

Republic of Guatemala
ETHICAL NORMS FOR THE JUDICIAL BRANCH

This Project was made possible by financing from the World Bank and by the support of the Judicial Branch Modernization Unit and the United Nations Development Program

Members of the Supreme Court of Justice

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Introduction

Supreme Court Agreement No. 7-2001, “Ethical Norms for the Judicial Branch of the Republic of Guatemala”, is the product of a collective effort by the Magistrates’ Institute, the Association of Judges and Magistrates of the Judicial Branch and of members of civil society who participated in the workshops held over the past year.

The Supreme Court of Justice dedicated a number of extraordinary plenary sessions to considering the Draft Agreement and benefited from the collaboration and support of Dr. Roberto Brenes.

To all those who contributed their constructive criticism and disinterested comments during this process, I extend my sincere thanks. They enlarged the original scope of the project and contributed to the adoption, on March 21, 2001, of the first legal body of ethical norms in Guatemala’s history ever to be adopted by a state institution.

Agreement No. 7-2001 will serve as a basis for workshops and seminars to be offered throughout Guatemala over the coming years to ensure that all Judicial Branch civil servants take up the mantle of integrity and arm themselves with rectitude, honor, loyalty and prudence. The overriding goal of this project is to achieve Justice, by ensuring that the Constitution is rigorously applied and that Human Rights are respected, thereby contributing to building the lasting peace that Guatemalans so desire.

Well aware that the Judicial Branch is not an island unto itself, but rather part of a system, we join forces with other government institutions in the fight against corruption with the publication of these norms and activities to promote their application in every court in the land.

Dr. Edgardo Daniel Barreda Valenzuela
Magistrate X
Supreme Court of Justice

ETHICAL NORMS FOR THE JUDICIAL BRANCH

AGREEMENT NO. 7-2001

THE SUPREME COURT OF JUSTICE

RECOGNIZING that the Supreme Court of Justice has a duty to ensure the fulfillment of its obligations to impart justice and to preserve and strengthen democracy.

CONSCIOUS that magistrates, judges, civil servants, auxiliary and administrative support staff are an essential part of the administration of justice, that they must serve the community and that their functions must therefore be carried out in accordance with clear ethical and moral norms requiring each and every one of them to act with: honor, probity, decorum, prudence, rectitude, loyalty, respect, independence, impartiality, veracity, efficiency, solidarity and dignity in all matters, demonstrating exemplary conduct, honesty and good faith in every one of their actions.

EMPOWERED by paragraph f) of article 54 of the Judicial Branch Act,

HAS AGREED

on the following:

ETHICAL NORMS FOR THE JUDICIAL BRANCH OF THE REPUBLIC OF GUATEMALA

CHAPTER I

DEFINITIONS AND SCOPE OF APPLICATION

Article 1. Scope of application. These norms will apply to the acts of all judges, civil servants and employees of the Guatemalan Judicial Branch, subject to provisions of other applicable norms.

Article 2. Binding nature. The norms set out in this Agreement are binding on all Judicial Branch personnel whenever they apply. The bodies established by the Judicial Career Act and the Act Respecting the Judicial Branch Civil Service must, within their respective areas of competence, ensure strict compliance with these norms and, where necessary, impose appropriate sanctions in cases of a violations in accordance with the aforementioned laws.

Article 3. Definitions. For the purposes of this Agreement, the following definitions apply:

- a) *Judge*: Any civil servant elected to the position of magistrate or appointed to the position of judge.
- b) *Employee*: all auxiliary judicial personnel and all administrative and technical support staff.
- c) *A quo*: a judge or tribunal whose decision may be appealed.
- d) *Ad quem*: a judge or tribunal to whom a party has appealed the decision of a lower tribunal.
- e) *Sub judice*: a case in process, pending judicial resolution.

CHAPTER II

ESSENTIAL VALUES AND ETHICAL PRINCIPLES FOR THE ADMINISTRATION OF JUSTICE

Article 4. Fundamental Values. It is the State's duty to carry out the administration of justice, thereby providing an essential public service oriented toward resolving conflicts in a manner that preserves peace and the stability of the democratic system, as well as protecting human rights and the security of its citizens. This service must be of the highest quality and efficiency, taking into account each of the values and propositions set out in the second paragraph of the Preamble to this Agreement.

Article 5. Guiding Principles of Integrity and Independence. In exercising their function, judges must ensure that they conduct themselves with integrity and independence in their sensitive functions, thereby contributing to strengthening respect for, and confidence in, the judiciary.

Article 6. Moderation and self-evaluation. All those who administer justice must use moderation in exercising the powers attributed to them, keeping in mind their personal responsibility for every action they take. Thus, they must continuously evaluate their own beliefs and convictions, while maintaining absolute respect for those of their colleagues when they form part of a bench together.

