

Subsidiary Legislation made under s.32(5).

## **Gibraltar Code of Judicial Conduct and Ethics**

**LN.2010/134**

*Commencement*

**29.7.2010**

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**2007-26**

Judicial Service

**2010/134**

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*Pursuant to section 32(5) of the Judicial Service Act 2007 the Minister has caused the following Code of Judicial Conduct and Ethics to be published following its adoption by the Judicial Service Commission and approval by Parliament on 5 July 2010.*

## **GIBRALTAR CODE OF JUDICIAL CONDUCT AND ETHICS**

### **Preamble**

The President of the Courts of Gibraltar—

**Noting** the solemn duty conferred on him by section 32(1) of the Judicial Service Act 2007;

**Recalling** the principles concerning judicial independence, impartiality and proper conduct specified in the Gibraltar Constitution Order 2006 and the Judicial Service Act 2007;

**Having regard** to the United Nations Basic Principles on the Independence of the Judiciary (1985) and other international rules and standards relating to judicial conduct and ethics;

**Recognising** the need for guidelines of general application to contribute to judicial independence and impartiality which are prerequisites to the rule of law and a fundamental guarantee of a fair trial and to establish standards of ethical conduct of judges, both in and out of court, to maintain confidence of the public;

**Realising** the fact that the violation of this Code of Judicial Conduct and Ethics may be deemed conduct prejudicial to the administration of justice that brings the judicial office into disrepute, or willful misconduct in judicial office;

**Having** in consultation with the Chief Justice and the Chairman of the Bar Council, drawn up and proposed to the Judicial Service Commission, a draft Code of judicial conduct and ethics;

**And** the Judicial Service Commission having adopted this Code of Judicial Conduct and Ethics—

**Short title.**

1. This Code may be cited as the Gibraltar Code of Judicial Conduct and Ethics.

**Interpretation.**

2. In this Code, unless the context otherwise requires–

“court staff” includes the personal staff of the judge including law clerks;

“judge” includes a magistrate and any person exercising judicial office, however designated;

“judge’s family” means a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge’s household; and

“judge’s spouse” includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

**Judicial independence.**

- 3.(1) Every judge should–

- (a) uphold the independence of the judicial office and the authority of the Court and he should conduct himself accordingly in carrying out his judicial functions; and
- (b) uphold and exemplify judicial independence in both its individual and institutional aspects.

- (2) Every judge should–

- (a) maintain that the relationship between the judiciary and the Government is one of mutual respect, each recognising the proper role of the others; and
- (b) take care that his conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

- (3) Every judge should always be alert to, and wary of, subtle and sometimes not so subtle, attempts to influence judges.

- (4) In the proper discharge of duties, every judge must be immune to the effects of publicity, whether favourable or unfavourable but it does not of course mean being immune to an

awareness of the profound effect judicial decisions may have, not only on the lives of people before the court, but sometimes upon issues of great concern to the public, concerns which may be expressed in the media.

(5) A judge may consult with colleagues when points of difficulty arise in order to maintain standards of decision but in performing judicial duties, every judge shall be independent of judicial colleagues and solely responsible for his decisions.

**Impartiality.**

4.(1) Every judge must be impartial and ensure the appearance of impartiality in the discharge of his judicial functions.

(2) The impartiality referred to in sub-paragraph (1) applies not only to the judge's decision itself but also to the process by which the decision is made.

(3) Every judge should—

- (a) strive to ensure that his 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; and
- (b) avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

(4) Every judge should so far as is reasonable, avoid extra-judicial activities that are likely to cause the judge to have to refrain from sitting on a case because of a reasonable apprehension of bias or because of a conflict of interest that would arise from the activity.

(5) Every judge must forego any kind of political activity and on appointment sever all ties with political parties in order to avoid the perception of bias.

(6) Where a close member of a judge's family is politically active, the judge needs to bear in mind the possibility that, in some proceedings, that political activity might raise concerns about the judge's own impartiality and detachment from the political process.

(7) Every judge should be careful in the expression of views out of court that would give rise to issues of perceived bias or pre-judgment in cases that later come before the judge.

(8) If circumstances which may give rise to a suggestion of bias, or appearance of bias, are present so that they are to be disclosed to the parties, that should be done well before the hearing, if possible, and the judge should bear in mind the difficult position in which parties,

and their advisers, are placed by disclosure on the day of hearing, when making a decision whether to proceed.

