

NO. 1 OF 2011

JUDICIAL SERVICE ACT

SUBSIDIARY LEGISLATION

List of Subsidiary Legislation

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JUDICIARY FUND REGULATIONS, 2012

[L.N. 35/2012.]

Revoked by Act No. 16 of 2016, s. 15.

JUDICIAL CODE OF CONDUCT AND ETHICS

[L.N. 132/2016.]

PART 1 – PRELIMINARY

1. Citation

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

2. Interpretation

In this Code, unless the context otherwise requires —

"confidential information" means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any Judge or magistrate relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations and similar papers;

"Code" means the Judiciary Code of Conduct and Ethics;

"fiduciary interest" includes relationships such as those associated with a business partner, an executor, administrator, a trustee and guardian;

"immediate family" includes, spouse, son, daughter, brother, sister, parent, grandparent, grandchildren, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister or person living in the household of a Judge or judicial officer;

"Judge's family" includes a Judge's spouse, son, daughter, son-in-law, daughter-in-law, or other person who forms part of the Judge's household whether as a relative, companion or employee;

"Judge's spouse" means the wife or husband of a Judge married under any recognized system of law in Kenya;

"judicial officer's family" includes a judicial officer's spouse, son, daughter, son-in-law, daughter-in-law, or other person who forms part of the judicial officer's household whether as a relative, companion or employee;

"judicial officer's spouse" includes any person who is in a relationship with the judicial officer which, but for the absence of marriage, has the character of a relationship between two persons who are married;

"judicial staff member" includes every employee of the judiciary whether casual, permanent, or on contractual basis but does not include a Judge or a judicial officer; and

"primary employment" means the position that ordinarily takes up the normal working hours of the judicial staff member and requires his or her exclusive attention in performing official duties.

3. Application of the Code

This Code applies as follows —

- (a) Part I applies to interpretation of terms;
- (b) Part II applies to Judges only;
- (c) Part III applies to judicial officers only;
- (d) Part IV applies to members of judicial staff only; and
- (e) Part V applies to general enforcement, oversight and implementation of the Code.

PART II – CODE OF CONDUCT AND ETHICS FOR JUDGES

4. Independence

(1) Judicial independence is a constitutional requirement to the rule of law and a fundamental guarantee of fair trial and a Judge shall therefore uphold and exemplify independence in both individual and institutional aspects.

(2) A Judge shall exercise the judicial authority independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

(3) A Judge shall not deviate from the law to appease public clamour, to avoid criticism, or to advance an illegitimate interest.

(4) A judge shall not be improperly influenced by —

- (a) the race, sex, gender, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, nationality, socio-economic status, language or place of birth, or other irrelevant ground of a victim of crime, witness, accused person, plaintiff or defendant;
- (b) the Judge's personal feelings concerning a victim of crime, witness, accused person, plaintiff or defendant; or
- (c) control, direction or pressure from any person or authority claiming to have an interest in a particular case.

(5) A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge has to adjudicate and shall resist and reject any external influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and shall have unfettered freedom to decide a case impartially, in accordance with his or her conscience and the application of the law to the facts.

(6) A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

(7) In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions that the judge is obliged to make independently.

(8) A Judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

(9) A Judge shall exhibit and promote high standards of judicial conduct in order to enhance public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

(10) A Judge who is assigned an administrative role shall promote judicial independence in the discharge of such duties, and shall cooperate with other judges in the discharge of their judicial duties by ensuring a unity of purpose and collegiality.

5. Impartiality

(1) Impartiality is essential to the proper discharge of the judicial office and a Judge shall promote impartiality not only to the decision itself but also to the process by which the decision is made.

(2) Impartiality requires that a judge shall make decisions based on objective criteria, rather than on the basis of bias, prejudice or conferring the benefit to one person over another for improper reasons.

(3) A Judge shall neither initiate nor consider *ex parte* communications on the merits, or procedures affecting the merits of a proceeding that is before, or could come before, the judge except as authorised by law.

