

Judicial Service (Code of Ethics) Regulations, 2012

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PREAMBLE

• WHEREAS it is recognized that the Constitution has vested the Judicial Authority of Zimbabwe in the Judiciary and has further entrenched the universally accepted norm of Independence of the Judiciary;

AND WHEREAS it is recognized by the Zimbabwean judiciary that a competent, independent and impartial judiciary is an indispensable and essential ingredient for good governance and the maintenance of the rule of law in any modern democratic society;

AND WHEREAS it is recognized that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a democratic society;

AND WHEREAS it is essential that judicial officers, individually and collectively, respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in the judicial system;

AND WHEREAS it is recognized that it is primarily the responsibility of the judiciary of Zimbabwe to promote and maintain high standards of judicial conduct;

AND WHEREAS the Constitution provides for the impeachment of a judicial officer, it is recognized that no formal complaints mechanism is provided to deal with complaints about judicial officers falling short of impeachable conduct;

AND WHEREAS the judicial officers of the Republic of Zimbabwe adopt, individually and collectively, this Code of Ethics to be the beacon of judicial conduct, now and in the future;

NOW, THEREFORE, IT is hereby notified that the Minister of Justice and Legal Affairs, in terms of sections 18 and 25 of the Judicial Service Act [*Chapter 7:18*] (No. 10 of 2006), has approved the following regulations made by the Judicial Service Commission:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the Judicial Service (Code of Ethics) Regulations, 2012 (hereinafter referred to as “this Code”).

Interpretation

2. In this Code—

“court staff” means the Secretary of the Commission and all other support staff of the Judicial Service;

“disciplinary committee” means a disciplinary committee appointed under Part III;

“family member” or “associate”, in relation to a judicial officer, means any or all of the following, as may be appropriate to the context—

- (a) any member of the judicial officer’s family, that is, the judicial officer’s spouse, son, daughter, son-in-law or daughter-in-law or any other close relative;
- (b) any friend of the judicial officer, being a person with whom the judicial officer interacts socially on a regular or frequent basis, or a person to whom the judicial officer is emotionally close, and includes a cohabitant;
- (c) any person the nature of whose social, business or other association with the judicial officer may, in certain contexts, be regarded by any fair-minded person as promotive of potential conflict between the judicial officer’s private interests and judicial duties;

“head of court or division concerned” means any of the following, as may be appropriate—

- (a) the Chief Justice;
- (b) the Judge President;
- (c) the Senior President of the Labour Court;
- (d) the Senior President of the Administrative Court;
- (e) the judicial officer who is the head of any division of the foregoing courts;

“immaterial grounds” in relation to equality provided for in section 9 includes but is not limited to, race, colour, gender, religion, national origin, disability, age, marital status, social and economic status, and other like causes;

“judicial officer” means any of the following, whether appointed in a substantive or acting capacity—

- (a) the Chief Justice;
- (b) the Deputy Chief Justice and other Judges of the Supreme Court;
- (c) the Judge President and the other Judges of the High Court;
- (d) the Senior President of the Labour Court and other Presidents of the Labour Court;
- (e) the Senior President of the Administrative Court and other Presidents of the Administrative Court.

Application

3. (1) This Code applies to every judicial officer.

(2) For the avoidance of doubt it is declared that no minimum standard prescribed in this Code shall be taken to derogate from the highest standards of ethics and propriety expected of judicial officers.

PART II

VALUES AND STANDARDS

Values attaching to judicial office

4. Every judicial officer shall, individually and collectively, uphold, maintain and promote the following values attaching to judicial office, as further elaborated in this Part—

- (a) personal and institutional independence; and
- (b) integrity; and
- (c) propriety, and the appearance of propriety; and
- (d) equality, that is, equal treatment of all before the courts; and
- (e) impartiality, not only in respect of particular decisions but also in respect of the process by which any decision is made; and
- (f) competence and diligence.

SUB-PART A

INDEPENDENCE

Independence

5. (1) A judicial officer shall uphold the independence of the judiciary and the authority of the courts and shall, in keeping with his or her judicial oath, perform all duties without fear or favour.

(2) A judicial officer shall at all times exhibit and promote high standards of judicial conduct in order to foster public confidence, which is universally accepted as a fundamental ingredient to the maintenance of judicial independence.

(3) A judicial officer shall be faithful to and maintain professional competence in the law, and shall not be swayed by partisan interests, public clamour or fear of criticism.

SUB-PART B

INTEGRITY

Integrity

6. (1) A judicial officer shall ensure that his or her conduct, in and outside court, is above reproach in the view of reasonable, fair-minded and informed persons.