(9) Disclosure referred to in sub-paragraph (8) must be to all parties and, save when the issue has been resolved by correspondence before the hearing, discussion between the judge and the parties as to what procedure to follow should normally be in open court, unless the case itself is to be heard in chambers. The consent of the parties is a relevant and important factor but the judge should avoid putting them in a position in which it might appear that their consent is sought to cure a ground of disqualification. Even where the parties consent to the judge sitting, if the judge, on balance, considers that recusal is the proper course, the judge should so act. Conversely, there are likely to be cases in which the judge has thought it appropriate to bring the circumstances to the attention of the parties but, having considered any submissions, is entitled to and may rightly decide to proceed notwithstanding the lack of consent.

(10) A judge is entitled to keep in mind his general duty to try the cases in his list and the listing burden and delay which may be occasioned by a recusal but it must be recognised that the urgency of the situation may be such that a hearing is required in the interests of justice notwithstanding the existence of arguable grounds in favour of disqualification.

(11) If a judge, or to the knowledge of the judge, a member of the judge's family has any significant financial interest in the outcome of the case that will plainly disqualify the judge to hear that case.

(12) The interest referred to in sub-paragraph (11) may arise without the judge having an interest in the case to be tried if the case is to decide a point of law which may affect the judge in his personal capacity. In taking the decision whether to hear the case, the judge should have regard, in relation to the point of law, to the nature and extent of his interest, and the effect of the decision on others with whom he has a relationship, actual or foreseeable.

(13) A fee-paid judge has the same general obligation to maintain the status and dignity of the office of judge and to be alert to the possibility that outside activities, including political activities, may create a perception of bias when dealing with particular cases. Judgment is required in striking a balance between maintaining that status and dignity and the reasonable requirements of a legal practice or, in the case of lay fee-paid judges, the reasonable requirements of other employment and activities.

(14) A fee-paid judge should refrain from any activity, political or otherwise, which could conflict with their judicial office or be seen to compromise his impartiality.

(15) Every fee-paid judge has additional factors to consider when making a decision as to recusal. The ban on party political activity does not apply to that judge who must therefore consider whether the nature and extent of the political activity would create a perception of unfairness in the particular case. The fee-paid judge may also, by virtue of professional

practice, have links with chambers, professional firms and other parties which make it inappropriate for him to hear a case involving them or their clients.

**Integrity.**

5.(1) Every judge should–

- (a) maintain integrity which is essential to the proper discharge of the judicial office;
- (b) conduct himself with probity and integrity in accordance with his office, thereby enhancing public confidence in the judiciary.

(2) Every judge is entitled to exercise the rights and freedoms available to all citizens.

(3) While appointment to judicial office brings with it limitations on the private and public conduct of a judge, there is a public interest in judges participating, insofar as their office permits, in the life and affairs of the community. Moreover, it is necessary to strike a balance between the requirements of judicial office and the legitimate demands of the judge's personal and family life. Judges have to accept that the nature of their office exposes them to considerable scrutiny and puts constraints on their behaviour which other people may not experience.

(4) Every judge should avoid situations that might–

- (a) reasonably lower respect for his judicial office or might cast doubt upon his impartiality as a judge; and
- (b) expose him to charges of hypocrisy by reason of things done in his private life.

(5) Behaviour which might be regarded as merely unfortunate if engaged in by someone who is not a judge might be seen as unacceptable if engaged in by a person who is a judge and who, by reason of that office, has to pass judgment on the behaviour of others.

(6) A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general.

(7) Every judge should–

- (a) seek to be courteous, patient, tolerant and punctual and respect the dignity of all; and

- (b) ensure that no one in court is exposed to any display of bias or prejudice on grounds of race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

(8) In the case of those with a disability care should be taken that arrangements made for and during a court hearing do not put them at a disadvantage. The duty of course remains on the judge to apply the law as it relates to allegedly discriminatory conduct.

(9) A judge should not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of his judicial functions.

### **Propriety.**

6.(1) Every judge should maintain propriety and bear in mind that propriety and the appearance of propriety, are essential to the performance of all of the activities to be done by him.

(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 must conduct himself in a way that is consistent with the dignity of the judicial office.

(3) A judge should avoid impropriety and the appearance of impropriety in all of the judge's activities.

