

National Prosecuting Authority (Code of Ethics) Regulations, 2015

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It is hereby notified that the National Prosecuting Authority has, in terms of section 30(1) of the National Prosecuting Authority Act [*Chapter 7:20*], made the following regulations with the concurrence of the Minister of Justice, Legal and Parliamentary Affairs:—

PART I

PRELIMINARY

Title

1. These regulations may be cited as the National Prosecuting Authority (Code of Ethics) Regulations, 2015.

Interpretation

2. In these regulations—

“Board” means the National Prosecuting Authority Board appointed in terms of section 5 of the National Prosecuting Authority Act [*Chapter 7:20*];

“immaterial grounds” in relation to equality provided for in section 9 includes but is not limited to, race, colour, gender, religion, national origin, disability, age, marital status, social and economic status, and other like causes;

“Prosecutor” includes for the exclusive purposes of these regulations—

- (a) the National Director of Public Prosecution; and
- (b) the Deputy National Director of Public Prosecution; and
- (c) the State Counsel II; and
- (d) the Principal Law Officers, Senior Law Officers and Law Officers; and

- (e) Public Prosecutors; and
- (f) any other person acting in the capacity of a prosecutor;

“Public Prosecutor’s family” includes a Public Prosecutor’s spouse, son, daughter, son-in-law or daughter-in-law or any other close relative or employee.

Application

3. These regulations shall apply to—
- (a) the Prosecutor-General;
 - (b) the National Director of Public Prosecution;
 - (c) the Deputy National Director of Public Prosecution;
 - (d) the State Counsel II;
 - (e) the Principal Law Officers, Senior Law Officers and Law Officers;
 - (f) any other person acting in the capacity of a public prosecutor.

PART II

VALUES AND STANDARDS

Independence

4. (1) A prosecutor shall uphold the independence of the Authority, the authority of the office and shall in keeping with his or her prosecutorial mandate, perform all duties without fear or favour.

(2) A prosecutor shall at all times exhibit and promote high ethical standards in order to foster public confidence, which is universally accepted as a fundamental ingredient to the maintenance of prosecutorial independence.

(3) A prosecutor shall be faithful to and maintain professional competence in law, and shall not be swayed by public clamour or fear of criticism.

Integrity

5. (1) A prosecutor shall ensure that his or her conduct, in and outside court, is above reproach in the view of reasonable, fair minded and informed persons.

(2) A prosecutor shall not allow family, social, political, religious or other like relationships to influence his or her prosecutorial duties or judgment.

(3) A prosecutor shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards, so that the integrity of the Authority may be preserved.

Propriety

6. (1) A prosecutor shall avoid impropriety and the appearance of improper behaviour in all of his or her activities, at work and away from work, and shall avoid any conduct that has the result of bringing the Authority into disrepute.

(2) As a subject of constant public scrutiny, a prosecutor—

- (a) must accept personal restrictions that might be viewed as burdensome by the ordinary citizen; and
- (b) shall conduct himself or herself in a way that is consistent with the dignity of the office of the Prosecutor-General.

(3) A prosecutor shall not use or lend the prestige of the office of the Prosecutor-General to advance his or her private interests or those of any member of his or her family and friends.

(4) A prosecutor and members of the prosecutor's family, shall neither solicit for, nor accept any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the Prosecutor in connection with the performance of his or her duties.

(5) Subject to the proper performance of prosecutorial duties, a prosecutor may participate in such activities as—

- (a) writing, lecturing, teaching and engaging in activities concerning the law, the legal system, the administration of justice and related matters;
- (b) appearing at a public hearing before an official body concerned with matters relating to the law, the legal system and the administration of justice or related matters; and
- (c) serving as a member of such body as referred to in paragraph (b) above.

(6) A prosecutor may receive such honorarium as may be appropriate, for participating in any such activity as described in this section:

Provided that such honorarium might not be reasonably perceived, by fair-minded persons, as intended to influence the Prosecutor in the performance of his or her duties or otherwise give rise to an appearance of partiality.