(2) A judicial officer shall not allow family, social, political, religious or other like relationships to influence his or her judicial conduct or judgment.

(3) A judicial officer shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards, so that the integrity of the judiciary may be preserved.

SUB-PART C

PROPRIETY

Propriety generally

7. (1) A judicial officer shall avoid impropriety and the appearance of improper behaviour in all of his or her activities, in and outside court, and shall avoid any conduct that may result in bringing the judiciary into disrepute.

(2) As a subject of constant public scrutiny, a judicial officer must accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, a judicial officer must conduct himself or herself in a way that is consistent with the dignity of the judicial office.

(3) A judicial officer shall not use or lend the prestige of the judicial office to advance his or her private interests or those of any of his or her family members or associates.

Gifts and other benefits

8. (1) No judicial officer, nor any family member or associate of that judicial officer, shall solicit or accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judicial officer in connection with the performance of judicial duties.

(2) If, during the course of judicial proceedings before a judicial officer, the judicial officer becomes aware that any of his or her family members or associates has received or accepted any gift, bequest, loan or favour from a party to those proceedings, then, whether or not such gift, bequest, loan or favour was made in connection with those proceedings, the judicial officer shall, at the earliest opportunity during those proceedings after he or she becomes so aware, require the party concerned to disclose that fact to the other party or parties to those proceedings.

Participation in extra-curial activities

9. (1) Without compromising the proper performance of his or her judicial duties, a judicial officer may participate in such activities as—

- (a) writing, lecturing, teaching and engaging in activities concerning the law, the legal system, the administration of justice and related matters; and
- (b) appearing at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters; and
- (c) serving as a member of a body referred to in paragraph (b).

(2) A judicial officer may receive such honorarium as may be appropriate for participating in or undertaking any activity described in subsection (2), so long, however, as such honorarium cannot be reasonably perceived, by fair-minded persons, as—

- (a) intended to influence the judicial officer in the performance of his or her judicial duties; or
- (b) otherwise giving rise to an appearance of partiality.

(3) A judicial officer may speak publicly on non-legal matters or participate in civil, cultural, religious, educational or charitable activities, so long, however, as such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

Business and financial dealings

10. (1) A judicial officer shall not serve as an executor, administrator, trustee, guardian or other fiduciary, save for the estate, trust or person of a member of the judicial officer's family, so long, however, as any such service does not interfere, directly or indirectly, with the proper performance of judicial duties.

(2) A judicial officer shall refrain from financial and business dealings that—

- (a) reflect adversely on the judicial officer's impartiality; or
- (b) interfere with the proper performance of the judicial officer's judicial duties; or

- (c) exploit, or give the appearance of exploiting, the judicial officer's judicial position; or
- (d) involve the judicial officer in frequent transactions or continuing business relationships with legal practitioners or other persons likely to come before the court on which the judicial officer serves.

(3) A judicial officer shall not, for the purpose of furthering or advancing his or her personal financial or business dealings or those of his family members or associates or for any other purpose which is unrelated to the judicial officer's judicial duties, disclose or use confidential information acquired during the course of judicial duties.

Practising law and rendering of legal advice

11. A judicial officer shall not practise law whilst being the holder of judicial office, but may, without compensation and without exploiting or giving the appearance of exploiting his or her judicial position, be consulted by his or her family members or associates on legal matters.

Promotion of collective interests as judicial officer

12. A judicial officer may form or join an association of judicial officers or participate in other legally recognised organisations representing the interests of judicial officers to promote professional training and to protect judicial independence, so long, however, as any such activities undertaken in connection with such association or organisation do not interfere with the proper performance of the judicial officer's duties.

SUB-PART D

IMPARTIALITY

Impartiality generally

13. (1) A judicial officer shall perform his or her judicial duties without fear, favour, bias or prejudice.

(2) A judicial officer shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judicial officer to be disqualified from hearing or deciding cases.

(3) A judicial officer shall not make any public comment that may affect or may reasonably be construed to affect the outcome of any proceedings or impair their fairness, or make any comment that might compromise a fair trial or hearing.

Recusal

14. (1) A judicial officer shall disqualify or recuse himself or herself in any proceedings in which the judicial officer's impartiality may reasonably be questioned, including but not limited to instances where—

- (a) the judicial officer has personal knowledge of disputed evidentiary facts concerning the proceedings; or
 - (b) subject to subsection (2), the matter in controversy—
 - (i) is one in which the judicial officer had served as a legal practitioner; or
 - (ii) involves a legal practitioner with whom the judicial officer had previously practised law, and such involvement began during the time when the judicial officer and legal practitioner were practising together;
- or
- (c) subject to subsection (2), the judicial officer or any of his or her family members or associates has, to his or her knowledge, a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings; or
 - (d) subject to subsection (3), the judicial officer has a personal bias or prejudice concerning a party.

