

SOLOMON ISLANDS

CODE OF CONDUCT

for

JUDICIAL OFFICERS

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FOREWORD

By

**The Honourable Sir Albert R. Palmer
Chief Justice of Solomon Islands**

This Code sets out in clear terms standards of ethical and professional conduct for Judicial Officers in Solomon Islands. This Code follows models of Codes of Conduct developed for Judiciaries in other major jurisdictions such as the Statement of Ethical Principles for Judges adopted in Canada in 1998, the European Charter on the Status of Judges in the same year, the Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India in 1999, the Guideline for Judges of South Africa in March 2000, the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002 and the **Bangalore Principles of Judicial Conduct 2002**. Codes of Conduct have also been or are about to be adopted by the Judiciaries in Pacific countries such as Cook Islands, Fiji, Kiribati, Marshall Islands and Niue.

In 2008, the Solomon Islands Judiciary decided that it should formalize in writing a Code of Judicial Conduct to help provide guidance, direction and reference for its judicial officers as well as enquiring members of the public. Consultations with judicial officers, other government and non governmental agencies were undertaken before the finalization of this Code. This Code reflects the collective wisdom of those consulted and has the support of the entire Solomon Islands Judiciary.

This Judicial Code of Conduct sets out 6 core Principles, followed by statements of the application in Solomon Islands of each Principle and a commentary to clarify the Principles. The Principles are based on the universally accepted statements of judicial ethics and standards of conduct as set out in the ***Bangalore Principles of Judicial Conduct*** which was created by Judges using their own experiences.

I wish to record my appreciation to the Judicial Officers of the Solomon Islands and the Pacific Judicial Development Programme in developing the Solomon Islands Code of Judicial Conduct.

It is my honour to formally publish the Solomon Islands Code of Judicial Conduct.

Date: 14th August 2008

PREAMBLE

WHEREAS the judicial power of the State is vested in the Judiciary which is independent of the legislature and the executive branches of government.

WHEREAS judicial officers are bound by their Judicial Oath of Office in all things, to uphold the application of the Laws and Usages of the Solomon Islands and to do right to all manner of people without fear or favour, affection or ill will.
(*wordings taken from the Judicial Oath of Office*)

WHEREAS a competent, independent and impartial judiciary is essential to the protection of human rights, the rule of law and the proper administration of justice.

WHEREAS it is essential that Judicial Officers, individually and collectively, respect and honour Judicial Office as a public trust and strive to enhance and maintain public confidence in the Judicial system.

WHEREAS the foregoing principles are reflected in international and regional instruments, judicial conventions and traditions.

WHEREAS, the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the Judiciary.

AND NOW, THEREFORE, the following **Solomon Islands Code of Judicial Conduct** for the **Judges and Magistrates** are **ADOPTED** to supplement existing rules of law and conduct which bind Judicial Officers.

1.0

PRINCIPLE

INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fair trial. A judge should therefore uphold and exemplify judicial independence in both its individual and institutional aspects¹

Application

- 1.1 A judicial officer should uphold the independence of the judiciary by exercising judicial functions independently and free of irrelevant influence.
- 1.2 Judicial Officers are independent from other branches of government but also from each other. Judicial decision making is the responsibility of the individual judge.
- 1.3 A judicial officer shall firmly reject any attempt to influence his or her decisions in any matter, where such attempt arises outside the proper performance of judicial duties.
- 1.4 Judicial officers should maintain and enhance the institutional and operational independence of the judiciary.
- 1.5 Judicial officers should exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

¹ Commentary

There are two kinds of judicial independence (a) constitutional independence and (b) independence in the discharge of judicial duties:

- (a) Constitutional independence refers to the independence of the judiciary from interference from the Legislature and the Executive and other branches of Government. As the Executive and other branches of Government are litigants in the courts, an appropriate distance between the Judiciary and other branches of Government and the Executive should be maintained.
- (b) Independence in the discharge of judicial duties refers to a judge being free of inappropriate outside influences. Independence of the judiciary refers to individual and collective or institutional independence required for impartial decisions and decision making. A judge's duty is to apply the law after examining the evidence as he or she understands it without fear or favour and without regard to whether the decision is popular or not. Judges must firmly reject improper attempts by litigants, politicians, business people, chiefs, police, officials and others to influence their decisions. Public confidence in court decisions depends upon the independence of the Judiciary.

2.0

PRINCIPLE

IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. Impartiality is essential not only to the decision itself but also to the process by which the decision is made. A judicial officer should perform judicial duties without fear, bias or prejudice.

