

JUDICIAL LEADERSHIP WORKSHOP

RESOURCE GUIDE

2008

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JUDGES OATH IN TERMS OF SECTION 6(1) OF THE CONSTITUTION:

I, ... swear/solemnly affirm that, as a Judge of the Constitutional Court/Supreme Court of Appeal/High Court, I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law.

■ JUDICIAL OATH: S 9(2)(A) MAGISTRATES' COURT ACT 32 OF 1944:

"I, ... do hereby swear/solemnly affirm that in my capacity as a judicial officer I will be faithful to the Republic of South Africa, will uphold and protect the Constitution and the human rights entrenched in it, and will administer justice to all persons alike without fear, favour or prejudice, in accordance with the Constitution and the law."

JUDICIAL LEADERSHIP WORKSHOP

THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002



THE BANGALORE PRINCIPLES OF JUDICIAL CONDUCT 2002

(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002) E/CN.4/2003/65

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law.

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

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

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* is designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to

afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary.

These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

- 1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.
- 1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.
- 1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free there from.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

**Value 2:
IMPARTIALITY**

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.

Application:

- 2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.
- 2.3 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.
- 2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, 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 the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where
 - 2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
 - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or
 - 2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

**Value 3:
INTEGRITY**

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

- 3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.
- 3.2 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 seen to be done.

Value 4:
PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.
- 4.3 A judge shall, in his or her personal relations with individual members of the legal profession who practice regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.
- 4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.
- 4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.
- 4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

- 4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.
- 4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.
- 4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.
- 4.11 Subject to the proper performance of judicial duties, a judge may:
- 4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
 - 4.11.2 appear 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;
 - 4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or
 - 4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.12 A judge shall not practise law whilst the holder of judicial office.
- 4.13 A judge may form or join associations of judges or participate in other organizations representing the interests of judges.
- 4.14 A judge and members of the judge's family, shall neither ask for, nor 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.
- 4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

- 4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:
EQUALITY

Principle:

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

Application:

- 5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes (“irrelevant grounds”).
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.
- 5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.
- 5.4 A judge shall not knowingly permit court staff or others subject to the judge’s influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.
- 5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:
COMPETENCE AND DILIGENCE

Principle:

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

Application:

- 6.1 The judicial duties of a judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.
- 6.3 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, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.
- 6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.
- 6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"***Court staff***" includes the personal staff of the judge including law clerks.

"***Judge***" means any person exercising judicial power, however designated.

"***Judge's family***" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"Judge's spouse" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analysed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning:
 - (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.
2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:
 - (a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
 - (b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
 - (c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96 (4) (a) of the Constitution of the People's Republic of Bangladesh, May 2000.
 - (d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.

- (e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- (f) The Idaho Code of Judicial Conduct 1976.
- (g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- (h) The Iowa Code of Judicial Conduct.
- (i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- (j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125 (3A) of the Federal Constitution of Malaysia, 1994.
- (k) The Code of Conduct for Magistrates in Namibia.
- (l) Rules Governing Judicial Conduct, New York State, USA.
- (m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- (n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- (o) The Code of Judicial Conduct of the Philippines, September 1989.
- (p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- (q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- (r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- (s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- (t) The Texas Code of Judicial Conduct
- (u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.

- (v) The Code of Conduct of the Judicial Conference of the United States.
- (w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- (x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- (y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- (z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- (aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- (bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- (cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- (dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- (ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- (ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000. At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka, Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the

UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinius of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia. The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session

were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.



Basic Principles on the Independence of the Judiciary

Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained to achieve international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without any discrimination,

Whereas the Universal Declaration of Human Rights enshrines in particular the principles of equality before the law, of the presumption of innocence and of the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

Whereas the International Covenants on Economic, Social and Cultural Rights and on Civil and Political Rights both guarantee the exercise of those rights, and in addition, the Covenant on Civil and Political Rights further guarantees the right to be tried without undue delay,

Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation,

Whereas the organization and administration of justice in every country should be inspired by those principles, and efforts should be undertaken to translate them fully into reality,

Whereas rules concerning the exercise of judicial office should aim at enabling judges to act in accordance with those principles,

Whereas judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens,

Whereas the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by its resolution 16, called upon the Committee on Crime Prevention and Control to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors,

Whereas it is, therefore, appropriate that consideration be first given to the role of judges in relation to the system of justice and to the importance of their selection, training and conduct,

The following basic principles, formulated to assist Member States in their task of securing and promoting the independence of the judiciary should be taken into account and respected by Governments within the framework of their national legislation and practice and be brought to the attention of judges, lawyers, members of the executive and the legislature and

the public in general. The principles have been formulated principally with professional judges in mind, but they apply equally, as appropriate, to lay judges, where they exist.

Independence of the judiciary

1. The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.

2. The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.

3. The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

4. There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.

5. Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.

6. The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.

7. It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.

Freedom of expression and association

8. In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary.

9. Judges shall be free to form and join associations of judges or other organizations to represent their interests, to promote their professional training and to protect their judicial independence.

Qualifications, selection and training

10. Persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory.

Conditions of service and tenure

11. The term of office of judges, their independence, security, adequate remuneration, conditions of service, pensions and the age of retirement shall be adequately secured by law.

12. Judges, whether appointed or elected, shall have guaranteed tenure until a mandatory retirement age or the expiry of their term of office, where such exists.

13. Promotion of judges, wherever such a system exists, should be based on objective factors, in particular ability, integrity and experience.

14. The assignment of cases to judges within the court to which they belong is an internal matter of judicial administration. Professional secrecy and immunity

15. The judiciary shall be bound by professional secrecy with regard to their deliberations and to confidential information acquired in the course of their duties other than in public proceedings, and shall not be compelled to testify on such matters.

16. Without prejudice to any disciplinary procedure or to any right of appeal or to compensation from the State, in accordance with national law, judges should enjoy personal immunity from civil suits for monetary damages for improper acts or omissions in the exercise of their judicial functions.

Discipline, suspension and removal

17. A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. The examination of the matter at its initial stage shall be kept confidential, unless otherwise requested by the judge.

18. Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.

19. All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct.

20. Decisions in disciplinary, suspension or removal proceedings should be subject to an independent review. This principle may not apply to the decisions of the highest court and those of the legislature in impeachment or similar proceedings.

African (BANJUL) Charter on Human and Peoples' Rights

(Excerpts)

(Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986)

Preamble

The African States members of the Organization of African Unity, parties to the present convention entitled "African Charter on Human and Peoples' Rights",

Recalling Decision 115 (XVI) of the Assembly of Heads of State and Government at its Sixteenth Ordinary Session held in Monrovia, Liberia, from 17 to 20 July 1979 on the preparation of a "preliminary draft on an African Charter on Human and Peoples' Rights providing inter alia for the establishment of bodies to promote and protect human and peoples' rights";

Considering the Charter of the Organization of African Unity, which stipulates that "freedom, equality, justice and dignity are essential objectives for the achievement of the legitimate aspirations of the African peoples";

Reaffirming the pledge they solemnly made in Article 2 of the said Charter to eradicate all forms of colonialism from Africa, to coordinate and intensify their cooperation and efforts to achieve a better life for the peoples of Africa and to promote international cooperation having due regard to the Charter of the United Nations. and the Universal Declaration of Human Rights;

Taking into consideration the virtues of their historical tradition and the values of African civilization which should inspire and characterize their reflection on the concept of human and peoples' rights;

Recognizing on the one hand, that fundamental human rights stem from the attributes of human beings which justifies their national and international protection and on the other hand that the reality and respect of peoples rights should necessarily guarantee human rights;

Considering that the enjoyment of rights and freedoms also implies the performance of duties on the part of everyone; Convinced that it is henceforth essential to pay a particular attention to the right to development and that civil and political rights cannot be dissociated from economic, social and cultural rights in their conception as well as universality and that the satisfaction of economic, social and cultural rights is a guarantee for the enjoyment of civil and political rights;

Conscious of their duty to achieve the total liberation of Africa, the peoples of which are still struggling for their dignity and genuine independence, and undertaking to eliminate colonialism, neo-colonialism, apartheid, zionism and to dismantle aggressive foreign military bases and all forms of discrimination, particularly those based on race, ethnic group, color, sex, language, religion or political opinions;

Reaffirming their adherence to the principles of human and peoples' rights and freedoms contained in the declarations, conventions and other instrument adopted by the Organization of African Unity, the Movement of Non-Aligned Countries and the United Nations;

Firmly convinced of their duty to promote and protect human and people' rights and freedoms taking into account the importance traditionally attached to these rights and freedoms in Africa;

Have agreed as follows:

Part I: Rights and Duties

Chapter I: Human and Peoples' Rights

Article 1

The Member States of the Organization of African Unity parties to the present Charter shall recognize the rights, duties and freedoms enshrined in this Chapter and shall undertake to adopt legislative or other measures to give effect to them.

Article 2

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized and guaranteed in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

Article 3

Every individual shall be equal before the law. Every individual shall be entitled to equal protection of the law.

Article 4

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

Article 5

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

Article 6

Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.

Article 7

Every individual shall have the right to have his cause heard. This comprises: (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force; (b) the right to be presumed innocent until proved guilty by a competent court or tribunal; (c) the right to defense, including the right to be defended by counsel of his choice; (d) the right to be tried within a reasonable time by an impartial court or tribunal.

No one may be condemned for an act or omission which did not constitute a legally punishable offence at the time it was committed. No penalty may be inflicted for an offence for which no provision was made at the time it was committed. Punishment is personal and can be imposed only on the offender.

Article 8

Freedom of conscience, the profession and free practice of religion shall be guaranteed. No one may, subject to law and order, be submitted to measures restricting the exercise of these freedoms.

Article 9

Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10

Every individual shall have the right to free association provided that he abides by the law. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

Article 11

Every individual shall have the right to assemble freely with others. The exercise of this right shall be subject only to necessary restrictions provided for by law in particular those enacted in the interest of national security, the safety, health, ethics and rights and freedoms of others.

Article 12

Every individual shall have the right to freedom of movement and residence within the borders of a State provided he abides by the law. Every individual shall have the right to leave any country including his own, and to return to his country. This right may only be subject to restrictions, provided for by law for the protection of national security, law and order, public health or morality. Every individual shall have the right, when persecuted, to seek and obtain asylum in other countries in accordance with laws of those countries and international conventions. A non-national legally admitted in a territory of a State Party to the present Charter, may only be expelled from it by virtue of a decision taken in accordance with the law. The mass expulsion of non-nationals shall be prohibited. Mass expulsion shall be that which is aimed at national, racial, ethnic or religious groups.

Article 13

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law. Every citizen shall have the right of equal access to the public service of his country. Every individual shall have the right of access to public property and services in strict equality of all persons before the law.

Article 14

The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.

Article 15

Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work.

Article 16

Every individual shall have the right to enjoy the best attainable state of physical and mental health.

States parties to the present Charter shall take the necessary measures to protect the health of their people and to ensure that they receive medical attention when they are sick.

Article 17

Every individual shall have the right to education. Every individual may freely, take part in the cultural life of his community. The promotion and protection of morals and traditional values recognized by the community shall be the duty of the State.

Article 18

The family shall be the natural unit and basis of society. It shall be protected by the State which shall take care of its physical health and moral. The State shall have the duty to assist the family which is the custodian of morals and traditional values recognized by the community. The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions. The aged and the disabled shall also have the right to special measures of protection in keeping with their physical or moral needs.

Article 19

All peoples shall be equal; they shall enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another.

Article 20

All peoples shall have the right to existence. They shall have the unquestionable and inalienable right to self-determination. They shall freely determine their political status and shall pursue their economic and social development according to the policy they have freely chosen. Colonized or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognized by the international community. All peoples shall have the right to the assistance of the States parties to the present Charter in their liberation struggle against foreign domination, be it political, economic or cultural.

Article 21

All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it. In case of spoliation the dispossessed people shall have the right to the lawful recovery of its

property as well as to an adequate compensation. The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international law. States parties to the present Charter shall individually and collectively exercise the right to free disposal of their wealth and natural resources with a view to strengthening African unity and solidarity. States parties to the present Charter shall undertake to eliminate all forms of foreign economic exploitation particularly that practiced by international monopolies so as to enable their peoples to fully benefit from the advantages derived from their national resources.

Article 22

All peoples shall have the right to their economic, social and cultural development with due regard to their freedom and identity and in the equal enjoyment of the common heritage of mankind. States shall have the duty, individually or collectively, to ensure the exercise of the right to development.

Article 23

All peoples shall have the right to national and international peace and security. The principles of solidarity and friendly relations implicitly affirmed by the Charter of the United Nations and reaffirmed by that of the Organization of African Unity shall govern relations between States. For the purpose of strengthening peace, solidarity and friendly relations, States parties to the present Charter shall ensure that: (a) any individual enjoying the right of asylum under 12 of the present Charter shall not engage in subversive activities against his country of origin or any other State party to the present Charter; (b) their territories shall not be used as bases for subversive or terrorist activities against the people of any other State party to the present Charter.

Article 24

All peoples shall have the right to a general satisfactory environment favorable to their development.

Article 25

States parties to the present Charter shall have the duty to promote and ensure through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.

Article 26

States parties to the present Charter shall have the duty to guarantee the independence of the Courts and shall allow the establishment and improvement of appropriate national institutions entrusted with the promotion and protection of the rights and freedoms guaranteed by the present Charter.

Chapter II: Duties

Article 27

Every individual shall have duties towards his family and society, the State and other legally recognized communities and the international community. The rights and freedoms of each

individual shall be exercised with due regard to the rights of others, collective security, morality and common interest.

Article 28

Every individual shall have the duty to respect and consider his fellow beings without discrimination, and to maintain relations aimed at promoting, safeguarding and reinforcing mutual respect and tolerance.

Article 29

The individual shall also have the duty:

To preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need; To serve his national community by placing his physical and intellectual abilities at its service; Not to compromise the security of the State whose national or resident he is; To preserve and strengthen social and national solidarity, particularly when the latter is threatened;

To preserve and strengthen the national independence and the territorial integrity of his country and to contribute to its defense in accordance with the law; To work to the best of his abilities and competence, and to pay taxes imposed by law in the interest of the society; To preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral well being of society; To contribute to the best of his abilities, at all times and at all levels, to the promotion and achievement of African unity.

Part II: Measures of Safeguard

Chapter I: Establishment and Organization of the African Commission on Human and Peoples' Rights

Article 30

An African Commission on Human and Peoples' Rights, hereinafter called "the Commission", shall be established within the Organization of African Unity to promote human and peoples' rights and ensure their protection in Africa.

Article 31

The Commission shall consist of eleven members chosen from amongst African personalities of the highest reputation, known for their high morality, integrity, impartiality and competence in matters of human and peoples' rights; particular consideration being given to persons having legal experience. The members of the Commission shall serve in their personal capacity ...

Article 41

The Secretary General of the Organization of African Unity shall appoint the Secretary of the Commission. He shall also provide the staff and services necessary for the effective discharge of the duties of the Commission. The Organization of African Unity shall bear the costs of the staff and services ...

Chapter II -- Mandate of the Commission

Article 45

The functions of the Commission shall be:

To promote Human and Peoples' Rights and in particular:

- To collect documents, undertake studies and researches on African problems in the field of human and peoples' rights, organize seminars, symposia and conferences, disseminate information, encourage national and local institutions concerned with human and peoples' rights, and should the case arise, give its views or make recommendations to Governments.
- To formulate and lay down, principles and rules aimed at solving legal problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislations.
- Co-operate with other African and international institutions concerned with the promotion and protection of human and peoples' rights. Ensure the protection of human and peoples' rights under conditions laid down by the present Charter. Interpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organization recognized by the OAU. Perform any other tasks which may be entrusted to it by the Assembly of Heads of State and Government.

Chapter III -- Procedure of the Commission

Article 46

The Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organization of African Unity or any other person capable of enlightening it.

Communication from States

Article 47

If a State party to the present Charter has good reasons to believe that another State party to this Charter has violated the provisions of the Charter, it may draw, by written communication, the attention of that State to the matter. This communication shall also be addressed to the Secretary General of the OAU and to the Chairman of the Commission. Within three months of the receipt of the communication, the State to which the communication is addressed shall give the enquiring State, written explanation or statement elucidating the matter. This should include as much as possible relevant information relating to the laws and rules of procedure applied and applicable, and the redress already given or course of action available.

Article 48

If within three months from the date on which the original communication is received by the State to which it is addressed, the issue is not settled to the satisfaction of the two States involved through bilateral negotiation or by any other peaceful procedure, either State shall have the right to submit the matter to the Commission through the Chairman and shall notify the other States involved.

Article 49

Notwithstanding the provisions of 47, if a State party to the present Charter considers that another State party has violated the provisions of the Charter, it may refer the matter directly to the Commission by addressing a communication to the Chairman, to the Secretary General of the Organization of African Unity and the State concerned.

Article 50

The Commission can only deal with a matter submitted to it after making sure that all local remedies, if they exist, have been exhausted, unless it is obvious to the Commission that the procedure of achieving these remedies would be unduly prolonged.

Article 51

The Commission may ask the States concerned to provide it with all relevant information. When the Commission is considering the matter, States concerned may be represented before it and submit written or oral representation.

Article 52

After having obtained from the States concerned and from other sources all the information it deems necessary and after having tried all appropriate means to reach an amicable solution based on the respect of Human and Peoples' Rights, the Commission shall prepare, within a reasonable period of time from the notification referred to in 48, a report stating the facts and its findings. This report shall be sent to the States concerned and communicated to the Assembly of Heads of State and Government.

Article 53

While transmitting its report, the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful.

Article 54

The Commission shall submit to each ordinary Session of the Assembly of Heads of State and Government a report on its activities.

Other Communications

Article 55

Before each Session, the Secretary of the Commission shall make a list of the communications other than those of States parties to the present Charter and transmit them to the members of the Commission, who shall indicate which communications should be considered by the Commission. A communication shall be considered by the Commission if a simple majority of its members so decide.

Article 56

Communications relating to human and peoples' rights referred to in 55 received by the Commission, shall be considered if they:

Indicate their authors even if the latter request anonymity, Are compatible with the Charter of the Organization of African Unity or with the present Charter, Are not written in disparaging

or insulting language directed against the State concerned and its institutions or to the Organization of African Unity, Are not based exclusively on news discriminated through the mass media, Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged, Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter, and Do not deal with cases which have been settled by these States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organization of African Unity or the provisions of the present Charter.

Article 57

Prior to any substantive consideration, all communications shall be brought to the knowledge of the State concerned by the Chairman of the Commission.

Article 58

When it appears after deliberations of the Commission that one or more communications apparently relate to special cases which reveal the existence of a series of serious or massive violations of human and peoples' rights, the Commission shall draw the attention of the Assembly of Heads of State and Government to these special cases. The Assembly of Heads of State and Government may then request the Commission to undertake an in-depth study of these cases and make a factual report, accompanied by its findings and recommendations. A case of emergency duly noticed by the Commission shall be submitted by the latter to the Chairman of the Assembly of Heads of State and Government who may request an in-depth study.

Article 59

All measures taken within the provisions of the present Chapter shall remain confidential until such a time as the Assembly of Heads of State and Government shall otherwise decide. . . .

The report on the activities of the Commission shall be published by its Chairman after it has been considered by the Assembly of Heads of State and Government.

Chapter IV -- Applicable Principles

Article 60

The Commission shall draw inspiration from international law on human and peoples' rights, particularly from the provisions of various African instruments on human and peoples' rights, the Charter of the United Nations, the Charter of the Organization of African Unity, the Universal Declaration of Human Rights, other instruments adopted by the United Nations and by African countries in the field of human and peoples' rights as well as from the provisions of various instruments adopted within the Specialized Agencies of the United Nations of which the parties to the present Charter are members.

Article 61

The Commission shall also take into consideration, as subsidiary measures to determine the principles of law, other general or special international conventions, laying down rules expressly recognized by member states of the Organization of African Unity, African practices consistent with international norms on human and people's rights, customs generally accepted as law, general principles of law recognized by African states as well as legal precedents and doctrine.

Article 62

Each state party shall undertake to submit every two years, from the date the present Charter comes into force, a report on the legislative or other measures taken with a view to giving effect to the rights and freedoms recognized and guaranteed by the present Charter..

GOVERNMENT NOTICE
DEPARTMENT OF JUSTICE

No. R. 361

11 March 1994

MAGISTRATES ACT, 1993
(ACT No. 90 OF 1993)
REGULATIONS

The Minister of Justice has, under section 16 of the Magistrates Act, 1993 (Act No. 90 of 1993), made the regulations in the Schedule.

SCHEDULE

REGULATIONS FOR JUDICIAL OFFICERS IN THE LOWER COURTS, 1993
Classification of Regulations

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- 30. Procedure for vacation of office

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1. Application for appointment as magistrate
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1. Evaluation questionnaire: Magistrates other than Senior Magistrates [Deleted by R.1339 of 26/9/03]
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SCHEDULE C

Application to use existing transport/transport arrangement provided by the employer for transport between residence and place of duty

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Rates for overtime remuneration
[Inserted by R.1407 of 11/8/94]

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Code of conduct for Magistrates
[Inserted by R.1707 of 27/10/94]

SCHEDULE F

[Schedule F inserted by R.1593 of 31.10.03]

Form No.

1. Registration of Partner
2. Deregistration of Partner

**CHAPTER I
GENERAL PROVISIONS**

Definitions

1. In these regulations unless the context otherwise indicates -

“abroad” means a country outside the borders of the Republic;
[Amended by R.1339 of 26/9/03]

“accommodation expenditure” means the expenditure in respect of lodging, meals (including non-alcoholic beverages with meals) and laundry;

“appropriate experience” means experience gained after obtaining the legal qualifications referred to in regulation 3(1)(e), and regarded by the Commission as appropriate;
[Amended by R.997 of 7/8/98]

“candidate” means a person who applies for appointment as a magistrate;

“court manager” the court manager at the court where a magistrate is performing his or her duties;

[Inserted by R.1593 of 31.10.03]

“Department” means the Department of Justice and Constitutional Development;

[Amended by R.1339 of 26/9/03]

“dependants” means the members of a magistrate’s household, excluding domestic workers;

“Director-General” means the Director-General: Justice and Constitutional Development or a person delegated by him;

[Amended by R.1339 of 26/9/03]

“furnished housing” means a hotel room or a rented room, a caravan, a hired furnished private house or official quarters which are provided, except by the magistrate, with the basic and essential furnishings;

“head of office” means, in the case of a district magistrate, the head of the relevant magistrate’s office, in the case of a regional magistrate, the regional court president of that region and, in the case of a family magistrate and a senior civil magistrate, the chief magistrate under whom he falls;

“headquarters” means the city, town or place which has been designated by the Commission or a person designated by the Commission;

[Amended by R.1339 of 26/9/03]

“household” means -

- (a) the spouse or partner of a magistrate;
- (b) the magistrate’s or the spouse or partner of the magistrate’s of necessity dependent child who is *bona fide* resident with such magistrate: Provided that if such child studies at an institution for post-school education, whether in tramurally or extramurally, he shall be deemed to be a member of the household, but only -
 - (i) if he or she did not, after leaving school, take up any permanent full-time employment (including any type of vocational training to which remuneration is attached), excluding work during vacations or temporary full-time employment which he or she had taken up between leaving school and commencing his her studies at and educational institution at the commencement of the academic year following the completion of his or her schooling; and

[Amended by R.1339 of 26/9/03]

- (ii) until -
 - (aa) he attains the minimum post-school qualification (or minimum combination or post-school qualifications) which will enable him to take up employment in the field of his or her original intended to qualify

himself; or

- (bb) the normal prescribed duration of the study period, as prescribed by the institution concerned for the study course, plus one academic year, expires if it takes him longer than such prescribed period to attain the relevant qualification as a result of poor academic performance; or
- (cc) he discontinues the course of study concerned; or
- (dd) he changes his course of study,

whichever of the said four events occurs first;

- (c) the magistrate's or the spouse or partner of the magistrate's relative who is permanently resident with him and who is of necessity dependent on him and whose income, from any source, does not exceed the sum of-
 - (i) the appropriate maximum basic social pension as prescribed by regulations promulgated in terms of -
 - (aa) the Social Pensions Act, 1973 (Act No. 37 of 1973); or
 - (bb) any other social pensions Act which is applicable in the Republic of South Africa; *plus*
 - (ii) the maximum allowance for a war veteran to whom a social pension has been awarded in terms of the War Veterans' Pensions Act, 1968 (Act No. 25 of 1968); *plus*
 - (iii) the maximum allowance paid to a person as a result of a late application for a social or war veteran's pension,

and, if the relative concerned is a social pensioner or war veteran pensioner, any allowances other than those referred to in subparagraphs (ii) and (iii) above, which he may receive in terms of the relevant regulations referred to above may be ignored for the purposes of this paragraph: Provided that where two relatives so reside with him and are dependent on him and where the one relative would normally have been a dependant of the other relative, for instance a father and a mother, both such relatives may be regarded as members of his household only if half of their joint income, from any source, does not exceed the sum of the maximum basic social pension and war veteran's pension and the allowances contemplated in paragraphs (i) to (iii) above; and

- (d) not more than two domestic workers (including nursemaids) employed in a full-time capacity by the magistrate;

“incidental expenditure” means the expenditure in respect of tips for table and room

service, reading matter, telephone calls, dry-cleaning and liquid refreshments which do not form part of meals;

“interim accommodation expenditure” means furnished housing which is occupied temporarily while permanent accommodation is being sought or until permanent accommodation, which has already been obtained, becomes available for occupation;

“official quarters” means those quarters, inclusive of buildings, outbuildings, grounds, fixtures, fittings, machines and equipment, but exclusive of furniture, that are owned or are held on lease or are otherwise in the lawful possession of the State, and that are available to the Director-General for assignment in terms of regulation H5 of the Public Service Regulations or that have been allotted to a magistrate in terms of regulation H6 of the Public Service Regulations;

“personal property” means the movable property of a magistrate and of his household, which is normally intended for personal use, including vehicles but excluding livestock, domestic animals and pets;

“preferentially promotable” means that the magistrate’s work performance is of such a high standard that there is enough justification to promote him over the head of his rank associates that are promotable out of turn, regardless of his position of seniority;

“promotable in turn” means that the magistrate is regarded as suitable for promotion when his turn for promotion arrives in accordance with his position of seniority;

“promotable out of turn” means that the magistrate’s work performance is of such a nature that there exists enough justification to promote him over the head of his rank associates that are promotable in turn, regardless of his position of seniority;

“Public Service Regulations” means the Public Service Regulations promulgated under section 41 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
[Amended by R.997 of 7/8/98]

“Public Service Staff Code” means the Public Service Staff Code referred to in section 42 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);
[Amended by R.997 of 7/8/98]

“Republic” [Deleted by R.1339 of 26/9/03]

“State” means the Government of the Republic of South Africa;

“the Act” means the Magistrates Act, 1993 (Act No. 90 of 1993); and

“transfer” means -

- (i) the moving of a magistrate and his or her household from one headquarters to another in the Republic or to or from abroad;
[Amended by R.1339 of 26/9/03]
- (ii) the temporary or permanent vacation of official quarters at a magistrate’s headquarters in order to move into other housing; or

- (iii) the vacation by a magistrate of housing in order to move into the official quarters at his headquarters.

CHAPTER II

REGULATIONS REGARDING MAGISTRATES

PART I: RECRUITING OF CANDIDATES

Advertising of vacancies

2. A vacancy for the office of a magistrate may be advertised by the Director-General by circular in the Department and in at least two newspapers which are circulated throughout the country in the official languages which the Commission prescribes: Provided that the Director-General shall be obliged to advertise the vacancy if the Commission so orders.

PART II: APPOINTMENT

Requirements for appointment

3. (1) No person shall be appointed as a magistrate, unless he -
 - (a) is a South African citizen or has been lawfully admitted to the Republic for permanent residence therein and is ordinarily resident in the Republic;
 - (b) is a fit and proper person;
 - (c) is, according to the health questionnaire referred to in regulation 4(2)(b), in good health: Provided that if there is uncertainty in respect of the good health of an applicant, the Commission may request that he subject himself to a health examination at his own expense and submit a medical report on his health: Provided further that if the health questionnaire referred to in regulation 4(2)(b) is older than three months from the date of examination, or his medical report is older than six months from the date of examination, a new health questionnaire or medical report may be requested by the Commission;
 - (d) is competent in the official languages in which, to the opinion of the Commission, he should be competent;
 - (e) has the legal qualifications referred to in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944); and
 - (f)
 - (i) has successfully completed an applicable course (the duration, content and extent of which shall be specified by the Chief of the Justice College after consultation with the Commission) to the satisfaction of the Chief of the Justice College or a person designated by him; and
 - (ii) has, after the successful completion of the course referred to in subparagraph (i), for a substantive period of six months, to the satisfaction of the Commission, occupied the office of a judicial officer in

respect of which he is a candidate in an acting or temporary capacity:

Provided that the Minister may, on the recommendation of the Commission, exempt a candidate from the requirements of paragraphs (i) or (ii) or both paragraphs.

(2) A candidate who has not already been appointed in terms of section 9(1) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), as judicial officer in another capacity as that in respect of which he is a candidate, is in the employment of the State in a full-time or temporary capacity while he attends the course referred to in subregulation (1)(f)(i) and fills the position of judicial officer referred to in subregulation (1)(f)(ii).

Application by candidates

4. (1) A candidate shall make an application for appointment as magistrate in writing on a form which corresponds substantially with Form 1 of Schedule A and hand it in to the Director-General or at a magistrate's office.

(2) The application referred to in subregulation (1) shall be accompanied by the following documents:

- (a) A certified copy of the candidate's identity document;
- (b) a completed health questionnaire which corresponds substantially with Form 2 of Schedule A;
- (c) certified copies of all educational qualifications;
- (d) certificates of service or, if not available, an affidavit by the candidate in respect of previous periods of service;
- (e) testimonials from previous employers, if available;
- (f) an affidavit setting out the candidate's assets and liabilities; and
- (g) names and addresses of two references.

(3) A confidential report which corresponds substantially with Form 3 of Schedule A shall be completed by the Director-General or the head of office or a person delegated by him.

