

**REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA**

Vol. 520

**Cape Town, 27 October
Kaapstad, 27 Oktober 2008**

No. 31540

THE PRESIDENCY

No. 1142

27 October 2008

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 20 of 2008: Judicial Service Commission Amendment Act, 2008.

DIE PRESIDENSIE

No. 1142

27 Oktober 2008

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 20 van 2008: Wysigingswet op die Regterlike Dienskommissie, 2008.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

— Words underlined with a solid line indicate insertions in existing enactments.

*(English text signed by the President.)
(Assented to 22 October 2008.)*

ACT

To amend the Judicial Service Commission Act, 1994, so as to establish the Judicial Conduct Committee to receive and deal with complaints about judges; to provide for a Code of Judicial Conduct which serves as the prevailing standard of judicial conduct which judges must adhere to; to provide for the establishment and maintenance of a register of judges' registrable interests; to provide for procedures for dealing with complaints about judges; to provide for the establishment of Judicial Conduct Tribunals to inquire into and report on allegations of incapacity, gross incompetence or gross misconduct against judges; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Insertion of Preamble in Act 9 of 1994

1. The following Preamble is inserted in the Judicial Service Commission Act, 1994, (hereafter referred to as the principal Act), after the long title: 5

“PREAMBLE

SINCE the Judicial Service Commission has been established by section 178(1) of the Constitution of the Republic of South Africa, 1996;

AND SINCE section 178(4) of the Constitution provides that the Judicial Service Commission has the powers and functions assigned to it in the Constitution and national legislation; 10

AND SINCE section 180 of the Constitution provides that national legislation may provide for any matter concerning the administration of justice that is not dealt with in the Constitution, including procedures for dealing with complaints about judicial officers; 15

AND SINCE section 177(1) of the Constitution provides that a judge may be removed from office only if—

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verorderings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verorderings aan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 22 Oktober 2008.)*

WET

Tot wysiging van die Wet op die Regterlike Dienskommissie, 1994, ten einde die Regterlike Gedragskomitee in te stel om klagtes oor regters te onvang en te hanteer; om voorsiening te maak vir 'n Regterlike Gedragkode wat dien as die heersende maatstaf vir regterlike gedrag waarby regters moet hou; om voorsiening te maak vir die instelling en byhou van 'n register van regters se registreerbare belang; om voorsiening te maak vir procedures om klagtes oor regters te hanteer; om voorsiening te maak vir Regterlike Gedragtribunale om ondersoek in te stel na en verslag te doen oor bewerings van onvermoë, uitermate onbevoegdheid of growwe wangedrag teen regters; en om vir verbandhoudende aangeleenthede voorsiening te maak.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Invoeging van Aanhef in Wet 9 van 1994

1. Die volgende Aanhef word na die lang titel in die Wet op die Regterlike Dienskommissie, 1994 (hierna die Hoofwet genoem), ingevoeg: 5

“AANHEF

AANGESIEN die Regterlike Dienskommissie ingestel is deur artikel 178(1) van die Grondwet van die Republiek van Suid-Afrika, 1996;

EN AANGESIEN artikel 178(4) van die Grondwet bepaal dat die Regterlike Dienskommissie die bevoegdhede en funksies het wat die Grondwet en Nasionale Wetgewing aan hom opdra; 10

EN AANGESIEN artikel 180 van die Grondwet bepaal dat nasionale wetgewing voorsiening kan maak vir enige aangeleenthed betreffende die regspiegeling waarmee nie in die Grondwet gehandel word nie, met inbegrip van procedures vir die hantering van klagtes oor regterlike beampies; 15

EN AANGESIEN artikel 177(1) van die Grondwet bepaal dat 'n regter slegs van die amp ontheft kan word indien—

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- (a) the Judicial Service Commission finds that the judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct; and
 (b) the National Assembly calls for that judge to be removed, by a resolution adopted with a supporting vote of at least two thirds of its members;

AND SINCE section 177(3) of the Constitution provides that the President, on the advice of the Judicial Service Commission may suspend a judge who is the subject of a procedure in terms of section 177(1);

AND SINCE it is necessary to create an appropriate and effective balance between protecting the independence and dignity of the judiciary when considering complaints about, and the possible removal from office of, judicial officers, and the overriding principles of openness, transparency and accountability that permeate the Constitution and that are equally applicable to judicial institutions and officers;

AND SINCE it is necessary to create procedures, structures and mechanisms in terms of which—

- complaints against judges could be lodged and dealt with appropriately;
- allegations that any judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct could be investigated; and
- information can be placed before the Judicial Service Commission and Parliament in order to enable these institutions to make a finding whether a judge suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct.”.

