THE REPUBLIC OF THE UNION OF MYANMAR

THE SUPREME COURT OF THE UNION

ပြည်ထောင်စုသမ္မတမြန်မာနိုင်ငံတော်

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Code of Judicial Ethics

for Myanmar Judges

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Foreword by Union Chief Justice

Only if the judiciary system is just and carried out impartially and independently, the basic principles of judiciary can be preserved and there can be the rule of law in society. As an effort to gain the public's trust and confidence upon the judiciary system and to increase their level of trust, judges must respect and adhere to the Code of Judicial Ethics, both individually and institutionally, to maintain the dignity of the Court.

In the judicial history of Myanmar, this is the first time ever that the Code of Judicial Ethics for judges could be issued in accordance with international best practices. By issuing this Code of Judicial Ethics, judges and judicial personnel as well as all relevant actors related to the judiciary sector will have a better understanding of the judiciary system. It is hoped that a just and firm judiciary system may be established by the contribution of their support as necessary.

It is documented here that a special thanks goes to: the Ethics Code Review Committee of the Supreme Court of the Union and its working committee members; judges from each State/Region High Court, District and Township; judicial officers; development partners and

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The Hon. Htun Htun Oo
Union Chief Justice
Supreme Court of the Union of Myanmar

2 August , 2017
Nay Pyi Taw

Code of Judicial Ethics

for Myanmar Judges

Introduction

The Code of Judicial Ethics provides the values and moral standards that judges have to observe. It lays out the standards of integrity and professionalism that all judges shall be bound to respect in their work. Different professions have different codes of ethics-medical doctors have their medical code of ethics, school teachers have their code of ethics, attorneys have a code of ethics for lawyers, and judges have their Code of Judicial Ethics. These codes of ethics provide guides that allow professionals to carry out his or her task with the ability to distinguish the right from the wrong, the good from the bad, the just from the unjust, and the lawful from the unlawful. It also ensures that a professional is responsible, faithful and whole-heartedly performing his or her duties.

As judges perform their judicial tasks with equality and impartiality by adhering to the Code of Judicial Ethics for judges, they also fulfill Article 10 of the Universal Declaration of Human Rights, which states that, "Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him." This in turn helps to

attain the public trust and strengthen the rule of law in the country. It is only when there is rule of law in the country can the nation truly develop.

The judges and judicial officers need to follow the Code of Judicial Ethics for judges. Only then can the justice sector and all relevant people have a better understanding of the judiciary. This will also provide the necessary means for the judiciary to earn public trust and strengthen the rule of law in the country.

Chapter 1

INDEPENDENCE

The Principle - Judicial Independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A judge must therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

The requirements of Judicial ***INDEPENDENCE*** include that:

Article 1. A judge must make all judicial decisions by independently upholding the law.

Article 2. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

Article 3. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, including private

individuals and entities but must also appear to be free there from to a reasonable observer.

Article 4. Judges shall be independent of society in general and of the particular parties to a dispute which he or she must adjudicate.

Article 5. Judges shall not allow the judge's family, social, or other relationships to influence judicial conduct and judgment .

Article 6. Judges shall not use or lend the prestige of judicial office to advance the private interests of the judge, a member of the judge's family or anyone else, nor shall a judge permit others to convey the impression that any one is in a special position improperly to influence the judge in performance of judicial duties.

Article 7. A judge must not be inappropriately influenced by judicial colleagues in respect of decisions which the judge is obliged to make independently.

Article 8. A judge in performing his/ her duties must always protect, encourage and defend the principle of judicial independence.

Chapter 2

EQUALITY

The Principle - Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

The requirements of ***EQUALITY*** include that:

Article 1. Judges should carry out their duties with appropriate consideration to, and understanding of, all persons regardless of ethnic background, race, birth, religion, status, culture, sex, wealth, or disability without unfair discrimination.

Article 2. A judge must perform his/her judicial tasks without fear, favor or animosity.

Article 3. A judge must treat everyone equally, including lawyers, plaintiffs, defendants, witnesses and any one related to the case, inside and outside of the court proceedings.

Article 4. Judges shall not knowingly permit court staff or others subject to his or her influence, direction or control to unfairly differentiate between persons concerned, in a matter before the judge.

Chapter 3

COMPETENCY AND DILIGENCE

The Principle - Competence and diligence are prerequisites to the due performance of judicial office.

The requirements of ***COMPETENCY AND DILIGENCE*** include that:

Article 1. A judge should devote his/ her professional activity to judicial tasks over all other activities and must be diligent in his/her judiciary performance.

Article 2. Judges should bear in mind that punctuality, observance of the prescribed procedure and avoidance of delay are essential in his/her judiciary performance. In addition, Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

Article 3. Judges shall maintain order in all proceedings before the court.

Article 4. Judges shall maintain and enhance their legal knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control to judges.

Chapter 4

IMPARTIALITY

The Principle - Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

The requirements of ***IMPARTIALITY*** include that: -

Article 1. Judges must perform their judicial duties without favor, bias, or prejudice.

Article 2. Judges shall ensure that their conduct, both in and out of court, maintains and enhances the confidence of the public, the legal professionals and litigants in the impartiality of the judge and of the judiciary.