(4) If the documents referred to in subregulations (1) and (2) are handed in at a magistrate's office, such documents shall, together with the confidential report referred to in subregulation (3), be sent to the Director-General by the head of office or a person delegated by him.

(5) The Director-General shall submit the application referred to in subregulation (1) and the confidential report referred to in subregulation (3) to the Commission for a recommendation regarding the suitability of the applicant for purposes of the course and the office of judicial officer referred to in regulation 3(1)(f).

(6) The Director-General shall implement the Commission's recommendation

referred to in subregulation (5).

(7) After completion of the period referred to in regulation 3(1)(f)(ii) the Commission shall forward the documents referred to in this regulation, together with a recommendation on the appointment of a candidate to the office of magistrate, to the Director-General for forwarding to the Minister.

(8) If the Commission, after receiving the documents referred to in subregulation (5), is of the opinion that the candidate should be exempted from one or both of the appointment requirements referred to in regulation 3(1)(f), the Commission shall forward the documents referred to in this regulation, together with a recommendation on the appointment of a candidate to the office of magistrate, to the Director-General for forwarding to the Minister.

Filling of vacancies

5. In the appointment or promotion of a magistrate, only the qualifications, level of education, relative merits, efficiency and competency for the office of persons who qualify for the relevant appointment or promotion shall be taken into account.

Date of appointment

6. The appointment of a candidate shall take effect on the date on which he accepts service as magistrate, except where he has accepted such service on the first workday of the month and that day is not the first day of the month, in which case the first day of such month shall be deemed to be the date on which he accepted service.

Salary recognition basis

7. [Repealed by R.997 of 7/8/98]

Date of qualification obtained

8. (1) A qualification, except one for which a thesis should be submitted or practical experience should be gained, shall be deemed to have been obtained with effect from the date immediately following that date on which the final examination of the last subject for the obtaining of the qualification was passed.

(2) A qualification in respect of which a thesis should be submitted, shall be deemed to have been obtained with effect from the date on which the student finally fulfils his obligations, namely either the date on which his thesis is accepted finally, or the date on which he successfully undergoes the final oral examination, whichever is the later date.

(3) A qualification in respect of which practical experience should be gained, shall be deemed to have been obtained with effect from the date immediately following that date which the relevant university or other educational institution indicates as the date on which the candidate has complied with all the requirements for the qualification.

(4) [Deleted by R.997 of 7/8/98]

Requirements in respect of experience

9. [Repealed by R.997 of 7/8/98]

Salary determination and salary or cash recognition

10. [Repealed by R.997 of 7/8/98]

Recognition for higher qualifications obtained after appointment

11. (1) [Deleted by R.997 of 7/8/98]

(2) A cash amount shall subject to subregulation (4), be awarded to a magistrate, excluding a Senior Magistrate, a Regional Magistrate, a Chief Magistrate and a Regional Court President, for obtaining a higher qualification which is regarded by the Commission as appropriate calculated at 7 % of the entry salary of magistrate with up to and including two years' appropriate experience as determined by the Minister by notice in the *Gazette* in terms of section 12(1) of the Act.

[Amended by R.997 of 7/8/98]

(3) The cash amount referred to in subregulation (2) shall, subject to the provisions of section 12(7) of the Act, be payable -

- (a) immediately after the obtaining of the qualification, if the magistrate has filled the position of magistrate for more than 12 calendar months before the obtaining of the qualification; or
- (b) upon the date which follows the date on which he has filled the office of magistrate for 12 continuous calendar months.

(4) Recognition on the basis set out in this regulation shall be limited to the payment of one cash amount.

Salary progression

12. [Repealed by R.997 of 7/8/98]

Salary incremental periods and salary incremental dates

13. [Repealed by R.997 of 7/8/98]

Privileges on appointment

14. (1) A magistrate and his household who, as a result of his appointment, necessarily have to move may claim reasonable actual expenses for travelling, and the transport, insurance and storage costs of his personal belongings, for at most one month, on the same basis as that set out in regulation 23(1)(a)(ii), (b) and (c).

(2) A magistrate to whom expenses referred to in subregulation (1) are paid shall conclude a written contract with the State which corresponds substantially with Form 4 of Schedule A, in which he undertakes to serve in the office of magistrate for not less than twelve months.

(3) If a magistrate does not comply with the provisions of the contract referred to in subregulation (2) he shall pay back a *pro rata* part of the amount which was paid to him in terms of subregulation (1), in respect of the remaining period.

(4) The Director-General shall determine the conditions, guidelines, procedures and requirements in respect of the payment of the expenses referred to in these regulations.

(5) The Director-General may lengthen the periods referred to in this regulation.

Privileges on appointment of a magistrate from abroad

15. (1) On the appointment of a magistrate from abroad the reasonable actual expenses which arise from his journey and that of his household, and the transport and insurance of his personal belongings, may be paid to him, as may other supplementary financial compensation for the defraying of expenses connected with his travelling to and settlement in the Republic.

(2) The provisions of regulation 14(2), (3), (4) and (5) shall *mutatis mutandis* apply to a person referred to in subregulation (1).

PART III: PROMOTION [Repealed by R.1339 of 26/9/03]

General promotion measures

16. [Repealed by R.1339 of 26/9/03]

Seniority date

17. [Repealed by R.1339 of 26/9/03]

Promotion periods

18. [Repealed by R.1339 of 26/9/03]

Evaluation procedure

19. [Repealed by R.1339 of 26/9/03]

Priority lists

20. [Repealed by R.1339 of 26/9/03]

Promotion date

21. [Repealed by R.1339 of 26/9/03]

PART IV: TRANSFERS

General provisions

22. (1) A magistrate may -
- (a) upon due application;
 - (b) with his or her consent; or
 - (c) without his or her consent, but for good reasons and without favour or prejudice, if necessary in the interest of the administration of justice, be transferred upon the recommendation and direction of the Commission.

[Amended by R.1339 of 26/9/03]

- (2) The Director-General shall, upon direction of the Commission, effect the transfer of a magistrate.

[Amended by R.1339 of 26/9/03]

- (3) [Deleted by R.1339 of 26/9/03]

- (4) [Deleted by R.1339 of 26/9/03]

Resettlement costs

23. (1) The following expenses may be paid to a magistrate when he is transferred:
- (a) Travelling and subsistence expenses with regard to -
 - (i) the magistrate's and a member of his household's reasonable actual travelling and subsistence expenses resulting from a single prior visit for a period not exceeding seven days to the new headquarters; and
 - (ii) the magistrate's and his household's reasonable actual travelling and subsistence expenses resulting from the transfer to the new headquarters,

in the amounts referred to in regulations 48(d) and 49(1)(a) and (b).
 - (b) Expenses incidental to the transport of the personal possessions of the magistrate and his household, including the packing thereof and the eventual unpacking at permanent housing, as well as comprehensive insurance cover thereof: Provided that the said expenses are incurred before the expiry of six months after the transfer.
 - (c) Expenses incidental to the storage of the personal possessions of the magistrate and his household for a period not exceeding two months, as well as comprehensive insurance cover thereof during that period.
 - (d) Expenses-
 - (i) with regard to interim accommodation in a rented furnished dwelling at the existing headquarters for a period not exceeding seven days under circumstances that prevent further stay in the normal dwelling and at the new headquarters for a period not exceeding seven days under circumstances that prevent immediate moving into permanent accommodation;

- (ii) with regard to interim accommodation in a rented furnished dwelling for a period not exceeding two calendar months while permanent accommodation is being sought or while circumstances exist that prevent the moving into permanent accommodation within seven days, in which case the prior written permission of the Director-General is required; or
 - (iii) in respect of a travelling allowance in accordance with the tariff prescribed in regulation 48 (d) for the purposes of daily forward and return journeys between the existing and the new headquarters for a period not exceeding two calendar months while permanent accommodation is still being sought, in which case the prior approval of the head of the office and the prior written permission of the Director-General is required.
[Amended by R.421 of 20/3/97]
- (e) Expenses with regard to customs duty, import or value added tax and other levies or moneys with regard to the transport of motor vehicles (including a motor financing scheme vehicle) over international borders.
- (f) Any costs, including the transfer costs of the property, bond costs, costs for the drafting of a deed of sale, value-added tax and inspection fees resulting from the transfer on the purchase of a house or the purchase of a building site and the erection of a house thereon: Provided that first-time home buyers shall not be compensated for these costs.
- (g) A non-recurrent amount for each school-going child to expenditure on school books, uniforms, school sports outfits and other necessities, which shall be in accordance with the allowance as prescribed from time to time in the Public Service.
[Amended by R.644 of 1/4/94]
[Amended by R.1808 of 17/10/94]
[Amended by R.1791 of 17/11/95]
[Amended by R.331 of 1/3/96]
[Amended by R.1567 of 27/9/96]
[Amended by R.1627 of 1/10/96]
[Amended by R.274 of 20/2/98]
- (h) A non-recurrent amount to defray miscellaneous expenses, for which specific provision has not been made elsewhere in these regulations, on the following basis:
- (i) If furnished housing is occupied permanently: An amount equal to 25 % of the magistrate's basic monthly pensionable salary as at the date of resettlement;
 - (ii) if unfurnished housing is occupied permanently:
 - (aa) An amount equal to 50 % of an unmarried magistrate's basic monthly pensionable salary as on the date of resettlement: Provided that

should the magistrate's reasonable actual expenditure exceed the said amount, the expenditure so incurred be paid to him or her to a maximum amount equal to his or her basic monthly pensionable salary on the date of resettlement.

[Amended by R.957 of 7/6/96]

- (bb) an amount equal to a full month's basic pensionable salary of a magistrate with dependants as at the date of resettlement;
 - (iii) if the amount referred to in subparagraph (i) or (ii) is less than an amount calculated according to the applicable percentage basis in the said subparagraphs based upon the first salary notch of a Senior Provisioning Administration Officer in the Public Service as amended from time to time, the applicable amount calculated in the last-mentioned way shall be paid; and
 - [Amended by R.644 of 1/4/94]
 - [Amended by R.1791 of 17/11/95]
 - [Amended by R.56 of 15/1/99]
 - (iv) the amount referred to in subparagraph (i) or (ii) shall not be more than an amount based on the third salary notch of a Director in the Public Service as amended from time to time.
 - [Amended by R.644 of 1/4/94]
 - [Amended by R.1791 of 17/11/95]
 - [Amended by R.1627 of 1/10/96]
 - [Amended by R.56 of 15/1/99]
 - (i) The payment of a home-owners allowance with regard to a house at the previous headquarters shall continue on such basis and for such period as the Minister, or a person designated by him, may approve.
- (2) To a magistrate and his household, who, at vacation of office under section 13(1) and (5) of the Act, or at the death of the magistrate, within six months of vacation of office or death, move from an existing home to a place where he and his household are desirous to live in the Republic or an independent state that was previously part of the Republic, the expenses for travelling, as well as the transport, insurance and storage costs of his personal possessions may be compensated non-recurrent on the same basis as set out in paragraphs (a)(ii), (b), (c), (d) and (e) of subregulation (1).
- (3) If a magistrate who is on official duty away from his headquarters or stationed in a foreign country, dies, including a member of his family accompanying him for official purposes, these additional expenses (excluding burial expenses) that result from the death at another place than his headquarters or in the Republic, shall be paid.
- (4) The conditions, guide-lines, procedure and requirements in respect of the payment of the expenses referred to in this regulation shall be determined by the Director-General.
- (5) The Director-General may lengthen the periods and increase the amounts referred to

in this regulation respectively.

Compensation for additional subsistence expenses

24. (1) A magistrate -

- (a) who is stationed and resident at headquarters -
 - (i) where no schooling facilities are available locally for his child and where there is also no free transportation to a nearby school; and
 - (ii) where school facilities, if they exist, are not accessible, because of the language medium used for tuition; and
 - (iii) that are situated more than 32 km per single journey from the nearest accessible school, and whose dependent child is in boarding-school elsewhere than at his headquarters or lodges elsewhere;
- (b) who is stationed in a self-governing territory as defined by section 38 of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), or in Transkei, Bophuthatswana, Venda, Ciskei, Botswana, Lesotho, Swaziland or Namibia, and resident there and whose dependent child is in boarding-school in the Republic, or lodges elsewhere, in order to attend school,

shall receive the allowance referred to in subregulation (2).

(2) Compensation shall be paid for the living expenses that arise as referred to in subregulation (1) by paying to a magistrate 50 % of the hostel or accommodation expenditure fees that he actually and of necessity incurs with regard to each child.

(3) The amount that may be paid as compensation in accordance with subregulation (2) shall be limited to -

- (a) not more than 50 % of the boarding-school fees of the State boarding-school where his child resides; or
- (b) not more than 50 % of the boarding-school fees of a State boarding-school in the region where such magistrate's headquarters is, if the child lodges privately or is resident in a private boarding-school; or
- (c) an amount that the Director-General considers reasonable if there is no State boarding-school in the region.

(4) Boarding-school fees and accommodation expenditure fees shall include the renting of accommodation, and meals, refreshments and laundry.

(5) Claims for the payment of a boarding-school allowance shall be accompanied by the necessary documentary proof.

(6) A claim for not more than one school year, running from 1 January to 31 December, may be considered at a time.

(7) If a magistrate, after he has claimed the allowance referred to in this regulation for a specific period, withdraws his child for whatever reason from the boarding-school or place of accommodation expenditure and for that reason receives a *pro rata* repayment of boarding-school or accommodation expenditure fees, he shall pay 50% of such repayment to the Director-General, who shall deposit it into the Consolidated Revenue Fund.

(8) The Director-General may -

- (a) subject to the provisions of this regulation, approve or reject applications on the grounds of the factual position; and
- (b) determine the maximum reasonable compensation if State boarding-school fees do not exist in a particular case.

PART V: MISCONDUCT

General provisions

25. A magistrate may be accused of misconduct if he -

- (a) is found guilty of an offence;
- (b) contravenes any provision of these regulations;
- (c) contravenes the Code of Conduct, if there is one;
- (d) is negligent or indolent in the carrying out of his duties;
- (e) uses intoxicants or stupefying drugs excessively;
- (f) accepts, without the permission of the Minister, or demands in respect of the carrying out of or the failure to carry out his duties any commission, fee or pecuniary or other reward, not being the emoluments payable to him in respect of his duties, or fails to report to the Minister the offer of such a commission, fee or reward;
- (g) misappropriates or makes improper use of any property of the State;
- (h) absents himself from his office or duty without leave or valid cause;

- (i) makes a false or incorrect statement, knowing it to be false or incorrect, with a view to obtaining any privilege or advantage in relation to his official position or his duties or to the prejudice of the administration of justice; or
- (j) refuses to execute a lawful order.

Procedure for preliminary investigation and misconduct hearing

[Regulations 26, 27, 28 and 29 substituted by R.1339 of 26/9/03]

26.(1) If a magistrate is accused of misconduct, the Commission may appoint a magistrate or an appropriately qualified person (hereinafter called the investigating officer) to conduct a preliminary investigation and to obtain evidence in order to determine whether there are any grounds for a charge of misconduct against the magistrate: Provided that, if the Commission is of the opinion that there is *prima facie* evidence to support the charge, the Commission may charge the magistrate concerned in writing with misconduct without the said preliminary investigation.

(2) The investigating officer appointed in terms of subregulation (1) may, for the purposes of the preliminary investigation -

- (a) summon any person who, in his or her opinion may be able to give material information concerning the subject of the investigation, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the investigation, to appear before the investigating officer at the time and place specified in the summons, to be questioned or to produce the book, document or object; and
- (b) retain a book, document or object referred to in paragraph (a) for the duration of the investigation.

(3) After the conclusion of the preliminary investigation contemplated in subregulation (1), the investigating officer shall recommend to the Commission whether or not the magistrate concerned should be charged, and if so, what the contents of the charge in question should be.

(4) If, after the conclusion of the preliminary investigation, the Commission is of the opinion that -

- (a) there are sufficient grounds for a charge of misconduct against the magistrate concerned and the allegations are of such a serious nature that they may justify the removal from office of the magistrate, the Commission may, in writing, charge the magistrate with misconduct;
- (b) the allegations are not of such a serious nature, the Commission shall issue directions, excluding the institution of misconduct proceedings, as to the manner in which the matter is to be dealt with.

(5) A charge contemplated in subregulation (1) or (4)(a) shall be accompanied by an invitation to

the magistrate charged to send or deliver within a reasonable period specified in the invitation to a person likewise specified, a written explanation regarding the misconduct with which he or she is charged in order to establish which allegations are admitted and which allegations are disputed.

(6) If the Commission decides that a magistrate should be subjected to a misconduct hearing, the Commission shall appoint –

(a) a magistrate (hereinafter called the presiding officer) to preside at that hearing; and

(b) a magistrate or an appropriately qualified person to lead evidence at that hearing.

(7)(a) The magistrate or person appointed in terms of subregulation (6)(b) must in writing notify the magistrate charged of the date, time and venue of his or her hearing.

(b) The magistrate or person appointed in terms of subregulation (6)(b) or a person designated by him or her, must personally hand the notice contemplated in paragraph (a) to the magistrate charged.

(c) The magistrate charged must immediately acknowledge receipt of the notice contemplated in paragraph (a).

(d) If a magistrate charged refuses to sign receipt of a notice contemplated in paragraph (a), the notice must be handed to that magistrate charged in the presence of any witness, who must sign in confirmation that the notice was handed to the magistrate charged in his or her presence.

(8) The presiding officer shall, at the commencement of a misconduct hearing -

(a) inform the magistrate charged about his or her right to remain silent; and

(b) ascertain from the magistrate charged, which allegations are disputed and which allegations are admitted.

(9) A presiding officer may, if the magistrate charged admits at any time that he or she is guilty of the charge, question the magistrate, and if the presiding officer is satisfied that the magistrate is guilty as charged, and after confirming that the version deposed to by the magistrate charged is in accordance with the facts held by the person referred to in subregulation (6)(b), the presiding officer shall make a finding to the effect that the magistrate charged is guilty.

(10) A magistrate or person appointed in terms of subregulation (6)(b) may, for the purposes of a misconduct hearing -

(a) summon any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object;

- (b) retain a book, document or object referred to in paragraph (a) for the duration of the hearing;
- (c) lead evidence and arguments in support of the charge and cross-examine witnesses; and
- (d) call upon and administer an oath to or accept an affirmation from any person present at the hearing who was or might have been summoned in terms of paragraph (a), and question him or her and order him or her to produce any book, document or object in his or her possession or custody or under his or her control that he or she suspects or believes to have a bearing on the subject of the hearing.

(11) The law relating to privilege, as applicable to a witness summoned to give evidence in a civil trial before a court of law or to produce a book, document or object, shall, *mutatis mutandis*, apply in relation to the examination of, or the production of any book, document or object to the presiding officer by, any person called as a witness in terms of this regulation.

(12) At a misconduct hearing the magistrate charged shall -

- (a) have the right –
 - (i) to be personally present and to be assisted or represented by another person;
 - (ii) to remain silent;
 - (iii) to give evidence; and
 - (iv) either personally or through a representative –
 - (aa) to be heard;
 - (bb) to call witnesses;
 - (cc) to cross-examine any person called as a witness in support of the charge; and
 - (dd) to have access to documents produced in evidence; and
- (b) show cause why he or she is not guilty of misconduct, if the misconduct with which he or she is charged amounts to an offence of which he or she was convicted by a court of law.

(13) The presiding officer may, at any stage of the hearing, on own accord or on request of the magistrate charged, summon or cause to be summoned any person who, in his or her opinion, may be able to give material information concerning the subject of the hearing, or who he or she suspects or believes has in his or her possession or custody or under his or her control any book, document or object which has any bearing on the subject of the hearing, to appear before the presiding officer at the time and place specified in the summons, to be questioned or to produce such book, document or object.

(14) (a) A presiding officer may order that a misconduct hearing be proceeded with even if the magistrate charged is absent from the proceedings or any part thereof, subject thereto that the presiding officer must be satisfied that proper notice of the hearing has been handed to the magistrate charged as contemplated in subregulation (7).

- (b) A magistrate contemplated in paragraph (a), may –
 - (i) at any stage, prior to a finding, inspect the record of proceeding of a hearing; and
 - (ii) if he or she was not assisted or represented at the hearing, with the permission

of the presiding officer examine any witness who testified during his or her absence.

(15) After the conclusion of the evidence and the arguments or address at a misconduct hearing, the presiding officer shall on a balance of probabilities make a finding as to whether the magistrate charged is guilty or not guilty of the misconduct as charged.

(16)(a) A presiding officer shall provide his or her reasons for any finding.

(b) The presiding officer shall give the magistrate charged and the magistrate or person who led the evidence at a misconduct hearing an opportunity to present any aggravating or mitigating factors.

(17) The presiding officer at a misconduct hearing may if a finding of guilty has been made –

(a) impose one of the following sanctions or any combination thereof on the magistrate charged:

(i) Caution or reprimand the magistrate;

(ii) specify the manner in which he or she should be cautioned or reprimanded;

(iii) direct the magistrate to tender an apology in a manner specified by the presiding officer; or

(iv) postpone the imposition of a sanction for a period not exceeding 12 months with or without conditions which may include counselling, treatment or attendance of a training programme,

or

(b) recommend to the Commission that the magistrate concerned be removed from office as contemplated in section 13 of the Act.

(18) After the conclusion of a misconduct hearing the presiding officer shall inform or notify the magistrate concerned of his or her right to lodge representations in terms of subregulation (20).

(19) After the conclusion of a misconduct hearing the presiding officer shall –

(a) inform or notify the Commission and the magistrate concerned of -

(i) his or her finding in relation to the charge and the reasons therefor;

(ii) his or her finding in relation to the aggravating or mitigating factors presented at the hearing;

(iii) the sanction imposed and the reasons therefor or his or her recommendation in terms of subregulation (17)(b) and the reasons therefor, and

(b) furnish the Commission with a copy of the record of proceedings.

(20) (a) If a recommendation is made in terms of subregulation (17)(b), the magistrate concerned may lodge representations with the Commission.

(b) The representations contemplated in paragraph (a) must –

(i) be in writing;

(ii) be lodged with the Commission within 21 working days after the findings of the presiding officer has come to the notice of the magistrate concerned; and

(iii) set out the grounds for his or her representations.

- (c) The magistrate concerned shall forward a copy of the notice of the representations, together with the grounds for his or her representations to the presiding officer.
- (21) Within 21 working days after receipt of the notice of representations contemplated in subregulation (20), the presiding officer may forward any additional reasons for his or her recommendation to the Commission and the magistrate concerned.
- (22) After consideration of the relevant documents referred to in subregulation (19), the Commission may –
- (a) recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act in which case the Commission shall submit to Parliament all the relevant documents with regard to that misconduct hearing: Provided that if the magistrate charged lodges representations in terms of subregulation (20) any recommendation or documentation shall not be submitted to Parliament until the Commission has made a finding regarding the representations; or
 - (b) if the Commission is of the opinion that the magistrate concerned should not be removed from office, impose any of the sanctions contemplated in subregulation (17)(a).
- (23) A person summoned as a witness to appear before an investigating officer or a presiding officer for the purposes of a preliminary investigation, or a misconduct hearing shall receive allowances in accordance with the tariff of allowances prescribed under section 191 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), by notice in the *Gazette*.
- (24) A summons in respect of a preliminary investigation or a misconduct hearing shall be issued on a form prescribed by the Commission and shall be served in a manner determined by the Commission.
- (25) A misconduct hearing shall be in public unless the presiding officer determines otherwise.
- (26) Evidentiary material obtained during a preliminary investigation which is not disputed by the magistrate concerned may, upon mere production thereof, be admitted at a misconduct hearing.

[Regulations 26 substituted by R.1339 of 26/9/03]

PART VI: INCAPACITY TO CARRY OUT DUTIES EFFICIENTLY

Procedure for investigation into magistrate's incapacity

27. (1) The Commission may order that an investigation be held into the capacity of a magistrate to carry out his or her duties of office efficiently.
- (2) An incapacity investigation shall be held as soon as possible by a magistrate or any person designated by the Commission and such magistrate or person shall have the powers referred to in

regulation 26(10).

(3) The magistrate with regard to whom an incapacity investigation is to be held -

(a) shall in writing be informed by the person who is to conduct the investigation of the date, time and place of the investigation; and
 (b) shall have the right -

- (i) to a written exposition of the grounds upon which it is alleged that he does not have the capacity to carry out his or her duties of office in an efficient manner;
- (ii) to be present at the investigation;
- (iii) to be assisted or represented by another person;
- (iv) to testify; and
- (v) either personally or through a representative, to -
 - (aa) be heard;
 - (bb) call witnesses;
 - (cc) cross-examine any person who is called as a witness in support of the said allegations; and
 - (dd) have access to documents which were produced as evidence.

(4) The magistrate in respect of whom the investigation is held, shall answer relevant questions of the person who conducts the investigation.

(5) After completion of an incapacity investigation the person who conducted the investigation shall make a finding and inform the magistrate concerned and the chairperson of the Commission of the finding.

[Regulations 27 substituted by R.1339 of 26/9/03]

Procedure after a finding of incapacity

28. (1) If the person who conducts an incapacity investigation finds that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner -

- (a) he or she shall furnish the magistrate concerned with a written exposition, of his or her finding and the reasons therefor; and
- (b) he or she shall forward without delay to the chairperson of the Commission the record of the proceedings of the investigation and all documentary evidence or certified copies thereof admitted at the investigation, as well as a written exposition of his or her reasons for the finding and any observations on the case which he or she may desire to make.

(2) The magistrate concerned may, within 10 working days after the date on which the finding of an incapacity hearing has come to his or her notice, submit to the chairperson of the Commission written comment regarding the finding and the reasons therefor.

- (3) (a) The Commission shall consider the relevant documents regarding an incapacity investigation, together with the comments of the magistrate contemplated in subregulation (2), if any.
- (b) The Commission shall, if it is as a result of an incapacity investigation, of the opinion that a magistrate should be removed from office due to incapacity,

recommend to Parliament that the magistrate be removed from office as contemplated in section 13 of the Act.

[Regulations 28 substituted by R.1339 of 26/9/03]

PART VII: REMOVAL FROM OFFICE ON ACCOUNT OF CONTINUED ILL-HEALTH

Procedure of investigation

29. (1) The Commission may order that an investigation be held regarding the removal of a magistrate from office on account of continued ill-health.

(2) The Commission shall before the commencement of a health investigation inform the magistrate of that investigation.

(3) The magistrate in respect of whom a health investigation is conducted, shall without delay after receipt of the notice of the investigation submit a medical report from a medical practitioner of his or her own choice to the Commission.

(4) In addition to subregulation (3), the Commission may order that a magistrate subject himself or herself to a medical examination by a medical practitioner designated by the Commission, whereafter that medical practitioner shall submit a medical report to the Commission.

(5) The costs of the medical examinations contemplated in subregulations (3) and (4) shall be paid by the State.

(6) (a) If the Commission, after considering a medical report in terms of this regulation, together with any relevant information, is of the opinion that the magistrate concerned does not have the capacity to carry out his or her duties of office in an efficient manner due to continued ill-health, the Commission shall -

- (i) furnish the magistrate concerned with a written exposition, of its opinion and the reasons therefor; and
- (ii) forward without delay to the magistrate concerned, the medical reports and any other relevant documents or certified copies thereof which are not in the possession of the magistrate concerned.

(b) The magistrate concerned may, within 10 working days after the date on which the opinion of the Commission has come to his or her notice, submit to the chairperson of the Commission written comment regarding the opinion.

(7)(a) The Commission shall consider the medical reports, together with the comments of the magistrate contemplated in subregulation (6)(b), if any.

(b) The Commission shall, if it is of the opinion that the magistrate concerned should be removed from office due to continued ill-health, recommend to Parliament that the magistrate concerned be removed from office as contemplated in section 13 of the Act.

[Regulations 29 substituted by R.1339 of 26/9/03]

PART VIII: VACATION OF OFFICE ON ACCOUNT OF CONTINUED ILL-

HEALTH

Procedure for vacation of office

30. (1) A magistrate who, in terms of section 13(5)(a)(i) of the Act, makes a request to vacate his office shall submit such request in writing, with full particulars in support thereof, which request shall be directed to the Minister and forwarded to the Director-General for submission to the Minister.

(2) The written request referred to in subregulation (1) shall be accompanied by a medical report from a medical practitioner of the magistrate concerned's own choice setting out the medical history, including the present medical condition, of the magistrate.

(3) The Minister may, after receipt of the request referred to in subregulation (1) and the medical report referred to in subregulation (2), order that the magistrate subject himself to a medical examination by a medical practitioner designated by the Minister, whereafter the medical practitioner shall submit a medical report to the Minister.

(4) The Minister shall consider the request and make a final decision.

(5) The costs incidental to the medical examinations referred to in subregulations (2) and (3) shall be paid by the magistrate concerned.

PART IX: COMPLAINTS AND GRIEVANCES OF MAGISTRATE

Procedure in respect of investigation of complaints and grievances

31. (1) If a magistrate is dissatisfied or discontented with an official act or omission, he may report the matter, in writing, to his head of office or if he does not have a head of office, to the Commission giving full particulars of the complaint or grievance.

(2) The head of office referred to in subregulation (1) or the Commission, as the case may be, investigates the matter and informs the magistrate concerned, in writing, of the result.

(3)(a) If-

(i) the head of office fails to conduct the investigation within 14 days in terms of subregulation (2), the magistrate concerned may, within 14 working days after the expiry of the period referred to in the subregulation submit his complaint or grievance, in writing, to the Commission; or

(ii) the magistrate concerned is dissatisfied with the outcome of the investigation by the head of office referred to in subregulation (2), he may, within 14 working days after receipt of the result submit his complaint or grievance, in writing, to the Commission.

(b) On receipt of the complaint or grievance concerned the Commission shall determine the manner of handling thereof and may designate a magistrate or person to investigate that complaint or grievance.

(c) After the complaint has been investigated, the magistrate or the person who conducts the investigation shall submit his recommendation and all the relevant documents

concerning the matter to the Commission.

(d) The Commission may after receipt of the recommendation referred to in paragraph (c) order such further investigation as it may deem fit.