Article 7. Justification for, and reasoning in, judicial decisions. In fulfilling his or her duty to justify judicial decisions, the judge must not limit him or herself to citing the applicable legislation, especially where the decision relates to the substantial issues of the case. Rather, the judge must respond to the arguments and pleadings advanced by the parties so as to ensure that the decision appears reasonable and well founded to them.

Article 8. Duty of transparency. In order to guarantee transparency, every judicial civil servant must record in writing, and permit publication of, all actions taken, subject to exceptions to the duty of public disclosure established by law.

Article 9. Duty of secrecy. The judge has a duty of secrecy with respect to matters *sub judice* when the law so provides or, in the absence of applicable provisions, when the judge is of the view that the legitimate rights or interests of one of the parties to the case might be affected, or where it is clear that it is not in the public interest to publish the information. Similarly, a judge who is a member of a panel must safeguard the secrecy of all tribunal deliberations.

Article 10. Limitations on judicial independence. Judicial independence is subject only to the Political Constitution of the Republic of Guatemala, to the laws of the land and to the fundamental values and principles contained therein.

Article 11. Advancing the Rule of Law. Without prejudice to the fulfillment of their duties, judges shall participate in and promote activities oriented toward improving and strengthening the Rule of Law, the administration of justice and respect for human rights.

CHAPTER III

FUNCTIONS, RELATIONSHIPS AND DISCIPLINE

Article 12. Qualities required of judges in the exercise of their substantive judicial functions. The proper exercise of judicial functions requires the judge to be hard working, prudent, serene, impartial and meticulous. The judge must be devoted to the study of the law, constantly updating his or her knowledge of the law and engaging in continuing education whenever possible. The judge must be diligent at all times.

Article 13. Updating knowledge and continuing education. Judicial civil servants must commit themselves to modernizing and improving the administration of their courts and of the legal system.

Article 14. Minimizing formal requirements. Judges must keep to a minimum any formal requirements that would prevent the resolution of matters within their jurisdiction. Provided there is no legal prohibition on doing so, judges must promote reconciliation between the parties, or at the very least, seek to mitigate hostility between them.

In accordance with the principle of effective judicial tutelage, a judge shall only reject submissions made to him or her due to a failure to comply with formal requirements where those requirements are clearly established by law and where the defect therefore cannot be rectified.

Article 15. Personal relationships. Persons who administer justice must maintain professional and cooperative relationships among themselves and among the staff they employ, in order to achieve the efficient administration of justice.

The conduct of persons who administer justice must be governed by the principles of mutual respect, cordiality and professional cooperation, without regard to hierarchical status.

Persons who administer justice shall avoid making unfounded or unnecessary criticisms that would diminish the prestige of their fellow judges. They shall ensure that their conduct as judicial professionals conforms to these ethical norms and is exemplary both in their personal lives and in the exercise of their professional functions.

Article 16. Respect for, and availability to, parties and citizens. Judges shall make themselves available to parties and their lawyers and maintain a respectful attitude toward them, while ensuring that their contact with parties and their lawyers does not create the perception that there exists any privileged relationship between them or that they are acting outside of their professional relationship.

This same attitude must be maintained in dealings with all citizens, demonstrating the consideration and respect owed to every person.

Article 17. Reporting improper acts. When judges, or other civil servants or employees of the Judicial Branch, become aware of any improper or dishonest act by a colleague or by a lawyer, they must take appropriate actions to ensure that proper proceedings are carried out.

Article 18. Basic duties of civil servants and employees of the Judicial Branch. The following are the basic duties and conduct required of civil servants and employees of the Judicial Branch:

- a) To carry out with maximum diligence any services required of them, ensuring that their work is carried out in a punctual fashion and abstaining from any acts or omissions that would cause the services provided to be suspended or to function poorly.
- b) To safeguard documents and information in their charge, by preventing the misuse, removal, destruction, concealment or failure to use documents or information.
- c) To conduct themselves properly in all aspects of their employment, treating with respect, diligence, impartiality and honesty all people with whom they come into contact, whether they be parties, the public or other civil servants.
- d) To abstain from any offence, misappropriation or abuse of authority.
- e) To refuse to accept or receive, either directly or indirectly, any present, gift, offer or promise in exchange for carrying out their duties or for abstaining from carrying out their

duties. It is also prohibited for civil servants and employees to accept, in the conduct of their duties, any gift, employment, position or commission for themselves, their spouses or their relatives, offered by any natural or legal person whose professional, commercial or industrial activities are directly linked to the civil servant or employee's work, or are subject to a proceeding, or are regulated or supervised by the civil servant or employee.

f) To abstain from intervening or participating without cause in the selection, appointment, designation, contracting, promotion, suspension, dismissal, relocation, elevation, compulsory retirement or punishment of any civil servant or employee where there exists a personal interest in the outcome – either due to a family or business relationship – or where an advantage or benefit may be derived for the civil servant or employee or for his or her spouse or relatives.

g) To carry out their job without seeking benefits additional to the salary and other legal entitlements provided by the Judicial Branch for the exercise of their functions.

h) Superiors must act in accordance with the rules of good conduct toward their staff. Similarly, all civil servants and employees must maintain a respectful attitude toward their superiors.