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

(5) A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest of fairness of the process, nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

(6) A Judge shall disqualify himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, that is to say if the judge —

- (a) is a party to the proceedings;
- (b) was or is a material witness in the matter in controversy;
- (c) or a member of the judge's family, has an economic or other interest in the outcome of the matter in controversy;
- (d) has personal knowledge of disputed evidentiary facts concerning the proceedings;
- (e) has actual bias or prejudice concerning a party;
- (f) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (g) had previously acted as counsel for a party; or
- (h) is precluded from hearing the matter on account of any other sufficient reason.

(7) Every disqualification of a judge shall be based on a specific reason, to be recorded in writing as part of the proceedings, including an explanation for the judicial officer's recusal on personal reasons.

(8) A disqualification of a judge may be dispensed with if no other judge can deal with the case and if because of urgent circumstances, failure to act could lead to a serious miscarriage of justice, and in the case of a collegiate bench, the decision to dispense with the disqualification of any judge shall be made by the bench.

6. Integrity

(1) Integrity is essential to the proper discharge of the judicial office.

(2) A Judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

(3) The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary and a judge shall uphold the principle that Justice must not merely be done but must also be seen to be done.

(4) A Judge shall not use the judicial office to improperly enrich himself, herself or other person.

(5) A judge shall not knowingly permit a member of the judicial staff or other person subject to the judge's influence, direction or authority, to ask for, or accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

(6) A judge shall not alter the substance of reasons for a decision given orally, or the transcript of evidence or of the summing up thereof.

7. Propriety

(1) Propriety, and the appearance of propriety, is essential to the performance of judicial duties and a judge shall avoid any act that demeans the office.

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

(3) 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.

Judicial Service

[Subsidiary]

(4) A judge shall conform to conventionally accepted standards of behaviour and morality and shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

(5) A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the courts, avoid situations which might reasonably give rise to suspicion or appearance of favouritism or partiality.

(6) A Judge shall not allow a member of the legal profession to use his or her residence to receive clients.

(7) A Judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

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

(9) A Judge shall inform himself or herself about the judge's personal fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

(10) A Judge shall not serve as an administrator, executor or trustee of any estate except the estate of a member of the judge's family only if such service will not interfere with the proper performance of judicial duties.

(11) A Judge shall refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial office, or involve the Judge in transactions with lawyers and other persons likely to come before the court in which the Judge serves.

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

(13) Subject to the provisions of any other law, 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:

Provided that no salary may be payable to a Judge for the performance of any of the activities mentioned under this sub rule.

(14) A Judge shall not practice law by offering legal advice or drafting pleadings for litigants or members of the public, whether for a fee or free of charge while the holder of judicial office.

(15) Subject to any legal requirements relating to public disclosure, a Judge may receive a token gift, award, honoraria, allowance or benefit as appropriate to the occasion on which it is made provided that 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.

(16) A Judge shall primarily speak through his or her judgments and shall not enter into correspondence with a litigant or other person relating to a matter before or likely to come before the Judge.

(17) A Judge shall not —

- (a) solicit contributions from the public for whatever cause; or
- (b) participate in a public collection of funds contrary to any law.

Provided that —

- (i) a Judge may participate in voluntary fund-raising only if the same does not reflect adversely upon the Judge's impartiality and if it does not interfere with the performance of the Judge's judicial duties or compromise the Judge's impartiality in a future case; and
- (ii) where a Judge contributes towards or attends such fund-raising, the Judge shall not play a central part in its organization or preside over the same.

8. Equality and non-discrimination

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

(2) A Judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, language, place of birth or other like station herein referred to as "irrelevant grounds".

(3) A Judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group.

(4) A Judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation.

(5) A Judge shall not knowingly permit court staff or others subject to the Judge's influence, direction or control to differentiate between persons concerned, in a matter before the Judge.

(6) A Judge shall not hold membership in any organization that practises invidious discrimination, and shall not use the benefits or facilities of such an organization to any significant extent.