Decision of Commission in respect of complaints and grievances

32. (1) After completion of the investigation with regard to the complaint or grievance referred to in regulation 31 the Commission shall -

- (a) take such steps as it may deem fit with regard to the complaint or grievance concerned; and
- (b) in writing, inform the magistrate concerned, accordingly.

(2) If the magistrate concerned is not satisfied with the steps referred to in subregulation (1)(a), he may within 10 working days after receipt of the notice referred to in subregulation (1)(b), in writing, submit to the Commission the reasons for his dissatisfaction, together with copies of the relevant documentation regarding his complaint or grievance, with the request that it must be submitted to the Minister.

- (3) The Commission then forwards the relevant documents to the Minister.

Decision of Minister in respect of complaints and grievances

33. The Minister shall -

- (a) make a decision regarding the complaint or grievance concerned after consideration of all the relevant documents and if he deems it expedient he may order any further investigation; and
- (b) advise the magistrate concerned, in writing, of his decision.

PART X: ABSCONDMENT

General provisions

34. (1) If a magistrate is absent without leave or valid reason from his office or duty for a period of 30 days or longer the Commission shall be informed accordingly without delay by the Director-General, and it shall be deemed that the magistrate has absconded and made himself guilty of misconduct.

(2) After the Commission has been informed in terms of subregulation (1), it shall make a recommendation to the Minister regarding the suspension of the magistrate in accordance with section 13(3) of the Act.

PART XI: OFFICIAL OFFICE HOURS

Office hours

35. The office hours of a magistrate shall be from Monday to Friday, from 07:45 to 16:15,

with a lunch interval of a maximum of 45 minutes.

Overtime and overtime remuneration

36. (1) Notwithstanding the provisions of regulation 35, a magistrate's head of office may require him to perform official service on any day of the week or at any time of the day or night or to be present at his normal place of work or elsewhere for such service.

[Amended by R.1407 of 11/8/94]

(2) A magistrate who, with regard to after-hours bail and other urgent applications and after-hours confessions or trials, performs official service referred to in subregulation (1) shall be paid overtime remuneration in accordance with the basis of calculation in Schedule D.

[Amended by R.274 of 20/2/98]

Absence during office hours

37. A magistrate may not be absent from his place of duty during the office hours referred to in regulation 35 without the consent of his head of office.

PART XII: LEAVE AND LEAVE GRATUITY

Leave

38. The provisions contained in Chapter C of the Public Service Regulations and Chapter D.II of the Public Service Staff Code shall, *mutatis mutandis* apply to magistrates: Provided that any leave shall be subject to approval by the Minister or a person designated by him: Provided further that any reference in those regulations or code to "officer" or "employee" shall be interpreted as a reference to a "magistrate" and that any reference to "Commission for Administration", shall be interpreted as a reference to "Commission".

Leave gratuity

39. (1) The provisions contained in Chapter D.VIII of the Public Service Code shall *mutatis mutandis* apply to magistrates.

(2)(a) A magistrate may, after 20 years' uninterrupted service in the Public Service of the Republic, or in the office of magistrate or both, discount a maximum of 10 days of his available vacation leave.

(b) A magistrate may, after 30 years' uninterrupted service in the Public Service of the Republic, or in the office of magistrate or both, discount 20 days of his available vacation leave, or 10% of his available vacation leave, whichever is the most.

PART XIII: OCCUPATION OF OFFICIAL QUARTERS

General provisions

40. (1) A magistrate may make use of official quarters if such quarters are available.

(2) If a magistrate makes use of official quarters, the provisions of Chapter H of the Public Service Regulations and Chapter D.VII of the Public Service Staff Code shall *mutatis mutandis* apply: Provided that any reference in the provisions to "officer" or "employee" shall be

interpreted as a reference to “magistrate”.

PART XIV: RECOGNITION OF PROFESSIONAL ASSOCIATIONS

General provisions

41. Any professional society representative of the majority of magistrates or regional magistrates or both shall be recognised.

[Substituted by R.997 of 7/8/98]

PART XV: GOVERNMENT MOTOR TRANSPORT

Government motor transport

42. A motor vehicle which is the property of the State may be allocated to a magistrate for use on official journeys subject to the same provisions under which such a vehicle is allocated to officers in the service of the State or under such amended or other conditions as the Commission and the Government Department that supplies the vehicle may agree.

PART XVI: SUBSIDISED TRANSPORT

Subsidised transport for certain magistrates

43. A subsidised vehicle may be allocated to a regional magistrate (excluding a regional court president), a senior civil magistrate or a family magistrate appointed in terms of section 9 of the Magistrates’ Courts Act, 1944, subject to the same conditions under which such a vehicle is allocated to officers in the service of the State or under such amended or other conditions as the Commission and the Government Department that administers the supply of such vehicles, may agree.

PART XVII: TRANSPORT BETWEEN RESIDENCE AND PLACE OF DUTY

Authorisation for transport between residence and place of duty

44. (1) The Director-General may in his discretion authorise the transportation of a magistrate between his residence and place of duty with State transport when exceptional transport problems are experienced in rendering a service at a specific place of duty and it is essential that State transport be supplied: Provided that an official journey between a residence and place of duty as referred to in Chapter D.IV, Part II/3, of the Public Service Staff Code and the journeys between a temporary residence and temporary place of duty as referred to in Chapter D.IV, Part II/4, of the Public Service Staff Code shall be excluded from this regulation.

(2) An application for State transport referred to in subregulation (1) shall be made on the form prescribed in Schedule C.

Monthly tariff payable

45. (1) If a magistrate makes use of State transport between his or her residence and place of duty he or she shall pay to the Director-General the monthly amount as prescribed from time to time for the Public Service.

[Amended by R.72 of 26/1/96]

[Amended by R.56 of 15/1/99]

(2) The Director-General shall pay the amount referred to in subregulation (1) into the Consolidated Revenue Fund.

Changed circumstances

46. A magistrate to whom State transport referred to in regulation 44 is supplied shall forthwith notify the Director-General in writing of any changed circumstances which might have an influence on his position.

PART XVIII: OFFICIAL JOURNEYS

General provisions

47. (1) All official journeys of which itineraries are submitted shall be authorised by the head of office who shall ensure that the journeys are necessary and in the interest of the administration of justice.

(2) The head of office referred to in subregulation (1) shall consider each application for an official journey, having regard to costs, availability of transport, route, timespan and any other relevant circumstances.

Transport

48. A magistrate who renders official service away from his station or service after hours at his station -

[Amended by R.178 of 7/2/97]

- (a) shall if he is in possession of a subsidised vehicle referred to in Part XVI or a motor vehicle under the motor vehicle financing scheme, for purposes of an official journey as referred to in regulation 47, use such transport: Provided that the Director-General may authorise such magistrate to travel in any other manner referred to in this regulation in which instance paragraph (b) shall be applicable;
- (b) may if he is not in possession of a vehicle or motor vehicle referred to in paragraph (a), for the purposes of the forward and return journey to and from the place where he so renders service, use any available public transport and may -
 - (i) make use of first-class railway transport;
 - (ii) with the consent of the Director-General use economy-class air transport;
 - (iii) in the case of any other public transport, where applicable, travel in the class that his head of office approves;
- (c) may also, subject to the provisions of paragraph (b) and the provisions of Part XVI, for the purposes of the forward and return journey to and from the place where he so renders service, use State transport; or
- (d) may, if he is not in possession of a vehicle or motor vehicle referred to in paragraph (a), for the purposes of a forward and return journey to and from the place where he so renders service with the approval of his head of office, use

private motor vehicle transport, in which case he shall be entitled to a transport allowance as prescribed from time to time for the Public Service.

[Amended by R.1340 of 12/8/96]

[Amended by R.274 of 20/2/98]

Subsistence allowance

49. (1) A magistrate who renders official service away from his station and -

- (a) is obliged to be absent for longer than 24 hours from his or her headquarters or permanent place of residence, shall be entitled to the allowances as prescribed from time to time for the Public Service; or

[Amended by R.644 of 1/4/94]

[Amended by R.1791 of 17/11/95]

[Amended by R.1178 of 19/7/96]

[Amended by R.56 of 15/1/99]

- (b) is obliged to be absent from his headquarters for less than 24 hours, shall be entitled to the reasonable actual expenses incurred if the necessary corroborative documents accompany the claim, or to the expenses as prescribed from time to time for the Public Service.

[Amended by R.178 of 7/2/97]

[Amended by R.274 of 20/2/98]

[Amended by R.56 of 15/1/99]

(2) A magistrate who renders official service outside the boundaries of the Republic shall, in addition to the allowance referred to in subregulation (1), be entitled to such allowance as may be determined by the Minister in his case.

Recruitment allowance

50. A magistrate who performs specific duties assigned to him by the Minister after consultation with the Commission in terms of section 14 of the Act may receive a non-pensionable recruitment allowance, calculated in accordance with the undermentioned formula for each day of absence from his headquarters:

Number of full days absent from headquarters	X	15 % of the magistrate's salary
365		1

[Amended by R.997 of 7/8/98]

Submitting of claims

51. (1) All claims for the payment of allowances under this Part shall specify the nature of services, the precise time of departure and arrival and such other information as may be necessary to calculate the amount payable.

(2) A claim referred to in subregulation (1) shall -

- (a) be accompanied by the authorisation referred to in regulation 49(1) and any other relevant corroborative documents; and
- (b) be signed by the magistrate concerned and his head of office, and certified as correct.

(3) All claims for the payment of allowances under this Part shall be submitted to the Director-General.

Economising

52. If a magistrate has travelled in a manner which results in higher travelling expenses or which involves a longer period of time than was necessary, he shall -

- (a) be restricted by his head of office in respect of the amount which may be paid to him to settle his travelling costs to the amount he would have been entitled to if he had complied with the provisions of regulation 48;
- (b) refund unnecessary expenses incurred if he travelled by State motor vehicle transport; and
- (c) cover every working day by which the normal travelling time was exceeded by leave of absence.

PART XIX: FIDELITY SCHEME FOR HOUSING LOANS

Fidelity scheme for housing loans

53. The fidelity scheme for housing loans for magistrates shall be the fidelity scheme which is applicable to a Deputy Director in the Public Service: Provided that the basis of calculation shall be the magistrate's gross salary as on the date of application for a guarantee.

PART XX: CREATION OF POSTS

Creation of posts

54. The Minister, in consultation with the Commission, shall create posts for all magistrates and determine the number, grading, regrading, naming, renaming or transformation of such posts.

[Substituted by R.1339 of 26/9/03]

PART XXI: CODE OF CONDUCT FOR MAGISTRATES

Code of conduct for Magistrates

54A. The Code of conduct for Magistrates is the Code of conduct contained in Schedule E of the Regulations.

[Inserted by R.1707 of 27/10/94]

PART XXII: PARTNER

[Part XXII inserted by R.1593 of 31.10.03]

Registration of partner

54B. (1) A magistrate who wishes to register a person as his or her partner must complete Form 1 of Schedule F.

- (2) A completed Form 1 of Schedule F must -

- (a) be accompanied by -
 - (i) certified copies of the identity documents of the magistrate and the person to be registered as partner; and
 - (ii) an affidavit by a person confirming the existence of a relationship between the magistrate and the person to be registered as partner; and
 - (b) together with the documents contemplated in paragraph (a) be submitted in duplicate to the court manager.
- (3) The court manager must -
- (a) on receipt of the documents contemplated in subregulation (2) affix the official stamp of the Department with the date of receipt on all pages of both copies of Form 1 of Schedule F and the attachments thereto;
 - (b) return one copy of Form 1 of Schedule F and the attachments thereto to the magistrate; and
 - (c) enter the following in a register kept for this purpose:
 - (i) the date of receipt of Form 1 of Schedule F;
 - (ii) the particulars of the magistrate and the person to be registered as partner; and
 - (d) forthwith forward the retained copy of Form 1 of Schedule F and the attachments thereto to the Director-General.

Deregistration of partner

- 54C.** (1) A magistrate who wishes to deregister a person who was registered as his or her partner in terms of regulation 54B(1) must complete Form 2 of Schedule F.
- (2) A completed Form 2 of Schedule F must be submitted in triplicate to the court manager.
- (3) The court manager must -
- (a) on receipt of the documents contemplated in subregulation (2) affix the official stamp of the Department with the date of receipt on all pages of all the copies of Form 2 of Schedule F;
 - (b) return two copies of Form 2 of Schedule F to the magistrate;
 - (c) enter the following in a register kept for this purpose:
 - (i) the date of receipt of Form 2 of Schedule F;
 - (ii) the particulars of the magistrate and the person to be deregistered as partner; and
 - (d) forthwith forward the retained copy of Form 2 of Schedule F to the Director-General.
- (4) The magistrate contemplated in subregulation (1) must -
- (a) by registered post send one of the copies of Form 2 of Schedule F contemplated in subregulation (3)(b) to the last known address of the person who is to be deregistered as his or her partner; and
- keep proof of having posted the copy to the relevant person.

CHAPTER III

REGULATIONS IN RESPECT OF JUDICIAL OFFICERS OTHER THAN

MAGISTRATES

Conditions of service and benefits

55. Any act, measure, arrangement or direction which is applicable to an officer in the Department, shall *mutatis mutandis* apply to any person who has been appointed in a temporary or acting capacity or as assistant-magistrate as a judicial officer in terms of section 9 of the Magistrates' Courts Act.

CHAPTER IV

SHORT TITLE

Short title and commencement

56. These regulations shall be called the Regulations for Judicial Officers in Lower Courts, 1994, and shall come into operation on 11 March 1994.

SCHEDULE A

FORM 1

**APPLICATION FOR APPOINTMENT AS MAGISTRATE
[Regulation 4 (1)]**

NOTE: This form is to be completed in ink in your own handwriting and in block letters. The following documentation shall accompany the application form:

- (a) Certified copy of your identity document.
- (b) Health questionnaire.
- (c) Certified copies of all educational qualifications.
- (d) Service certificates, or , if not available, an affidavit by you, regarding your previous periods of service.
- (e) Testimonials by previous employers.
- (f) Affidavit of assets and liabilities.

A. OFFICE DESIRED

1. Office desired.

.....
.....
.....

Centres where appointment is preferred, in order of preference.

.....
.....
.....

When can you accept service?

.....

ADVERTISING PARTICULARS

1. Reference number (if any)

.....

PERSONAL PARTICULARS

1, Surname (also maiden name if applicable)

.....

2. First names

.....

Permanent postal address

.....

.....

.....

Code:

4. Telephone numbers

(H)

(W)

5. Indicate with a X:

(i) Male (v) Divorced

(ii) Female (vi) Widower

(iii) Married (vii) Widow

(iv) Unmarried

6. Number and age of dependent children

.....

7. Date of birth

.....

8. Identity Number

.....

9. Are you a South African citizen? If not, give
nationality.....

10. Indicate:

(i) Have you ever been found guilty of a criminal offence?

.....

(ii) Have you ever paid an admission of guilt for any
offence?.....

(iii) Have you ever appeared in a court as an accused?

.....

(iv) Have you ever received a deferred fine?

.....

(v) Was the imposition of sentence ever deferred in your case?

.....
 (iv) Have you ever been imposed a suspended sentence?

If you have answered positively to any of the questions in paragraph 10, attach hereto full particulars thereof.

11. Official language in which you prefer to receive your correspondence

.....

D. LANGUAGE PROFICIENCY

Mention “good”, “fair”, “bad”

	Afrikaans	English	Other (specify)
Speak			
Read			
Write			

E. QUALIFICATIONS

Name of educational institution and centre	Certificates, diplomas and degrees obtained	ALL SUBJECTS: (Underline major subjects. In the case of typewriting and shorthand, state languages and speed)	Month and year and place obtained	Normal duration of course	How was the highest qualification obtained? Indicate with an X in the appropriate spaces.
School / Technical College	Name only highest qualification				Mainly full-time study
					Mainly part-time study
					Mainly own expense
University and other	Mention all qualifications				Mainly State expense

courses				
Name field of further study (if any)				

F. EXPERIENCE

Employer (also present)	Position filled	From			To			Reason for leaving
		Y	M	D	Y	M	D	

I declare that the above-mentioned particulars are complete and correct and understand that if I give any false information, I may be found guilty of misconduct.

.....

SIGNATURE

.....

DATE

FORM 2

**HEALTH QUESTIONNAIRE
[Regulation 4 (2) (b)]**

Republic of South Africa

FOR OFFICIAL USE		
Accepted/rejected in accordance with directions		
<i>Signature</i>		
Date	/	19 Rank
PROXY		

A.

1. Surname (in block letters)																			
Identity No.																			
2. First names					Sex														
3. Age	yrs.	4. Height	cm	5. Body mass	kg														

B.

DO YOU SUFFER OR HAVE YOU SUFFERED FROM –	MARK WITH A CROSS IN THE APPROPRIATE COLUMN		IF ANY ANSWER IS YES, GIVE DETAILS OF THE NATURE, SEVERITY, DATE AND DURATION OF THE ILLNESS
1. Any skin disease?	Yes	No
2. Any affection of the skeleton and/ or joints?	Yes	No
3. Any affection of the eyes, ears, nose or joints?	Yes	No
4. Any affection of the heart or circulatory system?	Yes	No
5. Any affection of the chest or respiratory system?	Yes	No
6. Any affection of the digestive system?	Yes	No

DO YOU SUFFER OR HAVE YOU SUFFERED FROM – MARK WITH A CROSS IN THE APPROPRIATE COLUMN IF ANY ANSWER IS YES, GIVE DETAILS OF THE NATURE, SEVERITY, DATE AND

COLUMN

DURATION OF THE ILLNESS

7. Any affection of the urinary system and/or genital organs?	Yes	No
		
8. Any nervous affection or mental abnormality?	Yes	No
		
9. Any other illness?	Yes	No
		

C.

	Yes	No
1. Do you suffer from any defect of hearing, speech or sight?		
2. Are you physically disabled and do you use artificial limbs?		
GIVE DETAILS OF THE NATURE AND SEVERITY OF THE DISABILITY		
.....		
.....		
.....		
.....		

“SCHEDULE E”
CODE OF CONDUCT FOR MAGISTRATES
(Regulation 54A)

WHEREAS

the Magistrates Act, No. 90 of 1993, seeks to maintain and promote the independence of the office of magistrate as a judicial office;

magistrates as judicial officers are required to maintain high standards of conduct in both their professional and personal capacities; and

a need for a code on conduct has arisen,

the Magistrates Commission hereby adopts, after consultation with the Magistrates profession, the following Code of Conduct for Magistrates:

1.

A magistrate is a person of integrity and acts accordingly. There are no degree of integrity. Integrity is absolute.

2.

A magistrate administers justice to all without fear, prejudice or favour.

3.

A magistrate executes his/her official duties objectively, competently and with dignity, courtesy and self-control.

4.

A magistrate acts at all times (also in his/her private capacity) in a manner which upholds and promotes the good name, dignity and esteem of the office of magistrate and the administration of justice.

5.

A magistrate obeys the laws of the land.

6.

A magistrate does not associate with any individual or body to the extent that he/she becomes obligated to such person or body in the execution of his/her official duties or creates the semblance thereof and does not use his/her office to further the interests of any individual or body or permit this to be done. A magistrate does not without the permission of the Commission accept membership of any legislative or executive authority as this may compromise the constitutional division between legislative and executive authorities and the judiciary.

[Inserted by R997 of 7.8.98]

7.

A magistrate does not accept any gift, favour or benefit of whatsoever nature which may possibly unduly influence him/her in the execution of his/her official duties or create the impression that this is the case.

8.

A magistrate refrains from the execution of any duty in an official capacity in a matter wherein he/she has a direct or indirect interest.

9.

A magistrate refrains from discussing or remarking or commenting on matters pertaining to his/her profession with the media or in public in a manner which is detrimental to the image of the office of magistrate.

10.

A magistrate shall not divulge any confidential information which has come to his/her knowledge in his/her official capacity, except in so far as it is necessary in the execution of his/her duties.

11.

A magistrate executes his/her official duties diligently and thoroughly and requires his/her subordinates to do likewise.

12.

A magistrate maintains good order in his/her court and requires dignified conduct from litigants, witnesses, court staff, legal practitioners and the public.

13.

A magistrate shall not, without the permission of the Commission, permit the proceedings in his/her court to be televised or broadcast or taped for these purposes, or photographs to be taken or television cameras or similar apparatus to be used in his/her court during a court session, during recess or immediately prior to or after the court session.

14.

A magistrate shall report unprofessional conduct on the part of legal practitioners or public prosecutors of which he/she becomes aware in the course of court proceedings to the professional body concerned or, in the case of public prosecutors, to the attorney-general concerned.

15.

A magistrate shall refrain from express support for any political party or grouping.

16.

A magistrate shall not act to the detriment of the discipline or the efficiency of the administration of justice or allied activities.

17.

A magistrate shall wear official dress during court sessions (except at inspections *in loco*). A magistrate who acts as presiding officer in a court shall wear a gown. The gown of a regional court magistrate shall be black with bell-shaped sleeves with seams, an eight-centimetre-wide full-length lapel, and shoulder piece of scarlet red. The gown of a magistrate shall be of black Princetta material with black embroidery of silken cord on the front and sleeves. A five-centimetre-wide dark scarlet red band shall be affixed to the centre of the collar piece, down the full length of the front panels and parallel on either side of the silken cord on the sleeves.

The length of the gown shall be in proportion to the height of the magistrate and the hemline of the gown shall not be more than 20 centimetres above the ground.

A magistrate shall wear suitable clothes with the gown”.

[Amended by R 1498 of 17.12.99 w.e.f. 4.1.2000]

[Schedule E inserted by R 1707 of 27.10.94]

Schedule E

SCHEDULE F

**FORM 1
[Regulation 54B]**

Note: Please attach-

- (i) Certified copies of identity documents of magistrate and person to be registered as partner; and*
- (ii) the affidavit referred to in regulation 54B(2)(a)(ii)*

[To be submitted in duplicate]

**REGISTRATION OF PARTNER IN TERMS OF THE MAGISTRATES ACT, 1993
(ACT NO. 90 OF 1993)**

PART A: DECLARATION BY MAGISTRATE

I.....(full names), identity number
.....hereby declare under *oath/affirmation as follows:

(a) I am in a permanent life partnership with (full names of person to be registered as partner) with identity number

(b) The reasons I regard the life partnership as permanent are the following:
.....
.....
.....
.....

(c) We have undertaken the following reciprocal duties of support:
.....
.....
.....
.....

(d) I hereby wish to register said as my partner for purposes of the above-mentioned Act.

DEPONENT

DATE

CERTIFICATION

I hereby certify that before administering the *oath/taking the affirmation I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

- (a) Do you know and understand the contents of the above declaration?
Answer _____.
- (b) Do you have any objection to taking the prescribed oath?

- Answer _____.
- (c) Do you consider the prescribed oath to be binding on your conscience?
 Answer _____.

I hereby certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to/affirmed before me, and the Deponent's signature was placed thereon in my presence.

Dated at _____ this _____ day of _____ 20__.

 *Justice of the Peace/Commissioner of Oaths

Full names: _____
 Designation: _____
 Area for which appointed: _____
 Business address: _____

PART B: DECLARATION BY PARTNER

I, (full names) with identity numberhereby declare under *oath/affirmation as follows:

(a) I am in a permanent life partnership with (full names of magistrate) with identity number

(b) The reasons I regard the relationship as permanent are the following:

(c) We have undertaken the following reciprocal duties of support:

(d) I hereby agree to be registered as the said magistrate's partner for purposes of the above-mentioned Act.

DEPONENT

DATE

CERTIFICATION

I hereby certify that before administering the *oath/taking the affirmation I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

- (a) Do you know and understand the contents of the above declaration?
Answer _____.
- (b) Do you have any objection to taking the prescribed oath?
Answer _____.
- (c) Do you consider the prescribed oath to be binding on your conscience?
Answer _____.

I hereby certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to/affirmed before me, and the Deponent's signature was placed thereon in my presence.

Dated at _____ this ____ day of _____ 20__.

*Justice of the Peace/Commissioner of Oaths

Full names: _____
 Designation: _____
 Area for which appointed: _____
 Business address: _____

** Delete whichever is not applicable.*

FORM 2
[Regulation 54C]

[To be submitted in triplicate]

DEREGISTRATION OF PARTNER IN TERMS OF THE MAGISTRATES ACT, 1993
(ACT NO. 90 OF 1993)

I, (full names of magistrate) with identity number hereby declare under *oath/affirmation that the permanent life partnership between myself and (full names) with identity number who was registered as my partner at on, has been terminated.

I herewith wish to deregister *him/her as my partner for purposes of the above-mentioned Act.

DEPONENT

DATE

CERTIFICATION

I hereby certify that before administering the *oath/taking the affirmation I asked the Deponent the following questions and noted *his/her answers in *his/her presence as indicated below:

(a) Do you know and understand the contents of the above declaration?

Answer _____.

(b) Do you have any objection to taking the prescribed oath?

Answer _____.

(c) Do you consider the prescribed oath to be binding on your conscience?

Answer _____.

I hereby certify that the Deponent has acknowledged that *he/she knows and understands the contents of this declaration which was *sworn to/affirmed before me, and the Deponent's signature was placed thereon in my presence.

Dated at _____ this _____ day of _____ 20__.

*Justice of the Peace/Commissioner of Oaths

Full names: _____

Designation: _____

Area for which appointed: _____

Business address: _____

** Delete whichever is not applicable.*

Judicial Accountability

**The Judicial Conference of Australia
The Marriott Resort, Gold Coast, Queensland
7 November 1998**

The Honourable Justice DH Lloyd

1. There are two kinds of judicial accountability. The *first* is the accountability which arises as a result of the requirement for every judicial officer to give reasons for his or her decision. Those reasons are exposed to enable the parties and other interested persons to know why a particular decision was reached. Such reasons are also necessary to enable any appellate court to also know why the particular decision was reached and to enable any errors as a result of such reasoning to be corrected.

2. The *second* kind of judicial accountability relates to tenure and, in particular, to the circumstances which give rise to disciplinary measures, including dismissal from office. It is this kind of judicial accountability which I propose to discuss.

3. Before discussing the position in New South Wales it is convenient to briefly review the position in other states and Federally.

4. The Commonwealth Constitution, s 72 provides:

"The Justices of the High Court and of other courts created by the Parliament
-
...

(ii) Shall not be removed except by the Governor-General in Council, on an address from both Houses of the Parliament in the same session, praying for such removal on the ground of proved misbehaviour or incapacity;

..."

This provision applies to all Federal judges, including judges of the High Court, the Federal Court and the Family Court. It may not apply to members of the Australian Industrial Relations Commission, since that is not a court. The *Industrial Relations Act*, 1988 (Cth), s 362(2), nevertheless, contains a similar provision. A similar provision is contained in the *Federal Court of Australia Act*, 1976 (Cth), s 6(1)(d), and the *Family Law Act*, 1975 (Cth), s 22(1)(b).

5. Similar, but not identical, legislation exists in the states. The *Constitution Act* 1975 (Vic), s 77, provides:

"The commissions of the judges of the [Supreme] Court shall [subject to a fixed age] ... remain in full force during their good behaviour ... but the Governor may remove any such judge upon the address of the Council and the Assembly".

6. The *Constitution Act*, 1867 (Qld) provides:

"15. The commissions of the present judges of the Supreme Court of the said colony and of all future judges thereof shall be continue and remain in full force during their good behaviour notwithstanding the demise of Her Majesty (whom may God long preserve) or of Her Heirs and Successors any law usage or practice to the contrary thereof in anywise notwithstanding.

16. It shall be lawful nevertheless for Her Majesty Her Heirs or Successors to remove any such judge or judges upon the address of both Houses of the Legislature of this colony."

The *Supreme Court Act* 1995 (Qld), s 195, provides:

"(1) The commissions of any present/future judges of the said Supreme Court shall be continue and remain in force during his, her or their good behaviour ...

(2) However, it shall be lawful for Her Majesty ... to remove any such judge or judges upon the address of the Legislative Assembly."

7. The *Constitution Act, 1889 (WA)* provides:

"54. The Commissions of the present Judges of the Supreme Court and of all future Judges thereof shall be, continue, and remain in full force during their good behaviour, notwithstanding the demise of Her Majesty (whom may God long preserve), any law, usage, or practice to the contrary notwithstanding.

55. It shall be lawful nevertheless for Her Majesty to remove any such Judge upon the Address of both Houses of the Legislature of the Colony."

The *Supreme Court Act, 1935 (WA)*, s 9(1) provides:

"All Judges of the Supreme Court shall hold their office during good behaviour, subject to a power of removal by His Majesty upon the address of both Houses of Parliament."

8. The *Constitution Act, 1934 (SA)* provides:

"74. The commissions of all Judges of the Supreme Court shall be and remain in full force during their good behaviour.

75. It shall be lawful for the King to remove any Judge of the Supreme Court upon the address of both Houses of the Parliament."

9. The *Supreme Court Judges' Independence Act, 1857 (Tas)* s 1, provides:

"It shall not be lawful for the Governor, either with or without the advice of the Executive Council, to suspend, or for the Governor to amove, any judge of the Supreme Court unless upon the address of both Houses of Parliament."

10. The Legislative Assembly of the Australian Capital Territory may legislate for the removal of a judicial officer. It has done so: The *Judicial Commissions Act, 1994*. Under that Act, where a complaint of the behaviour or the physical or mental incapacity of a *resident* judge is made to the Attorney-General, the Attorney-General may refer that complaint to a judicial commission. After tabling the report of the Judicial Commission the Legislative Assembly may, after affording the judge the opportunity to address it, resolve that the findings of the Commission amount to misbehaviour or physical or mental incapacity, whereupon the Executive must remove the judge from office.

11. The *Supreme Court Act, 1979 (NT)*, s 40(1), provides:

"A judge ... may be removed from office by the Administrator on an address from the Legislative Assembly praying for his removal on the ground of proved misbehaviour of incapacity, but shall not otherwise be removed from office."