Article 19. Special duties for persons exercising substantive judicial functions. In addition to the duties outlined above and others established in these Ethical Norms applying to persons exercising substantive judicial functions, the following are also basic duties for those who exercise substantive judicial functions:

a) To ensure that no attacks are made on the dignity of, and respect owed to, tribunals.

b) To take all necessary measures to prohibit improper conduct in the administration of justice, whether it be by lawyers, prosecutors, civil servants or employees of the tribunal or by any other person.

c) To act with prudence.

d) To ensure that judicial proceedings and the conduct of the tribunal are carried out in a disciplined, solemn and respectful environment and to ensure that no employee or person be allowed to disturb the order which must govern in court.

e) To treat lawyers and all other persons who come before the tribunal with courtesy.

f) To ensure that experts, arbitrators, trustees and others who provide assistance to the court are selected based on their knowledge of the subject-matter at hand and are competent, impartial and honorable.

CHAPTER IV

IMPARTIALITY AND INDEPENDENCE

Article 20. Impartiality. Every judge must be impartial and conduct him or herself in such a way as to exclude any appearance that he or she is susceptible to the influence of other persons, groups or parties, or to the influence of public opinion, considerations of popularity or notoriety, or to any other improper motive. Every judge shall remain conscious that his or her only task is to impart justice in accordance with the applicable law, with total equanimity and without regard for any criticism of his or her work.

Every judge must impart justice freely, subject only to the law and the principles that sustain it, impervious to any emotional considerations that might influence his or her decision.

Article 21. Respect for dignity and equality. Every judge must respect the dignity of human beings and recognize their right to equality, without discrimination on the basis of sex, culture, ideology, race, religion, language, nationality, personal or socio-economic status.

Each judge must make every effort to become aware of, and eventually overcome, his or her own cultural prejudices based on origins or training, particularly if these may have a negative impact on the full appreciation and weighing of the facts or in the interpretation of the law.

Article 22. Rejection of pressure. Every judge must reject any pressure, influence or request of any type that is made for the illegitimate purpose of affecting the time required or the method used to resolve the cases under his or her consideration. In order to prevent such situations from arising, the judge shall refuse invitations and requests to hold private meetings with parties outside of the exercise of his or her functions. The judge must avoid direct ties to political parties, to unions or to business organizations that might influence the exercise of his or her duties or tarnish his or her image as independent and impartial.

In carrying out his or her duties, the judge must avoid acts or attitudes that in any way give the impression that his or her social, business or family relationships or friendships have an influence on his or her decisions.

Article 23. Employee impartiality. Every employee exercising or assisting with judicial functions must act impartially in carrying out his or her duties.

Judges must monitor fulfillment of this duty by employees under their authority.

Article 24. Limits on hierarchical relationships. The *ad quem* shall not intervene, interfere or seek to influence the *a quo* in any cases heard by the *a quo* or in the decisions made thereby, since the only opportunity for review is by way of appeal or by other recourse available to the parties.

Article 25. Abstention from intervention. Every judge must abstain from intervening in a judicial proceeding where he or she is the object of a recusation proceeding made in accordance with the provisions of the Judicial Branch Act or, more generally, in any case where the judge is of the opinion that he or she may be influenced by factors that would compromise his or her impartiality.

CHAPTER V

PROHIBITED POLITICAL ACTIVITIES, OBLIGATIONS AND PRIVATE MEETINGS

Article 26. Independence and political activities. Prohibitions. Judges must protect and promote their own independence and that of the Judicial Branch as a means of maintaining the necessary balance in a democratic system. For this reason, no judge may participate in the political process, without prejudice to his or her right to vote, right to hold personal opinions on political matters and duty to exercise functions governed by electoral laws and regulations.

Article 27. Political activities of civil servants and employees. It is the judge's duty to ensure that other civil servants and employees of the tribunal or tribunals under his or her authority do not engage in political activity that would bring the image and impartiality of the Judicial Branch into disrepute.

Article 28. Application of the duty to act with diligence. Judges shall intervene in the conduct of proceedings to avoid unjustified delays, to clarify any matters outstanding and to prevent injustice.

