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Code of Ethics for Judges, 2024

FOREWORD

Judges are at the pinnacle of the Administration of Justice. Theirs is a sacred constitutional duty whose discharge demands absolute integrity, efficiency and humility. Society expects no less from them.

This Code of Ethics is an endeavour to help judges to uphold judicial standards and live up to societal expectations of timely delivery of justice.

The publication of the Code is to bring awareness to judges and society at large on the standards of behaviour to guide judges in both their professional and personal lives. More importantly, judges will be held accountable if their conduct is in deviation of the Code.

S.P. SAKOANE
CHAIRMAN, JUDICIAL SERVICE COMMISSION

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PREAMBLE

WHEREAS it is recognized that the Constitution has vested the Judicial Authority of Lesotho in the Judiciary and has further entrenched the universally accepted norm of Independence of the Judiciary;

AND WHEREAS it is recognized by the Basotho judiciary that a competent, independent and impartial judiciary is an indispensable and essential ingredient for good governance and the maintenance of the rule of law in any modern democratic society.

AND WHEREAS it is recognized that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a democratic society.

AND WHEREAS it is essential that judges, individually and collectively, respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in the judicial system;

AND WHEREAS it is recognized that it is primarily the responsibility of the judiciary of Lesotho to promote and maintain high standards of judicial conduct;

AND WHEREAS the Constitution provides for the impeachment of a judge, it is recognized that no formal complaints mechanism is provided to deal with complaints about judges falling short of impeachable conduct;

AND WHEREAS the judges of the Kingdom of Lesotho adopt, individually and collectively, this Code of Ethics to be the beacon of judicial conduct, now and in the future;

NOW THEREFORE IT is hereby notified that the Judicial Service Commission, acting in accordance with section 22 of the **Administration Judicial Act No 16 of 2011**, has approved the following Code of Judicial Ethics:

PART I

PRELIMINARY

Title

1. The Code may be cited as ‘The Code of Ethics for Judges’, (hereinafter referred to as “this Code”).

Interpretation

2. In this Code:

“court staff” means the Registrar and all other support staff of the Judicial Service;

“disciplinary committee” means a disciplinary committee appointed under Part III;

“family member” or “associate”, in relation to a judge, means either of both of the following, as may be appropriate to the context;

- (a) any member of the judge’s family, that is, the judge’s spouse, son, daughter, son-in-law or daughter-in-law or any other close relative;
- (b) any friend of the judge, being a person with whom the judicial officer interacts socially on a regular or frequent basis, or a person to whom the judge is emotionally close, and includes a cohabitant;

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- (c) any person the nature of whose social, business or other association with the judge may, in certain contexts, be regarded by any fair-minded person as promotive of potential conflict between the judge's private interests and judicial duties;

“immaterial grounds” in relation to equality provided for in section 9 includes but is not limited to, race, colour, gender, religion, national origin, disability, age, marital status, social and economic status, and other like causes;

“judicial officer” means any of the following, whether appointed in a substantive or acting capacity:

- (a) the Chief Justice;
- (b) the President of Court of Appeal;
- (c) the Judges of Court of Appeal
- (d) the Judges of the various divisions of the High Court;

Application

3. (1) This Code applies to every judge.

(2) For the avoidance of doubt it is declared that no minimum standard prescribed in this Code shall be taken to derogate from the highest standards of ethics and propriety expected of judges.

PART II

VALUES AND STANDARDS

Values attaching to judicial office

4. Every judge shall, individually and collectively, uphold, maintain and promote the following values attaching to judicial office, as further elaborated in this Part:

- (a) personal and institutional independence; and
- (b) integrity; and
- (c) propriety, and the appearance of propriety; and
- (d) equality, that is, equal treatment of all before the courts; and
- (e) impartiality, not only in respect of particular decisions but also in respect of the process by which any decision is made; and
- (f) competence and diligence.

