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COMMENTARY

KOSOVO CODE OF PROFESSIONAL ETHICS FOR JUDGES

JUSTICE SYSTEM STRENGTHENING PROGRAM IN
KOSOVO (JSSP)

Commentary

Kosovo Code of Professional Ethics for Judges

This publication was produced for review by the United States Agency for International Development. It was prepared by Millennium DPI Partners, LLC. The views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

December, 2017

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Introduction

A judiciary of undisputed integrity is essential for ensuring compliance with democracy and the rule of law.¹ Judges must perform their duties fairly and impartially. The *Kosovo Code of Professional Ethics for Judges* (Kosovo Judicial Ethics Code) is designed to promote the integrity of the justice system. It provides benefits to the Kosovo public as well as to the Kosovo judiciary.

With a clear understanding of the provisions and the intent of the Kosovo Judicial Ethics Code, judges in Kosovo will be aware of their ethical responsibilities with greater specificity. With the Kosovo Judicial Ethics Code setting forth the requirements for judges, the public will also become more aware of the ethical responsibilities of judges. With greater knowledge, judges will be better able to conform their conduct to the highest standards. A better understanding of the parameters of appropriate conduct will protect judges from the risks of unintentional violations of ethical rules and potential complaints or disciplinary sanctions. With increased knowledge, the public will also be able to ensure that their judges are conducting themselves in a manner worthy of the public trust and confidence that is essential to an independent and effective justice system.

The ***Bangalore Principles of Judicial Conduct*** (**Bangalore Principles**) was adopted by the *Judicial Integrity Group* which consists of President Judges and Chief Justices and other high-ranking judges from around the world. These principles are designed to provide ethical guidance for judges throughout the world. The Bangalore Principles have increasingly been accepted by different sectors of the global judiciary and by international agencies interested in the integrity of the judicial process.² Numerous international organizations have given the Bangalore Principles their support and endorsement. They include the United Nations Commission on Human Rights, The United Nations Office on Drugs and Crime, the American Bar Association, judges of

¹ Judge CG Weeramantry, Chairman of the Judicial Integrity Group

² Judge CG Weeramantry, Chairman of the Judicial Integrity Group

the member states of the Council of Europe, and the International Commission of Jurists.³

In many ways, the provisions of the **Kosovo Judicial Ethics Code** parallel the Bangalore Principles' core principles of conduct. This discussion of the ethical responsibilities of judges, when seeking to identify relevant ethical provisions, and equally important, the purposes and intent behind those provisions, will refer to both the Kosovo Judicial Ethics Code and to the Bangalore Principles.

Author, Judge John Fields

³ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

I. Integrity

*The components of integrity are honesty and judicial morality. A judge should always, not only in the discharge of official duties, act honourably and in a manner befitting the judicial office...There are no degrees of integrity, as so defined. Integrity is absolute. In the judiciary, integrity is more than a virtue; it is a necessity.*⁴

Discussion Question #1:

You are serving as a judge on a case that involves a lawsuit that seeks to permanently prohibit the largest mining company in Kosovo from continuing its open pit mining operation in western Kosovo due to alleged pollution violations. The case has had significant publicity in the media. The plaintiff claims that the public health of nearby residents has been significantly impacted as a result of a “continuous cloud of toxic materials in the air” due to the mining operation. The defense admits that there is a “cloud of materials in the air” but that they are “neither toxic nor harmful” to public health. You have received the testimony of several experts regarding the cloud of materials in the air. The defense has stated that shutting down the mining operation would have a significant negative impact upon the welfare of the workers who would lose their jobs and only source of income.

The day before you are scheduled to make your ruling in court your staff advises you that the Kosovo Minister of Economic Development is on the telephone and would like to talk with you. The call may be about a matter totally unrelated to the case you are handling.

1. Do you accept the telephone call? Why or why not? If you decide to accept the call what do you do:
 - a. Before speaking with the Minister?
 - b. After speaking with the Minister?

2. The day before your scheduled ruling in court you are eating dinner alone in a restaurant and the Minister is at a nearby table. He approaches your table, sits down and begins to talk only about

⁴ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

the basketball team that your son and his son used to play together on over 10 years ago.

- a. What do you do while at the restaurant? After you leave the restaurant?
3. The day before your scheduled ruling in court you are eating dinner alone in a restaurant and the Minister is at a nearby table. He approaches your table, sits down and begins to talk about how important the jobs at the mining operation are to the national economy.
- a. What do you do while at the restaurant? After you leave the restaurant?

Commentary:

1. Integrity is essential to the proper performance of a judge. A judge must maintain high standards of integrity. The integrity of a judge and the judicial system are critical to whether the public has trust and confidence in the justice system.

