

Judicial Ethics

By

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JUDICIAL ETHICS.

The branch of philosophy that defines what is good for the individual and for society and establishes the nature of obligations, or duties, that people owe themselves and one another. In modern society, ethics define how individuals, professionals, and corporations choose to interact with one another.

The word ethics is derived from the Greek word *ethos*, which means “**Character**” and from the Latin word *mores*, which means “**customs**”. Aristotle was one of the first great philosophers to study ethics. To him, ethics was more than a moral, religious, or legal concept. He believed that the most important element in ethical behavior is knowledge that actions are accomplished for the betterment of the common good. He asked whether actions performed by individuals or groups are good both for an individual or a group and for society. To determine what is ethically good for the individual and for society, Aristotle said, it is necessary to possess three virtues of practical wisdom: (1) temperance, (2) courage, and (3) justice.

The need to control, regulate, and legislate ethical conduct at the individual, corporate, and government levels has ancient roots. For example, one of the earliest law codes developed, the **Code of Hammurabi**, made **Bribery** a crime in Babylon

during the eighteenth century B.C. Most societies share certain features in their ethical codes, such as forbidding murder, bodily injury, and attacks on personal honor and reputation. In modern societies, the systems of law and public justice are closely related to ethics in that they determine and enforce definite rights and duties. They also attempt to repress and punish deviations from these standards.

A code of ethics is often developed by a professional society within a particular profession. The higher the degree of professionalism required of society members, the stronger and, therefore, more enforceable the code.

Judicial ethics is an impression defies definition, wherever there is a reference to judicial ethics, mostly it is not defined but attempted to conceptualized. According to Justice Thomus of the Supreme Court of Queensland, there are two key issues that must be addressed:

- (i) the identification of standard to which members of the judiciary must be held: and
- (ii) a mechanism formal or informal to ensure that these standards are adhered to.

The reference to various dictionaries, would enable framing of a definition, if it must be framed. Simply put it can be said that judicial ethics are the basic principle of right action of the judges.

It consists of, or relate to moral action, conduct, motive, character of judges:

What is right or befitting for them. It can also be said that judicial ethics consist of such values as belongs to realm of judiciary without regarding to the time or place and are referable to justice dispensation.

Socrates Counselling Judges to hear courteously, answer wisely consider soberly and decide impartially.

Alexander Hamilton once said -- "The judiciary ----- has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society, and can take no active resolution what so ever. It may truly be said to have neither forced nor will but merely judgment".

The greatest strength of the judiciary is the faith of people in it. Faith, confidence and acceptability can not be commanded: They have to be earned. And that can be done only by developing the inner strength of morality of ethics. When a Judge sits on trial, he himself is on trial. The trust and confidence of "we the judge" in judiciary stands on the bedrock of its ability to dispense fairness and impartial justice.

The importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice. An

independent judiciary is likewise essential if the courts are to fulfil their roles as guardians of the rule of law and thereby to assure good governance. The real source of judicial power is public acceptance of the moral authority and integrity of the judiciary. It is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The judicial ethics normally require the following observance by the Judge:

1. Propriety.

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

- 1.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 1.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 1.3 A judge shall avoid close personal association with individual members of the legal profession, particularly those who practise in the judge's court, where such

association might reasonably give rise to the suspicion or appearance of favouritism or partiality.

- 1.4 Save in exceptional circumstances or out of necessity, a judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 1.5 A judge shall avoid the use of the judge's residence and chambers by a member of the legal profession to receive clients or other members of the legal profession in circumstances that might reasonably give rise to the suspicion or appearance of impropriety on the part of the judge.
- 1.6 A judge shall refrain from conduct such as membership of groups or organisations or participation in public discussion which, in the mind of a reasonable, fair-minded and informed person, might undermine confidence in the judge's impartiality with respect to any issue that may come before the courts.
- 1.7 A judge shall, upon appointment, cease all partisan political activity or involvement. A judge shall refrain from conduct that, in the mind of a reasonable fair-minded and informed person, might give rise to the

appearance that the judge is engaged in political activity.

1.1.8 A judge shall refrain from:

1.8.1 Membership of political parties;

1.8.2 Political fund-raising;

1.8.3 Attendance at political gatherings and political fund-raising events;

1.8.4 Contributing to political parties or campaigns; and

1.8.5 Taking part publicly in controversial discussions of a partisan political character.

1.9 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

1.10 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

1.11 Subject to the proper performance of judicial duties, a judge may engage in activities such as:

1.11.1 The judge may write, lecture, teach and participate in activities concerning the law, the

legal system, the administration of justice and related matters;

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

1.11.3 The judge may serve as a member of an official body devoted to the improvement of the law, the legal system, the administration of justice or related matters.

