

JUDICIAL ETHICS

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Ethics is a subset of culture. While culture is the sum total of the expression of the collective mind, emotions and character of a people exhibited in the way they behave and what they will accept or reject, ethics form the body of moral precepts, principles and values that under gird this culture. Ethics prescribe the behavior code that the group demands because without it, their very development, health and wealth may be threatened. This means that the body of ethics is developed from the internal prescriptions of society, what they perceive to be important for their well being and even survival. Because it is developed from belief systems, it usually starts as unwritten and may become codified to ensure compliance and still debate.

As a society that has opted to guide its progress with the rule of law, the Ghanaian Judiciary has been given the privilege of being the hand of the society – uprooting breaches of law and upholding compliance with the law. Because of this central role given to the Judiciary, and the intrinsic manner in which any body of ethics is developed, it is imperative that Judges know, accept and inculcate the precepts and principles required of them to ensure a smooth partnership with the very society that upholds the privilege given to Judges. The body of principles has been codified in the Code of Conduct for Judges and Magistrates of the Judicial Service of Ghana (The Code). It's a recent addition to the regulations guiding the profession of Judicial Officer.

This discussion of Judicial Ethics requires us to identify and examine the moral precepts and values under girding the Code and which seek to guide the practice of the profession of judicial officer. It is as much a discussion of the philosophy behind the Code as it is a discussion of the written code. The objective of the discussion is to help Judges arrive at a clear map of the territory of Judicial Ethics. The Code divides the discussion of various precepts under 'rules' and provides commentaries on the practical application of the rule. This paper follows the same pattern in structure. Prior to the discussion, we will look at some definitions from **WEBSTERS ENCYCLOPAEDIC UNABRIDGED DICTIONARY OF THE ENGLISH LANGUAGE**

CULTURE

The sum total of ways of living built up by a group of human beings and transmitted from one generation to another

ETHICS

- i. **The body** of moral principles or values governing or distinctive of a particular culture or group
- ii. **A complex** of moral precepts held or rules of conduct followed by an individual or group
- iii. **System** of moral principles
- iv. The **rules of conduct** recognized in respect to a particular class of human actions or group or culture
- v. That **branch of philosophy** dealing with values relating to human conduct with respect to the **rightness and wrongness** of certain actions and to the **goodness and badness** of the motives and ends of such actions
- vi.

RULE ONE

INDEPENDENCE AND INTEGRITY

This rule is supported by the fundamental law of the land – The Constitution. The primary direction of the Constitution on the Judiciary is the need for the independence of the Judiciary to be preserved without any interference specifically from the Executive or Legislature.

ARTICLE 125 (1) reads -

Justice emanates from the people and shall be administered in the name of the Republic by the Judiciary which shall be independent and subject only to this Constitution’.

ARTICLE 125(3) states –

The judicial power of Ghana shall be vested in Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President and Judiciary shall be given final judicial power.

The Rule

‘An independent and honorable Judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct, and should personally observe those standards so that the integrity and independence of the judiciary is preserved’.

Practical application

- a. A Judge must act without fear or favor in the writing of judgments and rulings
- b. A Judge must stay within the law in arriving at any decision

- c. Independence is linked to integrity – which requires that Judges deliver decisions that are consistent with the law, the facts and the personal evaluation of the case by the Judge on all occasions
- d. A Judge shall not be swayed by partisan interests, public clamor or fear of criticism

RULE TWO PROPER CONDUCT AND AVOIDANCE OF IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY

The Rules

- A. A judge shall respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary
- B. A Judge shall not allow relationships to influence the Judge's judicial conduct or judgment.
- C. The maintenance of the prestige of the Judicial office is important to separation of powers of executive and legislature
- D. A Judge must not be a member of an organization that practices invidious discrimination based on race, sex, religion, national origin, ethnicity, or sexual orientation
- E. Being found guilty of a criminal offence or fraud or breach of trust shall be deemed to be breach of the Code

Practical Application

CONDUCT

- a. Prohibition on what is regarded as improper or the appearance of improper activity applies to both personal and professional conduct
- b. A Judge should expect to be the subject of constant public scrutiny and so must accept restrictions against their conduct at all times
- c. A minor infraction such as motor offence is not deemed to be breach of the Code.

RELATIONSHIPS

- a. Relationships that must not influence judgment or judicial conduct include family, social, political or any other relationship. Improper influence is using judicial position to gain advantage in a suit involving relations
- b. A Judge must avoid developing close relationship with litigants, lawyers and prosecutors working in the Judge's court.