9. Professionalism

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

(2) The judicial duties of a Judge take precedence over all other activities.

(3) A Judge shall devote the Judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

(4) A Judge shall take reasonable steps to maintain and enhance the Judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to Judges.

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

(6) A Judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

[Subsidiary]

(7) A Judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the Judge deals in an official capacity. The Judge shall require similar conduct of advocates, court staff and other persons before the court.

(8) A Judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

(9) A Judge shall, within the limits of his or her powers, adopt procedures to facilitate and promote access to justice as envisaged in the Constitution of Kenya.

(10) Subject to individual independence of a Judge, a Judge who serves in a collegiate bench shall maintain orderly consultations with colleagues for purposes of arriving at a judicious decision.

10. Accountability and prohibition against corrupt practices

(1) Corruption among members of the judiciary undermines the rule of law and affects public confidence in the judicial system.

(2) A Judge or any member of the Judge's family, shall neither ask for, nor accept, any bribe, gift, loan, hospitality, advantage, privilege 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, or which might reasonably be perceived as being intended to influence the performance of judicial duties.

(3) A Judge shall maintain an honest and impeccable conduct in and out of court, whether in official or private capacity and shall at all times uphold the dignity and integrity of the judiciary to enhance confidence of the public, the legal profession and litigants in the impartiality of the Judge and of the judiciary.

11. Prohibition against sexual harassment

(1) Sexual harassment in the workplace or other professional or social situation undermines the dignity of the victim and compromises the ability to perform the duties of the office.

(2) A Judge shall keep himself or herself informed about and observe the laws and policies relating to sexual harassment.

(3) A Judge shall not sexually harass a fellow member of staff or any other person in the workplace, or other professional or social situation.

(4) For purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, the Employment Act and the Public Officer Ethics Act and includes doing any of the following, if the person doing it knows or ought to know that it is —

- (a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (b) exerting unwarranted pressure for sexual activity or favours;
- (c) making intentional or careless physical contact that is sexual in nature; or
- (d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, innuendos regarding another person's sexuality:

Provided that consensual sexual behaviour that is based on mutual attraction and reciprocated shall not constitute sexual harassment.

(5) An action may be considered to constitute sexual harassment if it is so frequent and severe that it creates a hostile or offensive work environment and results in an adverse employment decision including the victim being dismissed, transferred, demoted or forced to quit the job.

(6) Investigations into allegations of sexual harassment shall be conducted in utmost confidentiality and shall take into account the circumstances of a particular case.

PART III – CODE OF CONDUCT AND ETHICS FOR JUDICIAL OFFICERS

12. Independence

(1) Judicial independence is a constitutional requirement to the rule of law and a fundamental guarantee of fair trial and a judicial officer shall therefore uphold and exemplify independence in both individual and institutional capacities.

(2) A judicial officer shall exercise the judicial authority independently on the basis of the judicial officer's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

(3) A judicial officer shall not deviate from the law to appease public clamour, to avoid criticism, or to advance an illegitimate interest.

(4) A judicial officer shall not be improperly influenced by —

- (a) the race, sex, gender, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, nationality, socio-economic status, language or place of birth, or other irrelevant ground of a victim of crime, witness, accused person, plaintiff or defendant;
- (b) the judicial officer's personal feelings concerning a victim of crime, witness, accused person, plaintiff or defendant; or
- (c) control, direction or pressure from any person or authority claiming to have an interest in a particular case.

(5) A judicial officer shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judicial officer has to adjudicate and shall resist and reject any external influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason, and shall have unfettered freedom to decide a case impartially, in accordance with his or her conscience and the application of the law to the facts.

(6) A judicial officer shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

(7) In performing judicial duties, a judicial officer shall be independent of judicial colleagues in respect of decisions that the judicial officer is obliged to make independently.

(8) A judicial officer shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

(9) A judicial officer shall exhibit and promote high standards of judicial conduct in order to enhance public confidence in the judiciary, which is fundamental to the maintenance of judicial independence.