1.12 A judge may speak publicly on non-legal subjects and engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise with the performance of judicial duties in accordance with this code.

1.13 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.

1.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

1.15 A judge may receive compensation and reimbursement of expenses for the extra-judicial activities permitted by High Court, if such payments do not give the appearance of influencing the judge in the performance of judicial duties or otherwise give the appearance of impropriety.

2. Judicial Independence

An independent judiciary is indispensable to impartial justice under law. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Judges shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions. They shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

2.1 A judge shall exercise the judicial function independently on the basis of the judge's 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.

2.2 A judge shall reject any attempt to influence his or her decision in any matter before the judge for decision where

such attempt arises outside the proper performance of judicial duties.

- 2.3 In performing judicial duties, a judge shall, within the judge's own court, be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 2.4 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 2.5 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence which is fundamental to the maintenance of judicial independence.

3. Impartiality

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the making of a decision itself but also to the process by which the decision is made.

Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions. They shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

- 3.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 3.2 A judge shall 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 the impartiality of the judge and of the judiciary.
- 3.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.
- 3.4 A judge shall not knowingly, while a proceeding is before, or could come before the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 3.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the judge is unable to decide the matter impartially.
- 3.6 A judge shall disqualify himself or herself in any proceedings in which there might be a reasonable perception

of a lack of impartiality of the judge including, but not limited to, instances where:

3.6.1 The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

3.6.2 The judge previously served as a lawyer or was a material witness in the matter in controversy;

3.6.3 The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy.

3.7 A judge who would otherwise be disqualified on the foregoing grounds may, instead of withdrawing from the proceedings, disclose on the record the basis of such disqualification. If, based on such disclosure, the parties, independently of the judge's participation, agree in writing or on the record, that the judge may participate, or continue to participate in the proceedings, the judge may do so.

3.8 Disqualification of a judge is not required if necessity obliges the judge to decide the matter in controversy including where no other judge may lawfully do so or where, because of urgent circumstances, failure of the judge to participate might lead to a serious miscarriage of justice. In such cases of necessity, the judge shall still be obliged to disclose to the parties in a timely way any cause of

disqualification and ensure that such disclosure is included in the record.

- 3.9 Save for the foregoing, a judge has a duty to perform the functions of the judicial office and litigants do not have a right to choose a judge.

4. Integrity

Integrity is essential to the proper discharge of the judicial office.

Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary. They shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions.

- 4.1 A judge shall ensure that his or her conduct is above reproach in the view of reasonable, fair-minded and informed persons.
- 4.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.
- 4.3 A judge, in addition to observing personally the standards of this Code, shall encourage and support their observance by others.

5. Equality

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

- 5.1 A judge shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2 A judge shall 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 judge shall carry out his or her duties with appropriate consideration for all person (for example, parties, witnesses, lawyers, Court staff and judicial colleagues) without unjust differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter which is before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before a court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds. This requirement

does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings.

- 5.6 A judge shall not be a member of, nor associated with, any society or organisation that practises unjust discrimination on the basis of any irrelevant ground.
- 5.7 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not engage in independent, personal investigation of the facts of a case.
- 5.8 Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a judge shall not, in the absence of the other parties to the proceedings, communicate with any party to proceedings in the judge's court concerning such proceedings.

6. Competence And Diligence.

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

Judges shall act diligently in the exercise of their duties and shall devote their professional activities to those duties. They shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office and shall perform all judicial duties properly and

expeditiously. They are expected to deliver their orders, Judgements and decisions without undue delay.

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote his or her professional activity to judicial duties. Such duties are broadly defined and include not only the performance of judicial duties in court and the making of decisions but other tasks relevant to the court's operations or to the judicial office.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of constitutional or other law, shall conform to such norms as far as is feasible.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings in which the judge is involved. He or she shall be patient, dignified and courteous in relation to litigants, witnesses,

lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.
- 6.8 A judge shall not be swayed by partisan interests, public clamour or fear of public criticism, in arriving at decisions.

ROLE OF THE JUDGE

A judge has to be possessed of excellence not only from within but he should also visibly display the functional excellence which is necessary to fulfil the promise of justice by the judiciary, for that four qualities are needed in a judge which are symptomatic to functional excellence. They are: (i) punctuality, (ii) probity, (iii) promptness and (iv) patience. The observance of the punctuality by the judges of time has been put on very high pedestal, a judge who does not observed punctuality of time does not believe in rule of law.