Insertion of heading in Act 9 of 1994

2. The following heading is inserted in the principal Act after the enactment clause:

“CHAPTER 1

ADMINISTRATIVE PROVISIONS”.

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Substitution of section 1 of Act 9 of 1994

3. The following section is substituted for section 1 of the principal Act:

“Definitions

1. In this Act, unless the context otherwise indicates—

‘Chairperson’ means the Chief Justice;

‘Commission’ means the Judicial Service Commission established by section [105] 178 of the Constitution;

‘complainant’ means a person who lodged a complaint against a judge in terms of section 14;

‘Minister’ means the Cabinet member responsible for the administration of justice;

‘prescribed’ means as prescribed in terms of a regulation made under section 35;

‘respondent’ means a judge against whom a complaint was lodged in terms of section 14, or who is the subject of an allegation referred to a Tribunal in terms of this Act;

‘this Act’ includes the Code of Judicial Conduct contemplated in section 12 and any regulations made under section 35; and

‘Tribunal’ means a Tribunal appointed in terms of section 21.”.

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- (a) die Regterlike Dienskommissie bevind dat die regter aan onvermoë ly, uitermate onbevoeg is of aan growwe wangedrag skuldig is; en
 (b) die Nasionale Vergadering die ontheffing van daardie regter aanvra by 'n besluit aangeneem met 'n ondersteunende stem van minstens twee derdes van sy lede;

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EN AANGESIEN artikel 177(3) van die Grondwet bepaal dat die President, op advies van die Regterlike Dienskommissie 'n regter kan skors wat die onderwerp van verrigtinge ingevolge artikel 177(1) is;

EN AANGESIEN dit nodig is om 'n gepaste en doeltreffende balans te bewerkstellig tussen die beskerming van die onafhanklikheid en waardigheid van die regbank wanneer klagtes oor, en die moontlike ampsontheffing van, regters oorweeg word, en die oorheersende beginsels van openheid, deursigtigheid en verantwoordingspligtigheid wat die Grondwet onderlê en wat insgelyks op regterlike instellings en beampies van toepassing is;

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EN AANGESIEN dit nodig is om procedures, strukture en meganismes te skep ingevolge waarvan—

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- klagtes teen regters gelê en gepas gehanteer kan word;
- bewerings dat 'n regter aan 'n onvermoë ly, uitermate onbevoeg is of aan growwe wangedrag skuldig is, ondersoek kan word; en
- inligting voor die Regterlike Dienskommissie en die Parlement geplaas kan word ten einde hierdie instellings in staat te stel om 'n bevinding te maak oor die vraag of 'n regter aan 'n onvermoë ly, uitermate onbevoeg is of aan growwe wangedrag skuldig is.'';

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Invoeging van opskrif in Wet 9 van 1994

2. Die volgende opskrif word na die verordeningsbepaling in die Hoofwet ingevoeg: 25

"HOOFSTUK 1

ADMINISTRATIEWE BEPALINGS"

Vervanging van artikel 1 van Wet 9 van 1994

3. Artikel 1 van die Hoofwet word deur die volgende artikel vervang:

"Woordomskrywing

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1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
'hierdie Wet' ook die Regterlike Gedragskode beoog in artikel 12 en enige regulasies kragtens artikel 35 uitgevaardig;

'klaer' 'n persoon wat 'n klage teen 'n regter gelê het ingevolge artikel 14;
 'Kommissie' die Regterlike Dienskommissie by artikel [105] 178 van die Grondwet ingestel; [en] 35

'Minister' die Kabinetslid verantwoordelik vir die administrasie van die regsglegging;

'respondent' 'n regter teen wie 'n klage ingevolge artikel 14 gelê is, of wat die onderwerp is van 'n bewering wat ingevolge hierdie Wet na 'n Tribunaal verwys is;

'Tribunaal' 'n Tribunaal aangestel kragtens artikel 21;

'voorgeskrewe' soos voorgeskryf ingevolge 'n regulasie kragtens artikel 35 uitgevaardig; en

'Voorsitter' die Hoofregter.".

