

Code of Judicial Conduct for Tuvalu

This code is issued for guidance of magistrates and to inform the people of Tuvalu as to the role of the magistrates. It should be read and interpreted in conjunction with the Leadership Code Act 2006.

The magistrate's primary duty is to administer justice by applying the law. This is reflected in the oath in which the magistrate swears:

"I swear by Almighty God that I will well and truly serve Our Sovereign Lady Queen Elizabeth, her Heirs and Successors, as a Judicial Officer and I will do right to all manner of people after the laws and usages of Tuvalu, without fear or favour, affection or ill will. So help me God."

1. Independence

Judicial independence is essential to the rule of law and the fair conduct of trials.

A magistrate should therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

1.1 A magistrate must not be actively involved in government or politics. This is why the Islands Court Act says a member of the Kaupule may not be a magistrate.

1.2 Magistrates are also members of the community and may properly take their part as members of the Falekaupule, where they may vote on policy and in the election of members of the Kaupule.

1.3 In deciding cases a magistrate must make his or her decisions according to the law and the evidence and without fear or influence from the Kaupule, central government, anyone or anything outside the proper process of the court.

2. Impartiality

Impartiality in both the decision and the decision making process is essential to the proper discharge of judicial duties.

2.1 Particular aspects of conduct relating to impartiality are explained below. In considering these it should be borne in mind that a balance must be struck between the need to remain impartial and the need to be, and be seen to be, a part of the community; both are important aspects of the judicial role. In deciding cases the law requires magistrates to evaluate the credibility of evidence, and in some cases, to decide what is reasonable. Such decisions require knowledge of local mannerisms and customs. Where a court takes local custom or tradition into account, it must say so in open court.

2.2 A magistrate must be impartial.

2.3 A magistrate must also appear to be impartial, which means that a reasonable and fair minded member of the community knowing all the circumstances would believe that the magistrate is impartial.

2.4 In any case where there might be a reasonable doubt about a magistrate's impartiality he or she should recuse him or her self and let another magistrate hear the case.

2.5 A magistrate should not sit in any case involving a person with whom the magistrate has a close relationship, and should not sit in any case involving the magistrate's

- a. immediate family (i.e. parent, spouse, brother or sister, child including an adopted or step child.)
- b. close friend
- c. workmate

This guideline applies whatever the capacity in which the person is involved; whether the person is a defendant, victim, witness, complainant or party to a civil case.

2.6 A magistrate should not sit on a case where he or his family might benefit from the outcome. This applies whether the interest is direct or indirect and includes:

- a. a financial interest, or
- b. an interest in land,
- c. an interest in other property

2.7 In a land case a magistrate ought not to decide a case concerning land which belongs to a Kaitasi of which he or she is a member.

2.8 A magistrate should not sit on any case where he or she has or may appear to have preconceived or pronounced views relating to:

- a. issues;
- b. witnesses; or
- c. parties.

2.9 A magistrate should strive to avoid making any assumptions and should make a decision based only on the evidence.

2.10 If the Island Magistrates believe their impartiality would be compromised because of the high social standing of the individual concerned it may be appropriate to refer a case to the Senior Magistrate. e.g. a case involving the Pule ote Fenua, Pule ote Kaupule, the pastor or his wife.

2.11 A magistrate should not recuse him or herself merely because he or she knows a person involved in the case. In a small community it is inevitable that the magistrates will know the people.

NOTE: Tuvalu is a small country and the island jurisdictions are very small. If magistrates were to disqualify themselves in every case where they know one or other participant, the hearing of minor matters might be considerably delayed. Undue delay can, in itself, constitute a denial of justice. Therefore, the interest of justice requires that magistrates are careful not to disqualify themselves too readily. Inevitably magistrates will hear cases where they know something of the parties. In every case it should be clear to all observers that the trial is conducted fairly and only on the evidence. The magistrates should explain their decision clearly giving their full reasoning. The reasons should leave no doubt that the decision was based on the law as applied only to those facts established by evidence in open court.