(10) A judicial officer who is assigned an administrative role shall promote judicial independence in the discharge of such duties, and shall cooperate with other judicial officers in the discharge of their judicial duties by ensuring a unity of purpose and collegiality.

13. Impartiality

(1) Impartiality is essential to the proper discharge of the judicial office and a judicial officer shall promote impartiality not only to the decision itself but also to the process by which the decision is made.

(2) Impartiality requires that a judicial officer shall make decisions based on objective criteria, rather than on the basis of bias, prejudice or conferring the benefit to one person over another for improper reasons.

(3) A judicial officer shall neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits of a proceeding that is before, or could come before, the judicial officer except as authorised by law.

[Subsidiary]

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

(5) A judicial officer shall not knowingly, while a proceeding is before, or could come before, the judicial officer, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process, nor shall the judicial officer make any comment in public or otherwise that might affect the fair trial of any person or issue.

(6) A judicial officer shall disqualify himself or herself in any proceedings in which his or her impartiality might reasonably be questioned, that is to say if the judicial officer —

- (a) is a party to the proceedings;
- (b) was or is a material witness in the matter in controversy;
- (c) or a member of the judicial officer's family, has an economic or other interest in the outcome of the matter in controversy;
- (d) has personal knowledge of disputed evidentiary facts concerning the proceedings;
- (e) has actual bias or prejudice concerning a party;
- (f) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (g) had previously acted as counsel for a party; or
- (h) is precluded from hearing the matter on account of any other sufficient reason.

(7) Every disqualification of a judicial officer shall be based on a specific reason, to be recorded in writing as part of the proceedings, including an explanation for the judicial officer's recusal on personal reasons.

(8) Disqualification of a judicial officer may be dispensed with if no other judicial officer can deal with the case or, if because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

14. Integrity

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(2) A judicial officer shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

(3) The behaviour and conduct of a judicial officer must reaffirm the people's faith in the integrity of the judiciary and a judicial officer shall uphold the principle that justice must not merely be done but must also be seen to be done.

(4) A judicial officer shall not use the judicial office to improperly enrich himself, herself or other person.

(5) A judicial officer shall not knowingly permit a member of the judicial staff or other person subject to the judicial officer's influence, direction or authority, to ask for, or accept, any gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

(6) A judicial officer shall not alter the substance of reasons for a decision given orally, or the transcript of evidence or of the summing up thereof.

15. propriety

(1) Propriety, and the appearance of propriety, is essential to the performance of judicial duties and a judicial officer shall avoid any act that demeans the office.

(2) A judicial officer shall avoid impropriety and the appearance of impropriety in all of the judicial officer's activities.

(3) As a subject of constant public scrutiny, a judicial officer must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

(4) A judicial officer shall conform to conventionally accepted standards of behaviour and morality and shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

(5) A judicial officer shall, in his or her personal relations with individual members of the legal profession who practise regularly in the courts, avoid situations which might reasonably give rise to suspicion or appearance of favouritism or partiality.

(6) A judicial officer shall not allow the use of his or her residence by a member of the legal profession to receive clients.

(7) A judicial officer, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judicial officer shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

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

(9) A judicial officer shall inform himself or herself about the judicial officer's personal fiduciary interests and shall make reasonable efforts to be informed about the financial interests of members of the judicial officer's family.

(10) A judicial officer shall not serve as an administrator, executor or trustee of any estate except the estate of a member of the judicial officer's family only if such service will not interfere with the proper performance of judicial duties.

(11) A judicial officer shall refrain from financial and business dealings that tend to reflect adversely on the judicial officer's impartiality, interfere with the proper performance of judicial duties, exploit the judicial office, or involve the judicial officer in transactions with lawyers and other persons likely to come before the court in which the judicial officer serves.

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

(13) Subject to the provisions of any other law, a judicial officer 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 judicial officer; 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:

Provided that no salary may be payable to a judicial officer for the performance of any of the activities mentioned under this sub rule.