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Substitution of section 2 of Act 9 of 1994

4. The following section is substituted for section 2 of the principal Act:

“Acting Chairperson and vacancies

2. [(1) **The members of the Commission designated as such in terms of section 105 (1) (c), (e), (f), (g), (h) and (i) of the Constitution shall hold office for a term not exceeding five years: Provided that—** 5
- (a) **the President shall remove any such member from office at any time if the designator who or which designated such member, so requests; or**
(b) **any such member may resign from office by giving at least one month’s written notice thereof to the chairperson.** 10
- (2) **A member of the Commission designated as such in terms of section 105 (1) (e), (f), (g), (h) or (i) of the Constitution shall vacate his or her office automatically if he or she ceases to be qualified to be so designated.** 15
- (3) **Subject to section 105 (1) of the Constitution, any person whose term of office as a member of the Commission has expired, may be redesignated.**
- (4) **The Commission shall designate one of the members holding office in terms of section 105 (1) (b), (c), (e), (f), (g) or (i) of the Constitution as deputy chairperson of the Commission, and when the chairperson is not available, the deputy chairperson shall act as chairperson.]** 20
- (1) **When the Chairperson is for any reason unavailable to serve on the Commission or perform any function or exercise any power, the Deputy Chief Justice, as his or her alternate, shall act as chairperson.** 25
- (2) **If neither the Chief Justice nor the Deputy Chief Justice is available to preside at a meeting of the Commission, the members present at the meeting must designate one of the members holding office in terms of section 178(1)(b) or (c) of the Constitution as acting chairperson for the duration of the absence.** 30
- [(5)] (3) A vacancy in the Commission shall—**
- (a) **not affect the validity of the proceedings or decisions of the Commission; and**
(b) **be filled in accordance with section [105 (1)] 178(3) of the Constitution, and any member so designated shall, where applicable, hold office for the unexpired portion of his or her predecessor’s term of office.”.** 35

Substitution of section 3 of Act 9 of 1994

5. The following section is substituted for section 3 of the principal Act: 40

“Remuneration and expenses of members of Commission

3. (1) Any member of the Commission who is **[a judge, a member of Parliament or a Premier of a province]** **an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997** (Act No. 92 of 1997), may be paid such allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission as the Minister **[of Justice]** may determine with the concurrence of the Minister of Finance. 45
- (2) Any member of the Commission who is not— 50
- (a) **[a judge] an office bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997;**
or
(b) **[a member of Parliament];**
(c) **a Premier of a province; or** 55

Vervanging van artikel 2 van Wet 9 van 1994

4. Artikel 2 van die Hoofwet word deur die volgende artikel vervang:

“Waarnemende Voorsitter en vakature

- 2.** [(1) Die lede van die Kommissie wat as sodanig ingevolge artikel 105(1)(c), (e), (f), (g), (h) en (i) van die Grondwet aangewys is, beklee hul amp vir 'n termyn van hoogstens vyf jaar: Met dien verstande dat—
 (a) die President te eniger tyd so 'n lid van sy of haar amp moet ontheft indien die aanwyser wat so 'n lid aangewys het, aldus versoek; of
 (b) so 'n lid uit sy of haar amp kan bedank deur minstens een maand skriftelike kennis daarvan aan die voorsitter te gee.] 5
- (2) 'n Lid van die Kommissie wat as sodanig ingevolge artikel 105(1)(e), (f), (g), (h) of (i) van die Grondwet aangewys is, ontruim sy of haar amp outomatics indien hy of sy ophou om bevoeg te wees om aldus aangewys te word.] 10
- (3) Behoudens artikel 105(1) van die Grondwet kan iemand wie se ampstermyn as lid van die Kommissie verstryk het, heraangewys word.] 15
- (4) Die Kommissie wys een van die lede wat sy of haar amp ingevolge artikel 105 (1)(b), (c), (e), (f), (g) of (i) van die Grondwet beklee, as ondervoorsitter van die Kommissie aan, en wanneer die voorsitter nie beskikbaar is nie, neem die ondervoorsitter as voorsitter waar.] 20
- (1) Wanneer die Voorsitter om enige rede nie beskikbaar is om op die Kommissie te dien of om enige funksie te verrig of bevoegdheid uit te oefen nie, neem die Adjunkhoofregter, as sy of haar alternatiewe lid, waar as voorsitter.] 25
- (2) Indien nie die Hoofregter of die Adjunkhoofregter beskikbaar is om voor te sit by 'n vergadering van die Kommissie nie, moet die lede wat by die vergadering aanwesig is een van die lede wat die amp ingevolge artikel 178(1)(b) of (c) van die Grondwet beklee, aanwys as waarnemende voorsitter vir die duur van die afwesigheid.] 30
- [(5)] (3) 'n Vakture in die Kommissie—
 (a) raak nie die geldigheid van die verrigtinge of besluite van die Kommissie nie; en
 (b) word ooreenkomsdig artikel [105 (1)] 178(3) van die Grondwet gevul, en enige lid aldus aangewys, beklee, waar toepaslik, sy of haar amp vir die onverstreke gedeelte van sy of haar voorganger se ampstermyn.”.] 35

