

**COMMISSION FOR THE ADMINISTRATION
OF JUSTICE**

**CODE OF ETHICS FOR MEMBERS
OF THE JUDICIARY**

*(As amended on 18 May 2004, and including the Chief Justice's Guidelines made pursuant
to rule 29 and approved on 8 June 2004)*

The Palace, Valletta
2004.

CODE OF ETHICS FOR MEMBERS OF THE JUDICIARY

PREAMBLE

Article 101A(11)(d) of the Constitution of Malta directs the Commission for the Administration of Justice to “draw up a code or codes of ethics regulating the conduct of members of the judiciary”.

Pursuant to the said article the Commission is hereby drawing up this Code after having taken into account rules of ethics to which all Judges and Magistrates have already subscribed. The rules, embodied in this Code have, in substance been accepted and observed by the Maltese Judiciary for a long number of years. This Code in effect reflects these long accepted rules of behaviour.

The aim of this codification is for members of the Judiciary to have a Code of Ethics regulating their conduct and providing them with guidelines that expressly confirm the values they have always adhered to. These values are being brought to the notice of the public so as to strengthen trust in the administration of Justice.

This trust cannot be maintained and reinforced if members of the Judiciary do not conform to this Code and if they fail to observe the highest standards of correct ethical behaviour, and if the State does not ensure that the Judiciary has at its disposal all the necessary means and resources to enable it to carry out its duties efficiently and within a reasonable time.

RULES

1. Members of the Judiciary shall perform their duties with competence, diligence and dedication.
2. Members of the Judiciary shall decide cases assigned to them within a reasonable time, according to the means and resources placed at their disposal by the State and to the volume of work assigned to them. They are to ensure that justice be done by giving each party a fair hearing according to law. Furthermore, they are to ascertain that their decisions shall, whenever required, be duly motivated so as to understand the reasoning for such a decision.
3. In order to be able to competently interpret and apply the laws of the land, members of the Judiciary must always be well trained professionally and, within the limits of the means and resources that the State is in duty bound to place at their disposal, they are to keep themselves informed regarding developments in legal and judicial matters.
4. Members of the Judiciary shall carry out their duties with dignity, courtesy and humanity. In particular they are to show respect towards advocates, legal procurators, the parties and witnesses, as well as towards the public and this to ensure the orderly and decorous conduct of proceedings. Furthermore, they are to ensure that good order and decorum are maintained in the courtroom where they preside and are to ensure that every person conducts himself accordingly in court.
5. Members of the Judiciary shall at all times show respect towards their colleagues, and particularly towards the judgements they pronounce.
6. Members of the Judiciary shall not, save in exceptionally serious circumstances, fail to exercise their duties as members of the Judiciary. Should this legitimate impediment last for sometime, the Chief Justice shall be duly informed of this fact as well as the cause thereof.
7. Members of the Judiciary shall not accept any post that could hinder them or restrict them in the full and correct performance of their duties.
8. Members of the Judiciary have every right to administer their personal assets and belongings in the manner most beneficial to them. However, they shall not engage in any activity that is in its very nature incompatible with the office they hold.
9. (a) Members of the Judiciary shall not hold any other office of profit under the Government, except such offices as are expressly allowed by law.

(b) Without prejudice to the first part of rule 8, members of the Judiciary shall not exercise any profession, business or trade.

(c) Members of the Judiciary may hold an office or post of profit where the law expressly provides for the possibility of their appointment.

*Amended:
on 18 May 2004.*

(d) Members of the Judiciary shall not hold any office or post, even though of a temporary or voluntary or honorary nature, and may not perform any activity, which in the opinion of the Commission for the Administration of Justice may compromise or prejudice their position or their duties or functions.

10. Members of the Judiciary shall inform the Chief Justice of every other post that they might hold both in Malta and overseas, be it remunerated or otherwise.
11. Members of the Judiciary, as other persons, have a right to their private life. However, in this context, members of the Judiciary are to ensure that their conduct is consistent with their office and that it does not tarnish their personal integrity and dignity which are indispensable for the performance of their duties.
12. Members of the Judiciary shall not join organizations, associations or bodies with political leanings, or which in their nature or in the purpose of their existence can be in conflict with their independence or impartiality, nor in any way can then show support even by way of financial assistance. Neither shall members of the Judiciary participate in activities of such organizations, associations or bodies.

Members of the Judiciary shall not associate or show familiarity with persons or associations that could discredit such members of the Judiciary or the office they hold, and they shall avoid conduct that could give rise to public scandal. In their behaviour members of the Judiciary shall demonstrate respect for the law.