USE OF PRESTIGE

- c. A Judge must distinguish between the proper and improper use of the prestige of office in all activities. The Judge must not lend the prestige of judicial office to advance their private interest or that of others
- d. Judge cannot convey or permit others to convey the impression that they are in a position to influence the Judge
- e. When stopped for lawful reason by the police such as breach of traffic offence, alluding to Judgeship to gain preferential treatment is improper use of prestige
- f. Judicial letterhead and title may not be used in conducting personal business. A Judge must retain control in contracts regarding a Judge's writings to avoid exploitation of the office in advertising and other marketing activities
- g. If a Judge gives a reference or recommendation based on personal knowledge, there must be sensitivity to possible abuse of prestige. A Judge must not testify voluntarily as a character witness

RULE THREE

IMPARTIALITY AND DILIGENCE

The Rules

- A. Judicial duties take precedence over all other activities of a Judge.
- B. A Judge shall be faithful to the law and maintain professional competence
- C. A Judge shall maintain order and decorum in proceedings
- D. A Judge shall do Self policing

Practical Application

JUDICIAL DUTIES

- a. A Judge shall hear all matters assigned except those in which s/he is disqualified. A Judge may request not to be assigned particular class of cases because of strongly held personal or moral beliefs
- b. All judicial duties must be executed without bias or prejudice including speech, gestures and conduct evidencing bias against race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, socioeconomic status
- c. The Judge must require court personnel and lawyers to refrain from exhibiting bias and prejudice. This does not preclude legitimate advocacy
- d. The Judge shall accord all persons with legal interest in the proceedings the right to be heard without initiating, permitting or considering any ex parte communication concerning a pending or impending proceeding except it is authorized by the rules or required for administrative purposes or emergencies
- e. A Judge shall take reasonable steps to avoid receiving from court personnel or other Judges factual information concerning a case, which is not part of the record
- f. No Judge shall consult with another Judge concerning cases pending before one of them when the other has a personal, financial or other interest which would preclude them from hearing that case
- g. A Judge shall dispose of all judicial matters promptly, efficiently and fairly
- h. A Judge is required to abstain from public comment about a pending or impending proceeding before the court but may make public statements on the procedures of the court, general legal principles or what may be learned from the public record
- i. A Judge shall not commend or criticize jurors for their verdict other than in a court order but may express appreciation for their service to the judicial system or community
- j. A Judge shall not disclose or use for any purpose unrelated to judicial duties, information acquired in a judicial capacity including using same for financial dealings or for private gain.
- k. Administrative responsibilities shall be diligently discharged without bias or prejudice and with professional competence
- l. Require staff to observe standards of fidelity and diligence that apply to a Judge
- m. A Judge shall require prompt disposition of cases before other Judges over which you have supervisory authority

ORDER AND DECORUM

- n. Patience and courtesy to litigants, jurors, witnesses, lawyers and demand of similar conduct of court personnel while being efficient and businesslike
- o. A Judge must avoid using the coercive powers of court such as contempt proceedings unless provocation has gone beyond commendable firmness in advocacy or passed the threshold of mere breach of professional etiquette
- p. In committing for contempt, a Judge must weigh the scales as fairly as he can

SELF POLICING

- q. A Judge having knowledge of substantial likelihood of another's violation of code regarding honesty, integrity, or fitness for judicial office may speak with the other Judge
- r. If the Judge remains adamant, then in extreme cases, may report to Chief Justice
- s. Having knowledge of a lawyer's breach of the Code of Ethics of GBA may inform the Secretary of the General Legal Council or take other appropriate action
- t. A Judge shall disqualify themselves from proceeding in cases where one's impartiality might reasonably be questioned – when you have personal bias, have served as a lawyer, is a party, have material knowledge of evidentiary facts, have been or likely to be material witness, close family members are involved. The rule of necessity may override the rule of disqualification
- u. Where the Judge may disclose on the record the basis of disqualification but the parties agree to submit the case before the Judge, s/he must record that agreement and proceed to hear it – but not in cases where the Judge has a fiduciary interest or financial interest

RULE FOUR

JUDICIAL COMPORTMENT, HONOR AND DIGNITY

The Rules

- A. A Judge must be the embodiment of all that is honorable and dignified, live with decorum and propriety
- B. A Judge must wear prescribed clothing in court sessions and appropriately on all occasions

Practical Application

- a. Public indulgence in excess of any kind is not allowed
- b. Judges should be cautiously selective of the company they keep and the places they visit
- c. Appropriate dressing is decent and not calculated to draw undue attention or adverse comment

