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**GENERAL:  
JUDICIAL CONDUCT**



# 1 Appointment

## 1.1 All Magistrates

All Magistrates are appointed by the President on the recommendation of the Judicial Services Commission. All recommendations must be based on merit: *s18(1) Judicial Services and Courts Act*.

In order to recommend a person for appointment as a Magistrate, the person must:

- hold a degree in law from a recognised tertiary institution; and
- have suitable legal training or experience: *s18(2) Judicial Services and Courts Act*.

## 1.2 Senior Magistrates

Senior Magistrates are appointed by the President on the recommendation of the Judicial Services Commission. All recommendations must be based on merit: *s18(4) as added by s12 Schedule Judicial Services and Courts (Amendment) Act No 4 of 2003*.

In order to be recommended for appointment as a Senior Magistrate, the person must have three years experience as a Magistrate: *s18(5) as added by s12 Schedule Judicial Services and Courts (Amendment) Act No 4 of 2003*.

## 1.3 Chief Magistrate

One Chief Magistrate must be appointed by the President, on the recommendation of the Judicial Services Commission. The recommendation must be based on merit: *s18(3) Judicial Services and Courts Act*.

In order to be recommended for appointment as Chief Magistrate, the person must have five years experience as a Magistrate: *s19(2) Judicial Services and Courts Act*.

With prior consultation with the Chief Justice and the Registrar, the Chief Magistrate:

- is responsible for the management of the administrative affairs of the Magistrate's Court;
- may issue directions consistent with the Rules of Court with respect to Court practices and procedures;
- must identify training programs for Magistrates;
- must notify the Commission of any matter which affects the employment of Magistrates;
- may discipline Magistrates through counselling;

- is responsible for management and control of Magistrate’s Court personnel;
- must implement all statutory orders relating to Magistrates;
- is responsible for the orderly and expeditious exercise of the Magistrate’s Court jurisdiction and must ensure that:
  - ⇒ the business of the Magistrate’s Court is undertaken in a just and fair manner at reasonable cost;
  - ⇒ all cases are listed, heard and determined as soon as possible; and
  - ⇒ delays in proceedings are avoided through unnecessary adjournments and that reasonable notice is given to parties of changes in hearing dates: *s19(5),(6)* as amended by *ss13,14 Judicial Services and Courts (Amendment) Act No4 of 2003*.

## 2 Ethical Principles

Upon appointment as a Magistrate you have sworn the following two oaths:

### Oath of Allegiance

“I....., do swear that I will well and truly serve and bear true allegiance to the Republic of Vanuatu according to law. So help me God.”

### Judicial Oath

“I....., having been appointed a Magistrate of the Republic of Vanuatu do swear that I will bear true faith and allegiance to the Republic of Vanuatu and will uphold the Constitution and the law, that I will conscientiously, impartially and to the best of my knowledge, judgement and ability discharge the functions of my office and do right to all manner of people after the laws and usages of the Republic of Vanuatu without fear and favour, affection or ill-will. So help me God”.

The Judicial Oath can be divided into parts to illustrate a number of well-established ethical principles of judicial conduct.

### 2.1 “To the Best of My Knowledge, Judgement and Ability Discharge the Functions of My Office”

#### Diligence

You should be diligent in the performance of your judicial duties.

This means you should:

- devote yourself to your judicial duties, including presiding in Court, making decisions and carrying out other tasks essential to the Court's operation;
- bring to each a case a high level of competence and preparation; and
- take steps to enhance the knowledge and skills necessary for your role.

Serving diligently also requires you to deliver decisions to the best of your ability, but also with regard to avoiding any unnecessary delay. To ensure this, you should:

- be familiar with common offences, the extent of your jurisdiction and Court procedures; and
- prepare as much as possible before sitting in Court.

## **2.2 “Do Right”**

### **Integrity**

You should conduct yourself with the utmost integrity to sustain and enhance public confidence in the judiciary.

This means you should:

- make every effort to ensure that your personal and public conduct is above reproach;
- not engage in conduct incompatible with the discharge of your role; and
- encourage and support your judicial colleagues to observe the same high standards.

## **2.3 “All Manner of People”**

### **Equality**

You should conduct yourself and proceedings before you so as to ensure equality according to the law.

