**Role and Functions of a Judge**

**The Branches of Government**

The Legislative branch of Government makes the rules – the statutes and regulations (the law).

The Executive branch, generally the political party or parties that are governing together with the Public Service administer the rules.

The Judiciary who are responsible for interpreting the “rules” in the context of disputes between citizens and the state and citizens.

And so, the job of a Judge is to apply the law to settle disputes.

Judges must uphold the law. That is, they must honestly and conscientiously apply the law as the Judge believes it to be to the dispute before them. In doing so Judges are upholding the rule of law an essential aspect of a democracy. Finally, the Judge stands between the State and the individual. The Judge’s job is to make sure the State obeys the law like everyone else. The state, whether as the police or a Government Department are not above the law. You as a Judge are there to make sure the citizen is protected from unlawful state action.

The Bangalore Principles set out six basic principles for Judges to be guided by.

1. **Independence**

Judges must be free to decide the cases before them without interference, whether from the State or anyone else. This “independence” is not for the Judge’s benefit – it protects the rule of law. Litigants must be reassured that Judges will not be influenced by anything other than the merits of the case before them. Only then can there be a fair and impartial hearing for all who come before the Courts.

1. **Impartiality**

This means that Judges must do their job without favour, bias or prejudice.

1. **Integrity**

This means that Judges will ensure their behaviour and conduct is above reproach.

1. **Propriety**

Judges will not act improperly.

1. **Equality of treatment**

Judges shall ensure all who appear in Court are treated equally.

**6. Competence and Diligence**

Judges will keep themselves trained, skilled and educated to perform their role. Being a Judge will have priority over all other roles.

**Other Relationships**

*Judges*

Having good relationships with your fellow judges is very important. It will create a supportive environment for all. Support and guidance from fellow Judges can be especially important for new Judges. It is acceptable to discuss a case you have to decide with other Judges. This can be especially so with the management of litigation. However, and this is a big however, the final decision must be yours and yours alone. You can listen to other Judges BUT you must exercise your independent judgment in deciding the case.

*With lawyers*

A friendship with a lawyer is not prohibited and it is not necessary on appointment as a Judge to give up friendship with lawyers. BUT you must never discuss a case before you with a lawyer other than in Court. And if you have a close friendship with a lawyer then you will need to think carefully whether you should disqualify yourself in any case on which the lawyer friend appears in Court (see disqualification process below).

*With friends; family*

You must never discuss a case before you, while it is proceeding, with friends or family. Where a friend or family member appears before you as a witness or a lawyer you will need to consider whether to disqualify yourself.

For example: You might disqualify if a close friend is an important witness in a case.

You might disqualify if the lawyer is a close relative in a contentious case.

*In Court – lawyers / litigants*

You wil need to try to keep a balance between formality and informality. Always address lawyers/witnesses/parties formally – Mr, Mrs, Miss or whatever is preferred.

You set the tone in Court. If you appear angry, aggressive, or nervous then this will be transmitted to the others in the Court and the Court will become a difficult place to manage. Be calm, talk quietly but firmly, take your time to consider matters, don’t interrupt too often and generally wait until someone has had their say before questioning. Don’t speak to lawyers about their case out of Court. Don’t speak to litigants or witnesses about the case out of Court. Ensure all parties and their lawyers (if any) are present in Court (or have had the chance to be present) when you hold a hearing about the case.

Never add to a decision given in Court or in a reserved decision.

*Self-Represented Litigants*

Once again have no contact out of Court. As we have said always be patient and courteous. It is difficult to strike the right balance between helping a self-represented litigant and taking over their case. Too much help and you take over their case, too little and you may not know or understand their case.

You should have prepared before the case begins a clear explanation of the process of hearing - for example which party starts, calling of witnesses, submissions etc. Do not use legal terms. Be clear about what you expect. If you can understand the self-represented litigant’s case then you can at least direct the litigant toward relevant matters. And this is the most difficult aspect – making sure only relevant matters are dealt with.

*Relationship with Court Staff*

Court staff obviously play a vital role in the efficient running of your Court. You must always treat them with courtesy and respect.