SUB-PART A

INDEPENDENCE

Independence

5. (1) A judge shall uphold the independence of the judiciary and the authority of the courts and shall, in keeping with his or her judicial oath, perform all duties without fear or favour.

(2) A judge shall at all times exhibit and promote high standards of judicial conduct in order to foster public confidence, which is universally accepted as a fundamental ingredient to the maintenance of judicial independence.

(3) A judge shall be faithful to and maintain professional competence in the law, and shall not be swayed by partisan interests, public clamour or fear of criticism.

SUB-PART B

INTEGRITY

Integrity

6. (1) A judge shall ensure that his or her conduct, in and outside court, is above reproach in the view of reasonable, fair-minded and informed persons.

(2) A judge shall not allow family, social, political, religious or other like relationships to influence his or her judicial conduct or judgment.

(3) A judge shall participate in establishing, maintaining and enforcing high standards of conduct and shall personally observe those standards, so that the integrity and efficiency of the judiciary is preserved.

SUB-PART C

PROPRIETY

Propriety generally

7. (1) A judge shall avoid impropriety and the appearance of improper behaviour in all of his or her activities, in and outside court, and shall avoid any conduct that may result in bringing the judiciary into disrepute.

(2) As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen. In particular, a judge must conduct himself or herself in a way that is consistent with the dignity of the judicial office.

(3) A judge shall not use or lend the prestige of the judicial office to advance his or her private interests or those of any of his or her family members, associates or friends.

Gifts and other benefits

8. (1) No judge, nor any family member or associate of that judge shall solicit or accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance

of judicial duties.

(2) If, during the course of judicial proceedings before a judge, the judge becomes aware that any of his or her family members or associates has received or accepted any gift, bequest, loan or favour from a party to those proceedings, then, whether or not such gift, bequest, loan or favour was made in connection with those proceedings, the judge shall, at the earliest opportunity during those proceedings after he or she becomes so aware, require the party concerned to disclose that fact to the other party or parties to those proceedings.

Participation in extra-curial activities

9. (1) Without compromising the proper performance of his or her judicial duties, a judge may on invitation and permission of the Chief Justice or the President participate in such activities as:

- (a) writing, lecturing, teaching and engaging in activities concerning the law, the legal system, the administration of justice and related matters; and
- (b) appearing 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; and
- (c) serving as a member of a body referred to in paragraph (b).

(2) A judge may receive such honorarium as may be appropriate for participating in or undertaking any activity described in subsection (2), so long, however, as such honorarium cannot be reasonably perceived, by fair-minded persons, as:

- (a) intended to influence the judge in the performance of his or her judicial duties; or
- (b) otherwise giving rise to an appearance of partiality.

(3) A judge may speak publicly on non-legal matters or participate in civil, cultural, religious, educational or charitable activities, so long, however, as such activities do not detract from the dignity of the judicial office or other-

wise interfere with the performance of judicial duties.

Business and financial dealings

10. (1) A judge shall not serve as an executor, administrator, trustee, guardian or other fiduciary, save for the estate, trust or person of a member of the judge's family, so long, however, as any such service does not interfere, directly or indirectly, with the proper performance of judicial duties.

(2) A judge shall refrain from financial and business dealings that:

- (a) reflect adversely on the judge's impartiality;
- (b) interfere with the proper performance of the judge's judicial duties;
- (c) exploit, or give the appearance of exploiting, the judge's judicial position; or
- (d) involve the judge in frequent transactions or continuing business relationships with legal practitioners or other persons likely to come before the court on which the judge serves.

(3) A judge shall not, for the purpose of furthering or advancing his or her personal financial or business dealings or those of his family members or associates or for any other purpose which is unrelated to the judge's judicial duties, disclose or use confidential information acquired during the course of judicial duties.

Practising law and rendering of legal advice

11. A judge shall not practise law whilst being the holder of judicial office, but may, without compensation and without exploiting or giving the appearance of exploiting his or her judicial position, be consulted by his or her family members or associates on legal matters.