12. The statutory position in states other than New South Wales, in the Territories and Federally may be summarised as follows:

- (i) Federal Judges can only be removed on an address from both Houses of Parliament on the ground of proved misbehaviour of incapacity;
- (ii) In Victoria, Queensland, Western Australia and South Australia there are two methods of removal of a judge:
 - (a) By either the Governor or the Executive on the ground of misbehaviour; or
 - (b) On an address of the Parliament without any question of misbehaviour.
- (iii) In Tasmania judges may be removed on an address of the Parliament without any question of misbehaviour;
- (iv) In the Northern Territory removal must be on an address of the Parliament on the ground

of proved misbehaviour or incapacity;

(v) In the Australian Capital Territory, the *resident* judges may be removed by the Executive on a resolution of the Assembly following a report of a judicial commission, on the ground of misbehaviour or incapacity.

13. With the exception of the ACT and New South Wales (to which I will presently refer), in those jurisdictions in which a judge may be dismissed for misbehaviour or for incapacity, no special authority is required by the law for the making of inquiries or the finding of facts concerning the misbehaviour or incapacity of a judge.

14. How does the Parliament, or the Executive, determine whether there has been misconduct by a judge, or that a judge is suffering from an incapacity?

15. When allegations were made against the late Mr Justice Murphy of an attempt to pervert the course of justice, the Commonwealth Parliament established a Parliamentary Commission of Inquiry, constituted by three retired Supreme Court judges, to examine whether there existed grounds for removal: *Parliamentary Commission of Inquiry Act, 1986* (Cth). Similarly, in Queensland, a Parliamentary Judges' Commission of Inquiry, comprising three retired judges, was appointed to inquire into the conduct of Mr Justice Vasta: *Parliamentary (Judges') Commission of Inquiry Act, 1988* (Qld). In all jurisdictions, however, including the ACT and New South Wales, Parliament has a residual discretion not to present an address for removal, even if proved misbehaviour or incapacity be found.

The Position in New South Wales

16. The *Constitution Act, 1902* (NSW), s 53, provides:

"53.(1) No holder of a judicial office can be removed from the office, except as provided by this Part.

(2) The holder of a judicial office can be removed from the office by the Governor, on an address from both Houses of Parliament in the same session, seeking removal on the ground of proved misbehaviour or incapacity.

(3) Legislation may lay down additional procedures and requirements to be complied with before a judicial officer may be removed from office."

This section is entrenched and requires a referendum to repeal or amend it: *Constitution (Entrenchment) Amendment Act, 1992*, s 7B. "Judicial office" means judges of all State courts and magistrates: *Constitution Act*, s 52(1).

17. The legislation referred to in s 53(3) has been enacted: *Judicial Officers Act, 1986* (NSW). Section 41 of that Act provides:

"41.(1) A judicial officer may not be removed from office in the absence of a report of the Conduct Division to the Governor under this Act that sets out the Division's opinion that the matters referred to in the report could justify parliamentary consideration of the removal of the judicial officer on the ground of proved misbehaviour or incapacity.

(2) The provisions of this section are additional to those of section 53 of the *Constitution Act 1902*."

The Judicial Commission of New South Wales

18. The Commission is established as a statutory corporation (*Judicial Officers Act*, s 5). It

consists of eight members:

The Chief Justice of the Supreme Court
The Chief Judge of the Industrial Court
The Chief Judge of the Land & Environment Court
The Chief Judge of the District Court
The Chief Judge of the Compensation Court
The Chief Magistrate
A legal practitioner appointed by the Minister (at present Mr Norman Lyall)
A person who, in the opinion of the Minister, has high standing in the community (at present the Honourable Susan Lenehan).

The *Judicial Officers Amendment Bill* 1998 will amend the Act so as to increase by two the number of community members on the Commission. It provides that community members are to be nominated following consultation by the Minister with the Chief Justice of the Supreme Court.

The functions of the Commission

19. The functions are:

- (a) to assist courts to achieve consistency in sentencing (s 8);
- (b) to provide continuing education and training of judicial officers (s 9);
- (c) to examine complaints against judicial officers (ss 15, 18-21); and
- (d) to advise the Minister on such matters as it thinks appropriate (s 11).

20. The functions of the Conduct Division are to examine and to deal with complaints referred to it by the Commission (s 14).

21. The Conduct Division consists of a panel of three judicial officers, or two judicial officers and one retired judicial officer, appointed by the Commission in relation to a complaint referred to the Division (s 22). One panel may deal with two or more complaints if the Commission considers it appropriate.

22. Any person may make a complaint to the Commission concerning the ability or behaviour of a judicial officer (s 15(1)), or in relation to a judicial officer's competence in performing judicial or official duties (s 15(4)). The Minister may also refer any matter relating to a judicial officer to the Commission and such a reference must be treated as a complaint (s 16).

23. The Commission must conduct a preliminary examination of a complaint (s 18). Following the preliminary examination the Commission must either

- (a) dismiss the complaint;
- (b) classify the complaint as minor; or
- (c) classify the complaint as serious (s 19).

24. The Commission may refer a minor complaint to the relevant head of jurisdiction if it thinks that the complaint does not warrant the attention of the Conduct Division. Otherwise a complaint which is not dismissed must be referred to the Conduct Division (s 21).

25. An undismissed complaint is classified as serious if the grounds of the complaint, if substantiated, could in the Commission's opinion justify parliamentary consideration of the removal of the judicial officer from office. The Conduct Division may itself reclassify a complaint referred to it. If the judicial officer about whom a minor complaint is made refuses to give evidence, the Conduct Division may reclassify the complaint as serious (s 30).

26. The Conduct Division must carry out an examination of a complaint referred to it and may initiate such investigations as it thinks appropriate (s 23). The Conduct Division may hold hearings in connection with the complaint. A hearing of a minor complaint must take place in private. A hearing of a serious complaint must take place in public unless the Division, if satisfied that it is desirable to do so because of the confidential nature of any evidence or other matter or for any other reason, directs that the hearing take place in private (s 24(1) - (3)).

27. At a hearing -

- (a) there may be counsel assisting the Division (s 47);
- (b) the judicial officer complained about may be represented by a legal practitioner;
- (c) the Division may consent to any other person being represented; and
- (d) any witness may, so far as the Division thinks it appropriate, be examined or cross-examined (s 24(6) - (7)).

28. If the Division decides that a minor complaint is wholly or partly substantiated, it must:

- (1) so inform the judicial officer or decide that no action need be taken (s 27);
- (2) furnish a report to the Commission setting out the action taken by the Division (s 29(7)); and
- (3) furnish a copy of the report to the judicial officer concerned (s 29(8)).

29. If the Division decides that a serious complaint is wholly or partly substantiated, it:

- (1) may form an opinion that the matter could justify parliamentary consideration of the removal of the judicial officer from office (s 28);
- (2) must present a report to the Governor setting out its conclusions (s 29(1)); and
- (3) the Minister must lay the report before both Houses of Parliament as soon as practicable after it is presented to the Governor (s 29(4)).

30. The report of the Conduct Division is subject to judicial review (*Bruce v Cole*, Court of Appeal, 12 June 1998, unreported). The *Briginshaw* test, appropriate to the gravity of the consequences which may flow from the formation of the opinion, applies to findings of the Division (*Bruce v Cole*, per Spigelman CJ at 48-50).

31. As I have indicated (in paragraph 17) above, a judicial officer may not be removed from office in the absence of a report of the Conduct Division (s 41). Moreover, Parliament has a residual discretion not to present an address for removal even if proved misbehaviour or incapacity be found.

32. "Misbehaviour" is understood in a wide sense. It need not relate solely to a judge's behaviour in that office. It includes any conduct rendering a judge unfit for office. The meaning of "misbehaviour" in the context of the Federal Constitution was considered by the Parliamentary Commission of Inquiry established to inquire into the conduct of the late Justice Lionel Murphy of the High Court.

33. Sir George Lush said:

"[T]he word 'misbehaviour' in s 72 is used in its ordinary meaning, and not in the restricted sense of 'misconduct in office'. It is not confined, either, to conduct of a criminal nature.

...

If their [judges'] conduct, even in matters remote from their work, is such that it would be judged by the standards of the time to throw doubt on their own suitability to continue in office, or to undermine their authority as judges or the standing of their courts, it may be appropriate to remove them.

...

[I]t is for Parliament to decide what is misbehaviour, a decision which will fall to be made in the light of contemporary values." Australia, Parliament, Parliamentary Commission of Inquiry, *Special report, 5 August 1986 NS Special report Dealing with the Meaning of 'Misbehaviour' for the Purposes of Section 72 of the Constitution, 19 August 1986* (Parliamentary Paper 443/1986, Canberra: Govt Pr, 1987), Sir George Lush at 18-19.

Sir Richard Blackburn said:

" '[P]roved misbehaviour' means such misconduct, whether criminal or not, and whether or not displayed in the actual exercise of judicial functions, as, being morally wrong, demonstrates the unfitness for office of the judge in question." Australia, Parliament, Parliamentary Commission of Inquiry, *Special report, 5 August 1986 NS Special report Dealing with the Meaning of 'Misbehaviour' for the Purposes of Section 72 of the Constitution, 19 August 1986* (Parliamentary Paper 443/1986, Canberra: Govt Pr, 1987), Sir Richard Blackburn at 32.

The Hon Mr Andrew Wells said:

"[T]he word 'misbehaviour' must be held to extend to conduct of the judge in or beyond the execution of his judicial office, that represents so serious a departure from standards of proper behaviour by such a judge that it must be found to have destroyed public confidence that he will continue to do his duty under and pursuant to the constitution." Australia, Parliament, Parliamentary Commission of Inquiry, *Special Report, 5 August 1986 and Special Report Dealing with the Meaning of 'Misbehaviour' for the Purposes of Section 72 of the Constitution, 19 August 1986* (Parliamentary Paper 443/1986, Canberra: Govt Pr, 1987), Mr Andrew Wells at 45.

34. The Queensland Parliamentary Judges' Commission of Inquiry, established to inquire into the conduct of Mr Justice Angelo Vasta found no misconduct in the Judge's carrying out of his judicial duties, but made findings on the Judge's dealings in financial and taxation matters and in defamation proceedings. In so doing it seems that the members of the Commission adopted the definitions of "misbehaviour" described by the members of the Federal Parliamentary Commission of Inquiry.

35. "Incapacity" seems to be a reference to a judge's ability to perform his or her duties of office. In the case of Justice Vince Bruce in New South Wales the issue was the judge's capacity to deliver judgments in a timely fashion - some of his judgments had not been delivered some two and a half to three years after having been reserved.

36. Although the Conduct Division inquiring into the alleged incapacity of Justice Bruce did not specify an appropriate time frame for the delivery of reserved judgments, it adopted what was said by the English Court of Appeal, comprising Lord Justices Peter Gibson, Brooke and Mummery in *Goose v Wilson Sandford & Co* (Court of Appeal, 13 February 1998, unreported). That was a case in which the trial judge, Harman J, had delayed in handing down a judgment for twenty months after the end of the hearing. The Judge had been seriously ill for part of that time. Lord Justice Peter Gibson said:

"106. There have unhappily been two other occasions in recent years when this court has censured judges for delay in delivering reserved judgments.

107. In *Rolled Steel Ltd v British Steel Corporation* [1986] Ch. 246 a judge had delayed giving judgment for nearly eight months at the end of a 19-day trial. This delay occasioned the following stricture from Lawton LJ:

[Counsel] submitted that this long and, in my experience, unprecedented delay resulted in the judge making material findings which were not justified by the evidence. I am not satisfied that this was so. But the fact that

responsible and experienced counsel, acting for a public corporation, felt it incumbent upon him to make this submissions shows that long delays in delivering judgment can cause disquiet and suspicion amongst litigants who lose - and those who win may feel they have been deprived of justice far too long. Delays of this length should not occur unless there are compelling reasons why they should; and, if there are such reasons, it would be prudent of a judge to refer to them briefly. In this case, for all we know, there may have been such reasons. We have kept in mind that the parties had a most patient hearing and that the judge must have kept a very full note to deliver the judgment he did.'

108. In Bishopsgate Investment Management Ltd v Maxwell [1993] BCC 120 this court criticised a judge for a five-month delay in giving judgment after a five-day hearing. Hoffmann LJ said that the members of the court thought that the time taken to deliver judgment was excessive. He added:

'We do not of course know why it took so long, but the hearing was arranged at fairly short notice to come on before the end of the summer term. The parties are entitled to feel that there was little point in exerting themselves if they were not going to have a decision for five months.'

109. The delays with which the court was concerned in those two cases were substantially shorter than the delay in the present case, even when due allowance is made for the judge's serious illness during 1995. As the judge himself was the first to recognise, a delay of this magnitude was completely inexcusable. The Plaintiff, who was not a young man, was claiming that Mr Wilson's fraudulent conduct had been causative of his financial ruin. Mr Wilson for his part was a professional man charged with serious professional misconduct amounting to fraud. Both parties were entitled to expect to receive judgment before Christmas 1994 at the very latest. The fact that they were obliged to wait another year and a quarter, even allowing for the judge's illness, is wholly unacceptable.

...

112. A judge's tardiness in completing his judicial task after a trial is over denies justice to the winning party during the period of the delay. It also undermines the loser's confidence in the correctness of the decision when it is eventually delivered. Litigation causes quite enough stress, as it is, for people to have to endure while a trial is going on. Compelling them to await judgment for an indefinitely extended period after the trial is over will only serve to prolong their anxiety, and may well increase it. Conduct like this weakens public confidence in the whole judicial process. Left unchecked it would be ultimately subversive of the rule of law. Delays on this scale cannot and will not be tolerated. A situation like this must never occur again."

37. The Conduct Division inquiring into the capacity of Justice Bruce found that there had been proved incapacity to perform judicial duties by any reasonable standards, which incapacity was found to be continuing. A summons for judicial review of the findings of the Conduct Division was dismissed by the Court of Appeal. Notwithstanding the findings of the

Conduct Division the Upper House resolved not to adopt an address to the Governor seeking his removal.

38. The inability of the Parliament in New South Wales to present an address to the Governor for the removal of a judicial officer, in the absence of a report from the Conduct Division justifying such removal, is seen as a valuable protection for judicial officers in that State. It means that no judicial officer can be removed from office unless a panel of his or her peers is of the view, after a hearing, that grounds exist for such removal. For my part, I would rather first be judged by my peers than by politicians, even although politicians have the final word.

39. What of the future? The procedure in New South Wales is now firmly in place. After some initial opposition at the time the *Judicial Officers' Act* was being considered, the Judicial Commission is now generally considered as being a valuable protection for judges in New South Wales. It removes the need for *ad hoc* Parliamentary committees to investigate complaints about the conduct or capacity of serving judges as a preliminary to parliamentary consideration of such matters. It involves an input by fellow judges who are able to apply their own experience and standards to such questions. Both the Commonwealth and other States would be well served by such a system.

40. Finally, it is self-evident that judges should only be removed in the event of either proved misbehaviour or incapacity. Consideration should be given to such a pre-condition in those States where it does not at present exist.

THE IMPORTANCE OF JUDICIAL INDEPENDENCE

Remarks by
Sandra Day O'Connor
Associate Justice, Supreme Court of the United States before the
Arab Judicial Forum, Manama, Bahrain
September 15, 2003

ALEXANDER HAMILTON, one of the Framers of the United States Constitution, wrote in *The Federalist* No. 78 to defend the role of the judiciary in the constitutional structure. He emphasized that "there is no liberty, if the power of judging be not separated from the legislative and executive powers.' ... [L]iberty can have nothing to fear from the judiciary alone, but would have every thing to fear from its union with either of the other departments." Hamilton's insight transcends the differences between nations' judicial systems. For only with independence can the reality and the appearance of zealous adherence to the Rule of Law be guaranteed to the people. As former U. S. President Woodrow Wilson wrote, government "keeps its promises, or does not keep them, in its courts. For the individual, therefore,... the struggle for constitutional government is a struggle for good laws, indeed, but also for intelligent, independent, and impartial courts." Let us keep in mind the importance of independence to the effective functioning of the judicial branch.

The principle that an independent judiciary is essential to the proper administration of justice is deeply embedded in Arab legal institutions. Virtually every Arab constitution guarantees judicial independence. For example, the Constitution of the Kingdom of Bahrain provides, in article 104, that "The honor of the judiciary, and the probity and impartiality of judges, is the basis of government and the guarantee of rights and freedoms. No authority shall prevail over the judgment of a judge, and under no circumstances may the course of justice be interfered with. The law guarantees the independence of the judiciary ..." Article 65 of the Egyptian Constitution provides: "the independence and immunity of the judiciary are two basic guarantees to safeguard rights and liberties." Jordan's Constitution, in article 97, proclaims that "Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law."

We see the same fine notions embodied in the six Bangalore Principles of Judicial Conduct, developed under the auspices of the United Nations to further the prospects of strengthening judicial integrity. The very first principle reads: "Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects." The Cairo Declaration on Judicial Independence, formulated in the Second Arab Justice Conference in February 2003, "agree[d] that an independent judiciary is the main pillar supporting civil liberties, human rights, comprehensive development processes, reforms in trade and investment regimes, regional and international economic cooperation, and the building of democratic institutions."

This principle also undergirds the place of the judiciary in the United States. The Founders of the United States recognized that it is essential to the effective functioning of the judiciary that it not be subject to domination by other parts of the government. To accomplish this goal, the United States Constitution established an independent federal judiciary by separating the law-making function of the legislative branch from the law-applying role of the judicial

branch. This separation of the legislative and judicial powers has proven essential in maintaining the Rule of Law. When the roles of lawmaker and judge are played by different state actors, the danger of government arbitrariness is greatly diminished. When the power to make laws is separated from the power to interpret and apply them, the very foundation of the Rule of Law—that controversies are adjudicated on the basis of previously established rules—is strengthened.

An independent judiciary requires both that individual judges are independent in the exercise of their powers, and that the judiciary as a whole is independent, its sphere of authority protected from the influence, overt or insidious, of other government actors. In the words of the Bangalore principles, judicial independence has both "individual and institutional aspects."

Addressing first the independence of individual judges, two avenues for securing that independence reveal themselves: First, judges must be protected from the threat of reprisals, so that fear does not direct their decision-making. Second, the method by which judges are selected, and the ethical principles imposed upon them, must be constructed so as to minimize the risk of corruption and outside influence.

In the United States, protection from reprisals is achieved primarily by keeping the positions and salaries of judges beyond the reach of external forces. The U.S. Constitution provides that federal judges hold office "during good behavior." This is understood to mean for life, absent the most serious misconduct. The Constitution also assures that the compensation of federal judges may not be reduced while they are in office. Together, these provisions ensure that judges will not be afraid to enforce the law as they see it. Security in pay and position frees judges to exercise their best legal judgment in applying the law fairly and impartially to the parties before them. The Kingdom of Bahrain has taken a similar approach to ensuring that the members of the new Constitutional Court will be secure in their positions, by providing in Article 106 of the Constitution that the Court's members "are not liable to dismissal" during the period of their service.

Steps must also be taken to ensure that judges exercise their powers impartially and not according to any personal interest or outside influence. Judges must not be influenced by bias toward or against particular litigants, nor by having a personal stake in the outcome of a particular case. Judges will never win the respect and trust of the citizens if they succumb to corrupting influences. Whenever a judge makes a decision for personal gain, or to curry favor, or to indulge a personal preference, that act denigrates the rule of law. The selection of judges and the ethical principles guiding their conduct must be managed with these concerns at the fore.

Selection of judges according to the candidates' merit is, naturally, key to ensuring that a judge will act impartially. Considerations other than merit motivating a political actor to appoint a judge (or voters to elect a judge) are likely to be the very considerations that will prevent a judge from deciding cases fairly and without bias. Recognizing that these interests are served by drawing from the largest possible pool of meritorious candidates, the Beirut Declaration of the First Arab Conference on Justice recommends that "[t]he election of judges shall be free of discrimination on basis of race, color, sex, faith, language, national origin, social status, birth, property, political belonging, or any other consideration. Particularly when electing judges, the principle of equal opportunity must be followed to guarantee that all applicants for a judicial position are objectively assessed." In addition, the Declaration recommends that "[n]o discrimination is permitted between men and women with respect to assuming the judicial responsibility." Heeding these recommendations will serve not only the

need to choose each candidate on merit, but will temper any institutional bias that might arise if the judiciary were entirely homogenous.

Adherence to the principles of judicial independence is not without difficulties. A particularly troubling issue is the tension that arises, once a judge is appointed, between independence from political pressure and independence from the taint of personal interest. Protection from influence exerted by other branches of government, and even by other judicial bodies, such as through life tenure and salary protection, entails to a large degree protection from discipline. Certainly, if a judge fails to adhere to the most fundamental requirements of independence—by taking bribes, for example—removal will be warranted. But short of such acts, discipline is difficult.

In the United States, maintaining a fair and independent judiciary has been accomplished with remarkable success through self-administered ethical norms. In the words of former Chief Justice Harlan Stone, "the only check upon our own exercise of power is our own self restraint." Every U.S. state and the federal judiciary has a code of conduct that promotes adherence to the highest ethical norms. The very first canon of the Code of Conduct for federal judges admonishes judges to "uphold the integrity and independence of the judiciary." As the Code of Conduct explains, "[a]n independent and honorable judiciary is indispensable to justice in our society."

In addition to placing tangible restrictions on judges' conduct, such as by prohibiting judges from deciding a case in which he or she has a personal interest, the Code of Conduct recognizes the importance of perceptions of the judiciary. A perception of corruption, bias, or other unethical traits can be almost as harmful to society's confidence in its legal system and its respect for the rule of law as the reality of those traits. Judges must not only avoid impropriety, but also the appearance of impropriety, if public confidence in the judiciary is to be maintained. Thus, the Code of Conduct for federal judges provides that judges should refrain from conduct that would create a perception that the judge's ability to carry out his or her judicial responsibilities with integrity, impartiality, and competence is impaired. By insisting that judges establish, maintain and enforce the highest standards of conduct, judicial codes of ethics are designed to ensure impartiality and that every case receives a fair hearing.

The Cairo Declaration urged governments in the Arab region to "[a]dopt a professional code of ethics consistent with the noble mission of the judiciary." A simple and attractive way to do so is to adopt the Bangalore Principles, which are a well-considered set of ethical norms. They are organized around six core values: independence, impartiality, integrity, propriety, equality, and competence. Concrete and detailed instructions give practical content to each of the values. I believe that the Principles, where adopted, will play as effective a role as the various Codes of Conduct have done in the United States.

I have so far been discussing mechanisms to ensure that individual judges will be able to perform their work free from outside influence. But an independent judiciary also requires protection from more systemic influence from other parts of government. A fundamental aspect of this institutional independence is ensuring that the judiciary receives adequate funding. Just as salary protection is necessary to individual judges' independence, overall financing issues can influence the work of the judiciary as a whole. The Beirut Declaration recommends that "[t]he state shall guarantee an independent budget for the judiciary, including all its branches and institutions. This budget shall be included as one item into the state budget, and shall be determined upon the advice of the higher judicial councils within the judicial bodies." The Cairo Declaration urged governments to "guarantee the financial

independence of judiciaries." Ensuring adequate and unconditional financing, in accordance with these Declarations' recommendations, is a crucial step in insulating the judiciary from improper influence.

A more complicated issue is that of the interplay between executive officials and the judiciary. I mentioned earlier the tension that exists between independence from other government actors on the one hand and, on the other, ensuring that judges do not compromise their own independence by succumbing to personal bias or corrupting influences. In the United States, we are more solicitous of the former concern, and leave the latter mostly up to the judiciary's self-regulating ethical principles. Different circumstances might of course require that the balance between the two be struck elsewhere. Care must always be taken to ensure, however, that the independence of the judiciary not be compromised by acts taken under the guise of disciplining wayward judges.

Judicial independence is not an end in itself, but a means to an end. It is the kernel of the rule of law, giving the citizenry confidence that the laws will be fairly and equally applied. Nowhere is this interest more keenly exposed than in the judicial protection of human rights. Judicial independence allows judges to make unpopular decisions. Federal judges in the United States have at times been called upon to stand firm against the will of the majority. For instance, the 1954 Supreme Court decision in *Brown v. Board of Education*, which declared that separate educational facilities for children of different races are inherently unequal, provoked a firestorm of criticism in much of the country. The decision, however, was a crucial moment in the recognition of civil and political rights in the United States.

Judicial independence also allows judges to make decisions that may be contrary to the interests of the other branches of government. Presidents, ministers and legislators at times rush to find convenient solutions to the exigencies of the day. An independent judiciary is uniquely positioned to reflect on the impact of those solutions on rights and liberty, and must act to ensure that those values are not subverted. Independence is the wellspring of the courage needed to serve this rule of law function.

Every country will place its own distinct stamp on the legal system it creates, but some principles transcend national differences. The importance of a strong and independent judiciary is one such principle. But, while it is easy enough to agree that judicial independence is essential in order to uphold the rule of law, more challenging by far is the task of putting these precepts into practice.

Sandra Day O'Connor was nominated to serve on the U.S. Supreme Court by President Ronald Reagan. She took her seat September 25, 1981.

LEADERSHIP

Stephen M.R. Covey: The Speed of Trust

Five waves of trust:

- Self Trust
- Relationship Trust
- Organizational Trust
- Market Trust
- Societal Trust

Self Trust: The principle of Credibility
Being credible - to yourself and to others

4 Cores:

- **Core 1: Integrity**
 - Include honesty, humility, courage
 - It's having the courage to act in accordance to your values and beliefs.
 - Make & keep commitments to yourself
 - Stand for something (Be valued and principle based. Know what you live for and live by those standards)
 - Be open
- **Core 2: Intent**
 - Motives, agendas and resulting behaviour: What is your agenda?
 - Improve intent:
 - Examine and redefine your motives
 - Declare your intent
 - Choose abundance (enough for everybody)
 - Integrity & Intent: matters of character
- **Core 3: Capabilities**
 - Abilities that inspire confidence – talents, skills, knowledge and style:
 - Also ability to establish, grow, extend and restore trust
 - Are you relevant?
- **TASKS:**
 - Talents, - what are my unique strengths or talents?, how can I better maximize talents, what talents have I not yet developed?
 - Attitudes, - What are my attitudes to work, life, learning, myself, my capabilities & opportunities to contribute? Are there more

productive attitudes and paradigms I could embrace that would help me create better results?

- Skills, - What skills do I have, what skills would I need in future that I do not currently have? To what degree am I involved with upgrading my skills?
- Knowledge, - What is my current level of knowledge in my field? What am I doing to stay current? What other areas of knowledge am I pursuing?
- Style – how effective is my current style in approaching problems and opportunities and interacting with others? Does my approach facilitate or get in the way of accomplishing the things that need to be done? What can I do to improve the way I am going about doing things?
- Increase capabilities:
 - Run with your strengths (and your purpose)
 - Keep yourself relevant
 - Know where you are going
- Core 4: Results
 - Track record, performance, getting right things done – reputation
 - What's your track record?
 - How to improve your results:
 - Take responsibility for results
 - Expect to win
 - Finish strong

Capabilities & Results: matters of competence

2nd wave: Relationship trust: the principle of behaviour

- 13 behaviours:
 - Talk straight: tell the truth and leave the right impression: be honest, tell the truth, let people know where you stand, use simple language, call things what they are, demonstrate integrity, don't manipulate people or distort facts, don't spin the truth, don't leave false impressions
 - Demonstrate respect: genuinely care for others, show you care, respect the dignity of every person and every role, treat everyone

with respect, especially those that can't do anything for you, show kindness in the little things, don't fake caring, don't attempt to be 'efficient' with people

- Create transparency: tell the truth in a way people can verify, get real and genuine, be open and authentic, err on the side of disclosure, operate on the premise of "What you see is what you get", don't have hidden agendas, don't hide information
- Right wrongs: make things right when you're wrong, apologise quickly, make restitution where possible, practice 'service recoveries', demonstrate personal humility, don't cover things up, don't let pride get in the way of doing the right thing
- Show loyalty: give credit freely, acknowledge the contributions of others, speak about people as if they were present, represent others who aren't there to speak for themselves, don't bad-mouth others behind their backs, don't disclose others' private information
- deliver results: establish a track record of results, get the right things done, make things happen, accomplish what you're hired to do, be on time and within budget, don't overpromise and underdeliver, don't make excuses for not delivering
- get better: continuously improve, increase your capabilities, be a constant learner, develop feedback systems – both formal and informal, act on the feedback you receive, thank people for feedback, don't consider yourself above feedback, don't assume today's knowledge and skills will be sufficient for tomorrow's challenges
- confront reality: address the rough stuff immediately, acknowledge the unsaid, lead out courageously in conversation, remove the 'sword from their hands', don't skirt the real issues, don't bury your head in the sand
- clarify expectations: disclose and reveal expectations, discuss them, validate them, renegotiate them if needed and possible, don't violate expectations, don't assume that expectations are clear or shared
- practice accountability: hold yourself accountable, hold others accountable, take responsibilities for results, be clear on how you'll communicate how you're doing – and how others are doing, don't

avoid or shirk responsibility, don't blame others or point fingers when things go wrong

- listen first: listen before you speak, understand, diagnose, listen with your ears – and your eyes and heart, find out what the most important behaviours are to the people you working with, don't assume you know what matters most to others, don't presume you have all the answers – or all the questions
- keep commitments: say what you're going to do, then do what you say you're going to do, make commitments carefully and keep them, make keeping commitments the symbol of your honor, don't break confidences, don't attempt to 'PR' your way out if a commitment you've broken
- Extend trust: demonstrate a propensity to trust, extend trust abundantly to those who have earned your trust, extend conditionally to those who are earning your trust, learn how to appropriately extend trust to others based on the situation, risk and credibility (character and competence) of the people involved, but have a propensity to trust, don't withhold trust because there is risk involved.