(7) A prosecutor may speak publicly on non-legal matters or participate in civil, cultural, religious, educational or charitable activities:

Provided that any such activities do not detract from the dignity of the prosecutorial office or otherwise interfere with the performance of prosecutorial duties.

(8) A prosecutor shall not serve as an executor, administrator, trustee, guardian or other fiduciary, save for the estate, trust or person of a member of the Prosecutor's family:

Provided that any such services do not interfere, directly or indirectly, with the proper performance of prosecutorial duties.

(9) A prosecutor shall refrain from financial and business dealings that—

- (a) reflect adversely on the Prosecutor's duties;
- (b) interfere with the proper performance of the Prosecutor's duties;
- (c) exploit the Prosecutor's prosecutorial position; or
- (d) involve the Prosecutor in frequent transactions or continuing business relationships with legal practitioners or other persons likely to receive his or her services.

(10) A prosecutor shall not disclose nor use confidential information acquired during the course of his or her duties, for the purposes of furthering or advancing his or her personal or family's financial dealings nor for any other purpose which is unrelated to the Prosecutor's duties.

(11) A prosecutor shall not practise law whilst being the holder of a prosecutorial office, but may, without compensation, be consulted by his or her family members on legal matters.

(12) A prosecutor may form or join an association of prosecutors or participate in other legally recognised organisations representing the interests of prosecutors to promote professional training and to protect independence of the Authority.

Impartiality

7. (1) A prosecutor shall perform his or her duties without fear or prejudice.

(2) A prosecutor shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the Prosecutor to be disqualified from prosecuting cases.

(3) A prosecutor shall not make any public comment that may affect or may reasonably be construed to affect the outcome of any proceedings or impair their fairness, or make any comment that might compromise a fair trial or hearing.

(4) A prosecutor shall disqualify or recuse himself or herself in any proceedings in which the Prosecutor's conduct may reasonably be questioned, including but not limited to instances where—

- (a) the Prosecutor has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings;
- (b) the Prosecutor served as legal practitioner in the matter in controversy, or a legal practitioner with whom the Prosecutor previously practised law with, served during such association as a legal practitioner concerning the matter;
- (c) the Prosecutor has a financial interest in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceedings:

Provided that a prosecutor who would otherwise be potentially disqualified in terms of this section may, instead of withdrawing from the proceedings, disclose to the parties, the grounds upon which such potential disqualification may arise. If, based on such disclosure, the parties independently of the Prosecutor's participation all agree that the Prosecutor's basis for potential disqualification is immaterial

or insubstantial, the Prosecutor is no longer disqualified and may participate, or continue to participate, in the proceedings.

Political engagement

8. (1) The Prosecutor-General and officers of the Authority must act in accordance with the Constitution and the law.

(2) No officer of the Authority may, in the exercise of his or her functions—

- (a) act in a partisan manner; or
- (b) further the interests of any political party or cause; or
- (c) prejudice the lawful interests of any political party or cause; or
- (d) violate the fundamental rights or freedoms of any person.

(3) Officers of the Authority must not be active members or office-bearers of any political party or organisation.

Equality

9. (1) A prosecutor shall strive to be aware of, and to understand, diversity in society and differences arising from various sources, including immaterial grounds.

(2) A prosecutor shall not, in the performance of prosecutorial duties, by words or conduct, manifest bias or prejudice towards any person or group based on immaterial grounds.

(3) A prosecutor shall carry out his or her duties with due or proper consideration for all persons such as the parties, witnesses, legal practitioners, court staff and judicial officers, without unjust differentiation on any immaterial ground, irrelevant to the proper performance of such duties.

(4) A prosecutor shall be required in proceedings before the court to refrain from manifesting, by words or conduct prejudice based on immaterial grounds:

Provided that this requirement does not preclude legitimate advocacy where any such grounds are legally relevant to an issue in the proceedings.

