

# THE REPUBLIC OF PALAU CODE OF JUDICIAL CONDUCT 2011

Promulgated by the Palau Supreme Court  
March 1, 2011, and amended March 9, 2011.

## PREAMBLE

WHEREAS, the Constitution of Palau establishes a democratic system of government that recognizes and protects fundamental rights as well as principles of Palauan custom and tradition;

WHEREAS, a competent, independent, and impartial Judiciary is essential for the courts to uphold and protect the Constitution and the rule of law;

WHEREAS, public confidence in the judicial system and in the moral authority and integrity of the Judiciary is of utmost importance in a modern democratic society;

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

WHEREAS, the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the Judiciary;

NOW, THEREFORE, pursuant to the authority vested in the Judiciary under Article X, Section 14 of the Constitution, the following code of judicial conduct (“Code”) for the courts and judges of the Republic of Palau is hereby adopted.

## CANON 1:

### INDEPENDENCE

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

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge’s

assessment of the facts and in accordance with a conscientious understanding of the law, without regard to any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

- 1.2 In performing judicial duties, a judge shall be independent in relation to society in general and in relation to the particular parties to a dispute that the judge is to adjudicate.
- 1.3 A judge shall be free from inappropriate connections with, and influence by, the executive and legislative branches of government, and must appear to a reasonable observer to be free therefrom.
- 1.4 In performing judicial duties, a judge shall be independent of judicial colleagues with respect to decisions that the judge is obligated to make independently. With respect to litigation or a dispute pending before another court or administrative agency, a judge shall refrain from influencing the outcome of that litigation or dispute.
- 1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the Judiciary.
- 1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the Judiciary.
- 1.7 No judge shall be liable in a civil action for damages by reason of any judicial action or judgment rendered by him or her in good faith.

## **CANON 2:**

### **IMPARTIALITY**

**Impartiality is essential to the proper discharge of the judicial office. Impartiality is essential not only to the decision itself, but also to the process by which the decision is made.**

Application:

- 2.1 A judge shall perform his or her judicial duties without fear, favor, bias, or prejudice.
- 2.2 A judge shall ensure that his or her conduct, both professional and personal, maintains and enhances the confidence of the public, lawyers, and parties in the impartiality of the judge and of the Judiciary.
- 2.3 A judge shall, so far as is reasonable, conduct himself or herself so as to minimize the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

- 2.4 With respect to pending or impending cases:
- 2.4.1 A judge shall not knowingly, while a proceeding is before or reasonably could come before the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the fairness of the process.
  - 2.4.2 A judge shall require court staff and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making under paragraph 2.4.1.
  - 2.4.3 Notwithstanding the restrictions in paragraph 2.4.1, a judge may make public statements in the course of his or her official duties, explain court procedures, and comment on any proceeding in which the judge is a party in a personal capacity.
  - 2.4.4 Subject to the restrictions in paragraph 2.4.1, a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.
- 2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:
- 2.5.1 the judge has actual bias or prejudice concerning a party or lawyer, or personal knowledge, other than that of any other member of the public, of disputed evidentiary facts concerning the proceedings;
  - 2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy;
  - 2.5.3 the judge has, or knows that a member of the judge's family has, a pecuniary or proprietary interest in the outcome of the matter in controversy that is other than de minimis or that is other than that of any other member of the public;
  - 2.5.4 the judge's ruling in a lower court is the subject of review; or
  - 2.5.5 the judge is related within the first or second degree, either by consanguinity or affinity, to a party, lawyer, or material witness;

provided, that disqualification of a judge shall not be required if constituting another tribunal to deal with the case is not practical or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice. Disqualification shall also not be required, other than for actual bias, if after the basis of disqualification is disclosed on the record, all parties and lawyers, independent of the judge's participation, agree in writing

that the reason for the potential disqualification is immaterial or unsubstantial. The agreement, signed by all parties and lawyers, shall be incorporated into the record of the proceedings.

### **CANON 3:**

#### **INTEGRITY**

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

Application:

- 3.1 A judge shall ensure that his or her conduct, both professional and personal, is above reproach in the view of a reasonable observer.
- 3.2 The behavior and conduct of a judge must reaffirm the public's faith in the integrity of the Judiciary.
- 3.3 A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge, shall inform the Chief Justice pursuant to paragraph 7.2. If the judge that has committed a violation of this Code is the Chief Justice, the reporting judge shall inform the next most senior judge of the Supreme Court after the Chief Justice. The next most senior judge of the Supreme Court is the judge with the most years on the bench. He or she shall take action on the report as provided in this Code.
- 3.4 A judge having a reasonable belief that the performance of another judge, court staff, or a lawyer is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, should take appropriate action. This may include a confidential referral to an assistance program or referral to the appropriate disciplinary authority.