Promotion of collective interests as judge

12. A judge may form or join an association of judges or participate in other

legally recognised organisations representing the interests of judges to promote professional training and to protect judicial independence, so long, however, as any such activities undertaken in connection with such association or organisation do not interfere with the proper performance of the judge's duties.

Use of Resources

13. (1) Judges shall not be extravagant or unreasonable and not knowingly allow anyone under his influence or supervision to be extravagant or unreasonable in the use of official resources of the Judiciary.

(2) Judges should never use or allow their judicial office to be used to gain an advantage for their own personal interests, or that of their families, relatives, or that of anyone else.

Use of Social Media Platforms

14. (1) Judges shall exercise caution and restraint in expressing their views in the context of social media which may give the appearance of prejudice, bias or undue influence or may compromise the independence, impartiality, integrity, propriety, dignity, diligence or confidentiality of the Judiciary.

(2) Judges should not underestimate the extent to which print, social or new media can influence them unsuspectingly to make "popular" decisions or refrain from making decisions that may garner public disapprobation. They should, therefore, exercise caution when they encounter any form of media coverage, particularly with regard to any high profile or sensitive case over which they are presiding. This will enable them to make decisions unaffected by how their decisions will be received publicly.

Professional Development

15. Judges should pursue opportunities for professional development and participate in professional development programs in order to enhance their knowledge, skills and attitude necessary to respond to changes in society and retain enthusiasm for their work.

Welfare

16. Judges shall desist from conduct that adversely affects their health

and welfare in ways that rendered them unable to discharge their judicial functions fully and effectively.

SUB-PART D

IMPARTIALITY

Impartiality generally

17. (1) A judge shall perform his or her judicial duties without fear, favour, bias or prejudice.

(2) A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

(3) A judge shall not make any public comment that may affect or may reasonably be construed to affect the outcome of any proceedings or impair their fairness, or make any comment that might compromise a fair trial or hearing.

Recusal

18. (1) A judge shall disqualify or recuse himself or herself in any proceedings in which the judge's impartiality may reasonably be questioned, including but not limited to instances where:

- (a) the judge has personal knowledge of disputed evidentiary facts concerning the proceedings; or
- (b) subject to subsection (2), the matter in controversy:
 - (i) is one in which the judge had served as a legal practitioner; or
 - (ii) involves a legal practitioner with whom the judge had previously practised law, and such involvement began during the time when the judge and legal practitioner were practising together; or

- (c) subject to subsection (2), the judge or any of his or her family members or associates has, to his or her knowledge, a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings; or
- (d) subject to subsection (3), the judge has a personal bias or prejudice concerning a party.

(2) A judge who would otherwise be disqualified in terms of subsection (1) (b) or (c) may, instead of withdrawing from the proceedings, disclose to the parties, the grounds upon which such potential disqualification may arise. If, based on such disclosure, all the parties independently of the judge's participation agree that the judge's basis for potential disqualification is immaterial or insubstantial, the judge is no longer disqualified and may participate, or continue to participate, in the proceedings.

(3) The inability on the part of a judge to overcome any personal bias or prejudice concerning a party is inconsistent with the exercise of judicial office, and a failure to recuse on that ground is a violation of this Code, unless the circumstances giving rise to the bias or prejudice are of such a nature that any fair-minded person would not perceive that the bias or prejudice is unreasonable, in which event the judicial officer must inform his or her head of court or division of those circumstances before recusing himself or herself.

(4) The head of court or division to whom any grounds of recusal referred to in subsection (3) are disclosed may, at the request of the judge concerned and if the head of court or division so deems it fit, direct that no disclosure of such grounds of recusal shall be made to the parties in the case.

Civic and Charitable Activity

19. (1) Judges are free to participate in educational civic, charitable and religious activities and associations subject to the following considerations:

- (a) Judges shall avoid any activity or association that could reflect adversely on their impartiality or interfere with the performance of judicial duties.

