

JUDICIAL PROFESSIONALISM AND ETHICS

Guiding principles

There are 3 basic principles to guide judicial conduct:

- Impartiality
- Judicial independence; and
- Integrity and personal behaviour

Objectives of principles

- To uphold public confidence in the administration of justice
- To enhance public respect for the institution of the judiciary; and
- To protect the reputation of individual judicial officers and of the judiciary

Principle 1: Impartiality

What does impartiality mean for your role as a judge?

Lack of impartiality

- bias
- conflict of interest
- prejudgment of an issue

What can give rise to impartiality?

Associations

- Professional or business associations (past or current) involving litigants, legal advisors of litigants and witnesses
- Relationships or social contact with litigants/ advisors/ witnesses
- Public statements or expressions of opinion on controversial social issues or matters in issue in litigation.

Activities

- Current commercial or business activities
- Personal or family financial activities, eg. shareholding
- Membership of or involvement with community organisations, if they become parties to litigation

Supported by

How to avoid allegations of bias

- 1) Inform parties of facts which might reasonably give rise to a perception of bias or conflict of interest.
- 2) Consider how the situation appears to a *reasonable well-informed lay-observer*.

Principle 2: Judicial Independence

- Constitutional independence
- Independence in discharge of judicial duties: Judges should always take care that their conduct, official or private, does not undermine their institutional or individual independence, or the public appearance of independence.

Principle 3: Integrity and personal behaviour

- Intellectual honesty
- Respect for the law and observance of law
- Prudent management of financial affairs
- Diligence and care in the discharge of judicial duties
- Discretion in personal relationships, social contacts and activities

Conduct in the Court

- Personal behaviour
- Conduct of hearings
- Participation in the trial
- Private communications

Conduct outside court

- Social conduct
- Family relationships
- Finance
- Morality associated matters
- Political activity
- Misuse of the prestige of office
- Misuse of court staff and resources

Case Study 1: Judicial Impartiality

The municipal council of a village in an isolated island in a Pacific Island country has approved the construction of a new hotel. The council hopes to increase tourism to the area, to help boost the fledgling tourism industry to this remote island.

The chosen location of the hotel is in front of a small local Church, and once built, will obstruct the Church's beautiful view of the ocean. The Church is frequently used for community gatherings and wedding ceremonies in the village, so the ocean view is an important backdrop to functions for local Church-goers.

The Church has lodged an action against the municipal council to prevent it from building the hotel, and has requested that the Court issue an injunction to the council.

The judge allocated with this case, Judge Kawa used to be a member of the Church, but stopped 5 years ago due to a heated disagreement with the new Minister at the Church, which caused quite a controversy in the local community at the time.

In the local media, there is a lot of support for the Church's case, but the local council needs to build the hotel as quickly as possible for contractual reasons. The Mayor has a lot of interest in building the hotel as quickly as possible. Judge Kawa frequently sits at the Mayor's table at community social functions and has known the Mayor for several years.

No other judge is currently available on the island to hear this matter, and the construction is scheduled to commence very soon. The Church cannot afford a costly hearing on the main island.

Points to consider

- What issues relating to bias/conflict of interest arise in this situation?
- Would a reasonable lay-person determine that the Judge has a bias/conflict of interest?
- What factors should Judge Kawa consider in determining which course of action to take?
- What action should Judge Kawa ultimately take?

Case Study 2: Judicial professionalism

Milo is a court registry officer at the local court. He is committed to and proud of his job and has introduced several important improvements to the court's case management system. Judge Sage, the only judge in the court, considers that Milo is the Court's best registry officer and knows Milo well. However, Milo, like other court staff, is paid poorly, and barely makes enough money to support his family of six. Due to a recent family need, Milo is facing great economic hardship and is unable to make ends meet for his family.

Felix is a prosperous business owner in the village who is facing charges from a former employee, who alleges that Felix has terminated his employment contract unlawfully. The matter has gone to trial before Judge Sage.

Felix is worried about the implications this case will have on the reputation of his business. Felix knows Milo socially and has heard from mutual friends that Milo is in need of a second job. Felix goes to Milo's home one day during the trial to speak with him outside business hours. Felix informs Milo that the Court is holding important documentary evidence from the plaintiff's side that would be detrimental to Felix's case, and that this evidence will be submitted to Court the next day. Felix knows that Milo will have access to the evidence before it is submitted in Court. He advises Milo that should this evidence get lost, Milo would be guaranteed a weekend job at Felix's company. Milo understands that Felix is bribing him, but is in a desperate situation, and says that he will think about the matter.

The next day, Milo accesses the Court files and takes out the crucial paperwork before it is submitted to the Court.

During the trial, the parties are baffled as to what has happened to the paperwork and the court room becomes quite heated with accusations flying. Judge Sage adjourns the hearing until the matter can be addressed.

Judge Sage knows that Milo was the only person who had access to the paperwork.

Points to consider

- What issues relating to bias/conflict of interest arise in this situation?
- What factors are important for Judge Sage as a judge? What should he do in his capacity as a judge? Why?
- What factors are important for Judge Sage as a leader? What should he do in his capacity as a leader? Why?
- How can Judge Sage ensure that this situation does not arise in the future?