

**JUDICIARY HANDBOOK**  
**THE KENYAN SECTION OF THE**  
**INTERNATIONAL COMMISSION OF JURISTS**  
**MODEL MAGISTRATES' CODE OF CONDUCT**

**Forward**

This handbook is a publication aimed at supporting effective interest group demand for judicial reform. It is part of a series of four code of conduct handbooks aimed at promoting judicial independence, accountability and effectiveness.

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These rules are designed to provide guidance to members of the magistracy and to afford a structure for regulating judicial conduct. The code also aims to promote awareness amongst individuals of their obligations to each other and the court.

The Code of Judicial Conduct is not intended as an exhaustive guide for the conduct of magistrates. They should also be governed in their judicial and personal conduct by general ethical standards. The Code is intended, however, to state basic standards, which should govern the conduct of all magistrates, and to provide guidance to assist judges in establishing and maintaining high standards of judicial and personal conduct.

This code of conduct aims to reinforce the general principles relating to the dispensation of justice, which are highlighted below.

- Judicial independence encompasses both the personal independence of an individual magistrate in reaching a decision in the courtroom, and the autonomy and collective independence of the judiciary from other branches of government.
- Judicial accountability and efficiency.
- Community trust and confidence.
- Professionalism.
- Impartiality - All persons coming to the court are entitled to fair and equitable treatment, regardless of their personal circumstances or legal situation.
- Personal integrity – Demonstrate the highest standards of personal integrity, honesty and truthfulness in all our professional and personal dealings, avoiding the misuse of court time, equipment, supplies, or facilities for personal use.
- Uphold the dignity of the court and promote respect for the courts duty to administer justice independently impartially according to the law.

The publication is intended to lead debate and discussion on the professionalism of court reporters.

### **CODE OF CONDUCT**

1. A magistrate must safeguard confidential information, both written and oral, unless disclosure is authorised by the court, refusing ever to use such information for personal advantage, and abstain at all times from public comment about pending proceedings except for strictly procedural matters.<sup>1</sup>
2. A magistrate must refrain from any actual impropriety such as breaking the law, receiving gifts or favours related to court employment, accepting outside employment that conflict with the court duties and recommending private legal service providers and intervening to expedite administrative process.<sup>2</sup>
3. A magistrate shall strive to be aware of, and to 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<sup>3</sup>. A magistrate shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds<sup>4</sup>.
4. A magistrate must at all times comply with the law and uphold the administration of justice.
5. A magistrate must not -
  - (a) place himself or herself in a position where his or her integrity might reasonably be called into question by reason of any financial or other obligation;
  - (b) take any action, which could bring discredit on the magistrates' courts.
6. A magistrate must not use his or her position to obtain or confer benefits, preferential treatment or advantage improperly for or on himself, herself or others.

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<sup>1</sup>Cf. Tasmania.

<sup>2</sup> Cf. Tasmania

<sup>3</sup> cf Canada.

<sup>4</sup> cf ABA Code, Iowa, South Africa, Virginia, Zambia.

7. A magistrate shall avoid close personal association with individual members of the legal profession, particularly those who practise in the magistrate's court, where such association might reasonably give rise to the suspicion or appearance of favouritism or partiality.<sup>5</sup>
8. A magistrate shall refrain from:
  - Membership of political parties;
  - Political fund-raising;
  - Attendance at political gatherings and political fund-raising events;
  - Contributing to political parties or campaigns; and
  - Taking part publicly in controversial discussions of a partisan political character.<sup>6</sup>
9. Save for holding and managing appropriate personal or family investments, a magistrate shall refrain from being engaged in other financial or business dealings as these may interfere with the proper performance of judicial duties or reflect adversely on the magistrate's imparity.<sup>7</sup>
10. A magistrate shall not practise law whilst holding a judicial office.<sup>8</sup>
11. A magistrate shall exercise the judicial function independently on the basis of the magistrate's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressure, threats or interference, direct or indirect, from any quarter or for any reason.<sup>9</sup>
12. A magistrate shall not knowingly, while a proceeding is before, or could come before the magistrate, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the

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<sup>5</sup> Cf Bangladesh, India, Philippines.

<sup>6</sup> Cf Canada, Bangladesh, India, Pakistan, Philippines, Uganda, Virginia, Zambia.

<sup>7</sup> Cf ABA Code, Bangladesh, Iowa, Nigeria, Philippines, Uganda, Virginia, Zambia.

<sup>8</sup> Cf ABA Code, Iowa, Kenya, Malaysia, Nigeria, Philippines, South Africa, Tanzania, Uganda, Virginia, Zambia.

<sup>9</sup> Cf Beijing Principles, Singhvi Declaration, Siracusa Principles, Solomon Islands, South Africa, UN Basic Principles.

process. Nor shall the magistrate make any comment in public or otherwise that might affect the fair trial of any person or issue.<sup>10</sup>

13. A magistrate shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which a reasonable, fair-minded and informed person might believe that the magistrate is unable to decide the matter impartially.<sup>11</sup>
14. Without authority of law and notice to, and consent of, the parties and an opportunity to respond, a magistrate shall not, in absence of the other parties to the proceedings, communicate with any party to proceedings in the magistrate's court concerning such proceedings.<sup>12</sup>
15. A magistrate shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.<sup>13</sup>

This code has been drafted with reference to several existing codes and international instruments such as:

- Code of conduct for non-judicial officers of the Magistrates Court of Tasmania.
- Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- The Canons of Judicial Conduct for the Commonwealth of Virginia adopted and promulgated by the Supreme Court of Virginia, 1998.
- The Iowa Code of Judicial Conduct.
- The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- The Bangalore draft code of conduct.
- Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.

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<sup>10</sup> Cf ABA Code, Bangladesh, Iowa, Nigeria, Philippines, South Africa, Tanzania, Uganda, Virginia, Zambia.

<sup>11</sup> Cf ABA Code, Bangladesh, Canada.

<sup>12</sup> Cf ABA Code, Nigeria, Philippines, Tanzania, Virginia, Zambia.

<sup>13</sup> Cf ABA Code, Bangladesh, Canada, Kenya, Nigeria, Philippines, South Africa, Uganda.

- Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- The Code of Judicial Conduct of the Philippines, September 1989.
- Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- Code of conduct for judicial officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- Code of Conduct for Judicial Officers of Kenya, July 1999.
- Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the judges of the Supreme Court and the High Court, July 1989.
- Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.