(2) A judicial officer who would otherwise be disqualified in terms of subsection (1)(b) or (c) may, instead of withdrawing from the proceedings, disclose to the parties, the grounds upon which such potential disqualification may arise. If, based on such disclosure, all the parties independently of the judicial officer's participation agree that the judicial officer's basis for potential disqualification is immaterial or insubstantial, the judicial officer is no longer disqualified and may participate, or continue to participate, in the proceedings.

(3) The inability on the part of a judicial officer to overcome any personal bias or prejudice concerning a party is inconsistent with the exercise of judicial office, and a recusal on that ground is a violation of this Code, unless the circumstances giving rise to the bias or prejudice are of such a nature that any fair-minded person would not perceive that the bias or prejudice is unreasonable, in which event the judicial officer must inform his or her head of court or division of those circumstances before recusing himself or herself.

(4) The head of court or division to whom any grounds of recusal referred to in subsection (3) are disclosed may, at the request of the judicial officer concerned and if the head of court or division so deems it fit, direct that no disclosure of such grounds of recusal shall be made to the parties in the case.

Political engagement

15. A judicial officer—

- (a) must not actively engage in any political activities or hold any office in a political organisation or be a member of any political organisation; and
- (b) shall not solicit funds for or make a contribution to, a political organization and shall not attend political meetings.

SUB-PART E

EQUALITY

Equality

16. (1) A judicial officer shall strive to be aware of, and to understand, and be sensitive to, diversity in society and differences based on various grounds that are not (except in strict compliance with the express terms of any law) material or determinative of any issue arising in connection with his or her performance of judicial duties, including (but not limited to) differences on the grounds of race, colour, gender, religion, national origin, disability, age, marital status, social and economic status and other like grounds (hereinafter referred in this section to as “immaterial grounds”).

(2) A judicial officer shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice based on immaterial grounds towards any person or group.

(3) A judicial officer shall carry out his or her duties with due or proper consideration for all persons such as the parties, witnesses, legal practitioners, court staff and judicial colleagues, without unjust differentiation on any immaterial ground.

In this subsection “unjust differentiation” means differentiation that is irrelevant to the proper performance of the duties of a judicial officer.

(4) A judicial officer shall not knowingly permit court staff or others subject to the judicial officer’s influence, direction or control to differentiate between persons on any immaterial ground in any matter which is before the judicial officer.

(5) A judicial officer shall require legal practitioners in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on immaterial grounds:

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

(6) A judicial officer shall accord to every person who is legally interested in the proceedings, or the legal practitioner of that person, a full right to be heard according to law, and, except as authorised by law, shall neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding.

SUB-PART F

COMPETENCE AND DILIGENCE

Diligence

17. (1) A judicial officer shall perform all judicial duties efficiently, fairly and with reasonable promptness.

(2) The judicial duties of a judicial officer take precedence over all the judicial officer’s other activities.

(3) A judicial officer shall devote his or her professional activity to judicial duties.

(4) Without derogating from the generality of subsection (3), a judicial officer's duties are not only limited to the performance of judicial functions and responsibilities in court and the rendering of decisions, but include other tasks relevant to the court's operations or to the judicial office.

Competence

18. (1) A judicial officer shall take reasonable steps to maintain and enhance the judicial officer's knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

(2) A judicial officer shall keep himself or herself informed about relevant developments in international law, including relevant international conventions and other instruments establishing human rights norms.

In this subsection "relevant" means capable of application by courts within the jurisdiction of Zimbabwe in accordance with the Constitution.

Reserved judgments

19. (1) Where a judgment is reserved to be delivered on notice, the judicial officer shall use his or her best efforts to ensure that such judgment is delivered within the next ninety (90) days and, except in unusual and exceptional circumstances, no judgment shall be delivered later than one hundred and eighty (180) days from the date when it is reserved.

(2) Where a judicial officer reserves judgment in any case and the judicial officer has reason to believe he or she will not be able to render judgment within the ninety-day period referred to in subsection (1), he or she shall inform his or her head of court or division of that fact.

(3) Upon receiving the information referred to in subsection (2) the head of court or division shall, with reasonable promptness, give such appropriate directions as will enable or assist the concerned judicial officer to deliver judgment within ninety days from the date of reservation or no later than one hundred and eighty days thereafter.

