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Session Report

Court Administration for Efficiency and Integrity

Work Stream 3: Assessing and Monitoring Integrity

Participants:

David Maraga, Chief Justice, Supreme Court, Kenya

Muyoboke Karimunda, Justice, Rwanda Supreme Court

Roger Bilodeau, Registrar, Supreme Court, Canada

Kersti Fjorstad, Deputy Director General, Norwegian Courts Administration

Jeffrey Apperson, Vice-President, National Centre for State Courts, Moderator

Prepared by: Jerome B. Abrams, Judge, State of Minnesota, Rapporteur

Each of the individuals above named provided presentations on topics concerning the role of court administration in the management of ethics procedures for courts. It was noted that there are sophisticated relationships that exist between the courts and the communities that they serve as well as the individuals who are summoned before the Courts and governments which provide and maintain the courts. All panelists pointed out that adequate funding for administrative and investigative services for managing bodies responsible for the administration of ethical rules must be in place. Additionally, it is the responsibility not only of the judges but of the justice system to apply ethical principles and rules to create public confidence in the courts.

**Norway:**

Ms. Fjorstad presented on the experience of Norwegian courts, as they score highest in public confidence among all government institutions in Norway. Norwegian courts maintain a comprehensive set of values including quality, transparency, service, efficiency, respect, and professionalism that are practiced at all times by all persons who work in the court systems, including the judges. Starting in

2014, Norway adopted a professional strategic plan to involve all aspects of court operations that provides for: an action plan; interaction protocol; external results; and user experience metrics.

Professional resources are applied to each operational aspect of the action plan to create value and trust in the user experience of Norwegian courts.

Norway has norms for good conduct, and assertion of these values is present in all of their work, including documents coming from the courts. Further, they require that the action plans are incorporated in the daily work of the courts. The service design for Norwegian courts make all those who encounter it, including complaining witnesses and victims, feel comfortable that they are safe and respected through their involvement with the court system. Thus, the common goals for judges and administrative staff are woven into the fabric of their court operations.

#### **Canada:**

Mr. Bilodeau explained through a comprehensive powerpoint how good practices increase judicial integrity, thereby increasing public confidence in the courts. His role is to be in charge of court operations and court services as well as to administer the financial operations of Canadian courts.

Canada itself has a published set of best practice requirements required of all government employees.

The Canadian model is very strong in enforcing ethical practices among its staff. They do so while ensuring judicial independence, but they also similarly fund resources which make sure that their job classifications, hiring criteria, conflict management procedures, value and ethics code, are all thoroughly defined at the time of hiring people who work with and for the courts. They have in place also a conflict management program both with their Labor Relations Organization as well as in the courts in general.

Consequently, with these types of programs in place, there is less likelihood of individual deviation from the expected standards. The important values for the courts and staff include respect for the government, its workers, the people who come before them, integrity, stewardship, and management.

In addition, judges are subject to a Judicial Council Code of Conduct in addition to their responsibility as government employees in Canada.

Judicial complaints are run through the Canadian Judicial Council and the Registrar of the courts (Mr. Bilodeau's office), which also oversees all expenses and payments made by the judicial branch. Audits are required of all expenditures for the judicial branch.

Ultimately, the Canadian model is built on the notion that good government and proper management work hand-in-hand to increase confidence in the judicial system. Mr. Bilodeau provided the following quotable statement: "The rule of law mandates high standards for those who administer it." He noted that the image of the court sets the tone for all relationships that the public has with government.

**Rwanda:**

Justice Karimunda, of the Supreme Court of Rwanda, pointed out that the institution of the courts is the key to peace and economic development in his country. He noted extensively, and sincerely, that the genocide which took place in Rwanda in 1994 was largely the product of injustice. Consequently, holding judges to be accountable to a high moral standard appears on the forefront of concerns of all who administer the rule of law in Rwandan courts.

Justice Karimunda explained that while judicial independence is required, it should not be used as an excuse for accountability. Moreover, accountability according to his view of court operations in Rwanda requires reasonable time to disposition of cases; that the system must be self-policing; that judicial training is necessary to enforce the rules and accountability expected of judges. There is a system in place in Rwanda through the High Counsel's Office, Inspector, and Ombudsman to look at judicial conduct. It takes a complaint to trigger an investigation. Once a complaint is started, the Inspector moves the complaint from its own first instance operation to the High Court and ultimately to the Judicial Commission with outcomes ranging from dismissal to whatever is deemed appropriate by the Judicial Commission. The Ombudsman has an office of corruption to actually act on citizen complaints.

