers on a complimentary basis for official use; or invitations to judges and their spouses to attend**

bar-related functions or activities devoted to the improvement of the law, the legal system, or the administration of justice;

- (b) Judges or members of their families residing in their households may accept ordinary social hospitality; a gift, bequest, favour, or loan from a relative; a gift from a friend on a special occasion such as a wedding, engagement, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges, or a scholarship or fellowship awarded on the same terms applied to other applicants.**
- (c) Judges or members of their families residing in their households may accept any other gifts, bequests, favour, or loan only if the donor is not a party or other person whose interests have come or are likely to come before the judge.**
- (d) a gift, award or benefit incident to the business, profession or other separate activity of a spouse or other family member residing in the judge's household, including gifts, awards and benefits for the use of both the spouse or other family member and the judge (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties.**

Commentary

The Rule prohibits judges from accepting gifts, favours, bequests, or loans from lawyers or their firms if they have come or are likely to come before the judge. It also prohibits gifts, favours, bequests, or loans from clients of lawyers or their firms when the clients' interests have come or are likely to come before the judge.

Because a gift, bequest, favour or loan to a member of the judge's family residing in the judge's household might be viewed as intended to influence the judge, a judge must inform those family members of the relevant ethical

constraints upon the judge in this regard and discourage those family members from violating them. A judge cannot however, reasonably be expected to know or control all the financial or business activities of all family members residing in the judge's household.

(4) Fiduciary Activities

A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trust, or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent, or such other relative or person. As a family fiduciary a judge is subject to the following restrictions:

- (a) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.**
- (b) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.**

Commentary

Judges' obligations under this Rule and their obligations as fiduciaries may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of the Code.

F. Arbitration

A judge shall not act as an arbitrator or mediator or otherwise perform judicial functions in a private capacity unless expressly authorized by law.

Commentary

The Rule does not prohibit a judge from participating in arbitration, mediation or settlement conferences performed as part of judicial duties.

G. Practice of law

A judge shall not practice law. A judge who acts pro se is not considered to be practicing law.

Commentary

The prohibition refers to the practice of the law in a representative capacity and not a pro se capacity. A judge may act for himself or herself in all legal matters, including matters involving litigation and matters involving appearances before, or other dealings with, legislative and other governmental bodies. However in so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

H. Extra-judicial appointments

A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice if acceptance of such appointment might reasonably cast doubt upon the judge's impartiality or demean the judge's office. A judge, however, may represent his country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

Commentary

Valuable services have been rendered in the past to the nation by judges appointed by the executive to undertake important extra-judicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in the light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial.

Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

I. Compensation and Re-imbusement

A Judge may receive Compensation for quasi-judicial and extra-judicial activities permitted by this code.

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extra-judicial activities permitted by this Code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise gives the appearance of impropriety.

Commentary

A judge must not appear to trade on the judicial position for personal advantage. Further, the source of the payment must not raise any question of undue influence of the judge's ability or willingness to be impartial.

RULE 6

POLITICAL AND QUASI-POLITICAL ACTIVITY

A judge should refrain from political activity inappropriate to his judicial office

A. Political conduct in general

- 1. Notwithstanding Article 55(2) of the 1992 Constitution of Ghana a judge or a candidate for appointment to judicial office should not:**
 - (a) Act as a leader or hold an office in a political organization;**
 - (b) Publicly endorse or publicly oppose another candidate for political office;**
 - (c) Make speeches on behalf of a political organization;**
 - (d) Attend political gatherings; or**

(e) Solicit funds for a political organization or candidate, or purchase tickets for political party dinners or other functions.

Commentary

A judge or candidate for judicial office retains the right to participate in the political process as a voter.

Post election parties held for the purpose of raising political funds are political gatherings for the purposes of Rule 6A (1) (d).

B. Governmental Activities

- 1. A judge may not accept appointment to a governmental committee or commission or other governmental position that is concerned with matters other than the improvement of the law, the legal system or the administration of justice. A judge may, however, represent a country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities.**

Commentary

Rule 5H prohibits a judge from accepting any governmental position except one relating to the law, legal system, or administration of justice. The appropriateness of accepting extrajudicial assignments must be assessed in the light of the demands on judicial resources created by crowded dockets and the need to protect the courts from involvement in extra-judicial matters that may prove to be controversial. Judges should not accept governmental appointments that are likely to interfere with the effectiveness and independence of the judiciary.

A judge may serve on organizations devoted to the improvement of the law, the legal system, or the administration of justice and the educational, religious, charitable, fraternal, or civic organizations not conducted for profit.

For example, service on the board of a public educational institution, unless it was a law school, would be prohibited but service on a public law school or any private educational institution would generally be permitted.

- (2) A judge may serve as an officer, director, trustee, or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice or of an educational, religious, charitable, fraternal, or civic organization not conducted for profit.**

Commentary

This section does not allow judges to hold office in political organizations.

C. Permissible Political Activity for Incumbent Judges

A judge shall not engage in any political activity except

- (1) on behalf of measures to improve the law, the legal system, or the administration of justice; or**
(2) as expressly authorized by law.

Commentary

No provision of the Code prohibits a judge in the exercise of administrative functions from engaging in planning and other official activities with members of the executive and legislative branches of government.

While it is recognized that judges have the right to vote, participate as citizens in their communities, and not be isolated from the society in which they live, those rights must be viewed in the light of Rule 2 A which requires that a judge conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

A judge's participation in partisan politics may give the appearance of affecting his or her judicial actions or might actually affect the judge's judicial actions. A judge's endorsement of a candidate or appearance of an

endorsement might as well be viewed as judicial endorsement, and that would advance the “private interests” of that person. Such activity would also create doubt about a judge’s impartiality towards persons, organizations, or factual issues that may come before the judge.

A judge may not attend an event organised to raise money or gather support for or opposition to a political candidate or party. The judge may not attend an event that is partisan in nature. The judge may not engage in any partisan or public support, such as driving an automobile with a partisan bumper sticker, posting a campaign sign outside the judge’s residence, signing nomination papers for a political candidate or carrying a campaign sign, distributing campaign literature, or encouraging people to vote or give money to a political party.

A judge has the right to be an informed citizen. As such, it would be permissible for a judge to attend an event that is nonpartisan, such as a forum intended to inform the public.

RULE 7

COMPLIANCE WITH THE CODE OF CONDUCT

A. The following persons shall comply with all provisions of this Code:

Anyone, whether or not a lawyer, who is an officer of the Judicial Service performing judicial functions, including an officer such as a referee in bankruptcy, special master, court commissioner, or magistrate, is a judge for the purpose of this Code.

B. Where a Judge commits a breach of any rule of this Code he shall be sanctioned with reference to the gravity of the act or omission constituting the breach in accordance with the Judicial Service Regulations.

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