13. Members of the Judiciary shall not discuss out of Court, cases that are pending in court. In full respect of freedom of expression members of the Judiciary should discourage persons from discussing, in their presence cases that are *sub judice*.
14. In preparing their decisions, members of the Judiciary may, should they deem it necessary, consult another member or other members of the Judiciary, provided that this be done strictly on the academic point at issue seeking clarification on a point of law. However, they should do so without making reference to the specific case.
15. Members of the Judiciary shall carry out their duties according to the dictates of their conscience, objectively and without fear, favour or prejudice, and in keeping with the laws and customs of the land.
16. Members of the Judiciary, in the performance of their duties, shall set aside all prejudice and decide cases objectively and solely on their legal and factual merits.
17. Members of the Judiciary shall conduct themselves, both in Court and outside Court, in such a manner as not to put into doubt their independence and impartiality or the independence and impartiality of the office they hold.
18. When members of the Judiciary sit on a collegial court and the law provides for one decision, they shall not, directly or indirectly, disclose their votes or opinions nor those of one or more members of that Court, who had a dissenting view.

19. Members of the Judiciary shall not communicate, directly or indirectly, with any of the parties involved in a case, their advocates or legal procurators regarding a case that has not yet been decided upon or one that is about to commence or proceed, except in the manner prescribed by law.
20. Members of the Judiciary are obliged to pronounce in open Court all communications made to them and to inform the President of Malta of such communication as provided for in the Code of Organization and Civil Procedure.
21. Save in those cases referred to in the Code of Organization and Civil Procedure, members of the Judiciary shall not act as advocates or give advice or their views regarding a case that they know has commenced or one that they think is likely to commence. As a rule, members of the Judiciary shall not act as character witnesses for any person, particularly if the said person stands accused of a crime, unless compelled by law or in cases involving relatives, and in other cases after having consulted with and obtained the approval of the Chief Justice.
22. Members of the Judiciary shall not act as arbitrators nor shall they undertake any tutorship or other forms of administration except those to which they have been appointed by law or those permitted by law.
23. Members of the Judiciary shall not preside over a case in which they know there exists any one of the reasons for being challenged as provided for in the Code of Organization and Civil Procedure or where there exists a manifest danger or prejudice to fair hearing: in all other cases they are bound not to abstain from their duty.
24. Members of the Judiciary shall not accept any gift, favour or benefit which might possibly influence them in the proper fulfilment of their judicial duties or which might give an impression of improper conduct.
25. Members of the Judiciary shall not, whether in their private or public life, act in such manner as might imply political partiality.
26. Although it may be useful and proper to maintain a dialogue between the Bench and other organs of the State, members of the Judiciary shall not however communicate in private with members of the Executive on any matter connected with their duties or functions except through or after express consultation with the Senior Magistrate and/or with the Chief Justice. Nor shall members of the Judiciary individually accept any advantage or benefit from the Executive except when such advantages or benefits are addressed to the Judiciary collectively.
27. Members of the Judiciary shall have the right to form their own professional association in order to safeguard their rights and interests, and individual members of the Judiciary shall be entitled to choose freely whether or not to be members of such a professional association. They shall also have the right to affiliate, whether through such a professional association or individually, with other associations which may better attain or ensure the aims which their association aspires to.

28. Members of the Judiciary shall not comment or grant interviews to the media, or speak in public on matters which are *sub judice*. Members of the Judiciary shall avoid communicating with the media and pronouncing themselves in public on matters which constitute a public controversy. In general, members of the Judiciary shall not seek publicity or the approval of the public or the media.

*Added:
on 18 May 2004.*

29. The Chief Justice shall recommend for the approval of the Commission for the Administration of Justice guidelines for members of the Judiciary for the purpose of clarifying how the rules in this Code, or some of them, may apply to concrete cases, and to ensure, as far as possible, uniformity in the implementation of the said rules.

The Maltese text of this Code shall be binding for the purpose of article 101 A (11) (d) of the Constitution of Malta.

Guidelines

*(made pursuant to rule 29 of the Code of Ethics for Members of the Judiciary
and approved on 8 June 2004)*

Introduction

These guidelines are intended to supplement the provisions of the Code of Ethics for Members of the Judiciary, hereinafter referred to as “the Code”, and in particular rules 7, 8, 9, 12, 17, 26 and 27 by referring in more concrete terms to types of interest and activity which are most likely to occur and by recommending the proper course to be undertaken by a member of the Judiciary. They are also intended to ensure uniformity, while respecting fully the provisions of Section 107(3) of the Constitution. References to Judges include Magistrates.