"Trust men and they will be true to you; treat them greatly and they will show themselves great." Ralph Waldo Emerson

3rd wave: organizational trust: principle of alignment

Align it in a way that establishes trust may well be your greatest influence. In doing so, you positively affect everything else within the organization

4th wave: market trust: principle of reputation

Oprah Winfrey: ***"in the end, all you have is your reputation"***

4 cores provide diagnostic tool to improve reputation

5th wave: societal trust: principle of contribution

- It's the intent to create value instead of destroy it, to give back instead of take.
- Inspire trust: the first thing for any leader is to inspire trust. (Conant)
- Lost trust can be restored – apply cores and behaviours

Guidelines:

- Don't be too quick to judge
- Do be quick to forgive

"The weak can never forgive. Forgiveness is the attribute of the strong."
Mahatma Gandhi

"It is better to trust and sometimes be disappointed than to be forever
mistrusting and be right occasionally." Maxwell

Extending trust to others rekindles the inner spirit – both theirs and ours. It touches and enlightens the innate propensity we all have to trust, and to be trusted. It brings happiness to relationships, results to work and confidence to lives. Above all, it produces an extraordinary dividend in every dimension of our lives: the speed of trust.

Albert Schweitzer: "In everybody's life, at some time, our inner fire goes out. It is then burst into flame by an encounter with another human being. We should all be thankful for those people who rekindle the inner spirit."

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Article

**WRITING BETTER OPINIONS:
COMMUNICATING WITH CANDOR,
CLARITY, AND STYLE**

[Nancy A. Wanderer \[FN1\]](#)

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I. INTRODUCTION

Eighty years ago, Judge Benjamin N. Cardozo discussed the “nature of the judicial process” in a series of lectures he delivered at Yale University. [\[FN1\]](#) In his first lecture, Judge Cardozo considered how judges go about their work:

The work of deciding cases goes on every day in hundreds of courts throughout the land. Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth. Let some intelligent layman ask him to explain: he will not go very far before taking refuge in the excuse that the language of craftsmen is unintelligible to those untutored in the craft. Such an excuse may cover with a semblance of respectability an otherwise ignominious retreat. [\[FN2\]](#) More recently, Judge Frank M. Coffin has reflected on the process of judging, attempting to get some perspective on some of the “stubborn problems,” “the approaches that worked,” and “the benchmarks of craftsmanship” in rendering appellate opinions. [\[FN3\]](#) Scribbling “on tickets, menus, court docket lists, [and] baggage checks,” Judge Coffin found himself following Henry David Thoreau's advice to “[k]now your own bone; gnaw at it, bury it, unearthen it, and gnaw it still.” [\[FN4\]](#) In the end, Judge Coffin's search focused on the question being asked by citizens “[a]t all levels of sophistication ...: Why must we entrust justice to the wisdom, mercy, and objectivity of this small and elite group, the judges?” [\[FN5\]](#) By identifying this central question, Judge Coffin acknowledges the judiciary's responsibility to communicate

clearly with its various audiences as the essential ingredient in achieving the goals of our judicial system.

This article explores the purposes of appellate decisions and presents some ways appellate judges might improve their opinion writing by becoming more conscious of the needs of the audiences for whom they are writing. Part I discusses the philosophical underpinnings of our judicial system, contrasting them with those of other countries that do not rely on the “reasoned” decision making that is central to our approach. Part II looks at who the various audiences are for an appellate opinion and what those various audiences need. Part III focuses on meeting those needs by writing clear, concise opinions. Part IV considers questions of style, including the use of humor and figurative language in opinions. The article concludes with an exhortation to judges to keep the needs of their audiences firmly in mind as they go about their work and to make every choice regarding tone or content of opinions with an eye to preserving respect and credibility for our judicial system.

**II. THE REASONED OPINION: A FOUNDATION
OF AMERICAN JURISPRUDENCE**

American lawyers, judges, and scholars expect an appellate opinion to be “a discursive narrative, consisting of a candid and reasoned explanation of the court's holding.” [\[FN6\]](#) A radically different approach is taken in other countries like France where judges typically employ an opinion form that is terse and syllogistic. [\[FN7\]](#) Justice Ruth Bader Ginsburg has described opinions written in the French tradition as “tightly and precisely composed,” and reported that commentators familiar with the French system believe that “the ideal judgment is ‘considered all the more perfect for its concise and concentrated style, so that *only experienced jurists* are able to understand and admire it.” [\[FN8\]](#) Whether the litigants or the general public understand the basis for the opinion is apparently not even a consideration.

Judicial scholars in the United States, however, emphasize the importance of writing a reasoned justification for the outcome in a case as a way of achieving the goals of our judicial system: (1) guiding the participants in the legal process, (2) persuading judges, officials, and citizens that the court has reached the proper resolution of a dispute, (3) limiting judicial arbitrariness, and (4) legitimizing any judicial departures from apparently established

law. [FN9] Providing a “reasoned response to reasoned argument is an essential aspect of” our judicial process. [FN10] Requiring judges to give reasons for their decisions not only educates and persuades the readers of those opinions, it encourages judicial candor [FN11] and is designed to provide a “profound constraint on judicial discretion.” [FN12] Candor has been viewed by one commentator as

the sine qua non of all other restraints on abuse of judicial power, for the limitations imposed by constitutions, statutes, and precedents count for little if judges feel free to believe one thing about them and to say another. Moreover, lack of candor seldom goes undetected for long, and its detection only serves to increase the level of cynicism about the nature of judging and of judges. [FN13] Judge Patricia M. Wald offers two slightly different reasons why judges do not “simply decree results in individual cases and, as necessary, announce broader commandments about what the law requires” [FN14]: Judges must, first, “reinforce [their] oft-challenged and arguably shaky authority to tell others—including our duly elected political leaders—what to do” and, second, they must “demonstrate [their] recognition that under a government of laws, ordinary people have a right to expect that the law will apply to all citizens alike.” [FN15] As Justice Oliver Wendell Holmes stated more than one hundred years ago, “the command of the public force [in our society] is intrusted to the judges ... and the whole power of the state will be put forth, if necessary, to carry out their judgments and decrees.” [FN16] Thus, observed Justice Holmes, people need to know what behavior is expected of them, based on the prior judgments of the courts. [FN17] Predictability—“the prediction of the incidence of the public force through the instrumentality of the courts” [FN18]—is one of the cornerstones of our legal system. Requiring judges to explain the outcome of each case reinforces the court’s authority to regulate others and informs citizens about the rules of conduct that will apply to all. Furthermore, published reasoned opinions tend to ensure consistency within and among courts, leading to an even greater degree of predictability.

Underlying these principles is the fundamental American value, expressed in the Declaration of Independence, that our government derives its “just Powers from the Consent of the Governed.” [FN19]

Thus, the court’s authority is grounded in public assent. To ensure that assent, a judicial opinion must seek to establish with its readers a conversation that invites them to use their minds and judgment in understanding and accepting the opinion of the court. Even the Supreme Court has recognized that its “power lies ... in its legitimacy, a product of substance and perception that shows itself in the people’s acceptance of the Judiciary as fit to determine what the Nation’s law means and to declare what it demands.” [FN20] Judge John Minor Wisdom taught his law clerks the importance of writing opinions “in a way that would teach basic principles of democracy, equal protection of the laws, and constitutional federalism to lawyers, government officials, and the general public, so that all would better understand the reasons behind the court’s decisions.” [FN21] Because of “the clarity and precision of his writing,” Judge Wisdom was able to explain “firmly and clearly the court’s reasoning in reaching what were often unpopular results.” [FN22]

James Boyd White has challenged the court to ask whether its opinion represents “an authoritarian text, one that demands simple and total obedience of its reader,” or defines “the reader as a person with a mind, with a heart—as a free agent—who in reading the text is encouraged to activate these capacities in certain ways?” [FN23] By showing respect for the people affected by their rulings and encouraging this form of participatory democracy, courts encourage respect for the judicial system and widespread acceptance of their opinions. When people do not feel committed to judicial pronouncements because they do not understand them or because they feel alienated from the judicial system itself, cynicism about legal institutions flourishes, potentially leading to outright disrespect for the law. [FN24]

One legal commentator has recognized “an emerging theory of judging [that] emphasizes ... [the] sense of community or dialogue” described by Professor White. [FN25] Warning against deifying abstract law, one trial judge argues that the “kind of law that conforms to the ideals of democracy” is the only kind of law that will ultimately “contribute to the evolution of human personality, spirit and capacity” and, thus, the only “kind of law that wisely may be deified.” [FN26] Each judge assumes the responsibility of ensuring “that individual justice is done, within the framework of the law.” [FN27] This job must be done by a “human judge, not an abstract legal technician. This judge has an initial human concern that the litigants receive common-sense justice, but he also realizes that the discipline of legal doctrine governs his determination of the cause.”

[FN28] To do this job effectively, the judge must be able to recognize where justice lies and explain how the decision will be consistent, or at least not inconsistent, with existing legal authority. [FN29]

Our judicial system is, thus, thoroughly grounded on the concept that “the fairness and effectiveness of adjudication are promoted by reasoned opinions. Without such opinions the parties have to take it on faith that their participation in the decision has been real, that the arbiter has in fact understood and taken into account their proofs and arguments.” [FN30] Furthermore, if a decision has consequences for an ongoing relationship, such as in a divorce case, and no reasons for the decision are provided by the court, the litigants will necessarily have to guess about the reasons for that decision and act accordingly. [FN31] In such circumstances, the effectiveness of the adjudication would be impaired for two reasons: First, the results achieved might not be those intended by the court, and, second, the court's “freedom of decision in future cases [might] be curtailed by the growth of practices based on a misinterpretation of decisions previously rendered.” [FN32]

In a talk given at the 1960 Conference of Chief Justices, Professor Robert A. Leflar challenged the judges to focus on the purposes of the appellate courts in our legal system and achieve those purposes by speaking clearly to their audiences, both by words and by action:

Judicial opinions are the voices of our courts, and they serve the purposes that the courts serve. Stated most broadly, those are the purposes of government itself Opinions are the public voice of appellate courts, and so represent the judiciary to the public, but they are not voices merely. They are what courts do, not just what they say. They are the substance of judicial action, not just news releases about what the courts have done [FN33]

Professor Leflar challenged the judges to consider consciously their audience when writing opinions, asking “To whom is this bit of writing addressed?” and “What ideas should it convey *to that reader*?” [FN34] Judges who seriously consider these questions when writing their reasoned opinions are most likely to succeed in accomplishing the goals of our legal system. Regardless of the outcome of the cases, readers will have more faith in the judicial system and be more likely to abide by the court's decision when they understand how that decision was reached. In the end, the judges who are able to explain their decisions

well to those who read them are the judges who will be revered. As Professor Lon L. Fuller said:

The great judges of the past are not celebrated because they displayed in their judicial “votes” dispositions congenial to later generations. Rather their fame rests on their ability to devise apt, just, and understandable rules of law; they are held up as models because they were able to bring to clear expression thoughts that in lesser minds would have remained too vague and confused to serve as adequate guideposts for human conduct. [FN35] III. THE AUDIENCES FOR APPELLATE OPINIONS: WHO ARE THEY AND WHAT DO THEY NEED?

Poet and English Professor Walker Gibson has challenged appellate judges to consider the following four questions when sitting down to write an opinion:

(1) To whom am I talking—who is my reader? (2) What do I want my reader to do? (3) Who am “I”—that is, what sort of speaking voice shall I project by the manner in which I compose my language? (4) What relation should I express between this “I” and my reader—should I be formal or informal, distant or intimate? To use the literary term, what is my *tone*? [FN36] The first question, according to Professor Gibson, is simply a matter of fact: One must determine who actually reads a judicial opinion. [FN37] Professor Gibson identified the immediate readers as the litigants and their lawyers; the writing judge's colleagues, including any dissenters; the lower court where the case originated, especially if the opinion is a reversal; perhaps a higher court; newspaper reporters; and the public at large. [FN38]

Professor Gibson had the opportunity to pose this question to appellate judges directly at the Appellate Judges Seminar held at New York University in 1960. [FN39] When asked to whom (or for whom) they wrote their opinions, the twenty-five judges present listed the following nine audiences: posterity, the bar, future judges, the legislature, law students (both today's and tomorrow's), readers of the *New York Times*, themselves (as the writing judges, to satisfy themselves that their decisions are correct), the losing lawyer, and their fellow judges. [FN40] Others have noted that appellate judges must address opinions to both lower and higher courts, “lawyers seeking understanding and guidance,” other members

of the judicial panel, “judges in other jurisdictions, legislative and executive officials, scholars, and the community at large,” any of whom might plan future transactions based on the courts' opinions. [FN41]

The audiences for whom appellate judges write seem to revolve around the court like planets around the sun. Closest to the court are those most immediately concerned with the decision: the writing judge, other judges on the panel, the litigants and their lawyers. In the next orbit would be the court whose judgment was being affirmed or reversed and perhaps a higher court to whom the present opinion might be appealed. Next would come the newspaper reporters, the bar, other judges, scholars, law students, and public officials; and, finally, the public and posterity.

The answer to Professor Gibson's second question—“What do I want my readers to do?”—varies somewhat for different audiences. Generally, however, what the court is seeking is agreement. [FN42] “See it my way,” the judge seems to be saying, while knowing that at least three members of the audience are sure to disagree: the losing party, that party's lawyer, and any dissenting judges. [FN43] The lower court, if its decision has been reversed, is also likely to be an unsympathetic reader. [FN44] To persuade its various audiences, including these most resistant ones, the court must convince them that it has considered all points of view, “that opposing evaluations of the case have been understood and seriously weighed.” [FN45] To make the losing party even more accepting of the result, the judge might grant the losing side a point or two. [FN46] Regarding this approach, Professor Gibson comments, “When this suggestion is proposed to appellate judges, they nod in polite agreement. Is it not astonishing, then, how many opinions are written as if there were only one, very obvious, and utterly inescapable position, and that the position of the writer himself?” [FN47]

Professor Gibson's third question, which “concerns the quality of the ‘I’ or stylistic voice through which the judge speaks,” [FN48] was addressed in Judge Cardozo's essay, *Law and Literature*. [FN49] There, Judge Cardozo describes possible roles a judge may adopt through the use of language, including the “type magisterial or imperative” and, in the alternative, a writer who recognizes that the reader is a person “of sophistication and intelligence ... who should not be patronized.” [FN50] Discouraging the authoritarian approach of the former, Professor Gibson urges judges to adopt the latter tone, which reflects, in the

words of Judge Cardozo, “a changing philosophy of law” that tends to use “other methods more conciliatory and modest.” [FN51]

The fourth question regarding the writer's tone has probably already been answered. The reader must be treated as an equal, with respect. According to Professor Gibson, the reader should obviously

not be slapped on the back with wisecracks and jocularly; neither should he be spoken to as if he were somehow intransigently stupid in the face of a “plain meaning.” He should not be addressed at undue length, in paragraphs wordy and windy, for the tone should imply two busy [people], writer and reader, both perfectly capable of following an argument that is succinct, and efficiently composed. Most important of all, the writer must not assume that the reader is necessarily ready to adopt his position; the writer's own display of logic is not inevitably dazzling. It is in this sense that “good humor” is appropriate— a recognition of contrary yet reasonable conclusions. [FN52]

Communicating with such varied audiences may seem an impossible challenge. Yet, if the court is to satisfy the participants in the legal process; educate the bench, bar, and general public [FN53]; and leave an intelligible marker for posterity, this challenge must be met. Perhaps the best advice about how to meet the needs of the court's various audiences comes from an unlikely source: a legal reporter. In a 1949 article for the *ABA Journal*, Boyd F. Carroll of the *St. Louis Post-Dispatch* issued a “plea for simplification.” [FN54] Carroll explains that when he talks about “simplification,” he means “anything that will contribute to clear understanding of court decisions by laymen and the public in general; perhaps by lawyers, too.” [FN55] Summing up centuries of complaints about legal writers, Carroll quotes “the gripe of an irate city editor who told a reporter, ‘Don't be so damned profound. Write so city editors and street car motormen can understand.’” [FN56] His plea, as well as some specific suggestions that will be discussed in Part III, were “offered in the spirit that anything tending toward more knowledge and clearer understanding of the courts and their decisions ... is a contribution to a better evaluation and appreciation of the courts.” [FN57] Judge Cardozo would, no doubt, have agreed.

IV. WRITING CLEAR, CONCISE OPINIONS: ISSUES OF FORM, SUBSTANCE, AND STYLE

“Ask the public: The first thing they associate with professors is tweed; the first with doctors (a tie here) is lots of money or bad handwriting; and the first with lawyers, written language that is impossible to understand.” [FN58] Judges probably feel the same way about lawyers themselves, having read countless briefs that are unnecessarily long, poorly organized, illogical, and, at times, even incomprehensible. To aid in eradicating such obfuscatory legal writing, judges should take the approach often advocated in sports: the best defense is a good offense. Judges should become models of clarity, conciseness, and logical organization through their opinions. They “need to be able to articulate clearly the steps and connections in a logical argument” and “maintain clarity of expression, even in the face of complexity of thought.” [FN59] They must organize the necessary ingredients of their opinions in a logical, organized format that addresses the needs of their various audiences in as concise a way as possible. And they must write in plain English, [FN60] use correct grammar and punctuation, and adopt an engaging writing style. [FN61]

A. The Five Parts of an Opinion

A well-written opinion consists of five essential parts: the nature of the action, the statement of the facts, the questions to be decided, the determination of the issues, and the disposition and mandate. [FN62]

1. The Opening Paragraph: The Nature of the Action

The opening paragraph should set the stage by laying out the “who” and the “what” of the case. [FN63] That paragraph should begin by identifying the parties and establishing how the court will refer to them. Names are usually best, but functional designations, such as “the Contractor” also work well. Next, the paragraph should explain the nature of the case, how it came before the court, and what the court must decide. This paragraph may end with the actual ruling, informing the reader of the result of the case immediately. The following example, taken from an actual opinion, achieves the necessary results succinctly:

Joseph H. Striefel appeals from the judgment entered in the Superior Court (Hancock County, *Mead, J.*) in favor of Donna Brignull, Donald W. MacLeod III, and Martha

M. Sikkema (collectively, “the MacLeods”) in Striefel’s action seeking a declaration of his rights in a strip of land. Striefel contends that: (1) the trial court applied the wrong standard of proof; and (2) the evidence was insufficient to establish the elements of adverse possession. We disagree, and affirm the judgment. [FN64]

2. Statement of the Facts

Following a hearing or bench trial, the trial judge should have considered all the evidence presented and made findings of fact based upon stipulations, uncontroverted relevant testimony, and admissions in the pleadings. Where the testimony, oral and documentary, was controverted, the judge should have made an explicit credibility determination, using such words as “The Court finds that ...,” or “credits the testimony of ...,” or “afforded great weight [or credibility] to ...” Some of these findings of fact will be relevant to the case on appeal. In writing the opinion, the reviewing judge must determine which of the testimony or findings of fact are the relevant ones. A mere recitation of the controverted testimony, with no indication of what the trial judge found to be credible is of little use to readers of the appellate decision. Specific findings of fact or credibility determinations are necessary to explain the factual basis for the court’s decision.

The opinion should not include all the facts, but just those facts that are either legally significant or necessary to establish the context of the events described. [FN65] Although the facts should always be obtained directly from the record itself rather than from the briefs or other statements of counsel, [FN66] the statement of the facts should not reproduce the record or include long quotes from deposition or trial transcripts or the text of pleadings and motions. Diagrams and maps should be included when they will aid the reader’s understanding of the case. This section may include any relevant procedural history not stated in the opening paragraph.

The facts should be stated as a narrative, in the past tense, usually in chronological order. They should be limited to those facts necessary to an understanding of the court’s decision regarding questions of law; everything else should be omitted. Dates should be inserted only when they help readers understand the flow of events or when they serve some other purpose, such as identifying the applicable law.

The following paragraph is an example of a well-written summary of the facts:

Adams suffered a work-related back injury on November 8, 1990, while employed by Mt. Blue Health Center. Except for a brief, unsuccessful return to light-duty employment in 1991, Adams has received the equivalent of total incapacity benefits since the date of his injury. Adams filed a petition for award of an inflation adjustment in October 1996, contending that he has received total incapacity benefits pursuant to former section 54-B and is, therefore, entitled to an inflation adjustment. The Board denied the petition and we granted the employee's petition for appellate review pursuant to [39-A M.R.S.A. § 322 \(Supp. 1998\)](#). [\[FN67\]](#)

The statement of the facts must be scrupulously accurate and stated “as favorably as possible to the losing side.” [\[FN68\]](#) The court must be careful not to state as a “fact” something that was hotly contested and not explicitly resolved in the trial court. [\[FN69\]](#) It is a good practice to reread the statement of the facts after completing the opinion to ensure that all the facts relied upon are adequately stated.

a. Distinction between Facts and Legal Conclusions

The statement of the facts should not include any legal conclusions. If the defendant punched the police officer, the statement of facts should say, “The defendant *punched* the police officer,” not “The defendant *assaulted* the officer.” A *punch* is a fact; an *assault* is a legal conclusion.

Although legal conclusions should not be included in the statement of the facts, logical factual conclusions-facts inferred from the evidence presented-are permissible. Such logical inferences must be based on “the reasonable probability that the conclusion reached flows from the evidentiary data.” [\[FN70\]](#) In the following example, the court explains such a logical inference:

Although the Hearing Officer did not make an explicit finding of unavailability, that finding must be inferred from the Hearing Officer's determination that Adams was entitled to benefits pursuant to subsection 55-B for 100% partial incapacity. [\[FN71\]](#)

b. Motion to Dismiss

When reviewing the court's decision to grant or deny a motion to dismiss, the court must assume that all of the plaintiff's assertions are true. [\[FN72\]](#) When granting a motion to dismiss, “[t]he judge should set forth the facts as broadly as possible, in accordance with the pleadings, in favor of the” plaintiff. [\[FN73\]](#)

c. Motion for Summary Judgment

When reviewing the court's decision to grant or deny a motion for summary judgment, the court must view the facts in the light most favorable to the nonmoving party. [\[FN74\]](#) When setting forth the reasons for affirming a grant or denial of summary judgment, the court should present the evidence supporting and contesting the motion to show whether a genuine issue of material fact exists. [\[FN75\]](#) The court may not “serve as a fact finder in summary judgment.” [\[FN76\]](#) If the evidence on a material fact is controverted, summary judgment will not be warranted. [\[FN77\]](#)

3. Questions to be Decided

Although the issues may be introduced in the opening paragraph, the specific legal questions to be decided should be laid out in the paragraph following the statement of the facts, before the determination of the issues. This approach is preferable to scattering the issues throughout the opinion, forcing the reader to seek them out as if participating in a treasure hunt.

To adequately identify the questions to be decided, the judge must state the issues concisely and specifically. [\[FN78\]](#) An issue statement is a question of law, which can often be recognized by the use of the word “whether.” [\[FN79\]](#) The questions to be decided should be set forth as clearly and simply as possible. As in the three examples below, they should be easily distinguished from the contentions of the parties and the legal rules used to determine the outcome of the case. [\[FN80\]](#)

Because the Superior Court acted in an appellate capacity, we review directly the record of the District Court to determine whether the District Court's denial of the Rule 60(b)(5) and 60(b)(6) motion for relief from judgment constituted an abuse of discretion. [\[FN81\]](#) The Crispins have raised several issues on appeal. We address only the following: (1) the separate responsibilities of the Planning Board and the Town Council when both contract zoning and subdivision approval are sought by an applicant; (2) the public's opportunity for notice and hearing

when the Town is considering a proposal for contract zoning; and (3) the Crispins' individual claims regarding their property rights in an easement over the parcel to be owned by Maine Life Care. [FN82] We direct our attention to the elements of adverse possession, to determine whether the record contains sufficient credible evidence to support the trial court's determination that the MacLeods met their burden of establishing each of the elements. [FN83]

4. *Determination of the Issues*

This section is the heart of the opinion, the legal discussion where competing cases, laws, or policies are analyzed and a reasoned decision is reached. In the trial court, “discussion of the law is justificatory only. It is not designed to be error-correcting.” [FN84] Appellate decisions, however, are intended to determine whether errors were committed in the trial court and, if so, whether those errors were prejudicial. If an error was great enough to be prejudicial, the reviewing court must grant a reversal or vacation of the judgment. [FN85]

Before determining whether an error was committed, the court must consider the extent of the review and the applicable standard of review. [FN86] To determine the extent of the review, the appeals court must first decide whether it has jurisdiction by establishing whether an appealable final order exists. [FN87] Next, the judge must determine the proper standard of review to be applied, noting first whether all the errors claimed were preserved in the record. “The analysis as to whether reversible error occurred is generally a function of the standard of review. This standard is established either by statute or by case law. It serves as a guide to measure the weight of the error. It determines [whether] the error is prejudicial.” [FN88]

Because trial judges, litigants, and the general public will rely on appellate court opinions and the precedents they set, their meaning must be as clear as possible. A foggy, imprecise opinion is bound to lead to extensive future litigation as lawyers and litigants attempt to determine the meaning of that opinion. As Dean Wigmore warned, the judge should not “piece[] together a great many semi-irrelevant propositions of law” or “wander[] through numerous cited cases, sometimes mak[ing] as much as a law lecture out of them, and end [ing] with the impression that somewhere or other the opinion has told what the law is. But just what detail of the rule is newly decided remains unclear to the Bar.” [FN89]

To avoid this outcome, the judge must explain the rules of law and their application to the facts at hand as clearly as possible. Unlike the facts, which occurred in the past, the rules of law being applied generally exist at the time the opinion is being written; in such cases, the law must be stated in the present tense. By stating the law in the present tense, the court helps the reader to grasp the current relevancy of the legal principles being applied. [FN90] If the law has changed since the incidents giving rise to the case at hand occurred, the court must determine whether the present law is retroactive and thus applies to the present case, or the law in force at the time of the incidents should be applied. If the court determines that the former law should be applied, it should be described in the past tense, just like the facts.

Because lengthy opinions are sometimes difficult to dissect, they should be divided into sections with section headings corresponding to each of the issues on appeal. This will satisfy the litigants that their contentions have been considered and assure any reviewing court that a question raised on appeal was, in fact, preserved. If an issue involves a novel question or if “the court's own decisions upon a particular point [are] somewhat out of harmony with one another,” [FN91] an extended discussion may be necessary. If the point is well settled, the issue can be adequately treated by reference to one or two citations. It is best to avoid long string cites and block quotes from cases or treatises; their potentially mind-numbing effect causes readers to skip over and disregard them. Little time should be devoted to minor, meritless claims. Just identifying them as such is usually sufficient. They should be grouped together and dispatched in a sentence or two. Similarly, dicta and footnotes should be used sparingly because of their tendency to break the flow and distract the reader.

In discussing each legal issue, it is helpful to the reader to organize the legal analysis as follows: first, identify the discrete issue, perhaps by a section heading; then present the statutory or common law rule that applies and show how that rule has been applied in other analogous cases; finally, apply that rule to the facts in the case at hand by presenting both parties' arguments and reach a conclusion indicating which argument is more persuasive. The final disposition of the case should reflect the sum of the individual conclusions of the separate issues on appeal. [FN92] If one of the individual conclusions is inconsistent with the final disposition, either that individual conclusion should be changed or the final disposition must be modified. [FN93] The final

disposition must be consistent with all of the individual conclusions. [FN94] If this process is followed, the reader should have no trouble seeing the legal justification for the decision, as in the example below:

In order to prove entitlement to total incapacity benefits for a 1990 injury, the employee must show: (1) a total or partial physical incapacity; (2) resulting in; (3) the inability to obtain any work, part-time or full-time, in the employee's local community; and (4) the inability to perform full-time work in the ordinary competitive labor market in the state, regardless of the availability of that work. In this case, the Board concluded that Adams has a partial physical incapacity and that work is unavailable to him in his local community as a result of his work-related injury. These findings satisfy the first three requirements for establishing total incapacity. The Board further found, at least implicitly, that Adams lacked the ability to perform full-time work in the state labor market. We conclude that Adams has met the four requirements. We must conclude, therefore, that Adams is entitled to total incapacity benefits pursuant to former section 54-B. [FN95]5. *Disposition and Mandate*

The last paragraph of the opinion, containing the disposition and mandate, should provide a clear, precise resolution of the case. The disposition and mandate should describe the decision reached and set forth the relief to be granted. If the case on appeal is to be remanded, the appeals court should provide clear directions about what the trial court should do on remand. In this way, subsequent appeals may be avoided. Each of the following final paragraphs is an example of a clear disposition and mandate:

The entry is:

Judgment vacated and remanded to the Superior Court for remand to the Board of Environmental Protection for consideration consistent with this opinion with regard to the ECF system; judgment affirmed with regard to the low NOx burner system. [FN96] The entry is:

Judgment vacated. Remanded for a new trial on the remaining damages issues. [FN97] The entry is:

Judgment amended to subtract \$460.80

from the total award for unpaid wages plus treble damages. As modified, the judgment is affirmed. [FN98] The entry is:

Judgment affirmed with sanctions against the plaintiffs and their counsel in the amount of \$1,000. [FN99]B. *Writing with Conciseness and Clarity*

“Justice is not there unless there is also understanding.” [FN100] If the function of opinions is to inform or to persuade, judges have failed unless their words actually convey their ideas to their readers. [FN101] After all, “the purpose of language is to reveal thought, not to conceal it.” [FN102]

Commentators critiquing judicial opinion writing have been saying the same thing for decades: judges should write shorter, clearer opinions. [FN103] George Rose Smith, retired Associate Justice of the Arkansas Supreme Court, tells the following story to illustrate his view that most opinions would be improved if they were shorter, perhaps even cut in half:

[A] woman ... asked a florist for advice before entering a contest for the best arrangement of garden flowers. He put his instructions in three envelopes, to be opened in order. The first note told the contestant to gather her flowers, select a vase, and make the best arrangement she could. After she had done that, she opened the next envelope and was told to discard half the flowers and rearrange the rest. The last note was the same as the second one. It goes without saying that the lady won first prize, else the story would not be retold. [FN104] Commentators also call for improvement in sentence structure, punctuation, and grammar, [FN105] and a vast reduction in the use of Latin phrases and dicta in opinions. [FN106] The following rules should help to guide a judge in writing clear, concise opinions, using effective sentence structure and proper punctuation.

1. *Make the Opinion Readable*

Two major criticisms of legal writing have predominated across the centuries: “its style is strange, and it cannot be understood.” [FN107] These were the complaints Thomas More was addressing when he wrote that the “Utopians' laws were few and simple because they thought that no one should have to obey a law [that] was ‘too long for an ordinary person to read right through, or too difficult for him

to understand.” [FN108] To avoid this problem, judges should refrain from writing “long, complex sentences with many embedded clauses.” [FN109] In addition, they should break each page into at least two or three paragraphs. When the page is broken into several blocks of text, it is far more readable. One-sentence paragraphs should also generally be avoided. Unless the sentence paragraph is intended for some special effect, it is better to incorporate it with the preceding or following paragraph.