Thus far, 96 judges have been held accountable. If convicted of ethical misconduct, the judge involved cannot be a judge again. He pointed out that even questionable judgments can give rise to ethical complaints and serve as the basis of government-sponsored investigation.

**Kenya:**

Chief Justice Maraga of Kenya explained what he called the "Kenya Challenge." This seems to arise through judges participating in the judicial function and the five directorates that provide judicial administration. The judicial function is led by a committee chaired by the Chief Justice. The Judicial Service Commission runs a staff of administrators to run the courts. Public concerns are addressed through a committee formed by the court to take on complaints provided about judges, and these committees operate at multiple locations. Most complaints go to the Judicial Service Commission. Many complaints are routed through the Judiciary Ombudsman. In the very first instance, when a complaint about a judge is lodged officially with the courts, they go to the Chief Justice. Pursuant to the Kenyan Constitution, the president must set up a tribunal for complaints that may result in removal of a judge. The Judicial Service Commission screens these complaints before going to the president. Once a complaint gets forwarded to the president, the tribunal must be established, and it is noted that not every complaint made is acted upon. There are, as a basis for many complaints, delays in entering judgment in cases. Investigations are often incomplete on their own as well as complaints are withdrawn before conclusion. The law does allow, however, the Judicial Service Commission to act on any complaint whether it is withdrawn or not.

**Discussion:**

Following the initial presenters, Mr. Apperson led a discussion concerning the process by which complaints about the judicial system are handled. In particular, there is an ever-present concern that complaints can be used as a mechanism to limit judicial independence as well as create a chilling environment for judges to operate. Often as it was noted by several commentators, politicians can use

judicial complaints to obtain outcomes and political benefit which might not otherwise be directly obtained either through the legislative or executive branches of their governments.

One of the principal concerns deals with whether judicial investigation should be opened or closed. Justice Maraga pointed out that their judicial commission does initial *in camera* reviews of complaints while the tribunal conducted by the president is public. Notably, this process of whether judicial complaints should be publicly aired in the first instance or not is a problem which is real and continually encountered in most court systems throughout the world.

Access to information has become an expectation of the populace in most countries. Consequently, accusations concerning judicial integrity are also reasonably expected to be subject to public review. Militating against this expectation is the need of course for complaints to be determined genuine, and worthy of further investigation. It was noted by several commentators that quite often outcomes of court cases fairly decided and negatively received by members of the public frequently trigger complaints about judges. In other words, people who are aggrieved by an outcome often make complaints which have nothing to do with a judicial officer's character or fitness. Determining the process by which the investigation is undertaken, and who does the investigating, are at the forefront of the implementation of any set of judicial integrity standards.

Additionally, whether or not the proceedings of that investigation are ultimately made public is of great concern. In many countries there are many documented instances of individuals being forced from judicial office based upon the public disclosure of information surrounding a complaint, regardless of whether or not the complaint is genuine.

Reference was made to the Istanbul Principles. Perhaps, the further harmonizing of Istanbul with the Bangalore Principles is a fruitful subject for further discussion. There are several areas, for example, transparency, that may be seen in conflict with the implementation of judicial conduct investigations.

Momentary mention was also made of artificial intelligence and its role or potential role within the courts. This discussion was not pursued.

The final area of concern was the application of court-based ethical principles to those services that are being provided by courts beyond their traditional function. For example, mediation services, arbitration services, and methods of dispute resolution which do not involve an adversary process customarily undertaken by the courts. Questions arose as to whether or not when the Court operates in an environment which is different than its principal role, whether separate ethical rules or codes of conduct, should be implemented.

The final takeaway from the discussion was the necessity of having what one might refer to as the comprehensive courts concept be implemented along with the ethical rules. Courts at every level from those people who interact with the public to people who process court records, file decisions, monitor the proceedings, *et cetera*, at every level be engaged and be subject to ethical rules, procedures, and if necessary, review. It seems that in the modern age the expectation for ethical conduct is present for every person who works in a courthouse in addition to the judges who may preside there.

Faithfully,

Jerome B. Abrams  
Judge of District Court