Your relations with them should be friendly but professional. It is not appropriate to have a personal friendship with a Court staff member. Their role is to support you to do your job. And so, it is important you let them do their job. But they must let you do your job. You must not let Court staff interfere at all in your job as a Judge. If an attempt is made to do so you must firmly but politely tell them they must not do so. The Court staff are members of the Executive arm of Government – you are a member of the Judiciary. And so, as we have discussed their job is to provide administration support for carrying out the rules set by Parliament and your job to interpret those rules. You can and should work together co-operatively with Court staff for the efficient running of the Court. But always keep in mind the different roles.

**Judicial Conduct**

**In Court**

This has already been covered. Always have an open mind.

**Bias or Appearance of Bias and Disqualification**

Bias or the appearance of bias justifying disqualification of a Judge from sitting on a case can arise in at least these situations:

* A conflict of interest
* Where a relationship exists between a Judge and a lawyer/witness or party in a case
* An economic interest of a Judge which may be affected by the litigation
* From earlier expressed opinions by a Judge (generally on a controversial question of law).

Generally, the question of whether a Judge should be disqualified will be raised either by the Judge or the lawyer or a litigant. Where you as a Judge know of a situation which could lead to disqualification you MUST disclose the circumstances in full to all parties to the litigation before you.

There are many “tests” for disqualification of a Judge.

One is, “what is it that is said to lead a Judge to decide a case other than on the merits?

Once that is identified then the question is, “What is the connection between the case and the feared deviation?”

Once the question of disqualification is raised the following process can be used:

* Give the lawyers/litigants the chance to make submissions which focus on the test above.
* Then give a ruling either disqualifying or carrying on.

Sometimes it just seems easier to disqualify. But it isn’t. It places the obligation on another Judge to hear the case. Judges who disqualify too easily can enable judge shopping – litigants trying to get the Judge they think will best suit their case.

**Diligence at Work**

Three points to this vital aspect:

* Have prompt and on time hearings and hear the cases efficiently.
* Ensure you have a fair share of the work of your Court.
* Ensure your reserved judgments are delivered in a timely way. For example - never more than 3 months.

If you do these three things the quality of justice will be enhanced.

**Private Conduct**

* Do not accept gifts from litigants or lawyers who appear before you in Court.
* Do not use your Judicial Office to advantage yourself, your family or friends.
* Avoid public controversy, for example you should have no involvement in politics or in controversial issues.
* Take great care in joining public organisations – are they controversial? Mostly ordinary social sports clubs will be ok. It can be better to avoid becoming an office-holder.

**Contempt of Court**

There are many different kinds of contempt of court. We are concerned with only one – which is where there is disruptive behaviour in the Courts that interrupts the Court case and interferes with your ability to resolve the case before you effectively and efficiently.

The first step should be to check whether there is a statutory provision in your jurisdiction dealing with contempt. If so use it! If not then you have the inherent power to control your Court and to deal with contempt of Court. Some hints.

There is much to be said for judicial blindness and deafness. Sometimes you see something objectionable or hear something. If it is not too serious or not a direct challenge to you and your authority it may be best to simply ignore it. IE to be blind and deaf.

Sometimes offensive behaviour can best be dealt with by the Judge adjourning and taking the heat out of the issue. This can be especially important if there is any threat to you or to Court staff.

Sometimes foolish behaviour in Court can be met by your ordering the person removed from Court (assuming they are not the defendant or a litigation party). Before you do this, you must be sure there is someone – preferably a policeman who can carry out your order.

Finally, if there is a clear case of contempt which cannot be dealt with any other way then we suggest the following process:

* First offer the person the chance to apologise for what they have done. If they do so then that is generally the end of the matter.
* If not then tell the person what the contempt is.
* Give them a chance to see a lawyer.
* Hear submissions from the lawyer.
* Impose punishment. If prison then it should be a matter of days.

**Extract from the *PJSI Judicial Decision-making Toolkit*, 2020**.

The full Toolkit is available here: <https://www.fedcourt.gov.au/pjsi/resources/toolkits>