

# GUIDELINES FOR JUDICIAL CONDUCT

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## A. PREFACE

1. This publication is intended to provide practical guidance to members of the judiciary in New Zealand. The general principles it identifies underpin the legitimacy of judicial function which is essential to any society organised by law. As such, the general principles can readily be accepted as standards all judges agree to live by when accepting appointment. The public of New Zealand is entitled to expect judges to follow the principles identified.
2. In practice, the application of the principles to circumstances as they arise every day is not always as clear cut as agreement on the general principles might suggest. The application of a principle may be novel or may be affected by changing community values. In some cases, whether the principle is engaged at all in the particular circumstances may be a matter of reasonable differences of view. In other cases there may be reasonable differences of opinion as to whether particular conduct by a judge affects the judicial function or whether it is private.
3. For these reasons, the guidance provided in these statements and comments is **not intended to be a code of conduct**. Rather, it is advice designed to assist judges to make their own choices, informed by a checklist of general principles and illustrations drawn from experience.
4. These guidelines illustrate the difficult choices confronting individual judges from time to time. In the end, the legitimacy of judicial function and the independence of the judiciary depend upon public confidence. Stripping away the mystique attached to what judges do and making explicit the process by which ethical dilemmas are confronted respects the community's vital interest in judicial standards and their maintenance.
5. Advice such as is provided here can never hope to be definitive. It must evolve to meet the changing expectations the community reasonably has of its judiciary. So the standards discussed are in part tentative and subject to reconsideration. In some cases they may require modification where the court consists of a panel of judges where different considerations may apply.

## **B. RELATIONSHIP WITH THE JUDICIAL COMMISSIONER AND JUDICIAL CONDUCT PANEL ACT 2004**

6. (a) Under the Judicial Commissioner and Judicial Conduct Panel Act 2004, a member of the public may make a complaint to the Judicial Conduct Commissioner about the conduct of a judge. These guidelines do not identify misconduct. They are not intended to bind or limit in any way the Commissioner's discretion in dealing with any such complaint as he or she thinks fit. Nor are they intended to extend the Commissioner's jurisdiction.

(b) A complaint about the "conduct" of a Judge does not include dissatisfaction with the legality or correctness of judicial decisions. The Commissioner must dismiss the complaint where the complaint is about a judicial decision or other judicial function that is or was subject to a right of appeal or right to apply for judicial review.<sup>1</sup>

## **C. THE BANGALORE PRINCIPLES**

7. *The Bangalore Principles of Judicial Conduct* were initiated by the United Nations in 2001 and, after wide consultation, were endorsed at the 59<sup>th</sup> session of the United Nations Human Rights Commission at Geneva in 2003.

8. Their stated intention is:

"To establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the Executive and Legislature, and lawyers and the public in general, to better understand and support the judiciary".

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<sup>1</sup> Judicial Commissioner and Judicial Conduct Panel Act 2004, ss 8(2) and 16(1)(f).

9. In summary, the principles are:

- (i) **Judicial independence** is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- (ii) **Impartiality** is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also the process by which the decision is made.
- (iii) **Integrity** is essential to the proper discharge of the judicial office.
- (iv) **Propriety**, and the appearance of propriety, are essential to the performance of all of the activities of the judge.
- (v) **Ensuring equality of treatment** to all before the courts is essential to the due performance of the judicial office.
- (vi) **Competence and diligence** are prerequisites to the due performance of judicial office.

10. These guiding principles overlap to some degree but are designed to enhance public confidence in the independence and impartiality of the judiciary. These principles are discussed further in the material which follows.

#### **D. JUDICIAL INDEPENDENCE**

11. Judicial independence is sometimes mistakenly perceived as a privilege enjoyed by judges. In fact, it is a cornerstone of our system of government in a democratic society and a safeguard of the freedom and rights of the citizen under the rule of law.

