



**International Project of Judicial Independence of the  
International Association of Judicial Independence and World Peace**

**JIWP**

***Bologna Milano Global Code of Judicial Ethics 2015***

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**Preamble**

The Universal Declaration of Human Rights, and the International Covenant on Civil and Political Rights and regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions, recognize as fundamental the principle that

everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice, and is also essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society and it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

The primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

The Global Code of Judicial Ethics is intended to clarify standards for ethical conduct of judges. The Code is designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct.

Parallel to the development of national codes of judicial ethics it is very important that a global code of judicial ethics should be adopted. The text is based on and adopted from standards contained in Mt Scopus International Standards of Judicial Independence 2008 , The New Delhi Code of Minimum Standards of Judicial independence 1982 ,Montreal Universal Declaration of The Independence of Justice 1983 , The Bangalore Principles of Judicial Conduct November 2002, the United Nations Basic Principles of Independence of the Judiciary, Mount Scopus Standards of Judicial Independence, The Burgh House Principles of Judicial Independence in International Law (for the international judiciary). Inspiration has also been drawn from the Tokyo Law Asia Principles; Council of Europe Statements on judicial independence, particularly the

Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges by the Council of Europe 1998, and the American Bar Association's revision of its ethical standards for judges. The Draft Global Code is also based on the Code of Judicial conduct for the United States Judges 1973, California Canon of Ethics 2003, Canadian Judicial Council, *Ethical Principles for Judges* (1998),<sup>1</sup> Council of Chief Justices of Australia *Guide to Judicial Conduct* (2002),<sup>2</sup> the Guide to Judicial Conduct (for General Courts)<sup>3</sup>, the Guide to Judicial Conduct 2009 (UK Supreme Court).<sup>4</sup>

The Global Code of Judicial Ethics is adopted as additional essential and complimentary code to the Mount Scopus International Standards of Judicial independence .

## **Part one: National Judges**

### **1. BASIC PRINCIPLES<sup>5</sup>**

1.1 The Global Code of Judicial Conduct reflects and expresses fundamental values and morals which constitute the basis of the acts of judicature and the behaviour and conduct of a judge.

The rules of the code are a crystallization of essential guiding principles which draw from ancient tradition and adapt themselves to contemporary times and place.

A judge shall direct his ways according to the law and in accordance with these rules, and shall at all times place before his eyes the need to maintain the confidence of the public in the judicial branch.

1.2 A judge shall be seen as having breached a rule of the Code of Judicial Conduct in a way allowing submittal of a complaint to the Disciplinary Authority if his conduct constitutes intentional or gross violation of the code reaching the extent of improper conduct in fulfilling his role or conduct which does not befit the status of a judge.

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<sup>1</sup> Accessed at [www.cjc-ccm.gc.ca/cmskib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmskib/general/news_pub_judicialconduct_Principles_en.pdf)

<sup>222</sup> Accessed at [www.aija.org.au/online/GuidetoJudicialConduct.pdf](http://www.aija.org.au/online/GuidetoJudicialConduct.pdf). For the practise in Australia see Mr Justice Thomas' study, *Judicial Ethics in Australia* (2<sup>nd</sup> ed., 1997).

<sup>3</sup> Accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf).

<sup>4</sup> H CJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54.

<sup>5</sup> Israel Rules of Judicial Ethics (2007).

1.2.1 The procedure of disciplinary measures shall be conducted in full transparency including the final judgement.

1.3 Every jurisdiction should establish citizens' complaints procedure to allow citizens to submit complaints against misconduct or improper conduct of judges. The panel of the review body of the complaints must include lay-people who are not judges or former judges; they shall be the majority of the panel.<sup>6</sup>

1.4 To assist in the implementation and interpretation of the code it is strongly recommended that each jurisdiction shall establish advisory committee on ethics which shall receive enquiries from judges and other professional authorities regarding questions of ethics and conduct.

## **2. JUDICIAL INDEPENDENCE<sup>7</sup>**

2.1. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges, whereas it is in fact a cornerstone of the system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law. The judiciary, whether viewed as an entity as a judicial branch or by its individual membership, is and must be seen to be, independent of the legislative and executive branches of government.

The relationship between the judiciary and the other branches should be one of mutual respect, each recognising the proper role of the others. Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

2.2 The judicial oath normally provides: "I will do right to all manner of people after the laws and usages of this Realm, without fear or favour, affection or ill-will." In taking that oath, the judge has acknowledged that he or she is primarily accountable to the law which he or she must administer.

2.3 The oath plainly involves a requirement to be alert to, and wary of, subtle and sometimes not so subtle attempts to influence judges or to curry favour. Moreover, in the proper discharge of

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<sup>6</sup> This amendment must be put in the Mt Scopus Standards of Judicial Independence as well.

<sup>7</sup> UK

duties, the judge must be immune to the effects of publicity, whether favourable or unfavourable. That does not of course mean being immune to an awareness of the profound effect judicial decisions may have, not only on the lives of people before the court, but sometimes upon issues of great concern to the public, concerns which may be expressed in the media.

2.4 Consultation with colleagues when points of difficulty arise is important in the maintenance of standards. In performing judicial duties, however, the judge shall be independent of judicial colleagues and solely responsible for his or her decisions.

### **3. GENERAL ETHICAL STANDARDS<sup>8</sup>**

3.1 Judges may not serve in Executive or Legislative functions, including as:

3.1.1 Ministers of the government; or as

3.1.2 Members of the Legislature or of municipal councils.

3.2 Judges shall not hold positions in political parties

3.3 A judge, other than a temporary or part-time judge, may not practise law.

3.4 A judge should refrain from business activities and should avoid engaging in other remunerative activity,<sup>9</sup> that can affect the exercise of judicial functions or the image of the judge, except in respect of that judge's personal investments, ownership of property, the business activities or ownership of property of family members<sup>10</sup>, or that judge's teaching at a university or a college.

3.5 A judge should always behave in such a manner as to preserve the dignity of the office and the impartiality, integrity and independence of the Judiciary.

3.6 Judges may be organized in associations designed for judges, for furthering their rights and interests as judges.

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<sup>8</sup> Adopted from the Mt Scopus Standards of Judicial Independence 2008. As amended. See Human Rights Watch, *Rigging the Rule of Law: Judicial Independence Under Siege in Venezuela*, Volume 16, No. 3(B) (June 2004) reporting some of allegations of judicial bias in Venezuela. For instance, Attorney General Isaias Rodriguez in May 2004 allegedly described how the country's top administrative court in the past established set fees for resolving different kinds of cases.

<sup>9</sup> ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2).

<sup>10</sup> ABA Model Code of Judicial Conduct (February 2007), Canon 4, Article D(2) discusses family.

3.7 Judge may take appropriate action to protect their judicial independence.<sup>11</sup>

3.8 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.

3.9 Such proceedings include, but are not limited to, instances where

- a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- b) The judge previously served as a lawyer or was a material witness in the matter in controversy; or
- c) The judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.<sup>12</sup>

3.10 A case should not be withdrawn from a particular judge without valid reasons, such as cases of serious illness or conflict of interest. Any such reasons and the procedures for such withdrawal should be provided for by law and may not be influenced by any interest of the government or administration. A decision to withdraw a case from a judge should be taken by an authority which enjoys the same judicial independence as judges.<sup>13</sup>

3.11 Judges shall discourage *ex parte* communications from parties and except as provided by the rules of the court such communications shall be disclosed to the court and to the other party.