Competence and diligence

10. (1) The prosecutorial duties of a prosecutor take precedence over all the Prosecutor's other activities.

(2) A prosecutor shall devote his or her professional activity to prosecutorial duties.

(3) Without derogating from the generality of subsection (2), a Prosecutor's duties are not limited to only the performance of prosecutorial functions and responsibilities in court and the rendering of well reasoned arguments and decisions, but include other tasks relevant to the court's operations of the prosecutorial office.

(4) A prosecutor shall take reasonable steps to maintain and enhance the Prosecutor's knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

(5) A prosecutor shall keep himself or herself informed about relevant developments in international law, including international conventions and other instruments establishing human rights norms and, within any applicable limits of the Constitution.

(6) A prosecutor shall perform all prosecutorial duties, including making oral or submitting written submissions efficiently and with reasonable promptness.

(7) A prosecutor shall comply with court rules and standard operating procedures of the Authority at all times.

PART III

ENFORCEMENT PROCEDURE

Disciplinary committee

11. Subject to the Constitution and any other enactment, if in the opinion of the Authority, a prosecutor has conducted himself or herself in a manner that, *prima facie*, violates any provision of these regulations and is such that it merits to be investigated, he or she shall appoint a disciplinary committee, which shall investigate into the acts or omissions allegedly giving rise to the violation and submit for the consideration of the Prosecutor-General its findings and recommendations.

Appointment and composition of committee

12. (1) A disciplinary committee shall be appointed on an *ad hoc* basis, and shall be composed of three members, two of whom may be retired prosecutors or judicial officers and one sitting prosecutor.

(2) Members of a disciplinary committee may be drawn from Zimbabwe or any other country in which the common law is Roman-Dutch or English and English is an official language:

Provided that at least two out of the three members of any disciplinary committee shall be from Zimbabwe.

Procedure

13. (1) In addition to the general principles listed herein and having regard to the principles of natural justice, a disciplinary committee shall set its own rules of procedures.

(2) A disciplinary committee shall—

- (a) conduct its proceedings in confidence; and
- (b) be transparent in its procedures so as to strengthen public confidence in the Authority and thereby reinforce its independence.

(3) By reason of the nature of the office, a disciplinary committee, shall at all times during its proceedings, take into account the legitimate needs of a prosecutor and ensure that the Prosecutor is afforded protection from vexatious and unsubstantiated accusations.

(4) A disciplinary committee shall use its best endeavours to expeditiously conduct and finalise its investigation.

(5) A disciplinary committee shall submit its findings and recommendations to the Board within a period of 90 days from date of receiving a complaint, unless it communicates exceptional circumstances to the Board, which, in the exercise of its discretion may grant an extension of time within which the committee can submit its findings and recommendations. Any such extension shall not exceed a further period of 60 days.

Discipline

14. (1) A prosecutor whose conduct is the subject of an investigation by a disciplinary committee may, at the discretion of the Board, be requested to take leave of absence for the duration of the investigation.

(2) At the conclusion of its investigation, a disciplinary committee shall forward to the Board its findings and recommendations regarding the appropriate disciplinary action, if any, to be taken against a prosecutor whose conduct was the subject of the investigation.

(3) Upon receipt of the findings and recommendations, the Board may, if he deems necessary, invite the affected prosecutor to submit written representations in relation to, amongst other things, the conduct of the investigation and the findings or recommendations made by a disciplinary committee.

(4) Notwithstanding the recommendations of a disciplinary committee, the final decision as to what disciplinary measure to take shall be within the exclusive discretion of the Board.

Disciplinary measures

15. (1) Subject to the Constitution and any other enactment the following shall be the permissible disciplinary measures that may be imposed on a prosecutor whose conduct is found to be in violation of the provisions of these regulations—

- (a) a reprimand from the Board;
- (b) a severe reprimand from the Board; or
- (c) a final reprimand from the Board.

(2) All reprimands under these regulations shall be recorded and placed in the personal file of the prosecutor concerned.