12. There are two aspects of this concept that are important for present purposes: constitutional independence and independence in the discharge of judicial duties.

##### ***Constitutional Independence***

13. The principle of the separation of powers requires that the judiciary must be, and be seen to be, independent of the legislative and executive branches of government.

14. The independence of the judiciary from the legislative and executive arms of government is fundamental to the constitutional balance under the Constitution Act 1986 as well as to the principle of legality which underlies it and the rights and freedoms recognised by the New Zealand Bill of Rights Act 1990.
15. It is secured by ancient guarantees of security of tenure and salary, now to be found in ss 23 and 24 of the Constitution Act 1986, and by constitutional conventions which prevent the executive directing the judiciary or criticising judges. Parliament directs the judiciary only by legislation. To reflect the separation of the judiciary from the other branches of government, judges are not “employed” by the government or the Ministry of Justice.
16. The independence of the judiciary imposes reciprocal obligations upon the judges to respect the proper role of Parliament and the executive. Judges cannot avoid entering upon politically contentious matters if properly brought before them in legal proceedings (although comments should be measured). But extra-judicial statements upon politically contentious matters are not appropriate if the judge’s involvement could reasonably undermine confidence in his or her impartiality on a matter that could come before the court, if it might unnecessarily expose the judge (and the judiciary) to political attack, or if the status of judicial office is used.

***Independence in the discharge of judicial duties***

17. Judges are independent in the performance of judicial function not only from the other branches of government, but from each other. Judicial decision-making is the responsibility of the individual judge, even in a collegiate appellate court. The Chief Justice or head of jurisdiction has no authority over the discharge of judicial function by other judges.

18. 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. Judges should bear in mind that the principle of judicial independence extends beyond the traditional separation of powers and requires the judge to be, and be seen to be, independent of all sources of power or influence in society, including the media and commercial interests. Judges should protect independence by rejecting any attempts to influence them except by public advocacy in the courtroom.
19. Illustrations of issues relating to judicial independence are set out in section H below.

## **E. IMPARTIALITY**

20. Impartiality is the essential quality required of the judge. That is made explicit by the judicial oath which requires judges to act “without fear or favour, affection or ill-will”. Even the constitutional requirement of judicial independence is essentially a means to the end of impartiality.
21. Impartiality must exist both as a matter of fact and as a matter of reasonable appearance. Reasonable appearance of partiality can be impossible to dispel, leaving a sense of injustice which is deeply destructive of confidence in judicial decisions.
22. The appearance of impartiality is measured by the standard of a fair-minded and properly informed observer. This objective standard supports public confidence in the judicial system.
23. The appearance that a judge is not impartial can be given by apparent conflict of interest, by judicial behaviour on the bench, and by associations and activities off the bench. Whether such appearance could reasonably be given is often extremely difficult to judge in advance or at the time. A judge will need to be careful about expressions of views which might give the appearance of bias, particularly in relation to differences arising from culture, race, religious belief or gender.

24. From time to time judges will err in concluding that no reasonable apprehension of partiality or bias could be taken from the circumstances. A conclusion that there was a reasonable apprehension of bias by an appellate or reviewing court does not of itself entail criticism of the judge's conduct or ethics. Such a conclusion simply reflects the appellate court's disagreement with what the circumstances objectively require and casts no personal aspersion on the judge concerned. That is not however a distinction always appreciated by lay litigants. Some particular vigilance on the part of the judge is warranted by the sensitivity of the issue and its capacity to erode confidence in the judiciary.
25. The requirement of impartiality does not mean that judges cannot have sympathies or opinions about matters of public interest. But they should recognise and suppress their own views in doing right according to law with an open mind in the particular case.
26. In certain circumstances, a judge may be obliged to disqualify himself or herself from sitting in a particular case. This topic is dealt with in the following section F.