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- (b) Judges should not solicit funds (except from judicial colleagues or for appropriate judicial purposes) or allow the prejudice of judicial office to be used in aid of fund raising.
 - (c) Judges should avoid involvement in causes or organizations that are likely to be engaged in litigation.
 - (d) Judges should not give legal advice.

Political engagement

20. (1) Judges shall refrain from conduct such as membership in groups or organizations or participation in public discussion which, in the mind of a reasonable, fair minded and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts.

(2) 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 activity.

- (3) Judge, shall refrain from:
 - (a) membership in political parties and political fund raising;
 - (b) attendance at political gatherings and political fund raising events;
 - (c) contributing 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.
- (4) Although members of a judge's family have every right to be po-

litically active, judges should recognize that such activities of close family members may, even if erroneously, 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 not sit.

SUB-PART E

EQUALITY

Equality

21. (1) A judge shall strive to be aware of, and to understand and be sensitive to, diversity in society and differences based on various grounds that are not (except in strict compliance with the express terms of any law) material or determinative of any issue arising in connection with his or her performance of judicial duties, including (but not limited to) differences on the grounds of race, colour, gender, religion, national origin, disability, age, marital status, social and economic status and other like grounds (hereinafter referred in this section to as "immaterial grounds").

(2) A judge should not, in the performance of judicial duties, be influenced by attitudes based on stereotype, myth or prejudice.

(3) A judge shall carry out his or her duties with due or proper consideration for all persons such as the parties, witnesses, legal practitioners, court staff and judicial colleagues, without unjust differentiation on any immaterial ground.

In this subsection "unjust differentiation" means differentiation that is irrelevant to the proper performance of the duties of a judge.

(4) A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons on any immaterial ground in any matter which is before the judge.

(5) A judge shall require legal practitioners in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on immaterial grounds:

Provided that this requirement does not preclude legitimate advocacy where any

such grounds are legally relevant to an issue in the proceedings.

(6) A judge shall accord to every person who is legally interested in the proceedings, or the legal practitioner of that person, a full right to be heard according to law, and, except as authorised by law, shall neither knowingly initiate nor knowingly consider *ex parte* or other communications concerning a pending proceeding.

SUB-PART F

COMPETENCE AND DILIGENCE

Diligence

22. (1) A judge shall perform all judicial duties efficiently, fairly and with reasonable promptness.

(2) The judicial duties of a judge take precedence over all the judicial officer's other activities.

(3) A judge shall devote his or her professional activity to judicial duties.

(4) Without derogating from the generality of subsection (3), a judicial officer's duties are not only limited to the performance of judicial functions and responsibilities in court and the rendering of decisions, but include other tasks relevant to the court's operations or to the judicial office.

Competence

23. (1) A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

(2) A judge shall keep himself or herself informed about relevant developments in international law, including relevant international conventions and other instruments establishing human rights norms.

In this subsection "relevant" means capable of application by courts within the jurisdiction of Lesotho in accordance with the Constitution.

Reserved judgments

24. (1) Where a judgment is reserved to be delivered on notice, the judge shall use his or her best efforts to ensure that such judgment is delivered within the next ninety (90) days and, except in unusual and exceptional circumstances, no judgment shall be delivered later than one hundred and eighty (180) days from the date when it is reserved.

(2) For purposes of this section, the word “judgment”, means judgments on merits, does not include rulings that have to be made during the proceeding and the reasons for the order(s) issued or judicial decision made.

(3) Where a judge reserves judgment in any case and has reason to believe he or she will not be able to render judgment within the ninety-day period referred to in subsection (1), he or she shall inform the head of court or division of that fact and reasons thereof.

(4) Upon receiving the information referred to in subsection (2) the head of court or division shall, with reasonable promptness, give such appropriate directions as will enable or assist the concerned judge to deliver judgment within ninety days from the date of reservation or no later than one hundred and eighty days thereafter.

(5) The Chief Justice and the President may, by a practice note, reduce the maximum periods within which judgments must, in terms of this section, be delivered.

