

## Code of Judicial Conduct for Niue

### What is this code for?

This code is issued for guidance of judges and to inform the people of Niue as to the role of the judges. These are guidelines only, not rules. It is for each judge to decide what the principles require in any given situation and different judges may properly interpret the requirements of the code differently.

The judge's primary duty is to administer justice by applying the law. This is reflected in the oath in which the judge swears to serve "*in accordance with the constitution and law.*"

This means that in deciding any case the judges must identify the applicable law and base their decision on a consideration of only those matters and facts which the law says are relevant; the judges must not take anything else into consideration.

### Why is there a code?

Upon appointment to the High Court of Niue Commissioners and Justices of the Peace swear the following:

"I swear by Almighty God that I will well and truly serve Her Majesty as the Head of State of Niue, Her heirs and successors, in accordance with the Constitution and the law, in the office of (Commissioner or Justice of the Peace); and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God."

In performing their judicial role judges make decisions which affect peoples' lives, it is important that the people affected by judicial decisions and those who may one day come before the court, have confidence that every case will be heard and decided fairly in accordance with the law.

If the respect and confidence of the public in the justice system is to be upheld Commissioners and Justices of the Peace must respect and comply with the law in their public and private lives, conducting themselves in a manner which will not bring themselves or their office into disrepute.

The following six principles or values are recognised in almost every judicial code of conduct.

However the principles are not to be neatly confined, they overlap and blend one into another.

Each principle is stated below and followed by guidelines as to its scope and application.

## Definitions

“**Judge**” is used in its widest sense to include any Judge, Commissioner or Justice of the Peace.

“**Appearance**” is to be judged from the view point of a reasonable member of the community.

In determining what a reasonable, fair minded and informed member of the community might think a judge may take account of his or her knowledge of the community’s values and customs.

## **1. Independence**

*Judicial independence is essential to the rule of law and the fair conduct of trials. It is for the judges alone to interpret and apply the law and in doing so they should be seen to be free from any external influence. A judge should do nothing in public or private that might undermine his or her individual independence, the institutional independence of the judiciary, or the appearance of independence.*

### **Scope and application**

1.1 Good governance requires that the judiciary must operate independently and free from influence by the Cabinet and public servants (the executive) or the Assembly (the legislature). This independence is fundamental to democracy and protected by the constitution.

1.2 A judge must however be independent and free from any and all influence other than those considerations required by the law, and to that end should:

- a. firmly reject any attempt to influence his or her decisions in any matter before the Court outside the proper process of the Court;
- b. not allow public opinion or fear of public disapproval to affect the decision making process
- c. encourage and uphold arrangements and safeguards to maintain and enhance the independence of the Judiciary;

## **2. Impartiality**

*Judges must be impartial, and appear to be impartial in both the decision and the decision making process.*

*Judges should make sure that their conduct, both in and out of Court, maintains and enhances confidence in their impartiality and that of the Judiciary.*

*If, in any particular case, a judge recognises that his or her impartiality is compromised he or she must not sit. The proper cause of action is for the judge to disqualify (recuse) him or her self.*

### **Scope and application**

2.1 Particular aspects of conduct relating to impartiality are discussed below. In considering these it should be born in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community both are important aspects of the judicial role. In deciding cases the law requires judges to evaluate the credibility of evidence, and in some cases to decide what is reasonable, such decisions require knowledge of local mannerisms and customs. Nevertheless, as much as is reasonably possible a judge should conduct his or her personal and business affairs so as to minimise the occasions on which it will be necessary to be disqualified from hearing cases.

2.2 The duty to be impartial touches on several areas of judicial conduct and overlaps to a considerable extent with the principles of independence, integrity, propriety and equality.

2.3 A judge's conduct in and out of court should maintain and enhance confidence in his or her impartiality.

2.4 A judge must not allow his or her decisions to be affected by, or appear to be affected by bias or prejudice.

- a. Conflicts of interest or bias may arise both from personal interests and relationships and from financial interests and relationships.
- b. Prejudice may be against a group or section of the population but may also occur at personal level against individuals based on their personal characteristics or prior contact. Judges must be alert to guard against prejudice where ever it may arise whether in themselves or in others.

2.5 Upon appointment a judge should review his or her membership of any commercial, social and political groups and withdraw from any involvement that could compromise his or her judicial position.

Judicial demeanour should demonstrate impartiality.

2.6 Whilst acting decisively, maintaining firm control of the process and ensuring cases are dealt with quickly, a judge should treat everyone before the Court with equal respect and courtesy.

Civic and charitable activity

2.7 Judges are free to participate in civic, charitable and religious activities, subject to the following considerations:

- a. A judge should avoid any activity or association that could reflect adversely on his or her impartiality or interfere with the performance of judicial duties.
- b. A judge should not solicit funds (except from judicial colleagues or for appropriate purposes) or lend the prestige of the judicial office to such solicitations.
- c. A judge should avoid involvement in causes and organisations that are likely to be engaged in litigation.
- d. A judge should not give legal or investment advice.