## **F. DISQUALIFICATION OF JUDGES**

### ***(a) Conflict of interest generally***

27. Judges have an obligation to sit on any case allocated unless grounds for disqualification exist. They should disqualify themselves in circumstances where a fair-minded, properly informed lay observer would have a reasonable apprehension that the judge might not bring an impartial mind to the resolution of the question the judge is required to decide. The standard is one of real and not remote possibility, rather than probability. Judges are not disqualified from sitting merely because the issues involved in a case are in some indirect way related to the Judge's personal experience.



28. Conflict of interest arises in a number of different situations. The judge should be alert to any appearance of bias arising out of connections with litigants, witnesses or their legal advisors. The fact that a particular relationship falls outside these guidelines may not necessarily dispel the possibility that there is nevertheless a reasonable apprehension of bias in the particular circumstances.
29. The question of disqualification is for the judge. The judge should not accede too readily to suggestions of bias. And it is not relevant that another judge may be better placed to hear a case. The judge should be mindful of the burden passed on to other judges if disqualification is resorted to without need. But greater burdens are imposed if an appellate court eventually takes the view that disqualification was appropriate. It is therefore prudent for the judge to decline to sit in cases of doubt as to appearance of bias.
30. The following guidance does no more than seek to assist the individual judge in the evaluation of whether grounds for disqualification exist, by reference to specific circumstances which may arise. Jurisprudence from New Zealand and Australia may also be of value to guide judges.<sup>2</sup> In cases of uncertainty it may be desirable for the judge to discuss the matter with the relevant head of jurisdiction or another judge.

**(b) Disqualification where relationship exists**

31. The existence of a relationship with a party, lawyer or witness will not in itself create a reasonable apprehension of bias. Rather, there must be some logical connection between the relationship and its capacity to influence a judge to deviate from the course of deciding a case on its merits alone. It is impossible to be categorical about relationships which tend to suggest such a logical connection will exist. What follows is merely guidance as to particular relationships that might arise.

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<sup>2</sup> Including *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd* [2009] NZSC 72, [2010] 1 NZLR 35; *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2009] NZSC 122, [2010] 1 NZLR 76; *Ebner v Official Trustee in Bankruptcy* [2000] HCA 63, (2000) 205 CLR 337; and *Aussie Airlines Pty Ltd v Australian Airlines Pty Ltd* (1996) 135 ALR 753. See also: Grant Hammond, *Judicial Recusal Principles, Process and Problems* (Hart Publishing, Oxford and Portland Oregon, 2009).

32. A judge should disqualify himself or herself where a party, lawyer or witness of disputed facts is a close relative or domestic partner of the judge.
33. A judge should also consider disqualification where:
- (i) A party or witness of disputed facts is a close friend of the judge;
  - (ii) A witness of disputed facts is someone known to the judge or someone about whom he or she has formed a view, such as a former client; or
  - (iii) A party, lawyer or witness of disputed facts is a business associate of the judge. Much will depend on the nature and extent of the association. For example, if the judge is directly or indirectly financially dependent on or indebted or otherwise beholden to a party, lawyer, or witness, the judge should disqualify himself or herself, unless that dependence or indebtedness is so minimal as to be immaterial.
34. Friendship or past professional association with lawyers engaged in the case is generally insufficient to result in disqualification. On the whole, friendships between counsel and members of the bench are positively regarded, as they engender mutual trust and confidence and support the smooth functioning of the administration of justice.

***(c) Disqualification arising from legal practice***

35. Judges should disqualify themselves if they served as legal advisors in respect of the matter in issue when in practice. If a firm of which the judge has been a member in practice was at the time concerned with the matter, the judge should consider disqualification even if the judge had no involvement in it.

