

**THE JUDICIAL CODE OF CONDUCT
AND ETHICS**

JUDICIAL SERVICE ACT
(Cap. 185B)

JUDICIAL CODE OF CONDUCT AND ETHICS, 2018

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IN EXERCISE of the powers conferred by Section 47(2)(a) of the Judicial Service Act, Sections 13 and 37 of the Leadership and Integrity Act, 2012, and Section 5(1) of the Public Officer Ethics Act, 2003, the Judicial Service Commission makes the following Code —

PART I— PRELIMINARY

Citation. **1.** This Code may be cited as the Judicial Code of Conduct and Ethics, 2018.

Interpretation. **2.** In this Code —

“Chief Registrar” means the Chief Registrar of the Judiciary as established under Article 161(2)(c) of the Constitution;

“confidential information” means information that has not been made a matter of public record relating to pending cases, as well as information not yet made public concerning the work of any judge, judicial officer, or judicial staff relating to pending cases, including notes, drafts, research papers, internal discussions, internal memoranda, records of internal deliberations, and similar papers;

“Commission” means Judicial Service Commission established under Article 171 of the Constitution;

“Code” means the Judicial Code of Conduct and Ethics;

“fiduciary interest” includes relationships such as those associated with a business partner, an executor, administrator, a trustee and guardian;

“immediate family” includes, spouse, son, daughter, brother, sister, parent, grandparent, grandchildren, father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, daughter-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister or person living in the household of a judge or judicial officer;

“judge’s family” includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, or other person who forms part of the judge’s household as a relative;

“judge's spouse” means the wife or husband of a judge married under any recognized system of law in Kenya;

“judicial officer” means a registrar, deputy registrar, magistrate, Kadhi or the presiding officer of a court established under Article 169(1)(d);

“judicial officer's family" includes a judicial officer's spouse, son, daughter, son-in-law, daughter-in-law, or other person who forms part of the judicial officer’s household as a relative;

“judicial officer's spouse" means the wife or husband of a judicial officer married under any recognized system of law in Kenya;

“judicial staff” includes a person, other than a judge or a judicial officer, employed by the Judiciary whether on a permanent and pensionable basis, or on contractual basis including legal researchers, consultants, any person on secondment to the Judiciary, casual employee, interns, pupils and any other person undertaking an attachment programme in the Judiciary;

“judicial staff’s spouse” means the wife or husband of a judicial officer married under any recognized system of law in Kenya; and

“judicial staff's family" includes a judicial staff's spouse, son, daughter, son-in-law, daughter-in-law, or other person who forms part of the judicial staff’s household as a relative.

Objects of the Code. **3.** The objects of this Code are to —

- (a) give effect to Articles 168 (1) (b) and 172 (1) (c) of the Constitution;
- (b) give effect to Article 10 of the Constitution on national values and principles of governance;
- (c) give effect to the Court of Appeal (Organization and Administration) Act, 2015, the High Court (Organization and Administration) Act, 2015 and the Magistrates’ Courts Act, 2015;
- (d) give effect to the provisions of the Leadership and Integrity Act, 2012, the Public Service (Values and Principles) Act, 2015 and the Public Officer Ethics Act, 2003;
- (e) provide for the Judicial Code of Conduct and Ethics, as a guide on ethical conduct for judges, judicial officers and judicial staff;

- (f) state basic standards governing the conduct of judges, judicial officers and judicial staff;
- (g) provide guidance to assist judges, judicial officers, and judicial staff in establishing and maintaining high standards of judicial and personal conduct; and
- (h) provide a framework for the judiciary to regulate judicial conduct of judges, judicial officers and judicial staff.

Guiding
Principles of the
Code.

4. This Code is founded on the —

- (a) fundamental principle in the Constitution that the independence of the judiciary is guaranteed, and that the implementation of the Code of Conduct and Ethics for judges, judicial officers and judicial staff is the responsibility of the Judicial Service Commission which is under the obligation to promote and facilitate the independence and accountability of the judiciary;
- (b) principle that public confidence in the judicial system and in the moral authority and integrity of the judiciary, is of utmost importance in a modern democratic society;
- (c) precept that a competent, independent, and impartial judiciary is essential for courts to fulfil their role in upholding constitutionalism and the rule of law;
- (d) constitutional requirement that when courts are exercising judicial authority, judges and judicial officers must be guided by the principles that —
 - (i) justice shall be done to all, irrespective of status;
 - (ii) justice shall not be delayed;
 - (iii) alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms, shall be promoted;
 - (iv) justice shall be administered without undue regard to procedural technicalities; and

- (v) the purpose and principles of the Constitution shall be protected and promoted;
- (e) precept that a judge, judicial officer, and judicial staff shall at all times act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary;
- (f) precept that judges and judicial officers, individually and collectively, shall respect and honour the judicial office as a public trust, and strive to maintain and enhance confidence in the judicial system;
- (g) principle of equality before the law, which recognizes that everyone is equal before the law, and is entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law;
- (h) principle that the duties of a judge and judicial officer, as prescribed by law, shall take precedence over personal and extrajudicial activities; and
- (i) recognition that judges, judicial officers and judicial staff shall comply with the law, including this Code.

Application.

5. This Code applies to —

- (a) judges of superior courts;
- (b) judicial officers; and
- (c) judicial staff.

Moral and ethical requirements.