Although it is unclear whether the Minister called to discuss the case or something entirely unrelated, perceptions and appearances are equally as important as reality. A judge must be honest and must also appear to be honest.

Judicial independence must be recognized and respected by all three branches of government. Confidence in the judiciary is eroded if judicial decision-making is subject to outside forces or is reasonably perceived to be subject to outside forces by the parliament or by the executive branch, such as the Minister.⁵

*The telephone call to the judge clearly raises, at the least, the "appearance" of **improper ex-parte contact** with the judge and, at the worst, actual improper ex-parte contact with the judge. The judge should not accept the telephone call. He or she should have their staff*

⁵ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

indicate to the Minister that until the case is completed that the judge is not allowed to have communication with him or her.

Ex-parte contact is an improper communication made to a judge outside the presence of the parties or their attorneys. Due process requires that all parties and their attorneys be part of any communication made to a judge that may have an impact upon the ruling in the case. Ex-parte contacts, whether innocent or intentional, have a serious impact upon the confidence of a litigant and the public as to whether the decision by the judge is made on the basis of a private communication with the judge or whether the decision is properly made based on the merits of the case. **Ex-parte communications with a judge are totally improper and the judge must always be on guard to avoid them. If, despite the judge's vigilance, an ex-parte communication takes place, due process requires that the judge provide timely notice to all of the litigants and their attorneys of the existence and contents of the ex-parte communication.**

2. While at the restaurant, the judge should explain to the Minister that while the case is pending it is inappropriate for them to have contact with each other even if the discussion was only about their children's long ago sports activities. The judge should get up and leave if the Secretary remains at the table. The next morning the judge should give a full account to the attorneys and parties, on the record in the courtroom, of the conversation that took place with the Secretary. With full and timely disclosure the judge is not required to recuse himself or herself.

3. While at the restaurant, the judge should explain to the Minister that while the case is pending it is inappropriate for them to have contact with each other. The judge should further indicate that it is totally improper for there to be a discussion about any aspect of the case. The judge should immediately leave the restaurant. He or she may wish to make a record of exactly what the Minister said to him or her. The next morning the judge should give a full account to the attorneys and the parties, on the record in the courtroom, of the conversation that took place. The judge should also indicate that he or she will not consider any of the information shared by the Minister in the judge's ruling in the case. The judge is not required to recuse himself or herself in the case.

Discussion Question #2:

You were recently appointed as a judge. You are proud of the work that you are doing and you are pleased with your new position. You enjoy other people and while at the university you made many friends. Many of your friends from school also became attorneys and several of them regularly appear before you in court. Last weekend you celebrated your birthday and you decided to do so by inviting many of your friends to celebrate with you at your home. Many of those individuals who joined you at your home were attorneys who regularly appear in court before you.

At your party there was great food and you also enjoyed drinking a little raki with your friends. Actually, you enjoyed drinking a **lot** of raki with your friends! Your spouse took pictures so that your birthday celebration could be shared with others later. The party was a great success and you had a little too much to drink (in reality you were quite inebriated) but you were at home and you didn't have to drive. Near the end of the party there were some photographs taken of you and your friends having one final toast of raki. The next day you posted on Facebook the photos that were taken at the end of the party so that others could see your birthday celebration and a number of people commented in person and online that you had, "quite a party!"

You thought the photos were great. However, a reporter saw the photos on Facebook and noticed that while you were making a final toast with the raki there were several attorneys with you that frequently appear before you in court. The reporter also noticed it appeared that you had had "a lot" to drink. She reviewed the Kosovo Code of Professional Ethics for Judges and called you. She asked, taking into account the Code, for your comments to the following questions:

1. After having had a week to recover, what are your thoughts about having hosted that party?
2. Does that type of birthday celebration, on the weekend at your private residence, have any affect on your ability to effectively perform your responsibilities as a judge?
3. What are your thoughts about the appropriateness of inviting guests that are attorneys who regularly appear before you in court?
4. Would it have made a difference if the attorneys who attended did not appear in court before you?

5. Was the Facebook posting of the photographs ethically permissible?
6. Even if the Facebook posting was ethically permissible, was it appropriate?

Commentary:

Although the birthday party was a private event at the judge's private residence, it raises several concerns. A judge is required to conduct himself/herself with dignity and shall at all times be of the highest moral character which is essential for the maintaining the reputation of the judiciary. The Code applies to a judge during their public duties and also during their private lives. The photos showing the judge inebriated reflects that he or she was not conducting herself, "with dignity". Also, the fact that attorneys who regularly appear before the judge are part of his or her birthday party might raise questions as to whether the attorneys receive special favours from the judge. Even if there are no actual special favours, a question could be raised as to whether a reasonable person could believe that that circumstance exists. A judge is required to avoid both actual impropriety and the appearance of impropriety in all of his/her activities. This includes both during a judge's professional and private life.