***(d) Disqualification where economic interest***

36. The judge should disqualify himself or herself if he or she, or a close relative or member of the judge's household, directly or indirectly has an economic interest in the outcome of the proceedings. Such conflicts may arise out of current commercial or business activities, financial investments (including shareholding in public or private companies) or membership or involvement with educational, charitable or other community organisations which may be interested in the litigation.
37. An economic interest may also arise, not from an interest in the outcome of the particular proceedings, but where the case is to decide a point of law which may affect the judge in his or her personal capacity beyond that of the public generally. In deciding whether to disqualify himself or herself, the judge should have regard to the point of law, to the nature and extent of his or her interest, and the effect of the decision on others with whom the judge has a relationship, actual or foreseeable.
38. Shareholdings in litigant companies or companies associated with litigants should be disclosed. They should lead to disqualification if the value of the shareholding would be affected by the outcome of the litigation. Where the shareholding is small, full disclosure should still be made.

***(e) Disqualification where opinions earlier expressed***

39. A judge should consider disqualifying himself or herself if the case concerns a matter upon which the judge has made public statements of firm opinion. However, the expression of opinion would have had to have been extreme and unbalanced before a reasonable observer would think the judge not able to have an open mind.

40. An expression of opinion in an earlier case or in an earlier stage of a proceeding is not necessarily a ground for disqualification.

***(f) Disclosure of conflict of interest***

41. Adequate disclosure protects the integrity of the judicial process and is also a defence against later applications for disqualification. It does not constitute an acknowledgement that the circumstances give rise to a reasonable apprehension of bias. Disclosure of any matter which might give rise to objection should be undertaken even if the judge has formed the view that there is no basis for disqualification. There may be circumstances not known to the judge which may be raised by the parties consequentially upon such disclosure.
42. Disclosure should be made as early as possible before the hearing. The only proper course for making disclosure is in writing and through the Registrar of the Court to counsel for all parties. The judge should ensure that the parties have sufficient information, without unnecessary detail, to decide whether to make a recusal application. It is undesirable for parties to be placed in the position of having to seek further information from the judge.
43. It is acknowledged that advance disclosure often may not be possible in light of listing arrangements. Disclosure only on the day of the hearing may be unavoidable. Discussion between the judge and the parties about whether to proceed should normally be in open court, unless the case itself is to be heard in chambers. The parties should be given an opportunity to make submissions on recusal after full disclosure of the circumstances giving rise to the question of disqualification. The judge should be particularly mindful of the difficult position that the parties and their advisors are placed in by disclosure on the day of the hearing and avoid putting parties in a situation in which it might appear that consent is sought where a ground of disqualification actually exists.

44. The consent of the parties to a judge sitting is not determinative, as the subjective perceptions of the parties are not relevant to whether there is a reasonable apprehension of bias. Even where parties do consent, the judge should nonetheless recuse himself or herself where there is a proper basis for disqualification. In other cases, where the judge has disclosed a matter which might give rise to objection and has heard and considered submissions, he or she may form the view that the hearing may proceed notwithstanding the lack of consent.
45. In circumstances of great urgency, where the judge cannot be replaced for practical reasons, he or she may need to hear the case, notwithstanding that there may exist arguable grounds in favour of disqualification.

## **G. CONDUCT IN THE COURTROOM**

### ***(a) Behaviour in court***

46. The primary obligation of a judge is to determine the case before him or her according to law without being deflected from that obligation by desire for popularity or fear of criticism.
47. The judge must hear a case in accordance with the principles of natural justice and on the evidence in the case. Communication between the judge and any party in the absence of the other party to the case is not permissible, except in proceedings properly heard *ex parte*.
48. 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, integrity, impartiality and independence of the judge.

