



1ST STUDY JUDICIAL QUESTIONNER

“DISCIPLINARY PROCEEDINGS AND JUDICIAL INDEPENDENCE”

We received a questioner consisting of the above topic and we respond as follows:

1. In South Africa, we have two bodies that that are responsible for disciplinary procedures against Judicial officers. One deals with disciplinary procedures against Magistrates and another against Judges. The composition of these bodies will be explained at paragraph 2 below. The kind of allegations that can justify disciplinary proceedings against Judicial officers are as follows:

- 1.1 IN THE WORKPLACE:** A Judicial officer must at all times, comply with the law. A judicial Officer is expected to make decisions in a fair and rational manner. We have example of a Judicial Officer that has been subjected to disciplinary procedures because it is believed that she imposed inappropriate sentences and thus acted irrationally. In South Africa a Judicial Officer can be subjected to disciplinary hearing if she or he fails to recuse themselves especially where there is a clear conflict of interest. The latin maxim, “*nemo iudex in sua*

causa', inter alia,' serves as a guide. No one may be a judge in his or her own cause. The Constitution¹ entails that every accused has a right to a fair trial which includes the right to have their trial begin and conclude without unreasonable delay. A judicial officer who fails to deliver judgments timeously may be subjected to disciplinary proceedings. The list is endless

1.2 IN PRIVATE LIFE: Every Judicial officer has a responsibility to act honourably and in a manner befitting judicial office. Any Judicial officer who is engaged in criminal activities or any transgression of the law may be subjected to disciplinary proceedings. Judicial officers are prohibited to display a disgraceful behaviour like drinking in public. A Judicial officer cannot hold office in a political organisation. They are prohibited from commenting in public or formulating and voicing out an opinion in a matter that is still pending in court. Any utterance either on social media or on any form of gathering which has a potential to bringing the judiciary into disrepute is prohibited.

JUDICIAL IMMUNITY: No Judicial Officer from disciplinary proceedings. The content of the decision taken by the Judicial officer during court proceedings can lead to disciplinary hearing for example racial or sexist comments which result in unfair or irrational decisions being taken.

Judicial officers can only enjoy judicial immunity if they act bona fide. Yes, a Judicial officer can be charged criminally for the content of their judicial decisions if it can be proved that there

¹ Section 35(3)(d) Act 108 of 1996

were malafides when that decision was taken. Example is where they impose an inappropriate sentence and it is proved later that he or she was involved in a corrupt relationship with the accused concerned and hence a lenient sentence was imposed.

2. The Judiciary consists of the Lower Court Judiciary and a Higher Court Judiciary. In terms of disciplinary procedures, the Judges in the Higher Courts account to the Judicial Service Commission. The Magistrates account to the Magistrate's Commission. The Magistrate's Commission has a body that deals specifically with disciplinary proceedings. This is called Ethics Committee. In case of Judges, the issues of discipline are conducted by Judicial Conduct Committee. The two bodies function more or less the same in terms of procedures to be followed when dealing with these matters.

COMPOSITION OF THE MAGISTRATES COMMISSION AND

JUDICIAL SERVICE COMMISSION: The Magistrates Commission was established in 1994 by virtue of section 2 of the Magistrate's Act². The Chairperson of the Magistrates Commission is a sitting Judge. Other members are: two Regional Magistrates, Two Magistrates with the rank of Chief Magistrates, two Magistrates who do not hold the rank of Regional Magistrate of chief Magistrate, two practising Advocates, two practising Attorneys, one teacher of law, Four persons designated by the National Assembly, four delegates from the NCOP, the Minister of Justice or his or her delegate etc. In terms of Section 178(1) of the Constitution, the Judicial Service Commission is composed of 25 members. The membership is divided evenly between politicians and

² Act 90 of 1993

non- politicians. In both these bodies, the politicians are excluded from dealing with disciplinary issues.

3. Penalties: Suspension with certain conditions, removal from office etc
4. A fair trial is granted; the accused Judicial officer appears before a body which consists of a Presiding Officer, the evidence leader and the accused Judicial officer. If the accused judicial officer is a Magistrate, the Presiding Officer must refer the matter to the Magistrate's Commission with his or her recommendations. The accused Magistrate is offered an opportunity to make representations. The Magistrates' Commission after having heard both sides and read the record of the proceedings makes its own recommendations and refers the matter to the Minister responsible for Administration of Justice. The matter further goes to Parliament for a final decision. The same procedure is followed in respect of Judges. There are checks and balances that are imperative before a Judicial Officer can be penalised for misconduct.
5. There are no changes regarding disciplinary proceedings that may be considered to infringe upon judicial independence.

JUDICIAL OFFICER'S ASSOCIATION

SOUTH AFRICA