A judge is not required to totally divest himself or herself from all out of court contact with attorneys. In fact, some jurisdictions believe it is helpful for the judge to maintain limited out of court contact with attorneys. It has been said that it would not be beneficial to the judicial process for judges to isolate themselves from the rest of society, including attorneys. Informal exchanges between attorneys and judges at social functions may, for example, assist with enhancing collegiality in the courtroom. Nonetheless, a judge should act on the basis of common sense and exercise caution.⁶

The use of social media by a judge e.g. Facebook, Twitter Instagram, etc., is something that requires special thought and care. A judge is not automatically precluded from using social media. However, a judge must carefully consider the impact that a social

⁶ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

media posting may have upon his or her judicial reputation and the reputation of the entire judiciary.

In the fact pattern of this discussion question, the judge not only posted a photograph showing that he was inebriated but the social media posting also reflected that several attorneys who appear before him or her regularly were also socializing at the judge's private residence. This social media posting could cause reasonable members of the public to have significant questions about the propriety of the judge's actions and about the judge's objectivity when his or her attorney friends, who were shown in the Facebook posting, appear before the judge.

Use of social media requires great care. Even if the use of social media is not automatically prohibited, a judge may determine that its use may not be appropriate.

Applicable Considerations and Code Provisions:

- Public confidence in the judicial system and in the moral authority and integrity of the judiciary is of great importance in a modern democratic society.⁷
- A judge shall exercise his/her 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 from any extraneous influences, inducements, pressures, threats, or interference, direct or indirect, from any quarter or for any reason. Section 1 of the Kosovo Judicial Ethics Code; Section 1.1 Bangalore Principles
- A judge shall conduct himself/herself with dignity and shall at all times be of the highest moral character, which is essential for maintaining the reputation of the judiciary. Section 4 of the Kosovo Judicial Ethics Code
- A judge shall maintain high standards of judicial conduct to reinforce public confidence in the judiciary. Section 4.1 of the Kosovo Judicial Ethics Code.

⁷ Commentary on the Bangalore Principles of Judicial Conduct , United Nations Office on Drugs and Crime

- A judge should act in a manner that promotes public confidence in the integrity of the judicial system. Section 4.2 of the Kosovo Judicial Ethics Code.
- A judge is required to avoid actual impropriety and the appearance of impropriety in all of his/her activities. This includes a judge's professional life and personal life, Section 2.1 of the Kosovo Judicial Ethics Code; Section 4.1 Bangalore Principles

II. Impartiality

Impartiality is the fundamental quality required of a judge and the core attribute of the judiciary. Impartiality must exist both as a matter of fact and as a matter of reasonable perception. The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge's behavior on the bench, or his or her association and activities outside of court.⁸

Impartiality is essential to the proper discharge of judicial duties. It applies not only to the decision itself but also to the process by which the decision is made. Important considerations of *impartiality* include:

- If a judge does not have actual impartiality he or she must recuse himself or herself from the case.⁹ (emphasis added)
- There may be a perception of the impartiality of a judge. In that situation, a judge is required to disqualify only if it may appear to a reasonable observer that the judge is unable to decide the case impartially.¹⁰ (emphasis added)
- A judge shall be impartial and shall not make any public or private comments that might reasonably be expected to affect the outcome of a case or to affect the right to a fair trial of any person or issue.

⁸ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

⁹ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

¹⁰ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

Bias and Demeanor

*A judge shall perform his or her judicial duties without favour, bias or prejudice.*¹¹

Applicable Considerations and Code Provisions:

- Bias or prejudice has been defined as a leaning, inclination, bent or predisposition towards one side or another or a particular result. Bias is a condition or state of mind, an attitude or point of view, which sways or colors judgment and renders a judge unable to exercise his or her functions impartially in a particular case.
- Bias includes verbal and non-verbal communication.

Section 3 of the Kosovo Judicial Ethics Code

- A judge shall not, in the performance of judicial duties, by words, gesture or conduct, manifest bias or prejudice towards any person or group. **Section 3.1 of the Kosovo Judicial Ethics Code**
- A judge, in the performance of judicial duties, should treat all parties in the proceedings equally without favoritism or manifesting bias or prejudice. **Section 2 of the Kosovo Judicial Ethics Code**
- A judge in the performance of his/her judicial duties respects the principles of equality of the parties in the proceedings, recognizing and respecting diversity in society on the basis of race, color, gender, religion, nationality, sexual orientation, disability, age, marital status, social and economic and any other criterion. **Section 3 of the Kosovo Judicial Ethics Code**

¹¹ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

- A judge has the obligation to require that court staff treat all of the parties in the proceedings and members of the public fairly.