(4) A judge should, in his personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favouritism or partiality.

(5) A judge should not—

- (a) 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;
- (b) allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession;
- (c) allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge;
- (d) 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;

- (e) 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; and
- (f) knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his duties or functions.

(6) Every judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, every judge should always conduct himself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

(7) Every judge should—

- (a) inform himself about the judge's personal and fiduciary financial interests; and
- (b) make reasonable efforts to be informed about the financial interests of members of the judge's family.

(8) Confidential information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

(9) Subject to the proper performance of judicial duties, a judge may—

- (a) write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- (b) appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
- (c) serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
- (d) engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

(10) Every judge may form or join associations of judges or participate in other organisations representing the interests of judges.



(11) Every judge and members of the judge's family, should 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.

(12) Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made if such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

#### **Due performance of the judicial office.**

7. Every Judge, for the purpose of due performance of the judicial office, should—

- (a) ensure equality of treatment to all before the courts; and
- (b) maintain his competence and diligence.

#### **Competence and diligence.**

8.(1) Every judge must do what he reasonably can in order to equip himself to discharge his judicial duties with a high degree of competence.

(2) Every Judge must—

- (a) take reasonable steps to maintain and enhance his knowledge and skills necessary for the proper performance of judicial duties, to devote the judge's professional activity to judicial duties; and
- (b) not engage in conduct incompatible with the diligent discharge of such duties.

#### **Personal relationships and perceived bias.**

9.(1) No judge should sit on a case in which the judge has a close family relationship with a party or the spouse or domestic partner of a party.

(2) Personal friendship with, or personal animosity towards, a party must disqualify a judge from hearing a case involving that party. In this context, friendship may be distinguished from acquaintanceship which may or may not be a sufficient reason for disqualification, depending on the nature and extent of such acquaintanceship.

(3) A current or recent business association with a party will usually mean that a judge should not sit on a case. A business association would not normally include that of insurer and insured,

banker and customer or taxpayer and Government. Judges should also disqualify themselves from a case in which their solicitor, accountant, doctor, dentist or other professional adviser is a party in the case.

(4) Friendship or past professional association with counsel or solicitor acting for a party is not generally to be regarded as a sufficient reason for disqualification.

(5) The fact that a relative of the judge is a partner in, or employee of, a firm of solicitors engaged in a case before the judge does not necessarily require disqualification. It is a matter of considering all the circumstances, including the extent of the involvement in the case of the person in question.

(6) Past professional association with a party as a client need not of itself be a reason for disqualification but the judge must assess whether the particular circumstances could create an appearance of bias.

(7) Where a witness (including an expert witness) is personally well known to the judge all the circumstances should be considered including whether the credibility of the witness is in issue, the nature of the issue to be decided and the closeness of the friendship.

(8) No judge should sit on a case in which a member of the judge's family appears as advocate.

### **Talking to the media.**

10.(1) Every judge should—

- (a) exercise his freedom to talk to the media, with the greatest circumspection; and
- (b) refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise.

(2) No judge should—

- (a) air disagreements over judicial decisions in the press; and
- (b) discuss individual cases with the media.

### **Participation in public debate.**

11.(1) Many aspects of the administration of justice and of the functioning of the judiciary are the subject of necessary and legitimate public consideration and debate in the media, legal literature and at public meetings, seminars and lectures, and appropriate judicial contribution

to this consideration and debate can be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the judiciary. At the least, it may help to dispel misunderstandings and correct false impressions. There is no objection to such participation if the issue directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice.

(2) Care should be taken about the place at which, and the occasion on which, a judge speaks so as not to cause the public to associate the judge with a particular organisation, group or cause. The participation should not be in circumstances which may give rise to a perception of partiality towards the organisation (including a set of chambers or firm of solicitors), group or cause involved or to a lack of evenhandedness.

(3) It should be borne in mind that the dialogue may not take the form, and the judge cannot expect to assume the role, which the judge would consider appropriate in court proceedings. The judge cannot expect to join in and leave the debate on the judge's terms. The risk of different judges expressing conflicting views in debate must also be borne in mind in that a public conflict between judges, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.

(4) There are plainly risks in a judge, whether exercising a criminal or a civil jurisdiction, who may have to deal with a wide range of people in his jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined. The risk of expressing views that will give rise to issues of bias or pre-judgment in cases that later come before the judge must also be considered.