### **CANON 4:**

#### **PROPRIETY**

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

Application:

- 4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities, both professional and personal.
- 4.2 As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and

willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office and the laws of Palau.

- 4.3 A judge shall, in his or her personal relations with lawyers who practice regularly in the judge's court, avoid situations that might reasonably give rise to the suspicion or appearance of favoritism or partiality.
- 4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a party or is associated with the litigation. The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge.
- 4.5 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. To this end, a judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, sexual orientation, ethnicity, place of origin, language, religion or belief, social status, or clan affiliation.
- 4.6 A judge shall stay informed of his or her personal, fiduciary, and financial interests, and shall make reasonable efforts to stay informed about the financial interests of members of the judge's family, so as to anticipate and remedy potential conflicts.
- 4.7 A judge shall not allow family, social, or other relationships to improperly influence the judge's judicial conduct and judgment.
- 4.8 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 anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position to improperly influence the judge in the performance of judicial duties. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office. For example, a judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge.
- 4.9 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any purpose other than the judge's judicial duties.
- 4.10 Subject to the proper performance of judicial duties, a judge may:
  - 4.10.1 write, lecture, teach, and participate in activities concerning the law, the legal system, the administration of justice, or related matters;
  - 4.10.2 appear at a public hearing before an official body concerned with matters relating

- to the law, the legal system, the administration of justice, or related matters;
- 4.10.3 serve as a member of an official body or governmental commission, committee, or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge;
- 4.10.4 participate in educational, religious, charitable, fraternal, or civic organizations and activities not conducted for profit; provided, however, a judge shall not solicit for contributions in or in relation to Palau (serving as an usher, food server or preparer, and the like at a fund-raising event is not solicitation);
- 4.10.5 hold and exercise rights and titles under Palauan customary law and traditional practice and participate in customary Palauan family activities and events; provided the judge does not use the prestige of office to influence customary, family, or community affairs, and further provided that a judge shall not accept or hold a traditional title if by virtue of that title a judge becomes a member of a political institution or if the title at issue is subject to traditional or customary controversy that may come before the courts; or
- 4.10.6 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.
- 4.11 A full-time judge shall not practice law while holding judicial office; provided, however, that a full-time judge may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of the full-time judge's family. A full-time judge shall not serve as the family member's lawyer in any forum.
- 4.12 A judge may form or join associations of judges or participate in other organizations representing the interests of judges. A judge may join associations of lawyers or the judicial division of associations of lawyers, provided that being a member of such an association or division would not to the reasonable observer create an impression of favoritism or partiality, and provided that such participation is not in violation of other provisions of this Code.
- 4.13 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan, or favor in relation to any action or inaction by the judge in connection with the performance of judicial duties.
- 4.14 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 favor in relation to any action or inaction in connection with his or her duties or functions.
- 4.15 Subject to law and to any legal requirements of public disclosure, a judge may receive a customary and traditional gift (e.g., gifts of food, local handicraft) or 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.

#### 4.16 Ex Parte Communications

4.16.1 A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of all the parties or their lawyers, concerning a pending or impending matter, except as follows:

4.16.1.1 When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

4.16.1.1.1 the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

4.16.1.1.2 the judge promptly notifies all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

4.16.1.2 A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

4.16.1.3 A judge may consult with court staff whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility of personally deciding the matter.

4.16.1.4 A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

4.16.1.5 A judge may initiate, permit, or consider any ex parte communication when expressly authorized by law to do so.

4.16.2 If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall promptly notify the parties of the

substance of the communication and provide the parties an opportunity to respond.

4.16.3 A judge shall not investigate facts in a matter independently and shall consider only the evidence presented and any facts that may properly be judicially noticed.

4.16.4 A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this provision is not violated by court staff and others subject to the judge's direction and control.

#### 4.17 Political Activity

4.17.1 A judge shall not:

4.17.1.1 act as a leader or hold any office in a political organization;

4.17.1.2 make speeches for a political organization or candidate or publicly endorse or oppose a candidate for public office; or

4.17.1.3 solicit funds for or pay an assessment or make a contribution to a political organization or candidate, attend political gatherings, or purchase tickets for political party dinners or other functions.

4.17.2 A judge shall resign the judicial office when the judge becomes a candidate in an election for any office.

4.17.3 A judge shall not engage in any political activity; provided, however, this should not prevent a judge from registering to vote, joining a particular political party, voting, or engaging in the activities described in paragraph 4.10.

