

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.

Commentary

A judge must accept restrictions on his or her activities

114. A judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept restrictions on his or her activities – even activities that would not elicit adverse notice if carried out by other members of the community or even of the profession - that might be viewed as burdensome by the ordinary citizen, and should do so freely and willingly. This applies to both the professional and the personal conduct of a judge. The legality of a judge’s conduct, although relevant, is not the full measure of its propriety.

Requirement of an exemplary life

115. A judge is required to live an exemplary life off the bench as well. A judge must behave in public with the sensitivity and self-control demanded by judicial office, because a display of injudicious temperament is demeaning to the processes of justice and inconsistent with the dignity of judicial office.

Visits to public bars, etc

116. In contemporary circumstances, at least in most countries, there is no prohibition against a judge visiting pubs, bars, or similar venues, but discretion should be exercised. The judge should consider how such visits are likely to be perceived by a reasonable observer in the community in the light, for example, of the reputation of the place visited, the persons likely to frequent it, and any concern that may exist as to the place not being operated in accordance with law.

Gambling

117. There is no prohibition against a judge engaging in occasional gambling as a leisure activity, but discretion should be exercised, bearing in mind the perception of a reasonable observer in the community. It is one thing to pay an occasional visit to the horse races, or to a casino when abroad during a holiday, or to play cards with friends and family. It may be quite another for a judge to stand too frequently at the betting windows of race tracks, become an inveterate gambler, or a dangerously heavy punter.

Frequenting clubs

118. A judge should exercise care in relation to using clubs and other social facilities. For example, care should be exercised in attending venues run by or for members of the police force, the anti-corruption agency and customs and excise department which are, or whose members are, likely to appear frequently before the courts. While there is no objection to a judge accepting an occasional invitation to dine at a police mess, it would be undesirable for the judge to frequent or become a member of such clubs or to be a regular user of such facilities. In most societies it is normal for judges to attend venues organized by the practising legal profession and mixing with advocates on a social basis.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

Commentary

Social contact with the legal profession

119. Social contact between members of the judiciary and members of the legal profession is a long-standing tradition and is proper. However, as a matter of common sense, depending on the circumstances, a judge should exercise caution. Since judges do not live in ivory towers but in the real world, they cannot be expected to sever all of their ties with the legal profession upon assuming judicial office. Nor would it be entirely beneficial to the judicial process for judges to isolate themselves from the rest of society which includes some who may have been schoolfriends, former associates, or colleagues in the legal profession. Indeed, a judge's attendance at social functions with lawyers offers some benefits. The informal exchanges that such functions allow may help reduce tensions between the judiciary and advocates and alleviate some of the isolation from former colleagues that a judge experiences upon elevation to the judicial office. However, as a matter of commonsense, a judge should exercise caution.

Social relationships with individual lawyers

120. Having a social relationship with a lawyer who regularly appears before a judge is fraught with danger and entails a balancing process. On the one hand, the judge should not be discouraged from having social or extrajudicial relationships. On the other hand, the obvious problem of the appearance of bias and favouritism exists when a friend or associate appears before the judge. The judge is the ultimate arbiter of whether he or she has an excessively close or personal relationship with a lawyer, or has created that appearance. Where that line is to be drawn is a decision that the judge will have to make. The test is whether the social relationship interferes with the discharge of judicial responsibilities, and whether a disinterested observer, fully informed of the nature of the social relationship, might reasonably entertain significant doubt that justice would be done. The judge must also be mindful of the enhanced danger of inadvertently being exposed to extrajudicial information concerning a case that the judge is hearing or one with which the judge may become involved. A judge would therefore be wise to avoid recurring contact with a lawyer in circumstances that would create a reasonable perception that the judge and the lawyer have a close personal relationship whilst a particular case is proceeding or pending in which the lawyer is appearing before the judge.

Social relationship with a lawyer neighbour

121. Where a judge's immediate residential neighbour is a lawyer who appears regularly in the court in which the judge sits, the judge is not required to abstain from all social contact with the lawyer, except perhaps when the lawyer is appearing before the judge in an ongoing case. Depending on the circumstances, some degree of socializing is acceptable, provided the judge does not create either the need for frequent recusal or the reasonable appearance that his or her impartiality might be compromised.

Participation in occasional gatherings of lawyers

122. There could be no reasonable objection for a judge to attend a large cocktail party given, for example, by newly appointed senior advocates to celebrate professional attainments. At such a function, although advocates appearing before the judge are likely to be present, direct social contact can readily be avoided whilst a case is pending. If such contact does take place, talk of the case should be avoided and, depending on the circumstances, the other parties to the hearing might be informed of the contact at the earliest opportunity. The overriding consideration is whether such social activity will create or contribute to the perception that the lawyer has a special relationship with the judge, and that this special relationship implies a special willingness on the part of the judge to accept and rely on the lawyer's representations.

Ordinary social hospitality

123. A judge is ordinarily permitted to receive ordinary social hospitality from advocates and other lawyers. Socializing with advocates under these circumstances is to be encouraged because of the benefits which come from the informal discussions which take place at social events. However, a judge may not receive a gift from a lawyer who might appear before the judge, and may not attend a social function given by a law firm where the hospitality exceeds ordinary and modest social hospitality. The criterion is how the event might appear to a reasonable observer who may not be as tolerant of the conventions of the legal profession as those members themselves are.

Guest of a law firm

124. Whether a judge may attend a party given by a law firm depends upon who is giving the party and who may be in attendance, as well as the nature of the party. In deciding whether to attend, the judge will have to rely upon his or her knowledge of local custom and past events. Depending on the circumstances, it might be necessary to ask the host to identify those invited and the extent of the hospitality to be given. Especial care should be taken where a particular firm may be seen as marketing itself or its services to clients or potential clients. There is also an obvious distinction between entertainment by professional associations (to which judges may indeed often be invited to speak on matters of general interest) and by particular law firms.

The judge must ensure that presence at a law firm party will not affect the judge's appearance of impartiality.

Visits to former chambers, firm or office

125. Care should be taken in assessing the appropriate degree to which social visits to the judge's old chambers or law firm should be made. For example, it would ordinarily be appropriate for a judge to visit the old chambers or law firm to attend a function, such as an annual party or an anniversary party or a party to celebrate the appointment of a member of chambers as senior counsel or elevation to judicial office. However, depending on the circumstances, excessively frequent visits by a judge to his or her old chambers in order to socialize with former colleagues might not be appropriate. Similarly a judge who had previously been a prosecutor should avoid being too close to former fellow prosecutors and to police officers who previously were his or her clients. Even to give the appearance of cronyism would be unwise.

Social relationships with litigants

126. A judge should be careful to avoid developing excessively close relationships with frequent litigants – such as government ministers or their officials, municipal officials, police prosecutors, district attorneys, and public defenders – in any court where the judge often sits, if such relationships could reasonably tend to create either an appearance of partiality or the likely need for later disqualification. In making the decision, it is appropriate for the judge to consider the frequency with which the official or lawyer appears before him or her, the nature and degree of the judge's social interaction, the culture of the legal community in which the judge presides, and the sensitivity and controversy of present or foreseeable litigation.

Membership of secret societies

127. It is inadvisable for a judge to belong to a secret society where lawyers who appear before him or her are also members, since it may be inferred that favours might be given to those particular lawyers as part of the brotherhood code.