Vervanging van artikel 3 van Wet 9 van 1994

5. Artikel 3 van die Hoofwet word deur die volgende artikel vervang:

“Vergoeding en uitgawes van lede van Kommissie

- 3.** (1) 'n Lid van die Kommissie wat 'n [regter, 'n lid van die Parlement of 'n Premier van 'n provinsie is] ampsbekleer is soos omskryf in artikel 1 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleers, 1997 (Wet No. 92 van 1997), kan die toelaes vir reis- en verblyfuitgawes deur hom of haar by die verrigting van sy of haar werksaamhede as 'n lid van die Kommissie aangegaan, betaal word wat die Minister [van Justisie] met die instemming van die Minister van Finansies bepaal.] 40
- (2) 'n Lid van die Kommissie wat nie—
 (a) 'n [regter] ampsbekleer soos omskryf in artikel 1 van die Wet op die Onafhanklike Kommissie vir die Besoldiging van Openbare Ampsbekleers, 1997, of
 (b) ['n lid van die Parlement;
 (c) 'n Premier van 'n provinsie; of] 45
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(d)] in the employ of the State and subject to the laws governing the public service,
 may be paid such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the performance of his or her functions as a member of the Commission, as the Minister [of Justice] may determine with the concurrence of the Minister of Finance.”.

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Repeal of section 4 of Act 9 of 1994

6. Section 4 of the principal Act is repealed.

Substitution of section 5 of Act 9 of 1994

7. The following section is substituted for section 5 of the principal Act: 10

“Publication of procedure of Commission

5. The Minister [of Justice shall] must by notice in the *Gazette*, make known the particulars of the procedure, including subsequent amendments, which the Commission has determined in terms of section [105 (4)] 178(6) of the Constitution.”.

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Substitution section 6 of Act 9 of 1994

8. The following section is substituted for section 6 of the principal Act:

“Annual report

6. (1) The Commission shall within six months after the end of every year submit a written report to Parliament [**a report in writing regarding its activities during that year**] for tabling.

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(2) The report referred to in subsection (1) must include information regarding—
 (a) the activities of the Commission during the year in question;
 (b) all matters dealt with by the Judicial Conduct Committee referred to in section 8;
 (c) all matters relating to, including the degree of compliance with, the Register of Judges’ Registrable Interests referred to in section 13, as reported by the Registrar of Judges’ Registrable Interests; and
 (d) all matters considered by the Commission in the course of the application of Chapters 2 and 3 of this Act, including the number of matters outstanding and the progress in respect thereof.”.

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Insertion of Chapters 2, 3 and 4 in Act 9 of 1994

9. The following Chapters are inserted in the principal Act after section 6, the existing section 7 becoming section 39: 35

“CHAPTER 2**OVERSIGHT OVER JUDICIAL CONDUCT AND ACCOUNTABILITY OF JUDICIAL OFFICERS****PART I*****Establishment and objects of Committee*** 40**Definitions and interpretation**

7. (1) For purposes of this Chapter, unless the context indicates otherwise—

(d)] in diens van die Staat en aan die wetsbepalings op die staatsdiens onderworpe,
is nie, kan die vergoeding, met inbegrip van toelaes vir reis- en verblyfuitgawes deur hom of haar by die verrigting van sy of haar werksaamhede as lid van die Kommissie aangegaan, betaal word wat die Minister [van Justisie] met die instemming van die Minister van Finansies bepaal.”.

Herroeping van artikel 4 van Wet 9 van 1994

6. Artikel 4 van die Hoofwet word herroep.

Vervanging van artikel 5 van Wet 9 van 1994

7. Artikel 5 van die Hoofwet word deur die volgende artikel vervang: 10

“Bekendmaking van prosedure van Kommissie

5. Die Minister [van Justisie] moet by kennisgewing in die *Staatskoerant* die besonderhede van die prosedure wat deur die Kommissie ingevalle artikel [105(4)] 178(6) van die Grondwet bepaal is, bekend maak.”. 15

Vervanging van artikel 6 van Wet 9 van 1994

8. Artikel 6 van die Hoofwet word deur die volgende artikel vervang:

“Jaarlikse verslag

6. (1) Die Kommissie lê binne ses maande na die verstryking van elke jaar 'n skriftelike verslag [**oor sy bedrywighede gedurende daardie jaar**] 20 aan die Parlement voor vir tertafellegging.