#### **Commercial activities.**

12.(1) The requirements of the office of the judge clearly place severe restraints upon the permissible scope of a judge's involvement with commercial enterprises.

(2) The management of family assets and the estates of deceased close family members, whether as executor or trustee, is unobjectionable, and may be acceptable for other relatives or friends if the administration is not complex, time consuming or contentious. But the risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked and the factors involved need to be weighed carefully before office is accepted.

#### **Involvement in community organisations.**

13.(1) Prior to his appointment, a judge may have been actively involved in community organisations, particularly, but not exclusively, educational, charitable and religious organisations. While continuing such involvement is not necessarily inappropriate, and may confer a public benefit, care should be taken that it does not compromise judicial independence

or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his duties and the judge's role should not involve active business management.

(2) A judge may properly be involved in the management of educational, charitable and religious organisations and trusts subject to the reservation already stated in relation to community organisations. Care should be taken in considering whether, and if so to what extent, a judge's name and title should be associated with an appeal for funds, even for a charitable organisation. It could amount to an inappropriate use of judicial prestige in support of the organisation and may also be seen as creating a sense of obligation to donors.

#### **References.**

14.(1) There is no objection in principle to a judge giving references for character or professional competence for persons who are well known to the judge. Consideration should be given as to whether the judge is the appropriate person to give the reference requested, the principle being that someone should not be deprived of a reference because the person best able to give it is the judge. Every judge must guard against inappropriate requests.

(2) Giving character evidence in court or otherwise is not excluded, particularly where it may seem unfair to deprive the person concerned of the benefit of such evidence, but the task should be undertaken only exceptionally because of the risks inherent in the judge entering the arena, albeit for a limited purpose, and the pressure such evidence may put on the trial judge or magistrate. Consultation with the head of the judiciary is advisable before taking a decision to give evidence.

#### **Remuneration.**

15.(1) Every judge holding full-time appointment is barred from legal practice.

(2) In addition to a judicial salary, a full-time judge should not receive any remuneration except for fees and royalties earned as an author or editor.

(3) Every judge may receive money from investments or property.

#### **Gifts and hospitality.**

16.(1) Every judge should exercise caution when considering whether to accept any gift or hospitality that may be offered to a judge.

(2) If the gift and hospitality in any way relates, or might appear to relate, to judicial office, the judge should be on his guard against any action which could be seen to undermine his impartiality. A judge must be wary of accepting any gift or hospitality which might appear to

relate in some way to his judicial office and might be construed as an attempt to attract judicial goodwill or favour.

(3) The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar.

(4) The acceptance of invitations to lunches and dinners by legal and other professional and public bodies or officials, where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is acceptable. But every judge should exercise caution when invited to take part in what may be legitimate marketing or promotional activities, where the object of judicial participation may be perceived to be the impressing of clients or potential clients.

(5) No judge should exploit the status and prestige of judicial office to obtain personal favours or benefits.

(6) Where a judge is in doubt as to the propriety of accepting any gift or hospitality he should seek the advice of the head of judiciary.

#### **Contact with the profession.**

17. Every judge should avoid direct association with individual members of the legal profession who are engaged in current cases before the judge in the absence of a representative from the other side.

#### **Other social activities.**

18. Social activities need to be assessed in the light of the judge's duty to maintain the dignity of the office and not to permit associations that may affect adversely the judge's ability to discharge his duties.

#### **Use of equipment.**

19. A judge must not use equipment, including IT equipment, provided for his use as a judge, for other purposes that could bring the judge or the judiciary in general into disrepute.

#### **After retirement.**

20.(1) No substantive senior judicial officer should, within a year of his retirement or ceasing to be a senior judicial officer, return to private practice as a barrister or a solicitor and provide services, on whatever basis, as a lawyer in any court or tribunal in Gibraltar or elsewhere,

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including any international court or tribunal, in return for remuneration of any kind, or offer or provide legal advice to any person.

(2) Notwithstanding sub-paragraph (1), a former or retired judge may provide services as an independent arbitrator or mediator and may receive remuneration for lectures, talks or articles.

(3) A former or retired judge may be regarded by the general public as a representative of the judiciary and for that reason a former or retired judge must avoid any activity that might tarnish the reputation of the judiciary.