



**REGULATION OF JUDICIAL CONDUCT  
FOR THE JUDGES OF  
THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**TRAINING COURSE**

**OCTOBER ۲۰۰۷**



## COURSE SYLLABUS

On ۱۹ June ۲۰۰۷ (۲۹ Jawza ۱۳۸۶), the Supreme Council of the Supreme Court of Afghanistan adopted the Regulation of Judicial Conduct for the Judges of the Islamic Republic of Afghanistan. The Regulation contains ۲۴ articles, and embodies universally-accepted principles of ethical conduct for judges: absolute independence and neutrality in decision making; impartiality and the absence of bias and prejudice against any party; complete fairness; respect for all who enter the courtroom; personal integrity; patience; diligence; and a prohibition against the acceptance of payments and gifts.

There are approximately ۱۳۰۰ sitting judges in Afghanistan. Before those judges can be held accountable for the ethical standards set forth in the Regulation, they must be aware of those standards and be trained on their meaning and significance. This focused training course is intended to be a vehicle for the delivery of that training.

The course presents an overview of the general subject of the importance of the Regulation to the independence of the judiciary in Afghanistan; provides an in-depth article by article review of the Regulation, with reference to other codes of judicial conduct found in the region and the world; and presents hypotheticals intended to prompt classroom discussion and promote a fuller and more meaningful understanding of the principles underlying the text of the articles and official comments. Because a mechanism for enforcement of the Regulation has not been discussed or considered by the Supreme Court subsequent to the adoption of the Regulation, the subject of enforcement is not covered in this course.

The materials have been prepared to allow for the delivery of the course in six to twelve hours, depending on the time available in a particular judicial training program. The task of delivering Regulation of Judicial Conduct training to ۱۳۰۰ judges in a one-year period is formidable. It is hoped that all organizations participating with the Supreme Court in the delivery of judicial training programs will include this course in their training programs, and maintain records of the judges who have taken the course.

The materials have been prepared by the USAID Afghanistan Rule of Law Project. Sincere appreciation is extended to Mohammad Osman Zhobal, Head of the Research and Studies Department of the Supreme Court, and Judges Abdul Basir Fayiz and Hazrat Gul Hussami, professional members of the Department, who reviewed the materials and made several helpful suggestions for changes, and to Professor Lutfurrahman Saeed, Lecturer, Sharia Faculty, Kabul University, who, together with Mr. Jobal and Judges Fayiz and Hussami, participated as members of a working group, discussed the Regulation and proposed hypotheticals, and suggested some of the hypotheticals contained in these materials.

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## **INTRODUCTION**

### **I. Qualities of a Good Judge**

The Regulation of Judicial Conduct for the Judges of the Islamic Republic of Afghanistan was adopted by the Supreme Council of the Afghanistan Supreme Court on ۱۹ June ۲۰۰۷.

The Regulation of Conduct is not unique in the world. Judicial systems that strive for legitimacy and independence have codes of conduct to guide their judges. Embodied in these codes are universal principles of ethical behavior.

The provisions of this Regulation do not reflect a new phenomenon in the area of judicial activities of the courts. In Afghanistan, under the titles of “manners of a judge” or “virtue of judgeship,” there are several books on Islamic jurisprudence-related subjects which have addressed these universal principles in detail. What is useful to understand is the fact that the Regulation presents a unified reference to these jurisprudence-related subjects from the rare and venerable books within the context of existing internationally-recognized criteria.

#### **Discussion points:**

۱. What are the essential characteristics of a good judge?
۲. Why?
۳. What happens when one or more of those characteristics are missing?
  - What is essential?
  - What is desirable?

#### **References:**

Qualities and Abilities – from United Kingdom Judicial Appointments Commission

Five core qualities and abilities required for judicial office. These may be adapted for different posts.

۱. Intellectual capacity
  - High level of expertise in your chosen area or profession

- Ability quickly to absorb and analyze information
- Appropriate knowledge of the law and its underlying principles, or the ability to acquire this knowledge where necessary

२. Personal qualities

- Integrity and independence of mind
- Sound judgment
- Decisiveness
- Objectivity
- Ability and willingness to learn and develop professionally

३. An ability to understand and deal fairly

- Ability to treat everyone with respect and sensitivity whatever their background
- Willingness to listen with patience and courtesy

॔. Authority and communication skills

- Ability to explain the procedure and any decisions reached clearly and succinctly to all those involved
- Ability to inspire respect and confidence
- Ability to maintain authority when challenged

•. Efficiency

- Ability to work at speed and under pressure
- Ability to organize time effectively and produce clear and reasoned judgments expeditiously
- Ability to work constructively with others (including leadership and managerial skills where appropriate)

The १० attributes of a great judge

१. Be kind
२. Be patient
३. Be dignified
- ॔. Don't take yourself too seriously
- . Work hard
६. Don't fear reversal
७. Treat all cases as important cases

٨. Be prompt
٩. Use common sense
١٠. Pray for divine guidance

## **II. Rationale for Codes of Judicial Conduct**

### **Discuss each of the following:**

Guidance, encouragement, and positive reinforcement for judges.

Notice to the public of legitimate expectations for judicial conduct.

Promotion of public trust and confidence.

Basis for evaluation, promotion, and discipline.

Preservation of the independence of the judiciary.

## **III. Judicial Independence and Independence of the Judiciary**

The subject of judicial independence and the importance of such independence to the protection of human rights has been an important subject internationally, regionally, and locally for the last ٢٠ years or so. Furthermore, as our global political structure and global economy changes, so must the judiciary. For Afghanistan to be an equal partner in the world (or regional) economy, there must be a legal system that businesses can rely on.

### **Notes on Independence of the Judiciary**

Constitution – separate but equal branch: “The judicial branch is an independent organ of the state of the Islamic Republic of Afghanistan (article ١١٦),” headed by the Supreme Court.

The Supreme Court is not a ministry, a department, or an office.

It should not be viewed as one of several justice institutions blended into something called “the justice sector.”

Such a view threatens the very essence of an independent judiciary.

Importance of an independent judiciary:

U.N. Basic Principles on the Independence of the Judiciary (General Assembly resolutions ٤٠/٣٢ of ٢٩ November ١٩٨٥ and ٤٠/١٤٦ of ١٢ December ١٩٨٥).

Two of the basic principles are worthy of mention.

No. ۳. “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.”

No. ۴. “There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision . . . .”

These principles stand for the proposition that the judiciary must be an independent and unrestrained check on the actions of the legislative and executive branches of government.

The principle of an independent judiciary is especially important in a young and developing republic, formed following three decades of war.

The Constitution of Afghanistan contains ۳۷ articles delineating the fundamental rights and duties of citizens.

These rights and duties are universal and are familiar.

The survival of Afghanistan as a republic will depend upon the ability of all three branches of government to vindicate these rights for all the citizens of Afghanistan.

The ultimate duty and responsibility to ensure the vindication of these rights will fall to the judiciary.

Without an independent judiciary, there can be little hope for the future.

Without independent judges there cannot be an independent judiciary.

#### **IV. Historical Antecedents.**

##### **Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash’ari, Allah be pleased with them**

The second caliph used to rely on logical and expedient ways of interpretive judgment (Ejtehaad) whenever there was no clear provision in Qur’an and traditions of the Prophet Mohammad (Sunnah). In his letters to his appointed governors in various parts of the Islamic territory, he would introduce the sources and rules of inference for rulings.

His letter to Abu Musa Al-ash’ari, governor of Basra (year ۱۷ of Lunar Calendar – ۶۳۸ AD), enjoys a historical recognition in this regard:

“Pronouncing judgment (qadha) is an established/unequivocal ordinance and followed practice (sunnah). You must try to understand the case which comes before you because the pronouncement of a judgment which can not be put into effect is of no use.

Act impartially in your hobnob with the people and in courtroom so that the rich (men of high status) be not greedy for your partiality and the weak (men of inferior status) be not fearful of your injustice.

The onus of proof is on plaintiff and the oath on the one who denies (the charge). Conciliation is permissible between Muslims, except a conciliation which makes licit forbidden or forbids what is licit. Let not a judgment which you judged yesterday, but over which you re-consulted yourself and were guided to your rectitude; prevent you from retracting to justice/right (al-haq), for nothing can invalidate justice and retraction to justice/right is better than long persistence in a thing which is invalid.

Pay attention to comprehending what is evolving disturbingly in your mind (lit. chest) that has no Qur’anic indication or practice of the Prophet (sunnah) applicable to it and become acquainted with similarities and analogies and then after that, compare matters. Then have recourse to that which is the most preferable to God and most in conformity of them to justice/right (haq) as you see it.

Set a term for a person who advances a plea, taking into consideration a potential right and giving him a deadline to produce a proof. If he produces a proof, he will receive his due, if not, it is permissible to issue a judgment against him, doing so will remove any doubts, will clear any ambiguities and will leave no excuse behind.

The Muslims are persons whose testimony is admissible (they are uduol) except for a person who has received a whipping for [an offense against morality] involving a fixed penalty (hadd), or from whom false testimony has been experienced, or one who is suspect on account of client relationship (walaa) [to a litigant].

God is well aware of your hearts and averts [punishment] from you in accordance with outward character. Have a care to avoid impatience, vexation and annoyance with people and denying the rights of the litigants when they are on the right side. If you do so, God will confer reward and makes goodly store. For whoseever’s secret heart is right in what lies between him and his God, God will make right/reconcile what lies between him and the people. And whosoever decks himself out for the world with something other than what God knows of him, God will bring shame upon him.”

**Code of Hammurabi – c. 1780 BCE** (Hammurabi lived 1790-1750 BC)

Judges are strictly supervised and appeal is allowed.

A judge who blunders in a legal matter is to be expelled from his judgeship and heavily fined.

Hammurabi Code Sec. 5 – If a judge try a case, reach a decision, and present his judgment in writing; if later error shall appear in his decision, and it be through his own fault, then he shall pay twelve times the fine set by him in the case, and he shall be publicly removed from the judge’s bench, and never again shall he sit there to render judgment.