(14) A judicial officer shall not practice law by offering legal advice or drafting pleadings to litigants or members of the public, whether for a fee or free of charge while the holder of judicial office.

(15) Subject to any legal requirements relating to public disclosure, a judicial officer may receive a token gift, award, honoraria, allowance or benefit as appropriate to the occasion on which it is made: provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judicial officer in the performance of judicial duties or otherwise give rise to an appearance of partiality.

[Subsidiary]

(16) A judicial officer shall primarily speak through his or her judgments and shall not enter into correspondence with a litigant or other person relating to a matter before or likely to come before the judicial officer.

(17) A judicial officer shall not —

- (a) solicit contributions from the public for whatever cause; or
- (b) participate in a public collection of funds contrary to any law.

Provided that —

- (i) a judicial officer may participate in voluntary fund-raising only if the same does not reflect adversely upon the judicial officer's impartiality and if it does not interfere with the performance of the judicial officer's judicial duties or compromise the judicial officer's impartiality in a future case; and
- (ii) where a judicial officer contributes towards or attends such fund-raising, the judicial officer shall not play a central part in its organization or preside over the same.

16. Equality and non-discrimination

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

(2) A judicial officer shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, political association, culture, dress, language, place of birth or other like station herein referred to as "irrelevant grounds".

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

(4) A judicial officer shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

(5) 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 concerned, in a matter before the judicial officer, on any irrelevant ground.

(6) A judicial officer shall not hold membership in any organization that practises invidious discrimination on any irrelevant ground, and shall not use the benefits or facilities of such an organization to any significant extent.

17. Professionalism

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

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

(3) A judicial officer shall devote the judicial officer's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

(4) 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, taking advantage for that purpose of the training and other facilities that should be made available, under judicial control, to judicial officers.

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

(6) A judicial officer shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

(7) A judicial officer shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judicial officer deals in an official capacity. The judicial officer shall require similar conduct of advocates, court staff and other persons before the court.

(8) A judicial officer shall not engage in conduct incompatible with the diligent discharge of judicial duties.

(9) A judicial officer shall, within the limits of his or her powers, adopt procedures to facilitate and promote access to justice as envisaged in the Constitution of Kenya.

18. Accountability and prohibition against corrupt practices

(1) Corruption among members of the judiciary undermines the rule of law and affects public confidence in the judicial system.

(2) A judicial officer or any member of the judicial officer's family, shall neither ask for, nor accept, any bribe, gift, loan, hospitality, advantage, privilege 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, or which might reasonably be perceived as being intended to influence the performance of judicial duties.

(3) A judicial officer shall maintain an honest and impeccable conduct in and out of court, whether in official or private capacity and shall at all times uphold the dignity and integrity of the judiciary to enhance confidence of the public, the legal profession and litigants in the impartiality of the judicial officer and of the judiciary.

19. Prohibition against sexual harassment

(1) Sexual harassment in the workplace or other professional or social situation undermines the dignity of the victim and compromises the ability to perform the duties of the office.

(2) A judicial officer shall keep himself or herself informed about and observe the laws and policies relating to sexual harassment.

(3) A judicial officer shall not sexually harass a fellow member of staff or any other person in the workplace, or other professional or social situation.

(4) For purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, the Employment Act and the Public Officer Ethics Act and includes doing any of the following, if the person doing it knows or ought to know that it is —

- (a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (b) exerting unwarranted pressure for sexual activity or favours;
- (c) making intentional or careless physical contact that is sexual in nature; or
- (d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, innuendos regarding another person's sexuality;

Provided that, consensual sexual behaviour that is based on mutual attraction and reciprocated shall not constitute sexual harassment.

(5) An action may be considered to constitute sexual harassment if it is so frequent and severe that it creates a hostile or offensive work environment and results in an adverse employment decision including the victim being dismissed, transferred, demoted or forced to quit the job.

(6) Investigations into allegations of sexual harassment shall be conducted in utmost confidentiality and shall take into account the circumstances of a particular case.