6. For purposes of Article 166(2)(c) of the Constitution and section 13 of the Leadership and Integrity Act, a judge, judicial officer, and judicial staff shall observe and maintain the following ethical and moral requirements —

- (a) to demonstrate honesty in the conduct of public affairs subject to the Public Officer Ethics Act;
- (b) not engage in activities that amount to abuse of office;
- (c) accurately and honestly represent information to the public;
- (d) not to engage in wrongful conduct in furtherance of personal benefit;

- (e) prudently use public resources;
- (f) not to discriminate against any person, except as expressly provided for under the law;
- (g) not to falsify records;
- (h) not to engage in actions which would lead to the person's removal from the membership of a professional body in accordance with the law; and
- (i) not commit offences and in particular, any of the offences under Parts XV and XVI of the Penal Code (Cap 63), the Sexual Offences Act.

PART II—CODE OF CONDUCT AND ETHICS FOR JUDGES

- Independence. **7.** A judge shall exercise judicial authority independently and shall—
- (a) uphold the independence and integrity of the judiciary and the authority of the courts;
 - (b) maintain an independence of mind in the performance of judicial duties;
 - (c) take all reasonable steps to ensure that no person, forum, or organ of state, interferes with the functioning of the courts;
 - (d) exercise judicial function on the basis of the judge's own assessment of the facts of the case, in accordance with a conscientious understanding of the law, and without reference to any extraneous influences; and
 - (e) Exercise judicial function without being influenced by personal feelings, prejudice, or bias.
- Dignity and integrity of the court processes. **8.** A judge shall exercise all powers vested in the judge's office by the Constitution and statute law, for the maintenance of the dignity of the court and for sustaining the integrity of court processes, and the regular discharge of all proceedings coming up before the court.
- Impartiality. **9.** (1) A judge shall, at all times, carry out the duties of the office with impartiality and objectivity in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practice favouritism, nepotism, tribalism, cronyism, religious and cultural bias, or engage in corrupt or unethical practices;

(2) In the discharge of duty, a judge shall—

- (a) uphold and apply the law;
- (b) observe fairness and impartiality;
- (c) cooperate with other judges in the discharge of judicial duties, by ensuring unity of purpose and collegiality; and
- (d) perform all duties of the judicial office, including administrative duties impartially, competently, diligently, and without bias.

Private communication.

10. (1) A judge shall not initiate, permit, or consider private communication relating to a matter or case directed to the judge, regarding a pending or impending matter in court.

(2) If a judge receives private communication under sub-paragraph (1), the judge shall ensure that other parties concerned are promptly informed, and shall keep a court record of the same.

(3) A judge shall primarily speak through his or her judgment and shall not enter into correspondence with a litigant or other person relating to a matter pending, or impending, before the court, or determined by the court.

Integrity.

11. (1) A judge shall in the discharge of official duties, act honourably and in a manner befitting the judicial office.

(2) A judge shall not—

- (a) deliver an oral decision;
- (b) alter the substance of reasons given, or the transcript of evidence or of the summing up thereof; or
- (c) after delivery of a decision, hold or keep a file in his or her custody beyond twenty-four (24) hours from the time the decision was delivered, except where the holding or keeping of a file is provided for in any written law.

(3) A judge shall—

- (a) not accept any gifts, personal loans, bequests, benefits, or other things of value, if acceptance is prohibited by law, or would compromise the judge's independence, integrity, or impartiality;
- (b) conduct the judge's personal and extrajudicial activities in such a manner as to minimize the risk of conflict with the obligations of judicial office.

Responsibility for Social media activities etc.

12. A judge is responsible for his or her online activity and should avoid any activity, action, or association that may reflect adversely on the Judge's impartiality or interfere with the performance of judicial duties or status of the office.

Accountability and prohibition against bribery, and other corrupt practices.

13. (1) A judge shall not –

- (a) use the judicial office to unlawfully or wrongfully enrich himself or herself, or any other person; or
- (b) Subject to Article 76(2) (b) of the Constitution, accept a personal loan or benefit which may compromise the judge in carrying out the duties of the office of a judge.

(2) A judge, or any member of the judge's family, shall not directly or indirectly negotiate or accept remuneration, loan, gift, advantage, or privilege that is incompatible with judicial office or that can reasonably be perceived as being intended to influence the judge in the performance of his or her judicial duties, or to serve as a reward.

(3) A judge, or any member of the judge's family, shall not ask for, or accept any bribe, gift, loan, hospitality, advantage, privilege or favour, in relation to anything done or to be done or omitted to be done by the judge, in connection with the conduct of judicial duties, or which might reasonably be perceived as being intended to influence the discharge of judicial duties.

Propriety.

14. (1) A judge shall avoid impropriety or appearance of impropriety and shall —

- (a) not subject himself or herself to improper influences;
- (b) not participate in activities such as will impair the dignity and esteem of the court;
- (c) ensure order and decorum in proceedings before the court;

- (d) act courteously, and respect the dignity of others in court and in chambers;
- (e) treat members of the public, judicial staff, and other public officers with courtesy and respect;
- (f) not engage in any type of trade or business in court premises, or encourage others to do so;
- (g) not lend the prestige of the judicial office to advance any private interests; and
- (h) not serve as executor, administrator or other personal representative, trustee, guardian or other fiduciary responsibility, except for the estate, trust, or person of a member of the judge's family, and only if the service does not interfere with the proper performance of judicial duties.

(2) A judge may participate in extra-judicial activities, including associated rights of citizenship, unless such activities are incompatible with the confidence in, or the impartiality or independence of the judge, or affect or may be perceived as affecting the judge's availability to perform his or her judicial obligations.

(3) A judge shall conduct his or her private affairs in such a manner as preserves the public confidence in the integrity of the judicial office.

Equality and non-discrimination.

15. A judge shall safeguard the right of equality before the law, and the right of equal protection, and benefit of the law, without bias or prejudice.