This means you should:

- carry out your duties with appropriate consideration for all persons (for example, parties, witnesses, Court personnel and judicial colleagues) without discrimination;
- strive to be aware of and understand differences arising from, for example, gender, race, religious conviction, culture, ethnic background;
- avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;
- in the course of proceedings before you, disassociate yourself from and disapprove of clearly improper comments or conduct by Court staff, counsel, or any other person

subject to your direction. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

## **2.4 “After the Laws and Usages of the Republic of Vanuatu”**

### **Lawfulness**

You must always act within the authority of the law. This means you should:

- not take into account irrelevant considerations when making decisions. Your decisions should only be influenced by legally relevant considerations;
- not abdicate your discretionary powers to another. You must make the decision;
- defend the constitutionally guaranteed rights of the people of Vanuatu.

## **2.5 “Without Fear and Favour, Affection or Ill-Will”**

### **Judicial Independence**

An independent Judiciary is indispensable to justice under the law. You should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

You must:

- exercise your judicial functions independently and free from irrelevant influence;
- reject any attempts to influence your decisions outside of the Court;
- uphold arrangements and safeguards to ensure judicial independence;
- promote high standards of judicial conduct.

### **Impartiality**

In any case in which you have a personal interest or there is actual bias or an apprehension of bias, you must disqualify yourself and direct that the proceedings be heard by another Magistrate: *s21(1) Judicial Services and Courts Act*.

You can disqualify yourself at your own discretion or at the application of a party: *s21(2) Judicial Services and Courts Act*.

If you reject an application for disqualification, you must give the applicant written reasons for the rejection: *s21(4) Judicial Services and Courts Act*.

If the applicant appeals your rejection to the Supreme Court, you must adjourn the proceedings until the appeal has been heard and determined: *s21(3) Judicial Services and Courts Act*.

Justice requires you to in fact be impartial, but also requires you to **appear** to be impartial in your decision making.

To ensure impartiality, you should:

- not allow your decisions to be affected by:
  - ≡ bias or prejudice; or
  - ≡ personal or business relationships or interests;
- as much as reasonably possible, conduct your personal and business affairs so as to minimise the occasions where it will be necessary to disqualify yourself from hearing cases.

Impartiality touches on several different aspects of your conduct.

#### 1. Judicial demeanour

At all times you should maintain firm control of Court processes and ensure all people in the Court are treated with courtesy and respect.

#### 2. Civic and charitable activity

You are free to participate in civic, charitable and religious activities, subject to the following considerations:

- avoid any activity or association that could interfere with the performance of your judicial duties or could reflect on your impartiality;
- do not use your judicial office to advance the causes of others;
- avoid involvement in causes or groups likely to be involved in litigation;
- do not give legal advice.

#### 3. Political activity

You should refrain from conduct which, in the mind of a reasonable, fair-minded and informed person, would undermine confidence in your impartiality with respect to matters that could come before the Courts.

Specifically, you should refrain from:

- membership in political parties and political fundraising;
- attendance at political gatherings;
- contributing to political parties or campaigns;
- taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the Courts, the independence of the judiciary or fundamental aspects of the administration of justice.

#### 4. Conflict of interest

In any case in which you believe you will be unable to act impartially, you must disqualify yourself.

It is impossible to list with certainty each situation where you should disqualify yourself but, as a general rule, you should never hear a case where close family members or friends are parties, witnesses or have an interest in the outcome.

For more distant family or friends, you should ask yourself whether your relationship with the person is one that could lead to bias, or that a reasonable, fair-minded and informed person would have a suspicion of bias. If so, you should disqualify yourself. For example, you should not sit in a case involving a very distant relative if you have a very close relationship with that person.

You must not preside over any case where you may have, or appear to have, preconceived or pronounced views relating to:

- issues in the case;
- witnesses; or
- parties.

For example, if you witness an accident, do not preside over any case arising out of that accident, as you may prefer your own memory over that of the evidence lawfully presented in Court.

Disqualifying yourself is **not** appropriate if:

- the matter giving rise to the perception of a possibility of conflict is trifling or would not support a plausible argument in favour of disqualification;
- no other Magistrates are available to deal with the case; or
- because of urgent circumstances, failure to act could lead to a miscarriage of justice.

If you must disqualify yourself, procedures are in place for your replacement so that the case can be heard in accordance with the law and without the possibility of real or perceived bias.

Alternatively, if it appears impossible to hear a case in the jurisdiction because too many Magistrates must disqualify themselves, report the matter to the Chief Justice.

### **3 Code of Conduct**

As a judicial officer you must always follow the Code of Conduct. A copy of the Code of Conduct had been copied onto the following pages for reference.



## Code of Conduct

### GENERAL

1. Every Judicial Officer must recognize that if he or she accepts a judicial appointment that necessarily will restrict his or her behaviour and activities.
2. The duties set out in these rules must not only be done but be seen to be done.
3. If a Judicial Officer is unsure of how to conduct himself or herself in any circumstances, then he or she must consult the Chief Justice.

