



OFFICE OF THE CHIEF EXECUTIVE OFFICER

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Via e-mail vramaano@parliament.gov.za

Mr V Ramaano
Committee Secretary
Portfolio Committee: Justice and Constitutional Development
Cape Town

Dear Sir

CODE OF JUDICIAL CONDUCT AND REGULATIONS OF JUDGES

The Law Society of South Africa (LSSA) welcomes the opportunity to provide comments on the proposed Code of Judicial Conduct and Regulations of Judges, but wishes to express concern at the short time that has been provided to consider the Code and Regulations, draft appropriate comments and mandate these comments as required.

The following comments are therefore made subject to concerns about the lack of time for proper consultation on the Code and Regulations.

1. The LSSA welcomes the move to create a code of conduct for judges.
2. By and large, most of our judges conduct themselves in exemplary fashion, but unfortunately there are some, few as they may be, who do not and, as there is no proper mechanism in place to deal with them, a code of conduct has become necessary. Recent history has reflected the consequences of not having a code.
3. Aspirant judges particularly should be aware of such a code and it should form part of their judicial training.
4. Most professions (and being a judge is also a profession) have codes of conduct in place, including rules and provision for sanction.
5. It is right that such a code be evolved and put in place.

The Law Society of South Africa brings together the Black Lawyers Association, the Cape Law Society, the KwaZulu-Natal Law Society, the Law Society of the Free State, the Law Society of the Northern Provinces and the National Association of Democratic Lawyers in representing the attorneys' profession in South Africa.

6. When judges do overstep the mark, the media will invariably raise the matter and the public perception of justice is tarnished.
7. A code of conduct will advance the ethos behind our Constitutional Democracy and Bill of Rights: judges must not be seen to be beyond the law and must be accountable for their actions like any other citizen. They are very much in the public eye and their conduct should be exemplary and serve as an example to others - they are in a special and powerful position and should exercise their authority in an open and fair manner.
8. All judges should support such a code.
9. The technical aspects of the Code and the drafting may need some touching up, but at the end of the day, the Code will promote respect for and uphold the dignity of our Judiciary. Nonetheless, it is the judges themselves who hold the key to dignity and ethical conduct and they should strive to ensure this at all times.
10. Amongst the matters which the Code needs to deal with are:
 - 10.1 The delays in delivering reserved judgements are a serious matter and litigants are seriously prejudiced by such delays. Where a judgment is reserved, it should be delivered promptly and in any event within a reasonable time, unless for good reason it is not possible to do so.
 - 10.2 A judge should be patient, dignified and courteous to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity, and should not permit lawyers, court officials and others who are subject to the judge's direction and control to display impatience or discourtesy or to detract from the dignity of the court. Their conduct in open court to all who are there should be exemplary - witnesses, attorneys, counsel are there for a purpose and the judge is there to facilitate the process.
 - 10.3 A judicial officer should not, without authority of the law or the consent of the parties, carry out investigation of the facts of a case before him or her in the absence of any of the parties, nor communicate with any party to such a case in the absence of the other party.
 - 10.4 A judicial officer shall at all times and in every respect be of an upright character and ensure that his or her conduct is above reproach in the view of a reasonable fair minded and informed person.
 - 10.5 Financial and other interests in outside entities.
 - 10.6 Using their best endeavours to ensure that matters proceed and are not postponed on frivolous technical grounds.
 - 10.7 A judicial officer shall be practical in presiding over matters and, where reasonably possible, condone minor errors, so that matters can proceed and be finalised. A judicial officer should promptly dispose of the business of the court, but in so doing, must ensure that justice prevails. The unnecessary protraction of

a matter must be avoided. Dilatory conduct of the litigants must be checked and appropriate directives must be given.

- 10.8 A judge must ensure that a lay unrepresented litigant is assisted within the parameters of the system and shown the same courtesy as is shown to other litigants and lawyers.
- 10.9 To ensure independence, judges should, after their appointment, sever all ties with voluntary legal organizations.
- 10.10 There is uncertainty surrounding disciplinary jurisdiction over acting judges. It appears that the Judicial Service Commission (JSC) is of the view that it has no jurisdiction and that same lies with the respective provincial law societies / bar councils, as the case may be. This uncertainty needs to be addressed and removed.
- 10.11 While perhaps not directly relevant, the appointment of acting judges needs to be reconsidered. The appointment of permanent judges has a set procedure where e.g. provincial law societies and others are entitled to make submissions for consideration by the JSC. There is no provision for input from anyone with regard to the appointment of acting judges. Law societies and through them their circle representatives can make a useful input to such appointments - they are after all at the coal fence. At present, there seems to be no proper process in place.

We trust that the above is in some measure helpful and we would welcome an opportunity to make *viva voce* representatives.

Yours sincerely



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