## **V. Primary and Secondary Sources**

In order to better understand the principles of ethical behavior set forth in our Regulation of Judicial Conduct, not only will we study this letter from the second caliph, but we will also look to the following primary and secondary source materials for guidance:

### **Primary Sources:**

**Constitution of Afghanistan**

**Afghanistan Civil Procedure Code**

**Law on Organization and Jurisdiction of Courts**

### **Secondary Sources**

**Bangalore Principles of Judicial Conduct (1923) (prepared by chief justices of the civil law system)**

**Code of Conduct of the Hashemite Kingdom of Jordan**

**International Criminal Court Code of Judicial Ethics (ICC-CJE)**

**American Bar Association (ABA) Model Code of Judicial Conduct (1972)**

# REGULATION OF JUDICIAL CONDUCT

## TEXT AND DISCUSSION

### CHAPTER ONE – AUTHORITY AND PURPOSE

#### ARTICLE 1 – [AUTHORITY]

**This regulation is adopted pursuant to the authority granted in articles 123 and 124 of the Constitution of the Islamic Republic of Afghanistan, and in accordance with article 68 of the Law on Organization and Jurisdiction of Courts of the Islamic Republic of Afghanistan.**

#### ARTICLE 2 – [PURPOSE]

**The purpose of this regulation is to determine the norms and standards for the conduct of all judges, to put them on notice of those norms and standards, and to regulate the affairs related to their duties and responsibilities.**

#### **Lecture Materials:**

#### **Key Principles:**

Article 124, second paragraph, of the Constitution states as follows: “Appointment, transfer, promotion, punishment and proposals for retirement of judges, carried out according to the provisions of the laws, shall be within the authority of the Supreme Court.”

Article 68 of the Law on Organization and Jurisdiction of Courts states that “[d]isciplinary measures for judges shall take place according to particular regulation approved by the Supreme Court.” Article 29, paragraph (1) also provides authority to the Supreme Court to approve regulations.

Because the judicial branch is an independent organ of the state, the Supreme Court has the authority under the Constitution and the Law on Organization and Jurisdiction of Courts to regulate the internal affairs of the judiciary, including the behavior of judges, by adopting regulations.

These regulations are not subject to review and approval of the government.

Of critical importance to the Supreme Court’s ability to regulate the judicial branch is its supervision of the conduct of the judges.

#### **Secondary Sources:**

## ICC-CJE

### Article 11 – Observance of the Code

1. The principles embodied in this Code shall serve as guidelines on the essential ethical standards required of judges in the performance of their duties. They are advisory in nature and have the object of assisting judges with respect to ethical and professional issues with which they are confronted.

2. Nothing in this Code is intended in any way to limit or restrict the judicial independence of the judges.

By contrast, the standards of conduct set forth in the Afghanistan Regulation of Judicial Conduct are binding on all the judges of Afghanistan.

## CHAPTER TWO – DUTIES AND OBLIGATIONS

### ARTICLE 3 – [INDEPENDENCE and NEUTRALITY]

**The independence and neutrality of a judge are the sole guarantees to ensure the administration of rights and the dispensing of justice. Hence, the judge shall be required to strictly prevent any interference, or attempt at interference, in the affairs that fall within his or her jurisdiction by other authorities or persons, including relatives. He or she shall respect and comply with the law, and shall bear in mind that in exercising his or her judicial functions, he or she shall not be subject to any authority other than the authority of the law.**

### COMMENTS

**Under article 116 of The Constitution of Afghanistan, the judicial branch is an independent organ of the state of the Islamic Republic of Afghanistan. For the public to accept the independence of the judicial branch, and give deference to the rulings and judgments of the courts, the public must have confidence in the integrity and independence of the judges. To earn and retain this confidence, judges must comply with the law and act without fear or favor. They must not accept any interference or attempt at interference from authorities within the other organs of the state, from others within the judicial branch, or from any other persons, in any cases that are before them. They must be unmoved by partisan interests, public clamor, or fear of criticism.**

### Lecture Materials:

### Key Principles:

For the judicial branch to function as an independent organ of the state, the judges who perform the work of the judicial branch must be fully independent, and must be seen by the public as being independent.

Acceptance by the public of decisions and verdicts of the courts depends upon public trust and confidence in the integrity and independence of the judges.

To be independent, judges must be completely free, in the performance of their judicial duties, from interference by any institution, authority, or person.

To earn the trust and confidence of the public, judges must obey the law themselves, follow the provisions of this Regulation, and be unmoved by partisan interests, public clamor, or fear of criticism.

### **Hypotheticals for Discussion:**

Assume the following: Ramin has just become a member of the court, and assigned to his first panel of judges. Mahmood, the senior judge in the district, has the office next to Ramin. Mahmood is not on the panel with Ramin, but tells Ramin that he had a case similar to the one that Ramin's panel is hearing, and the decision he rendered was for the defendant. Mahmood tells Ramin he should rule for the defendant.

Has Mahmood done anything wrong?

Has Ramin done anything wrong?

What should Ramin do?

Would the situation be different if Mahmood was the Chief Judge? (see also article ۷)

Would the situation be different if the person who contacted Ramin was his father, a member of the Parliament?

### **Primary Sources:**

Constitution of Afghanistan

Article ۱۱۶ –

The judiciary shall be an independent organ of the state of the Islamic Republic of Afghanistan.

The judiciary shall be comprised of one Supreme Court, High Courts as well as primary courts whose organization and authority shall be regulated by law.

### **Secondary Sources:**

Bangalore Principles – Preamble Paras. ۱ & ۲

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full quality 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 charges 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.

#### Jordan Code

##### Article (١)

The judge shall guard his own independence. He shall refrain from accepting any interference or attempt at interference by other authorities in any case that is before him. He shall bear in mind that in exercising his judicial functions he shall not be subject to any authority other than the authority of the law.

##### Article (٢)

The judge shall not allow any of his colleagues to interfere with the exercise of his judicial functions, or to interfere with the judicial functions of his colleagues. He shall bear in mind that he and his colleagues shall be devoted to accomplishing justice.

##### Article (٣)

The judge shall not allow litigants, lawyers, or any other person to interfere in or influence his judicial functions.

##### Article (٢٢)

The judge shall perform his judicial duties without preference, partiality, assailment, or prejudice. He shall perform them in a manner that enhances confidence in judicial independence and integrity.

##### Article (٢٩)

The judge shall not allow court staff under his management to breach the appearance of justice among litigants in a judicial action that is before him, nor allow court staff to accept a gift, reward, or loan from any litigant. The judge shall report anyone who commits such an action.

##### Article (٣٠)

The judge shall maintain the court's prestige during hearing sessions. He shall in all cases be patient, respectful, a good listener, polite in dealing with litigants, and shall demonstrate self-respect, strong character and noble feelings. He shall enhance through his behavior, appearance, and language, inside and outside the court, the confidence of

the public in his integrity as well as in the integrity of the judiciary, and shall demonstrate that he has no preference, partiality, or prejudice in his dealings.

ICC-CJE

Article ٧ – Judicial independence

١. Judges shall uphold the independence of their office and the authority of the Court and shall conduct themselves accordingly in carrying out their judicial functions.

٢. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

#### **ARTICLE ٤ – [RECORD EVIDENCE]**

**The judgment of a judge shall be based upon facts and evidence that have been admitted through the court proceeding; hence, the judge shall not rely upon his or her personal information while considering a case, or, except when allowed by law, consider any evidence that has not been properly admitted in the case and discussed openly by the parties.**

#### **COMMENTS**

**In his or her capacity as a decision maker, a judge is not an investigator, and must rely, in making his or her decision, on the information and evidence submitted by the parties during the proceeding. Except when allowed by law, a judge cannot take into consideration, in making a ruling, personal knowledge or information, or evidence that has not been properly submitted in the case. This principle is reaffirmed, for example, in article ٢٤٨ of the Civil Procedure Code of the Islamic Republic of Afghanistan.**

#### **Lecture Materials:**

##### **Key Principles:**

The parties in a court case have a right to know all the facts and evidence being considered by the judge(s), and respond accordingly.

If a judge relies on personal knowledge, the parties will not know it, and will be denied this important right.

##### **Hypotheticals for Discussion:**

Consider this situation: Farid allows Hamed to use his car. Hamed drives the car to a nearby village and sells it. Farid claims in court that Hamed stole the car and sold it. Farid has no evidence other than the fact that a friend of Hamed told Farid that he heard Hamed boasting about how much money he got for the car. Judge Rahi, who is the

presiding judge in the case, knows Farid's car and saw someone driving it just outside of the village.

Can Judge Rahi use his knowledge in deciding this case? Why? Why not?

Is there anything that Judge Rahi can or should do under article ٦?

Should Judge Rahi consider disqualifying himself from presiding in the case?

If so, is disqualification optional or mandatory?

### **Primary Sources:**

Afghanistan Civil Procedure Code

Article ٢٤٨ - The court issues its decision only on the basis of the evidence that has been gathered and investigated during the judicial proceedings.

### **Secondary Sources:**

Jordan Code

Article (١٠)

Except when allowed by law, the judge shall not rely in his ruling on his personal information, or on any other evidence that has not been properly submitted in the case and discussed openly by the litigants. Departure or deviation from the logic of conclusive evidence presented in the action is an indication that the judge is under the influence of external factors.

Article (١١)

Taking into consideration the right of litigants and their attorneys to explain their legal and jurisprudential opinions during the hearings, the judge shall not hear a party on a matter that might influence his ruling in the absence of the other party outside of the hearing, regardless of whether doing so will accomplish justice.

Article (١٢)

The judge shall inform litigants and prosecution about any solicitation that he has received related to the case before him.

Article (١٣)

The judge shall examine evidence presented to him in the case being heard before him. He shall make an effort to learn the truth, and then issue his ruling in accordance with established legal rules and judicial discretion. In case he cannot learn the truth sufficiently based on the submitted evidence, then he shall implement the principles of right and justice in his actions.

## **ARTICLE 6 – [FREE SPEECH]**

**A judge shall have the right to freely express his or her opinions. In collective adjudications, a judge shall not impose his or her opinion on the rest of the judges, or follow the opinion of the other judges contrary to his or her own will. A judge shall be independent of other judges with regard to decisions that the judge is to make. A judge shall not meddle in any case that is being considered by another judge. A judge shall not make any comment in public or otherwise that might reasonably be expected to affect the outcome of a proceeding or the right to a fair trial of any person or issue.**

### **COMMENTS**

**Judges in the same court are colleagues, and are free to discuss pending cases among themselves. However, a judge must be independent of other judges in the same court and in other courts with regard to decisions that the judge is to make. A judge must not attempt to influence another judge in the making of such decisions, and the judge making the decision must not accept any influence.**

**Basic notions of fairness dictate that a decision or judgment will be based upon the information and evidence presented during the proceeding, and that the judge will not make a decision until the parties have had a fair opportunity to present their case and the proceeding has concluded. If a judge comments publicly about a pending matter, the comments, regardless of the judge's intent, could be interpreted as suggesting that the judge has already made up his or her mind about the matter. To avoid the appearance of bias or prejudice, a judge should not comment publicly about a pending matter. A matter is considered to be pending during any appellate process and until final disposition.**

### **Lecture Materials:**

#### **Key Principles:**

A person does not give up his or her right to express opinions when he or she becomes a judge.

Judges can discuss pending cases with their colleagues, but a judge must be independent of other judges regarding decisions that the judge is to make.

In collective deliberations, a judge should not attempt to impose his or her opinion on the other judges, and should not accept the opinion of another judge contrary to his or her own will.