Professionalism.

16. A judge shall—

- (a) carry out the duties of his or her office in a manner that assures public confidence in the integrity of the office;
- (b) perform judicial, and administrative duties, competently, diligently, promptly, and without favouritism;
- (c) maintain high standards of performance and professionalism within the judiciary;

- (d) cooperate with other judges, and court officials, in the administration of court business;
- (e) take reasonable steps to maintain and enhance his or her knowledge, skills, and personal qualities necessary for the proper performance of judicial duties, taking advantage, for that purpose, of the training and other facilities available to judges; and
- (f) comply with administrative rules or reasonable directives of a presiding judge.

Involvement in other activities.

17. (1) Subject to rule 15, a judge may—

- (a) write, lecture, teach and participate in activities concerning the advancement of the law, the legal system, the administration of justice, or related matters;
 - (b) engage in arts, sports and other social and recreational activities, if such vocational activities do not adversely affect the dignity of the judicial office or interfere with the performance of the judge's duties;
 - (c) 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;
 - (d) 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
 - (e) 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.
- (2) No salary is payable to a judge for the performance of any of the activities mentioned under this rule.

(3) A judge shall not engage in consultancy or practice law by offering legal advice or drafting pleadings for litigants or members of the public, while holding judicial office.

(4) Subject to any legal requirements relating to public disclosure, a judge may receive a token gift, award, honorarium, benefit, or allowance as appropriate to the occasion, if the gift, award, honorarium, or benefit would not be reasonably perceived as intended to influence the performance of judicial duties.

Commenting on matters pending in court.

18. (1) A judge shall not, comment on proceedings pending in any court, and shall require similar abstention on the part of the court personnel subject to the judge's direction and control.

(2) Subject to sub rule (1), a judge may make statements in the course of his or her official duties on, or explain for public or private information, the procedure of the court provided such statements are not prejudicial to the integrity of the judiciary and the administration of justice.

Offers of future benefits.

19. (1) A judge shall not allow himself or herself to be influenced in the performance of the duties of the judicial office by plans or expectations of offers of future benefits.

(2) A judge shall disclose, in writing, to the Chief Justice, such offers of future benefits as could place the judge in a situation of conflict of interest.

Conflict of interest.

19. (1) A judge shall use the best efforts to avoid being in situations where personal interests conflict or appear to conflict with the judge's official duties.

(2) A judge may hold shares or have any other interest in a company, partnership or other body, directly or through another person, if holding those shares, or having that interest, does not amount to a conflict of interest such as will compromise the judge's performance.

Recusal.

20.(1) A judge may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judge—

(a) is a party to the proceedings;

(b) was, or is a material witness in the matter in controversy;

- (c) has personal knowledge of disputed evidentiary facts concerning the proceedings;
- (d) has actual bias or prejudice concerning a party;
- (e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (f) had previously acted as a counsel for a party in the same matter;
- (g) is precluded from hearing the matter on account of any other sufficient reason; or
- (h) or a member of the judge's family has economic or other interest in the outcome of the matter in question.

(2) Recusal by a judge shall be based on specific grounds to be recorded in writing as part of the proceedings.

(3) A judge may not recuse himself or herself if—

- (a) no other judge can deal with the case; or
- (b) because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.
- (c) the merits of the application for recusal have been considered by a plural bench of judges, and recusal held to be unnecessary.

(4) In the case of a collegiate bench, the decision to dispense with the disqualification of any judge shall be made by the bench.

Public
collections.

21.(1) A judge shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A judge shall not participate in a public collection of funds in a way that reflects adversely on that judge's integrity or impartiality or interferes with the performance of his or her judicial duties.

- (3) Subject to sub-rule (2), a judge may participate in voluntary fund-raising only if the same does not reflect adversely on the judge's integrity, or if it does not compromise the performance of the judge's duties.

Participation in tenders.

22.A judge shall not participate either directly or indirectly in a tender for the supply of goods or services to the judiciary or the Judicial Service Commission, though the holding of shares by a judge in a company shall not be construed as participating in a tender of the judiciary or the Commission, except where the judge has a controlling shareholding in the company, or is a director of the Company.

Care of public property.

23.(1) A judge shall take all reasonable steps to ensure that public property in the judge's custody, possession, or control, is safely kept.

(2) A judge shall return to the Chief Registrar of the Judiciary all public property in the custody, possession or control of the judge when the judge leaves office.

Bank account outside Kenya.

24.(1) Subject to Article 76(2)(a) of the Constitution, a judge shall not open or continue to operate a bank account outside Kenya without the approval of the Commission.

(2) A judge who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the Commission, through the office of the Chief Justice for approval to open or operate a bank account.

(3) A judge who operates or controls the operation of a bank account outside Kenya shall submit statements of the account annually to the Commission, and shall, authorize the Commission to verify the statements, and any other relevant information from the foreign financial institution in which the account is held.

Gainful employment.

25.(1) Subject to sub-rule (2), a judge shall not participate in any other gainful employment.

(2) In this section, "gainful employment" means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the judge, or which results in the impairment of the judgment of the judge in the execution of the functions of the judicial office, or results in a conflict of interest in the terms of this Code.

Tax, financial, and legal obligations. **26.**(1) A judge shall pay any taxes due from the judge as prescribed by law.

(2) A judge shall not neglect his or her financial or legal obligations.

Bullying. **27.**(1) A judge shall not bully any person.

(2) For purposes of subparagraph (1), “bullying” includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

Prohibition against sexual harassment. **28.**(1) A judge shall keep himself or herself informed about and shall duly observe the laws and policies relating to sexual harassment.