Article 3. Judges shall, so far as is reasonable, conduct themselves so as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

Article 4. Judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome

of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

Article 5. Judges should disqualify themselves in any case in which they believe that a reasonable, fair minded and informed person would have a reasonable suspicion of conflict between a judge's personal interest (or that of a judge's immediate family or close friends or associates) and a judge's duty.

Such proceedings include, but are not limited to, instances where:

(a) The judge has personal knowledge of disputed evidentiary facts concerning the proceedings.

(b) The judge, or a member of his/ her family, has personal interest in the out-come of the matter in controversy.

(c) The judge is related to a party or to counsel.

(d) The judge knows that his/ her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings:

The followings are not appropriate for disqualification :

(i) the matter giving rise to the perception of a possibility of conflict is trivial or would not support a plausible argument in favor of disqualification, or

(ii) no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could leave to a miscarriage of justice.

Chapter 5

INTEGRITY

The Principle - Integrity is essential to the proper discharge of the judicial office.

The requirements of ***INTEGRITY*** include that:-

Article 1. A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

Article 2. The behavior and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seem to be done.

Chapter 6

PROPRIETY

The Principle - Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. Judges must expect to be the subject of constant public scrutiny. Therefore, he or she must avoid all impropriety and appearance of impropriety both in professional and personal conduct. A judge's good behavior and habits should win the Public's trust as it reflects on the integrity of his/ her judicial activities.

The requirements of ***PROPRIETY*** include that: -

Article 1. No judge is allowed to take advantage of his/ her judicial duties and privileges directly or indirectly in performing his/ her judicial tasks.

Article 2. No judge is allowed to receive or accept any form of social entertainment, money, gift and/ or any other items that would be regarded as gifts from litigants, law officials, and from anyone else involved in a case.

Article 3. No judge is allowed to take part in any

form of commercial activity .

Article 4. No judge is allowed to work as legal advisor or advocate for any individual, organization or company whilst as working as a Judge.

Article 5. A judge must not only abide by this Code of Judicial Ethics but in circumstances where he or she is also bound by a Civil Servant's Code of Conduct must comply with that code of conduct except where there arises any conflict between the two codes in which case the provisions of this Judicial Code of Conduct must prevail, issued by law.

Article 6. All partisan political activity must cease upon appointment. Judges should refrain from conduct that, in the mind of a reasonable, fair minded and informed person, could give rise to the appearance that the judge is engaged in political activities.

Article 7. Judges should refrain from the followings:

(a) Membership in political parties and

political fund raising:

(b) Attendance at political gathering and political fund raising events:

(c) Contributing financially to political parties or campaigns:

(d) Taking part publicly in controversial political discussions except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice:

(e) Signing petitions to influence a political decision.

Article 8. Although members of the judge's family have every right to be politically active, judges should recognize that such activities of close family members might, even if mistakenly, adversely affect the public perception of a judge's impartiality. In any case before the court in which there could reasonably be such a perception, the judge should disqualify himself or herself.

Article 9. A judge must avoid any kind of in appropriate personal relationship within the office and at Court with lawyers, law officers, and other relevant personnel.

Article 10. A judge must absent himself/ herself from cases where family and relatives are involved. A Judge must not make any inappropriate communication or contact with any person that could cause a reasonable perception that such communication or contact could affect the outcome of a case.

Article 11. A judge during a trial must not meet or discuss with anyone related to the case except in a transparent manner in open court.

Article 12. A judge must avoid from any and all behaviors that undermines his/ her dignity.

Article 13. Confidential information acquired by judges in their judicial capacity shall not be used or disclosed for any other purpose other than those related to their judicial duties.

Article 14. A judge's involvement in financial activities may undermine his/ her ability in the judicial tasks and could further damage his/ her image in public trust. Accordingly a judge should not engage directly or indirectly in trade or business, either by himself or in association with any other person. (Publication of legal writings or any activity in the nature of a hobby will not be construed as trade or business nor would the conduct of a small family farm or similar activity)

Article 15. Extrajudicial activities unrelated to judicial tasks may erode the confidence of the Public in a Judge's honesty and integrity. A judge may participate in extrajudicial activities as long as it does not detract from the dignity of the judge's office, does not interfere with the performance of the judge's official duties, and does not reflect adversely on the judge's impartiality. In particular a judge may engage in extra judicial activities to improve the law, the

legal system, and the administration of justice or the public understanding thereof. A judge, subject to the proper performance of judicial duties, may engage in the following law-related activities. If in doing so the judge does not cast reasonable doubt on the capacity to decide impartially any issue that may come before the judge.

(a) A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, and the administration of justice.

(b) A judge may appear at a public hearing before, or otherwise consult with, an executive or legislative body or official on matters concerning the law, the legal system, and the administration of justice to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area.

(c) A judge may serve as a member, officer, or director of an organization or government agency devoted to the improvement of the law, the legal system, or the administration of justice.

Article 16. A judge when communicating and meeting with the media must refer to the Court Media Manual.

Article 17. Judges shall be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

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