Application

- 2.1 A judicial officer should perform his or her judicial duties without fear, favour, bias or prejudice.
- 2.2 A judicial officer should minimize the occasions on which it might be necessary for the judicial officer to be disqualified from hearing or deciding cases.
- 2.3 A judicial officer shall refrain from making any comment to the media or to members of the public while proceedings are before or could come before the Court that might affect the outcome of the proceedings or impair the fairness of the proceedings or trial of any person.
- 2.4. A judicial officer shall disqualify himself or herself from participating in any proceedings in which he or she is unable to decide the matter impartially or where it would appear to a reasonable observer that the judicial officer is unable to decide the matter impartially. Such instances include but not limited to:
 - (a) proceedings where the judicial officer, depending on the circumstances, has the same ethnic or cultural background as the parties in the proceedings.²
 - (b) where the judicial officer is related³ to or is a personal friend to a party in the proceedings.
 - (c) situations where the judicial officer is personally hostile or has a personal bias against a party or parties in the proceedings;
 - (d) where the judicial officer holds strong views on the issue before the court; or where the judicial officer has personal knowledge of disputed evidentiary facts in the proceedings.
 - (e) proceedings where the judicial officer or a member of his or her family has a close personal or financial interest in the outcome of the proceedings.

² Ethnicity and cultural background has been raised by judicial officers during consultations in March 2008 in Solomon Islands. By way of example, a magistrate born in Gizo may hear cases in Gizo (in the same cultural group) but if that same magistrate on circuit in Auki had a litigant from Gizo (in the same cultural group) before the court, then, the magistrate may, depending on the circumstances, consider disqualifying himself or herself from hearing the case.

³ See personal relationships defined in the definition section.

- (f) where a close member of the judicial officer's family is politically active and where concern may be raised on the judicial officer's impartiality and detachment from the political process.

Provided that disqualification of a judicial officer shall not be required if, because of urgent circumstances, or circumstances due to geographical isolation during circuit and where no other judicial officer is available, that failure to act could lead to a serious miscarriage of justice.⁴

2.5 A judicial officer disqualified under the above or on any other term shall disclose on the Court record the basis for disqualification and may ask the parties and their lawyers, if represented, to consider, out of the presence of the judicial officer, whether to waive disqualification. If all parties agree to the waiver, the judicial officer shall hear the case.

⁴ **Commentary:** If a judicial officer considers that disqualification is the proper course of action, the judicial officer should so act. Impartiality denotes absence of bias or prejudice. A number of issues raised by judicial officers during consultation in Solomon Islands in March 2008 include:

- **Sharing the same transport with prosecutors and litigants whilst on circuit.**

The question is, does the sharing of transport influence the outcome of the case or likely to influence the judicial officer's decision in any way?

The ultimate question is whether a fair minded observer might reasonably believe that the judicial officer will not be impartial in resolving the case. If the answer is in the affirmative, the judicial officer should self disqualify. In such situations, the opportunity should also be given in the first instance to the parties to make submissions with respect to disqualification. If there are no objections, the judicial officer should proceed with the case. This process to be reflected on the case record.

- **Participation in religious activities and fund raising.**

There is a wide range of religious activities that judicial officers, as members of the congregation, may become involved. When engaging in such activities, judicial officers should be aware of the standards of judicial office and regulate the extent of their engagements accordingly.

Public fund raising can be problematical and a judicial officer should avoid any involvement in public fund raising as it might create a perception that advantage is being taken of the judicial office. (*Australian Guide to Judicial Conduct*).

- **Gifts and customary gifting**

It is necessary to make a distinction between gifts given by family members and close friends to the judicial officer in his or her personal capacity e.g. birthdays, and customary gifts of food and handicrafts such as baskets and mats from gifts that might relate to the functions of judicial office. Where a judicial officer is of the opinion that a gift given could relate to the judicial officer's position and to influence the making of a favorable court decision, it should be avoided.

- **Visits to bars and night clubs**

Visiting bars, night clubs and similar facilities, consuming alcohol and being drunk in public places, although a matter for individual judicial officers, can erode public confidence in the judiciary. Note needs to be taken of the public's perception of the conduct of judicial officers as close association with persons who are litigants or potential litigants could have a detrimental effect on the impartiality and integrity of the judicial officer and the judiciary.

3.0 PRINCIPLE INTEGRITY

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

Application

3.1 A judicial officer should ensure that his or her conduct is above reproach in the view of a reasonable, fair-minded and informed person.