Probity is uprightness; moral integrity; honesty.

There are three basic and fundamental functions of a Judge and they are as follows:-

1. To do justice between the parties in deciding the issues brought before the court, be they civil or criminal.
2. To try and ensure that not only is justice done between the parties, but that also to reasonable and unbiased observers it appears to be done.
3. In deciding what is the just order to be made, to have regard to both law and facts, but to disregard other consequential effects of such judgment/order.
4. Duties of a judge generally can be categories in five categories.

- A. Judicial Duties in General,
- B. Adjudicative Responsibilities,
- C. Managerial Responsibilities,
- D. Disciplinary Responsibility and
- E. Disqualification.

A. Judicial Duties in General.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In performance of those duties, the following standards apply.

B. Adjudicative Responsibilities.

1. A judge should be faithful to the law and maintain professional competence in it. A judge should not be swayed by partisan interests, public clamor or fear of criticism.
2. A judge should require order and decorum in proceedings before him.
3. A judge should be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in official capacity, and should require similar conduct of lawyers, and other staff, court officials and others subject to the judge's direction and control.
4. A judge should perform judicial duties without bias or prejudice. A judge should 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, disability, age, or socioeconomic status, and should not permit staff, court officials and others subject to the judge's direction and control to do so.

5. A judge should require lawyers in proceedings before him to refrain from manifesting, by words or conduct, bias or prejudice of nature referred to above, against parties, witnesses, counsel or others.
6. A judge should 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.
7. A judge should dispose of all judicial matters promptly, efficiently and fairly.
8. A judge should not while a proceeding is pending or impending in any court, make any public comment that might reasonably be expected to affect the outcome or impair its fairness or make any non-public comment that might substantially interfere with a fair trial or hearing.
9. A judge should not with respect to cases, controversies or issues that are likely to come before the court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.

C. Managerial Responsibilities.

1. A judge should diligently discharge the judge's managerial responsibilities, without bias or prejudice and maintain professional competence in judicial administration, and should cooperate with other judges and court officials in the administration of court business.
2. A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
3. A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
4. A judge should not make unnecessary appointments. A judge should exercise the power of appointment impartially and on the basis of merit. A judge should avoid nepotism and favoritism.

D. Disciplinary Responsibility.

A Judge should report to the disciplinary authority any unprofessional conduct of a judge or lawyer of which the judge may become aware.

E. Disqualification.

The fundamental principle is that a man may not be a judge in his own cause (*nemo judex in sua causa*). This principle, as developed by the courts, has two very similar but not identical implications. First it may be applied literally: if a judge is in fact a party to the litigation or has a financial or proprietary interest in its outcome then he is indeed sitting as a judge in his own cause. In that case, the mere fact that he is a party to the action or has a financial or proprietary interest in its outcome is sufficient to cause his automatic disqualification. The second application of the principle is where a judge is not a party to the suit and does not have a financial interest in its outcome, but in some other way his conduct or behaviour may give rise to a suspicion that he is not impartial, for example because of his friendship with a party. This second type of case is not strictly speaking an application of the principle that a man must not be judge in his own cause, since the judge will not normally be himself benefiting, but providing a benefit for another by failing to be impartial.

Once it is shown that the judge is himself a party to the cause, or has a relevant interest in its subject matter, he is disqualified without any investigation into whether there was a likelihood or suspicion of bias. The mere fact of his interest is sufficient to disqualify him unless he has made sufficient disclosure.

The above principle is applicable to cases involving pecuniary and non-pecuniary interest. A case of non-pecuniary interest (i.e. criminal case) to achieve a particular result is sufficient to give rise to automatic disqualification.

If the absolute impartiality of the judiciary is to be maintained, there must be a rule which automatically disqualifies a judge who is involved, whether personally or as a Director of a company, in promoting the same causes in the same organisation as is a party to the suit. It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. (Senator Pinochet case (1999) 1 All E.R. page 572).

1. A judge should 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, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
 - c. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child

- wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or has an interest more than de minimis that could be substantially affected by the proceeding;
- d. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;
 - (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 an interest more than de minimis that could be substantially affected by the proceeding;
 - (iv) is to the judge's knowledge likely to be a material witness in the proceeding.
 - e. The Judge has made a public statement that commits, or appears to commit, the judge with respect to an issue in the proceeding or the controversy in the proceeding.
2. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.