#### 4.18 Reporting Requirements

4.18.1 A judge shall publicly report the amount or value of:

4.18.1.1 compensation received for extrajudicial activities as permitted by paragraph 4.10;

4.18.1.2 gifts and other things of value as permitted by paragraph 4.15, other than gifts from family members and customary and traditional gifts, unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed \$150.00; and

4.18.1.3 reimbursement or payment of expenses and waiver of fees or charges for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition,



and similar items, from sources other than the Government of Palau or its donor countries and agencies, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code, unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed \$1,000.00.

- 4.18.2 When public reporting is required by paragraph 4.18.1, a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.
  - 4.18.3 The public report required under paragraph 4.18.1 shall be made at least annually, except that for reimbursement or payment of expenses and waiver or partial waiver of fees or charges, the report shall be made within thirty days following the conclusion of the event or program.
  - 4.18.4 Reports made in compliance with this paragraph shall be filed as public documents in the office of the Clerk of the Courts.
- 4.19 A judge should not use to any substantial degree judicial chambers, resources, or staff to engage in extrajudicial activities permitted under this Code. This paragraph does not apply to activities engaged in or sponsored by the Judiciary.

## **CANON 5:**

### **EQUALITY**

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

Application:

- 5.1 A judge shall perform the duties of the judicial office, including administrative duties, without bias or prejudice.
- 5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon gender, race, language, religion, political or other opinion, national or social origin, place of birth, family status or descent, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

- 5.3 A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including but not limited to race, sex, gender, religion or belief, national origin, language, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation against parties, witnesses, lawyers, or others.
- 5.4 The restrictions of paragraphs 5.2 and 5.3 do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

## **CANON 6:**

### **COMPETENCE AND DILIGENCE**

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

Application:

- 6.1 The judicial duties of a full-time judge take precedence over all other activities.
- 6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions, but also other tasks relevant to the judicial office and court operations.
- 6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills, and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities that should be made available, under judicial control, to judges.
- 6.4 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness.
- 6.5 A judge shall hear and decide matters assigned to the judge, except when disqualification is required by paragraph 2.5 or other provision.
- 6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified, and courteous in relation to parties, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. The judge shall require similar conduct of lawyers, court staff, and others subject to the judge's influence, direction, or control.
- 6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

- 6.8 Unless on official leave, a full-time judge should be at the courthouse or otherwise discharging judicial duties during established working hours. While in country, a trial judge should be available for emergencies 7 days a week.
- 6.9 A judge shall cooperate with other judges and court staff in the administration of court business.
- 6.10 A judge may participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice; provided, however, that in doing so, the judge is not hindered in the performance of his or her duties. In conducting such activities, the judge shall act in a manner consistent with this Code.

## **ACCOUNTABILITY**

- 7.1 This Code shall apply to all judges of Palau, except as expressly provided otherwise.
- 7.2 Anyone may complain to the Chief Justice about the conduct of a judge, including a violation of this Code. Upon receiving a complaint, the Chief Justice or his or her designee shall acknowledge receipt of the complaint, inform the subject judge, and conduct a preliminary examination of the complaint. Following the preliminary examination, the Chief Justice or his or her designee shall dismiss the complaint if any of the following apply:
- 7.2.1 a Judicial Disciplinary Tribunal will not have jurisdiction over the complaint or the complainant;
  - 7.2.2 the complaint has no bearing on judicial functions or duties;
  - 7.2.3 the conduct complained of occurred at too remote a time to justify further consideration;
  - 7.2.4 the complaint is frivolous, vexatious, or not in good faith;
  - 7.2.5 the subject matter of the complaint is trivial;
  - 7.2.6 the complaint is about a judicial decision or other judicial function that is directly related to the merits of a decision or procedural ruling;
  - 7.2.7 the person who is the subject of the complaint is no longer or never was a judge in Palau;
  - 7.2.8 the complaint was previously considered and there are no new grounds to justify further action; or

7.2.9 any other reason that justifies dismissal.

If the Chief Justice or his or her designee dismisses a complaint, he or she shall so inform the complainant, the subject judge, and the head of the court concerned.