Unduly formal or abstract words and expressions also make legal writing difficult to read. Judges should abstain from using long words, unnecessary Latin phrases, and other pompous communication, often referred to as “legalese.” [FN110] Some Latin phrases like “stare decisis,” “voir dire,” and “habeas corpus” must be used, but many others like “vel non,” “sub judice,” and “inter alia,” are not only unnecessary but often misunderstood. They should be avoided.

Judges should choose the simplest word that adequately expresses the idea. For example, judges should use “later” instead of “subsequently,” “before” instead of “prior to,” “stop” instead of “cease,” “explain” instead of “elucidate,” “place” instead of “locality,” and “begin” instead of “initiate.” As Justice Marshall F. McComb suggested:

In selecting a word, think: First, do I know what it means? Second, how many of my readers know its meaning? Third, is there another word which expresses the same concept; if so, would more readers know its meaning? If you decide that a substituted word would be more readily understood by a larger audience use it [FN111] Opinion writers should also eliminate compound prepositions and use the simple form instead. For example, “because” is shorter and better than “for the reason that”; “by” expresses the same idea as “in accordance with”; and “if” means the same thing as “in the event that.” By substituting the simple form in each of these sentences, two or three words can be eliminated without changing the meaning of the sentence.

Opinion writers should resist “elegant variation” and not be afraid to repeat the same word or phrase, [FN112] especially when it has a particular legal significance. For example, they should not refer to a list of “elements” in one sentence and later call them “factors.”

2. Prefer the Active Voice

Opinion writers should use the active voice unless they have a reason not to. [FN113] In the active voice, the doer in the sentence is in the subject position. For example, “The judge pounded the gavel.” In the passive voice, the doer is not the subject of the sentence. For example, “The gavel was pounded by the judge.” Sentences in the active voice are generally leaner and more vivid. The passive voice should be used, however, when the doer is unknown or unimportant or the writer wants to downplay the doer's identity or emphasize some other part of the sentence. [FN114] For example, a criminal defendant's lawyer would probably say, “The old woman was strangled,” not, “My client strangled the old woman.”

3. Create a Strong Subject-Verb Unit

The best way to achieve “an energetic yet lean style is to make sure that the subject-verb unit carries the core of meaning in the sentence.” [FN115] To create a strong subject-verb unit, opinion writers should choose concrete subjects for their sentences [FN116] and put the real action in the sentence in the verb, [FN117] not bury it in a noun. For example, the following sentence is weak because the verb is “are”: “The facts in the case are an illustration of this point.” Putting the core meaning of the sentence into the subject-verb unit creates a more energetic style: “The facts in the case illustrate this point.”

Opinion writers should avoid using the words “there is,” “there are,” “there were,” “it is,” and “it was” as the opening words in a sentence “unless the point of the sentence is that something exists.” [FN118] They should look for the doer in the sentence and make the doer the subject. For example, “She planned to file the motion,” is a stronger sentence than “It was her plan to file the motion.”

4. Avoid Nominalizations and Abstractions

Nominalizations—turning verbs into nouns—should be avoided. They dilute the impact of the sentence and convey an abstract impression, disconnected from common experience. For example, “reached an agreement” should be “agreed,” “made a statement” should be “stated,” and “performed a review” should be “reviewed.” [FN119]

5. Use the Proper Word to Express an Idea

Judge Wisdom emphasized the need “to find precisely the right word to do the job at hand.”

[FN120] Noting that English has many more words than most other languages, Judge Wisdom observed that such a large number of English words can be “both a boon and a detriment to lawyers and judges. The unskilled writer can easily find a word that may seem good enough at first blush, but by critical standards is just not the right word.” [FN121] Many writers, including judges, often confuse the following words. To maintain precision, judges should use the words as indicated below. [FN122]

Affect and effect: “Affect” is a verb meaning “to influence”: “The testimony was intended to *affect* the jury.” “Affect” can also mean “to pretend”: “She *affected* surprise.” “Effect” is usually used as a noun meaning “consequences”: “She noted three major *effects* of the treatment.” Sometimes “effect” may be used as a verb meaning “to bring about or accomplish”: “The mediator *effected* an agreement.” [FN123]

Amount and number: “Use ‘amount’ with nouns that cannot be counted and ‘number’ with nouns that can be counted”: “That *amount* of pain can never be measured in any *number* of dollars.” [FN124]

Common law and case law: Be careful to distinguish between “common law” and other case law. Although the term “case law” encompasses both common law and court decisions interpreting or applying enacted law, they are not one and the same.

Compare to/compare with/contrast: Use “compare to” in pointing out only similarities: “She *compared* Judge Smith *to* Moses when the judge applied the ‘best interests of the child’ standard.” Use “compare with” when pointing out both similarities and differences: “In choosing a puppy, be sure to *compare* one breed *with* the other.” Use “contrast” when pointing out only differences: “Today’s rain certainly *contrasts* with yesterday’s beautiful sunshine.” [FN125]

Continual and continuous: “‘Continual’ means ‘frequently repeated.’” “‘Continuous’ means ‘unceasing’”: “His *continual* complaint was that the *continuous* buzzing sound interrupted his sleep.” [FN126]

Farther and further: “Use ‘farther’ for geographical distances and ‘further’ for ... other additions”: “The *farther* he walked the *further* discouraged he became.” [FN127]

Flout and flaunt: “Flout” means “to treat with contemptuous disregard.” “Flaunt” means “to display

ostentatiously”: “He *flouted* the nudity ordinance by *flaunting* his unclothed physique.”

Fewer and less: “Use ‘fewer’ for objects that can be counted.” Use “less” when referring to an amount: “He used *fewer* bottles of shampoo because he had *less* hair.” [FN128]

Held, ruled, and stated: Be clear whether a court “held,” “ruled,” or “stated” something. When the court applies a legal rule to the facts, it “holds” something. A holding is the court’s decision in a particular case. When the court announces a legal standard to be used in deciding issues, it “rules” something. Rules are not case-specific; they are general standards to be applied in similar cases. When the court makes comments that are not directly related to the issue before it or necessary to its holding, the court “states” something. These statements are generally dicta. Do not use the imprecise word “indicated” when you mean “held,” “ruled,” or “stated.”

Lay and lie: “Lay” means “to set down”; it must take a direct object: “*Lay* the book down.” “Lie” means “to recline or remain”; it does not take a direct object: “The book *lies* open on the desk.” [FN129]

Oral and verbal: “Oral” means “spoken out loud”; “verbal” means “in words.” Something that is verbal may be oral or in writing. Do not make the mistake of saying, “Your answer may be verbal or in writing.” To cover both spoken and written language say, “Your answer may be oral or in writing.”

Proved and proven: Use “proved” as part of the verb “to prove” and “proven” as an adjective: “The lawyer *proved* her client was innocent even though everyone knew he was a *proven* liar.” [FN130]

Since and because: Do not use “since” unless you are referring to the passage of time. Use “because” if you are indicating cause and effect: “*Since* Wednesday, I have had the flu.” “*Because* she was only two years old, she couldn’t sit still in church.” [FN131]

While and although: Use “while” only as a time reference: “*While* you were sleeping, I ran three miles and cooked breakfast.” Use “although” to indicate a relationship between ideas: “*Although* she was only two years old, she could read simple books.”

That/which/who: “Use ‘that’ and ‘which’ for things; use ‘who’ for people. Use ‘that’ [to introduce]

... restrictive clauses and ‘which’ for nonrestrictive clauses”: “She was the teacher *who* gave me my first C.” “I opened the thin, blue envelope with my name on it, *which* contained a \$100 bill.” “I would prefer to use the lawnmower *that* starts on the first pull.” [\[FN132\]](#)

6. *Strive for Conciseness*

Judges can succeed in writing shorter, more concise opinions in several ways. First, they can cut out superfluous facts, including only those necessary to the legal conclusions. They can also avoid cumulative citation of authority and eliminate most footnotes and dicta.

Judges can omit unnecessary words and phrases. For example, they can eliminate all the words in parentheses in the following sentence: (At this point in time), we are (in the process of) filing a motion to dismiss (with the court). They should avoid repeating themselves needlessly by eliminating redundant words like the following words in parentheses: (point in) time, (advance) warning, (past) history, consensus (of opinion). They can remove qualifiers like “very,” “quite,” “rather,” and “somewhat,” and avoid “throat-clearing expressions” that add little or nothing to the meaning of the sentence [\[FN133\]](#) like the following: “It is significant that,” “It is generally recognized that,” and “It should be noted that.”

Judges can use variety in sentence openers. Although most sentences should begin with the subject, sentence variety may be achieved by preceding the subject with a phrase or clause that establishes a context or picks up a previously established theme. The previous sentence is an example of beginning the sentence with a clause.

7. *Keep a Reference Book Handy to Resolve Questions of Punctuation, Usage, and Style*

No one can remember all the rules of effective writing. Thus, it is essential to keep a reference book nearby as a guide to grammar, punctuation, and usage. *The Elements of Style*, [\[FN134\]](#) by William Strunk, Jr. and E.B. White, is perhaps the clearest, and certainly the most concise, authority on the rules of usage, principles of composition, and matters of form and style. *A Writer's Reference*, [\[FN135\]](#) by Diana Hacker, provides a more expansive guide to better writing. It is fully indexed and provides helpful examples to illustrate each point.

In the end, all judges must set their own standards for their opinions. They must then “govern and

discipline the writing process to comply with those standards.” [\[FN136\]](#) The bottom line in judicial writing, however, must be whether opinion writers have communicated effectively with their audiences by organizing and writing their opinions “efficiently, understandably and forcefully.” [\[FN137\]](#) “The purpose of the writing is to identify and articulate the questions presented and to render a decision.” [\[FN138\]](#) In doing so with dignity, clarity, and profound respect for the litigants, a judge has fulfilled the promise of our judicial system.

V. USE OF HUMOR AND FIGURATIVE LANGUAGE IN OPINIONS

Sometimes judges are tempted to “spice up” their opinions with a dash of humor or figurative language. Most commentators, however, agree that judicial humor is “neither judicial nor humorous.” [\[FN139\]](#) According to William Prosser,

Judicial humor is a dreadful thing. In the first place, the jokes are usually bad; I have seldom heard a judge utter a good one. There seems to be something about the judicial ermine which puts its wearer in the same general class with the ordinary radio comedian. He just is not funny. In the second place, the bench is not an appropriate place for unseemly levity. The litigant has vital interests at stake. His entire future, or even his life, may be trembling in the balance, and the robed buffoon who makes merry at his expense should be choked with his own wig. [\[FN140\]](#) Thus, humor is almost always inappropriate in opinions. Humor at a party's expense is never appropriate, no matter how clever or witty it is. Litigation is a serious matter, the outcome of which has great significance for the parties. They are seeking justice and a level of sensitivity and concern on the part of the court. “Amusing” verse, puns, innuendos and gratuitous commentary, excessive brevity, spoofs, sarcasm, and ridicule are not appreciated by the parties or their attorneys and should be avoided.

Some commentators, however, believe that humor may be appropriate if it enlivens opinions and serves an educative function. [\[FN141\]](#) Even Judge Cardozo seemed ambivalent on the propriety of adding a bit of humor or figurative language to opinion when he wrote:

Flashes of humor are not unknown, yet the form of opinion which aims at humor from

beginning to end is a perilous adventure, which can be justified only by success, and even then is likely to find its critics as many as its eulogists I would not convey the thought that an opinion is the worse for being lightened by a smile. I am merely preaching caution In days not far remote, judges were not unwilling to embellish their deliverances with quotations from the poets. I shall observe towards such a practice the tone of decent civility that is due to those departed. [FN142] The use of humor and figurative language may help to “demystify law,” or “crystallize a point, put it in context, and breathe life into the set of facts that the law has formalized.” [FN143]

In 1855, for example, the Supreme Court of California wrote the following short opinion in which the humor injected may actually have clarified the opinion's legal significance without being offensive to the parties:

If the defendants were at fault in leaving an uncovered hole in the sidewalk of a public street, the intoxication of the plaintiff cannot excuse such gross negligence. A drunken man is as much entitled to a safe street as a sober one, and much more in need of it. [FN144] In another short opinion, the court seems to have said all that is needed in just a few words:

The appellant has attempted to distinguish the factual situation in this case from that in *Renfro v. Higgins Rack Coating and Manufacturing Co., Inc.* He didn't. We couldn't. Affirmed. Costs to appellee.” [FN145] The best examples of judicial humor seem to be characterized by two requirements: brevity and a genuine relevance to the case at hand. [FN146]

William Domnarski, in a 1986 law review article, provided some examples of the effective use of humor and metaphor by Connecticut Supreme Court Justice Leo Parskey. [FN147] Parskey apparently made frequent use of colorful figurative language: allusions, similes, maxims, and especially epigrams loaded with metaphors. [FN148]

An epigram is defined as “a concise [writing] dealing pointedly and often satirically with a single thought or event and often ending with an ingenious turn of thought”; it is also “a terse, sage, or witty and often paradoxical saying.” [FN149] The use of epigrams is particularly effective in judicial opinions

because “the antithesis at its center declares meaning through contrasts and gives the defined idea depth and texture.” [FN150] For example, in the following portion of an opinion, Justice Parskey used two epigrams to aid in the reader's understanding of a confusing legal doctrine:

[The] *Evans* rule is designed to protect fundamental constitutional rights. It deals with substance, not labels. Putting a constitutional tag on a nonconstitutional claim will no more change its essential character than calling a bull a cow will change its gender. If a word to the wise will do it, then suffice it to observe that the *Evans* trial court bypass to this court is a narrow constitutional path and not the appellate Champs-Elysees. [FN151] In another opinion, Justice Parskey used an epigram involving a vacuum cleaner to explain the error of thinking that a claim involving due process should warrant automatic appellate review: “Due process is not to be regarded as a giant constitutional vacuum cleaner which sucks up any claims of error which may occur to a party upon microscopic examination of the trial record.” [FN152] According to Domnarski, “[o]nce the reader's attention has been captured by the apparently incongruous images, he realizes that the distinction between bulls and cows analogizes potently to claims that cannot be disguised by labels. In this manner, Parskey's imagery reflects a deliberate use of hyperbole that intensifies meaning by helping to isolate the principle at issue.” [FN153] Domnarski points out that the gift of metaphor has been highly prized since Aristotle who stated, “By far, the greatest thing is to be a master of metaphor. It is one thing that cannot be learned from others. It is a sign of genius, for a good metaphor implies an intuitive perception of similarity among dissimilars.” [FN154]

Ultimately, in deciding whether to include imagery or humor in an opinion, a judge must consider his or her own audience and purpose. Will the interjection of witty or figurative language help to demystify the law and explain the rationale more clearly to the reader? Dealing with legal principles can, at times, overly formalize a dispute; perhaps the use of imagery and humor can help bring the dispute down to earth. Or will its use demean or ridicule the parties and actually prevent them from understanding that justice has been served? If so, it should be eliminated.

Judge Smith concluded his examination of humorous opinions in verse with the following limerick, which appeared in *United States v. Irving*, [FN155] an unpublished opinion. [FN156] Mr. Irving had been charged with “having created a physically offensive condition” by briefly being nude while changing out of some wet clothes in a mostly deserted parking lot at the Lava Beds National Monument.” [FN157] Although Irving was convicted of this petty offense, no record of the proceeding was made and the conviction was set aside. [FN158] In setting aside the conviction, United States District Judge Thomas J. McBride quoted from counsel's brief this limerick, which Judge Smith believed, had genuine relevance, considering the facts in the case:

There was a defendant named Rex
With a minuscule organ of sex.
When jailed for exposure
He said with composure,
De minimis non curat lex. [FN159]

Although this limerick clearly meets the criterion of brevity, its genuine relevance to the case at hand is surely in doubt. Furthermore, Mr. Irving might find the humor in the limerick demeaning and potentially embarrassing. So, despite the limerick's origin in Irving's counsel's brief, the judge would have done well to leave it out of his opinion. Because it does nothing to enhance the reader's understanding of the law or explain the court's opinion, the limerick fails to serve the interests of justice and should have been eliminated.

VI. CONCLUSION

Ultimately, the goal of opinion writing is clear communication. If opinion writers make every choice regarding the tone or content of opinions with an eye toward communicating with the audiences for those opinions, the purposes of our judicial system will be met. Such opinion writers will have succeeded in the noble goal of “devis[ing] apt, just, and understandable rules of law,” which will serve as “guideposts for human conduct.” [FN160] There can be no higher calling.

The following checklist may be helpful in critiquing an opinion. Opinion writers who can answer “yes” to all of the questions on the list can be fairly confident that their opinions will provide reasoned explanations of their courts' holdings, explanations that their readers can understand and ultimately should be able to accept.

CHECKLIST FOR CRITIQUING AN OPINION

Does the court have jurisdiction?

Are all the factual statements in a trial court opinion supported by references to the original depositions, transcripts, and exhibits?

Are the questions to be decided laid out clearly?

Are all the legally significant facts included in the statement of the facts?

Are all direct quotations from an exhibit, a witness's testimony, or legal authority perfectly accurate?

Have the facts supporting the losing party been stated?

Have all issues been addressed?

Have the arguments of the losing party been stated and adequately addressed?

Do the cases cited stand for the propositions for which they are asserted?

Are the conclusions in the opinion supported by clear reasoning and legal authorities?

Is the court's ruling stated clearly and succinctly?

Have all omissions from quotations been indicated by ellipses?

Are all dates, numbers, and citations accurate?

Is the opinion readable, grammatical, and correctly punctuated?

Is any use of figurative language or humor in the opinion likely to help the reader to understand the court's resolution of the legal issues in the case?

Have all the parties been treated with respect?

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[FN1] . See generally BENJAMIN N. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* (1921).

[FN2] . *Id.* at 9.

[FN3] . FRANK M. COFFIN, *THE WAYS OF A JUDGE* 3 (1980).

[FN4] . *Id.* (citation omitted in original).

[FN5] . *Id.* at 3-4.

[FN6] . Michael Wells, *French and American Judicial Opinions*, 19 *YALE J. INT'L L.* 81, 81 (1994).

[FN7] . *Id.* at 82.

[FN8] . Ruth Bader Ginsburg, *Remarks on Writing Separately*, 65 *WASH. L. REV.* 133, 136 (1990) (quoting RENÉ DAVID & JOHN E.C. BRIERLEY, *MAJOR LEGAL SYSTEMS IN THE WORLD TODAY* 129 (2d ed. 1978) (emphasis added)).

[FN9] . Wells, *supra* note 6, at 82.

[FN10] . David L. Shapiro, *In Defense of Judicial Candor*, 100 *HARV. L. REV.* 731, 737 (1987).

[FN11] . *Id.*

[FN12] . Patricia M. Wald, *Some Thoughts on Judging as Gleaned from One Hundred Years of the Harvard Law Review and Other Great Books*, 100 *HARV. L. REV.* 887, 904 (1987).

[FN13] . Shapiro, *supra* note 10, at 737.

[FN14] . Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial*

[Writings](#), 62 U. CHI. L. REV. 1371, 1371 (1995).

[FN15] . *Id.* at 1372.

[FN16] . Oliver Wendell Holmes, *The Path of the Law*, 10 HARV. L. REV. 457,457 (1897).

[FN17] . *Id.*

[FN18] . *Id.*

[FN19] . THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

[FN20] . [Planned Parenthood v. Casey](#), 505 U.S. 833, 865 (1992).

[FN21] . Allen D. Black, *Judge Wisdom, the Great Teacher and Careful Writer*, 109 YALE L.J. 1267, 1269 (2000).

[FN22] . *Id.* Judge Wisdom's opinion in [United States v. Jefferson County Bd. of Educ.](#), 372 F.2d 836 (5th Cir. 1966), adopted per curiam, 380 F.2d 385 (5th Cir. 1967) (en banc), provides an excellent example of his ability to explain the court's holding in simple and practical terms. In instructing federal courts on how to desegregate hundreds of school districts, Judge Wisdom concluded, "The only school desegregation plan that meets constitutional standards is one that works." *Id.* at 847 (emphasis omitted).

[FN23] . JAMES BOYD WHITE, JUSTICE AS TRANSLATION 101 (1990).

[FN24] . Wells, *supra* note 6, at 88.

[FN25] . Martha L. Minow, *Judging Inside Out*, 61 U. COLO. L. REV. 795, 800 (1990) (pondering whether judging is a lonely experience or "an experience that confirms solidarity with others and that unlocks stored up memories and triggers imagined conversations with other people who could have a view on the issue").

[FN26] . William J. Palmer, *Appellate Jurisprudence as Seen by a Trial Judge*, 49 A.B.A. J. 882, 885 (1963).

[FN27] . Robert J. Martineau, *Craft and Technique, not Canons and Grand Theories: A Neo-Realist View of Statutory Construction*, 62 GEO. WASH. L. REV. 1, 33 (1993) (quoting Albert Tate, Jr., *The Art of Brief Writing: What Judge Wants to Read*, LITIG. 11 at 11 (Winter 1978)).

[FN28] . *Id.* (quoting Albert Tate, Jr., *The Art of Brief Writing*, LITIG. 11 (Winter 1978)).

[FN29] . *See id.*

[FN30] . Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 388 (1978).

[FN31] . *See id.*

[FN32] . *Id.*

[FN33] . Robert A. Leflar, *Some Observations Concerning Judicial Opinions*, 61 COLUM. L. REV. 810, 819 (1961).

[FN34] . *Id.*

[FN35] . Lon L. Fuller, *An Afterword: Science and the Judicial Process*, 79 HARV. L. REV. 1604, 1619 (1966).

[FN36] . Walker Gibson, *Literary Minds and Judicial Style*, 36 N.Y.U. L. REV. 915, 921 (1961).

[FN37] . *Id.*

[FN38] . *Id.* at 921-22.

[FN39] . Leflar, *supra* note 33, at 813 (citing Robert A. Leflar, *The Appellate Judges Seminar at New York University*, 9 J. LEGAL ED. 359 (1956)).

[FN40] . *Id.* at 813-14.

[FN41] . Wells, *supra* note 6, at 87.

[FN42] . Gibson, *supra* note 36, at 922.

[FN43] . *Id.*

[FN44] . *Id.*

[FN45] . *Id.*

[FN46] . *Id.*

[FN47] . *Id.*

[FN48] . *Id.*

[FN49] . *Id.* (citing BENJAMIN N. CARDOZO, LAW AND LITERATURE 3-4 (1931)).

[FN50] . Gibson, *supra* note 36, at 923.

[FN51] . CARDOZO, *supra* note 1, at 14-15 quoted in Gibson, *supra* note 36, at 923. See also JOHN P. FRANK, MARBLE PALACE: THE SUPREME COURT IN AMERICAN LIFE 295, 297 (1958) (cited in Gibson, *supra* note 36, at 922 n.16 (quoting Frank's terms for "the stuffier judicial styles" as "Legal Lumpy" and "Legal Massive")).

[FN52] . *Id.*, at 923.

[FN53] . See generally Christopher L. Eisgruber, *Is the Supreme Court an Educative Institution?*, 67 N.Y.U. L. REV. 961 (1992).

[FN54] . Boyd F. Carroll, *The Problems of a Legal Reporter: Views on Simplifying Appellate Opinions*, 35 A.B.A. J. 280, 280 (April 1949).

[FN55] . *Id.* at 281.

[FN56] . *Id.*

[FN57] . *Id.* at 282.

[FN58] . George D. Gopen, *The State of Legal Writing: Res Ipsa Loquitur*, 86 MICH. L. REV. 333, 333 (1987).

[FN59] . *Id.* at 335.

[FN60] . *Id.* at 348 (quoting the following elements of "Plain English": (1) a clear, organized, easy-to-follow outline or table of contents, (2) appropriate captions or headings, (3) reasonably short sentences, (4) active voice, (5) positive form, (6) subject-verb-object sequence, (7) parallel construction, (8) concise words, (9) simple words, and (10) precise words.) (citation omitted).

[FN61] . 1999 Fall Judicial Conference of the Maine State Judiciary, "Better Opinion Writing," Augusta (Oct. 22, 1999) (notes on file with the author). At the Fall Judicial Conference of the Maine State District Court, Superior Court, and Supreme Judicial Court judges, trial court judges were asked to tell Maine Supreme Court Judges what they would like to see more of (or less of) in their opinions. The trial judges made the following suggestions to the Supreme Judicial Court:

"Don't misstate applicable facts." "Be specific about what the trial court ruled, what the previous order or decision was." "Give more instruction to the trial court (e.g., particular language to use in instructing juries). Be clearer about what the court should do on remand." "Be clearer in your use of language: Does 'property' mean real or

personal property?" "Be more specific in stating the rule you are adopting and your holding." "Apply the law consistently; resist the urge to get a 'fairer' result. Don't overrule prior cases unless absolutely necessary." "Be more instructional, less cryptic." "Indicate explicitly which claims the court considers 'frivolous' or 'without merit.'" "Be creative: Literary and well reasoned opinions are fun to read." *Id.*

[FN62] . See JOYCE J. GEORGE, JUDICIAL OPINION WRITING HANDBOOK 13 (3d ed. 1986); RUGGERO J. ALDISERT, OPINION WRITING § 10.2, at 153 (West Publishing Co. 1990).

[FN63] . ALDISERT, *supra* note 62, § 10.2, at 153.

[FN64] . *Striefel v. Charles-Keyt-Leaman P'ship*, 1999 ME 111, ¶ 1, 733 A.2d 984.

[FN65] . GEORGE, *supra* note 62, at 13.

[FN66] . George Rose Smith, *A Primer of Opinion Writing for Law Clerks*, 26 VAND. L. REV. 1203, 1204 (1973).

[FN67] . *Adams v. Mt. Blue Health Ctr.*, 1999 ME 105, ¶ 2, 735 A.2d 478.

[FN68] . Richard B. Klein, *Opinion Writing Assistance Involving Law Clerks: What I Tell Them*, JUDGES' J. Summer 1995, at 33, 35.

[FN69] . *Id.*

[FN70] . ALDISERT, *supra* note 62, at 158.

[FN71] . *Adams v. Mt. Blue Health Ctr.*, 1999 ME 105, ¶ 19 n.5, 735 A.2d 478.

[FN72] . See, e.g., *United States v. Gaubert*, 499 U.S. 315, 327 (1991).

[FN73] . ALDISERT, *supra* note 62, § 10.4 at 155.

[FN74] . See, e.g., *Matushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587-88 (1986).

[FN75] . *Id.*

[FN76] . *Id.*

[FN77] . ALDISERT, *supra* note 62, § 10.5, at 156.

- [FN78] . GEORGE, *supra* note 62, at 48-49.
- [FN79] . *Id.* at 49.
- [FN80] . *Id.*
- [FN81] . Beck v. Beck, 1999 ME 110, ¶ 6, 733 A.2d 981 (citations omitted).
- [FN82] . Crispin v. Town of Scarborough, 1999 ME 112, ¶ 9, 736 A.2d 241.
- [FN83] . Striefel v. Charles-Keyt-Leaman P'ship, 1999 ME 111, ¶ 8, 733 A.2d at 989.
- [FN84] . ALDISERT, *supra* note 62, § 10.9, at 160.
- [FN85] . GEORGE, *supra* note 62, at 83.
- [FN86] . *Id.* at 84.
- [FN87] . *Id.*
- [FN88] . *Id.*
- [FN89] . 1 JOHN HENRY WIGMORE, WIGMORE ON EVIDENCE § 8b, at 254 (3d ed. 1940).
- [FN90] . GEORGE, *supra* note 62, at 52.
- [FN91] . Smith, *supra* note 66, at 1206.
- [FN92] . GEORGE, *supra* note 62, at 94.
- [FN93] . *Id.*
- [FN94] . *Id.*
- [FN95] . Adams v. Mt. Blue Health Ctr., 1999 ME 105, ¶¶ 18-19, 735 A.2d 478 (footnotes omitted).
- [FN96] . Int'l Paper Co. v. Bd. of Env'l Prot., 1999 ME 135, ¶ 33, 737 A.2d 1047.
- [FN97] . Withers v. Hackett, 1999 ME 117, ¶ 9, 734 A.2d 189.
- [FN98] . Taylor v. Kennedy, 1999 ME 116, ¶ 6, 734 A.2d 682.
- [FN99] . Johnson v. Amica Mutual Ins. Co., 1999 ME 106, ¶ 12, 733 A.2d 977.
- [FN100] . Anon Y. Mous, *The Speech of Judges: A Dissenting Opinion*, 29 VA. L. REV. 625, 638 (1943) (quoting Justice Cardozo from an uncited opinion).
- [FN101] . *See* Klein, *supra* note 68, at 36 (“Legal writing should be thought of as a transportation system, to convey an idea from your head to that of the reader. Plain writing does this best.”).
- [FN102] . Eugene C. Gerhart, *Improving our Legal Writing: Maxims from the Masters*, 40 A.B.A. J. 1057, 1057 (1954).
- [FN103] . *See, e.g.*, Marshall F. McComb, *A Mandate from the Bar: Shorter and More Lucid Opinions*, 35 A.B.A. J. 382, 382-84 (1949) (quoting Justice John D. Martin's exhortation, “Let there be no unsolved mysteries in the Courts. Reasons for the decision of cases should be always unmistakably clear.”) (citation omitted); Robert G. Simmons, *Better Opinions-How?*, 27 A.B.A. J. 109, 109 (1941) (reporting on a “recent survey made by a committee of the American Bar Association” indicating that “a great majority of lawyers prefer: One-Short written opinions; Two-Memorandum opinions in cases in which the law is already clear; Three-The omission of (pure dicta).”) (citation omitted).
- [FN104] . Smith, *supra* note 66, at 1205.
- [FN105] . *See id.* at 1208.
- [FN106] . McComb, *supra* note 103, at 383-84.
- [FN107] . Robert W. Benson, *The End of Legalese: The Game is Over*, 13 N.Y.U. REV. L & SOC. CHANGE 519, 520 (1984).
- [FN108] . *Id.* at 520-21 (quoting THOMAS MORE, UTOPIA 106 (P. Turner trans. 1965) (1st ed. Louvain 1516)).
- [FN109] . *Id.* at 524; *see also* Gopen, *supra* note 58, at 349 (“The problem is not how to make lawyers write shorter sentences, but rather how to get them to manage long sentences far better than they now are able. In the process, the redundancies, the loophole plugs, and other assorted fat will naturally be trimmed away”).
- [FN110] . Benson, *supra* note 107, at 523.
- [FN111] . McComb, *supra* note 103, at 384.
- [FN112] . John Minor Wisdom, *Wisdom's*

Idiosyncrasies, 109 YALE L.J. 1273, 1274 (2000).