3.2 The behaviour and conduct of the judicial officer must reaffirm the public's faith in the integrity of the judiciary.⁵

⁵ **Commentary:** Integrity means honesty, soundness of character and uprightness.

The difficulty with paragraphs 3.1 and 3.2 above is that it does not provide adequate information on what activities are prohibited. There is a wide range of conduct which cannot be covered here and it has been stated that it might be unwise to do so. The application of this Principle is therefore written in general terms.

Principle 1 and Principle 2 gives context to the other Principles. The Principle of Integrity is not relied upon solely as the Principles of Independence and Impartiality are often cited together. Any violation of these Principles also impairs the integrity of the judiciary.

Lack of integrity undermines public confidence in the judiciary. An honourable, independent and impartial judiciary is indispensable to justice in our society. This requires establishing, maintaining and enforcing high standards of conduct and to personally observe those standards, in order to preserve the integrity and independence of the judiciary. Observing the high standards of conduct promotes public confidence in the integrity and independence of the judiciary.

4.0

PRINCIPLE

PROPRIETY

Propriety and the appearance of propriety are essential to the performance of all of the activities of a judicial officer.⁶

Application

- 4.1 A judicial officer should freely and willingly accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, a judicial officer should conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.2 A judicial officer should, in his or her personal relationship with members of the legal profession who practice regularly in his/her court, avoid situations which might give rise to a reasonable suspicion of favoritism.
- 4.3 A judicial officer should not participate in the determination of a case which involves any member of the judicial officer's family.
- 4.4 A judicial officer, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights and freedoms, a judicial officer should always maintain and preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

⁶ Commentary

Propriety means fitness, rightness and correctness of behaviour or morals. Propriety and the appearance of propriety, both professional and personal, are essential elements of the judicial officer's life. Improper conduct includes creating or acquiescing in any appearance of impropriety. The concerns raised during interviews in Solomon Islands in March 2008 revolved around personal conduct, the frequency with which judicial officers socialize with members of the public, the legal fraternity, frequenting bars and the level of consumption of alcohol in public places. Such conduct would raise questions of impropriety and impartiality of the judicial officer. The larger the network of persons with whom the judicial officer socializes and associates, the more the risk that any one of the associates is or will be a litigant in the Court. A judicial officer's conduct both in and out of court is often subjected to public scrutiny.

A judge's personal conduct greatly exceeds those of ordinary citizens. The principle of propriety makes clear that judges have responsibilities with regard to their personal conduct. Improper conduct includes but not limited to:

- associating with members of the legal fraternity especially those who frequently appear in court.
- socializing and associating with litigants before the court.
- frequenting public liquor bars and night clubs and socializing with members of the public who are litigants or potential litigants.
- accepting tuition fees and expenses for the Judicial officer or a member of his or her family to attend a course of study or training and paid for by an individual or the organization outside the normal approved providers.

- 4.5 A judicial officer should be well informed and knowledgeable about his or her own personal, fiduciary and financial interests and should be reasonably informed about the financial interests of the members of the judicial officer's family.
- 4.6 A judicial officer should not convey or permit others to convey the impression that anyone is in a special position to improperly influence him or her in the performance of judicial duties.
- 4.7 Confidential information acquired by a judicial officer in his or her official judicial capacity must not be used or disclosed for any purpose other than to the judicial officer's judicial duties.

5.0

PRINCIPLE

EQUALITY

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.⁷

Application

- 5.1 A judicial officer should not in the performance of judicial duties, by words or conduct, show bias or prejudice towards any person or group on irrelevant grounds.
- 5.2 Judicial officers should pay special attention to the right of equality before the law and the right of equal protection and benefit of the law.
- 5.3 A judicial officer should not permit court staff or others subject to the judicial officer's influence, direction or control to differentiate between persons concerned in a matter before the judicial officer, on any irrelevant grounds.
- 5.4 A judicial officer should require lawyers and/or parties in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds (except such as are relevant to an issue in the proceedings and which may be the subject of legitimate advocacy).

⁷ **Commentary:** A judicial officer's duty is to give equal treatment to all parties and to ensure that each party receives a fair hearing. "Irrelevant grounds" is defined in the definition section. The Constitution of Solomon Islands and the law enshrine the principle of equality. The Principle of equality is also reflected in the *Convention on the Rights of the Child* and in the *Convention on the Elimination of all Forms of Discrimination Against Women* to which Solomon Islands is a party. Apart from Constitutional requirements, fair and equal treatment is a core principle in the administration of justice.