Disqualification of the Judge

A judge should disqualify himself or herself from participating in any proceeding in which the judge is actually unable to decide the matter impartially or in any proceeding in which it may appear to a reasonable person that the judge is unable to be impartial.

Discussion Question #3:

You are the judge assigned to try a theft case. As you are preparing for the trial you discover that a witness in the case is the same mechanic that you have taken your car to for routine maintenance as well as repairs over the past three years. You are now trying to determine what is the correct step for you to take. Which of the following should you do?

- a) You must automatically disqualify yourself from the case.
- b) You should immediately give disclosure to the attorneys and the parties that you have had your car repaired by the mechanic. Disclosure does not mean that the judge would automatically be disqualified from the case.
- c) You should not say anything to the attorneys and the parties about your acquaintanceship with the mechanic because they probably won't find out.
- d) You are not required to give disclosure that you are acquainted with the mechanic because you don't believe that you should be disqualified.

Commentary: *The best answer is B. If a judge is acquainted with or related to a party or a witness, the judge must provide timely notice and disclosure of the situation to the attorneys and the parties. This should be done on the record in the courtroom. Often, in small towns and sometimes in larger cities, a judge will know people who appear before the judge. The mere fact that a judge is acquainted with a witness does*

not automatically require a judge to disqualify himself/herself. The relevant question in this matter is whether the judge is able to handle the matter fairly and impartially despite the fact that he or she knows and has utilized the services of the mechanic. After the judge has provided disclosure on the record the parties should be allowed to speak privately with their attorneys to determine if they have an objection to the judge continuing to hear the case and whether they wish to file a motion for disqualification of the judge. If a party files a motion for disqualification the judge should make a ruling on the record stating whether they are disqualifying themselves and their reasoning as to why they are or are not disqualifying themselves.

Discussion Question #4:

You are a member of an ethnic group that experienced loss of life in the past 20 years as a result of the actions of another ethnic group. An individual, who is a member of the other ethnic group, has recently been arrested and charged with a single murder of a person from your ethnic group. You are assigned to the case as the trial judge. Counsel for defendant has filed a motion for your disqualification alleging that due to your ethnicity you are unable to fairly decide the case.

Are you required to disqualify? Why or why not?

Commentary:

A judge's religion, ethnicity, national origin, gender, age, or class generally may not be the basis upon which a judge is disqualified.¹²

Applicable Considerations and Code Provisions:

- A judge must disqualify himself/herself if there is a reasonable impression to the public that he/she is not able to be impartial. (emphasis added) Section 2.5 of the Kosovo Judicial Ethics Code; Section 2.5 of the Bangalore Principles

¹² Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

- Tests for when disqualification is required:

a. When it would appear to a reasonable disinterested person, knowing all of the circumstances, that the judge is unable to decide the matter impartially.

b. When the judge has information that the parties or the attorneys might consider relevant to the question of disqualification, the information must be timely disclosed even if the judge believes there is no actual basis for disqualification.

- The judge has personal knowledge of disputed evidentiary facts concerning the proceedings.¹³ (emphasis added)
- What additional types of relationships may require a judge to disqualify?

When there are witnesses or parties who are the judge's:

1. Relatives
2. Friends
3. Family or household acquaintances
4. Prior business partners
5. Former clients

Political Activity

A judge shall refrain from conduct that may give the impression to the public that he or she is politically active.

Discussion Question #5:

You are a recently appointed as a judge in Kosovo. Your neighbor is a candidate for a position in the Assembly of Kosovo. She is bright,

¹³ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

hardworking and has great common sense. Exactly the type of person that is needed to make government responsive to the public! She has asked you to assist her so that effective government will return to Kosovo. You know that as a judge you cannot make a financial contribution to her campaign but you place a post on your Facebook Page supporting her candidacy.

May a judge use social media to indicate their preference for a candidate for the Kosovo Assembly?

Commentary:

While it is wonderful that your neighbor was elected to the Assembly of Kosovo, based on her excellent credentials, it is not appropriate that a judge express his or her views of a candidate for a political position.

A judge should be very careful regarding the effect and impact of his or her comments, posts or even when clicking on a “like” that someone else has submitted. For example, a problem can occur if a judge were to “like” an organization that is found to have engaged in illegal discrimination. If that were to occur there is a possibility that the judge’s action could be determined to be a violation of Section 2.21a of the Kosovo Judicial Ethics Code’s requirement that states that a judge shall, “...avoid any activity or relationship that may reflect adversely on the judge’s impartiality...”