(2) A judge shall not sexually harass a fellow member of staff or any other person.

(3) For purposes of this Code, “sexual harassment” has the meaning assigned to it in the Sexual Offences Act, the Employment Act, and the Public Officer Ethics Act, and includes doing any of the following, if the person doing it knows or ought to know that it is —

(a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;

(b) exerting unwarranted pressure for sexual activity or favours;

(c) making intentional or careless physical contact that is sexual in nature; or

(d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, or innuendos regarding another person’s sexuality.

Acting through others. **29.**(1) A judge contravenes this Code if the judge —

(a) causes anything to be done through another person that would constitute a contravention of this Code if done by the judge personally; or

(b) allows or directs a person under the judge's supervision or control to do anything that is in contravention of the Code.

(2) Sub-rule(1)(b) shall not apply where anything is done without the judge's knowledge or consent, or if the judge has taken reasonable steps to prevent it.

(3) A judge who acts under an unlawful direction is responsible for his or her action.

Confidentiality. **30.** A judge shall not disclose to any unauthorized person for any purpose, any confidential information acquired in the course of employment.

Obtaining documents unlawfully. **31.** A judge shall not without lawful authority take possession, control, disseminate or access for personal use or the use of any other person, official documents or court records.

Misleading the public and falsification of records. **32.** A judge shall not—
(a) knowingly give false or misleading information to any person; or
(b) falsify any records or knowingly misrepresent information to the public.

PART III—CODE OF CONDUCT AND ETHICS FOR JUDICIAL OFFICERS

Independence. **33.** A judicial officer shall exercise judicial authority independently and shall—
(a) uphold the independence and integrity of the judiciary and the authority of the courts;
(b) maintain an independence of mind in the performance of judicial duties;
(c) exercise the judicial function on the basis of the judicial officer's own assessment of the facts of the case, in accordance with a conscientious understanding of the law, and without reference to any extraneous influences;
(d) take all reasonable steps to ensure that no person, forum, or organ of state, interferes with the functioning of the courts;

- (e) exercise judicial function without being influenced by the judicial officer's personal feelings; and
 - (f) exercise judicial function without being influenced by personal feelings, prejudice, or bias.
- Dignity and integrity of the court process. **34.**A judicial officer shall exercise all powers vested in him or her by the Constitution and statute law, for the maintenance of the dignity of the court, and for sustaining the integrity of court processes, and the regular discharge of all proceedings coming up before the court.
- Impartiality. **35.**(1) A judicial officer shall, at all times, carry out the duties of the office with impartiality and objectivity, in accordance with Articles 10, 27, 73(2)(b) and 232 of the Constitution and shall not practice favouritism, nepotism, tribalism, cronyism, religious bias, or engage in corrupt or unethical practices;
 - (2) In the discharge of duty, a judicial officer shall—
 - (a) uphold and apply the law;
 - (b) observe fairness and impartiality; and
 - (c) perform the duties of judicial office, including administrative duties impartially, competently, and diligently, without bias.
- Private communication. **36.**(1)A judicial officer shall not initiate, permit, or consider private communication to him or her, regarding a pending or impending matter in court.
 - (2) If a judicial officer receives private communication under sub-rule (1), the judicial officer shall ensure that other parties concerned is promptly informed and shall keep a court record of the same.
 - (3) A judicial officer shall primarily speak through his or her judgement and shall not enter into correspondence with a litigant or other person relating to a matter pending, or impending, before the court, or determined by the court.
- Integrity. **37.**(1) A judicial officer shall in the discharge of official duties, act honourably, and in a manner befitting the office.
 - (2)A judicial officer shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law, or would appear to undermine the judicial officer's independence, integrity, or impartiality; or

(4) A judicial officer shall conduct his or her personal and extrajudicial activities to in such a manner as to minimize the risk of conflict with the obligations of the office.

Responsibility
for Social media
activities etc.

38.A judicial officer is responsible for his or her online activity and should avoid any activity, action, or association that may reflect adversely on the judicial officer's impartiality or interfere with the performance of judicial duties or status of the office.

Propriety.

39.(1) A judicial officer shall avoid impropriety, or appearance of impropriety and shall

- (a) not subject himself or herself to improper influences;
- (b) not participate in activities as tend to impair the dignity and esteem of the court;
- (c) ensure order and decorum in proceedings before the court;
- (d) act courteously, and respect the dignity of others in court and in chambers;
- (e) treat members of the public, staff and other public officers with courtesy and respect;
- (f) not lend the prestige of the judicial office to the advancement of private interests;
- (g) not engage in any type of trade or business in court premises or encourage others to do so; and
- (h) not serve as executor, administrator or other personal representative, trustee, guardian or other fiduciary engagement, except for the estate, trust, or person within the judicial officer's family, and only if the service does not compromise the proper performance of judicial duties.

(2) A judicial officer may be involved in extra-judicial activities, such as those relating to their rights as citizens, unless such activities are incompatible with the principles of , impartiality or independence of the judicial officer, or affect or may be perceived to affect the judicial officer's availability for the discharge of his or her judicial obligations.

- (3) A judicial officer shall conduct his or her private affairs in such a manner as that maintains public confidence in the integrity of the office.

Equality and non-discrimination. **40.** A judicial officer shall endeavor to uphold the right of equality before the law and the right of equal protection, and benefit of the law, and shall not manifest bias or prejudice in the performance of judicial duties.

Professionalism. **41.** A judicial officer shall—

- (a) carry out duties of the office in a manner that maintains public confidence in the integrity of the office;
- (b) perform judicial and administrative duties competently, diligently, promptly, and without favouritism or nepotism;
- (c) to the extent appropriate to the office, maintain high standards of performance and professionalism within the Judiciary;
- (d) cooperate with other judicial officers and court officials in the administration of court business; and
- (e) comply with administrative rules or reasonable directives of a judge with supervisory authority.