3.12 Except in cases of legitimate consultations a judge shall not approach other judges not sitting with him on the same panel on pending cases.<sup>14</sup>

#### **4. SECURING IMPARTIALITY AND INDEPENDENCE<sup>15</sup>**

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<sup>11</sup> This is how the section appears in the Montreal Declaration, section 2.09.

<sup>12</sup> Bangalore Principles of Judicial Conduct

<sup>13</sup> Recommendation N.R(94)12 of the committee of Ministers of the Council of Europe to Member States.

<sup>14</sup> This article was added as an Amendment to the Mt Scopus Standards of Judicial independence in Vienna in 2011. See analysis of the background of the amendment in Christopher Forsyth, 'Accountability of Judicial Service Commission to the Law', in Shimon Shetreet Ed., *Culture of Judicial Independence Rule of Law and World Peace*, 48 (2014)

<sup>15</sup> See Cyrus Das and K. Chandra, Editors, *Judges and Judicial Accountability*, Universal Law Publishing Company Ltd., Delhi.

4.1 A judge<sup>16</sup> shall enjoy immunity from legal actions, except for intentional or gross violations, in the exercise of official functions.<sup>17</sup>

4.2 A judge shall not sit in a case where there is a reasonable suspicion of bias or potential bias.<sup>18</sup>

4.3 A judge shall avoid any course of conduct which might give rise to an appearance of partiality.

4.4 The state shall ensure that in the decision-making process, judges should be independent and be able to act without any restriction, improper influence, inducements, pressures, threats<sup>19</sup> or interferences, direct or indirect, from any quarter or for any reason.

The law should provide for sanctions against persons seeking to influence judges in any such manner, judges should have unfettered freedom to decide cases impartially, in accordance with their conscience and their interpretation of the facts, and in pursuance of the prevailing rules of the law. Judges should not be obliged to report on the merits of their cases to anyone outside the judiciary.<sup>20</sup>

4.5 Ensuring impartiality of chairpersons and members of commissions and committees of inquiry and other quasi-judicial institutions.<sup>21</sup>

4.5.1 All officers exercising judicial and quasi-judicial and investigative and auditing functions are subject to the duty of fairness and impartiality. This includes commissions of inquiry, mediation, arbitration, state auditing and internal auditing. All such officers and Members or chairpersons of commission or committee of inquiry shall maintain impartiality and demonstrate independence in conduction inquiries and in making fact-finding and recommendations.

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<sup>16</sup> This does not exclude the possibility that the state may be liable for the gross negligence of a judicial office.

<sup>17</sup> Consider a 1988 Italian law which was designed to, within certain limit, render judges accountable for damages caused by serious fault in the exercise of their functions: see Giovanni E. Longo, "The Human Right to an Independent Judiciary: International Norms and Denied application before a Domestic Jurisdiction," *St John's Law Review* (Winter 1996).

<sup>18</sup> "It is most important that the judiciary be independent and be so perceived by the public. The judges must not have cause to fear that they will be prejudiced by their decisions or that the public would reasonably apprehend this to be the case": Howland, CJ, *R v. Valente* 2 C.C.C. (3d) 417, at 423 (1983).

<sup>19</sup> Including physical threats to injure or to kill.

<sup>20</sup> Recommendation N.R(94)12 of the committee of Ministers of the Council of Europe to Member States.

<sup>21</sup> This section was added as an Amendment to the Mt Scopus Standards of Judicial independence in the Osnabruck Conference, 2014.

4.5.2 The general rules applicable to national judges in case of circumstances requiring disqualification of judges, shall also apply to administrative adjudicators and members of commissions of inquiry and to quasi-judicial institutions.

4.5.3 The general rules applicable to national judges in case of circumstances requiring disqualification of judges shall also apply to internal auditors and state auditors.

4.5.4 Impartiality<sup>22</sup>: a judge shall treat the parties equally, shall neither be partial to the poor nor defer to the rich and powerful, shall not be gracious to one party and ungracious to another, and shall judge with an open mind, with no prejudice or partiality.

4.6 Public Inquiries by judges:<sup>23</sup> if a serving member of the judiciary accepts appointment as a Commissioner of Inquiry on behalf of Government, he or she does so not in capacity of a judge but as a public servant in public administration.

4.6.1 While a serving judge conducts a public inquiry, in accordance with terms of reference stated by Government, he must act impartially and independently of any party interested in the substance of the public inquiry.

4.6.2 A serving judge who chairs a public inquiry is entitled to insist that all matters of the of the procedure in the conduct of the inquiry shall be at his complete discretion; in particular he or she may, according to the applicable law or standards, issue a warning letter to any interested party of any complaint that may appear in the Inquiry's report to Government.

4.6.3 If an interested party responds to any such warning letter from the public inquiry, the judge will consider such response, and if necessary, indicate that it has been considered in the preparation of the final report to Government.

4.6.4 Upon receiving a request to chair a commission of inquiry, a judge shall carefully consider all the ramifications of such appointment before giving consent to said appointment.

4.6.5 Judges who exercise other functions such as in alternative dispute resolution (ADR), in mediation or arbitration, shall act impartially and independently of any party to the relevant procedure.

## **5. INTEGRITY, PROPRIETY AND EQUALITY<sup>24</sup>**

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<sup>22</sup> Israel Rules of Judicial Ethics (2007)

<sup>23</sup> This article was added as an Amendment to the Mt Scopus Standards of Judicial independence in Ghent 2012.

<sup>24</sup> **BANGALORE Principles of Judicial Conduct**



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

5.1.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

5.1.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

5.2 Propriety: Propriety and the appearance of propriety are essential to the performance of all of the activities of a judge.

5.2.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

5.2.2 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. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

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

5.2.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

5.2.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

5.2.6 A judge, as 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.

5.2.6a A judge should not cast aspersions on the bona fides of other judges except when filing an appropriate grievance.

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

5.2.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

5.2.9 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.

5.2.10 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.

5.2.11 Subject to the proper performance of judicial duties, a judge may:

5.2.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

5.2.11.2 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;

5.2.11.3 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

5.2.11.4 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.

5.2.12 A judge shall not practise law whilst the holder of judicial office.

5.2.13 A judge may form or join associations of judges or participate in other organisations representing the interests of judges.

5.2.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan 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.

5.2.15 A judge shall take steps to prevent court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan 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.

5.2.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award 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.

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

5.3.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

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

5.4.3 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 on any irrelevant ground, immaterial to the proper performance of such duties.

5.3.4 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, on any irrelevant ground.

5.3.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

## **6. Conduct in Court<sup>25</sup>**

6.1 Conduct of hearings: It is important for judges to maintain a standard of behaviour in court that is consistent with the status of judicial office and does not diminish the confidence of litigants in particular, and the public in general, in the ability, the integrity, the impartiality and the independence of the judge.

