

GOVERNMENT OF ZAMBIA

ACT

No. 13 of 1999

Date of Assent: 23rd December, 1999

An Act to provide for the Code of Conduct for officers of the Judicature pursuant to article *ninety-one* of the Constitution and for matters connected with or incidental to the foregoing.

[24th December, 1999]

ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. This Act may be cited as the Judicial (Code of Conduct) Act, 1999.

Short title

2. In this Act, unless the context otherwise requires—

Interpretation

"Chairman" means the Chairman of the Industrial Relations Court appointed under article *ninety-five* of the Constitution;

Cap. 1

"Chairperson" means the Chairperson of the Committee appointed under section *twenty*;

"Commission" means the Judicial Service Commission constituted under article *one hundred and twenty-three* of the Constitution;

Cap. 1

"Committee" means the Complaint Committee established under section *twenty*;

"Court" means the Supreme Court, the High Court, the Industrial Relations Court, the Subordinate Court, the Local Court or such lower court as may be prescribed by an Act of Parliament;

"Deputy Chairman" means the person appointed Deputy Chairman of the Industrial Relations Court under article *ninety-five* of the Constitution;

Cap. 1

"judge" means a person appointed judge under article *ninety-five* of the Constitution;

"judicial officer" means the Chief Justice, the Deputy Chief Justice, a judge, Chairman, Deputy Chairman, registrar, magistrate, justice of a court or other person having power to hold or exercise the judicial powers of a Court;

Cap. 30

"legal practitioner" has the meaning assigned to it in the Legal Practitioners Act;

"member" means a member of the Complaints Committee;

"member of staff" means—

(a) the Chief Administrator;

(b) a sheriff or other officer appointed under the Judicature Administration Act, other than a judicial officer;

(c) Master, Deputy Master and Assistant Master of the Supreme Court; and

(d) such other officers or staff of any court, appointed under the Judicature Administration Act; and

"Secretary" means the Secretary to the Complaints Committee.

PART II

ADJUDICATIVE RESPONSIBILITIES

Independence and impartiality
Cap. 1

3. A judicial officer shall uphold the integrity, independence and impartiality of the Judicature in accordance with the Constitution, this Act or any other law:

Officer not to discriminate

4. (1) A judicial officer shall perform the duties of that office without bias or prejudice and shall not, in the performance of adjudicative duties, by word or conduct, manifest bias, discrimination or prejudice, including but not limited to bias or prejudice based upon race, tribe, sex, place of origin, marital status, political opinion, colour or creed and shall not permit any member of staff or any other person subject to the officer's direction and control to so discriminate or manifest bias or prejudice.

(2) Subject to subsection (3), a judicial officer shall not allow a legal practitioner or other officer of the court in any proceedings before the judicial officer to manifest, by word or conduct, bias, discrimination or prejudice contrary to the Constitution or any other law, against any party, witness, or any other person.

(3) This section does not preclude legitimate advocacy where the social or economic status, or other similar matter are in issue in the proceedings before a Court.

5. (1) Subject to section *six* a judicial officer shall hear and determine any matter assigned to the officer except a matter which the officer is, by law not competent to hear or determine.

Discharge of
duties

(2) A judicial officer shall not, in the performance of adjudicative duties, be influenced by—

- (a) partisan interests, public clamour or fear of criticism;
- (b) family, personal, social, political or other interests; or
- (c) any other circumstances otherwise than that provided by law.

(3) A judicial officer shall not use the office or the officer's position to advance any private interest of that officer, the officer's spouse, child, relation or other person or make any person believe that the officer's spouse, child, relation or other person is in a position to influence the officer in any manner.

(4) A judicial officer shall not testify as a character witness before a Court.

6. (1) Notwithstanding section *seven* a judicial officer shall not adjudicate on or take part in any consideration or discussion of any matter in which the officer or the officer's spouse has any personal, legal or pecuniary interest whether directly or indirectly.

Disqualifica-
tion from
adjudication

(2) A judicial officer shall not adjudicate or take part in any consideration or discussion of any proceedings in which the officer's impartiality might reasonably be questioned on the grounds that—

- (a) the officer has a personal bias or prejudice concerning a party or a party's legal practitioner or personal knowledge of the facts concerning the proceedings;
- (b) the officer served as a legal practitioner in the matter;
- (c) a legal practitioner with whom the officer previously practiced law or served is handling the matter;
- (d) the officer has been a material witness concerning the matter or a party to the proceeding;
- (e) the officer individually or as a trustee, or the officer's spouse, parent or child or any other member of the officer's family has a pecuniary interest in the subject matter or has any other interest that could substantially affect the proceeding; or

(f) a person related to the officer or the spouse of the officer—

(i) is a party to the proceeding or an officer, director or a trustee of a party;

(ii) is acting as a legal practitioner in the proceedings;

(iii) has any interest that could interfere with a fair trial or hearing; or

(iv) is to the officer's knowledge likely to be a material witness in the proceeding.