(6) A day in terms of this section includes a weekend and a public holiday.

SUB-PART G**EFFICIENT AND EXPEDITIOUS CONDUCT OF
JUDICIAL BUSINESS****Conduct of judicial proceedings generally**

25. (1) A judge shall maintain order and decorum in all proceedings in which the judge is involved. He or she shall be patient, dignified and courteous in relation to litigants, assessors, witnesses, legal practitioners and others

with whom the judge deals in an official capacity. The judge shall require similar conduct of legal practitioners, court staff and others subject to the judge's influence, direction or control.

(2) A judge shall attend to matters set-down in chambers and those set-down in court, punctually and in such manner as is necessary and appropriate to ensure decisive and prompt, disposition of judicial business.

(3) Subject to formal administrative arrangements, a judge shall not assign work to himself or herself, and no litigant shall have a right to choose the judge who will preside or deal with their matter.

PART III

ENFORCEMENT PROCEDURE

Disciplinary committee

26. (1) Subject to the Constitution and any other enactment, if, in the opinion of Judicial Service Commission, a judge has conducted himself or herself in a manner that appears to violate any provision of this Code, Judicial Service Commission shall appoint a disciplinary committee, which shall investigate the acts or omissions allegedly constituting the violation and submit its findings and recommendations for the consideration of Judicial Service Commission.

(2) A disciplinary committee shall be appointed on an ad hoc basis, and shall be composed of three members who are sitting or retired judges.

Procedure of disciplinary committee

27. (1) In addition to the general principles listed herein and having regard to the principles of natural justice, a disciplinary committee appointed in terms of section 26 shall set its own rules of procedure.

(2) A disciplinary committee shall:

(a) conduct its proceedings in camera; and

(b) otherwise be transparent in its procedures so as to strengthen public confidence in the judiciary and thereby

reinforce judicial independence.

(3) By reason of the nature of judicial office, a disciplinary committee shall at all times during its proceedings take care to ensure that the judge is afforded protection from vexatious or unsubstantiated accusations.

(4) A disciplinary committee shall use its best endeavours to expeditiously conduct and finalise its investigation.

(5) A disciplinary committee shall submit its findings and recommendations to Judicial Service Commission within a period of ninety (90) days from the date when the committee is constituted, unless it communicates to Judicial Service Commission that exceptional circumstances make it impossible to meet this deadline, in which event Judicial Service Commission may, at his or her discretion, grant an extension of time not exceeding a further period of sixty (60) days within which the committee can submit its findings and recommendations.

Investigation by disciplinary committee and outcome thereof

28. (1) A judge whose conduct is the subject of an investigation by a disciplinary committee may, at the discretion of Judicial Service Commission, be requested to take leave of absence for the duration of the investigation.

(2) At the conclusion of its investigation, a disciplinary committee shall forward to Judicial Service Commission its findings and recommendations regarding the appropriate disciplinary action, if any, to be taken against a judge whose conduct was the subject of the investigation.

(3) Upon receipt of the findings and recommendations, the Judicial Service Commission may, if it deems it necessary, invite the concerned judge to submit written representations in relation to, amongst other things, the conduct of the investigation and the findings or recommendations made by a disciplinary committee.

(4) Notwithstanding the recommendations of a disciplinary committee, the final decision as to what disciplinary measure to take shall be within the exclusive discretion of Judicial Service Commission.

Disciplinary measures

29. (1) Subject to the Constitution and any other law the following disciplinary measures may be imposed on a judge whose conduct is found to be in violation of this Code, according to the gravity or frequency of the violation:

- (a) a reprimand;
- (b) a severe reprimand.

(2) All reprimands under this Code shall be recorded and placed in the personal file of the judge concerned.

(3) Nothing contained in this Code shall be construed as taking away or derogating from:

- (a) the powers of impeachment conferred on any person by section 121 (3) – (7) or Section 125 (3) – (7) of the Constitution; or
- (b) the right of the Attorney-General or the Director of Public Prosecutions or any other person to institute civil or criminal proceedings against the judge concerned, arising out of the conduct complained of.