Political activity

2.8 All political activity must cease upon appointment. Judges should refrain from conduct that could give rise to the appearance that they are engaged in political activity. Judges should refrain from:

- a. membership in political parties and political fundraising;
- b. attendance at political fundraising 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.

2.9 Members of a judge's family have every right to be politically active. Sometimes this may adversely affect the public perception of the judge's impartiality. In any case before the Court where there could reasonably be such a perception, a judge should not sit.

Conflict of interest

2.10 A judge must disqualify him or her self in any case in which he or she will not be able to judge impartially, or where that appears to be the case. Generally a judge should not preside over a case where the accused or witness is a

- a. is a near relative; (ie. A member of your immediate family: parent, spouse, sibling, child including adopted or step child, Grandparents.)
- b. is a close friend;
- c. is an employer or employee; or
- d. has a close business relationship with the judge.

2.11 A judge should not preside over a case where he or she has or may appear to have preconceived or pronounced views relating to:

- a. issues;
- b. witnesses; or
- c. parties.
- d. A judge should strive to avoid making any assumptions in relation to the foregoing and should make a decision based only on the evidence.

2.12 It is **not** appropriate for a judge to disqualify him or herself if:

- a. the matter giving rise to a possibility of conflict is insignificant or a reasonable and fair-minded person would not be able to make an argument in favour of disqualification;
- b. no other Commissioners or Justices of the Peace are available to deal with the case and then only if, because of urgent circumstances, failure to act could lead to a miscarriage of justice.

*NOTE: Niue is a very small country and if judges were to disqualify themselves in every case where they know of one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that judges are careful not to disqualify themselves too readily. Inevitably judges will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and the judges should explain their decision clearly. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.*

*The Niuean people are used to the idea that individuals may “wear a number of different hats” and the judges must make it clear from the way they conduct themselves, that with the judicial hat comes impartiality.*

2.13 Where the circumstances are evenly balanced the consent of the party or parties after full disclosure in open court may be relevant, however care should be taken to identify any possibility that consent is not freely given. For instance a party may feel that he or she cannot bear the delay of waiting for a trial with a differently constituted bench.

### **3. Integrity**

*Through all his or her public and private life a judge should demonstrate soundness of moral character through consistency of action, values, honesty and truthfulness. By conducting themselves with integrity judges will sustain and enhance public confidence in the Judiciary.*

#### **Scope and Application**

3.1 By exhibiting and promoting respect for the law and high standards of conduct in his or her professional and private life a judge will reinforce public confidence in the judiciary.

3.2 This means judges should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed members of the community. Judges should encourage and support their judicial colleagues to observe these high standards.

### **4. Propriety**

*A judge must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.*

#### **Scope and Application**

4.1 A judge must act with propriety in order to uphold the dignity and authority of the judicial office. A judge's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works.

4.2 A judge should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Judges should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

4.3 It is improper for judges to use their judicial office to obtain any favour or advancement and judges must avoid any conduct which might give the appearance of so doing.

#### **Gifts**

4.4 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to curry favour a Judge must not accept.

Confidential Information

4.5 A judge should not discuss or disclose any confidential matters learnt of by reason of his or her office which includes the deliberations of judges in reaching their decisions. It is however proper for judges to discuss with other judges issues arising during the conduct of cases in the interest of developing good practice.

## **5. Equality**

*A judge should ensure that every one is treated with respect and courtesy and with equality according to the law.*

**Scope and Application**

5.1 It is the duty of the judges to ensure that people attending court proceedings, in whatever capacity, are treated as equal before the law.

5.2 Judges should:

- a. ensure that the trial process is fair and that all parties are given an equal opportunity to put their case and to answer any evidence put against them;
- b. carry out their duties with appropriate consideration for all persons be they parties, witnesses, court personnel, observers or judicial colleagues, and without discrimination;
- c. strive to be aware of and understand and accommodate differences arising from, for example, gender, race, religious conviction, culture, ethnic background or disability;
- d. avoid membership in any organisation that you know currently practices any form of discrimination that contravenes the law;

5.3 A judge should disassociate him or herself from, and make clear his or her disapproval of clearly irrelevant comments or improper conduct by court staff, counsel, or any other person in court. Improper conduct can include sexist, racist, or discriminatory language or actions which are prohibited by law.

## **6. Competence and Diligence**

*A judge must be prepared to engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.*

**Scope and Application**

6.1 This means judges should:

- a. be conscientious in fulfilling their judicial duties, which include not only the conduct of cases in court, but other judicial tasks essential to the Court's operation;

- b. bring to each case a high level of competence and ensure that they are sufficiently informed to provide adequate reasons for each decision;
- c. take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for their role;
- d. not engage in conduct incompatible with the diligent discharge of judicial duties or condone such conduct in colleagues.

6.2 Decisions should be delivered as quickly as circumstances permit; usually this will be immediately. This means judges must be familiar with common offences, jurisdiction and procedure; and prepare before sitting in Court.

### **Cases of doubt**

In any case where a judge is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the head of the judiciary. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.