[Subsidiary]

PART IV – THE CODE OF CONDUCT AND
ETHICS FOR MEMBERS OF JUDICIAL STAFF**20. Performance of duties**

(1) A judicial staff member shall at all times perform official duties properly and to the utmost of his or her ability and with diligence, and shall commit themselves exclusively to the business and responsibilities of the office during working hours.

(2) A judicial staff member shall expeditiously enforce rules and implement orders of the court within the limits of their authority.

(3) A judicial staff member shall perform their responsibilities to the public in a timely, impartial, diligent and courteous manner.

(4) In performing official duties, a judicial staff member shall not discriminate, nor manifest by word or conduct, bias or prejudice based on race, colour, sex, religion, conscience, belief, culture, dress, language, birth, ethnic or social origin, disability, age, marital status, social or economic status or other like causes.

(5) A judicial staff member shall not discriminate by dispensing special favours to anyone. Judicial staff member shall not allow kinship, rank, position or favours from any party or person to influence official acts or duties.

(6) A judicial staff member shall not alter, falsify, destroy or mutilate, or fail to make required entries on, any record within their control. This provision does not prohibit the alteration or expunction of records or documents pursuant to a court order.

(7) A judicial staff member shall not recommend private advocates to litigants, prospective litigants, or anyone dealing with the judiciary.

(8) A judicial staff member shall avoid close personal association with lawyers, litigants or their agents and other court users, where such association may reasonably give rise to suspicion or appearance of favouritism.

(9) A judicial staff member is not precluded from responding to inquiries concerning court procedures, but they shall not give legal advice.

(10) A judicial staff member shall not, while on official duty, perform duties outside their primary employment.

(11) A judicial staff member shall abide by the professional requirements of the officer's profession.

21. Confidentiality

(1) A judicial staff member shall not disclose to any unauthorized person any confidential information acquired while employed in the judiciary, whether such information came from authorized or unauthorized sources.

(2) Confidential information available to specific individuals by reason of a written law, court rule or administrative policy shall be provided only by judicial staff member authorized to do so.

(3) A judicial staff member shall report confidential information to the appropriate authority when they reasonably believe this information is or may be evidence of a violation of law or of unethical conduct. Judicial staff member shall not be disciplined for disclosing such confidential information to an appropriate authority.

(4) A judicial staff member shall not initiate ex parte communication with litigants, witnesses or advocates on behalf of a Judge, judicial officer, or any other person.

(5) A judicial staff member shall not, unless authorised —

- (a) access information contained in any file, computer system or program;
- (b) make any input, alteration, modification, deletion, suppression or generation of any information concerning a matter before the court;
- (c) cause any interference, hindrance, impairment or obstruction with the functioning of a computer system; or

- (d) copy, transfer, share or move information contained in any file, computer or other medium; or
- (e) leak or disclose any court decision on any matter, before delivery by the court.

(6) A former judicial staff member shall abide by the law relating to communication of official information and shall not, unless authorized under the law, disclose confidential information acquired during employment in the judiciary when disclosure by current judicial staff member of the same information would constitute a breach of confidentiality.

22. Conflict of Interest

(1) A conflict of interest exists when —

- (a) a judicial staff member's objective ability or independence of judgment in performing official duties is impaired or may reasonably appear to be impaired; or
- (b) a judicial staff member, his or her immediate family, or his or her business or other financial interests, would derive financial gain because of the officer's position.

(2) A judicial staff member shall avoid conflicts of interest in the performance of official duties. A judicial staff member is required to exercise utmost alertness on conflicts of interest, and shall disclose conflicts to an appropriate authority, and terminating them when they arise.

(3) Conflict of interest does not exist if any benefit accrues to a judicial staff member as a member of a profession, business or organization to the same extent as any other member of such profession, business or organization who does not hold a position within the judiciary.