Financial interests

There is normally no objection to a Judge holding shares in a commercial company. However, a Judge should not hold a commercial directorship, whether in a private or in a public company, and whether or not that directorship is remunerated. This applies even if the company is solely owned by the Judge and his family.

Termination of professional and business contacts

A Judge is expected to terminate all professional and business contacts with his former partners and clients and to sever professional connections with his former office or chambers on taking up judicial office, save to the extent that such contact may be necessary for practical purposes, such as the receipt of outstanding fees. A Judge should not maintain an office or make use of office facilities in the premises of the partnership, firm or chambers with which he was formerly connected, and he should also bear in mind the need for discretion in the number and frequency of visits he makes there even when these are of a social or personal nature. He is also to ensure that his name is removed from the headed papers and other stationery of the partnership, firm or chambers.

Social, cultural and other activities

As a rule a Judge may engage in historical, educational, cultural, sporting or like social and recreational activities, if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties; and for such purpose a Judge may be a member of a historical, educational, cultural or sporting association. The same applies to charitable activities. However membership of associations which involve or require regular meetings with persons who are actively engaged in the business sector or in politics should be undertaken with great caution. In case of doubt, the Chief Justice is to be consulted.

Other than for honorary (i.e. non executive) posts, a Judge should not hold any post within an association, whether in Malta or abroad, where such association, directly or indirectly, requires fund-raising from third parties not being members of that association, or which requires sponsorship solicitation, or which administers immovable property or other property of a substantial nature, or which is involved in commercial dealings; or an association which by its very nature or purpose involves the Judge in decision-making processes directly affecting or likely to directly affect the members of the association; or an association which is in receipt of funds from the Government or which is charged with the task of giving effect to Government policy in any field. In principle there is no objection to a Judge holding an executive post in an association such as is referred to in rule 27 of the Code, even if the association receives limited

funding from Government, whether directly or indirectly (for instance, through EU funding); likewise a Judge may hold an executive post in an international association or network which is in receipt of such funding and which is set up to promote international judicial co-operation. Again, in case of doubt, the Chief Justice should be consulted.

Boards of inquiry

Other than in the cases specifically provided for by law, a Judge should not sit on, or advise, any board of inquiry. In the case of an inquiry held under the provisions of the Inquiries Act (Cap. 273) a Judge should inform the Chief Justice before accepting to participate in such an inquiry.

Lecturing and writing

There is in principle no objection to members of the Judiciary speaking on technical legal matters, which are unlikely to be controversial, at lectures and conferences organised by professional, academic and other similar non-profit making organisations. Lectures and seminars which deal with matters of more general public interest may, however, raise wider issues of policy, sometimes not immediately apparent. Judges will therefore wish to be cautious about speaking at these. Depending on circumstances, it could also be inappropriate for a Judge to accept an invitation to deliver a public lecture or participate in a conference or seminar run or sponsored by a commercial undertaking. It is also inappropriate for a Judge to receive a fee for giving a lecture or otherwise conducting a conference or seminar. The same applies to lectures of a cultural nature.

It is in the interest of the legal profession that Judges lecture to students reading law or subjects ancillary to law. On the other hand it is important to ensure that such lecturing, when not just occasional, does not interfere with the Judge's duties. Consequently a Judge who is invited to deliver a series of lectures to, or to hold a number of tutorial sessions with, students is first to consult with the Chief Justice to ensure that such lectures and their scheduling do not interfere with judicial duties. In principle such lectures or tutorial sessions should not involve more than fourteen contact hours per academic year; only in exceptional circumstances should more lectures be delivered. A Judge is not to receive any remuneration or any other form of allowance or consideration for delivering such lectures.

The writing of books, of articles in professional or academic journals, and the editing of legal textbooks are not, as a rule, incompatible with the holding of judicial office. Legal and technical books and articles do not normally give rise to difficulties, but it may sometimes be advisable for a Judge to avoid writing on a subject of wider or more general public interest, or on a topic, even if legal, which is likely to be controversial.

A Judge should always ensure that writing or lecturing, whether occasional or otherwise, does not compromise his position with respect to any case pending or likely to be pending before him.

Masonic and secret associations

Membership of Masonic lodges and secret associations is incompatible with the holding of judicial office. Likewise membership of any association that requires a promise of allegiance from its members is incompatible with judicial office.