Waiver of
disqualifica-
tion

7. (1) A judicial officer disqualified under section six shall, at the commencement of the proceedings or consideration of the matter, disclose the officer's disqualification and shall request the parties or the parties' legal representatives to consider, in the absence of the officer, whether or not to waive the disqualification.

(2) Where a judicial officer has disclosed an interest other than personal bias or prejudice concerning a party to the proceedings, the parties and the legal representatives may agree that the officer adjudicates on the matter.

(3) A disclosure or an agreement made under subsection (2) shall form part of the record of the proceedings in which it is made.

Non-
disclosure to
members of
public

8. (1) A judicial officer or a member of staff shall not, while proceedings are pending or impending in any court, make any public comment that may affect or may reasonably be construed to affect the outcome of the proceedings or impair its fairness, or make any comment that might substantially interfere with a fair trial or hearing.

(2) A judicial officer shall not, where the officer is serving as an expert or technical witness before another Court, a commission or other tribunal, express an opinion or give information unless the opinion or information is founded upon—

(a) adequate knowledge of the facts in issue;

(b) a background of competence or jurisdiction on the subject matter; or

(c) an honest conviction of the accuracy and propriety of the testimony.

(3) A judicial officer shall not disclose or use, for any purpose other than judicial duties, information acquired in the course of that officer's duties.

(4) A judicial officer shall not issue any statement, criticism or argument on the judiciary, whether inspired or paid for by any interested party or by personal interest, pecuniary or otherwise.

9. (1) Subject to subsection (2), a judicial officer shall not initiate, permit or consider an ex-parte communication or other communication made to the officer in the absence of a party to any proceedings concerning pending or impending proceedings.

Ex-parte
communica-
tion

(2) A judicial officer may authorise an ex-parte communication that relates to a substantive matter or issue, on merit, where—

(a) the officer has reasonable grounds to believe that no party will gain a procedural or tactical advantage as a result of the ex-parte communication; or

(b) the officer makes provision to notify all the other parties concerned of the substance of the ex-parte communication and allows an opportunity to respond.

(3) A judicial officer may consult with other officers whose function is to assist the officer in carrying out the officer's adjudicative responsibilities.

(4) A judicial officer may, with the consent of the parties, confer separately with the parties and the parties' legal representatives in order to mediate or settle matters pending before the officer.

(5) A judicial officer shall dispose of a judicial matter promptly, efficiently, fairly and competently within a reasonable time.

10. (1) A judicial officer shall diligently discharge the officer's administrative duties and shall foster integrity, honour, dignity and professional competence in the administration of justice.

Administra-
tive
responsibili-
ties

(2) A judicial officer shall not undertake any assignment or other responsibility that would create a potential conflict of interests between the judicial officer and the Commission.

(3) Where a judicial officer is vested with authority to appoint other members of staff, the officer shall exercise the power of appointment impartially and on the basis of merit.

PART III

EXTRA-JUDICIAL ACTIVITIES

11. (1) A judicial officer shall not conduct activities outside the office that—

Extra-
judicial
activities

(a) create conflict with judicial responsibilities;

(b) create doubt on the officer's capacity to act impartially as a judicial officer;

(c) bring the integrity, independence and impartiality of the Judicature into disrepute; and

(d) interfere with the proper performance of judicial duties.

(2) A judicial officer may receive compensation and reimbursement for services rendered and expenses incurred for any extra-judicial activities which are not contrary to the provisions of this Act.

(3) Any form of compensation or reimbursement received under subsection (2)—

- (a) shall not exceed that which is reasonable and commensurate with the services rendered or expenses incurred;
- (b) shall not exceed what a person who is not a judicial officer would receive as compensation or reimbursement for the same activity; and
- (c) in the case of reimbursement, shall be limited to the actual cost of travel, food, lodging and other expenses reasonably incurred by the officer and, where authorised, by the officer's spouse.

Public report

12. (1) Where a judicial officer receives any compensation or reimbursement under section *eleven*, the officer shall make a report to the Commission stating—

- (a) the amount of compensation or reimbursement received;
- (b) the date on which the payment is received;
- (c) the place where the payment is made and the nature of the activity for which the officer received the payment; and
- (d) the name of the person, institution or organisation making the payment.