RULE FIVE

EXTRA JUDICIAL ACTIVITIES NOT TO CONFLICT WITH JUDICIAL OBLIGATIONS

The Rules

EXTRA JUDICIAL ACTIVITIES

Extra judicial activities

- A. Must not cast reasonable doubt on a Judge's capacity to act impartially as a Judge
- B. Demean the judicial office
- C. Interfere with the proper performance of judicial duties

AVOCATIONAL ACTIVITIES

- D. A Judge may engage in activities to improve the law, legal system and administration of justice if the activity does not interfere with the performance of judicial duties
- E. A Judge may engage in quasi-judicial activities such as civic and charitable activities that do not reflect adversely upon their impartiality

GIFTS AND LOANS

- F. A Judge or members of his family shall not accept Gifts and Loans that may interfere with the Judge's judicial obligations

FIDUCIARY

- G. A Judge may not serve as fiduciary if it will interfere with proper performance of his duties

ARBITRATION

- H. A Judge may not act as an Arbitrator outside the performance of his duties under the law

PRACTICE OF LAW

- I. A Judge shall not practice law in a representative capacity

EXTRA JUDICIAL APPOINTMENTS

J. A Judge may accept appointments only as allowed under the Code

Practical Application

- a. A Judge must not become isolated from the community. However, activities that involve expression of bias or prejudice can cast reasonable doubt on impartiality hence the need to be removed from them
- b. Undertaking extra judicial activities must be assessed in the light of the demands of judicial duties
- c. There is the need to protect the courts from involvements in extra-judicial matters that may prove controversial
- d. Quasi judicial activities include speaking, teaching, writing concerning the law; appearing at public hearing before the executive or legislative body in matters concerning the law or administration of justice; serve as a member of an organization of governmental agency devoted to the improvement of the law, may assist in raising funds for such agency but not publicly
- e. Judge may serve as an officer, director or trustee of an educational, religious, charitable, fraternal or civic organization not conducted for economic or political advantage but not solicit for funds for the organization or permit the use of the prestige of the office for that purpose
- f. A Judge should not give investment advice to any organization
- g. A Judge should refrain from financial and business dealings with lawyers, litigants or anyone who can interfere with proper performance of his duties
- h. A Judge may hold and manage investments, including real estate, but may not engage in remunerative activity including the operation of family business
- i. A Judge should manage his investments and financial interest to minimize the number of cases in which he is disqualified

GIFTS AND LOANS

- j. Neither Judges or their family shall accept a substantial Gift, bequest, favor or loan from anyone except gifts incident to a public testimonial; books supplied on complimentary basis for official use; invitations to attend bar-related functions related to improvement of the law
- k. Judges may accept gifts on special occasions such as weddings, engagement, anniversaries but only if commensurate with the occasion and relationship,
- l. Loans must be from a lending institution in its regular course of business and on same terms as the public
- m. Members of families and the Judge may accept any gift or loan if the donor is not a party or person whose interests are likely to come before the Judge or could not reasonably be perceived as intended to influence the Judge

FIDUCIARY

- n. A Judge should not serve in fiduciary capacity such as trustee, administrator, guardian except for the state or trust or person of a family member if the service will not interfere with the proper performance of his judicial duties
- o. He should not serve if it is likely that any proceedings will come before him

ARBITRATION

- p. A Judge shall not act as arbitrator or mediator or perform judicial functions in a private capacity unless expressly authorized by law

PRACTICE OF LAW

- q. A Judge may act for himself or herself in all legal matters

EXTRA JUDICIAL APPOINTMENTS

- r. A Judge should not accept appointment to a governmental committee, commission or other position except when it involves improvement of the law or legal system
- s. A Judge may represent his country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities
- t. A Judge may receive compensation for quasi-judicial and extra-judicial activities permitted by this code

RULE SIX

POLITICAL AND QUASI-POLITICAL ACTIVITY

The Rules

- A. A Judge should refrain from political activity inappropriate to his office

Practical Application

A Judge shall not

- a. Act as a leader or hold office in political organization
- b. Publicly endorse or oppose political candidates
- c. Attend political gatherings or make speeches thereat
- d. Solicit funds for a political organization or candidate or show support through driving a car with a partisan bumper sticker, signing nomination forms, posting a campaign side outside their house, distributing campaign literature or encouraging people to vote or give money to a political party
- e. A Judge retains the right to be a voter
- f. A Judge may engage in political activity as expressly authorized by law
- g. A Judge, in administrative function may engage in planning with members of the executive or legislature

RULE 7

COMPLIANCE WITH THE CODE OF CONDUCT

The Rule

- A. Everyone, whether or not a lawyer, who is an officer of the Judicial Service performing judicial functions such as referee in bankruptcy, special master, court commissioner or magistrate, is a Judge for the purpose of this Code