(2) Die verslag bedoel in subartikel (1) moet inligting insluit betreffende—

- (a) die werksaamhede van die Kommissie gedurende die betrokke jaar;
- (b) alle aangeleenthede deur die Regterlike Gedragskomitee bedoel in artikel 8 gehanteer;
- (c) alle aangeleenthede betreffende, met inbegrip van die graad van voeldoening aan, die Register van Regters se Registreerbare Belange bedoel in artikel 13, soos oor verslag gedoen deur die Registrateur van Regters se Registreerbare Belange; en
- (d) alle aangeleenthede oorweeg deur die Kommissie in die loop van die toepassing van Hoofstukke 2 en 3 van hierdie Wet, met inbegrip van die getal aangeleenthede wat uitstaande is en die vordering in verband daarmee.”.

Invoeging van Hoofstukke 2, 3 en 4 in Wet 9 van 1994 35

9. Die volgende Hoofstukke word na artikel 6 in die Hoofwet ingevoeg, terwyl die bestaande artikel 7 artikel 39 word:

“HOOFSTUK 2

OORSIG OOR REGTERLIKE GEDRAG EN VERANTWOORDINGSPLEIGTIGHEID VAN REGTERLIKE BEAMPTES 40

DEEL I

Instelling en oogmerke van Komitee

Woordomskrywings en uitleg

7. (1) Vir doeleinades van hierdie Hoofstuk, tensy uit die samehang anders blyk, beteken— 45

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(a)	"active service" means active service as contemplated in section 1 of the Judges' Remuneration and Conditions of Service Act, 2001 (Act No. 47 of 2001);	
(b)	"Chairperson", means the Chairperson of the Committee;	5
(c)	"Commission" means the Commission, acting without the participation of the members referred to in section 178(1)(h) and (i) of the Constitution;	
(d)	"Committee" means the Judicial Conduct Committee referred to in section 8;	
(e)	"Head of Court", in relation to a complaint against a judge—	10
	(i) of the Constitutional Court, means the Chief Justice;	
	(ii) of the Supreme Court of Appeal, means the President of that Court;	
	(iii) of any other court, means the Judge President of that court;	
	(iv) who was performing judicial duties in an acting capacity on the date the complaint arose, means the Head of Court in which such judge acted when the complaint arose; or	15
	(v) who has been discharged from active service, means the Chief Justice;	
(f)	"immediate family member" in relation to a judge refers to the spouse, civil partner or permanent life partner of that judge and includes dependent children of, and family members living in the same household with, that judge; and	20
(g)	"judge" means any Constitutional Court judge or judge referred to in section 1 of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), which includes a judge who has been discharged from active service in terms of that Act, as well as any person holding the office of judge in a court of similar status to a High Court, as contemplated in section 166 of the Constitution, and, except for the purposes of section 11, includes any Constitutional Court judge or judge performing judicial duties in an acting capacity.	25
	(2) In this Chapter any reference to a complainant or to a respondent must, unless it is inconsistent with the context, be construed to include a reference to a legal representative of that complainant or respondent.	30
	Establishment and composition of Judicial Conduct Committee	35
	8. (1) The Commission has a Judicial Conduct Committee, comprising—	
(a)	the Chief Justice, who is the Chairperson of the Committee;	
(b)	the Deputy Chief Justice; and	40
(c)	four judges, at least two of whom must be women, designated by the Chief Justice in consultation with the Minister, for the period determined at the time of such designation, provided that such period may not exceed two years.	
	(2) Any judge designated in terms of subsection (1)(c) may be reappointed once for a period not exceeding two years, but may not serve as such a member for more than four years in total.	45
	(3) The Chairperson may, either generally or in a specific case, delegate any of his or her powers or functions as Chairperson of the Committee to the Deputy Chief Justice.	
	(4) When considering a complaint relating to the conduct of a judge who is a member of the Committee, the Committee must sit without that member.	50
	(5) The first designations in terms of subsection (1)(c) must be made within one month of this section coming into operation.	
	(6) Any vacancy which may arise in respect of a designation in terms of subsection 1(c) must immediately be filled for the remaining period of such designation in the manner prescribed in this section.	55