49. It is therefore necessary to display such personal attributes as punctuality, courtesy, patience, tolerance and good humour. Any trial is a serious matter but that does not mean that occasional humour is out of place in a courtroom, provided it does not embarrass a party or witness or give the impression to a litigant that his or her case is not being taken seriously. Indeed, it sometimes relieves tension and thereby assists the trial process.
50. Nevertheless, the entitlement of everyone who comes to court, whether litigants or witnesses, is to be treated in a way that respects their dignity. Judges must conduct themselves with courtesy to all and must require similar courtesy from those appearing in court. Judges should be alert to protect parties or witnesses from discourtesy or displays of prejudice based on racial, sexual, religious or other impermissible grounds.
51. A judge must be firm in maintaining proper conduct during a hearing. Intervention is appropriate but should be moderate. It is important a judge does not appear from interventions to have reached a conclusion prematurely or, in the case of criminal trials before a jury, to have reached a view of guilt or innocence.
52. A judge should remember that 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 should be kept in mind, particularly in the case where there is an unrepresented litigant, but the caution extends to all cases.

***(b) Diligence in discharge of official functions***

53. Judges should diligently and faithfully discharge their judicial functions. The obligation covers not only intellectual honesty in judging and prompt disposal of work, but willingness to undertake a fair share of the work of the court.

***(c) Correction of oral judgments***

54. A judge should not alter the substance of reasons for decisions given orally. The correction of slips or poor expression, including citations omitted at the time of oral judgments, is acceptable.

***(d) Correction of transcript of summing up***

55. The transcript of a summing up to a jury should not be altered unless it does not correctly record what the judge actually said.

***(e) Reserved judgments***

56. A judge should deliver reserved judgments within a reasonable time. If other work commitments prevent a judge from completing a reserved judgment, it is the responsibility of the judge to raise the matter with the scheduling judge or the head of jurisdiction so that opportunity for completion of the judgment can be provided.

***(f) Communication with appellate court***

57. A judge should not communicate with an appellate court where an appeal is taken from the judge's determination unless a report is called for by the appellate court.

## H. ACTIVITIES OUTSIDE THE COURTROOM

### *Illustrations of issues relating to judicial independence*

#### **(a) Communication with executive or Parliament on behalf of the judiciary**

58. Communication with the executive on behalf of the judiciary is usually the responsibility of the Chief Justice or (if only one jurisdiction is affected) the head of jurisdiction. Such communication should be open and formal.
59. Communication with political parties, Members of Parliament or any appearance of political lobbying (such as through signing petitions) is inappropriate.

#### **(b) Membership of political organisations**

60. Membership of, or association with, political organisations is inconsistent with judicial independence.

#### **(c) Voting**

61. In the past, judges have taken the view that they should abstain from voting in general elections. The more general view now is that judges should not feel precluded from exercising the general privileges of citizenship.

#### **(d) Service on government committees and inquiries**

62. Judges are sometimes asked to serve as commissioners in public inquiries or in ministerial or departmental working parties or committees. Invitation to accept non-judicial functions should be carefully considered for compatibility with judicial function. The judge approached should consult the head of jurisdiction and the Chief Justice before accepting. Relevant considerations will be the impact upon judicial strength during the time of the secondment and any implications for judicial independence.



63. Judges should not agree to serve on government advisory bodies or committees without the approval of the head of jurisdiction. The correct protocol is for the executive to first approach the head of jurisdiction to ascertain whether a member of the bench can be released for such service. If a direct approach is made to the judge, he or she should bring the matter to the attention of the head of jurisdiction. Factors which will influence the appropriateness of acceding to the request are the maintenance of the independence of the judiciary and workload considerations. Whether service on advisory bodies or committees to executive government is appropriate depends upon the role of the body and whether judicial membership in it might be perceived to be inconsistent with the impartiality and political neutrality of judges.

***(e) Submissions or evidence to Parliamentary Select Committees***

64. Subject to paragraph 65, a judge is not precluded from making a submission or giving evidence before a parliamentary select committee on a matter affecting the legal system. However, caution is recommended. It is important to avoid entering upon matters of a political nature and to bear in mind the need to maintain judicial independence from the legislative and executive branches of government. It is important for the head of jurisdiction to be consulted before embarking upon a submission.