Until a case is final, a judge sitting on the case should not comment in public about the case.

### **Hypotheticals for Discussion:**

Assume the following: You are sitting on a panel of judges in a murder case. The case is the subject of great public interest in your community. A newspaper reporter asks to interview you about the case

Can you make any comment to the reporter? Why? Why not?

Would the situation be different if the case was over, and a verdict had been rendered?

At that point, can you give your opinions about the case, the trial, the attorneys, etc.?

Would the situation be different if the verdict were final? When is a verdict or a case final?

Consider this situation: Walid is convicted by you of arson and the sentence you impose is three years in prison. Your local newspaper is very critical of the sentence because Walid's action destroyed many businesses in town and put many people out of work. You are offended that the newspaper is critical of the length of the sentence and you send a letter to the editor giving your reasons for setting the sentence at three years.

Is it appropriate for you to send that letter, whether it will be published or not?

Does it make a difference if you wait to send the letter until the time for appeal has expired without an appeal?

### **Secondary Sources:**

Bangalore Principles

Application 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.

Application 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.

Application 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.

## Jordan Code

### Article (٤)

No person or entity shall solicit the judge in any case that is before him. A judge shall not meddle in any case that is being considered by another judge.

### Article (٨)

In the event that a judicial colleague dominates or influences a case that is before a judge, or in the event that a judge is subjected to domination or influence, the judge shall inform the Head of the Judicial Council.

### Article (١٦)

The judge shall not express his opinion in the dispute before him to litigants or others. He shall not participate in any legal discussion or research in which he knows that his opinion shall be sought regarding the dispute.

### Article (٣١)

The judge is prohibited from disclosing deliberations before and after the issuance of a ruling and in all other cases stated by law.

### Article (٣٥)

The judge shall not express any comments or opinions about the cases that are before him or his colleagues, whether in private or public gatherings, unless the purpose is for judicial training or research.

### Article (٣٩)

The judge may freely state his views through all means of expression, provided that he does not go beyond the limits of the law.

## ICC - CJE

### Article ٦ – Confidentiality

Judges shall respect the confidentiality of consultations which relate to their judicial functions and the secrecy of deliberations.

### Article ٩ – Public expressions and association

١. Judges shall exercise their freedom of expression and association in a manner that is compatible with their office and that does not affect or appear to affect judicial independence or impartiality.

٢. While judges are free to participate in public debate on matters pertaining to legal subjects, the judiciary or the administration of justice, they shall not comment on pending cases and shall avoid expressing views which may undermine the standing and integrity of the Court.

## ARTICLE 7 – [DISQUALIFICATION; RECUSAL]

Whenever a judge reasonably believes that due to inevitable pressures he or she may not be able to decide a case impartially, he or she shall disqualify himself or herself from considering that case. A judge shall also disqualify himself or herself from considering a case in which a reasonable, fair-minded person might believe that the judge is unable to decide the case impartially. In cases where, according to the law, a judge is disqualified, he or she shall not participate in the consideration of that case.

### COMMENTS

Impartiality is essential to the performance of all judicial duties. “Impartiality” denotes the absence of bias or prejudice in favor of, or against, a particular party, as well as maintaining an open mind in considering issues that may come before the judge. If, for any reason, a judge believes that he or she cannot be impartial in a particular proceeding or matter, the judge must, on his or her own initiative, disqualify himself or herself from further participation. For example, while emotionally unstable or angry in a manner that could bias the judge, the judge shall not hear a case, or if a judge at the time of adjudication becomes psychologically unstable, he or she shall disqualify himself or herself from hearing cases until emotional stability is restored. If a judge has or receives information relevant to a proceeding or matter that might raise a reasonable question concerning the judge’s impartiality, the judge must disclose that information to the parties and their attorneys. Unless the parties agree, outside of the presence of the judge, that the judge may continue to participate in the proceeding or matter, the judge should disqualify himself or herself from further participation. Furthermore, a judge may disqualify himself or herself, or be disqualified as a matter of law, as provided, for example, in articles 70 – 78 of the Civil Procedure Code.

### Lecture Materials:

#### Key Principles:

Impartiality, and equally important, the appearance of impartiality to the parties and the public, is essential to the performance of all judicial duties.

Public trust and confidence in the fairness of the courts is based on this principle.

Impartiality means the absence of bias or prejudice in favor of, or against, any person or party.

In some situations, the law states that a judge is disqualified from sitting on a particular case.

In other situations, the judge must decide, by looking into his or her heart, whether he or she can be fair and impartial. If there is a doubt, the judge must, on his or her own, step aside from the case.

If a judge receives information about a pending case that may call into question the judge's ability to be fair and impartial, or could lead the parties or the public to that conclusion, he or she should immediately disclose this information to both parties.

### **Hypotheticals for Discussion:**

What should you do, if anything, if you are assigned a criminal case and the defendant owes money to your brother? What is the potential problem?

Assume the following: You are the presiding judge in a case where your son is the police officer who arrested the defendant. Your son will not be called as a witness in the case.

What should you do, if anything? What is the potential problem?

Would it make any difference if the arresting officer is your wife's cousin?

Do you have an option to disqualify yourself, or is it an obligation?

### **Lecture Summary:**

A judge should disclose information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification.

A "rule of necessity" may override the disqualification rule if, for example, there is no other judge or court available to hear a case requiring an immediate ruling. The judge must recuse himself or herself after the emergency is over.

In deciding whether or not disqualification is required, the following checklist may be useful:

1. Am I an interested party in the case?
2. Is the claim related in any manner to my husband, wife or their relatives?  
    "Relatives" includes up to 2nd degree of relationship  
    Brother/sister  
    Nephew/niece  
    Uncle/aunt – on both mother's side and father's side  
    Father-in-law/mother-in-law
3. Does any member of my family (to a 2nd degree of relationship) have an economic interest in the outcome of the case?
4. Have I participated in the case as an attorney (including as a prosecutor)?
5. Have I served as an expert or witness in the case?

٦. Have I expressed an opinion about the case?
٧. Is there a conflict between me and one of the parties to the case?
٨. Is there enmity between me and one of the parties to the case?
٩. Am I related to one of the other judges in the case?
١٠. Do I have a personal bias or prejudice concerning a party or a party's attorney?
١١. Was I involved in the preliminary hearing of the case?
١٢. Did I participate in the hearing of the case before the tribunals of the Supreme Court?
١٣. Has a party in the case requested my disqualification under items ١٠, ١١ or ١٢ of this list?
١٤. Has a party in the case requested my disqualification for any reason?

### **Primary Sources:**

#### Afghanistan Civil Procedure Code

Article ٦٥ – The president and the members of the court shall each remove himself/herself from the composition of the trial and hearing of a civil action in the following situations:

١ – If he/she is an interested party in the case before the court or if the claim is related to the principals and proxies, husband, wife or their relatives. For this purpose, “relatives” means brother and sister and their respective children (nephew/niece), uncle and aunt (on both the mother's side and the father's side), father-in-law and mother-in-law.

٢ – If he/she has written or signed a document related to the case before the court, or if he/she, acting as a prosecutor, has already made a judgment as to the subject matter of the claim, or as an expert or witness, has already expressed an opinion.

٣ – If there is a conflict between the president and the members of the court or one of the parties to the case.

٤ – If there is an existing enmity between the president and the members of the court or one of the parties to the case.

Article ٦٦ – The judges that pursuant to the provision of clause ١ of Article ٦٥ of this Code are related to each other cannot be involved in the composition of the trial and the hearing of the civil case.

Article ٦٧ – In case of the occurrence of circumstances beyond those provided for under Articles ٦٥ and ٦٦ of this Code, a judge can refuse to participate in the hearing of a case.

Article ٦٨ – Involvement of the president and the members of the court in the subsequent hearing is not allowed in the following situations:

١ – In case of participation in the preliminary hearing of the case.

٧ – In case of participation in the hearing of the case before the tribunals of the Supreme Court.

Article ٦٩ – In situations provided for under Articles ٦٧ and ٦٨ of this Code, the judge is obligated to submit to the court his/her recusal from the case.

Article ٧٠ – The parties to a claim can in case of the existence of one of the situations provided for under Articles ٦٧ and ٦٨ of this Code request the exclusion of a judge from the proceedings of the case.

Article ٧١ – A demand for exclusion/rejection of the judge is submitted to the court in a written and documented form within three days prior to the commencement of proceedings of the case.

Article ٧٢

١ – The judicial panel of the court shall examine during a judicial hearing the grounds and reasons for the rejection, and shall make a decision and issue a ruling with a majority of opinions regarding acceptance and non-acceptance.

٢ – If opinions are evenly divided, rejection of the judge is preferred.

Article ٧٣ – If there is one judge in the preliminary court, the request for rejection is presented to the superior court and, in case of acceptance of the rejection, another judge is assigned to hear the case.

Article ٧٤ – If demand for rejection is directed against the whole judicial panel of the preliminary court, in case of the acceptance of rejection, another judicial panel is assigned for the purpose of hearing the claim and issuance of judgment by the superior court.

Article ٧٥ – If the grounds for rejection are directed against the judicial panel of one of the tribunals of the state court or an equivalent court, the president of the court shall with the participation of another judge make a decision regarding the acceptance or non-acceptance of the rejection.

If the grounds of rejection are directed against the head of the state court, an equivalent court or against members of the Supreme Court, the high council of the Supreme Court shall make a decision regarding this matter.

Article ٧٦ – When the rejection of a judge is at issue, the hearing of actual claim shall be postponed.

Article ٧٧ – If the grounds for rejection of the judge are not proven, the court deciding that there is no proof to allow rejection shall impose a monetary fine of up to three thousand Afghani upon the party requesting the rejection in bad faith (plaintiff or defendant).

Article ٧٨ – The rulings that are issued by the court regarding rejection shall be final.

### **Secondary Sources:**

#### Bangalore Principles

##### Application ١.٢

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.

##### Application ١.٣

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 from them.

##### Application ١.٦

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.

##### Application ٢.٣

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

##### Application ٢.٥

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

٢.٥.١ the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

٢.٥.٢ the judge previously served as a lawyer or was a material witness in the matter in controversy; or

٢.٥.٣ 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.

#### Jordan Code

##### Article (٢٠)

The judge shall recuse himself from a case if any of the reasons for disqualification stipulated in the law are present and apply to him.

## Article (٢١)

The judge shall inform the head of the court upon hearing any case in which any of the disqualification reasons apply to him, or in which he otherwise feels conflicted.