6.1.1 It is the duty of a judge to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour.<sup>26</sup>

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<sup>25</sup> Council of Chief Justices of Australia, *Guide to Judicial Conduct* (2002)

<sup>26</sup> The entitlement of everyone who comes to court, litigants and witnesses alike, to be treated in a way that respects their dignity should be constantly borne in mind. The trial of an action, whether civil or criminal, is a serious matter but that does not mean that occasional humour is out of place in a courtroom, provided that it does not embarrass a party or witness. Indeed it sometimes relieves tension and thereby assists the trial process.

6.1.2 A judge must be firm but fair in the maintenance of decorum, and above all be even-handed in the conduct of the trial.<sup>27</sup>

6.1.3 A judge must be strict in the observance of the principles of natural justice, and in the protection of a party or witness from any display of racial, sexual or religious bias or prejudice.

6.1.4 A judge must not convey an impression that the judge and counsel are treating the proceedings as if they were an activity of an exclusive group.<sup>28</sup>

6.2 Participation in the trial: It is common and often necessary for a judge to question a witness or engage in debate with counsel, but the judge should keep the proper level of such intervention to a moderate measure.

6.2.1 A judge must be careful not to descend into the arena and thereby appear to be taking sides or to have reached a premature conclusion.

6.3 Private communications: The principle that, save in the most exceptional circumstances, there should be no communication or association between the judge and one of the parties (or the legal advisers or witnesses of a party) otherwise than in the presence of, or with the previous knowledge and consent of, the other party (or parties) once a case is under way is, of course, very well known.<sup>29</sup>

6.3.1 An approach to a judge in chambers by the lawyers for one party should not be made without the presence, or the knowledge and consent of, the lawyers for the other party.<sup>30</sup>

6.4 Criminal trials before a jury: The nature or extent of judicial intervention in the course of evidence or argument in a jury trial must not convey to the jury a judicial view of guilt or innocence.

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<sup>27</sup> The absence of any intention to offend a witness or a litigant does not lessen the impact.

<sup>28</sup> Informal exchanges between the judge and counsel may convey an impression that the judge and counsel are treating the proceedings as if they were an activity of an exclusive group. This is a matter to be borne in mind particularly in a case in which there is an unrepresented litigant, but the caution extends to all cases.

<sup>29</sup> The principle is referred to by McInerney J in *R v Magistrates' Court at Lilydale; Ex parte Ciccone* [1973] VR 122 (at 127) in a statement approved in *Re JRL; Ex parte CJL* (1986) 161 CLR 342 by Gibbs CJ (at 346) and Mason J (at 350-351).

<sup>30</sup> It is important to bear in mind that breaches of the principle can occur through oversight, sometimes when attempts are made to adopt what may seem to be practical, convenient, or time-saving measures. Care should be taken, for example, on country circuits if suggestions are made about shared travel that seem sensible at the time, but may in fact involve a breach of the principle.

## 6.5 Revision of oral judgments

6.5.1 Oral judgments: A judge may not alter the substance of reasons for decision given orally.<sup>31</sup>

6.5.1.1 Subject to that basic principle, a judge may revise the oral reasons for judgment where, because of a slip, the reasons as expressed do not reflect what the judge meant to say, or where there is some infelicity of expression. Errors of grammar or syntax may be corrected. References to cases may be added, as may be citations for cases referred to in the transcript.

6.5.2 Summing up to a jury: Apart from errors of spelling or punctuation which may alter the meaning if uncorrected, there should be no change to the transcript of a summing up unless it does not correctly record what the judge actually said.<sup>32</sup>

6.5.2.1 Where time and opportunity permit, a judge must prepare written notes of the intended charge to the jury, particularly with respect to directions on the law, which may help to validate any proposed change to the transcript of the summing up. If the transcript is corrected, and a fresh transcript of the summing up incorporating the corrections is to be prepared, the original transcript should be retained on the court file.

6.5.3 It is the duty of a judge to insure accurate accounts of the protocol of the proceedings .

6.6 Reserved judgment: A judge should aim to prepare and deliver a reserved judgment as soon as possible. In case of a delay, a judge should speak to the head of the jurisdiction about the situation before it becomes a problem.<sup>33</sup>

6.7 The judge as a mediator: Many judges consider that the role of a mediator is so different from that of a judge that a judge must not to act as a mediator.<sup>34</sup>

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<sup>31</sup> That is the basic principle.

<sup>32</sup> This is because the transcript of a summing up to a jury is, like the transcript of evidence, intended to be a true record of what was said in court.

<sup>33</sup> It sometimes happens that circumstances lead to an unacceptable accumulation of reserved judgments.

<sup>34</sup> The difference lies in the interaction of a mediator with counsel and parties, often in private – i.e. in the absence of opposing counsel or parties, which is seen to be incompatible with the way in which judicial duties should be performed, with the risk that public confidence in the judiciary may thereby be impaired. Many judges would see this as a matter of court policy. In some courts, the Rules of Court with respect to mediation specifically recognize the appointment of a serving judge as a mediator. The success of judicial mediation in those jurisdictions appears to justify the practice. The statutory obligation of confidentiality binding upon a mediator, and the withdrawal of the judge from the trial or an appeal, if the mediation fails, should enable a qualified judge to act as a mediator without detriment to public expectations of the judiciary.

## 7. ACTIVITIES OUTSIDE THE COURT AND EXTRAJUDICIAL ACTIVITIES

### 7.1 The Media

7.1.1 Judges should exercise their freedom to comment in the media, with ‘the greatest circumspection’.<sup>35</sup> A judge should refrain from answering public criticism of a judgment or decision, whether from the bench or otherwise. Judges should not air disagreements over judicial decisions in the press.<sup>36</sup>

7.1.2 Judges must be careful when they are factually misrepresented or where the judges are aware, particularly when sentencing in a criminal case.<sup>37</sup>

### 7.2 Participation in Public Debate

7.2.1 There is no objection to such participation in public debate provided the issue directly affects the operation of the courts, the independence of the judiciary or aspects of the administration of justice.<sup>38</sup>

7.2.2 A judge must take care to not cause the public to associate the judge with a particular organization, group or cause. The participation should not be in circumstances which may give rise to a perception of partiality towards the organization (including a set of chambers or firm of solicitors), group or cause involved or to a lack of even handedness.

7.2.3 Dialogue may not take the form, and the judge cannot expect to assume the role, which the judge would consider appropriate in court proceedings. The judge cannot expect to join in and leave the debate on the judge’s terms.<sup>39</sup>

7.2.4 A judge must consult with Heads of Division, the presiding, resident or designated judge, as the case may be (the “head of the appropriate jurisdiction”). A judge must also consider the

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<sup>35</sup> Lord Bingham has commented that ‘a habit of reticence makes for good judges.’

<sup>36</sup> In his speech in the House of Lords on 21 May 2003, Lord Woolf CJ referred to “the very important convention that judges do not discuss individual cases”.

<sup>37</sup> Guidance as to how to react when a judge is factually misrepresented or where the judge is aware, particularly when sentencing in a criminal case, that remarks could be misinterpreted by reporters, is contained in the guidance on dealing with the media available on the judicial intranet at: [http://judiciary.sut1.co.uk/info\\_about/media\\_issues.htm](http://judiciary.sut1.co.uk/info_about/media_issues.htm).