(3) Nothing contained in this Code shall be construed as taking away the powers of the Prosecutor-General to institute criminal or and in case of the Board, civil proceedings against the prosecutor concerned, arising out of the conduct complained of.

Implementation and accountability

16. (1) In the interests of effective implementation, every prosecutor shall use his or her best endeavours to uphold the values and standards as enunciated in these regulations.

(2) Subject to the Constitution, the National Prosecuting Authority Act [Chapter 7:20] or any other enactment or as is otherwise provided by this Code, prosecutors shall not be accountable or answerable to any other State or non-state organ, entity or authority.

(3) All legitimate complaints against any prosecutor shall be dealt with as follows—

- (a) complaints against the person of the National Director of Public Prosecutions shall be directed for the attention of the Prosecutor-General or the Board;
- (b) complaints against the Deputy National Director of Public Prosecutions shall be directed for the attention of the National Director of Public Prosecutions or the Board;
- (c) complaints against the Chief Public Prosecutor shall be directed for the attention of the Deputy National Director of Public Prosecutions, National Director of Public Prosecutions, Prosecutor-General or the Board;
- (d) complaints against the Principal Public Prosecutor, Senior Public Prosecutor and Law Officers shall be directed for the attention of the Chief Public Prosecutor, Deputy National Director of Public Prosecutions, National Director of Public Prosecutions, Prosecutor-General or the Board;
- (e) complaints against any other person acting in the capacity of a Public Prosecutor shall be directed for the attention of the Chief Public Prosecutor:

Provided that in circumstances where the complaint is against the National Director of Public Prosecutions, and the Prosecutor-General determine that the complaint lacks merit, he or she may, without the need for further investigation, at his or her discretion, dispose of the complaint.

(4) Where the Authority, as the case maybe, arrive at the opinion, that *prima facie*, the complaint has merit, the Authority shall, forthwith, refer such complaint to a disciplinary committee.

PART IV

ETHICS ADVISORY COMMITTEE

Establishment of Ethics Advisory Committee

17. (1) Subject to the Constitution and any other enactment there shall be established a committee on standards of conduct for prosecutors, to be known as the Ethics Advisory Committee.

(2) The Ethics Advisory Committee shall consist of not more than five and not less than three members, appointed by the Authority, of whom—

- (a) three shall be prosecutors; and
 - (b) two legally qualified persons submitted by the Board.
- (3) Members appointed in terms of subsection (2)(b) shall—
- (a) hold office for such period, not exceeding three years, as may be fixed by the Authority on their appointment; and
 - (b) be eligible for reappointment for one such further term.

Functions of Ethics Advisory Committee

18. (1) The Advisory Committee shall render advisory opinions to inquiring prosecutors relating to the propriety of contemplated professional and non professional conduct, but all opinions shall be advisory in nature only.

(2) For the avoidance of doubt, no opinion shall bind a disciplinary committee appointed in terms of these regulations, in any proceeding properly before that body.

(3) An opinion of the Advisory Committee may, however, in the discretion of a disciplinary committee, be considered as evidence of a good faith effort to comply with this National Prosecuting Authority Code of Ethics:

Provided that no opinion issued to one prosecutor shall be authority for the conduct, or evidence of good faith, of another prosecutor unless the underlying facts are identical.

(4) All opinions rendered by the Advisory Committee, shall be in writing, and a copy of each opinion, together with the request therefore, shall be filed with the Authority.

(5) The National Prosecuting Authority may, at its discretion, publish the opinions of the Advisory Committee, only within the service. For all such publications and for purposes of maintaining confidentiality, all references to the name of the requesting Prosecutor shall be deleted.

PART V

MISCELLANEOUS PROVISIONS

General provisions

19. (1) No prosecutor on the Advisory Committee shall participate in any matter before the Committee in which he or she has a direct or indirect interest.

(2) Any determination of the propriety or impropriety of particular conduct by a disciplinary committee shall supersede any conflicting opinion of the Advisory Committee.