### RULE 1

A Judicial Officer must be true and faithful to the oath of allegiance and the Judicial oath.

A Judicial Officer must:

- Uphold the Constitution and the law.
- Discharge the functions of office to the best of his or her knowledge, judgement and ability.
- Do right to all people without fear or favour, affection or ill will.

A Judicial Officer must not:

- Be influenced by the sex, ethnic or national origin, religious belief, political association or socio-economic grouping of any person involved in the execution of his or her duties.
- Be influenced by personal feelings in the execution of his or her duties.

## RULE 2

A Judicial Officer must perform the duties of his or her office with diligence:

- A Judicial Officer must arrange and attend to his or her duties in an efficient and timely manner.
- A Judicial Officer must not allow any outside activities to interfere with the efficient and timely execution of his or her duties.
- A Judicial Officer, in the discharge of his or her duties must have and display professional competence and a clear understanding of the law
- A Judicial Officer must not engage in any other paid activity without proper authorization

## RULE 3

A Judicial Officer must act at all times in a manner which upholds the good name, dignity and esteem of his or her office.

- A Judicial Officer must ensure that he or she conducts all his or her financial and other affairs in a reputable manner. In particular, he or she must only borrow from recognised financial institutions and only if he or she is capable of servicing the loan properly and without hardship to himself or herself or his or her family.
- A Judicial Officer must not commit any criminal offence.
- A Judicial Officer must not become a judgement debtor or be declared bankrupt.

## RULE 4

A Judicial Officer must perform his or her duties with impartiality:

- A Judicial Officer must be free and be seen to be free from any external influence or pressure.
- A Judicial Officer must refrain from consulting or discussing with or seeking views from anyone outside judicial circles when executing his or her duties.

- A Judicial Officer shall disqualify himself or herself from any matter if:
  - (i) he or she has any personal bias or prejudice or knowledge concerning any person or facts involved in any matter before him or her
  - (ii) his or her family or close relation is involved in a matter or might reasonably be said to have a financial or other interest in the matter;
    - unless the matter is urgent and there is no alternative,
    - and the Judicial Officer declares the fact.

#### RULE 5

A Judicial Officer must not use the power vested in him or her by virtue of his or her appointment for any purpose other than the due discharge of his or her duties.

#### RULE 6

A Judicial Officer must act at all times with courtesy and respect for all people.

A Judicial Officer must require lawyers, parties and all other persons with whom he or she comes into contact in the execution of his or her duties to refrain from words or conduct based on prejudice in respect of any person's sex, ethnic or national origin, religious belief, political association or socio-economic grouping unless, and only to the extent, such is necessarily involved in the issues in a case.

#### RULE 7

A Judicial Officer must not put himself or herself in a position which conflicts or might conflict with the discharge of any of the functions of his or her office:

- A Judicial Officer must not give or accept gifts or other benefits in money, kind or services other than in the normal course of family life and personal friendships.
- If an unacceptable gift is sent to a Judicial Officer, it should be passed onto the Registrar to return with an accompanying letter explaining the reasons why it cannot be accepted.
- A Judicial Officer must not give legal advice either for payment or otherwise save to a close relative or personal friend in a non-contentious matter.

## RULE 8

A Judicial Officer must not engage in political activity:

- A Judicial Officer must remain completely apart from politics.
- A Judicial Officer must not make statements to the press or in public of a political nature or which might reasonably be regarded as of a political nature.

## RULE 9

A Judicial Officer must maintain confidentiality at all times:

- A Judicial Officer must not divulge any information concerned with the discharge of his or her duties to the press, the public or any person save those necessarily involved in the judicial system in those duties.
- A Judicial Officer must not communicate with the press or make public statements or give interviews without the consent of the Chief Justice and within the limits of any such consent.
- Press statements shall only emanate from the Chief Justice or the Registrar on the Chief Justice's direction.
- If a Judicial Officer does speak or act in public or at a meeting open to a limited section of the public, then he or she must make it clear in what capacity he or she is speaking or acting.

## RULE 10

A Judicial Officer must seek at all times to maintain the independence of the Judiciary:

- A Judicial Officer must inform the Chief Justice immediately of any activity which he or she proposes to engage in or has engaged in if it might conflict with any of these rules.
- A Judicial Officer must inform the Chief Justice immediately of any breach or suspected breach of these rules by himself or herself or by any other Judicial Officer.

- A Judicial Officer must not directly, indirectly or tacitly utilize or allow to be utilized his or her position for any purpose other than the execution of the functions of his or her office.