***(f) Participation in public debate/media/judicial writing***

65. If a matter of public controversy calls for a response from the judiciary or a particular court, it should come from the Chief Justice or head of jurisdiction or with his or her approval. In other cases it may be beneficial to public debate for judges to provide information relating to the administration of justice and the functions of the judiciary. Such participation is desirable but requires care. In particular a judge should avoid political controversy. It is important to avoid using judicial office to promote personal views and to avoid the appearance of capture by particular organisations or causes. Judges should avoid expressing opinions on matters which may arise in litigation and which may lead to concern about the impartiality of the judge.

66. Publication in legal journals or presentations at legal seminars is not objectionable but requires care to avoid expressing firm views about matters which may come before the court for determination.

***(g) Comments on judicial decisions***

67. Judgments must stand without further clarification or explanation. Where a decision is subject to inaccurate comment, any appropriate response should be from the Chief Justice or head of jurisdiction. Generally the most effective response is to get the full text of the judgment into the public arena promptly. In major or high profile cases, a short explanatory media release may be appropriate to accompany a judgment along the lines sometimes adopted by the Supreme Court.

***(h) Threats to independence in the discharge of judicial duty***

68. Sometimes judges receive letters or other communications containing threats to the safety or welfare of themselves or members of their family in an attempt to influence a judicial decision. Conduct of this nature will not influence the judge but, where appropriate, it may be prudent to report any such threat to the head of jurisdiction and to the Ministry of Justice security personnel or to the police. Reporting a matter to the police should only take place after consultation with the head of jurisdiction or a senior colleague.

***Extra-judicial activities***

69. The days are past when appointment to the judiciary compelled social and civic isolation. Effective judges should not be isolated from the communities they serve. Judges are also entitled to private and civic lives which are not disadvantaged by office.
70. On the other hand, a judge's conduct, both in and out of court, inevitably attracts closer public scrutiny than that of other members of the community. And the standing of the judiciary is adversely affected by conduct which, for others, might not attract serious criticism. Judges must therefore accept some restrictions on conduct and activities as a consequence of appointment.

71. Where the balance should be struck is a matter of reasonable difference of opinion but, as a general principle, a judge should try to ensure that his or her conduct in public and in private, maintains and enhances public confidence in the integrity of the judge and of the judiciary generally. Guidance in respect of specific activities follows.

***(a) Membership of discriminatory organisations***

72. A judge should not be a member of any social organisation which discriminates on the basis of race, sex, religion or national origins.

***(b) Alcohol, breaches of law, lack of integrity of propriety in private dealings***

73. Judges who deal with the effects of alcohol abuse may well be seen as compromised if themselves abusers of alcohol. And breaches of law, at least beyond the trivial or technical, are incompatible with the judicial obligation to uphold the law. Lack of integrity or propriety in private dealings and financial affairs, such as would expose the judge to the censure of reasonable, fair-minded and informed persons, may also be viewed as incompatible with judicial office. Personal and social relationships, if abusive, exploitative or with people who do not observe the law, may raise questions about fitness. Matters such as these reflect upon the judge's ability or fitness to discharge the trust of judicial office.

***(c) Property and civil rights***

74. On the other hand, judges should not be denied the right to act in protection of rights of property and other personal interests. Nor should they lightly be denied the freedoms of association and expression secured for all citizens.

***(d) Service on charitable or community organisations***

75. Extra-judicial responsibilities and interests should not be such as to interfere with the discharge of judicial duties. Judging is onerous work. The judge's primary responsibility is to fulfil the judicial duties. Any outside activities should not be of a scale which might distract from the judge's principal responsibilities.