- 7.3 If the Chief Justice or his or her designee determines that further action is justified, he or she shall appoint a Judicial Disciplinary Counsel to investigate and prosecute the complaint before the Judicial Disciplinary Tribunal. If the Chief Justice or his or her designee appoints a Judicial Disciplinary Counsel, he or she shall also empanel the Judicial Disciplinary Tribunal consisting of three judges.
- 7.4 Following the preliminary examination of the complaint by the Judicial Disciplinary Counsel as directed by the Tribunal, the Tribunal may still dismiss the complaint on the grounds stated in 7.2.1 to 7.2.9. This may be done with or without a hearing.
- 7.5 If the Tribunal determines that a hearing is necessary, it shall direct the Judicial Disciplinary Counsel to file a complaint and serve a copy of the complaint to the subject judge, who shall file his or her answer within 20 days. Failure to file a timely answer shall constitute an admission that the allegations in the complaint are true.
- 7.6 Except as otherwise provided herein, proceedings before the Judicial Disciplinary Tribunal shall be governed by the Republic of Palau Rules of Civil Procedure and abide by the Republic of Palau Rules of Evidence.
- 7.7 Fees and costs of the judicial disciplinary proceedings shall be paid by the Judiciary, unless the Tribunal includes payment of fees and costs as part of the sanction against the subject judge.
- 7.8. The standard of proof for establishing allegations of misconduct under the Code shall be clear and convincing evidence.
- 7.9 With respect to any hearing, the subject judge shall have the following rights:
- 7.9.1 to be promptly informed in detail of any accusation;
  - 7.9.2 to a hearing without undue delay;
  - 7.9.3 to adequate time to prepare a defense;
  - 7.9.4 to defend himself or herself in person or through a lawyer;
  - 7.9.5 to call, examine, and cross-examine witnesses; and
  - 7.9.6 to subpoena the appearance of witnesses and the production of documents and other things.
- 7.10 The Judicial Disciplinary Tribunal shall render its decision within 20 days of the conclusion of the hearing. If the Tribunal is unable to issue its decision within 20 days, it shall inform the parties of the reasons for the delay and the new date that the decision shall be issued. The decision of the Tribunal shall be final.

- 7.11 If the Tribunal finds that the allegations of misconduct under the Code are true, it shall impose an appropriate sanction or a combination of sanctions. Sanctions shall include, but not be limited to, the following:
- 7.11.1 a period of suspension from the bench with pay withheld until any requirements imposed by the Tribunal have been met;
  - 7.11.2 a period of probation;
  - 7.11.3 private censure;
  - 7.11.4 public censure;
  - 7.11.5 reimbursement of costs associated with the judicial disciplinary proceeding; and
  - 7.11.6 judicial conduct training.
- 7.12 In determining the type of sanctions to impose, the Tribunal shall consider, among others, the following factors:
- 7.12.1 the length and character of the judge’s public service;
  - 7.12.2 whether there is prior case law on point;
  - 7.12.3 the magnitude of the offense and harm suffered;
  - 7.12.4 whether the misconduct is an isolated incident or part of a pattern of misconduct;
  - 7.12.5 whether moral turpitude was involved; and
  - 7.12.6 the presence or absence of mitigating or aggravating circumstances.

## **SUPREMACY, PURPOSE, INTERPRETATION AND DEFINITIONS**

- 8.1 In the event of conflict with any law, rule, regulation, or authority other than the Palau Constitution, this Code shall take precedence pursuant to Article X, Section 14 of the Constitution.
- 8.2 This Code is intended to establish standards for the ethical conduct of judges. It is designed to provide guidance to judges and to afford the Judiciary a framework for regulating judicial conduct through the imposition of appropriate disciplinary action other than impeachment under Article X, Section 10 of the Constitution.
- 8.3 In interpreting and applying this Code, guidance may be sought from secondary sources including the ABA Model Code of Judicial Conduct and comments on The Bangalore Principles of Judicial Conduct.
- 8.4 Unless the context otherwise permits or requires, the following meanings shall be attributed to the words used in this Code:
- 8.4.1 “Court staff” includes all court personnel other than judges.
  - 8.4.2 “Judge” means any person exercising judicial power, however designated.

- 8.4.3 “Judge’s family” includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge or who lives in the judge’s household.
- 8.4.4 “Judge’s spouse” includes a domestic partner of the judge.
- 8.4.5 “Lawyer” means any person admitted to practice before the courts of Palau.
- 8.4.6 “Palau” means the Republic of Palau.
- 8.4.7 “Reasonable observer” means an informed and fair-minded person.
- 8.4.8 “Within the first degree” includes persons related to the judge by consanguinity or affinity as a natural or adoptive child, grandchild, great-grandchild, parent, brother, sister, nephew, niece, great-grand nephew, or great-grand niece.
- 8.4.9 “Within the second degree” includes persons related to the judge by consanguinity or affinity as a natural or adoptive grandparent, uncle, aunt, first cousin, first cousin once removed, first cousin twice removed, or first cousin thrice removed.

### **EFFECTIVE DATE AND POPULAR NAME**

- 9.1 This Code may be cited as the Republic of Palau Code of Judicial Conduct and its provisions shall be effective as of the date set forth below.

March 1, 2011  
(amended March 9, 2011)