## **4 Conduct in Court**

### **4.1 Preparing for a Case**

Ensure you have studied and understood the files you will be dealing with.

Have the relevant legislation at hand.

#### **Criminal Jurisdiction**

- Consider the offences – make sure you know what elements must be proved.
- Be prepared for interlocutory applications that may arise in the course of proceedings.
- Be prepared to deliver rulings at short notice.

#### **Civil Jurisdiction**

- Study the file, sworn statements, etc.
- Identify the issues in dispute and the relief sought.

### **4.2 Courtroom Conduct**

You should exhibit a high standard of conduct in Court so as to reinforce public confidence in the judiciary:

- Be courteous and patient.
- Be dignified.
- Be humble. If a mistake is made you should apologise - there is no place on the Bench for arrogance.
- Continually remind yourself that a party is not simply a name on a piece of paper. The parties are looking to the Court to see justice is administered objectively, fairly, diligently, impartially, and with unquestionable integrity.
- Never make fun of a party or witness. A matter which may seem minor to you, may be very important to a party or witness.

- Show appropriate concern for distressed parties and witnesses.
- Never state an opinion from the Bench that criticises features of the law. Your duty is to uphold and administer the law, not to criticise it. If you believe that amendments should be made, discuss the matter with the Chief Justice.
- Never say anything or display conduct that would indicate you have already made your decision before all parties have been heard.
- Do not discuss the case or any aspect of it outside of the judiciary.

### **4.3 Maintaining the Dignity of the Court**

Ensure that all people appearing before the Court treat it with respect by:

- keeping order in Court;
- being polite and respectful and expecting the same from all people in Court.

Deal effectively with unruly accused persons, parties, witnesses and spectators by:

- being decisive and firm;
- dealing promptly with interruptions or rudeness;
- clearing the Court or adjourning if necessary.

### **4.4 Communication in Court**

#### **Speaking**

- Use simple language without jargon.
- Make sure you know what you want to say before you say it.
- Avoid a patronising and/or unduly harsh tone.
- Generally, do not interrupt counsel or witnesses.
- Always express yourself simply, clearly and audibly. It is important that:
  - ⇒ the party examined and every other party understands what is happening in the Court and why it is happening;
  - ⇒ the Court Clerk is able to hear what is being said for accurate records; and
  - ⇒ the public in the Court are able to hear what is being said.

#### **Active Listening**

- Be attentive and be seen to be attentive in Court.

- Take accurate notes.
- Maintain eye contact with the speaker.

### **Questioning**

You may ask a witness questions to clear up ambiguities in the evidence, but do not conduct the case for the parties. Each party should have the opportunity to re-examine the witness after your questions, and if necessary, the parties should be given an adjournment to prepare for the re-examination.

#### Criminal cases

- You have a wide-ranging power to ask questions but you should use it sparingly as the criminal justice system is based on an adversarial procedure, which requires the prosecution to prove the case. Your role is not to conduct the case for the parties, but to listen and determine.
- You should generally not ask questions while the prosecution or defence are presenting their case, examining, cross-examining or re-examining witnesses.
- You may ask questions at the end of cross-examination or re-examination, but only to attempt to clarify any ambiguities appearing from the evidence. If you do this, you should offer both sides the chance to ask any further questions of the witness, limited to the topic you have raised.
- Never ask questions to plug a gap in the evidence.

#### Civil

- You may ask questions. If parties are unrepresented, you might do this to indicate what is needed to satisfy you and clarify what they are saying.
- Be careful to be neutral when asking questions. Your questions must not show bias to either side.
- Avoid interrupting during submissions. If possible, wait until the party has finished his or her submissions.

### **Dealing With Parties Who Do Not Understand**

- You may frequently be confronted with unrepresented accused persons and parties who do not appear to understand what the proceedings are about.
- It is your responsibility to ensure that the accused understands:
  - the criminal charges faced (criminal) or matters in issue (civil); and
  - the procedures of the Court.

- When dealing with unrepresented accused persons, you should explain to them:
  - ⇒ the nature of the charge;
  - ⇒ the legal implications of the allegations, including the possibility of a prison term if he or she is convicted;
  - ⇒ the right to legal representation.

## **5 Actions Against Magistrates**

As a Magistrate, you are protected from civil actions for any act you do or order in the discharge of your judicial duty, whether the act was within your jurisdiction or not, if you were acting on a belief in good faith that you had the jurisdiction to do the act: *s14 Magistrates' Courts Act*.

See s55 Judicial Services and Courts Act.