(2) The report referred to under subsection (1) shall be made within twenty-one days from the date of receipt of the compensation or reimbursement by the judicial officer, and shall be filed as a public document with the clerk of the Court on which the officer serves or such office as the Chief Justice may designate.

Membership
in
governmental
organisation

13. (1) Subject to subsection (2), a judicial officer may serve as an officer, director, trustee or member of—

- (a) an organisation or government agency devoted to the improvement of the law, the legal system or the administration of justice; or
- (b) a non-profit making educational, religious, charitable, fraternal, professional, civic or similar non-governmental organisation.

(2) A judicial officer shall not adjudicate on or take part in any consideration or discussion of any proceedings where the organisation of which the judicial officer is a member is a party.

(3) A judicial officer shall not hold office in or belong to an organisation or institution that practices discrimination contrary to the provisions of the Constitution.

PART IV

FINANCIAL MATTERS

14. (1) Subject to the other provisions of this Act, a judicial officer shall not—

Financial
matters

- (a) solicit or accept any financial or other consideration for services performed in the course of duties or incidental to the performance of duties other than an official emolument;
- (b) use business or other commercial information received in the course of duties for personal profit; or
- (c) disclose information concerning the business affairs or other dealings of a party to proceedings before that officer.

(2) A judicial officer shall not engage in financial or business dealings that may compromise the officer's professional integrity, independence or competence.

15. (1) A judicial officer or member of the officer's family residing in the judicial officer's household, shall not accept a gift, bequest, favour or loan from any person for purposes of a bribe, corrupt practice so as to influence the officer in the execution of the officer's duties.

Gifts

(2) For the purposes of subsection (1), "gift", "bequest" or "favour" does not include—

- (a) a gift incidental to a public testimonial, a book, tape or other resource material supplied by a publisher on a complimentary basis;
- (b) an invitation to the judicial officer's spouse or other family member to attend a function or an activity related to the improvement of the law, the legal system or the administration of justice;
- (c) a gift, award or benefit incidental to the business, profession or other activity of a spouse or other family member of a judicial officer.

- (d) a gift, award or benefit for use by the spouse, other family member and the judicial officer;
- (e) ordinary social hospitality;
- (f) a gift from a relative or a friend, for a special occasion including a wedding, anniversary or birthday, where the gift is commensurate with the occasion and relationship;
- (g) a gift, bequest, favour or loan from a relative or personal friend;
- (h) a loan from a lending institution on the same terms available to persons who are not officers;
- (i) a scholarship or fellowship awarded on same terms and criteria applied to other applicants; or
- (j) any other gift, bequest, favour or loan, from a person who is not a party or is not a person who is or is likely to come or whose interest is or is likely to come before the officer:

Provided that the gift, award or benefit could not reasonably be perceived as a bribe or corrupt practice or an intention to influence the officer in the performance of judicial duties.

Fiduciary activities

16. (1) A judicial officer shall not serve as an executor, administrator or other personal representative, trustee, guardian, attorney in fact or other fiduciary, except for the estate, trust or person of a member of the officer's family.

(2) A judicial officer shall not serve as a fiduciary where it is likely that the officer will engage in proceedings or matters that would ordinarily come before the officer, or if the estate, trust or ward is a party to any proceeding in the officer's Court or under one of the Court's appellate jurisdiction.

(3) Sections *fourteen and fifteen* apply with the necessary modification to a judicial officer where the officer is acting in a fiduciary capacity.

Practice of law

17. (1) Subject to subsection (2), a judicial officer shall not practice law.

(2) Notwithstanding subsection (1), a judicial officer may act in person and may, without remuneration, give legal advice to, and draft or review documents for a member of the judicial officer's family.

PART V

POLITICAL AND EMPLOYMENT OPPORTUNITIES

18. A judicial officer shall not—

- (a) hold office in or belong to a political party;
- (b) endorse or oppose a candidate for political office;
- (c) make any speech or public statement on behalf of a political organisation;
- (d) attend a political gathering;
- (e) solicit funds on behalf of, or pay an assessment to or make a contribution to a political organisation or candidate;
- (f) partake in any function held or organised by a political party; or
- (g) engage in any political activity.

Political
activity

19. (1) Where a judicial officer is appointed to an office other than an office in the Judicature, the judicial officer—

- (a) may apply for unpaid leave for the duration of the appointment; or
- (b) may apply for secondment to the office for the duration of the appointment.

Appointment
to office,
application
for employ-
ment, etc.

(2) A judicial officer shall not—

- (a) attract or solicit employment by false or misleading representations;
- (b) pay or offer to pay, either directly or indirectly, any commission, political contribution, gift or other consideration as an inducement to secure employment or other form of remuneration; or
- (c) solicit or accept funds, personally or through a committee or otherwise, to support the officer's appointment.