There is an actual case in Kosovo in which a reprimand was issued for this type of situation. A judge must give thoughtful consideration to the effect and impact of his or her actions on social media.

Please think carefully before posting, tweeting or taking other action that will remain forever in cyberspace.

Applicable Considerations and Code Provisions:

- A judge is prohibited from:
 - Being a member of any political party.
 - Attending political gatherings.

- Providing financial contributions or other contributions (in-kind benefits) to a political party.
- Publicly participating in political discussions.

Section 2.2.3 and 2.2.4 of the Kosovo Judicial Ethics Code

Charitable Organizations

- A judge may participate in social, charitable and religious activities **except**:
 1. He/she may not participate in an organization whose beliefs reflect poorly on a judge's impartiality.
 2. If the organization is or will be engaged in legal proceedings that are ordinarily brought before the court.
 3. Fundraising by a judge on behalf of a charitable organization generally raises questions whether the donor made the financial contribution to the charitable organization because the donor truly supports the organization or if they donated because they occasionally have matters in court that come before the judge and they were concerned that a failure to donate would alienate the judge.

Section 2.2.1 of the Kosovo Judicial Ethics Code

Gifts

A judge and his/her family members, as well as staff members, cannot request or accept any gift, testament, loan or other services for actions or inactions related to the judge's judicial functions.

Section 4.10 of the Kosovo Judicial Ethics Code

Discussion Question #6:

Shortly before the holidays, an attorney leaves a large lemon pound cake in your court clerk's office with a holiday card attached.

- What, if anything, should you do?

- Does it matter what type of gift was given?
- Does it matter whether the gift was given to a staff member rather than to the judge?

Commentary:

Often attorneys and others who have regular business with the court desire to extend holiday wishes to the judges and members of the court staff. Sometimes these holiday wishes can include gifts that are quite nominal in cost and some gifts that are very expensive. Regardless of the intent of the attorney or others, acceptance of a gift by a judge or his or her family members is prohibited.

It does not matter what type of gift was provided (cash as contrasted with a lemon pound cake). A fundamental principle is that the public must have trust and confidence in the integrity and independence of the court and all of its judges and staff members. Gifts provided by some individuals to judges or court staff members may be interpreted as having a meaning or intent beyond a gift.

There is no distinguishing between judges and court staff with respect to the prohibition of the acceptance of gifts. It does not matter that the gift was provided to the court staff rather than to the judge. The acceptance of a gift by court staff members is prohibited in the same manner as it is for judges.

The judge should return the large lemon pound cake to the attorney with an explanation of the provisions of the Kosovo Judicial Ethics Code. Even if the attorney is reluctant to accept the returned gift the judge must ensure the “gift” is not retained by the court so that: 1) fair and equal treatment of all of those who do business with the court will continue to be an attribute of the court, and 2) the judge will not later be subject to criticism and possible sanctions for violation of the Kosovo Judicial Ethics Code.

Applicable Considerations and Code Provisions:

- “In accordance with the legal provisions governing the declaration of gifts, the judge may not accept or give gifts except during any protocol or similar visits.”

Section 4.11 of the Kosovo Judicial Ethics Code, states,

- There is a duty to ensure that court staff conform to the standards that prohibit judges from accepting gifts.

Bangalore Principles of Judicial Conduct

III. Professionalism

If there is a conflict between International Law and Domestic Law with respect to Human Rights issues, which law is the judge required to follow?

A judge is required to follow international law with respect to human rights. **Section 5.3 of the Kosovo Judicial Ethics Code** provides that a judge is required to follow the relevant practice in domestic and international law, referring to international conventions relating to human rights.

Discussion Question #7:

You and a fellow judge go to lunch at a restaurant which has a long line of people waiting for a table. The manager of the restaurant knows that you are judges and states in front of the other waiting customers, "For you judges, there is no wait and we will seat you ahead of everyone else." You should:

1. Say, "Thank you" and be seated as quickly as possible.
2. Say, "Thank you. However, as judges, we are not able to accept special favors" and decline to be seated ahead of the others already waiting in line.
3. Tell the people waiting in line that you are being seated immediately because you are, "judges who are very busy with important matters this afternoon."
4. Accept the offer immediately because it would be impolite to decline the offer of the restaurant manager.

Commentary:

The best answer is "2".