76. Appointees to judicial office have often been engaged in service through charitable or civic organisations before appointment. It is not always necessary for the judge to withdraw from such service. Many judges have served on the boards or as trustees or officers of educational, religious, or charitable organisations. But some caution is required. It is important that the activities of the organisation should not reflect adversely upon the judge's impartiality or standing or the discharge of the judge's judicial duties. Involvement in an organisation is not appropriate where:
- (i) it is likely to be regularly involved in contested proceedings before the courts;
  - (ii) its finances are unsound;
  - (iii) the standing of judicial office could be used to solicit funds; or
  - (iv) the objectives of the organisation include law reform or political change.
77. It is not appropriate for judges to provide legal or investment advice to charitable organisations. A judge who is a member of a decision-making body of such an organisation may however participate in its decisions including those about investments or legal rights and obligations.
78. Where a judge serves on the board of an organisation which has commercial activities or raises funds from the public, the judge should not permit his or her name or title to appear on documents associated with an appeal for funds.
79. A judge should not personally solicit funds or lend his or her name to fund-raising activities.

***(e) Public fundraising***

80. A judge should avoid any involvement in fundraising which might create a perception that use is being made, or advantage taken, of the judicial office. A judge should be especially careful to avoid creating such a perception in the minds of actual or potential litigants or witnesses.

**(f) Management of own investments**

81. Judges are not precluded from managing their own investments and those of their immediate families or family trusts provided they do not distract from judicial duties. Some caution is necessary if the investments are substantial or of a nature which is likely to give rise to controversy. In such cases it may be preferable for the judge to be removed from direct management.

**(g) Company directorships/trusteeships**

82. Section 4(2A) of the Judicature Act 1908 provides:

A Judge must not undertake any other paid employment or hold any other office (whether paid or not) unless the Chief High Court Judge is satisfied that the employment or other office is compatible with judicial office.

83. A similar provision exists for the District Court, requiring the consent of the Chief District Court Judge.<sup>3</sup> The precise scope of these provisions has not been clarified but it is sufficiently wide to cover the undertaking of any other paid employment. It may also cover other offices (whether paid or not) such as a company directorship or trusteeship under a trust or will. In all such cases, the Chief High Court Judge or the Chief District Court Judge (as appropriate) must be satisfied that the employment or other office is compatible with judicial office.<sup>4</sup>

84. The management of deceased estates for close family members, whether as executor or trustee, is unobjectionable, and may be acceptable even for other relatives or friends if the administration is not complex, time-consuming or contentious. The directorship of small-scale commercial or private investment companies may also be unobjectionable. Directorships of public companies should be resigned on appointment and not thereafter accepted while in judicial office. A cautious approach is required and, in any case of doubt, the advice of the head of jurisdiction should be obtained.

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<sup>3</sup> District Courts Act 1947, s 5(4).

<sup>4</sup> The Supreme Court in *Saxmere Company Ltd v Wool Board Disestablishment Company Ltd (No 2)* [2010] 1 NZLR 76 at [9] did not find it necessary to decide whether this provision applied to judges of the Court of Appeal and Supreme Court but observed this would be an odd result.

***(h) Legal advice and representation***

85. Judges should not give legal advice except without compensation for close family members. Judge is not precluded from acting for himself or herself in legal matters but should not, in so acting, abuse the standing of judicial office to advance the interests of the judge or the judge's family. The judge cannot act as advocate or negotiator for a family member in a legal manner.
86. A judge should not accept free legal advice or representation. All professional services from lawyers should be paid for at the lawyer's usual charge-out rate.

***(i) Acceptance of gifts and expenses***

87. A distinction is necessary between accepting gifts in a personal capacity unrelated to judicial office, eg from family or close friends, and gifts which in some way relate, or appear to relate, to judicial office. It is only in the latter category that acceptance of gifts or other benefits needs careful consideration.
88. Acceptance of small gifts for participating in a public or private function is not objectionable. Some care is necessary in accepting payment of expenses.
89. There is generally no objection to judges receiving travel and accommodation in return for providing papers at conferences or similar occasions. If the host organisation is a university or a legal organisation, there will generally be no problem. If however the organisation is a private one associated with a particular cause or which is a potential litigant before the courts, or if the arrangements are unusually lavish, consultation with the Chief Justice or head of jurisdiction before accepting is advisable.
90. Caution is necessary in respect of any significant benefit. There are two risks:
- (i) any suggestion of exploitation of the standing of judicial office to obtain benefit.
  - (ii) anything which might be interpreted as an attempt to influence the judge in performance of judicial work.