## ABA Model Code Canon ٣F

Remittal of Disqualification. A judge disqualified by the terms of Section ٣E may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

## ARTICLE ٧- [FOLLOW PROCEDURES]

**A judge shall obey the orders and instructions of his or her superior judicial officials to an extent that it does not contradict his or her independence and neutrality, and does not influence his or her fair and impartial adjudication.**

## COMMENTS

Under article ١١٦ of the Constitution of Afghanistan, the Supreme Court is the highest judicial organ, and heads the judicial branch, which consists, under law, of primary and appeal courts, as well as the Supreme Court. The Supreme Court is responsible for the administration of the judicial branch. Judges, at all levels, must follow administrative regulations, directives, and instructions that have been adopted to permit the efficient functioning of the courts. At the same time, as stated in article ٤ of this regulation, a judge must be independent of other judges, be they colleagues, the chief judge, or judges sitting in a higher level court, with regard to a decision that the judge is to make in a particular case. For example, the chief judge of a court cannot direct or order a judge of that court to decide a case in a particular way. Such an order would be a direct violation of article ٥.

## Lecture Materials:

### Key Principles:

Judges, at all levels, must follow administrative regulations, directives, and instructions adopted by the Supreme Court to permit the efficient functioning of the courts.

This obligation, however, does not extend to the decision-making duties of a judge. There, as we saw in article ٤, the judge must be completely independent.

### **Hypotheticals for Discussion:**

Consider this situation: A judge in one of the judicial districts asks for advice from colleagues about the interpretation of an unclear law. The judges in the province discuss the law at a conference, and reach a conclusion on how the law is to be interpreted. That conclusion is communicated to all the judges in the province.

Should all the judges accept the conclusion, and interpret the law in the same way?

Must all the judges accept the conclusion?

Can anyone tell a judge how to interpret or apply a law in a particular case?

### **Primary Sources:**

Constitution of Afghanistan

Article ۱۱۶ –

The judiciary shall be an independent organ of the state of the Islamic Republic of Afghanistan.

The judiciary shall be comprised of one Supreme Court, High Courts as well as primary courts whose organization and authority shall be regulated by law.

### **Secondary Sources:**

Bangalore Principles

Application ۱.۹

A judge shall encourage 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.

Application ۶.۲

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.

Jordan Code

Article (۱۴)

The judge shall avoid postponing sessions for unjustified reasons, particularly postponing a case more than once for the same reason, or postponing a case to fulfill a request made by one of the litigants in the absence of the other. He shall follow the postponement periods specified by law.

#### Article (٤١)

The judge shall keep abreast of all judicial opinions issued by higher courts, and take note of their established opinions regarding controversial issues. He shall follow the opinions of the full panels of such courts until they are reversed by explicit decisions.

#### **ARTICLE ٤ – [MONITOR DECISIONS]**

**A judge shall have the authority to monitor the implementation of his or her rulings and decisions within the limits allowed by the law.**

#### **COMMENTS**

**While a judge has the authority to monitor the implementation of a ruling or decision within the limits allowed by the law, the judge must be very careful not to become so actively involved in the monitoring as to give the impression that he or she could not be impartial in making a further decision in the case, should the case come back before him or her.**

#### **Lecture Materials:**

##### **Key Principles:**

If the law permits or requires that the judge monitor the implementation of a ruling or decision, the judge should do so.

In doing so, the judge must be careful not to leave an impression that he or she could not be fair and impartial to both parties should there be further proceedings in the case.

##### **Hypotheticals for Discussion:**

Consider the following set of circumstances: In a civil contract case, you order a defendant to produce financial records of his business. The defendant refuses to obey your order, even after you have repeated it in open court.

How can you get the defendant to comply with your order?

#### **ARTICLE ٩ – [POLITICAL ACTIVITY]**

**A judge, like any other citizen, enjoys all basic and civil rights; however, during his or her tenure as a judge, he or she shall not be affiliated with any political party, work secretly or openly for the benefit of a political party, or provide, directly or indirectly, material or incorporeal assistance to a political party.**

#### **COMMENTS**

**Articles 118 and 153 of the Constitution of Afghanistan state that justices and judges cannot be members of a political party during the term of official duty. These provisions are necessary to preserve the independence of the judiciary.**

## **Lecture Materials:**

### **Key Principles:**

The Constitution of Afghanistan speaks for itself:

Article 118 –

Supreme Court members shall have the following qualifications:

١. At time of appointment the age of the Chief Justice of the Supreme Court and its members shall be a minimum of forty years.
٢. Shall be a citizen of Afghanistan.
٣. Shall have expertise as well as adequate experience in legal sciences and Islamic jurisprudence.
٤. Shall have higher education in legal studies or Islamic jurisprudence as well as expertise and adequate experience in the judicial system of Afghanistan.
٥. Shall have good character as well as a good reputation.
٦. Shall not have been convicted, by a court, for crimes against humanity, crimes, or deprivation of civil rights.
٧. Shall not be a member of any political party during his term of duty.

Article 153 –

Judges, Attorneys, Officers of the Armed Forces, Police and Officials of the National Security shall not become members of political parties during their term of office.

### **Secondary Sources:**

Bangalore Principles

Application ١.٦

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.

Application ٤.١٣

A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

Application ٦.٧

A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Jordan Code

Article (V)

The judge shall not be a member of any political party or association.

ICC-CJE

Article 10 – Extra-judicial activity

1. Judges shall not exercise any political function.

#### **ARTICLE 10 – [EQUALITY OF PARTIES; EX PARTE COMMUNICATION]**

**A judge, while considering a case, shall pay solemn attention to the litigants and shall carry out the proceeding on the basis of equality of both parties before the law and court, and shall not grant any kind of distinction or privilege to any of the parties. A judge shall not hear a party or representative of a party on a matter that might influence his or her ruling in the absence of the other party or the party's agreement.**

#### **COMMENTS**

**The adversarial process assumes that the parties will have equal rights, notice and knowledge of all information and evidence submitted in the case that might influence its outcome, and an opportunity to respond to those submissions. Contact by the judge with only one side of the case on a matter that might influence a ruling or decision is contrary to the adversarial process and brings into question the independence and impartiality of the judge. Purely administrative matters, such as scheduling, are not covered by this article as they are not likely to influence the outcome of a case.**

#### **Lecture Materials:**

##### **Key Principles:**

The parties appearing before the court are equal under the law, and must be treated equally and fairly.

Fundamental to this notion of equality is the right of the parties to notice and knowledge of all evidence and information submitted in the case that could influence the outcome of the case, and the right to challenge and respond to those submissions.

Contact by the judge with a party, or the party's attorney, in the absence of the other party on a matter that could influence a ruling or decision, unless specifically permitted by the law, is completely contrary to this notion of equality and calls into question the independence and impartiality of the judge.

Purely administrative matters, such as scheduling, are not covered by this article.

### **Hypotheticals for Discussion:**

What would you do in the following circumstances: In a criminal case, the prosecutor calls you after a hearing and wants to talk with you about the case.

What is the potential problem, if any?

What is the solution?

If the prosecutor succeeds in communicating information to you, what should you do? (see also article ٦)

Assume the following: You are presiding over a civil case. The uncle of the plaintiff, a man you have known for many years, writes a personal letter to you telling you how good a man his nephew is and how difficult it will be for him and his family if he (the nephew) loses the case. You read the entire letter before you know exactly what it is about.

What should you do, if anything?

If you put the letter in a file and do nothing, what might happen if the decision is for the nephew and the existence of the letter is later revealed to the public?

### **Lecture Summary:**

An ex parte communication is any communication:

- outside the presence of or without the knowledge or participation of every person who has a legal interest in a proceeding or that person's lawyer,
- about a pending or impending case,
- by or to the judge presiding in the case.

Also included:

- communications with lawyers, law teachers, and other persons who are not participants in the proceeding, and
- independent investigations of the facts.

Exceptions:

- authorized by law (example – restraining orders, application for search warrant)
- with experts (if a court-appointed expert, though parties should know of the communication)
- with other judges (though not a judge who is disqualified from hearing the case)
- with court personnel
- about settlements
- about administrative matters

Remedies:

Not automatic disqualification

- Unless communication creates bias or prejudice
- Unless communication stemmed from judge's bias or prejudice

Disregard content

Disclose to all parties

Tell sender to cease communicating ex parte

Ex parte communications are prohibited because they undermine a judge's impartiality.

Inaccurate information

Uncontested remarks

Negative impressions

Subtle influence

### **Primary Sources:**

Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash'ari, Allah be pleased with them

“Act impartially in your hobnob with the people and in courtroom so that the rich (men of high status) be not greedy for your partiality and the weak (men of inferior status) be not fearful of your injustice.”

“Have a care to avoid impatience, vexation and annoyance with people and denying the rights of the litigants when they are on the right side. If you do so, God will confer reward and make goodly store. For whosever's secret heart is right in what lies between him and his God, God will make right/reconcile what lies between him and the people. And whosoever decks himself out for the world with something other than what God knows of him, God will bring shame upon him.”

### **Secondary Sources:**

Bangalore Principles

Application ۲.۱

A judge shall perform his or her judicial duties without favour, bias or prejudice.

Application ۲.۲

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.

Application ۲.۴

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.

#### Application ๑.๑

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.

#### Jordan Code

##### Article (๕)

No person or entity shall solicit the judge in any case that is before him. A judge shall not meddle in any case that is being considered by another judge.

##### Article (๑๑)

Taking into consideration the right of litigants and their attorneys to explain their legal and jurisprudential opinions during the hearings, the judge shall not hear a party on a matter that might influence his ruling in the absence of the other party outside of the hearing, regardless of whether doing so will accomplish justice.

##### Article (๑๒)

The judge shall inform litigants and prosecution about any solicitation that he has received related to the case before him.

##### Article (๑๓)

During the exercise of his judicial function, the judge shall deal equally in his speech and behavior with all persons, whether they are litigants or others (witnesses, lawyers, court employees, or colleagues in the profession). He shall not discriminate against them for reasons related to religion, race, color, or for any other reason. He shall request his subordinate employees to comply accordingly.

##### ABA Model Code Canon ๓B(๗)

A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding (subject to certain exceptions).

#### **ARTICLE ๑๑ – [ATTENDANCE OF PARTICIPANTS; SECURITY]**

**Every litigant shall have the right to freely attend a court proceeding; hence, a judge shall not allow any type of limitation in the enjoyment of this right upon any litigant. In addition, the judge shall not allow the security officers to bring the accused handcuffed or in chains into the hearing session. However, in exceptional cases, the judge may order the adoption of necessary security measures to avoid the escape of the accused or to preserve order in the courtroom.**

#### **COMMENTS**

**The judge is responsible for preserving the dignity of the court proceeding and the equal rights of the litigants, and for maintaining security and order in the courtroom. Therefore, the judge must take whatever action is necessary to discharge this duty. At the same time, the judge must be mindful that the imposition of security measures might suggest that the judge is biased or prejudiced against one of the parties. For example, the presence of several security officers may suggest that the judge believes that the accused is a very dangerous person, and has prejudged his or her guilt. The judge should exercise restraint in the imposition of security measures.**

### **Lecture Materials:**

#### **Key Principles:**

For the public to have trust and confidence in the courts, hearings and other proceedings in court must be conducted in an orderly and dignified manner.