(4) The Chief Justice may, by a practice note, reduce the maximum periods within which judgments must, in terms of this section, be delivered.

SUB-PART G

EFFICIENT AND EXPEDITIOUS CONDUCT OF JUDICIAL BUSINESS

Conduct of judicial proceedings generally

20. (1) A judicial officer shall maintain order and decorum in all proceedings in which the judicial officer is involved. He or she shall be patient, dignified and courteous in relation to litigants, assessors, witnesses, legal practitioners and others with whom the judicial officer deals in an official capacity. The judicial officer shall require similar conduct of legal practitioners, court staff and others subject to the judicial officer's influence, direction or control.

(2) A judicial officer shall attend to matters set-down in chambers and those set-down in court, timeously and in such manner as is necessary and appropriate to ensure the due and diligent performance of all official duties.

(3) Subject to formal administrative arrangements, a judicial officer shall not assign work to himself or herself, and no litigant shall have a right to choose the judicial officer who will preside or deal with their matter.

PART III

ENFORCEMENT PROCEDURE

Disciplinary committee

21. (1) Subject to the Constitution and any other enactment, if, in the opinion of the Chief Justice, a judicial officer has conducted himself or herself in a manner that appears to violate any provision of this Code, the Chief Justice shall appoint a disciplinary committee, which shall investigate the acts or omissions allegedly constituting the violation and submit its findings and recommendations for the consideration of the Chief Justice.

(2) A disciplinary committee shall be appointed on an *ad hoc* basis, and shall be composed of three members who are sitting or retired judicial officers, and who may be sitting or retired judicial officers from Zimbabwe or any other country in which the common law is Roman-Dutch or English and English is an official language:

Provided that two of the members shall be from Zimbabwe, and at least one member must be a sitting judicial officer serving in Zimbabwe, other than the Chief Justice.

Procedure of disciplinary committee

22. (1) In addition to the general principles listed herein and having regard to the principles of natural justice, a disciplinary committee appointed in terms of section 21 shall set its own rules of procedure.

(2) A disciplinary committee shall —

- (a) conduct its proceedings in confidence; and
- (b) otherwise be transparent in its procedures so as to strengthen public confidence in the judiciary and thereby reinforce judicial independence.

(3) By reason of the nature of judicial office, a disciplinary committee shall at all times during its proceedings take care to ensure that the judicial officer is afforded protection from vexatious or unsubstantiated accusations.

(4) A disciplinary committee shall use its best endeavours to expeditiously conduct and finalise its investigation.

(5) A disciplinary committee shall submit its findings and recommendations to the Chief Justice within a period of ninety (90) days from the date when the committee is constituted, unless it communicates to the Chief Justice that exceptional circumstances make it impossible to meet this deadline, in which event the Chief Justice may, at his or her discretion, grant an extension of time not exceeding a further period of sixty (60) days within which the committee can submit its findings and recommendations.

Investigation by disciplinary committee and outcome thereof

23. (1) A judicial officer whose conduct is the subject of an investigation by a disciplinary committee may, at the discretion of the Chief Justice, be requested to take leave of absence for the duration of the investigation.

(2) At the conclusion of its investigation, a disciplinary committee shall forward to the Chief Justice its findings and recommendations regarding the appropriate disciplinary action, if

any, to be taken against a judicial officer whose conduct was the subject of the investigation.

(3) Upon receipt of the findings and recommendations, the Chief Justice may, if he or she deems it necessary, invite the concerned judicial officer to submit written representations in relation to, amongst other things, the conduct of the investigation and the findings or recommendations made by a disciplinary committee.

(4) Notwithstanding the recommendations of a disciplinary committee, the final decision as to what disciplinary measure to take shall be within the exclusive discretion of the Chief Justice.

Disciplinary measures

24. (1) Subject to the Constitution and any other enactment the following disciplinary measures that may be imposed on a judicial officer whose conduct is found to be in violation of this Code, according to the gravity or frequency of the violation—

- (a) a reprimand from the Chief Justice; or
- (b) a severe reprimand from the Chief Justice; or
- (c) a final reprimand from the Chief Justice.

(2) All reprimands under this Code shall be recorded and placed in the personal file of the judicial officer concerned.

(3) Nothing contained in this Code shall be construed as taking away or derogating from—

- (a) the powers conferred on any person by section 87 of the Constitution and, in the case of Presidents of the Labour Court or the Administrative Court, the terms and conditions of their service applicable to them at the time any action is taken under this Part; or
- (b) the right of the Attorney-General or any other person to institute criminal or civil proceedings against the judicial officer concerned, arising out of the conduct complained of.