Involvement in other activities. **42.**(1) Subject to rule 41, a judicial officer may—

- (a) write, lecture, teach and participate in activities concerning the advancement of the law, the legal system, the administration of justice, or related matters;
- (b) engage in arts, sports and other social and recreational activities, if such vocational activities do not adversely affect the dignity of his or her office, or interfere with the performance of the judicial officer’s duties;
- (c) 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;

- (d) 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 judicial officer; or
- (e) 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.

(2) No salary is payable to a judicial officer for the performance of any of the activities mentioned under this rule.

(3) A judicial officer shall not engage in consultancy or practice law by offering legal advice or draft pleadings for litigants or members of the public, while holding judicial office.

(4) Subject to any legal requirements relating to public disclosure, a judicial officer may receive a token gift, award, honorarium, benefit, or allowance as appropriate to the occasion if the gift, award, honorarium, or benefit might not reasonably be perceived as intended to influence the performance of judicial duties.

Commenting on matters pending or impending in court.

43.(1) A judicial officer shall not, comment on proceedings pending in any court, and shall require similar abstention on the part of the court personnel subject to the judicial officer's direction and control.

(2) Subject to sub rule (1), a judicial officer may make statements in the course of his or her official duties, or explain for public or private information, the procedure of the court provided such statements are not prejudicial to the integrity of the judiciary and the administration of justice.

Accountability and prohibition against bribery and corrupt practices.

44.(1) A judicial officer shall not use the office to unlawfully or wrongfully enrich himself or herself or any other person.

(2) Subject to Article 76(2)(b) of the Constitution, a judicial officer shall not accept a personal loan or benefit which may compromise the judicial officer in carrying out the duties of the office.

- (3) A judicial officer or any member of the judicial officer's family shall not directly or indirectly negotiate or accept remuneration, loan, gift, advantage, or privilege that is incompatible with judicial office or that can reasonably be perceived as being intended to influence the judicial officer in the performance of his or her judicial duties, or to serve as a reward for them.
- (4) A judicial officer or any member of the judicial officer's family shall not ask for or accept any bribe, gift, loan, hospitality, advantage, privilege or favour in relation to anything done or to be done or omitted to be done by the judicial officer in connection with the performance of judicial duties, or which might reasonably be perceived as being intended to influence the performance of judicial duties.

Conflict
interest.

- of **45.**(1) A judicial officer shall avoid being in situations in which his or her personal interests conflict or appear to conflict with the duties of his or her office.
- (2) A judicial officer may hold shares, or have any other interest in a company, partnership or other body, directly or through another person, if holding such shares or having such interest does not amount to conflict between the judicial officer's personal interests and his or her duties.
 - (3) A judicial officer whose personal interests conflict with his or her official duties shall declare the personal interests to the Chief Registrar.
 - (4) The Chief Registrar may give direction in writing, on the appropriate action to be taken by a judicial officer, to avoid the conflict of interest in the judicial officer's discharge of duty;
 - (5) The judicial officer shall—
 - (a) comply with the directions; and
 - (b) refrain from participating in any deliberations with respect to the matter.
 - (6) Where a judicial officer is present at a meeting, and an issue which is likely to result in a conflict of interest arises, the judicial officer shall declare the interest at the beginning of the meeting, or before the issue is deliberated upon.

- (7) A declaration of a conflict of interest under sub-rule (6) shall be recorded in the minutes of that meeting.
- (8) For purposes of sub-rule (6), the Chief Registrar, shall maintain a register of conflicts of interest, which shall be open to the public for inspection.
- (9) The Chief Registrar shall maintain an open register of conflicts of interest in the prescribed form in which an affected judicial officer shall register the particulars of registrable interests, stating the nature and extent of the conflict.
- (10) For purposes of sub-rule (9), the registrable interests shall include—
 - (a) the interests set out in the Second Schedule to the Leadership and Integrity Act;
 - (b) any application for employment or other form of engagement with the judiciary, by a family member or friend of the judicial officer or by a company associated with the judicial officer; and
 - (c) any other matter which in the opinion of the judicial officer, taking into account the circumstances thereof, is necessary for registration as a conflict of interest.
- (11) The Chief Registrar shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.
- (12) A judicial officer shall ensure that an entry of registrable interests under sub-rule (9) is updated and shall notify the Chief Registrar of any changes in the registrable interests, within one month of each change occurring.

Recusal.

- 46.** (1) A judicial officer may recuse himself or herself in any proceedings in which his or her impartiality might reasonably be questioned where the judicial officer—
- (a) is a party to the proceedings;
 - (b) was, or is a material witness in the matter in controversy;
 - (c) has personal knowledge of disputed evidentiary facts concerning the proceedings;

- (d) has actual bias or prejudice concerning a party;
- (e) has a personal interest or is in a relationship with a person who has a personal interest in the outcome of the matter;
- (f) had previously acted as a counsel for a party in the same matter;
- (g) is precluded from hearing the matter on account of any other sufficient reason; or
- (h) a member of the judicial officer's family has economic or other interest in the outcome of the matter in question.

(2) Recusal by a judicial officer shall be based on specific grounds to be recorded in writing as part of the proceedings.

(3) A judicial officer may not recuse himself or herself if—

(a) no other judicial officer can deal with the case; or

(b) because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Public
collections.