Therefore, the judge must balance the right of the parties to have a full and fair opportunity to participate in the case and the duty to maintain order and decorum in the courtroom.

Security measures can give the impression that the judge has prejudged the guilt of an accused before the case has been completed. Therefore, although necessary in some cases, the judge should exercise restraint in the imposition of security measures.

#### **Hypotheticals for Discussion:**

Consider this situation: You are presiding in a criminal case in which the defendant yells at the witnesses during the presentation of evidence. You warn the defendant, but his conduct persists.

What are your options for dealing with the defendant?

Assume the following: You are the presiding judge in a murder case involving a notorious warlord/drug dealer. Public threats have been made by members of his gang to disrupt the trial and to harm the judges.

What options do you have to control the courtroom, provide security, and ensure a fair trial to both parties?

#### **Secondary Sources:**

Bangalore Principles

Application 0.2

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.

#### Application ٦.٦

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.

#### Jordan Code

#### Article (٩)

The judge shall maintain the openness of any hearing, unless it is decided that it should be conducted in camera in order to maintain public order or morals.

#### Article (٩٠)

The judge shall not hesitate to take the necessary legal action against any person who commits misconduct inside the court.

### **ARTICLE ١٢ – [RECORDED TRANSMISSIONS]**

**Unless explicitly agreed to by the litigants and approved by the judge, the video or audio recording or real time transmission of a hearing session to those outside of the court shall not be permitted.**

#### **COMMENTS**

**Video cameras and other transmission devices in the courtroom can be a very useful tool in educating the public about the work of the courts, and instilling public trust and confidence in the judicial branch. At the same time, depending upon the type of case and the parties involved, cameras in the courtroom can be disruptive of the proceedings and can impair the dignity and importance of the judicial process, thereby undermining public trust and confidence. Initially, both parties must agree to the transmission of a hearing session. Ultimately, the judge must weigh these considerations and, in the exercise of his or her sound discretion, make the final decision.**

#### **Lecture Materials:**

#### **Key Principles:**

Before a hearing session can be televised or recorded, both parties must agree and the judge must approve.

Even if both parties agree, the judge must ultimately make the decision.

In making that decision, the judge should, based upon the particular circumstances of the case, balance the advantages to the public in being able to see and understand the work of the courts with the need to maintain order in the courtroom and the dignity of the judicial process.

### **Hypotheticals for Discussion:**

Consider this situation: Basir represents the defendant in a criminal case. He is also a candidate for Parliament. He requests that the trial be open to real-time television coverage; the prosecutor has no objection.

Do you allow cameras in the courtroom?

What factors do you consider in making your decision?

If you allow television coverage, would you impose any restrictions or guidelines?

If so, for whom – the TV station, the attorneys, the witnesses?

### **ARTICLE ١٣ – [TIMELINESS; PROMPTNESS; DILIGENCE]**

**A judge shall be required to conclude the consideration of all cases within the legal timeframe. If action required to be taken by the judge in the exercise of his or her judicial duties is not subject to a legal timeframe, the judge shall act with reasonable promptness in taking the required action. In the event of delay in the consideration of a case resulting from violation by another authority of an order of the court, the judge may issue a decision identifying the violation and forward the decision to the appropriate authority for further proceedings and possible prosecution.**

### **COMMENTS**

**Not only are judges duty bound to maintain official business hours and work hard, they must manage individual cases in a way that precludes unnecessary delay by one side or the other. Furthermore, courts must administer their calendars efficiently in order to complete all the cases in a timely fashion. In a fundamental way, for the public to have confidence in the judicial branch and the courts, it must see that the work of the courts is being done in a fair and expeditious manner. Unnecessary delay in the processing of cases is expensive and harmful to the people involved, and severely undermines the public's trust and confidence in the judicial branch. Judges should issue their decisions promptly following the conclusion of the judicial proceeding. These principles are reaffirmed, for example, in articles ١٩٧, ٢٠٠, and ٤٩٣ of the Civil Procedure Code.**

## **Lecture Materials:**

### **Key Principles:**

In a very fundamental sense, for the public to have trust and confidence in the judiciary, the courts must show that they can get all their work done in a fair and expeditious manner. Case backlogs severely undermine public trust and confidence.

While judges are obligated to finish their cases within the legal timeframe, that timeframe should be viewed as the outside limit. Every effort should be made to conclude cases with reasonable promptness and quicker than the legal timeframe.

### **Hypotheticals for Discussion:**

Consider this situation: Judge Wali is very nice and fair and intelligent. He is just lazy about writing up his decisions and issuing them. He has a backlog of many, many files that have been heard, but no decision issued. The plaintiff in one of Judge Wali's cases is quite ill and may die very soon. His attorney wants to get the decision. What should the attorney do?

### **Lecture Summary:**

It can be said that justice delayed is justice denied. In all activities related to official duties, a judge should carefully and diligently carry out those responsibilities to enhance the reputation of the judicial system. That means:

- Monitor and supervise cases
- Keep good records of cases
- Devote adequate time to judicial duties
- Decrease extra-judicial activities
- Withdraw from additional duties
- Be punctual
- Be expeditious in determining matters under submission
- Insist court officials, parties and lawyers cooperate
- Give necessary instructions to court personnel
- Ensure adequate number of court personnel
- Relinquish administrative duties to staff

### **Primary Sources:**

Afghanistan Civil Procedure Code

Article ۱۹۷ – The court cannot without justifiable need postpone the proceedings and hearing of civil cases.

Article ٢٠٠ – The completion of trial stages in civil cases, including the follow-up by the parties to the claim, and the issuance of judicial ruling to the effect take place at most within four months.

Article ٢٠١ – The time period contained in Article ٢٠٠ of this Code is extendable up to one month according to the specific nature of the cases based on documented and justifiable reasons.

Article ٤٩٣ – The judge cannot postpone and delay without legal reason the resolution of cases within his/her authority.

### **Secondary Sources:**

#### Bangalore Principles

##### Application ٦.٥

A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

#### Jordan Code

##### Article (١٤)

The judge shall avoid postponing sessions for unjustified reasons, particularly postponing a case more than once for the same reason, or postponing a case to fulfill a request made by one of the litigants in the absence of the other. He shall follow the postponement periods specified by law.

##### Article (١٥)

The judge shall not postpone more than once the issuance of a decision that will lead to the resolution of a dispute. Final rulings shall be issued during the period specified by law. Otherwise, the judge shall issue decisions within a reasonable period of time following the conclusion of the trial. In the event that the mentioned time period requirements are violated, the head of the court of the judge in charge shall notify Judicial Inspection about the incident.

##### Article (٢٦)

The judge shall commence court hearings at an early time during official business hours. He shall comply with the time set for the trial if it is set in the court record and commence the hearing at that time.

#### ICC-CJE

##### Article ٧ – Diligence

٧. Judges shall act diligently in the exercise of their duties and shall devote their professional activities to those duties.

- ٢. Judges shall take reasonable steps to maintain and enhance the knowledge, skills and personal qualities necessary for judicial office.
- ٣. Judges shall perform all judicial duties properly and expeditiously.
- ٤. Judges shall deliver their decisions and any other rulings without undue delay.

## **ARTICLE ١٤ – [TIME FOR APPEAL]**

**The judge shall be required to educate the losing party about the timeframe and legal procedures of protestation against the court’s decision.**

### **COMMENTS**

**Upon the conclusion of a case, the judge must advise the losing party of applicable appeal rights, as required, for example in article ٧٤٤ of the Civil Procedure Code. More generally, many parties in court proceedings are not represented by an attorney, and are unfamiliar with their rights. It is important for the court to take an active role in protecting their rights, at the same time being mindful of the duty to remain impartial and to treat the parties equally. This principle is articulated, for example, in article ٤٩ of the Civil Procedure Code.**

### **Lecture Materials:**

#### **Key Principles:**

In assisting unrepresented parties to understand the proceedings and their rights, the judge must be careful to remain impartial and not give any suggestion that he or she favors one party over the other.

#### **Primary Sources:**

Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash’ari, Allah be pleased with them

“Set a term for a person who advances a plea, taking into consideration a potential right and giving him a deadline to produce a proof.”

“If he produces a proof, he will receive his due, if not, it is permissible to issue a judgment against him, doing so will remove any doubts, will clear any ambiguities and will leave no excuse behind.”

Afghanistan Civil Procedure Code

Article ٤٩ – The presiding judge explains the rights, duties and responsibilities of the persons involved in the case and in the hearing and instructs the secretary of the judicial

session to read out the agenda of the hearing; and after introducing the plaintiff, the defendant or their legal representative shall commence the proceedings of the case.

Article २६६ – After a decision has been taken and the text of the judicial panel has been arranged, a reference is made to the chamber of the president of the session who shall announce the court's judgment, explain the time period for complaints and appeals.

Article २६० – The time period to present complaint and objection after issuance of the judgment and its announcement shall be one month.

Article २७७ – The detailed objection of the complainant shall be presented within twenty (२०) days after the submission of the complaint.

Article ६३७

१ – The time period for final appeal is two months.

२- The calculation of this period commences from the date of announcement of the judgment.

## ARTICLE १० – [IMPARTIALITY]

**The impartiality of the judge is the best guarantee for the administration of justice, and a judge shall be required to exhibit neutrality and impartiality in all his or her work as a judge, and to avoid any discrimination for reasons related to race, gender, ethnicity, sect, language, religion, or disposition while carrying out his or her judicial duties.**

### COMMENTS

**In the performance of all judicial duties, including administrative duties, a judge must act without favor, bias, or prejudice to any party or person. A judge who exhibits bias on any basis in a proceeding impairs the fairness of the proceeding and brings the court and the judicial branch into disrepute. A judge must be alert to avoid behavior, including gestures and facial expressions, as well as speech, that may be perceived by the parties, the attorneys, other persons, or the public as indicative of judicial bias.**

### Lecture Materials:

#### Key Principles:

As discussed under article १, the impartiality of the judge is the foundation for a justice system that has earned the trust and confidence of the public.

Impartiality begins with the absence of any discrimination based on race, gender, ethnicity, sect, language, religion, or disposition, but does not end there.

Impartiality, and the appearance of impartiality, also requires the avoidance of behavior, including gestures, facial expressions, and statements that may be perceived as indicative of judicial bias.

### **Hypotheticals for Discussion:**

Consider the following set of circumstances: You are a member of an inspections team, and are observing how Judge Jamila, a senior judge, presides in her court. You see that she allows the older of the two attorneys in the courtroom to approach the bench, but requires the younger one to stay at the table. She also gives a bigger table to the older attorney, and the younger attorney has little space at his table.

Is this a problem that requires attention?