Implementation and accountability

25. (1) In the interests of effective implementation, every judicial officer shall use his or her best endeavours to uphold the values and standards enshrined in this Code.

(2) Subject to the Constitution, the Judicial Service Act [Chapter 7:18] (No. 10 of 2006), any other enactment and this Code, judicial officers shall not be accountable or answerable to any other State or non-State organ, entity or authority.

(3) All legitimate complaints against any judicial officer shall be dealt with as follows—

- (a) complaints against the person of the Chief Justice shall be directed for the attention of the President and shall not be subject to this Part; and
- (b) complaints against the person of the Deputy Chief Justice and the other judges of the Supreme Court, the Judge President of the High Court, the Senior President of the Labour Court, and the Senior President of the Administrative Court shall be directed for the attention of the Chief Justice; and
- (c) complaints against the other judges of the High Court shall be directed for the attention of the Judge President; and
- (d) complaints against the other Presidents of the Labour Court shall be directed for the attention of the Senior President of the Labour Court; and
- (e) complaints against the other Presidents of the Administrative Court shall be directed for the attention of the Senior President of the Administrative Court.

Provided that in circumstances where the complaint is against a Judge of the High Court or a President of the Labour Court or the Administrative Court, as the case may be, and the head of the court concerned determines that the complaint lacks merit, head of the court may, without the need for further investigation, reject the complaint and inform the complainant and the judicial officer concerned accordingly.

(4) Where the Judge President or a Senior President, as the case maybe, arrive at the opinion that the complaint appears to have merit, the head of the court concerned shall forthwith refer such complaint to the Chief Justice, who shall in turn, determine whether the complaint merits reference to a disciplinary committee under this Part.

PART IV

ETHICS ADVISORY COMMITTEE

Establishment of Ethics Advisory Committee

26. (1) Subject to the Constitution and any other enactment, there shall be established a Committee on standards of conduct for judicial officers, to be known as the Ethics Advisory Committee.

(2) The Ethics Advisory Committee shall consist of not more than five and not less than three members, appointed by the Chief Justice, of whom —

- (a) two or three (as the case may be) shall be judicial officers; and
 - (b) one or two (as the case may be) shall be legally qualified persons, appointed from a list of not less than four names submitted by the Judicial Service Commission.
- (3) Members appointed under subsection (2)(b) shall —
- (a) hold office for such period, not exceeding three years, as may be fixed by the Chief Justice on their appointment; and
 - (b) be eligible for reappointment.

Functions of Ethics Advisory Committee

27. (1) The Ethics Advisory Committee shall render advisory opinions not inconsistent with this Code to inquiring judicial officers relating to the propriety of contemplated judicial and non-judicial conduct, but all opinions shall be advisory in nature only.

(2) No judicial officer sitting as a member of the Ethics Advisory Committee shall participate in any matter before the Committee in which he or she has a direct or indirect interest.

(3) All opinions rendered by the Ethics Advisory Committee, shall be in writing, and a copy of each opinion, together with the request therefore, shall be filed with the Chief Justice and the Judicial Service Commission.

(4) The Judicial Service Commission may, at its discretion, circulate the opinions of the Ethics Advisory Committee for the benefit of members of the Judicial Service:

Provided that all references to the name of the requesting judicial officer shall be deleted.

Interface of Ethics Advisory Committee with disciplinary committees

28. No opinion of the Ethics Advisory Committee shall bind a disciplinary committee appointed in any proceedings properly before it, and any determination of the propriety or impropriety of particular conduct by a disciplinary committee shall supersede any conflicting opinion of the Ethics Advisory Committee, but the disciplinary committee shall give such opinion due weight when arriving at any finding or making any recommendation, in particular—

- (a) such opinion may be considered as evidence that the judicial officer subject to the investigation endeavoured to comply with this Code in good faith;
- (b) an opinion issued to one judicial officer shall not be authority for the conduct, or evidence of good faith, of another judicial officer, unless the underlying facts are identical.

PART V

TRANSITIONAL PROVISIONS

Transitional provisions

29 Section 19 shall not apply to any judgment that was reserved prior to the coming into operation of this Code. However, any such judgment still outstanding on the ninetieth day from the date of promulgation of this Code shall be notified by the judicial officer concerned to his or her head of the court or division, and upon such notification the head of court or division shall give such appropriate directions as are reasonably necessary to ensure the due and speedy delivery of the judgment.