(3) A judicial officer seeking employment may—

- (a) communicate with the appointing authority or nominating authority or other body designated to consider the candidature of an applicant;
- (b) request reference or endorsement for appointment from any authority making the recommendations for appointment to the office, or from persons to the extent required under paragraph (a); and
- (c) provide to the appointing authority information as to the officer's qualifications for the office.

PART VI

COMPLAINTS COMMITTEE

Complaints
Committee

20. (1) There is hereby constituted a Complaints Committee which shall consist of five members who have held or are qualified to hold high judicial office.

(2) The members of the Committee shall be appointed by the President subject to ratification by the National Assembly.

(3) The members shall elect the Chairperson of the Committee from amongst themselves.

(4) A member shall hold office for a period of four years subject to renewal for a further like period.

(5) A member may resign upon giving one month's notice in writing to the President.

(6) The President may remove a member if—

(a) the member is absent without reasonable excuse from three consecutive meetings of the Committee of which the member has had notice;

(b) the member is found guilty of an offence involving dishonesty; or

(c) the member fails to perform the duties of the member's office.

(7) Where the office of a member falls vacant before the expiry of office, the President may appoint another person to be a member in place of the member who vacates office but the new member shall hold office only for the unexpired part of the term.

Secretary to
Committee

21. The Secretary to the Committee shall be appointed by the President and shall be—

(a) responsible for the management and administration of the Committee; and

(b) responsible for the implementation of any matters referred to the Secretary by the Committee.

Immunity of
members

22. No civil or criminal proceedings shall lie against any member of the Committee or Secretary for things done in the lawful exercise of that person's functions under this Act.

Remunera-
tion of
members

23. A member of the Committee shall be paid such allowances and remuneration as may be determined by the Commission.

24. (1) The functions of the Committee shall be to—

Functions of
Committee

- (a) receive any complaint or allegation of misconduct and to investigate any complaint or allegation made against a judicial officer;
- (b) submit its findings and recommendations to—
 - (i) the appropriate authority for disciplinary action or other administrative action; and
 - (ii) the Director of Public Prosecutions for consideration of possible criminal prosecution.

(2) In this Part, "appropriate authority" means—

- (a) in the case of the Chief Justice, the President;
- (b) in the case of a Judge, the Chief Justice, who may admonish the Judge concerned and in the case of a breach requiring removal under subsection (2) of article *ninety-eight* of the Constitution, the Chief Justice shall inform the President;
- (c) in the case of the Registrar, the Chief Administrator, who shall inform the Commission;
- (d) in the case of a magistrate, the Director of Local Courts or any other judicial officer, the Registrar, who shall report to the Commission for action; and
- (e) in the case of a local court officer or justice, the Director of Local Courts, who shall report to the Commission for action.

(3) The appropriate authority or the Director of Public Prosecutions shall, where a report is made by the Committee under sub-section (1), notify the member against whom the report is made within seven days from the date the report is received.

25. (1) Any member of the public who has a complaint against a judicial officer or who alleges or has reasonable grounds to believe that a judicial officer has contravened this Act shall inform the Committee.

Procedure
for com-
plaint

(2) Where a judicial officer alleges or has reasonable grounds to believe that any other judicial officer has contravened this Act, the judicial officer shall inform the Committee.

(3) A person who has a complaint or allegation against any judicial officer shall lodge it with—

- (a) the Secretary; or
- (b) the clerk of court in the area where the incident or circumstances giving rise to the complaint or allegation occurred; or
- (c) the District Administrator in the area where the incident or circumstances giving rise to the complaint or allegation occurred.

(4) A complaint may be made orally or in writing.

(5) A complaint shall include the following:

- (a) the name, physical and postal address of the person making the complaint;
- (b) the complainant's age; and
- (c) a detailed statement including the facts of the incident or circumstances giving rise to the complaint.

(6) Where a complaint or allegation is made orally, the recipient of the complaint shall reduce it to writing.

(7) A Complaint shall bear the signature or thumb print of the person making it.

(8) A complaint or allegation lodged against a judicial officer and any investigation carried out into the complaint by the Committee shall be treated as confidential, and shall not be open for public inspection except for the judicial officer concerned and the complainant.

(9) A judicial officer or a member of staff shall not prevent or attempt to prevent the lodging of a complaint or an allegation against any judicial officer.

(10) A person who contravenes subsection (9) commits an offence, and is liable, upon conviction, to a fine not exceeding two thousand penalty units, or to imprisonment for a period not exceeding one year, or to both.