Is it a violation of article 10?

### **Primary Sources:**

Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash'ari, Allah be pleased with them

“Act impartially in your hobnob with the people and in the courtroom so that the rich (men of high status) be not greedy for your partiality and the weak (men of inferior status) be not fearful of your injustice.”

“Have a care to avoid impatience, vexation and annoyance with people and denying the rights of the litigants when they are on the right side. If you do so, God will confer reward and make goodly store. For whosever's secret heart is right in what lies between him and his God, God will make right/reconcile what lies between him and the people. And whosoever decks himself out for the world with something other than what God knows of him, God will bring shame upon him.”

### **Secondary Sources:**

Bangalore Principles

Application 0.1

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”).

Application 0.2

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.

#### Application ๑.๓

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.

#### Jordan Code

##### Article (๑๗)

During the exercise of his judicial function, the judge shall deal equally in his speech and behavior with all persons, whether they are litigants or others (witnesses, lawyers, court employees, or colleagues in the profession). He shall not discriminate against them for reasons related to religion, race, color, or for any other reason. He shall request his subordinate employees to comply accordingly.

##### Article (๑๘)

The judge shall perform his judicial duties without preference, partiality, assailment, or prejudice. He shall perform them in a manner that enhances confidence in judicial independence and integrity.

##### Article (๑๙)

The judge shall not allow court staff under his management to breach the appearance of justice among litigants in a judicial action that is before him, nor allow court staff to accept a gift, reward, or loan from any litigant. The judge shall report anyone who commits such an action.

##### Article (๒๐)

The judge shall maintain the court's prestige during hearing sessions. He shall in all cases be patient, respectful, a good listener, polite in dealing with litigants, and shall demonstrate self-respect, strong character and noble feelings. He shall enhance through his behavior, appearance, and language, inside and outside the court, the confidence of the public in his integrity as well as in the integrity of the judiciary, and shall demonstrate that he has no preference, partiality, or prejudice in his dealings.

##### Article (๒๑)

The judge shall restrict his personal relationship with lawyers or others who perform permanent work in the court at which the judge works, to an extent that protects him from the suspicion of partiality or bias.

#### ICC – CJE

##### Article ๕ – Impartiality

١٠. Judges shall be impartial and ensure the appearance of impartiality in the discharge of their judicial functions.

١١. Judges shall avoid any conflict of interest, or being placed in a situation which might reasonably be perceived as giving rise to a conflict of interest.

## **ARTICLE ١٦ – [VIOLATIONS OF RIGHTS OF ACCUSED]**

**Whenever it is noticed by a judge while considering a case that the basic rights of the accused were violated during the investigation and detection of the crime, upon the conclusion of the case, the judge shall be required to issue a decision identifying the violation and forward the decision to the appropriate authority for further proceedings and possible prosecution.**

### **COMMENTS**

**In the investigation and prosecution of a crime, the police and the prosecutor must honor the fundamental rights of the accused. If, during the proceedings, the judge determines that the police or the prosecutor violated those fundamental rights, the judge, subject to the applicable law, may consider that violation in reaching a verdict. Upon the conclusion of the case, the judge must issue a decision identifying the violation, and forward that decision to the appropriate authority for further proceedings and possible prosecution.**

### **Lecture Materials:**

#### **Key Principles:**

The Constitution contains ٣٧ articles delineating the fundamental rights and duties of citizens.

While it is the duty of all three branches of the state to vindicate these fundamental rights, the ultimate responsibility will fall to the judiciary, and several of these fundamental rights will be vindicated every day in courtrooms all over the country.

A person accused of committing a crime enjoys several basic rights during the investigation of the crime and prosecution of the criminal charge. If the judge sitting on the criminal case decides that a basic right has been violated, the judge can take that violation into account in reaching a verdict, to the extent permitted by law.

In order to maintain the appearance of impartiality, if the judge decides to report the violation to the appropriate authority, the judge should delay the report until the case is concluded.

## **ARTICLE 11 – [PRESENTATION OF EVIDENCE; COURTROOM DEMEANOR]**

**The parties shall have the right to freely present their evidence before the court; hence, the judge shall be required to take all necessary legal measures to ensure that sessions are held in a manner in which the parties may enjoy this right with a peaceful and confident spirit. To ensure this right, the judge shall maintain order in all court proceedings in which the judge is involved.**

### **COMMENTS**

**In all court proceedings, the parties enjoy equality of arms, and have the equal right to freely present all documents, testimony, and other information relevant to the proceeding. Therefore, the judge must ensure that the parties, whether or not they are represented by an attorney, have a full and equal opportunity to present, in an orderly, efficient, and respectful manner, all evidence and arguments that the judge considers relevant to the proceeding. At the same time, the judge must take whatever action is appropriate and necessary to maintain order and the dignity of the court proceeding. These principles are reaffirmed, for example, in articles 10 – 14 of the Civil Procedure Code.**

### **Lecture Materials:**

#### **Key Principles:**

As mentioned under article 11, the judge must balance the right of the parties to have a full and fair opportunity to participate in the case and the duty to maintain order and decorum in the courtroom.

And as mentioned under article 14, in assisting unrepresented parties to understand the proceedings and their rights, the judge must be careful to remain impartial and not give any suggestion that he or she favors one party over the other.

When a judge finds it necessary, in order to maintain order and decorum in the courtroom, to discipline or threaten to discipline, a party or an attorney, the judge should act in such a way as to best preserve the appearance of impartiality.

#### **Hypotheticals for Discussion:**

In Judge Jamila's case discussed above, the older attorney repeatedly makes disparaging remarks about the younger attorney's ethnic background in the courtroom. Judge Jamila warns the attorney to stop making such remarks, but the attorney does not heed the warning.

What can Judge Jamila do?

## **Primary Sources:**

### Afghanistan Civil Procedure Code

Article ٥٤ – The leadership and management of the judicial hearing shall be within the authority of the presiding judge.

Article ٥٥ – The persons involved in the case, the legal representative of the parties to the claim, the witnesses, the experts, the interpreters and others involved in the judicial hearing are obligated to observe the orderly conduct of the trial and to follow the orders of the presiding judge.

Article ٥٦ – The plaintiff, the defendant or their legal representative, the witnesses, the experts and the interpreters are obligated to stand up while reading their statements and while explaining issues, unless the presiding judge gives them permission to sit down.

Article ٥٧ – The presiding judge shall warn the person who disturbs the order of the hearing. In case of violation, the presiding judge can expel the persons creating the disturbance from the trial chambers.

Article ٥٨ – If those disturbing the orderly conduct of the hearing are the plaintiff, the defendant or their legal representative and, in case such violation is repeated, the court can impose a monetary fine of no more than three thousand Afghanis or a sentence of imprisonment of up to one week upon such person.

Article ٥٩ – If the person disturbing the order of the hearing is a civil prosecutor, the court shall, by issuing a judicial ruling, take an action to replace him.

Article ٦٠ – If the person who disturbs the order of the hearing is a defense attorney, the court shall discipline him/her according to the provisions of law.

Article ٦١ – If a person commits the crime of obscenity or a misdemeanor during the hearing, he/she shall be punished by the court according to the provisions of the law.

Article ٦٢ – The court shall determine the mandatory punishments provided for under Articles ٥٨ to ٦٠ of this Code and the judgment of the court to this effect shall not be subject to appeal.

Article ٦٣ – In situations provided for under Articles ٥٨ to ٦٠ of this Code, the court can cancel the judgment that has been issued prior to the end of the hearing.

Article ٦٤ – In case of a misdemeanor, if the court does not convict the accused in the same hearing session, or if the wrongdoing is a crime, the court is obligated to prepare the records of the incident and issue an order for the arrest of the accused and refer the issue

to the relevant prosecutor. Issuance of judgment in this regard takes place in the nearest court.

### **Secondary Sources:**

Jordan Code

Article (٩)

The judge shall maintain the openness of any hearing, unless it is decided that it should be conducted in camera in order to maintain public order or morals.

Article (٣٠)

The judge shall maintain the court's prestige during hearing sessions. He shall in all cases be patient, respectable, a good listener, polite in dealing with litigants, and shall demonstrate self-respect, strong character and noble feelings. He shall enhance through his behavior, appearance, and language, inside and outside the court, the confidence of the public in his integrity as well as in the integrity of the judiciary, and shall demonstrate that he has no preference, partiality, or prejudice in his dealings.

ICC - CJE

Article ٨ – Conduct during proceedings

١. In conducting judicial proceedings, judges shall maintain order, act in accordance with commonly accepted decorum, remain patient and courteous towards all participants and members of the public present and require them to act likewise.

٢. Judges shall exercise vigilance in controlling the manner of questioning of witnesses or victims in accordance with the Rules and give special attention to the right of participants to the proceedings to equal protection and benefit of the law.

٣. Judges shall avoid conduct or comments which are racist, sexist or otherwise degrading and, to the extent possible, ensure that any person participating in the proceedings refrains from such comments or conduct.

### **ARTICLE ١٨ – [COMPETENCE IN THE LAW]**

**To be able to adjudicate fairly and equitably, a judge shall be knowledgeable of all international laws, treaties, and conventions to which Afghanistan is a signatory, and stay committed to their implementation. A judge shall take reasonable steps to maintain and enhance his or her knowledge and skills necessary for the proper performance of judicial duties, taking advantage for this purpose of training which will be made available by the judiciary.**

### **COMMENTS**

**Judges must make their decisions in accordance with the Constitution and laws of Afghanistan, and all applicable international laws, treaties, and conventions.**

**Existing laws are amended or repealed, and new laws are enacted. The education of a judge, therefore, continues throughout the judge's term in office. The Supreme Court will provide continuing judicial education for the judges in Afghanistan, and the judges will be required to complete a certain number of hours of continuing education and training during a specified period. Likewise, judges with knowledge and expertise in certain subject areas will have a duty to act as trainers in the continuing judicial education program.**

## **Lecture Materials:**

### **Key Principles:**

Developing and maintaining knowledge of the laws presently in force is the duty of every judge, and this duty is unconditional.

Providing continuing judicial education for the judges is the responsibility of the Supreme Court.

### **Primary Sources:**

Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash'ari, Allah be pleased with them

“You must try to understand the case which comes before you because the pronouncement of a judgment which can not be put into effect is of no use.”

“Let not a judgment which you judged yesterday, but over which you re-consulted yourself and were guided to your rectitude; prevent you from retracting to justice/right (alhaq), for nothing can invalidate justice and retraction to justice/right is better than long persistence in a thing which is invalid.”

“Pay attention to comprehending what is evolving disturbingly in your mind (lit. chest) that has no Qur'anic indication or practice of the Prophet (sunnah) applicable to it and become acquainted with similarities and analogies and then after that, compare matters.”

“Then have recourse to that which is the most preferable to God and most in conformity of them to justice/right (haq) as you see it.”