47.(1) A judicial officer shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the *gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A judicial officer shall not participate in a public collection of funds in a way that reflects adversely on the judicial officer's integrity or impartiality or interferes with the performance of his or her judicial duties.

(3) Subject to paragraph (2), a judicial officer may participate in voluntary fund-raising only if the same does not reflect adversely on the judicial officer's integrity, or if it does not compromise the performance of the judicial officer's duties.

Participation in
tenders.

48.A judicial officer shall not either directly or indirectly participate in a tender for the supply of goods or services to the judiciary or the Judicial Service Commission, though the holding of shares by a judicial officer in a company shall not be construed as participating in a tender of the judiciary or the Commission, except where the judicial officer has a controlling shareholding in the company, or is a director of the Company.

Acting through others.

- 49.**(1) A judicial officer contravenes this Code if the officer —
- (a) causes anything to be done through another person that would constitute a contravention of this Code if done by the judicial officer personally; or
 - (b) allows or directs a person under the judicial officer’s supervision or control to do anything that is in contravention of the Code.
- (2) Sub-rule (1)(b) shall not apply where anything is done without the judicial officer’s knowledge or consent, or if the judicial officer has taken reasonable steps to prevent it.
- (3) A judicial officer who acts under an unlawful direction is responsible for his or her action.

Bank accounts outside Kenya.

- 50.**(1) Subject to section 19 of the Leadership and Integrity Act, a judicial officer shall not open or continue to operate a bank account outside Kenya without the approval of the Commission.
- (2) A judicial officer who has reasonable grounds for opening or operating a bank account outside Kenya shall apply to the Commission, through the office of the Chief Justice for approval to open or operate a bank account.
- (3) A judicial officer who operates or controls the operation of a bank account outside Kenya shall submit statements of the account annually to the Commission, and shall, authorize the Commission to verify the statements, and any other relevant information from the foreign financial institution in which the account is held.

Gainful employment.

- 51.**(1) Subject to sub-rule (2), a judicial officer shall not participate in any other gainful employment.
- (2) In this section, “gainful employment” means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the judicial officer, or which results in the impairment of the prudence of the judicial officer in the execution of the functions of the judicial office, or results in a conflict of interest in the terms of the Code.

- Tax, financial and legal obligations. **52.**(1) A judicial officer shall pay any taxes due from the judicial officer as prescribed bylaw.
- (2) A judicial officer shall not neglect his or her financial or legal obligations.
- Bullying. **53.**(1) A judicial officer shall not bully any person.
- (2) For purposes of subparagraph (1), “bullying” includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.
- Prohibition against sexual harassment. **54.**(1) A judicial officer shall keep himself or herself informed about and shall duly observe the laws and policies relating to sexual harassment.
- (2) A judicial officer shall not sexually harass a fellow member of staff or any other person.
- (3) For purposes of this Code, “sexual harassment” has the meaning assigned to it in the Sexual Offences Act, the Employment Act, and the Public Officer Ethics Act, and includes doing any of the following, if the person doing it knows or ought to know that it is —
- (a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
 - (b) exerting unwarranted pressure for sexual activity or favours;
 - (c) making intentional or careless physical contact that is sexual in nature; or
 - (d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, or innuendos, regarding another person’s sexuality.
- Confidentiality. **55.**A judicial officer shall not disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment.

Obtaining documents unlawfully.

56.A judicial officer shall not without lawful authority, take possession, control, disseminate, or access for personal use or the use of any other person, official documents or court records.

Misleading the public and falsification of records.

57.A judicial officer shall not—

- (a) knowingly, give false or misleading information to any person; or
- (b) falsify any records, or knowingly misrepresent information to the public.

PART IV—THE CODE OF CONDUCT AND ETHICS FOR MEMBERS OF JUDICIAL STAFF

Performance of duty.

58.(1) A judicial staff shall at all times perform official duties properly and with diligence, and shall commit themselves exclusively, to the business and responsibilities of the office during working hours.

- (2) A judicial staff shall expeditiously enforce rules and implement orders of the court within the limits of their authority.
- (3) A judicial staff shall perform the duties of his or her office timeously, impartially, courteously, competently, diligently, and without favour or bias.
- (4) A judicial staff shall not discriminate by dispensing special favours to anyone.
- (5) A judicial staff shall not allow kinship, rank, position or favours from any party or person to influence official acts or duties.
- (6) A judicial staff shall not alter, falsify, destroy, or mutilate, or fail to make required entries, on any record within their control.
- (7) Sub-rule 6 does not prohibit the alteration or expunction or disposal of records or documents pursuant to a court order or as authorized by law.
- (8) A judicial staff shall not recommend private advocates to litigants, prospective litigants, or anyone dealing with the judiciary.

(9) A judicial staff shall avoid close personal association with lawyers, litigants or their agents and other court users, where such association may reasonably give rise to suspicion or appearance of favouritism.

(10) A judicial staff is not precluded from responding to inquiries concerning court procedures but shall not give legal advice.

(11) A judicial staff shall abide by the professional requirements of his or her profession.

Professional
judicial staff.

59.(1) A professional judicial staff is bound by their respective professional code of conduct and is personally liable for the action and advice given in the course of employment.

(2) For purposes of this rule, professional judicial staff means a person engaged in work predominantly intellectual and varied in character involving the consistent exercise of discretion and judgment in its performance and includes accountants, human resource professionals, health professionals, procurement officers, auditors and any other vocational calling.

(3) A breach of a professional judicial staff's professional code prescribed by his or her regulatory or professional body, amounts to a breach of this Code.

Confidentiality.

60.(1) A judicial staff shall not disclose to any unauthorized person, any confidential information acquired in the course of employment, whether such information came from authorized, or unauthorized source.