The test for impropriety is whether the conduct of the judge compromises the ability of the judge to carry out judicial responsibilities with integrity, impartiality, independence and competence...or, if, in the mind of a reasonable observer, there is a perception that the judge's

ability to carry out judicial responsibilities in that matter is impaired. Treating members of the judiciary differently from other members of the public by giving them preferential seating creates the appearance that the restaurant manager has special access to the court and its decision-making processes.¹⁴

- *A judge should act with integrity in the judge’s professional and personal life. **Section 4 of the Kosovo Judicial Ethics Code.***
- *In no circumstance should a judge take advantage of his or her judicial position. **Section 4.6 of the Kosovo Judicial Ethics Code.***

Ex-Parte Communication:

The principle of impartiality generally prohibits private communications between the judge and any of the parties or their legal representatives or witnesses. If a judge receives a private communication it is important that the court ensures that the other parties are fully and promptly informed and the court record noted accordingly.

Commentary on the Bangalore Principles of Judicial Conduct

Discussion Question #8:

You are a member of the judiciary with responsibility for handling family matters including divorce proceedings. You have received a letter from a member of the Assembly of Kosovo advising you that they are writing on behalf of a constituent who has a divorce case pending before you. The member of the Assembly of Kosovo urges you to expedite the divorce matter and to ensure that his constituent receives their “fair share” of the property division. What do you do?

¹⁴ Commentary on the Bangalore Principles of Judicial Conduct, United Nations Office on Drugs and Crime

Commentary:

You debate how to answer the letter or whether to answer it at all. If you do answer, you may wish to: 1) do so by mail, with a copy to each of the attorneys (or the party if they do not have an attorney) 2) advise the member of the Assembly of Kosovo that you cannot and will not discuss non-public details of the case; 3) advise the member of the Assembly of Kosovo that the case will move forward in the normal time frame for all divorce proceedings, 4) state that you cannot make any representations with respect to the end result of the case, and 5) you send a copy of the letter from the member of the Assembly of Kosovo to each of the attorneys along with a copy of your response to the member of the Assembly of Kosovo.

If you do not answer, you need to be certain to provide a copy of the member of the Assembly of Kosovo's letter that you received to each of the attorneys (or to the parties if they do not have an attorney).

To ensure that you have addressed all aspects or concerns regarding the ex-parte communication received from the member of the Assembly of Kosovo you could also inquire of both counsel if they wish to be heard regarding this matter at the next time the matter is scheduled for proceedings in court. Even if counsel indicate they do not wish to be heard on this matter in court, it would be appropriate for you to make a record in court, with counsel and the parties present, that you received a letter from a member of the Assembly of Kosovo and also stating the steps you took to ensure that all parties and their counsel received timely notice of the letter. In this way, all parties have notice of the ex-parte communication that you received and you have a record in court of the steps you took to comply with the requirements of the Judicial Code of Ethics regarding ex-parte communications.

Discussion Question #9:

You are a member of the judiciary with responsibility for criminal proceedings. You receive a telephone call from a police official asking if you will consider a release of a prisoner who is awaiting trial because the prisoner is very ill and has a need for hospitalization and medical treatment that cannot be provided at the jail. The police official explains to you that they do not have sufficient personnel to post a guard for the prisoner 24 hour a day outside the hospital room. The police official asks you to please do something, "right away!" What do you do?

Commentary:

You debate how to best respond. You may wish to consider scheduling an immediate conference call with the prosecutor and the attorney for the defendant to advise them of the contents of the telephone call and to ask for their view as to the appropriate action, if any, that you should take. If you and the attorneys cannot agree in this conference call as to the appropriate action to take, you may wish to consider setting an emergency hearing in court with both counsel present as well as the police official so that a full record can be made of the contact received from the police official and the position of both the prosecutor and the defense attorney. If you and the attorneys agree as to the appropriate action to take indicate in your written Order that there was a conference call between you and both attorneys to address this emergency situation and that both attorneys agreed to the action taken with respect to the prisoner.

If you cannot reach counsel by telephone and an immediate decision is required, you may issue an emergency Order. The Order will indicate your ruling and the reasons for your ruling as well as the steps that you took to attempt to contact counsel before issuing the ruling. The Order should be provided to counsel as soon as possible. There may need to be a hearing shortly thereafter if requested by either party.

Applicable Considerations and Code Provisions:

- What are ex-parte communications and why are the prohibitions against most ex-parte communications necessary?
- Verbal communications made to a judge when all of the attorneys or parties are not present, or
- Written, telephonic or electronic communications to a judge that were not sent to all of the attorneys or parties.
- A prohibition of ex-parte communications is necessary to establish/maintain the parties and attorneys' trust and confidence that they are being treated equally and fairly.

- Prohibition of ex-parte communications prevents bias, avoids prejudice, deters improper coercion and inhibits improper exploitation.
- Section 3.2 of the Kosovo Judicial Ethics Code requires that a judge ensure equal treatment of the parties to the proceedings. Equal treatment does not occur when there are verbal, written, telephonic or electronic (ex-parte) communications to the judge that all of the attorneys or parties did not receive.
- It is very important that judges seek to refrain from ex-parte communications, except in emergency situations, thereby avoiding actual impropriety and/or the appearance of impropriety.