<sup>38</sup> However, and subject to the above, many aspects of the administration of justice and of the functioning of the judiciary are the subject of necessary and legitimate public consideration and debate in the media, legal literature and at public meetings, seminars and lectures, and appropriate judicial contribution to this consideration and debate can be desirable. It may contribute to the public understanding of the administration of justice and to public confidence in the judiciary. At the least, it may help to dispel misunderstandings and correct false impressions.

<sup>39</sup> The risk of different judges expressing conflicting views in debate must also be borne in mind in that a public conflict between judges, expressed out of court, may bring the judiciary into disrepute and diminish the authority of the court.

risk of expressing views that will give rise to issues of bias or pre-judgment in cases that later come before the judge must also be considered.<sup>40</sup>

7.2.5 A judge must consider the dignity of judicial office before participation in public protests and demonstrations.

### 7.3 Commercial Activities

7.3.1 There must be requirements of office clearly in place with severe restraints upon the permissible scope of a judge's involvement with commercial enterprises.<sup>41</sup>

7.3.2. The risks, including the risk of litigation, associated with the office of trustee, even of a family trust, should not be overlooked and the factors involved need to be weighed carefully before office is accepted.<sup>42</sup>

### 7.4 Involvement in Community Organisations

7.4.1 Care must be taken with involvement in community organisations to not compromise judicial independence or put at risk the status or integrity of judicial office. Such activities should not be so onerous or time consuming as to interfere with the judge's performance of his or her duties and the judge's role should not involve active business management.

7.4.2 Judges generally should not be involved in fund raising .Care should be taken in considering whether, and if so to what extent, a judge's name and title should be associated with an appeal for funds, even for a charitable organization.<sup>43</sup>

7.4.3 It is necessary to limit and regulate the nature and extent of personal involvement in contentious situations. Any conflict of interest in a litigious situation must be declared.<sup>44</sup>

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<sup>40</sup> There are plainly risks in a judge, whether exercising a criminal or a civil jurisdiction, who may have to deal with a wide range of people in his or her jurisdiction, being exposed to public debate in such a way that the authority and status of the judicial office may be undermined.

<sup>41</sup> Guidance appears in the cases as to the extent to which a judge is entitled to pursue commercial activities and further detailed guidance, save by reference to the cases, is inappropriate in this document. Reference to the judge's terms of service is appropriate.

<sup>42</sup> The management of family assets and the estates of deceased close family members, whether as executor or trustee, is unobjectionable, and may be acceptable for other relatives or friends if the administration is not complex, time consuming or contentious

<sup>43</sup> Judges may properly be involved in the management of educational, charitable and religious organizations and trusts subject to the reservation already stated in relation to community organizations. It could amount to an inappropriate use of judicial prestige in support of the organization and may also be seen as creating a sense of obligation to donors. There will be occasions, for example in the case of charities supporting the work of the Courts, where the objection would not apply.

<sup>44</sup> Many judges hold or have held high office in governing bodies of universities and similar institutions without embarrassment notwithstanding that the management and funding structures of such organizations are complex, and are often the subject of public debate and political controversy. Moreover, in considering whether to accept office

## 7.5 References

7.5.1 A judge may give references for character or professional competence for persons who are well known to the judge.<sup>45</sup>

7.5.2 A judge may give character evidence in court or otherwise.<sup>46</sup>

7.5.2.1 This task should be undertaken only exceptionally and for a limited purpose.<sup>47</sup>

7.5.2.2 A judge must consult with the head of the appropriate jurisdiction advisable before taking a decision to give evidence.

7.6 Remuneration: Judges holding full-time appointments are barred from legal practice. In addition to a judicial salary, a full-time judge should not receive any remuneration except for fees and royalties earned as an author or editor. A judge may of course receive money from investments or property.

7.6.1 Lectures, and teaching in an institution: It is possible to allow a judge to engage in legal lectures, and the remuneration for the teaching is subject to two standards, which both must be met:

7.6.1.1 The level of remuneration shall not exceed the level practised in that institution for similar work.

7.6.1.2 The payment received by the judge shall not exceed the equivalent of maximum 25% of his judicial salary .

7.6.2 The acceptance by the judge of delivering a single lecture or teaching position in a higher educational institution or giving a lecture is subject to the grant of permission by a proper judicial authority.

## 7.7 Business cards .

7.7.1 A judge should be very cautious in describing his position in business cards or letterheads.<sup>48</sup>

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and what role to play, consideration should be given to the trend of some such bodies to be more entrepreneurial and to resemble a business. The greater the move in that direction, the less appropriate judicial participation may be.

<sup>45</sup> Consideration should be given as to whether the judge is the appropriate person to give the reference requested, the principle being that someone should not be deprived of a reference because the person best able to give it is the judge. Plainly judges should guard against inappropriate requests.

<sup>46</sup> Particularly where it may seem unfair to deprive the person concerned of the benefit of such evidence

<sup>47</sup> This is because of the risks inherent in the judge entering the arena, and the pressure such evidence may put on the trial judge or magistrate.

<sup>48</sup> E.g. It is not appropriate for someone who sits as a deputy high court judge, a recorder or as a deputy district judge, to describe him or herself as such on a business card, cheque book or



## 7.8 Gifts, Hospitality and Social Activities

7.8.1 Gifts and Hospitality. A judge must be cautious when accepting any gift or hospitality that may be offered.<sup>49</sup>

7.8.2 The acceptance of a gift or hospitality of modest value, as a token of appreciation, may be unobjectionable, depending on the circumstances. For example a judge who makes a speech or participates in some public or private function may accept a small token of appreciation.<sup>50</sup>

7.8.3 A judge may accept invitations to lunches and dinners by legal and other professional and public bodies or officials.<sup>51</sup>

7.8.4 Caution should be exercised when invited to take part in what may be legitimate marketing or promotional activities, for example by barristers' chambers or solicitors' firms, or professional associations.<sup>52</sup>

7.8.5 A judge must not exploit the status and prestige of judicial office to obtain personal favours or benefits.

7.8.6 A judge should seek the advice of the head of the appropriate jurisdiction when in doubt as to the propriety of accepting any gift or hospitality.

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letterhead. Entries of a biographical nature in, for example, a firm's or chambers' brochure, are acceptable.

<sup>49</sup> It is necessary in this context to distinguish between accepting gifts and hospitality unrelated to judicial office, for example from family and close friends, and gifts and hospitality which in any way relate, or might appear to relate, to judicial office. In relation to the latter category, judges should be on their guard against any action which could be seen to undermine their impartiality. Judges should be wary, therefore, of accepting any gift or hospitality which might appear to relate in some way to their judicial office and might be construed as an attempt to attract judicial goodwill or favour.

<sup>50</sup> It may include a contribution to charity in the manner explained in the Memorandum on Conditions of Appointment and Terms of Service (October 2000). "The Lord Chancellor regards it as inappropriate for a judge to receive a fee personally for giving a lecture. However, where a judge gives a lecture for a commercial undertaking there is no objection, if he considers that it would be appropriate, to his requesting that any fee otherwise payable be paid to a charity of his choice. To avoid any liability for tax, a judge should try to ensure that payment is made direct to the charity. Where this is not possible, e.g. accounting reasons, and the charity would otherwise lose out, a judge may accept the payment himself, provided that he is prepared to pay the tax on that sum and make the payment directly to the charity himself. There is no objection to a judge accepting reimbursement of the cost of any necessary travel and accommodation necessitated by attending a suitable lecture, conference or seminar."