(2) Confidential information available to specific individuals by reason of a written law, court rule, or administrative policy, shall be provided only by judicial staff authorized to do so.

Conflict of
interest.

61.(1) A judicial staff shall avoid being in situations in which his or her personal interests conflict or appear to conflict with the duties of his or her office.

(2) A judicial staff may hold shares, or have any other interest in a company, partnership or other body, directly or through another person, if holding such shares or having such interest does not occasion conflict between the judicial staff's personal interests and his or her duties.

- (3) A judicial staff whose personal interests' conflict with his or her official duties shall declare the personal interests to the Chief Registrar.
- (4) The Chief Registrar may give direction in writing, on the appropriate action to be taken by a judicial staff, to avoid the conflict of interest in the judicial staff's discharge of duty.
- (5) The judicial staff shall—
- (a) comply with the directions; and
 - (b) refrain from participating in any deliberations with respect to the matter.
- (6) Where a judicial staff is present at a meeting, and an issue which is likely to result in a conflict of interest arises, the judicial staff shall declare the interest at the beginning of the meeting, or before the issue is deliberated upon.
- (7) A declaration of a conflict of interest under sub-rule (6) shall be recorded in the minutes of that meeting.
- (8) For purposes of sub-rule (6), the Chief Registrar, shall maintain a register of conflicts of interest, which shall be open to the public for inspection.
- (9) The Chief Registrar shall maintain an open register of conflicts of interest in the prescribed form in which an affected judicial staff shall register the particulars of registrable interests, stating the nature and extent of the conflict.
- (10) For purposes of sub-rule (9), the registrable interests shall include—
- (a) the interests set out in the Second Schedule to the Leadership and Integrity Act;
 - (b) any application for employment or other form of engagement with the judiciary, by a family member, or friend of the judicial staff, or by a company associated with the judicial staff; and

(c) any other matter which, in the opinion of the judicial staff, taking into account the circumstances thereof, is necessary for registration as a conflict of interest.

(11) The Chief Registrar shall keep the register of conflicts of interest for five years after the last entry in each volume of the register.

(12) A judicial staff shall ensure that an entry of registrable interests under sub-rule (9) is updated and shall notify the Chief Registrar of any changes in the registrable interests, within one month of each change occurring.

Prohibition of improper enrichment.

62.(1) A judicial staff shall not use or attempt to use his or her official position to secure unwarranted privileges, or exemptions for, or to confer any corrupt, or unfair advantage upon, himself or herself, or any relation or associate.

(2) A judicial staff shall not request or accept any fee, compensation, or benefit of any kind, as a condition for the performance of his or her duties, for himself or herself or on behalf of any person, on account of anything done, or omitted to be done by him or her in the discharge of the duties of his or her office.

(3) A judicial staff shall not engage in consultancy or practise law by offering legal advice or drafting pleadings for litigants or members of the public, whether for a fee, or free of charge.

(4) A judicial staff shall not appropriate to himself or herself or disburse by way of loan to himself or herself or any person, court fees, fines, or other funds in his or her custody.

(5) A judicial staff shall not engage in any type of trade or business in court premises, or encourage others to do so.

(6) A judicial staff shall not offer legal advice, canvass, tout, or present himself or herself in such a manner as to give the impression of being capable of influencing the course of justice.

Accountability and prohibition against bribery

63.(1) A judicial staff shall not use the office to unlawfully or wrongfully enrich himself or herself or any other person.

and corrupt practices.

- (2) A judicial staff shall not accept a personal loan, or benefit which may compromise the judicial staff in carrying out the duties of the office.
- (3) A judicial staff, or any member of the judicial staff's family, shall not directly or indirectly negotiate or accept remuneration, loan, gift, advantage, or privilege that is incompatible with office or that can reasonably be perceived as being intended to influence the staff in the performance of his or her duties, or to serve as a reward for them.
- (4) A judicial staff or any member of the judicial staff's family shall not ask for, or accept any bribe, gift, loan, hospitality, advantage, privilege or favour in relation to anything done, or to be done, or omitted to be done by the judicial officer in connection with the performance of their duties, or which might reasonably be perceived as being intended to influence the performance of their duties.

Integrity.

64.(1) A judicial staff shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the integrity of the judicial staff's duties.

- (2) A judicial staff shall conduct his or her personal and extrajudicial activities in such a manner as to minimize the risk of conflict with the obligations of his or her office.

Responsibility for Social media activities etc.

65.A judicial staff is responsible for his or her online activity and should avoid any activity, action, or association that may reflect adversely on the officer's impartiality or interfere with the performance of his or her duties or status of the office.

Prohibition from sexual harassment.

66.(1) A judicial staff shall keep himself or herself informed about and shall duly observe the laws and policies relating to sexual harassment.

- (2) A judicial staff shall not sexually harass a fellow member of staff or any other person.

- (3) For purposes of this Code, "sexual harassment" has the meaning assigned to it in the Sexual Offences Act, the Employment Act, and the Public Officer Ethics Act, and includes doing any of the following, if the person doing it knows or ought to know that it is —

- (a) bullying or coercion of a sexual nature, or the unwelcome and inappropriate promise of rewards in exchange for sexual favours;
- (b) exerting unwarranted pressure for sexual activity or favours;
- (c) making intentional or careless physical contact that is sexual in nature; or
- (d) unwelcome sexual advances or requests for sexual favour, verbal or physical conduct, sending of suggestive electronic text messages, pictures and videos or gestures of a sexual nature including noises, jokes or comments, or innuendos regarding another person's sexuality.

Bullying.

67.(1) A judicial staff shall not bully any person.