Receipt of
complaint by
clerk of
court

26. (1) Where the complaint is received by a person other than the Secretary, the person shall, within fourteen days of receipt of the complaint, submit it to the Secretary.

(2) The Secretary shall, upon receipt of the complaint under subsection (1), within seven days lay it before the Committee and send a copy of the acknowledgment of receipt to the person who made the complaint.

Powers of
Committee

27. (1) The Committee may investigate any complaint or allegation referred to it under this Act by—

- (a) an aggrieved person directly affected by the judicial officer's action;
- (b) an association or body of persons acting in the interest of its members; or
- (c) a person acting on behalf of an aggrieved person, body or organisation.

(2) The Committee may—

- (a) issue summons or orders requiring the attendance of any person before the Committee and the production of any document, or record relevant to any investigation by the Committee;
- (b) question any person in respect of any subject matter under investigation before the Committee; and
- (c) require any person to disclose any information within that person's knowledge relevant to any investigation by the committee.

(3) A person summoned under subsection (1) shall be examined under oath or affirmation and the oath or affirmation shall be administered by the Chairperson.

28. (1) Subject to the other provisions of this Act, the Committee may regulate its own procedure.

Proceedings
of Committee

(2) The Committee shall meet for the performance of its functions at such places and times as the Chairperson may determine.

(3) Three members of the Committee shall form a quorum at any meeting of the Committee.

(4) The Chairperson shall preside at every meeting of the Committee.

(5) Where the Chairperson is absent from a meeting, such member as the members present at the meeting shall elect for the purpose of the meeting shall preside at the meeting.

(6) A decision of the Committee shall be by a majority of the members present and voting at a meeting.

(7) Where the Committee is of the opinion that a person who is not a member of the Committee is required to attend a meeting, the person may be invited to attend the meeting, but the person shall have no vote.

29. (1) A person present at a meeting of the Committee who has a direct or indirect interest, in the subject matter under consideration, shall as soon as practicable disclose such interest.

Disclosure
of interest

(2) A disclosure of interest made under subsection (1) shall form part of the record of the proceedings in which it is made.

(3) Any person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding five thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

Prohibition
of disclosure
of informa-
tion

30. (1) A person shall not, without the written consent of the Committee publish or disclose to any person otherwise than in the course of that person's duties the contents of any documents, communication or information which relates to, and which has come to that person's knowledge in the course of that person's duties under this Part.

(2) A person who contravenes subsection (1) commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units or to imprisonment for a period of not exceeding three years, or to both.

Register of
complaints

31. (1) The Secretary shall keep a register of complaints which shall state—

- (a) the name and address of the person making the complaint;
- (b) the nature of the complaint; and
- (c) the date and time when the complaint is made.

(2) A member of the public may inspect the register on payment of such a fee as the Commission may determine.

Offences

32. A person who—

- (a) gives false information to the Committee in relation to a complaint;
- (b) insults, interrupts, or obstructs any member of the Committee or the Secretary in the performance of that member's or Secretary's functions; or
- (c) disobeys any summons or order made under this Part;

commits an offence and shall be liable, upon conviction, to a fine not exceeding ten thousand penalty units, or to imprisonment for a period not exceeding three years, or to both.

PART VII

GENERAL

Breach of
Code of
Conduct

33. (1) A judicial officer contravenes this Act if the officer—

- (a) improperly uses or benefits from information which is obtained in the course of the officer's duties and which is not generally available to the public;
- (b) discloses any official information to unauthorised persons;
- (c) exerts any improper influence in the appointment, promotion, discipline or removal of any judicial officer or member of staff;
- (d) maliciously or falsely, directly or indirectly, injures the professional reputation, prospects, practise or employment of another judicial officer or member of staff;

(e) unlawfully discloses confidential information or finding of any commission or board of which the officer was a member;

(f) directly or indirectly converts Government property for personal or other unauthorised use;

(g) solicits or accepts transfer of economic benefits, other than—

(i) a benefit of nominal value, including customary hospitality and a token gift;

(ii) a gift from a close family member; or

(iii) transfers pursuant to an enforceable property right of the officer or pursuant to a contract for which full value is given.

(2) Subject to the other provisions of this Act any breach of the provisions of this Act shall be construed as misconduct to be reported to the Committee for action.

34. A judicial officer who receives information or has reasonable grounds to believe that a legal practitioner has committed an offence that raises a substantial question as to the legal practitioner's, honesty, trustworthiness or fitness as a legal practitioner shall inform the Law Association of Zambia.

Duty in
relation to
legal
practitioner

35. The Chief Justice may, by statutory instrument, make regulations for the better carrying out of this Act.

Regulations