(4) A judicial staff member shall not —

- (a) enter into any contract with the judiciary for services, supplies, equipment, or lease or sale of property, apart from the employment contract relating to the judicial staff member's position; nor use that position to assist any member of the judicial staff member's immediate family in securing a contract with the judiciary in a manner not available to any other interested party;
- (b) participate in any official action involving a party with whom either a judicial staff member or any member of the judicial staff member's immediate family is negotiating for future employment;
- (c) knowingly influence or recommend for employment any member of the judicial staff member's family; or
- (d) solicit or accept any gift, loan, hospitality, advantage, privilege or favour under circumstances from which it is, or could be, reasonably inferred that a major purpose of the donor is to influence the judicial staff member in performing official duties.

(5) The position in the judiciary of every judicial staff member shall be such member's primary employment.

23. Prohibition of improper enrichment

(1) A judicial staff member shall not use or attempt to use his or her official position to secure unwarranted privileges or exemptions for, or to confer any corrupt or unfair advantage upon, himself or herself or any relation or associate.

(2) A judicial staff member shall not request or accept any fee, compensation, or benefit of any kind, as a condition for the performance of his or her duties, for himself or herself or on behalf of any person, on account of anything done or omitted to be done by him or her in the discharge of the duties of his or her office.

(3) A judicial staff member shall not practice law by offering legal advice or drafting pleadings for litigants or members of the public, whether for a fee or free of charge while the person is the holder of a judicial office.

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(4) A judicial staff member shall not appropriate to himself or herself or disburse by way of loan to himself or herself or any person, court fees, fines or other funds in his or her custody.

(5) A judicial staff member shall not engage in any type of trade or business in court premises during office hours, or encourage others to do so.

(6) A judicial staff member shall not offer legal advice, canvass, tout or present himself or herself in such a manner as to give the impression of being capable of influencing the course of justice.

24. Accountability and prohibition against corrupt practices

(1) Corruption among members of the judiciary undermines the rule of law and affects public confidence in the judicial system.

(2) A judicial staff member shall perform his or her judicial duties without favour, bias or prejudice and shall not be influenced by any improper motive or corrupt practice.

(3) A judicial staff member shall maintain an honest and impeccable conduct in and out of court, whether in official or private capacity, and shall at all times uphold the dignity and integrity of the judiciary to enhance the confidence of the public, the legal profession and litigants in the impartiality of the judicial staff member and of the judiciary.

(4) A judicial staff member or any member of the Judicial staff member's family, shall neither ask for, nor accept, any bribe, gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done by the Judicial staff member in connection with the performance of judicial duties, or which might reasonably be perceived as being intended to influence the performance of judicial duties.

25. Prohibition of sexual harassment

(1) A judicial staff member shall keep himself or herself informed about, observe and promote the Kenyan Judicial Sexual Harassment Policy.

(2) A judicial staff member shall not sexually harass a fellow member of staff or any other person in the workplace, or other professional or social situation.

(3) For purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, the Employment Act and the Public Officer Ethics Act and includes doing any of the following, if the person doing it knows or ought to know that it is —

- (a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (b) exerting unwarranted pressure for sexual activity or favours;
- (c) making intentional or careless physical contact that is sexual in nature; or
- (d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, innuendos regarding another person's sexuality:

Provided that consensual sexual behaviour that is based on mutual attraction and reciprocated shall not constitute sexual harassment.

(4) An action may be considered to constitute sexual harassment if it is so frequent and severe that it creates a hostile or offensive work environment and results in an adverse employment decision including the victim being dismissed, transferred, demoted or forced to quit the job.

(5) Investigations into allegations of sexual harassment shall be conducted in utmost confidentiality and shall take into account the circumstances of a particular case.

26. General

(1) A judicial staff member who intends to maintain a bank account outside Kenya shall inform the Commission of such intention before opening the account.

(2) Where a judicial staff member maintains a bank account outside Kenya, that judicial staff member shall annually supply the Commission with the bank statement relating to that account.

(3) A judicial staff member shall not seek or accept a personal loan or benefit in circumstances that compromise the integrity of the officer.