<sup>51</sup> Also where attendance can be reasonably seen as the performance of a public or professional duty, carrying no degree of obligation, is entirely acceptable.

<sup>52</sup> The object of judicial participation may be perceived to be the impressing of clients or potential clients.

7.8.7 Contact with the Profession. A judge must avoid direct association with individual members of the profession who are engaged in current or pending cases before the judge.<sup>53</sup>

7.8.8 Other Social Activities. A judge is under the duty to maintain the dignity of the office and not to permit associations which may affect adversely the judge's ability to discharge his or her duties.

7.8.9 A judge should be very careful to avoid a situation of suspicion of bias in case of close social relations with a lawyer or a witness or party in the case, which could become grounds for disqualification.

7.9 Use of Equipment: A judge should not use equipment, including IT equipment, provided by the Court Service for his or her use as a judge.<sup>54</sup> Detailed guidance upon the use of IT equipment, including the importance of not compromising its security should be detailed in the relevant rules

7.10 Judicial Office-holders' duty to notify legal proceedings and other matters relating to conduct

7.10.1 All judicial office-holders have an obligation to notify the appropriate senior judicial officer if they are aware of any matters relating to conduct which may affect their position or may reflect on the standing and reputation of the judiciary at large.

7.11 Criminal proceedings (including minor offences)

7.11.1 Without prejudice to the generality of the above, they must also notify the Lord Chief Justice or the Senior President if they are cautioned for, or charged with, any criminal offence other than a parking or minor traffic offence without aggravating circumstances.

7.11.2 Special rules should apply in respect of minor offenses.

7.11.3 Office-holders should advise the Senior Judicial Officer on court proceedings relating to a charge against them. This is to ensure that full and timely consideration can be given to the listing of the case and whether or not it would be appropriate for the office-holder to continue sitting while court proceedings are pending.

7.12 Civil proceedings

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<sup>53</sup> There is a long-standing tradition of association between bench and the bar and the solicitors' profession. This occurs both on formal occasion, such as dinners, and less formal ones. There will be cases in which retaining too close a social relationship with a practitioner who regularly has litigation before the judge's court may create a perception of bias but the particular circumstances, which will vary widely, must be addressed.

<sup>54</sup> Other purposes could bring the judge or the judiciary in general into disrepute.

7.12.1 All judicial office-holders have an obligation to report to the senior judicial officer their involvement in legal proceedings which are coming to court. This includes all civil proceedings (including family proceedings) and is to ensure that the senior judicial officer can give full and timely consideration to the listing of the case and whether or not it would be appropriate for the office-holder to continue sitting in that area or jurisdiction whilst proceedings are ongoing.

#### 7.13 Other proceedings

7.13.1 Judicial office-holders must also notify the appropriate senior judicial officer if they are the subject of any complaint or disciplinary proceedings by any professional body to which they belong; or if they get into serious financial difficulties particularly where legal proceedings are or are likely to be initiated.

7.13.2 Failure to report proceedings as set out above could result in disciplinary action.

7.14 It is the duty of a judge to engage in continued judicial education.

## **8. SOCIAL NETWORKING AND BLOGGING**

8.1 A judge may use social networking, or use social media.

8.1.1 Judges must follow the guidance that the relevant authority in his or her jurisdiction has issued on the security aspects of this medium.<sup>55</sup>

8.2 A judge should follow the following suggested rules:

8.2.1 A judge must ensure that information about his or her personal life and home address is not available online.<sup>56</sup>

8.2.2 A judge must be wary of publishing more personal information than is necessary.<sup>57</sup>

8.2.3 A judge must not post information that could put personal safety at risk.<sup>58</sup>

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<sup>55</sup> Although there is no specific guidance on this matter, judges are encouraged to bear in mind that the spread of information and use of technology means it is increasingly easy to undertake 'jigsaw' research which allows individuals to piece together information from various independent sources.

<sup>56</sup> A simple way of checking can be by typing your name into an internet search engine such as Google. You may also want to talk to your family about such social networking systems as Facebook where personal details which carry some risk-such as holiday absences-can unwittingly be put into the public domain.

<sup>57</sup> In particular phone numbers, dates of birth and addresses are key pieces of information for security fraudsters. Other users probably don't need to know such details – if any contacts do need them send them to individuals separately.

<sup>58</sup> For example, personal address, details of holiday plans and information about your family could be used for criminal purposes. Photographs could enable home addresses or car numbers to be identified.

8.2.4 A judge must check privacy settings and restrict access to their profile to ensure information is kept to a restricted group.

8.2.5 A judge must check the terms and conditions of any sites to which he or she signs up and ensure they are aware of who owns data posted on the site and what the owners of the site can do with their data.

8.2.6 A judge may blog.

8.2.6.1 Judicial office-holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary.

8.2.6.2 A judge must not express an opinion, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This also applies to blogs which purport to be anonymous.

8.2.7 Failure to adhere to the guidance could ultimately result in disciplinary action.

## 9. POST-JUDICIAL ACTIVITIES<sup>59</sup>

9.1 Professional and commercial activities: Judges may avoid the sometimes difficult and controversial decisions that have to be taken by those who seek a more active and remunerative role.<sup>60</sup>

9.2 A judge may receive a judicial pension.<sup>61</sup>

### 9.3 Professional legal activities

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<sup>59</sup> Council of Chief Justices of Australia, *Guide to Judicial Conduct (2002)*. The purpose of this chapter is not to dictate to retired judges, but to give guidance to serving judges who are contemplating or planning for their retirement.

<sup>60</sup> Particularly those who have remained in office to the age of statutory retirement, who choose to undertake only recreational activities in retirement.

<sup>61</sup> Most judges on appointment make a substantial financial sacrifice in terms of earning capacity. Nor does it seem necessary, in the discussion that follows, to draw any distinction in principle between:

Those who have reached the statutory age of retirement;

Those who, after quite lengthy judicial service, have chosen to retire early for reasons other than ill-health;

Those relative few who have found themselves ill-suited to the judicial role and have resigned after a short term in office.

If there is one guiding principle, a former judge should be satisfied that any proposed professional or commercial activity is not likely to bring the judicial office into disrepute, or put at risk the public expectation of judicial independence, integrity and impartiality.

9.3.1 Practice at the Bar: A judge contemplating retirement should consult the local Bar Association or Law Society for relevant rulings.<sup>62</sup>

9.3.2 Practice as a solicitor: A judge may have active association with a firm of solicitors, whether as a partner, consultant, or in some other capacity.

9.3.2.1 Preferably this will not be sooner than a year or so after retirement.<sup>63</sup>

9.3.3 Alternative dispute resolution – mediation and arbitration: Judges may be appointed or offer their services as mediators or arbitrators.<sup>64</sup>

9.3.4 Appointment as an acting or auxiliary judge: A retired judge who sits from time to time as an acting or auxiliary judge must consider carefully the appropriateness of other activities that the retired judge might be undertaking.<sup>65</sup>

9.3.4.1 The exercise of the judicial office on a part-time basis may require the observance of, or at least consideration of, some of the restrictions identified in this publication.

9.3.4.2 A judge must take particular care in relation to activities undertaken concurrently with part-time judicial work.

