JUDICIAL IMMUNITY AND DUE PROCESS IN THE DETERMINATION OF ALLEGATIONS OF JUDICIAL MISCONDUCT

COMMONWEALTH MAGISTRATES’ & JUDGES’ ASSOCIATION INTERNATIONAL ASSOCIATION OF JUDGES INTERNATIONAL BAR ASSOCIATION

The difficulty in balancing the need for effective judicial disciplinary procedures whilst ensuring on the one hand due process for the judicial officer involved and on the other hand protecting the underlying principles of judicial independence are acknowledged.

The session will explore the practical issues which arise and will also seek to differentiate between process in criminal proceedings and those for cases of alleged ill discipline. The session will work through the different issues, separating day to day disciplinary issues (with consideration of triage methods, disciplinary bodies and sanctions) from issues of dishonesty and criminal behaviour and the particular issues that these present to criminal justice.

Underlying the whole topic will be the imperative of protecting judicial independence (including the identification of false or mischievous allegations).
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Session Organizer:
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Moderator:
Justice Mankhambira Charles Mkandawire
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Rapporteur:
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International Association of Judges

Ms. Sara Carnegie
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Justice Lynne Leitch
Superior Court of Ontario, Canada

Justice Mankhambira Charles Mkandawire
High Court, Malawi

The three organizations are well-known international legal bodies with a wide and acknowledged experience in dealing with the day to day practical issues which arise in different jurisdictions when dealing with issues of judicial misconduct whilst at the same time safeguarding the principle of judicial (and bar) independence. Included in the session will be a report on research on assessing the quality of disciplinary processes and practices.
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Main Issues:
To identify best practices in the determination of allegations (or complaints) of judicial misconduct to ensure due process and fairness to the judicial officer and proportionality in the response, with particular consideration of:

- the nature of the institutions tackling issues of judicial misconduct, and
- the criminal and disciplinary sanctions available for addressing all levels of judicial misconduct

To consider a framework and methodology for assessing the quality of disciplinary processes, practices and sanctions for misconduct or judicial corruption.

Specific Questions and Discussion Points:
- What is the most appropriate forum for the determination of allegations of judicial misconduct, how should that forum be constituted and led?
- In dealing with cases of judicial corruption how would that forum interact with the normal criminal justice system? What special procedures may be necessary in the criminal justice system to deal with issues of judicial corruption?
- What fundamental principles should be applied to ensure that disciplinary proceedings are fair both to the judicial officer and to the complainant?
- Should a triage system be employed? Should representation be available to the judicial officer?
- Should the proceedings be held in public or in private?
- What sanctions should be available for dealing with cases of judicial misconduct?
- How can the Global Judicial Integrity Network best contribute to the promotion of good practices?

Proposed Outcomes of the Session:
The promotion of debate between the different stakeholders in the judicial sector with a view to:
- promoting confidence in legal processes and the judiciary at all levels;
- establishing guidelines on good practices for proceedings involving allegations against members of the judiciary, with particular emphasis on the need to safeguard threats to judicial independence.
- exploring how far the Global Judicial Integrity Network can contribute to the promotion of good practices.