Timely Completion of Cases

- A judge has a responsibility to organize the work of the court in an effective and efficient manner. **Section 5.2 of the Kosovo Judicial Ethics Code.**
- The responsibility of a judge to handle cases takes priority over all other activities of a judge. **Section 5.1 of the Kosovo Judicial Ethics Code**
- If an adjournment is granted by a judge it is important to include in the Order of Adjournment why the adjournment was granted. Often, the public believes that court cases take too long to complete. If the Order of Adjournment reflects “good cause” to adjourn and clearly states the specific reason for the adjournment the public’s trust and confidence in the justice system is likely enhanced.

Extra-judicial Activities

Discussion Question #10:

Under what circumstances may a judge engage in extra-judicial activities such as teaching at a law school?

Commentary:

With the permission of the Kosovo Judicial Council, a judge may engage in extra-judicial activities ***if*** they occur after normal working hours ***and*** do not affect the efficiency of the court. **Section 4.8 of the Kosovo Judicial Ethics Code**

- *Extra-judicial activities may include writing, teaching and participating in scientific and professional activities related to the law. **Section 4.8 of the Kosovo Judicial Ethics Code***

Continuing Legal Education

- Newly appointed judges receive training on ethical issues. It is recommended that periodic continuing education on ethical issues for **all judges** be provided by the Kosovo Judicial Institute or by presently serving or retired Kosovo judges.
- A judge is required to maintain a high level of professional ability. **Section 5 of the Kosovo Judicial Ethics Code**
- **The Bangalore Principles, at Section 6.3**, provide that a judge shall take reasonable steps to maintain and enhance his/her knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

IV. Classified Information And Relations With Public And Media

The courts must maintain the confidentiality of certain information related to pending and active trials and other matters required by existing legislation to be kept confidential. Careful consideration must be given to protecting the lives and safety of victims, informants and other witnesses, and to protecting the privacy rights of all citizens.

The Kosovo Judicial Council seeks to raise awareness within the broader community of the respective roles, responsibilities and activities of the Kosovo Judicial Council and the Courts.

Discussion Question #11

Judge Rama is the presiding trial judge of a three-judge panel conducting the trial of a high-profile murder case. The case has been going on for months and it seems to him that it will never end despite his best efforts. Members of the media are present during every session of the trial.

Yesterday, defense counsel filed a motion for a four-week adjournment to have a forensics expert review the ballistics of the firearm that was allegedly used in the shooting. Judge Rama met in chambers with the other two judges hearing the case. While there, he stated to his colleagues that he wanted to charge the defense attorney with contempt for failing to file this motion on a timely basis. The other judges believed the motion was made at the present time as a result of “newly discovered evidence” and they opposed charging the defense attorney with contempt. When the judges returned to the courtroom the defense motion for a four-week adjournment was granted.

Late that evening, while at home, Judge Rama received a call from a reporter for *The Daily Truth*, the local newspaper. She mentioned that many people wanted to know how much longer this case was going to go on. Judge Rama responded, “I’m doing my best to complete this case as quickly as possible. The defense just seems to keep finding ways to have the case go on and on and on.”

After the phone call was over, Judge Rama sent what he believed was a private Facebook message to his best friend, Gushta. Totally frustrated he wrote,

“I’m being criticized for the length of time the trial is taking and yet I was the one who wanted to charge the defense attorney with contempt but my colleagues wouldn’t agree. Everyone knows how this case will end. I just want it over!”

The next morning, before leaving for court, Judge Rama glanced at the newspaper and saw a headline which stated, “Judge blames defense for “Finding ways for case to go on and on and on!” As he was walking out the door for work, Judge Rama’s wife said, “Did you post on your Facebook page something about your trial? He said, “No, I sent only sent a private message to Gushta.” Judge Rama’s wife responded, Well, it’s on your public Facebook page.”

What are the issues that might arise? Does Judge Rama have anything to worry about? If so, what?

Commentary:

Judge Rama may have a long day! Judge Rama must be impartial when he is hearing this case. As with any judge in any case, he must not only have actual impartiality but there should also be the appearance of impartiality. Whether that remains is questionable. Judge Rama’s statements, at best, call into question whether there is the appearance of impartiality and, at worst many may submit that he is not actually impartiality. He stated to the media that, “the defense just seems to keep finding ways to have the case go on and on and on.” In addition, he stated on Facebook, “...Everyone knows how this case will end...” Each of those statements calls into question his impartiality.