9.4 Commercial activities: A retired judge may engage in commercial activities.

9.4.1 A retired judge must consider whether his or her activities might harm the standing of the judiciary, because of a continuing association in the public mind with that institution.

9.5 Political activity: A retired judge may have involvement with politics.

9.5.1 A retired judge should consider whether the particular activity undertaken might reflect adversely on the judiciary.<sup>66</sup>

9.6 Participation in public debate: A retired judge may engage in public debate, and in many cases is well qualified to do so, particularly in matters touching the administration of justice generally.

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<sup>62</sup> All however proscribe appearance as counsel in a court of which the judge was formerly a member, for various periods ranging from two to five years. This is a “grey area” in which it is not possible to formulate uniform guidelines. Australian experience suggests, however, that this topic is most likely to concern those who have resigned soon after appointment.

<sup>63</sup> Some judges consider that care should be taken to ensure that the firm does not take active steps to promote itself by overt reference to the judge’s former judicial status.

<sup>64</sup> It has become quite common for judges who have retired, whether early or at full retirement age, to be appointed or to offer their services as mediators or arbitrators. Although some judges do not approve of such activities, they are not at present subject to any legal or professional restraint.

<sup>65</sup> Many countries make provision for a retired judge to return to the court, for temporary or intermittent periods, as an acting judge

<sup>66</sup> The public might continue to associate the retired judge with that institution.

9.6.1 A retired judge should not act in such a way as to create the impression that he or she is speaking with judicial authority.<sup>67</sup>

9.6.2 A retired judge should not use the former title "Justice" or "Judge" in connection with activities of a political nature.

9.7 Community and social activities: A retired judge may engage in chosen recreational and other community and social activities.

9.7.1 Any activity that might tarnish the reputation of the judiciary should be avoided.<sup>68</sup>

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<sup>67</sup> A retired judge should consider whether a contribution to public debate is appropriately identified as coming from a retired judge.

<sup>68</sup> Even in retirement a former judge may still be regarded by the general public as a representative of the judiciary.

## Explanatory Notes

During the conferences of the International Association of Judicial Independence and World Peace at the University of Ghent October 2012 and at the University of San Diego in September 2013 it was resolved at the proposal of Prof. Marcel Storme to embark upon a project to develop a global code of judicial ethics. It should deal with two major parts. One part will deal with conduct on the bench and the other on the conduct off the bench, i.e. the rules governing the conduct outside the official judicial duties.

In most common law jurisdictions there has been a shift from a practice of non-written judicial traditions on judicial conduct to a practice of written codes. In the United States, the American Bar Association (“ABA”) drafted a code of judicial conduct in 1924.<sup>69</sup> The ABA's updated code of judicial conduct is currently embodied in the 2011 Model Code of Judicial Conduct.<sup>70</sup> A written judicial code for Federal Judges was adopted in 1973<sup>71</sup> and there are additional codes for judicial conduct in various American states such as California and Texas.<sup>72</sup>

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<sup>69</sup> American Bar Association 1924 Canons of Ethics – accessed at [www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924\\_canons.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/cpr/pic/1924_canons.authcheckdam.pdf).

<sup>70</sup> See the Model Code of Judicial Conduct 2011 – accessed at [www.americanbar.org/content/dam/aba/administrative/professional\\_responsibility/2011\\_mjcc\\_table\\_of\\_contents.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2011_mjcc_table_of_contents.authcheckdam.pdf).

<sup>71</sup> See the Code of Conduct for US Judges 1973, as amended – accessed at [www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf](http://www.uscourts.gov/Viewer.aspx?doc=/uscourts/RulesAndPolicies/conduct/Vol02A-Ch02.pdf)

The Code of Conduct for United States Judges was initially adopted by the Judicial Conference on April 5, 1973, and was known as the "Code of Judicial Conduct for United States Judges." See: **JCUS-APR 73**, pp. 9-11. Since then, the Judicial Conference has made the following changes to the Code: March 1987: deleted the word "Judicial" from the name of the Code; September 1992: adopted substantial revisions to the Code; March 1996: revised part C of the Compliance section, immediately following the Code; September 1996: revised Canons 3C(3)(a) and 5C(4); September 1999: revised Canon 3C(1)(c); September 2000: clarified the Compliance section; March 2009: adopted substantial revisions to the Code. This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the “Compliance” section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies.

<sup>72</sup> See the California Canons of Ethics 2003 – accessed at [www.courts.ca.gov/documents/ca\\_code\\_judicial\\_ethics.pdf](http://www.courts.ca.gov/documents/ca_code_judicial_ethics.pdf), as well as the Texas Code of Conduct – Accessed at [www.legalethiextexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx](http://www.legalethiextexas.com/Ethics-Resources/Rules/Texas-Code-of-Judicial-Conduct.aspx)

In Canada, judges adopted the Principles of Judicial Ethics in 1998.<sup>73</sup> While in Australia, the judiciary adopted a Code of Judicial Conduct in 2002.<sup>74</sup> England has adopted two codes of judicial conduct, and the Guide to Judicial Conduct adopted in 2008 by the Judges' Council of England and Wales, also applies to the English judiciary.<sup>75</sup> Barely a year later, in 2009, the United Kingdom (“UK”) Supreme Court adopted a new Guide to Judicial Conduct.<sup>76</sup>

In Israel, a code of judicial ethics was adopted by Chief Justice Shamgar in 1993. Israel is the only country in the common law world to have declared its code of judicial ethics to be *not* legally binding as they were not issued by virtue of an express authority and judges have discretion to decide how to conduct themselves regarding disqualification, such as, on account of a very close friendship with a lawyer or party in a matter.<sup>77</sup> In just such a case, the lawyer joined the legal team only at the appeal stage. It took another 14 years, until 2007,<sup>78</sup> before a code of judicial ethics was issued under an express authority. The Israeli Parliament reversed the ruling on the specific issue providing that a judge must not sit in a case where there is a special relation with a lawyer representing a party. Later it provided for an express authority to issue judicial ethical rules and such were issued under the newly enacted statutory power in 2007. About the same time, legal controversy arose in India concerning the duty to disclose to the public certain types of information under the freedom of information rules of the declarations of assets submitted by judges of the Supreme Court on a fiduciary and voluntary basis by virtue of a resolution of the judges.<sup>79</sup>

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<sup>73</sup> Canadian Judicial Council, *Ethical Principles for Judges* (1998) – accessed at [www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_judicialconduct_Principles_en.pdf)

<sup>74</sup> Council of Chief Justices of Australia, *Guide to Judicial Conduct* (2002) – accessed at [www.ajja.org.au/online/GuidetoJudicialConduct.pdf](http://www.ajja.org.au/online/GuidetoJudicialConduct.pdf). For the practice in Australia see Mr Justice Thomas' study, *Judicial Ethics in Australia* (2nd ed., 1997).

<sup>75</sup> See the Guide to Judicial Conduct (for General Courts) – accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf)

<sup>76</sup> See the Guide to Judicial Conduct 2009 (UK Supreme Court) – accessed at [www.supremecourt.gov.uk/docs/guide\\_to\\_judicial\\_conduct.pdf](http://www.supremecourt.gov.uk/docs/guide_to_judicial_conduct.pdf)

<sup>77</sup> H CJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54 .