[FN113] . See LAUREL CURRIE OATES, ANNE ENQUIST & KELLY KUNSCH, THE LEGAL WRITING HANDBOOK § 23.1.2, § 23.1.3, at 588-90 (2d ed. 1998).

[FN114] . *Id.* § 23.1.3, at 590-93.

[FN115] . *Id.* § 24.2.4, at 643.

[FN116] . *Id.* § 23.2, at 593.

[FN117] . *Id.* § 24.2.4, at 643.

[FN118] . *Id.* § 24.2.4, at 644.

[FN119] . *Id.*

[FN120] . Black, *supra* note 21, at 1270.

[FN121] . John Minor Wisdom, *How I Write*, 4 SCRIBES J. LEGAL WRITING 83, 84 (1993) *quoted in* Black, *supra* note 21, at 1270.

[FN122] . OATES ET AL., *supra* note 113, at 906-12 (Glossary of Usage).

[FN123] . *Id.*

[FN124] . *Id.*

[FN125] . *Id.* at 907.

[FN126] . *Id.* at 908.

[FN127] . *Id.* at 909.

[FN128] . *Id.* at 906.

[FN129] . *Id.* at 910.

[FN130] . *Id.* at 911.

[FN131] . *Id.* at 907.

[FN132] . *Id.* at 912.

[FN133] . *Id.* at 654.

[FN134] . WILLIAM STRUNK JR. & E.B. WHITE, THE ELEMENTS OF STYLE (4th ed. 2000).

[FN135] . DIANA HACKER, A WRITER'S REFERENCE (4th ed. 1999).

[FN136] . GEORGE, *supra* note 62, at 144.

[FN137] . *Id.* at 143.

[FN138] . *Id.* at 144.

[FN139] . George Rose Smith, *A Primer of Opinion Writing, For Four New Judges*, 21 ARK. L. REV. 197, 210 (1967); *see also* Marshall Rudolph, *Judicial Humor: A Laughing Matter?*, 41 HASTINGS L.J. 175, 176 (1989); GEORGE, *supra* note 62, at 7 (“Never use sarcasm and avoid humor.”); *but see* George Rose Smith, *A Critique of Judicial Humor*, 43 ARK. L. REV. 1, 25 n.60 (1990) (retracting his view of humor in *A Primer of Opinion Writing, For Four New Judges* as follows: “In judicial language, that part of the Primer disapproving judicial humor is hereby overruled, set aside, held for naught, and stomped on!”) (hereinafter “*Critique*”).

[FN140] . THE JUDICIAL HUMORIST: A COLLECTION OF JUDICIAL OPINIONS AND OTHER FRIVOLITIES vii (William Prosser ed., 1952), *quoted in* Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 U. MIAMI L. REV. 693, 693 (1987).

[FN141] . *See, e.g.*, Adalberto Jordan, *Imagery, Humor, and the Judicial Opinion*, 41 U. MIAMI L. REV. 693, 700-02, 705 (1987) (providing a “small sampling of some of the best judicial opinions employing colorful language”).

[FN142] . BENJAMIN N. CARDOZO, LAW AND LITERATURE 26-27, 29 (1931), *quoted in* Jordan, *supra* note 141, at 700.

[FN143] . Jordan, *supra* note 141, at 700.

[FN144] . Marshall Rudolf, *Judicial Humor: A Laughing Matter?*, 41 HASTINGS L.J. 175, 180 (1989) (quoting *Robinson v. Pinoche, Bayerque & Co.*, 5 Cal. 460, 461 (1855)).

[FN145] . *Denny v. Radar Industries, Inc.*, 184 N.W.2d 289, 290 (Mich. Ct. App. 1971) (citation omitted).

[FN146] . *Critique*, *supra* note 139, at 5, 8.

[FN147] . *See generally* William Domnarski, *The Tale of the Text: The Figurative Prose Style of Connecticut Supreme Court Justice Leo Parskey*, 18 CONN. L. REV. 459 (1986).

[FN148] . *Id.* at 459.

[FN149] . MERRIAM WEBSTER'S COLLEGIATE DICTIONARY 390 (10th ed. 1993).

[FN150] . Domnarski, *supra* note 147, at 460.

[FN151] . *Id.* (quoting [State v. Gooch, 438 A.2d 867, 869 \(Conn. 1982\)](#)).

[FN152] . *Id.* (quoting [State v. Kurvin, 442 A.2d 1327, 1331 \(Conn. 1982\)](#)).

[FN153] . *Id.* at 462-63.

[FN154] . *Id.* at 465 (quoting Aristotle from J. WILLIAMS, TEN LESSONS IN CLARITY AND GRACE 156 (1981)).

[FN155] . No. 76-151 (E.D. Cal. 1977).

[FN156] . CRITIQUE, *supra* note 147, at 14.

[FN157] . *Id.*

[FN158] . *Id.*

[FN159] . *Id.*

[FN160] . *See* Fuller, *supra* note 35, at 1619.

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JUDICIAL ETHICS & INTEGRITY

Summary: It is a fundamental assumption of the Constitution and the citizens of the Republic that magistrates should behave ethically. This assumption underlies the independence of our judicial system and is the reason that the Constitution commands other organs of state to support and protect the dignity, accessibility and effectiveness of the judiciary.

Description: Introduction
It is a fundamental assumption of the Constitution and the citizens of the Republic that magistrates should behave ethically. This assumption underlies the independence of our judicial system and is the reason that the Constitution commands other organs of state to support and protect the dignity, accessibility and effectiveness of the judiciary.

Assumptions, however, weaken if they are not seen to be practiced. Magistrates need to be seen to practise the attitudes and behavior they claim as their own when they are appointed to their positions. Magistrates take the oath or affirm, in terms of the Constitution, that they will be faithful to the Republic of South Africa; will uphold and protect the Constitution and the human rights entrenched in it and will administer justice to all persons alike without fear favour for prejudice, in accordance with the Constitution and the law.

A code of conduct for Magistrates has been inserted in the Regulations to assist magistrates to deal with ethical issues.

BACKGROUND

The supremacy of the Constitution and the rule of law are foundational to the democracy established by the Constitution (section 1(c)). So too are the rights and freedoms enshrined in the Bill of Rights (section 7(1)). The protection of these fundamental values is entrusted to an independent judiciary (section 165), whose members must on appointment take an oath or affirm that they will uphold and protect the Constitution (section 174(8) read with section 6(3) of Schedule 2).

To fulfill the constitutional role the judiciary needs public acceptance of its moral authority and integrity, the real source of its power. Accordingly, the Constitution commands all organs of state to assist and protect the independence, impartiality, dignity, accessibility and effectiveness of the judiciary (section 165). It is important that magistrates at all times seek to maintain, protect and enhance the status of the judiciary. To that end they should be sensitive to the ethical rules which govern their activities and behavior both on and off the bench.

The code of conduct intends to assist magistrates in dealing with

ethical and professional issues which may confront them during their judicial careers. It also intends to inform the public about the judicial ethos.

Ethical rules differ from legal rules in that they are seldom absolute. These guidelines are likewise not absolute but describe the high standards to which all magistrates should aspire. They are not to be interpreted as impinging on the constitutionally guaranteed independence of the judiciary or any magistrate. Nor does a breach of any particular rule or guideline necessarily warrant censure.

On the one hand the Constitution enshrines judicial independence and embraces the doctrine of separation of powers - courts are independent and subject only to the Constitution and the law. On the other hand, it requires courts to apply the Constitution and the law impartially and without fear, favour or prejudice (section 165). The independence of the judiciary is for the protection of the freedom of individuals and the integrity of the Constitution and not for the benefit of magistrates.

There is confusion/conflict between judicial independence and judicial responsibility. Judicial independence denotes freedom of conscience for magistrates and non-interference in their decision-making. It is not concerned with judicial misbehavior. Individual magistrates must be free from personal influence or private interest and the judiciary must be beyond the undue influence of the legislative or executive branches of government and removed from the direct influence of popular majorities – see *S v Makwanyane* 1995(2) SACR 1(CC) paragraphs 87 to 89. The rule of law and independence of the judiciary depend primarily upon public confidence; lapses or questionable conduct by magistrates tend to erode that confidence.

Magistrates should make every effort to ensure that their conduct is above reproach in the view of reasonable, fair minded and informed persons. Mr Dato' Param Cumaraswamy, the UN's Special Rapporteur on the Independence of the Judiciary, in a submission during 1998 to the TRC explained this as follows:

"... judicial accountability is not the same as the accountability of the executive or the legislature or any public institution. This is because of the independence and impartiality expected of the judicial organ ... though judges are accountable, their accountability does not extend to their having to account to another institution for their judgments." (Quoted by Professor D Zeffertt in 1999 SA Law Journal at pages 668 to 669)

Voet in *Selective Voet*, Volume 2 at page 56 define a judge (magistrate) as "... an honest gentleman (lady) and fair, having in

himself (herself) or in his (her) assessors skill in law, appointed by public authority and enjoying the capacity to hear and decide cases.”.

A magistrate should not only ensure that his/her conduct is above reproach in and around the courtroom, but everywhere he/she goes and at all times as Anders op cit quoted at 241:

"Judici vitanda familiaritas cum hominum vulgo, nam ex concersatione aequali contemptio dignitatis nascitur. At vero qui sapiunt, et se sibi priores probarunt, non habent, quod a familiaritate et contemptu metuant."

- "He (she) should scrupulously guard and maintain his (her) dignity and the lustre of his (her) office, and accordingly not appear in improper places where his (her) dignity would be in peril of being degraded or impaired.”.

Complaints against magistrates that are directly related to the merits of a decision or procedural ruling must be dismissed at the outset. In Petition of Lauer 788 F.2d 135 (8th Circuit, 1985) the point is well made:

“While many people may agree or disagree with the sentence and the judge’s reasons for imposing the sentence, it must be remembered that a judge has the authority and the power to be wrong as well as right. ... Disenchanted litigants or other citizens should not be able to influence a judge about a judicial decision through the threat of disciplinary sanction.”.

General

Magistrates should generally refrain from entering public debate that might undermine the standing and integrity of the judiciary. It requires a magistrate upon appointment to organize his or her personal and business affairs to minimize the potential for conflict and interest.

There have always been ethical standards for magistrates of which some have been taken up in the code of conduct for magistrates. Magistrates appointed to office generally know what is expected of them and if they have doubts, they consult with their colleagues.

A magistrate is ultimately answerable for his or her behavior to Parliament which may remove him or her from office by a special impeachment in serious cases.

To properly fulfill its role, the judiciary relies on public acceptance of its

moral authority and integrity. Questionable conduct by magistrates erodes public confidence. That is why complaints procedures and conduct processes are necessary and which have already been enacted. It is, however, a general accepted principle in constitutional democracies that the judiciary educates, supervises, guides and disciplines the judiciary. It is generally internationally accepted that the judiciary (magistrates) should not be held to account by an extrajudicial body

Training hints for Trainers

1 Introduction

When you have to present a lecture or do a training session, you should:

- establish the target audience
- establish the needs of your target group
- develop a lecture or training session to fit that need

When you are preparing and presenting a lecture, you need to take cognisance of the following factors:

- the target audience
- the topic
- the objective of the lecture
- the time available for your lecture

Never underestimate these factors, as this will determine the success of the lecture!

Target audience

- Typically:
- adults
 - matriculated/graduates
 - various levels of experience in specific fields

People are shaped differently through:

- physical attributes
- cultural environment
- social environment

The audience differ regarding each individual's personality type:

Typical personality types include:

- Economical - practical & concrete
- Power - wants to rule & be served
- Social - human empathy
- Theoretical - intellectualistic (scientists)
- Aesthetic - focus on impression
- Religious - religious values their priority

People all have different personalities, interests, skills, talents and capabilities

You should also remember that there are differences regarding:

- intelligence: the capability to execute actions in terms of:
 - difficulty
 - complexity
 - abstraction
 - time saving
 - social status
 - originality
- perceptions

- Frame of reference
 - conditioning
 - association
 - experience

- Emotions
 - behaviour
 - attitude
 - values

- Attention
 - concentration span
 - weariness
 - disturbances
 - inner emotional capabilities
 - vague uninteresting presentations

- Adult trainees are:
- self responsible
 - have self respect
 - self appointed
 - experienced
 - problem focussed - wants to use information/ideas immediately
 - not always ready to learn
 - tend to have fixed ideas and methods - will change if convinced that training will be to their benefit
 - knowledge/information must be applied / of practical use for them

A trainer is often perceived as a role model and as such he is expected to act as one through:

- proper language
- good human relations - respect for others
- well disciplined
- punctuality
- self respect
- responsibility
- knowledge of subject

2 Organising the presentation

When you have to organise a presentation, make sure that you organise it for a time and place most of your target audience will be available. (For example, a Friday afternoon at 15h00 might not be the best idea for court personnel!) Send out invitations/notification in advance to ensure that participants have time to organise attendance. It is usually a good idea to ask them to let you know whether they will be available. If it is a small group, arrangements can be done much easier and more informally, but you still need to ascertain beforehand the number of people attending, as you have to make sure that enough copies are made in time, and that the venue you want to use is suitable.

You should also have a registration form for participants to fill in, as well as an

evaluation form that can be filled in afterwards.

3 Presentation/lecture

In order to ensure a successful presentation, you need to be in charge, and lay down the ground rules, know the topic and the material you use. You have to plan your presentation - you need to have a framework of how you are going to present it and allocate enough time for each part of the presentation - and stick to it as far as possible. Always leave time for questions or discussions.

Have a framework in which you break the presentation up, for example:

- 1 Introduction
(information about yourself, welcome)
- 2 State the course subject
- 3 State objective/s of lecture
(what they will get out of lecture/learn etc)
- 4 Presentations (content)
- 5 Summarise
- 6 Questions

Remember to motivate and/or encourage trainees - they need to know what lecture will do for them.

Always give credit to good answers. When a person ask a question/answer, repeat it for rest of group. Formulate questions in advance and ask one question at a time, wait for response, repeat or rephrase if necessary and always accept responses. It is preferable to tell participants in beginning, when you lay down ground rules, when they can ask questions - at the end or during the presentation.

Lecturing - with

- enthusiasm** - speak with expressiveness
- variety of tone of voice
 - use humorous anecdotes or examples (sparingly, and be careful with the jokes)
 - gestures with hands, arms, body - don't be 'dead'
 - eye contact with audience

- pacing** - slow is better
- key terms on white board / overhead
 - summarize periodically
 - check for understanding before proceeding

- clarity** - relates subject matter to interests
- provide real-life examples
 - provide multiple examples
 - use graphics
 - put outline of lecture on board
 - signal transitions

- interaction**
- addresses participants by name
 - ask questions
 - reward and reinforce responses

- communicates with audience outside of lecture

4 Types of presentations

Training can be done in a variety of different ways, and can also be a combination of different presentations. In deciding the way you are going to do your presentation, you again have to keep in mind your target audience, the time available and the time needed to cover the topic, and of course, the topic itself. Certain information can best be disseminated through a demonstration, while other types of topics lend itself more to work or discussion group type of presentations.

The basic ways to disseminate information are:

- a lecture
- demonstration
- discussion group
- work group
- experiential exercises
- combination of two or more of the above

In deciding the way you are going to do your presentation, you should also take into account the type of venue that will be available to you. For example, for discussion groups, you would preferably have break-away rooms to accommodate the different groups.

In order to make the most of training, physical and environmental conditions should be taken into account, and you should try to ensure that participants are as comfortable as possible. To try to disseminate information in any way to participants that are disturbed by outside or physical factors can be a nightmare and can end up as a fruitless exercise.

5 Training / instructional aids

5.1 White board

Before the time ensure you-

- have correct white board pens (in different colours)
- have correct eraser

During presentation - make sure writing is clear, readable

- use board economically - don't start in middle if you are going to write a lot
- do not stand in front of own writing/while writing
- don't talk while you write and your back are to the group

After presentation - clean white board before leaving

5.2 Video

Before video presentation

- make sure video machine and monitor are in working order
- place monitor in proper position

- make sure power supply is on
- connect monitor & video
- check to see if video tape is in machine and rewinded
- make sure appropriate channel is selected

- To group*
- explain purpose of video
 - explain content of video tape
 - emphasise important points that the students must take note off

During the video presentation

- stop video for discussion or activities if planned
- do not leave the room while the video is still showing

At the end of the video session

- answer questions
- ask questions
- encourage discussion
- do predetermined task - rather group task than individual task - will get better discussions

5.3 Overhead projector

Before the presentation

- make sure projector is in good order and working, plugged in, know where to switch on etc.
- placed in correct position - all can see
- picture in focus and square
- have transparencies arranged in consecutive order
- ensure transparencies is correctly placed before projector is switched on

During the presentation

- do not leave projector on after discussion
- use 'mask' to blank off points not under discussion
- do not shift/move projector when it is switched on
- use a pointer if needed during discussion
- don't stand in front of projection screen
- be careful that you are not looking away from group when you are talking to them

Transparencies

- criteria - visibility
 - simplicity
 - clarity
- ensure readable
- not more than 3 ideas/themes on one
- not too much writing on one
- emphasize important points - other colour etc

6 Dealing with “the Dirty Dozen”

How to handle people who disrupt, sidetrack, or bog down proceedings? Scannell gave the following hints on how to spot problem persons in the audience and how to

deal with them.

1) The Griper

A professional griper with a pet problem. Even if the complaint is legitimate, point out that policy cannot be changed here, and that the object is to operate as best possible under the system. Say that you'll discuss the problem with him after the lecture or by appointment. Depending on the problem, you can also ask a member of the group to respond, but be careful as it could turn into a heated debate, sidetracking the whole lecture.

2) Highly argumentative

The combat personality or professional heckler. May be normally good-natured but upset by personal or job problems. Keep your temper firmly in check, and do not let the group get excited either. Try to find honest merit in one of this person's points, express your agreement and move on to something else. When such a person make an obvious mistake, toss it to the group and let them turn it down, rather than yourself. As a last resort, talk to this individual during a recess, or invite the person to discuss the point afterwards with you and move on.

3) The Inarticulate person

A person who lacks the ability to put thoughts into proper words. This person may be getting ideas, but can't convey them. Don't say: "What you mean is..." Say: "Let me repeat that ..." and put it into better language, but don't get impatient and interrupt the person.

4) Off the subject

The person is not rambling, just off the subject with a question or comment. Take the blame: "Something I said must have led you off the subject - this is what we should be discussing." restate the point or use the white board or overhead projector to refocus the conversation.

5) The opinion solicitor

Someone's who trying to put you on the spot, making you support one view. The person may also simply be looking for your advice.

Generally, avoid solving this person's problem. Point out that your view is relatively unimportant, compared with the view of the entire group - but don't let this become a phobia. There are times when you must and should give a direct answer. Before you do, try to determine the reason for asking your view. Say: "first, let's get some other opinions," or "How do you look upon this point?" (selecting a member of the group to reply).

6) The overly talkative

The person may be an "eager beaver" or a showoff. May also be exceptionally well informed and anxious to show it, or just naturally wordy. Don't embarrass this person or be sarcastic - you may want to use the talkative traits later on. Slow him or her down with some difficult questions. Interrupt with: "That's an interesting point. Now let's see what the group thinks of it." In general, let the group take care of the situation as much as possible.

7) Personality clash

Two or more members who clash, sometimes dividing the group into factions. Emphasize points of agreement and minimize points of disagreement, if possible. Draw attention to the objectives of the meeting or lecture. Cut across them with a direct question on the topic. Bring an objective member into the discussion. Frankly request that personalities be omitted from the subject at hand.

8) The quickly helpful

Someone who's really trying to help, but actually makes it difficult and keeps others out of the interplay. Tactfully cut off this individual by question others. Suggest that "we put others to work." Use the eager helper for summarising.

9) The rambler

One who talks about everything but the subject, often using farfetched analogies, and gets lost. When this person stops for breath, say thank you, refocus everyone's attention by restating the relevant points, and move on. Grin, say you find the remarks interesting, then point to the white board and in a friendly manner indicate that you're getting a bit off the subject. As a last resort, glance at your watch.

10) Silent Sam

Someone who just won't talk, who may be bored, indifferent, timid, conceited, or insecure. Your actions will depend upon what is motivating the individual. Ask directly for his or her opinion. Draw out the person next to him or her, then ask the quiet individual for an opinion on the view expressed. If the quiet person is seated near to you, let him or her talk to you, not the group. If he or she is the "superior" type, indicate your respect for his experience (but don't overdo it or the group will resent it) and then ask for an opinion or comment on the topic at hand. Toss out a provocative query. If the person is sensitive or timid, however, compliment him or her for joining in - and be sincere.

11) Stubborn stickler

Someone who won't change his or her mind; who hasn't seen your point. Throw this person's views to the group, and have members counteract. Say that time is short and you'll be glad to discuss the point later; ask him or her to accept the group viewpoint for the moment.

12) Talkers on the side

People holding their own conversations, which may be related to the subject or may be personal - but are distracting members of the group and you. Don't embarrass them. Call one by name and ask the person an easy question, or call one by name and restate the last remark made by a member of the group, asking for an opinion on it. If during the conference you are in the habit of moving around the room, saunter and stand casually behind members who are talking, but don't make your point too obvious.

7 Conclusion

With proper planning and preparation, training can be very rewarding and a lot of fun. Good luck with the training you are going to do in future. Remember that you are only human, and you can expect the unexpected to happen. To be a good trainer, you need not be perfect, or have unlimited knowledge - no person can ever know everything!

Being a trainer can also be exhausting, frustrating and sometimes even demotivating. Look after yourself - physically and mentally, and be good to yourself when you are training to avoid becoming frustrated, demotivated or negative.

Good luck!!

Jakkie Wessels
Justice College
September 1999

Preparation for training

- 1 Target audience: _____
- 2 Topic: _____
- 3 Objective of training:

- 4 Probable number of attendees: _____
- 5 Names of probable/possible attendees: Confirmed:

- 6 Possible dates & times for training: Confirmed

- 7 Possible venues: Confirmed

- 8 Materials to be used: Number of Copies: Made:

- 9 "Tools" needed: Confirmed:

10 Method/s of presentation:

11 Presentation plan:

Topic	Objective	Time

12 Last minute check list:

7 Keys to Building Great Workteams

Suzanne Willis Zoglio, Ph.D.

(Published January 15, 2002)

Fostering teamwork is a top priority for many leaders. The benefits are clear: increased productivity, improved customer service, more flexible systems, employee empowerment. But is the vision clear? To effectively implement teams, leaders need a clear picture of the seven elements high-performance teams have in common.

1. COMMITMENT

Commitment to the purpose and values of an organization provides a clear sense of direction. Team members understand how their work fits into corporate objectives and they agree that their team's goals are achievable and aligned with corporate mission and values. Commitment is the foundation for synergy in groups. Individuals are willing to put aside personal needs for the benefit of the work team or the company. When there is a meeting of the minds on the big picture this shared purpose provides a backdrop against which all team decisions can be viewed. Goals are developed with corporate priorities in mind. Team ground rules are set with consideration for both company and individual values. When conflict arises, the team uses alignment with purpose, values, and goals as important criteria for acceptable solutions.

To enhance team commitment leaders might consider inviting each work team to develop team mission, vision, and values statements that are in alignment with those of the corporation but reflect the individuality of each team. These statements should be visible and "walked" every day. Once a shared purpose is agreed upon, each team can develop goals and measures, focus on continuous improvement, and celebrate team success at important milestones. The time spent up front getting all team members on the same track will greatly reduce the number of derailments or emergency rerouting later.

2. CONTRIBUTION

The power of an effective team is in direct proportion to the skills members possess and the initiative members expend. Work teams need people who have strong technical and interpersonal skills and are willing to learn. Teams also need self-leaders who take responsibility for getting things done. But if a few team members shoulder most of the burden, the team runs the risk of member burnout, or worse -- member turn-off.

To enhance balanced participation on a work team, leaders should consider three factors that affect the level of individual contribution: inclusion, confidence, and empowerment. The more individuals feel like part of a team, the more they contribute; and, the more members contribute, the more they feel like part of the team. To enhance feelings of inclusion, leaders need to keep work team members informed, solicit their input, and support an atmosphere of collegiality. If employees are not offering suggestions at meetings, invite them to do so. If team members miss meetings, let them know they were missed. When ideas -- even wild ideas -- are offered, show appreciation for the initiative.

Confidence in self and team affects the amount of energy a team member invests in an endeavor. If it appears that the investment of hard work is likely to end in success employees are more likely to contribute. If, on the other hand, success seems unlikely, investment of energy will wane. To breed confidence on a work team, leaders can highlight the talent, experience, and accomplishments represented on the team, as well as keep past team successes visible. The confidence of team members can be bolstered by providing feedback, coaching, assessment and professional development opportunities.

Another way to balance contribution on a work team is to enhance employee empowerment. When workers are involved in decisions, given the right training, and respected for their experience, they feel enabled and invest more. It is also important to have team members evaluate how well they support the contribution of others.

3. COMMUNICATION

For a work group to reach its full potential, members must be able to say what they think, ask for help, share new or unpopular ideas, and risk making mistakes. This can only happen in an atmosphere where team members show concern, trust one another, and focus on solutions, not problems. Communication --when it is friendly, open, and positive --plays a vital role in creating such cohesiveness.

Friendly communications are more likely when individuals know and respect one another. Team members show caring by asking about each other's lives outside of work, respecting individual differences, joking, and generally making all feel welcome.

Open communication is equally important to a team's success. To assess work performance, members must provide honest feedback, accept constructive criticism, and address issues head-on. To do so requires a trust level supported by direct, honest communication.

Positive communication impacts the energy of a work team. When members talk about what they like, need, or want, it is quite different from wailing about what annoys or frustrates them. The former energizes; the latter demoralizes.

To enhance team communication, leaders can provide skill training in listening, responding, and the use of language as well as in meeting management, feedback and consensus building.

4. COOPERATION

Most challenges in the workplace today require much more than good solo performance. In increasingly complex organizations, success depends upon the degree of interdependence recognized within the team. Leaders can facilitate cooperation by highlighting the impact of individual members on team productivity and clarifying valued team member behaviors. The following **F.A.C.T.S. model** of effective team member behaviors (follow-through, accuracy, timeliness, creativity, and spirit) may serve as a guide for helping teams identify behaviors that support synergy within the work team.

Follow-through

One of the most common phrases heard in groups that work well together is "You can count on it." Members trust that when a colleague agrees to return a telephone call, read a report, talk to a customer, attend a meeting, or change a behavior, the job will be done. There will be follow-through. Team members are keenly aware that as part of a team, everything that they do --or don't do---impacts someone else.

Accuracy

Another common phrase heard in effective work groups is "We do it right the first time." Accuracy, clearly a reflection of personal pride, also demonstrates a commitment to uphold the standards of the team, thus generating team pride.

Creativity

Innovation flourishes on a team when individuals feel supported by colleagues. Although taking the lead in a new order of things is risky business, such risk is greatly reduced in a cooperative environment where members forgive mistakes, respect individual differences, and shift their thinking from a point of view to a viewing point.

Timeliness

When work team members are truly cooperating they respect the time of others by turning team priorities into personal priorities, arriving for meetings on time, sharing information promptly, clustering questions for people, communicating succinctly, and asking "Is this a good time?" before initiating interactions.

Spirit

Being on a work team is a bit like being part of a family. You can't have your way all of the time, and - to add value - you must develop a generous spirit. Leaders can help work teams by addressing these "rules" of team spirit: value the individual; develop team trust; communicate openly; manage differences; share successes; welcome new members.

5. CONFLICT MANAGEMENT

It is inevitable that teams of bright, diverse thinkers will experience conflict from time to time. The problem is not that differences exist, but in how they are managed. If people believe that conflict never occurs in "good" groups, they may sweep conflict under the rug. Of course, no rug is large enough to cover misperception, ill feelings, old hurts, and misunderstandings for very long. Soon the differences reappear. They take on the form of tension, hidden agendas, and stubborn positions. On the other hand, if leaders help work teams to manage conflict effectively, the team will be able to maintain trust and tap the collective power of the team. Work teams manage conflict better when members learn to shift their paradigms (mindsets) about conflict in general, about other parties involved, and about their own ability to manage conflict. Three techniques that help members shift obstructing paradigms are reframing, shifting shoes, and affirmations.

Reframing is looking at the glass half-full, instead of half-empty. Instead of thinking "If I address this issue, it'll slow down the meeting," consider this thought: "If we negotiate this difference, trust and creativity will all increase."

Shifting Shoes is a technique used to practice empathy by mentally "walking in the shoes" of another person. You answer questions such as "How would I feel if I were that person being criticized in front of the group?" "What would motivate me to say what that person just said?"

Affirmations are positive statements about something you want to be true. For example, instead of saying to yourself right before a negotiating session, "I know I'm going to blow up", force yourself to say, "I am calm, comfortable, and prepared." If team members can learn to shift any negative mental tapes to more positive ones, they will be able to shift obstructing paradigms and manage conflict more effectively.

6. CHANGE MANAGEMENT

Tom Peters, in *Thriving On Chaos*, writes "The surviving companies will, above all, be flexible responders that create market initiatives. This has to happen through people." It is no longer a luxury to have work teams that can perform effectively within a turbulent environment. It is a necessity. Teams must not only respond to change, but actually initiate it. To assist teams in the management of change, leaders should acknowledge any perceived danger in the change and then help teams to see any inherent opportunities. They can provide the security necessary for teams to take risks and the tools for them to innovate; they can also reduce resistance to change by providing vision and information, and by modeling a positive attitude themselves.