Judicial officers are expected to keep themselves informed of developments in society, changes in attitudes, ethnic makeup of the community with the development of new businesses to avoid insensitivity and irrelevant comments that are racist, sexist and inappropriate in order to maintain impartiality.

6.0

PRINCIPLE

COMPETENCE AND DILIGENCE

Competence and diligence are crucial to the due performance of judicial office.⁸

Application

- 6.1 A judicial officer should give precedence to his or her judicial functions over any other activity.
- 6.2 A judicial officer shall not engage in any activity which may adversely affect the diligent discharge of his or her judicial functions.
- 6.3 A judicial officer should perform all judicial duties and shall dispose of all judicial matters, including delivery of reserved decisions, fairly, efficiently and with reasonable promptness.
- 6.4 Judicial Officers should take all reasonable steps to enhance legal knowledge, judicial skills and personal development necessary for the proper performance of judicial duties. For this purpose, training and other facilities should be made available to judicial officers.
- 6.5 Judicial officers shall maintain order, decorum and treat all parties courteously in all proceeding in which he or she is involved.

⁸ **Commentary:** A judicial officer is required to perform his or her function competently and diligently. This means that a judicial officer must have knowledge of the law and skills in managing Court processes Diligence means persistent effort and work. Thus good preparation, sitting in Court on time and delivering decisions within a reasonable time are all parts of being competent and diligent. Comment made during consultations in Solomon Islands over the delays in delivery of judgments may be now addressed in the High Court with **The Solomon Islands Courts (Civil Procedure) Rules 2007 Subordinate Solomon Islands Courts (Civil Procedure) Rules 2007 Subordinate Law SL 2007 (Legal Notice 20). Supplement to the Solomon Islands Gazette 29 February 2008**, which provides:

“Judgment

- 12.30 After the trial, the court must give judgment.
- 12.31 If judgment has not been delivered within 3 months of the date when the trial finished, the registrar must list the proceedings for mention before the judge who conducted the trial and the judge must report on the finalisation of the proceedings.
- 12.32 If Judgment has not been delivered within 3 months of the date the judge reported on finalisation under rule 12.31 of this rule, the registrar must list the proceedings for mention before the judge and the judge must give a further report on the finalization of the proceedings.”

II. HOW TO USE THE CODE OF JUDICIAL CONDUCT

This Code contains key principles to guide the conduct of Judicial Officers in the performance of their functions on the Bench and in their private lives. Although the Code addresses many of the main issues of ethics and conduct, it is by no means comprehensive. Where the Code is silent, the spirit of the Code is to be applied.

Judicial Officers should proactively seek advice from the Head of Jurisdiction about issues of personal concern or where there is some difficulty in determining whether an action is ethical or not. Consultation with the Head of Jurisdiction is encouraged.

III. COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

The Solomon Islands Code of Judicial Conduct is a public document. Adherence to this Code is not only fundamental to the integrity and independence of the Judiciary, but to also maintain public confidence in the Judiciary. Breaches of the Code can be viewed seriously and may lead to consultation and advice or to appropriate action taken by the Head of Jurisdiction.

IV. DEFINITIONS

In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“Judicial Officer” means any person exercising judicial functions, with the exception of the Local Court Justices. The Local Court Justices may however use this Code for guidance purposes.

“Judicial officer’s family” means a judicial officer’s:

First Degree

Spouse

Children

Parents

Brothers and sisters (siblings)

De facto Partner (“02”) (the number “02” is commonly used in Solomon Islands to refer to the de-facto partner as being second to the husband or wife in a relationship).

Second Degree

Grandparents, grandchild, in-laws of the First Degree, uncles, aunties, nephews, nieces and enemies/hostile friends.

Third Degree

Distant relatives or Linesmen/tribe, clans, friends and beyond. For example, in some cultural groups, a cousin, 10 times removed can be considered to be sufficiently close to warrant disqualification.

A judicial officer must disqualify him/herself from hearing cases of or involving family members falling within the above definition. A judicial officer may hear cases falling outside the above definition. Any objection from any party over the relationship between the judicial officer and family members falling outside of the above definition, the Judicial Officer may disqualify him/herself if another judicial officer can be found to hear the case. In exceptional situations, where a judicial officer is unable to transfer the case, the relationship between the Judicial Officer and the litigant must be disclosed on the record and consent of all parties in the case to be sought. If consent is given, the judicial officer can participate in the proceedings. This process must be recorded on the case file.

“irrelevant grounds and irrelevant influence” includes the grounds of race, colour, sex, religion, national origin, disability, age, marital status, sexual orientation, social and economic status and other like grounds.