<sup>78</sup> The Judicial Ethical Rules are drafted by the President of the Supreme Court in consultation with the Minister of justice and are approved by the Law and Justice Committee of the Knesset ,The Israeli parliament .

<sup>79</sup> CPIO (Central Public Information Officer) Supreme Court v. Subhash Chandra Agrawal CLXII Delhi Law Times 135 (2009 ) Per Judge S.Ravindra Baht .



The shift from unwritten ethical rules to a written code prevails also in the regulation of conduct of the officers of other branches of government, such as ministers and members of the legislature.<sup>80</sup>

Regarding teaching by judges, after a long debate the international association of judicial independence at the conferences held in Italy in June, 2015, it was resolved that judges are permitted to hold lectures, and teach in higher learning institution. While it is possible to allow a judge to engage in legal lectures, the remuneration for the teaching is subject to two standards. Firstly, that the level of remuneration shall not exceed the level practised in that institution for similar work and secondly, that the payment received by the judge shall not exceed the equivalent of maximum 25% of his official salary . Both conditions must be met. In addition, the acceptance by the judge of delivering a single lecture or teaching position in a higher educational institution or giving a lecture is subject to the grant of permission by a proper judicial authority.

Since ancient times, judges have enjoyed a unique status in the community. The fundamental assumption is that the judiciary as a collective, and each and every judge, individually are independent in adjudicative proceedings and in their decisions, and that the judicial branch in general is an autonomous branch, decent and fair in its conduct, and has the ability and skills to interpret and apply the law properly.

Naturally, the judges holds their appointment in trust, for the benefit of society at large They act as trustees, who have nothing at all of their own, and all they do , they do as the public's agents.

A precondition of the judge's ability to act as a judge is the community's confidence in the judicial branch, its recognition of the judicial branch's exclusive authority to adjudicate, and its acceptance of judicial rulings. This status of the judicial branch and of its members, the judges – a status of autonomy, independence, and benefit from the public confidence – requires, almost inherently, that judges uphold especially high ethical standards.

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<sup>80</sup> See the Ministerial Code approved in 2010 by Prime Minister Cameron following previous Ministerial Codes – accessed at [www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf](http://www.cabinetoffice.gov.uk/sites/default/files/resources/ministerial-code-may-2010.pdf). In the US written rules were enacted by the Ethics in Government Act of 1978 (Public Law 95-251), or by a subsequent amendment to that Act.

It follows that it is necessary to create unique rules of conduct obliging the individual judges in their conduct and their ways – on the bench and off the bench – in order to preserve the special status of the judge and the judicial branch as a whole.

Thus it always has been. As Jethro advised Moses in the Bible regarding the way to choose judges: "You should ... look for able men among all the people, men who fear God, men of truth, who are not avaricious . . ." (Exodus 19:21). The Emphasis on the personal good character of the judge remains to this day a central requirement for judicial appointment. Indeed, a judge is a person – first and foremost a person – however, by agreeing to hoist the burden of a judge upon his shoulders, he has obliged himself with the duties and burdens of a member of the judicial branch.

In the past, rules for judicial conduct were as the oral traditions, and the law, morality, logic, common sense, tradition and life experience were what guided judges' conduct. As the days and years passed, individual and community life became increasingly complex, and even the judicial system grew, expanding and absorbing many members. A need thus arose to put the oral traditions into writing and create a written code of conduct for judges.

Indeed, in many countries codes for judges' conduct have been compiled. Thus was also the case in Israel, when in 1993 President of the Supreme Court Meir Shamgar published The Judicial Code of Ethics, 1993, prepared on the basis of the report by a committee chaired by former President ( of the Supreme Court Moshe Landau. (

The purpose of the Code of Ethics for Judges is to guide the conduct of the judges of Israel along their path, and to serve them as an aid, by which they can be assisted and from which they can learn. The code includes rules of various types: fundamental rules which stem from the judge's status, and express fundamental values, which are the basis for judicature; rules regarding the act of adjudication itself; rules regarding the personal conduct of judges; and specific norms dealing with practical issues that arise in daily life. Together, these norms constitute a wide codification in which judges – both young judges in need of guidance at the start of their path, and senior judges in need of solutions to specific issues – can, and should seek assistance. A judge who runs into a dilemma whether to do or refrain from doing can refer to the code and find solutions in it to many of the questions which judges confront and with which they struggle on a routine basis. Thus, for example, in extrajudicial activity, in public activity, in contact with the media, and more.

Last, the Code of Ethics for Judges does not take on a life of its own, and is not detached from its surroundings. The law, morality, logic, common sense, tradition and life experience, which have guided judges in the past, will continue to guide us in the future as well. Thus, for example, a judge should take the decisions of the Ombudsman of the Israeli Judiciary, pursuant to the Ombudsman of the Israeli Judiciary Law, 5762-2002<sup>81</sup>, into account in fulfilling his role. Furthermore, the rules in the code will be interpreted not solely by their language, but by the spirit moving within them. Further yet, operating beside the written rules, and in their framework, is the Judicial Ethics Committee; and without derogating from the authority of the President of the Supreme Court on ethical and other issues, the Committee's role is to discuss, recommend and decide on issues of judicial ethics. A judge who runs into an ethical problem which is not clearly answered in the code should turn to the committee, or the President of the Supreme Court, and request an answer and guidance.

## II. The Binding Force of National Codes of Judicial Ethics

The English Guide to Judicial Conduct is generally considered persuasive. However, there are a number of lines of thought that support the view that the Guide to Judicial Conduct is not merely persuasive, but actually rather binding. These lines of thought are detailed over the course of several interviews conducted with distinguished jurists and judges for the preparation of the 2<sup>nd</sup> edition of Shetreet *Judges on Trial* (1976)<sup>82</sup> published by Cambridge University Press. One such line of thought is that most of the rules contained in the guide to judicial conduct are declaratory of the existing law and of existing standards of judicial conduct.<sup>83</sup>

Similarly, one can argue that the proper rules of judicial conduct are implied conditions of the judicial office. An additional argument that supports the view that the Guide to Judicial Conduct is binding and not merely persuasive is that the duty of obeying the rules of the Guide are

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<sup>81</sup> *Sefer HaChukim*, 590.

<sup>82</sup> Shetreet and Turenne, *Judges on Trial: Independence and Accountability of the English Judiciary* (2nd ed. 2013).

<sup>83</sup> For reliance on the existing law, please see Paragraph 3.7 of the UK Supreme Court Guide to Judicial Conduct. Recent UK cases include *Porter v Magill* [2002] 2 AC 357, *Locobail (UK) Ltd v Bayfield Properties Ltd* [2002] QB 451, *Re Medicaments and Related Classes of Goods (No.2)* [2001] 1 WLR 700 and *Helow v Secretary of State for the Home Department* [2008] 1 WLR 2416., *R. v. Bow "Street Metropolitan Stipendiary Magistrate and others" ex parte Pinochet Ugarte* (No. 2), House of Lords, [1999] 1 All ER 577, [1999] 2 WLR 272. *see also* S. Shetreet, Standards of Conduct of International Judges: Outside Activities, 2 *The Law and Practice of International Courts and Tribunals* 127 (2003).

in fact part of the judicial oath of office that is taken by every judge on appointment to the bench. In fact the Guide to Judicial Conduct emphasises the judicial oath as an important basis for the implementation of the rules of judicial ethics, as part of the judicial oath.<sup>84</sup>

The view that the duty to obey the rules of ethics contained in the Guide of Judicial Conduct derives from a contractual basis is not a valid view, for judges are not considered to be "persons in Her Majesty's Service ", but rather statutory officers. This was the basis of the judges' position in the heated controversy over whether or not the salary cuts of the 1930s would be applied to judges. The judges argued that they were not to be included in the category of "persons in His Majesty's Service" and therefore they were not subject to the salary cuts under the National Economy Act of 1931.<sup>85</sup> In the end, the Judges prevailed and the cuts were not applied to the judiciary branch.