7. CONNECTIONS

A cohesive work team can only add value if it pays attention to the ongoing development of three important connections: to the larger work organization, to team members, and to other work teams.

When a work team is connected to the organization, members discuss team performance in relationship to corporate priorities, customer feedback, and quality measures. They consider team needs in light of what's good for the whole organization and what will best serve joint

objectives. Leaders can encourage such connection by keeping communication lines open. Management priorities, successes, and headaches should flow one way; team needs, successes, and questions should flow in the other direction.

When a work team has developed strong connections among its own members, peer support manifests itself in many ways. Colleagues volunteer to help without being asked, cover for each other in a pinch, congratulate each other publicly, share resources, offer suggestions for improvement, and find ways to celebrate together. A few ideas for developing and maintaining such connections are: allow time before and after meetings for brief socialization, schedule team lunches, create occasional team projects outside of work, circulate member profiles, take training together, and provide feedback to one another on development.

Teams that connect well with other work groups typically think of those groups as "internal customers". They treat requests from these colleagues with the same respect shown to external customers. They ask for feedback on how they can better serve them. They engage in win/win negotiating to resolve differences, and they share resources such as training materials, videos, books, equipment, or even improvement ideas. To build stronger connections with other groups, work teams might consider: scheduling monthly cross-departmental meetings, inviting representatives to their own team meeting, "lending" personnel during flu season, and combining efforts on a corporate or community project.

To compete effectively, leaders must fashion a network of skilled employees who support each other in the achievement of corporate goals and the delivery of seamless service.

END

*Suzanne Willis Zoglio, Ph.D., is the author of **Teams At Work: 7 Keys to Success, The Participative Leader, and Create A Life That Tickles Your Soul.***

Leadership: An Overview of the Literature and Web-Based Resources

An Annotated Bibliography of Recent Works and Resources Available on the World Wide Web



**Compiled by
Katharine Cahn, MSW and Laura Nissen, Ph.D., M.S.W.**

March 1, 2002

Introduction

Leadership is conventionally defined as the ability to get things done through others, the process by which a leader exerts influence over others to move towards a vision. Leadership is distinguished from management, in that leadership implies a vision, or some sense of a higher and purpose beyond the day to day task of managing the work production of an organization or agency. However, most leadership texts note the importance of good management skills to the implementation of a leadership agenda.

Many of the readers of this bibliography will be engaged in the implementation of change in complex systems and agencies. Leadership will be a critical element in any such change effort. For the initiative to succeed, someone (or many someones) will need to articulate a vision, motivate the aligned energy of groups of people, negotiate resources, resolve conflicts, keep the change process moving in the desired direction, and stimulate appropriate adjustment to ever-changing conditions. This is leadership.

Books on leadership abound and motivational speakers traverse the country consulting with Fortune 500 companies and others on leadership development strategies for gaining the upper hand in their companies and in the community. Many of these start with the view, gaining ascendance in the last twenty years, that we are operating in a new economy, calling for new paradigms of organizational dynamics, and for new notions of leadership. These new views are a good fit for the complex interlocking systems involved in serving youth and families.

The traditional view of organizations was that organizations operate as a machine with an interlocking hierarchy of gears, controllable by top – down directive, and functioning in a world that can be predicted and managed. Within this view, leadership would entail strong directive and task skills, and a clear idea of the objective, usually formed by the individual independent of input from others. Leadership was also a function of position, a power possessed only by the

person (usually a man) at the top. This model of leadership does not match new views of organization, and may never have matched the complexities of social service management.

The new view of organizations is much more complex and less predictable, calling for a new view of leadership. Organizations and systems are now seen as interdependent, complex, and diverse. They are seen as consisting of informal and tenacious cultures that are much more impervious to change than the objects (people and resources) they contain. Even in the corporate world, and especially in the non-profit and governmental sectors, the environment is made of a complex network of customers, suppliers, and interlocking markets – and subject to sudden, unpredictable change. Diversity is the key to success, and the ability to innovate and flex strategies is imperative. The game is no longer winnable using strict win-lose strategies.

The public sector reflects these trends as well, with its multiple stakeholders and complex systemic drivers. The workforce is diverse. The pace of change is accelerating rapidly and outcomes to intractable social problems are expected overnight. There is no such thing as linear change (if there ever was). A leader must be able to chart a course through systems described as “chaotic”, as “permanent whitewater”.

A new model of leadership is needed to match these new organizational conditions, and there is quite a body of research designed to define the set of skills that would make up the most effective kind of leader. Often these new models stress the interpersonal aptitude of the leader, the ability to authentically articulate core principles and a sense of meaning for oneself and for others, and the skill to tap the deep resources of creativity and passion of team members. Without abandoning traditional skills, such as strategic planning, team-building, and conflict management, the ‘new’ leader will also provide a principled context, or a higher purpose for staff and customers, and will attend to the symbol systems and visions of the initiative. The leader will attract a diverse team. She or he will reward a diverse set of skills, creatively aligned towards one outcome. Authenticity, alignment with principles and personal integrity are prized.

The publications below speak to this new world of leadership, offering a range of resources for those wishing to lead their organization or system into a new way of operating. Many are based on empirical research and case studies from the corporate, public, and not-for-profit sectors. Most offer case studies to understand the application of principles presented. Others offer personal inventories and action plans for skill development and personal planning. There is something here for anyone from the experienced leader, to someone just stepping into their first management position, and including the student of leadership.

Published Works

Astin, A. W., Astin, H. S., & Associates. (2000). *Leadership Reconsidered: Engaging Higher Education in Social Change*. Kalamazoo, MI: W.K. Kellogg Foundation.

Astin and Astin worked with a group of leadership scholars who were particularly interested in the development of leadership in higher education. Working from a transformational model of leadership, in which the context of a meaningful and moral outcome is as important as the skills used to get there, they identified five personal qualities of a leader, and five group qualities that would encourage leadership development. The individual characteristics are: self-knowledge, authenticity, empathy, commitment, and competence. The group characteristics identified are:

collaboration, shared purpose, division of labor, disagreement with respect, learning environment

Bennis, W., & Nanus, B. (1985). *Leaders: The strategies for taking charge*. Cambridge, MA: Harper and Row.

This early book asserts and describes a new environment in which leadership must be executed: one of worker/public apathy, complexity, uncertainty, and a loss of credibility in the highest offices. The authors propose a new theory of leadership based on interviews with ninety public and private sector executives who have engaged in organizational transformation efforts. Bennis and Nanus develop in this book ideas of what a transformative leader might be – one who “converts followers into leaders” (p.3). They start with the notion that leading others and managing yourself are interactive dynamics. The result of managing this successfully will be the empowerment of others ... a fundamental ingredient to organizational success, and possibly the object of true leadership.

Four key strategies are:

1. Attention through vision: paying attention, synthesizing vision into a choice of direction, focusing attention by developing commitment
2. Meaning through communication: addressing the social architecture (the culture and climate of the organization)
3. Trust through positioning. Developing a predictability, the experience of being known by the external environment. This starts with being clear what business one is in (related to vision), aligning the internal environment, changing the external environment, and establishing new linkages.
4. Deployment of self - discusses the learning organization, how to encourage and foster innovation and learning, how to nurture the creative talent of staff, and beginning with understanding oneself, and developing interpersonal competence.

The book ends with a discussion of management education and self-development as a leader.

Bolman, L. G., & Deal, T. E. (1991). *Reframing Organizations: Artistry, choice, and leadership*. San Francisco: Jossey - Bass Publishers.

This book provides both conceptual and practical access to a wide foundation for leadership principles. The intent is to illuminate leadership through four frameworks, each providing a particular vantage point for organizational analysis and leadership. The four frames are: structural, human resources, political, and symbolic. Drawing extensively on the best writing in the fields of organization development and leadership, each frame is described, and then examples and applications for leadership are presented. This solid book will offer a good review of a range of management literature, and offer a number of case studies and examples for leadership development or understanding and analyzing leadership issues.

The structural frame allows one to analyze the way people interact and relate, how work is assigned, and how accountability and checks and balances are designed into the pattern. Bolman and Deal review the model and describe what is known about appropriate structures (from bureaucratic to free-form and ad hoc) for a range of tasks and environments.

The human resources frame stresses the relationship between people's needs and the organizations in which they work, and proposes that even in times of environmental turbulence, investing in people will produce the best result over time. These sections of the book include a review of interpersonal dynamics and approaches to resolve conflict.

The political frame allows one to see the dynamics of coalitions, enduring differences among members, the allocation of scarce resources, conflict, power, and the whole process of bargaining, negotiation, and jockeying for position among different stakeholders. (p. 163). They propose that a wise leader will be an astute politician and will employ power constructively, and they offer a review of the literature on how this might be approached.

The symbolic frame allows the manager to tap into the power of symbol, ritual, myth and drama, to manage the meaning ascribed to events. This can release the deep intrinsic motivation in staff and customers to increase loyalty, passion, and creativity that cannot be tapped by other means. The application chapter here focuses on organizational culture.

Corbin, C. (2000). *Great Leaders see the future first: Taking your organization to the top in five revolutionary steps*. Chicago, IL: Dearborn Financial Publishing, Inc.

This volume addresses the emerging need for leaders to 'get the jump on' the future. Given the rapid pace of change, a great leader will develop the capacity to scan the horizon, identify future trends, and position the agency or system to meet future needs. Based on her work with managers and leaders from public and non-profit sector organizations, Corbin identifies the competencies a future-oriented leader must develop. The book starts with a "self-test" the reader can take, and leads into a series of chapters each introducing trends of the future and management behaviors needed to take advantage of them. Each chapter ends with questions for thought and strategies for leadership development. The four general steps covered are:

- Step 1. Orchestrate a 360° world view (strategies for identifying trends)
- Step 2. Order the Chaos (working with sources of chaos in the organization and structuring to develop an empowered organization that is flexible to sudden change)
- Step 3. Blend multiple organizational models (developing an organization that draws on the best organizational attributes of several sectors of the economy)
- Step 4. Engage the whole person (developing and nurturing the whole person among employees, so as to be poised for innovation).

Covey, S. R. (1990). *Principle-centered leadership*. New York: Simon and Schuster.

Stephen Covey, the author of the much-read book *The Seven Habits of Highly Effective People*, also published this work bringing the notion of principle-centered leadership to the field. In the first section, he speaks of the development of a leadership style that leads "from the inside out", and is based on the personal attributes of integrity, maturity, and an abundance mentality. Throughout he returns to the theme of developing one's own principled center as access to being an empowering leader. In the second section of the book he attends to the craft of leadership in a management role. His goal is for a leader to build a high-trust culture where people are empowered to strive for their best, and seeking to align "strategy, style, structure and systems" with the professed mission and with the realities of the environment. At four levels of leadership (personal, interpersonal, managerial, and organizational) he presents concrete approaches to live by the respective principles of trustworthiness, trust, empowerment, and alignment. This book moves the craft of leadership from one focused strictly on organizational outcomes, to one focused on an ethical core and the pursuit of a higher purpose or meaning in life for the leader and for organizational members. Covey concludes with a call for

'transformational leadership' and offers coaching on how to build one's own personal constitution for leadership.

Follett, M. P. (1996). *Prophet of management*. Boston, MA: Harvard Business School Press.

Edited by Pauline Graham, this is a collection of articles by one of the earliest management writers – a social worker named Mary Parker Follet. Born and educated at the end of the 19th century, Follett worked and wrote in the first half of the twentieth century and has been rediscovered for the prescience of her management theories. Reflecting an empowerment framework, with an eye to developing a supportive and rewarding organizational culture, her theories are still cited as source materials by management theorists today, and have been revisited in this collection. This readable book, available in paper back, is not to be missed by social workers interested in management and administration.

Garner, Leslie H. (1989). *Leadership in human services: How to articulate and implement a vision to achieve results* (first edition ed.). San Francisco: Jossey-Bass.

This book takes theories of leadership into specific applications to the public sector. It is included in this list because it is one of few books to apply new leadership theories to the unique constraints of leadership in public or large private human service agencies. The author recognizes the unique pressures of operating in a highly visible environment, held accountable by the press, government audit agencies, and a variety of advocacy groups. He uses the book to outline an approach that focuses the diffuse energies of all the players in the bureaucratic system, in ways that will ultimately benefit clients and the community as a whole. Key concepts are: vision, results-oriented management, organizational climate and culture, and sustaining success over time. Real-world agency case studies ground the concepts in examples that will be familiar and encouraging to the reader with a social services background.

Isaacs, W. (1999). *Dialogue and the art of thinking together: A pioneering approach to communicating in business and in life* (1st ed.). New York, New York: Doubleday.

From quantum physics comes the view that all human interaction occurs in a 'field' of possibility. This moves the world view from attending to the objects in the field (the individual players) to attending to the field in which these objects (or players) interact. In systems change, the purpose of leadership would be to move an organization or a system and its participants, to new ways of thinking and doing. The main tool available for this is conversation – speaking and listening to one another, which is harder than it sounds. The problem is that most human communication is within the bounds of our pre-set agendas, and limited by already-existing world views. Rarely do we listen openly enough to hear new ideas or to understand, appreciate, and benefit from another's experience. A new kind of conversation, one that attends to the *field* as well as the agenda, is needed. This is the challenge dialogue was invented to meet.

The practice of dialogue – what the author and others call "thinking together" – was originally developed by the physicist David Bohm. It requires listening with one's own agenda suspended, and speaking to a common (implicate) order. Isaacs has applied these methods in a range of major corporations as a consultant and as the Director of the Dialogue Project at the Sloan School of Management at MIT. In this volume he outlines the nature of a dialogue, practices for suspending one's own agenda and the agenda of others, and the various roles people are likely to play in a dialogue. He recommends practices a leader can undertake to establish a

'container' for a dialogue so that people in a family, group, or organization can authentically 'think together' to move together into a new way of relating and responding to challenging problems.

This is very stimulating reading on a powerful new approach to engaging in organizational dialogue, change, and breakthrough thinking and learning.

Kouzes, J. M., & Posner, B. Z. (1990). *The leadership challenge* (First Edition ed.). San Francisco, CA: Jossey - Bass.

Kouzes and Posner developed their theory and wrote this book based on interviews with successful leaders from both the corporate and the not-for-profit or public sectors. They distinguish leadership as a set of behaviors, not personality traits, and thereby make the practice of leadership accessible to ordinary people, not only a few charismatic individuals.

They say that successful leaders do five things:

1. Challenged the process
2. Inspired a shared vision
3. Enabled others to act
4. Modeled the way
5. Encouraged the heart.

This book is very readable, and offers useful examples to illustrate each behavior. The leadership practices inventory (LPI) Kouzes and Posner developed for this work (which has been tested with over 3,000 individuals) is now available to all. Using this they have found that these practices are characteristic of leaders in a variety of cultures, in both the private and public sector, and hold true for both men and women leaders (though women consistently score higher on 'encouraging the heart'). The LPI is available for leaders to take themselves and administer to others to establish areas of mastery and growth in developing their own leadership abilities.

Lipman-Blumen, J. (1996). *Connective leadership: Managing in a changing world*. New York: Oxford University Press

Dr. Lipman-Blumen draws on extensive study of leaders from the profit and not-for-profit sector to make the case for a new model of leadership. Describing two prior stages of history – the first of independent rulers, the next of geopolitical alliances – Lipman - Blumen says that we are now moving into a new, third phase of leadership characterized by the dynamic tension between diversity and interdependence. Leadership behaviors such as being directive were rewarded in previous eras. In this current era ("Phase 3") the successful leader will draw on relational and instrumental skills to form alliances and tap the strength of diverse staff. This well-written book offers descriptions of nine sets of leadership behaviors, and provides a solid research base for the application of each to management and leadership. Dr. Lipman-Blumen gives case examples of Phase 3 leaders from social services and the corporate sector who have effectively used instrumental and relational skills to advance their strategic vision. This volume will certainly provoke new thoughts about leadership, and will offer direction on where a person could develop him or herself to make a bigger difference.

Luke, J. S. (1998). *Catalytic leadership: Strategies for an interconnected world*. San Francisco: Jossey-Bass

This book presents a model of leadership design specifically for the world of a leader in the public sector – a world of interconnected systems with multiple stakeholders, where, successful leadership as the author says “was more catalytic and collaborative than charismatic and controlling”. Luke has spent most of his consulting and research life looking at public sector initiatives in economic and social problem-solving and his model of leadership grows out of these experiences. His examples and recommendations are firmly rooted in the world of public service and social problem – solving, and would be valuable for any leader operating in this set of circumstances. He names four tasks of leadership in this setting:

1. Focus attention by elevating the issue to the public and policy agendas
2. Engage people in the effort by convening the diverse set of people, agencies, and interests needed to address the issue.
3. Stimulate multiple strategies and options for action
4. Sustain action and maintain momentum by managing the interconnections through appropriate institutionalization and rapid information sharing and feedback.

(preface, p. xv)

In chapters on each, Luke presents case studies and detailed suggestions as to how to carry out each of the recommended tasks. He concludes with chapters on working with groups and developing one’s personal passion and character as a leader. This book is one of the few written on leadership that addresses the large interconnected public systems in which many systems change activists will work.

Manske, F. A. (2000). *Secrets of effective leadership: A practical guide to success* (4th Edition ed.). Mount Pleasant, TN: Leadership Education and Development Inc.

Author Manske defines leadership as ‘obtaining excellence from people’, and proceeds to outline seventeen basic attributes of leadership, with a chapter on each one. In addition, he addresses the leader’s personal life as the foundation for effectiveness, and offers chapters on stress and time management and healthy home life. The book concludes with a self-test a person could take to identify arenas of growth. This book says the effective leader:

1. builds group cohesiveness and pride
2. lives by the highest standards of honesty and integrity
3. shares information openly and willingly
4. coaches to improve performance
5. insists on excellence
6. sets the example for others to follow
7. holds subordinates accountable
8. has courage
9. shows confidence in people
10. is decisive
11. has a strong sense of urgency
12. makes every minute count
13. earns the loyalty of employees
14. is employee centered
15. listens actively
16. is determined
17. is available and visible to his or her team.

Maxwell, J. C. (1993). *Developing the leader within you*. Nashville, TN: Thomas Nelson, Inc.

One of the core dynamics of leadership is change. Very few leadership texts look at the core issue of how the leader oneself changes over time. This book focuses on the developmental path of a leader, outlining key personal capacities, including the ability to set priorities, to manage one's integrity, to understand change processes, to solve problems, to maintain a positive attitude, to develop people, to craft a vision, and to maintain self-discipline. By practicing these skills, a leader can move from leadership as a function of position, to a place where leadership is a function of and expression of one's own personhood. Maxwell has done much of his work with leaders of church communities and his religious foundation is clear in the writing. Other books by Maxwell are also available, and equally accessible. These include:

Maxwell, J.C. (1995) *Developing the leaders around you*. Nashville, TN: Thomas Nelson, Inc.

A discussion of the importance of identifying and developing future leaders, and skills involved in building the next generation of leaders.

Peters, T. (1988). *Thriving on chaos: Handbook for a management revolution*. New York: Alfred A. Knopf.

Written by one of the 'gurus' of management, this was one of the first books to explicitly draw in the notion of chaos theory as an underpinning for leadership and management. Peters, who had originally written *In Search of Excellence*, and *A Passion for Excellence* states that his earlier work and that of others were recipes for success in a relatively stable and predictable world, a world which has since disappeared. The new world, recognizable to any leader in social services, is characterized by accelerating and sudden change, by complexity, by unpredictability, and by the need to respond quickly to changing circumstances with innovation and flexibility. The moment of chaos is not to be avoided, but embraced as the access to organizational reinvention and reformulations. Peters outlines forty-five strategies for leadership in five broad areas:

- Creating total customer responsiveness: ten approaches to listening and responding quickly and with quality to customer needs.
- Pursuing fast-paced innovation: ten approaches to building a culture and capacity for quick innovation
- Achieving flexibility by empowering people: ten approaches to tapping the best people have to offer, including how to 'eliminate bureaucratic rules and humiliating conditions'.
- Learning to love change: a new view of leadership at all levels: ten approaches to vision, attention, use of self, and creating a sense of urgency
- Building systems for a world turned upside down: what you measure, control tools, goal setting and integrity.

Though written more than ten years ago, this book is accessible, inspiring, and loaded with examples applicable to the current era. A leader can dip into any chapter and find insight and direction.

Ponder, R. D. (1998). *The leader's guide: 15 essential skills*. Central Point, OR: The Oasis Press / PSI research.

This book is a good handbook combining both leadership and management skills. It includes some of the basics of management, such as project planning and decision-making, time and team management, diversity and staff development, and motivating and coaching a team. Conflict resolution based on win-win principles and strategic planning are also included. It includes concrete directions on how to deal with a wide range of management dilemmas. This would be a useful resource to a leader new to the management side of his or her job.

Rabbin, R. (1998). *Invisible leadership*. Lakewood Colorado: Acropolis Books.

This volume goes one step beyond Covey in looking at the inner core, or “why” of being a leader. Rabbin, who has a background in spiritual practices and teaching, moves into the world of management with the question of where a leader comes from in doing his or her work. He encourages us to be centered in our own inner sense of purpose, accessed through reflection, and through the practice of being present. As many leaders seek to form an agency or business that is about more than just the bottom line, this volume will be an inspiration to live a life of larger meaning and wholeness. Rabbin says a leader must first be a mystic, to stay centered, available, and powerful in the rapidly changing and unpredictable world of management today. If we don't he cautions that there will be a world of “weird failures” (quoting the Sufi poet Rumi) and misaligned intentions.

Spears, L. C. (Ed.). (1998). *Insights on leadership*. New York: John Wiley and Sons.

The traditional view of leadership is top-down – telling people what to do and being an expert for others to follow. Robert Greenleaf developed an alternate theory of “Servant- Leadership” and launched a new world of thought about how a leader can be more powerful by tapping the intrinsic motivation and passion of those in the organization. Editor Larry Spears, who directs The Greenleaf Center for Servant Leadership, says it is the role of a leader to develop a culture of trust, and then to “lead people by coaching, empowerment, persuasion, example, modeling.” (*Forward, xvii*). To explore this further, the editor has collected a series of articles by well-known management writers and consultants reflecting on this model of leadership. This volume is organized into four sections: service, stewardship, spirit, and servant leadership, and includes articles by Steven Covey, Ken Blanchard, Peter Block, Margaret Wheatley, James Autry, Parker Palmer, and Joseph Jaworski. While the concept of ‘servant leadership’ is well-illuminated by the end of the collection, this book offers much more than that, and will touch on almost every chord of new thinking on who a leader could be. It has excellent articles on meaning – making, on self-care and rejuvenation, on inverting the pyramid, and on building empowering cultures. Each author is first a good writer, making the collection one that is eminently readable and useful.

Wheatley, M. J. (1992). *Leadership and the new science* (1st Edition ed.). San Francisco: Berrett-Koehler Publishers.

In this book, Margaret Wheatley further contributes to the distinguishing of new organizational paradigms. She proposes new models of leadership that move away from “command and control” and take into account the ever-changing (even chaotic) complexities of current

management environments. To develop the new models of leadership, Wheatley reaches into the worlds of biology, chemistry, quantum physics, chaos theory, and other aspect of 'new science'. These provide support for a model of leadership that elicits individual motivation and passion, in a unifying 'field' of an organizational vision and intention. By going along with the physics of how change actually occurs in large systems, Wheatley proposes that new leadership practices will be much more effective in achieving organizational alignment, productivity, and change. Based on new sciences, she encourages leaders to focus on relationships, to understand and intervene based on the basic interconnectedness of all things and behaviors, and to see disorder and chaos as the moment a system is about to change. Many "new writers" draw on chaos theory in an attempt to describe and understand the fast pace of change. Margaret Wheatley does the best job of painting the picture and inviting the reader to enter the world captured by the new sciences.

Web-Based Resources

Center for Creative Leadership

<http://www.ccl.org/>

This website is sponsored by a non-profit educational institution committed to promoting creativity in leadership, and a broader sense of the role of business in society. In addition to information about the institute's training programs and consulting work, the site offers resources for leaders. For example, the Center created a performance assessment tool called 360° Assessment, and information about this and other assessment tools is available on the site. One of the most valuable resources available on this site are downloadable guide books for leaders. At this writing, two are available – on leadership resilience and on communicating across cultures. Both are comprehensive, concrete, and very useful.

Advancing Women in Leadership

<http://www.advancingwomen.com/awl/awl.html>

This site is actually an on-line journal. In the words of the editors it "represents the first on-line professional, refereed journal for women in leadership" and it "publishes manuscripts that report, synthesize, review, or analyze scholarly inquiry that focuses on women's issues". The site contains sites addressing issues faced by the individual woman leader, including job listings, networking opportunities, and financial advice, as well as networks for women with common interests, such as women leaders in education, Hispanic women leaders. The journal addresses issues of women in leadership and workplace issues for women.

The Community Leadership Association

<http://www.communityleadership.org/>

This association is dedicated to "nurturing leadership in communities throughout the United States and internationally". According to the website, its mission is "to strengthen and transform communities by enhancing the capacity of inclusive, community leadership development efforts." Resources available on the website include more information about the association itself, its strategic plan, and an annual leadership conference and workshops, as well as discussion forums for members and for non-members to discuss leadership topics. A sampling

of topics on the open discussion forum recently included the following discussion topics: funding sources, diversity in leadership, what makes a good leader, youth leadership, senior leadership, low income women in leadership, job postings, an exchange of ice-breakers and team-building exercises, and a discussion of citizen participation. The site also includes links to the websites of foundations and organizations related to the mission of the Community Leadership Association.

Greenleaf Center for Servant-Leadership

<http://catalog.greenleaf.org>

As described in the book “Insights on Leadership” listed above, “servant leadership” is a phrase originally coined by Robert Greenleaf to address a new model of leadership, one where the leader serves those working in the organization and the organization’s mission, not the other way around. This notion has been a touchpoint for writing on leadership that stresses principled leadership, attention to people and relationship, and attention to the wholeness and integrity of the leader him or herself, all with an eye to increasing the effectiveness of the organization. This website offers a catalogue of leadership books to, in their words, “help you become an authentic and effective leader”. The categories of books include: personal leadership development, books by Robert Greenleaf or about servant leadership, books by other authors writing to illuminate the concepts of servant leadership, and titles on organizational leadership development. This is a wonderful site from which to begin an exploration of the leadership literature.

African American Leadership Institute

<http://www.academy.umd.edu>

This site, one of several sites within the site for the University of Maryland’s James MacGregor Burns Academy of Leadership, is dedicated to the development of the “transforming leaders needed to tackle the challenges of the 21st century. The site will connect the viewer to books and other resources on African American leadership, to information about training and fellowship programs, to information on specific initiatives such as mobilizing New York, and race and welfare. It contains links to other web resources particular to African American leadership.

Leadership for a changing world

<http://leadershipforchange.org/>

This is the website for a program funded by the Ford Foundation that recognizes leaders who are making a positive difference in improving people’s lives in communities across the United States. Each year the program recognizes 20 “outstanding leaders and leadership groups...[who] ... work in such areas as economic and community development, human rights, the arts, education, human development, sexual and reproductive health, religion, media, and the environment.” Each leader who is recognized is listed on the website, receives a financial award, and participates in the development of a research base to deepen the understanding of

community leadership. Current community leaders will benefit from this website not only for news of the program itself, but for the opportunity to read interviews with outstanding community leaders, and articles on leadership.

This site is hosted by two researchers at the Robert F. Wagner Graduate School of Public Service at New York University. The researchers are using a qualitative and participatory approach to develop a new model of what leadership would look like in a community setting. They say they are “drawing in particular on new leadership theories that pay attention to the role of culture and meaning-making as well as to the interconnections between leaders and communities. In addition, they draw from theories on social change ranging from social movements and collective action theory to accounts of activism and community organizing, as well as multicultural insights coming from scholars concerned with the role of social change leadership within ethnic and feminist communities. “

The site contains references to other writings on community leadership.

Institute for Women’s Leadership

<http://www.womensleadership.com/>

This website provides access to training programs and workshops this company offers for women leaders. They say their programs focus not just on what a woman leader must know and do, but also on the underlying beliefs and values of the woman leader – who she must be, and the context in which she operates. Workshops are offered for women leading change initiatives, for women of color in leadership positions, and for men and women leading change initiatives. Coaching is also available.

The Center for Innovative Leadership

<http://www.cfil.com/>

This site is sponsored by the Center for Innovative Leadership at. In addition to promoting their own publications on leadership and management, the site has downloadable articles on leadership, most with a corporate slant. The site also offers a wide-ranging bibliography of major works on leadership written since 1980, complete with links to Amazon’s website for complete information on the book and easy purchase information.

Overview of Leadership in Organizations, Written by Carter McNamara, MBA, PhD

<http://www.mapnp.org/library/ldrship/ldrship.htm>

This is a written essay on leadership in non-profit and for-profit organizations. It provides a definition of leadership, a summary of leadership theories, a discussion of whether leadership and management can or should be separated, a set of suggested competencies and traits leaders should possess or develop, and a basic guide to management and supervision. There

is also a brief promotional section on an e-mail course to develop management skills in non-profit management.

Leadership Now

<http://www.leadershipnow.com>

This site is based on the premise that everyone can be a leader, regardless of position, gender, or age. The site offers articles, books, videos, and other resources for use by people in families, businesses, and communities. It links to other leadership sites on the web. One interesting and unusual feature is a section just for quotations by leaders or on leadership on a wide variety of subjects.

Institute for Collaborative Leadership

<http://home.att.net/~randagroup>

The Institute for Collaborative Leadership is a nonprofit organization dedicated to helping leaders build and manage productive collaborations, partnerships, teams & coalitions. This website has a list of downloadable articles and book reviews, a list of services the Institute offers, and connects the viewer to a study by the Chapin Hall Center for Children on non-profit strategic alliances.

The Leadership Challenge Home Page

www.theleadershipchallenge.com

This website is developed as a companion to Kouzes and Posner's book *The Leadership Challenge* (reviewed above). It offers access to more information on the five principles of leadership outlined in the book and to research using the leadership instrument developed by the two authors.