- (2) For purposes of sub-rule (1), “bullying” includes repeated offensive behaviour which is vindictive, cruel, malicious or humiliating and is intended to undermine a person.

Misuse of official information.

68.(1) A judicial staff shall not directly or indirectly use or allow any person under the judicial staff's authority to use any information obtained through or in connection with the office which is not available in the public domain for the furthering of any private interest, whether financial or otherwise.

- (2) The provisions of sub-rule (1), shall not apply where the information is to be used for the purposes of—

- (a) furthering the interests and meeting the requirements of the Leadership & Integrity Act; or
- (b) educational, research, literary, scientific or other purposes not prohibited by law.

Bank accounts outside Kenya.

69.(1) Subject to section 19 of the Leadership and Integrity Act, 2012, a judicial staff shall not open or continue to operate a bank account outside Kenya without the approval of the Chief Registrar.

(2) A judicial staff, who has reasonable grounds for opening or operating a bank account outside Kenya, shall apply to the Chief Registrar for approval to open or operate a foreign bank account.

(3) A judicial staff who operates or controls the operation of a bank account outside Kenya, shall submit statements of the account annually to the Chief Registrar and shall authorize the Chief Registrar to verify the statements and any other relevant information from the foreign financial institution in which the account is held.

Care of property. **70.**(1) A judicial staff shall take all reasonable steps to ensure that public property in the judicial staff's custody, possession, or control, is safely kept.

(2) A judicial staff shall return to the Chief Registrar all public property in the custody, possession or control of the judicial staff when the judicial staff leaves office.

Public collections. **71.**(1) A judicial staff shall not solicit for contributions from the public for a public purpose unless the President has, by notice in the *Gazette*, declared a national disaster and allowed a public collection for the purpose of the national disaster in accordance with the law.

(2) A judicial staff shall not participate in a public collection of funds in a way that reflects adversely on that judicial staff's integrity or impartiality or interferes with the performance of his or her duties.

(3) Subject to sub-rule (2), a judicial staff may participate in voluntary fund-raising only if the same does not reflect adversely on the judicial staff's integrity, or if it does not compromise the performance of the judicial staff's duties.

Participation in tenders. **72.**A judicial staff shall not either directly or indirectly participate in a tender for the supply of goods or services to the judiciary or the Judicial Service Commission, but the holding of shares by a judicial staff in a company shall not be construed as participating in a tender of the judiciary or the Commission unless the judicial staff has a controlling shareholding in the company or is a Director of the Company.

- Gainful employment. **73.**(1) Subject to sub-rule (2), a judicial staff shall not participate in any other gainful employment.
- (2) In this section, “gainful employment” means work that a person can pursue and perform for money or other form of compensation or remuneration which is inherently incompatible with the responsibilities of the judicial staff or which results in the impairment of the prudence of the judicial staff in the execution of the functions of the judicial staff, or results in a conflict of interest in terms of this Code.
- Tax, financial, and legal obligations. **74.**(1) A judicial staff shall pay any taxes due from the judicial staff as prescribed by law.
- (2) A judicial staff shall not neglect his or her financial or legal obligations.
- Obtaining documents unlawfully. **75.**A judicial staff shall not without lawful authority, take possession, control, disseminate, or access for personal use or the use of any other person, official documents or court records.
- Misleading the public and falsification of records. **76.**(1) A judicial staff shall not—
- (a) knowingly give false or misleading information to any person; or
- (b) falsify any records or knowingly misrepresent information to the public.

PART V—ENFORCEMENT, OVERSIGHT AND IMPLEMENTATION OF THE CODE

- Disciplinary procedure for breach of the code by a judge or a judicial officer. **77.**(1) Without derogating from the provisions of Articles 168 and 172 of the Constitution, breaches of the Code that amount to minor infractions and administrative lapses by judges and judicial officers, shall be dealt with by the Chief Justice as the administrative head of the judiciary.

- (2) Any person may lodge a complaint alleging a breach of this Code by a judge, a judicial officer, or judicial staff, using the procedure for handling complaints that may be prescribed by the Commission.

Breach of the Code.	78. A breach of this Code amounts to misconduct for which a judicial officer or a judicial staff may be subjected to disciplinary proceedings.
Implementation of the Code.	79. The Commission is responsible for the implementation of this Code.
Guidelines and administrative process.	80. The Commission may from time to time, issue guidelines on the oversight and implementation of the Code including the lodgment and resolution of complaints against Judges, judicial officers and judicial staff.
Signing and subscription to the Code.	81. A judge, a judicial officer and a judicial staff shall sign and subscribe to this Code in the manner provided for in the schedule.
Code to supplement other legal requirements.	82. The provisions of this Code apply in addition to, and not in derogation from, the requirements of any other law relating to codes of conduct and ethics.
Review of the Code.	83. The Commission may, from time to time, review this Code.
Revocation of Legal Notices No. 50 of 2003 and No. 132 of 2016.	84. The Judicial Service Code of Conduct and Ethics issued under section 5 (1) of the Public Officer Ethics Act, 2003 vide Legal Notice No. 50 of 2003, and Legal Notice No. 132 of 2016 issued under section 47(2)(a) of the Judicial Service Act, are revoked.

Dated the 17th January, 2020

DAVID K. MARAGA,

Chief Justice and President of the Supreme Court of Kenya.

Schedule------(R.81)

COMMITMENT TO THE CODE

I,holder of National ID/Passport and
PJ No. having been appointed as a judge/judicial
officer/judicial staff do hereby confirm that I have read and understood this Code and now do
commit to faithfully uphold and abide by the provisions of the Code at all times.

.....

Signature