Judges presiding on cases in Kosovo are precluded from speaking with the media about those cases. Section 12.5 of the Media Guidelines, adopted by the Kosovo Judicial Council provides, “No public comment or dissemination of information about any active court case shall be made without express prior approval of the Chief Judge of the relevant Court.” Thus, Judge Rama’s comments to the reporter were improper.

Judge Rama also violated the requirement for confidentiality and secrecy of judicial deliberations. Section 6 of the Kosovo Judicial Ethics Code provides, “Judges must respect the confidentiality and secrecy of all judicial deliberations, and they must not make public comment or provide information for any case.” Judge Rama wrote on Facebook, “I’m being criticized for the length of time the trial is taking and yet I was the one who wanted to charge the defense attorney with contempt but my colleagues wouldn’t agree.” The Media Guidelines adopted by the Kosovo Judicial Council provide at Section 8.8 that the following information may not be disclosed to the public or media: “Information that would reveal confidential judicial deliberative processes.”

Additionally, Judge Rama’s posting on Facebook violated the provisions prohibiting disclosure to the public of confidential and secret judicial deliberations as well as the prohibition against public comment or dissemination of information about any active case. Judge Rama mistakenly made a public post on Facebook. However, the fact that Judge Rama intended to send a “private” Facebook message to his friend Gushta is no excuse. The sending of a private Facebook message with this content still violates the limitations on disclosure stated above.

Actually it appears that Judge Rama may have numerous long days in the future!

Discussion Question #12:

A judge in Kosovo appeared on a television program where he made several negative remarks about the functioning of judicial system. This judge mentioned that certain bodies within the judicial system have not been functioning properly and are poorly managed.

Commentary:

Were the Judge’s statements on television in compliance with the requirements of Kosovo Code of Professional Ethics for Judges? If not, why?

Judges are prohibited from commenting publicly on the performance of others within the justice system. Specifically, Section 6.3 of The Kosovo Judicial Ethics Code states that, “A judge has an obligation to refrain from any public commentary regarding performance or efficiency of judges, judicial officials or the system in general.”

Applicable Considerations and Code Provisions:

- A judge will not reveal classified or confidential information of which they are aware through the execution of procedures unless that constitutes a legal obligation. **Kosovo Judicial Ethics Code, Section 6**
- Judges must respect the confidentiality and secrecy of all judicial deliberations and they must not make public comments or provide information for any case. **Kosovo Judicial Ethics Code, Section 6**
- 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. **Bangalore Principles of Judicial Conduct Section 4.10**
- A judge has an obligation to refrain from any explanation to the media and other interested parties regarding particular cases unless there is authorization to do so. **Kosovo Judicial Ethics Code, Section 6.2**
- A judge has an obligation to refrain from any public commentary regarding performance or efficiency of judges, judicial officers, or the system in general. **Kosovo Judicial Ethics Code, Section 6.3**
- A judge who is authorized to provide information shall take into consideration to be objective and accurate, and when giving information should be careful in protection of personal and family data of parties and other participants in the proceedings, interest of juveniles, protection of private and family life of injured parties

and defendants and their rights not to be violated. **Kosovo Judicial Ethics Code, Section 6.4**

The **Kosovo Judicial Council Media Guidelines** provide in part:

- It is natural for journalists to want to speak with the presiding judge when questions arise about a particular matter being heard in court. Media representatives need to be aware that *judges are bound by canons of judicial conduct which constrain them from commenting publicly or making any nonpublic comment on any court matter which could affect the outcome of a case or could interfere with a fair trial or hearing.* **Kosovo Judicial Council Media Guidelines, Section 4.3**
- For all questions related to court cases and other sensitive issues related to the work of the Court, only the Court President (or in the absence of the Court President, the Court Vice President) of the respective Court has the authority to communicate directly with the public and the media. **Kosovo Judicial Council Media Guidelines, Section 5.3.2**
- Any information not required to be kept confidential may be disseminated in any form including but not limited to, documents, records, transcripts, orders, opinions, reports, news releases, printed materials, photographs, video, and audio recordings, statistical compilations, models, charts, diagrams, and data material in any form. **Kosovo Judicial Council Media Guidelines, Section 9**
- All trials are open to members of the public, including journalists and other representatives of media organizations. All decisions concerning the use by the media of a camera or any video or audio recording device during a trial is at the discretion of the presiding trial judge. **Kosovo Judicial Council Media Guidelines, Section 11**
- No public comment or dissemination of information about any substantive matter concerning any active court case shall be

made without express prior approval of the Chief Judge of the relevant Court. **Kosovo Judicial Council Media Guidelines, Section 12.5**