Afghanistan Civil Procedure Code

Article ٤٩٨ – The judge must, in addition to having complete grasp and understanding of the effective laws of the country and of the rules of the Islamic law, have complete awareness of the general culture, manners and customs of the society.

### **Secondary Sources:**

## Bangalore Principles

### Preamble - Para. ٢

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 charges 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.

### Application ١.١

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.

### Application ٦.٣

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.

### Application ٦.٤

A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

## Jordan Code

### Article (١٣)

The judge shall examine evidence presented to him in the case being heard before him. He shall make an effort to learn the truth, and then issue his ruling in accordance with established legal rules and judicial discretion. In case he cannot learn the truth sufficiently based on the submitted evidence, then he shall implement the principles of right and justice in his actions.

### Article (٤٠)

The judge shall be familiar with all laws and regulations issued in the Hashemite Kingdom of Jordan, and any amendments hereto. Furthermore, he shall be familiar with the relevant jurisprudential interpretations.

### Article (٤١)

The judge shall keep abreast of all judicial opinions issued by higher courts, and take note of their established opinions regarding controversial issues. He shall follow the opinions of the full panels of such courts until they are reversed by explicit decisions.

### Article (٤٢)

The implementation of provisions superseding domestic law and regulations requires that the judge shall be familiar with bilateral and multilateral international agreements to which Jordan is a party.

#### Article (٤٣)

The judge shall attend training courses, seminars, and workshops as decided by the Judicial Council. He shall submit a written report at the end of each course, in accordance with the form that has been prepared in advance for this purpose.

#### Article (٤٤)

The judge shall strive to improve his personal skills through attending and participating in specialized courses, particularly computer application course, communications course, and language training.

### **CHAPTER THREE – CONDUCT OF A JUDGE**

#### **ARTICLE ١٩ – [PERSONAL CONDUCT]**

**A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the litigants, legal officers, and the general public in the independence, impartiality, and integrity of the judiciary. He or she shall act soberly and be patient, courteous, and dignified in relation to litigants, lawyers, witnesses, and others with whom the judge deals in his or her official capacity, and shall avoid any gestures that are disgraceful to him or to her or to the status of the judiciary. The judge shall require similar conduct by court staff and others under his or her control. In his or her social life, a judge shall enjoy particular respect and credibility. Hence, a judge must be trustworthy and honest, and shall observe the highest moral and social values.**

#### **COMMENTS**

**Judges personify the court and the judicial branch for the public. Therefore, for the public to have confidence in the courts, judges must maintain the dignity of the courtroom and be respectful to all who enter the courtroom. This principle is recognized in many laws, including, for example, article ٤٩٧ of the Civil Procedure Code. Respect shown by the judge will be reciprocated by the parties, the attorneys, and the public. The judge must also conduct all proceedings with patience, and that duty is not inconsistent with the duty to be efficient and prompt expressed in article ١٣. Judges can be efficient while also being patient and courteous.**

**A judicial system that earns the trust and confidence of the public also earns its respect. Judges are respected members of their community. Respect for the courts and the judges facilitate the orderly conduct of legitimate judicial business. Beyond the duties and responsibilities prescribed in specific articles of this regulation, a judge has an overriding duty to avoid all impropriety or the appearance of**

**impropriety in both his or her professional and personal lives. Only through the observation of this high standard of behavior can the judicial branch earn and maintain the confidence of the public. Because the activities of a judge will be subject to constant public scrutiny, a judge must willingly accept restrictions on his or her conduct that might be considered burdensome by the ordinary citizen. Actual improprieties include, but are not limited to, violation of law, court rules, or the provisions of this regulation. The appearance of impropriety occurs when a person aware of the facts might reasonably entertain a doubt that, under the circumstances, the judge would be able to act with integrity, impartiality, and competence.**

### **Lecture Materials:**

#### **Key Principles:**

To the parties, attorneys, and public at large, judges personify the courts and the judiciary.

Judges are well-known persons in their communities, and their public and private lives are the focus of constant public attention.

Because the public will judge the judiciary by the behavior of the judges, that behavior, both in and out of court, must be exemplary and reflect the highest ethical standards.

Judges have an overriding duty to follow the law and avoid all impropriety or appearance of impropriety in both their professional and personal lives.

#### **Hypotheticals for Discussion:**

Assume the following: Judge Omar lives in a small, rural community. He likes to eat lamb. Every Thursday he goes to Hassan's restaurant for lunch, and Hassan always has a special cut of lamb that he serves the judge, but doesn't charge him any more than for the poorest cut.

Should Judge Omar continue to eat at Hassan's restaurant?

How would this practice appear to the other customers eating at the restaurant?

Should Judge Omar accept an invitation from a local businessman to attend a large private party at Hassan's? Why? Why not?

#### **Lecture Summary:**

A judge should avoid impatience, anger and impolite behavior toward attorneys and parties. Instead, a judge should be patient, dignified and courteous to all. This behavior sets an example for all in the courtroom. Rude and abusive behavior includes:

Becoming angry or upset  
Vulgar gestures  
Profanity  
Body language:  
    Roll eyes  
    Smirk  
    Frown  
    Shake head  
    Yawn  
    Mouth words of disdain  
Use of demeaning tone  
Use of ill-advised humor  
Repeatedly interrupting a witness or attorney  
Name-calling

### **Primary Sources:**

Letter of Umar ibn al-khattab, the second caliph, to Abu Musa al-ash'ari, Allah be pleased with them

“Act impartially in your hobnob with the people and in courtroom so that the rich (men of high status) be not greedy for your partiality and the weak (men of inferior status) be not fearful of your injustice.”

Afghanistan Civil Procedure Code

Article ٤٩٧ – The judge cannot dictate to the plaintiff, defendant and witnesses in any manner.

### **Secondary Sources:**

Bangalore Principles

Preamble Para. ٧

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.

Application ١.٦

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.

Application ٢.٢

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.

Application ٣.١

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

Application ٣.٢

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.

Application ٤.١

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

Application ٤.٢

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.

Application ٤.٣

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.

Jordan Code

Article (١٧)

The judge or any of his dependent family members shall not accept or ask for a gift, reward, or loan that would otherwise not be obtained but for the judge's judicial status, in return for expectations related to his work, or for refraining from conducting his work. This provision shall exclude legal books dedicated by their authors.

Article (١٩)

The judge shall not behave in a manner that implies or creates an impression in others that one of his family members, or any other person, has an influence on his judicial functions. He shall as much as possible prevent others from creating that impression.

Article (٣٠)

The judge shall maintain the court's prestige during hearing sessions. He shall in all cases be patient, respectful, a good listener, polite in dealing with litigants, and shall demonstrate self-respect, strong character and noble feelings. He shall enhance through his behavior, appearance, and language, inside and outside the court, the confidence of

the public in his integrity as well as in the integrity of the judiciary, and shall demonstrate that he has no preference, partiality, or prejudice in his dealings.

Article (ੳੲ)

The judge shall confirm, through his behavior in his private life, that he is above suspicion in a manner that enhances the confidence of ordinary people in his honesty and integrity, and that reflects positively on the respectability of the judiciary.

Article (ੳੳ)

Taking into consideration that the judge has his own private community of family, relatives, and friends, he shall minimize participation in occasions and minimize acceptance of invitations that would raise suspicions that might affect his eligibility to hear a case, or that might subject him to removal from a case.

Article (ੳੴ)

The judge may participate in private activities, provided that such participation shall not raise doubts about his integrity. He should regulate such activities to minimize their imposition upon his time or judicial duties.

Article (ੳੵ)

The judge shall restrict his personal relationship with lawyers or others who perform permanent work in the court at which the judge works, to an extent that protects him from the suspicion of partiality or bias.

ICC - CJE

Article 10 – Extra-judicial activity

1. Judges shall not engage in any extra-judicial activity that is incompatible with their judicial function or the efficient and timely functioning of the Court, or that may affect or may reasonably appear to affect their independence or impartiality.

2. Judges shall not exercise any political function.

ABA Model Code Canon ੳ

A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

ABA Model Code Canon ੴA

Extra-judicial Activities in General. A judge shall conduct all the judge's extra-judicial activities so that they do not 1) cast reasonable doubt on the judge's capacity to act impartially as a judge; 2) demean the judicial office; or 3) interfere with the proper performance of judicial duties.

## ARTICLE ٢٠ – [PRIORITIES]

**A judge shall give priority to his or her judicial duties, over all other activities in which he or she is engaged. A judge shall not pursue any activity contrary to his or her judicial integrity. In addition, a judge shall not practice his or her non-judicial activities in a manner that may conflict with his or her judicial duty. A judge shall commence court proceedings at an early time during, and shall leave work only after official business hours. He or she shall not be absent from work without prior excuse from his or her supervisor unless the absence is due to circumstances beyond his or her control.**

## COMMENTS

**While a judge may be involved in outside activities, so long as they do not constitute, or give the appearance of a conflict of interest, or raise doubts as to the independence and impartiality of the judge, the judicial duties of a judge take precedence over all other activities. Excessive or inappropriate involvement in outside activities may suggest to the public that a judge is not committed to the duties of his or her office, and undermines the public's confidence in the courts.**

### **Lecture Materials:**

#### **Key Principles:**

Being a good judge is a full-time occupation. There should be little time for outside activities.

Judicial duties take precedence over all outside activities.

A judge may engage in outside activities, so long as they do not interfere with the judge's official duties, do not constitute, or give the appearance of a conflict of interest, and do not raise doubts as to the independence and impartiality of the judge.

#### **Hypotheticals for Discussion:**

Consider the following: Judge Sayed's salary is quite limited. To provide additional income to support his family, Judge Sayed writes articles on legal subjects for a local newspaper that pays him ١٠٠٠ Afs per month. Judge Sayed's colleague, Judge Sangar, drives a delivery truck during the hours ١٨٠٠ – ٢٤٠٠ and earns ٤٠٠٠ Afs per month in extra income. Judge Basir grows flowers and vegetables in his yard and sells them to a local grocery store for extra cash.

Is there anything wrong with what these judges are doing?

Should a judge, through an article in the local newspaper, indicate how he or she might decide a legal issue in the future?

Could this be a problem for Judge Sayed in the above example?

If Judge Sangar's earnings from driving a delivery truck are greater than his judge's salary, is this a problem?

### **Secondary Sources:**

Bangalore Principles

Application ٤.١١

Subject to the proper performance of judicial duties, a judge may:

٤.١١.١ write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

٤.١١.٢ 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;

٤.١١.٣ 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;

٤.١١.٤ 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.

Application ٤.١٢

A judge shall not practice law whilst the holder of judicial office.

Application ٦.١

The judicial duties of a judge take precedence over all other activities.