There has been a shift from oral traditions to written codes of judicial ethics .One can make a good argument that the rules embodied in the codes are actually an expression of the pre-existing norms and therefore legally binding rather than persuasive. However, there remains a need to bolster public confidence in the judiciary by applying the codes of ethics in a consistent and equitable fashion.

### **III. The Need for a Written Code**

The need for a written code of judicial ethics has become necessary due to the substantial increase in the size of the judiciary. With this increasing size, the judiciary's diversity has also enlarged. The result has been that the rules of conduct which were previously well known to a small, tight knit judiciary have become less intuitive to the now much larger, more diverse judiciary. This effect has been exacerbated by the fact that the tribunal judiciary has now been included in the general judicial system, side by side with the mainstream judiciary.

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<sup>84</sup> The reference to the judicial oath is found in Chapter 1 of Australia's Guide to Judicial Conduct, Paragraph 1.1; in Paragraph 2.2 of the UK Supreme Court Guide to Judicial Conduct; in the Guide to Judicial Conduct, England Judges' Council, Forward and Paragraphs 2.2 and 2.3.

<sup>85</sup>See Shimon Shetreet , Judges on Trial;A Study of the Appointment and Accountability of the English Judiciary ,34-36 ( North Holland 1976 )

Beyond the issue of the size of the judiciary there is a need to clarify the rules of judicial conduct.<sup>86</sup> Particularly, there is a need to clarify the correct resolution of the balance between conflicting schools of thought on the proper judicial conduct in certain situations. The need to strike the correct balance between proper judicial conduct and necessary involvement in community experience can be seen in Australia's guide to judicial conduct. This need was met by drafting written and detailed codes of conduct. The standards reflect changes as suggested by the Preface of CJ Murray Gleeson, Chief Justice of Australia, to the Guide of Judicial Conduct.<sup>87</sup>

The Australian Chief Justices decided that it was time to provide members of the judiciary with some practical guidance about conduct expected of them as holders of judicial office, and that such guidance should reflect the changes that have occurred in the community standards over the years.

The need for a written code of ethics is also called for due to the changes in the standards that have taken place over a span of decades. For example, formerly it was acceptable for a son to appear as a barrister before his father acting as a judge. Today, this is clearly unacceptable, and even unthinkable.<sup>88</sup>

In shaping standards one should mention the Impact of the ECtHR jurisprudence and it is referred to in the Guide to Judicial Conduct.<sup>89</sup>

#### **IV. Enforcement of Judicial Ethics**

In England, the Constitutional Reform Act of 2005 transferred certain disciplinary powers over judges from the Lord Chancellor to the Lord Chief Justice, who is now the head of the judiciary. The Lord Chancellor and the Lord Chief Justice are assisted in the implementation of

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<sup>86</sup> For the need for written standards see paragraph 1.2, Judges' Council Guide to Judicial Conduct.( England )

<sup>87</sup> Chapter 1, page 1. CJ Forward Guide to Judicial Conduct, page 1

<sup>88</sup> For theoretical considerations in connection with ethics of judges it is stated that judges are entitled to exercise rights of citizens, see paragraph 4.1 of the UK Supreme Court Guide to Judicial Conduct. As to the duty of disclosure, see paragraph 3.15 and 3.16 of the UK Supreme Court Guide to Judicial Conduct.

<sup>89</sup>See eg *Procola v.Luxemburg* .for a detailed analysis see *Shimon Shetreet* , The Normative Cycle of Shaping Judicial Independence in Domestic and International Law: The Mutual Impact of National and International Jurisprudence and Contemporary Practical and Conceptual Challenges, 10 Chicago J. of International Law, pp.275-332 (2009)

the Guide to Judicial Conduct by the Office of Judicial Conduct, which was established following the Constitutional Reform Act of 2005.

In Israel, one can observe a very negative effect from the Yoav Yitzhak case<sup>90</sup>, which declared the judicial code of ethics issued by Chief Justice Shamgar in 1993 to be legally invalid. This case sent the message that individual judges are able to make their own ethical rules.

## **V. From National Codes to a Global Code of Judicial Ethics**

Parallel to the development of national codes of judicial ethics it is very important that a global code of judicial ethics should be adopted. The text is based on and adopted from standards contained in Mt Scopus International Standards of Judicial Independence 2008 , The New Delhi Code of Minimum Standards of Judicial independence 1982 ,Montreal Universal Declaration of The Independence of Justice 1983 , The Bangalore Principles of Judicial Conduct November 2002, the United Nations Basic Principles of Independence of the Judiciary, The Burgh House Principles of Judicial Independence in International Law (for the international judiciary). Inspiration has also been drawn from the Tokyo Law Asia Principles; Council of Europe Statements on judicial independence, particularly the Recommendation of the Committee of Ministers to Member States on the independence, efficiency and role of judges by the Council of Europe 1998, and the American Bar Association's revision of its ethical standards for judges. The Draft Global Code is also based on the Code of Judicial conduct for the United States Judges 1973, California Canon of Ethics 2003, Canadian Judicial Council, *Ethical Principles for Judges* (1998),<sup>91</sup> Council of Chief Justices of Australia *Guide to Judicial Conduct* (2002),<sup>92</sup> the Guide to Judicial Conduct (for General Courts)<sup>93</sup>, the Guide to Judicial Conduct 2009 (UK Supreme Court).<sup>94</sup>

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<sup>90</sup> See Yoav Yitzhak case HCJ 1622/00 Yitzhak v President Barak 54 (2 ) P D 54 ,See Shetreet, The Status of Judicial Code of Ethics ,in Medina, Fassberg and Weisman ,Eds. Festschrift in Honour of Prof Avigdor Levontin, (Sacher Institute 2013).

<sup>91</sup> Accessed at [www.cjc-ccm.gc.ca/cmskib/general/news\\_pub\\_judicialconduct\\_Principles\\_en.pdf](http://www.cjc-ccm.gc.ca/cmskib/general/news_pub_judicialconduct_Principles_en.pdf)

<sup>92</sup> Accessed at [www.aija.org.au/online/GuidetoJudicialConduct.pdf](http://www.aija.org.au/online/GuidetoJudicialConduct.pdf). For the practise in Australia see Mr Justice Thomas' study, *Judicial Ethics in Australia* (2<sup>nd</sup> ed., 1997).

<sup>93</sup> Accessed at [www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf](http://www.judiciary.gov.uk/Resources/JCO/Documents/Guidance/guide-judicial-conduct-aug2011.pdf).

<sup>94</sup> HCJ 1622/00 Yoav Yitzhak v. Aharon Barak President of the Supreme Court 54(2) P D 54.