Article 29. The judge as guarantor of the right to due process. Every judge shall remain aware of the fact that he or she is not simply an arbiter or moderator of a debate, but rather the guarantor of respect for the right to fair process and, in this respect, that the judge in general has an obligation of result, rather than of mere respect or non-interference.

Article 30. Prohibition on reprisals for the exercise of a right. During all proceedings, and especially at the moment of sentencing, the judge shall not allow the exercise of the right to due process to influence his or her state of mind. On the contrary, the judge must ensure that this right is exercised in accordance with all guarantees.

Article 31. Private meetings with parties. Judges shall ensure that private meetings with parties or their lawyers, or communications or arguments made by the same, do not contravene the principles of procedural fairness and equality, nor do they lead to the denial of the right to full and fair defense of one of the parties. Judges shall take special care to ensure that the impartiality of their judgment is not impaired.

CHAPTER VI

CONDUCT DURING TRIALS

Article 32. Consideration and respect as general duty. Judges' integrity and the severity required of them in certain cases shall never go beyond the bounds of respect and consideration for the parties involved in the proceeding. In particular, the judge must remain conscious of the need to limit the publicity of proceedings in cases where intimacy, modesty or human suffering demand it, provided that this does not give rise to a risk of prejudicing a just outcome or the rights involved.

Article 33. Duty of consideration and courtesy. Every judge shall be considerate and respectful toward the parties and their lawyers. Judges must conduct themselves in the same manner with witnesses, experts, trustees, civil servants of the tribunal and any other person appearing before them.

Similarly, judges shall ensure that all employees of the tribunal, lawyers and any other persons appearing before them act in the same manner.

Article 34. Punctuality and delays. Every judge must be punctual in carrying out his or her duties, recognizing the value of time for lawyers, litigants, witnesses, parties and all others appearing before him or her.

All judges shall take necessary measures to avoid situations in which the parties, their lawyers or any other person mentioned in the last paragraph cause unjustified delays in the litigation. Judges shall remain diligent in processing the matters submitted to them for their consideration.

CHAPTER VII

INFLUENCE AND COMMUNITY RELATIONS

Article 35. Conflicts of interest. No judge shall use his or her position to further the success of his or her private business or for personal benefit.

Article 36. Undue influence in judicial proceedings. Every judge must avoid all conduct or behavior that, for his or her personal benefit or the benefit of third parties, would exert undue influence over the judgment of any other judge in acting his or her judicial capacity.

Article 37. Decorum and conduct in public. Judges must be scrupulous in avoiding any acts that might reasonably give the appearance that his or her social, business or family relationships or friendships have an influence on his or her judicial decisions.

Article 38. Discussion and explanation to the public of judicial acts. Any judge may make statements, whether directly or through the specialized office of the Judicial Branch, provided that they do not in any way divulge in advance his or her views on matters pending resolution.

Similarly, every judge shall ensure that civil servants and employees under his or her authority conduct themselves in the same fashion.

Article 39. Statements to the media. Judges who offer statements to the media must take great care to ensure that the statements are objective and do not compromise their duty of impartiality.

With respect to the decisions made by a judge, no limitation may be placed on the right to freedom of expression or the right to access to information except for any law that provides otherwise.

CHAPTER VIII

FINAL PROVISIONS

Article 40. Other norms. The norms established in the present Agreement do not exclude the observance of other ethical norms designed to achieve upstanding human conduct.

Article 41. Entry into force. This Agreement shall enter into force thirty days from its publication in the Official Gazette.

Made in the Palace of Justice, in Guatemala City, this twenty-first of March 2001.

Message from Dr. Carlos Esteban Larios Ochaita, Magistrate IX of the Supreme Court of Justice and Coordinator of the Modernization Unit.

Within the framework of judicial reform, one of the key components of the Modernization Plan is combating corruption. We are therefore proud to have supported the drafting process of these Ethical Norms for the Judicial Branch, a new instrument that will provide further impetus toward honor, probity, decorum, prudence, rectitude, loyalty, respect, independence, impartiality, truth, efficiency, solidarity and dignity in every aspect of the judicial conduct of the personnel of this branch of government, and particularly in the conduct of those who carry out substantive judicial functions.

In addition, we are firmly committed, alongside Dr. Edgardo Barreda Valenzuela, Magistrate X of the Supreme Court of Justice, to providing the necessary support to ensure that all Judicial Branch personnel familiarize themselves with the content of these norms and observe them in carrying out their duties, so as to ensure that the Judicial Branch fulfills its constitutional mandate to provide full and fair justice for the benefit of the Guatemalan people.

This project benefited from technical assistance provided by the United Nations Development Program and the Modernization Unit.

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Publications 2001
Judicial Branch Modernization Unit