(4) A judicial staff member shall take all reasonable steps to ensure that property that is entrusted to his or her care is adequately protected and not misused or misappropriated.

(5) Every judicial staff member shall, once every two years, submit to the Commission a declaration of the income, assets and liabilities of that officer, his or her spouse or spouses and his or her dependent children under the age of eighteen years in the manner and procedure applicable for such declarations under any other law.

(6) A judicial staff member shall not —

- (a) solicit contributions from the public; or
- (b) participate in a public collection of funds contrary to any law.

Provided that —

- (i) a judicial staff member may participate in voluntary fund-raising only if the same does not reflect adversely upon the judicial staff member's integrity and if it does not interfere with the performance of the judicial staff member's duties; and
- (ii) where a judicial staff member contributes towards or attends such fund-raising, the judicial staff member shall not play a central part in its organization or preside over the same.

(7) Pursuant to section 52 of the Leadership and Integrity Act, Chapter Six of the Constitution and any other law relating to public officers shall, with necessary modifications, apply to a judicial staff member.

PART V – ENFORCEMENT, OVERSIGHT AND IMPLEMENTATION OF THE CODE

27. Breach of the code

A breach of this Code may amount to misconduct for which appropriate lawful action may be taken.

28. Institutional framework for implementation of the Code

(1) The Chief Justice may, from time to time, issue guidelines and directions on the oversight and implementation of the Code including the lodgement and resolution of complaints against Judges, judicial officers and members of staff of the judiciary.

(2) Without limiting the generality of sub rule (1), the Commission and the Chief Justice may prescribe administrative and procedural mechanisms including measures —

- (a) to promote compliance, and the implementation of the inspirational aspects of the Code, through mentorship, counselling, and promotion of employee wellness;
- (b) to establish collegial peer review panels for resolution of complaints against Judges through the offices of the President of the Court of Appeal, the principal Judges and presiding Judges;
- (c) to resolve complaints against judicial officers and members of staff, through the offices of the presiding Judges, station and division heads and the Registrars;
- (d) to facilitate the referral of complaints to and from other institutions including the Commission, the Commission for Administrative Justice and the judicial offices;
- (e) to ensure efficient disposal of complaints within set time frames, appoint ethics officers and establish appropriate mechanisms;

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- (f) to set up suitable administrative framework, including an advisory peer support mechanism to ensure compliance with the Code; and
- (g) to ensure complete confidentiality in the resolution of complaints.

(3) A peer review panel set up under this rule shall, to the extent possible attempt to reach a consensus and report to the appointing authority.

29. Signing and subscription to the Code

A Judge, judicial officer and member of staff of the judiciary shall sign and subscribe to this Code.

30. Code to supplement other legal requirements

(1) The provisions of this Code apply in addition to, and not in derogation from, the requirements of any other law relating to code of conduct and ethics.

(2) For purposes of —

- (a) section 5 of the Public Officer Ethics Act, 2007;
- (b) section 37 of the Leadership and Integrity Act; and
- (c) section 17 of the Public Service (Values and Principles) Act, 2015,

this Code shall be the prescribed specific Code for the Judiciary through which the requirements of the three Acts are given effect.

(3) This Code is further intended to —

- (a) give effect to Articles 168 (1) (b) and 172 (1) (c) of the Constitution;
- (b) give effect to the Bangalore Principles of Judicial Conduct as adopted by the Judicial Group on Strengthening Judicial Integrity, and revised at the Round Table Meeting of Chief Justices held at the Peace Palace, in the Hague from the 25th to the 26th of November, 2002; and
- (c) supplement and not derogate from the General Leadership and Integrity Code for State officers prescribed under Part II of the Leadership and Integrity Act, and any other law and conduct which is intended to bind judges and judicial officers.

30. Review of the Code

(1) The Commission and the Chief Justice may, from time to time, review this Code.

(2) The Judicial Service Code of Conduct and Ethics issued under section 5 (1) of the Public Officer Ethics Act, 2003 is hereby revoked.