It is for the magistrates to make it clear from the way they conduct themselves, that when they are sitting a magistrates they will always be impartial.

3. Integrity

Through all his or her public and private life a magistrate should demonstrate soundness of moral character through consistency of action and values, honesty and truthfulness.

3.1 By conducting themselves with integrity magistrates will sustain and enhance public confidence in the Judiciary.

3.2 A magistrate must be honest in his public and private life so that people will know that the magistrate can be trusted.

3.3 A magistrate must be true to the judicial oath.

4. Propriety

A magistrate must avoid impropriety and the appearance of impropriety in all his or her activities, public and private.

4.1 A magistrate's conduct should not be such as to bring the judicial office into disrepute or to offend against those standards expected of a proper member of the community within which he or she lives and works. By their behaviour individually and collectively magistrates should teach people to respect the court and the rule of law.

4.2 Whatever a magistrate does he must do properly, according to the law and with respect for the customs and traditions of the people.

4.3 It is improper for magistrates to use their judicial office to obtain any favour or advancement and magistrates must avoid any conduct which might give the appearance of so doing.

4.4 A magistrate should avoid any relationship which may put him or her in such a position as to be, or appear to be, subject to the influence of others. To this end, Magistrates should especially avoid developing, or appearing to develop, close social relationships with the prosecuting authorities and those individuals who represent parties in court.

Gifts

4.5 If there is any possibility that the giving of a gift is an attempt or might appear to be an attempt to gain favour, a Magistrate must not accept.

4.6 A magistrate does not accept any gift, benefit or advantage whatsoever that might influence the conduct of his official duties or which might give the appearance of so doing.

(N.B. Specific guidance regarding traditional gifts can be found in The Leadership Act)

Confidential Information

4.7 A magistrate should not discuss or disclose any confidential matters learnt of by reason of his or her office. The deliberations of magistrates in reaching their decisions are confidential. It is proper for magistrates to discuss with other magistrates issues arising during the conduct of cases in the interest of developing good practice. A magistrate must never seek the opinion of any person, even another magistrate, other than those hearing the case in question as to the appropriate decision.

5 Equality

A magistrate should ensure that every one is treated with respect and courtesy and with equality according to the law.

5.1 It is the duty of the magistrates to ensure that every court hearing is fair. This means that everyone participating in court proceedings must be treated:

- a. equally, no matter high or low, and
- b. with respect and courtesy, and
- c. without prejudice or hatred.

AND that parties to a case must be:

- d. given the same voice in order to put their case to the court.
- e. present during proceedings to hear the case against them and the evidence submitted in support of that case.
- f. given an opportunity to answer anything said against them
- g. given the opportunity to put their own evidence before the court.

5.2 The court must recognise and uphold all those rights given by law to individuals.

6. Competence and Diligence

A magistrate must engage in training and preparation so as to be competent in performing his or her duties. He or she should also be diligent in the performance of judicial duties.

6.1 The Island Magistrates are created by statute (the Island Courts Act and The Native Lands Act) and the powers of magistrates are limited by statute. Magistrates must take care not to exceed the authority given to them.

6.2 A magistrate should read and use the materials provided for his or her guidance, such as the benchbook and the laws of Tuvalu.

6.3 A magistrate should participate in such training as is available.

6.4 Court hearings should be conducted at scheduled and published times and should commence punctually.

6.5 Decisions should be given in reasonable time and full reasons should be given identifying the relevant law and the evidence relied upon.

6.6 The magistrates should ensure that the court makes and keeps an adequate written record of the decision and the reasons therefore.

Cases of doubt

In any case where a magistrate is uncertain as to how these principles apply to the particular circumstances, he or she may seek guidance from the Senior Magistrate or the head of the judiciary, the Chief Justice. If there is not time to do so, he or she should err on the side of caution; the question may nevertheless be referred to the Chief Justice for the future.