Jordan Code

Article (٥)

The judge shall not practice commercial activities. He shall not be a member of a Board of Directors of any company, institution, or other entity. Furthermore, he shall not assume any other positions or professions.

Article (٦)

The judge shall not perform arbitration work in cases other than those allowed by law.

Article (٢٦)

The judge shall commence court hearings at an early time during official business hours. He shall comply with the time set for the trial if it is set in the court record and commence the hearing at that time.

Article (၃၅)

The judge shall not be absent from his work without a prior excuse from his superior, unless such absenteeism is due to circumstances beyond his control. He shall report to work and leave work in accordance with the court's business hours. In this manner, he shall set an example to his staff, and give reason to be respected by litigants.

Article (၃၆)

The judge shall give top priority to his judicial duties over all other activities in which he is engaged.

Article (၃၇)

Taking into consideration that the judge has his own private community of family, relatives, and friends, he shall minimize participation in occasions and minimize acceptance of invitations that would raise suspicions that might affect his eligibility to hear a case, or that might subject him to removal from a case.

Article (၃၈)

The judge may participate in private activities, provided that such participation shall not raise doubts about his integrity. He should regulate such activities to minimize their imposition upon his time or judicial duties.

**ARTICLE ၃၉ – [CORRUPTION; CONFLICTS OF INTEREST; MISUSE OF OFFICE]**

**A judge shall not accept any gifts or favors that put him or her under suspicion of graft or corruption, and shall not let any of his or her relatives or dependants receive such gifts or favors in regard to his or her position as a judge. A judge, or any of his or her court staff, or family members, shall not request or accept any gift, reward, loan, or favor in relation to anything done or to be done in connection with the performance of judicial duties. A judge shall not use his or her judicial position to enhance his or her personal interests, the interests of his or her family members, or any other person.**

**COMMENTS**

**The acceptance by a judge, his or her court staff, or a member of the judge's family living with the judge, of any gift, reward, loan, or favor, whether solicited or unsolicited, carries a clear implication that the judge will be obligated or will feel obligated to reciprocate. Such a perception calls into question the independence and impartiality of the judge. Therefore, no gift, reward, loan, or favor should be accepted from any person, attorney, business, organization, or other entity that is appearing, or may appear in the future before the judge, or that has, or may have, business with the judge connected to the performance of his judicial duties. This**

**article does not prevent the acceptance by a judge of an honorarium, provided to the judge by a governmental entity or an organization engaged in the provision of continuing legal or judicial education courses or seminars, in recognition of the judge's participation in the teaching of a course. Judges must distinguish between the proper and improper use of the prestige of the office in their personal, as well as their professional activities. The judge must avoid lending the prestige of his or her office for the advancement of his or her private interests or the private interests of others.**

## **Lecture Materials:**

### **Key Principles:**

In all normal human relations, the doing of a favor or the giving of a gift carries with it the inference of an obligation to reciprocate at some time in the future. It is the same for judges and public officials, except that the inference to be drawn by the public is that the judge or public official is corrupt and the reciprocation will take the form of some official act.

This perception of corruption, as much as the fact of corruption itself, destroys the public's trust and confidence in the formal justice system.

To avoid this perception of corruption, judges, and their families, must avoid the acceptance of all gifts and favors.

At the same time, the prestige and power of judicial office places a judge in the position to request and receive favors and preferential treatment. A request for and acceptance of a favor strongly implies a duty to reciprocate in the future.

Therefore, a judge cannot use his or her judicial position to enhance his or her personal or business interests, or those of his or her family or any person.

### **Hypotheticals for Discussion:**

Consider these situations:

1) Judge Shah is the presiding judge in a civil case where one of the parties is a car dealer. Immediately following a decision favorable to the car dealer, Judge Shah goes to the car dealer and buys a car at a very favorable price.

Has Judge Shah done anything wrong?

Does it matter whether or not the decision in the case is final?

If the other party in the case or the public became aware of the price paid by Judge Shah, what would be the likely assumption or perception?

Would the result be different if Judge Shah bought the car before the trial, but knowing that the trial was coming up? Or bought the car during the trial?

୪) Judge Lali's nephew is stopped by a traffic officer for speeding, and is given a speeding ticket. He tells his uncle, Judge Lali, that he is very sorry and is worried that he will lose his drivers license. Without making any promises to his nephew, Judge Lali calls the traffic officer, identifies himself, and simply asks what happened.

Is this conduct proper and ethical? Why? Why not?

How would the call appear to the traffic officer?

୫) Haffiz is a long time friend of Jamil. When Haffiz became a successful businessman, he started sending Jamil a goat every year at the end of Ramadan. When Jamil became a judge, Haffiz began sending Jamil two goats. Now that he is a judge, what should Jamil do with the goats?

୬) Judge Ayesha was very moved by the television stories about children starving in Darfur. She organized a committee to raise money to buy food to send to Darfur. To raise money to buy the food, Judge Ayesha asked many attorneys, judges and businessmen to contribute money. All the people at court who worked for Judge Ayesha were expected to donate something to this charity. She also put a jar in her courtroom with a sign saying people could put contributions in the jar for the committee to buy food for the children of Darfur.

Is this proper behavior for a judge?

What possible problems do you see?

The cause is worthy, but is the judge using the prestige of his or her office to further a personal interest?

### **Secondary Sources:**

Bangalore Principles

Application ୩.୧

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

Application ୩.୨

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.

Application ୫.୫

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.

Application  . 

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.

Application  .

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.

Application  .^

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.

Application  .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.

Application  .)\*

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.

Application  .)\* 

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.

Application  .)\* 

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.

Application  .)\* 

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.

Application  . 

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.

Application ٦.٧

A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

Jordan Code

Article (٣)

The judge shall not allow litigants, lawyers, or any other person to interfere in or influence his judicial functions.

Article (٤)

No person or entity shall solicit the judge in any case that is before him. A judge shall not meddle in any case that is being considered by another judge.

Article (٥)

The judge shall not practice commercial activities. He shall not be a member of a Board of Directors of any company, institution, or other entity. Furthermore, he shall not assume any other positions or professions.

Article (١٠)

Except when allowed by law, the judge shall not rely in his ruling on his personal information, or on any other evidence that has not been properly submitted in the case and discussed openly by the litigants. Departure or deviation from the logic of conclusive evidence presented in the action is an indication that the judge is under the influence of external factors.

Article (١٧)

The judge or any of his dependent family members shall not accept or ask for a gift, reward, or loan, that would otherwise not be obtained but for the judge's judicial status, in return for expectations related to his work, or for refraining from conducting his work. This provision shall exclude legal books dedicated by their authors.

Article (٣٩)

The judge shall not allow court staff under his management to breach the appearance of justice among litigants in a judicial action that is before him, nor allow court staff to accept a gift, reward, or loan from any litigant. The judge shall report anyone who commits such an action.

Article (٣٦)

The judge shall not exploit the judicial position to which he belongs to enhance his personal interest, the interest of his family members, or any other person.

#### Article (37)

The judge shall not disclose his professional capacity, or hint at its authority, in a manner that would place him in a situation that may jeopardize the sanctity of his mission.

#### ICC – CJE

#### Article 6 – Integrity

1. Judges shall conduct themselves with probity and integrity in accordance with their office, thereby enhancing public confidence in the judiciary.

2. Judges shall not directly or indirectly accept any gift, advantage, privilege or reward that can reasonably be perceived as being intended to influence the performance of their judicial functions.

#### ARTICLE 22 – [MONITOR COLLEAGUES]

**A judge shall monitor the conduct and behavior of his or her colleagues, so that their conduct may not harm the prestige and authority of the court. In the event a judge observes a violation, or attempted violation of this regulation by another judge, he or she shall report it the Supreme Court.**

#### COMMENTS

**In order to preserve the integrity of the judiciary, it is the duty of every judge to be observant regarding the conduct of other judges, and to report any violation, or attempted violation of this regulation to the Supreme Court for action, as determined appropriate by the Supreme Court. Because the discipline of judges is within the exclusive authority of the Supreme Court, a judge who makes a report must not disclose the fact that a report has been made to any other person.**

#### **Lecture Materials:**

#### **Key Principles:**

Every judge has an obligation to report any violation, or attempted violation of the Regulation of Judicial Conduct to the Inspections Department of the Supreme Court. Discretion should be used in the analysis whether the conduct observed constitutes a reportable violation or attempted violation.

Because the investigation of judicial misconduct lies with the Supreme Court and the reputation of a judge, and by extension the courts and judiciary, is at stake, the judge making a report must not disclose the conduct or the report to any other person.

#### **Hypotheticals for Discussion:**

In the hypothetical about the car dealer who sold the car to the judge Shah, a person who works for the dealer knows the judge got an extra good deal because he saw and heard the entire transaction and knows how much the car was worth. That person reports the transaction to a different judge.

Should the judge who got the information report it to the Supreme Court or anyone else?

What should the second judge do, if anything?

### **Secondary Sources:**

Jordan Code

Article (۳۳)

The judge shall advise his colleagues to correct any erroneous or improper conduct in which they might be engaging. However, he shall inform the relevant authorities if such behavior is criminal.

ABA Model Code Canon ۳D(۱)

A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code should take appropriate action. A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question as to the other judge's fitness for office shall inform the appropriate authority.

## **CHAPTER FOUR – MISCELLANEOUS PROVISIONS**

### **ARTICLE ۳۳ – [DISCIPLINE]**

**Whenever a judge does not abide by the duties and standards of this regulation in regard to his or her judicial performance, the High Council of the Supreme Court shall prescribe disciplinary punishment for him or her according to the regulation on the disciplinary punishment of the judges.**

### **Primary Sources:**

Law on Organization and Jurisdiction of Courts

Article ۳۰ – The chief justice shall represent the Judicial Authority of Islamic Republic of Afghanistan and shall have the following jurisdiction and duties:

Para. ۱۱. propose on pardoning, mitigation of imprisonment and other punishments of judges to the president's office.

## **Secondary Sources:**

### Bangalore Principles

#### Preamble Para. 10

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.

### Jordan Code

#### Article (8)

In the event that a judicial colleague dominates or influences a case that is before a judge, or in the event that a judge is subjected to domination or influence, the judge shall inform the Head of the Judicial Council.

#### Article (10)

The judge shall not postpone more than once the issuance of a decision that will lead to the resolution of a dispute. Final rulings shall be issued during the period specified by law. Otherwise, the judge shall issue decisions within a reasonable period of time following the conclusion of the trial. In the event that the mentioned time period requirements are violated, the head of the court of the judge in charge shall notify Judicial Inspection about the incident.

#### Article (11)

The judge shall perform his judicial duties without preference, partiality, assailment, or prejudice. He shall perform them in a manner that enhances confidence in judicial independence and integrity.

## **ARTICLE 14 – [EFFECTIVE DATE]**

**This regulation shall come into effect upon the approval of the High Council of the Supreme Court.**