***(j) Social contact with members of the legal profession***

91. Social contact between members of the bench and bar is a long-standing tradition. Care should be taken to avoid direct social contact with practitioners who are engaged in current cases before the judge. A judge may accept invitations to speak at law firms or barristers' chambers but should be careful to avoid any perception of a lack of impartiality.

***(k) Disciplinary committees***

92. A judge should not be a member of the committee of an extra-judicial body which exercises disciplinary powers unless authorised by statute.

***(l) Other social contacts***

93. Judges should be careful about being present in circumstances where a gathering on premises may not be conducted in accordance with law or where they may risk associating with people who are involved in criminal activities.

***(m) Use of judicial office***

94. A judge should not use judicial office for personal advantage or for the benefit of the judge's family or friends.

***(n) Use of judicial stationery in private business dealings***

95. In personal business dealings the judge should not use judicial stationery and should be careful to avoid the appearance of using the standing of judicial office for advantage.

**(o) Letters of recommendation**

96. Judges should be cautious about providing references or letters of recommendation. There is no objection to letters of recommendation arising out of the personal knowledge of the judge, but caution is necessary in the use of judicial letterheads. Generally speaking, judicial stationery should be used for recommendations only where the personal knowledge of the person recommended is acquired in the course of judicial work. That is the case, for example, with recommendations for scholarships or employment for former clerks.

**(p) Evidence in court**

97. While a judge may give evidence when summonsed by a party, care needs to be taken not to invoke the standing of judicial office.

**(q) Character evidence**

98. A judge should not give character evidence in court proceedings as a volunteer. However, character evidence may be given where it would be unfair to deprive the person known by the judge of special knowledge possessed only by the judge. In such cases it is preferable for the judge concerned to consult the head of jurisdiction if asked to give such evidence.

**(r) Acceptance of fees, royalties and expenses for papers and publications**

99. The delivery of papers on legal subjects at legal conferences is an obligation which goes with judicial office. Acceptance of a fee for such participation is not appropriate although the reimbursement of expenses incurred is permissible.
100. There is no objection to a judge receiving royalties or payment for publication of texts or other substantial work. Care should be taken however to ensure that such writing does not intrude upon judicial responsibilities and time. Again, a judge should be careful in any such publication to avoid the appearance of pre-determining matters which may come before the court in actual controversy.



## **I. GENERAL MATTERS**

### ***(a) Support for judicial independence***

101. In their discharge of judicial functions judges should be mindful of the obligation to maintain the independence of the judiciary. That includes the independence of the institution and respect and support for judicial colleagues. Judges should not criticise or denigrate other judges publicly or privately including, for example, to members of the legal profession. The court system means that an appellate court will need to correct decisions in lower courts from time to time and the appellate court should not shrink from doing so where necessary. However, any criticism of the lower court should be expressed in moderate terms. Collegiate support is important to the maintenance of judicial independence.

### ***(b) Support for colleagues***

102. In addition to judges observing high standards of conduct personally, they should also encourage and support their judicial colleagues to do the same, as questionable conduct by one judge reflects on the judiciary as a whole.
103. Judges also have opportunities to be aware of the conduct of their judicial colleagues. If a judge is aware of evidence which, in the judge's view, is reliable and indicates a strong likelihood of unprofessional conduct by another judge, serious consideration should be given as to what action the judge should take, having regard to the public interest in the due administration of justice. This may involve counselling, making inquiries of colleagues, or informing the Chief Justice or head of jurisdiction of the relevant court.