Implementation and accountability

30. (1) In the interests of effective implementation, every judge shall use his or her best endeavours to uphold the values and standards enshrined in this Code.

(2) Subject to the Constitution, the Administration of Judiciary Act 2011, and this Code, judges shall not be accountable or answerable to any other State or non-State organ, entity or authority.

(3) All legitimate complaints against a judge shall be dealt with as follows:

- (a) complaints against the person of the Chief Justice and the President shall be directed for the attention of the

Prime Minister and shall not be subject to this Part;

- (b) complaints against the person of the Justices of the Court of Appeal, and High Court shall be directed for the attention of Judicial Service Commission:

Provided that in circumstances where the complaint lacks merit or is about decisional independence of the Judicial Service Commission may, without the need for further investigation, reject the complaint and inform the complainant and the judge concerned accordingly.

(4) Where Judicial Service Commission, as the case maybe, arrive at the opinion that the complaint appears to have merit, they shall refer the matter disciplinary committee under this Part.

PART IV

ETHICS ADVISORY COMMITTEE

Establishment of Ethics Advisory Committee

31. (1) Subject to the Constitution and any other enactment, there shall be established a Committee on standards of conduct for judges, to be known as the Ethics Advisory Committee.

(2) The Ethics Advisory Committee shall consist of not more than five and not less than three members, appointed by the Chief Justice, of whom:

- (a) two or three (as the case may be) shall be judges; and
 - (b) one or two (as the case may be) shall be legally qualified persons, appointed from a list of not less than four names submitted by the Judicial Service Commission.
- (3) Members appointed under subsection (2)(b) shall:
- (a) hold office for such period, not exceeding three years, as may be fixed by the Chief Justice on their appointment; and

- (b) be eligible for reappointment.

Functions of Ethics Advisory Committee

32. (1) The Ethics Advisory Committee shall render advisory opinions not inconsistent with this Code to inquiring judges relating to the propriety of contemplated judicial and non-judicial conduct, but all opinions shall be advisory in nature only.

(2) No judge sitting as a member of the Ethics Advisory Committee shall participate in any matter before the Committee in which he or she has a direct or indirect interest.

(3) All opinions rendered by the Ethics Advisory Committee, shall be in writing, and a copy of each opinion, together with the request therefore, shall be filed with the Chief Justice and the Judicial Service Commission.

(4) The Judicial Service Commission may, at its discretion, circulate the opinions of the Ethics Advisory Committee for the benefit of members of the Judicial Service:

Provided that all references to the name of the requesting judge shall be deleted.

Interface of Ethics Advisory Committee with disciplinary committees

33. No opinion of the Ethics Advisory Committee shall bind a disciplinary committee appointed in any proceedings properly before it, and any determination of the propriety or impropriety of particular conduct by a disciplinary committee shall supersede any conflicting opinion of the Ethics Advisory Committee, but the disciplinary committee shall give such opinion due weight when arriving at any finding or making any recommendation, in particular:

- (a) such opinion may be considered as evidence that the judge subject to the investigation endeavoured to comply with this Code in good faith;
- (b) an opinion issued to one judge shall not be authority for the conduct or evidence of good faith, of another judge unless the underlying facts are identical.

PART V**TRANSITIONAL PROVISIONS****Transitional Provisions**

34. Section 24 shall not apply to any judgment that was reserved prior to the coming into operation of this Code. However, any such judgment still outstanding on the ninetieth day from the date of promulgation of this Code shall be notified by the judge concerned to his or her head of the court or division, and upon such notification the head of court or division shall give such appropriate directions as are reasonably necessary to ensure the due and speedy delivery of the judgment.

DATED:

**SAKOANE PETER SAKOANE
CHAIRMAN, JUDICIAL SERVICE COMMISSION**