**WYSIGINGSWET OP DIE
REGTERLIKE DIENSKOMMISSIE, 2008**

Wet No. 20, 2008

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| <p>(a) ‘aktiewe diens’ aktiewe diens soos beoog in artikel 1 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001 (Wet No. 47 van 2001);</p> <p>(b) ‘Hofprinsipaal’, met betrekking tot ‘n klagte teen ‘n regter—</p> <ul style="list-style-type: none"> (i) van die Konstitusionele Hof, die Hoofregter; (ii) van die Hoogereghof van Appèl, die President van daardie Hof; (iii) van enige ander hof, die Regterpresident van daardie hof; (iv) wat regterlike pligte in ‘n waarnemende hoedanigheid verrig het op die datum waarop die klagte ontstaan het, die Hofprinsipaal van die hof waarin so ‘n regter waargeneem het toe die klagte ontstaan het; of (v) wat van aktiewe diens onthef is, die Hoofregter; <p>(c) ‘Komitee’ die Regterlike Gedragskomitee bedoel in artikel 8;</p> <p>(d) ‘Kommisjie’, die Kommissie, handelende sonder die deelname van die lede bedoel in artikel 178(1)(h) en (i) van die Grondwet;</p> <p>(e) ‘nabye familielid’ met betrekking tot ‘n regter, die gade, siviele lewensgenoot of permanente lewensmaat van daardie regter, met inbegrip van afhanglike kinders van, of familielede wat in dieselfde huishouding woon as, daardie regter;</p> <p>(f) ‘regter’ ‘n Konstitusionele Hof regter of regter bedoel in artikel 1 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 2001 (Wet No. 47 van 2001), met inbegrip van ‘n regter wat ingevolge daardie Wet van aktiewe diens onthef is, sowel as enige persoon wat die amp van regter beklee in ‘n hof van soortgelyke status as ‘n Hoë Hof, soos beoog in artikel 166 van die Grondwet, en, behalwe vir doeleinades van artikel 11, met inbegrip van ‘n Konstitusionele Hof regter of regter wat regterlike pligte in ‘n waarnemende hoedanigheid verrig; en</p> <p>(g) ‘Voorsitter’ die Voorsitter van die Komitee.</p> <p>(2) In hierdie Hoofstuk word enige verwysing na ‘n klaer of ‘n respondent, tensy dit nie met die samehang versoenbaar is nie, vertolk om ‘n verwysing na die regtsverteenvoerdiger van daardie klaer of respondent in te sluit.</p> | <p style="margin-bottom: 10px;">5</p> <p style="margin-bottom: 10px;">10</p> <p style="margin-bottom: 10px;">15</p> <p style="margin-bottom: 10px;">20</p> <p style="margin-bottom: 10px;">25</p> <p style="margin-bottom: 10px;">30</p> |
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Instelling en samestelling van Regterlike Gedragskomitee

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| <p>8. (1) Die Kommissie het ‘n Regterlike Gedragskomitee, wat bestaan uit—</p> <p>(a) die Hoofregter, wat die Voorsitter van die Komitee is;</p> <p>(b) die Adjunkhoofregter; en</p> <p>(c) vier regters, van wie minstens twee vroue moet wees, wat deur die Hoofregter aangewys word in oorleg met die Minister, vir die tydperk wat ten tye van die aanwysing bepaal word, met dien verstande dat sodanige tydperk nie langer as twee jaar mag wees nie.</p> <p>(2) ‘n Regter wat ingevolge subartikel (1)(c) aangewys is, kan een keer heraangestell word vir ‘n tydperk wat nie twee jaar te bove gaan nie, maar mag nie as so ‘n lid dien vir ‘n tydperk van meer as vier jaar in totaal nie.</p> <p>(3) Die Voorsitter kan, hetsy in die algemeen of in ‘n bepaalde geval, enige van sy of haar bevoegdhede as Voorsitter van die Komitee aan die Adjunkhoofregter deleger.</p> <p>(4) By die oorweging van ‘n klagte wat verband hou met die gedrag van ‘n regter wat ‘n lid van die Komitee is, sit die Komitee sonder daardie lid.</p> <p>(5) Die eerste aanwysings ingevolge subartikel (1)(c) moet binne ‘n maand na die inwerkingtreding van hierdie artikel gedoen word.</p> <p>(6) Enige vakature wat ontstaan ten opsigte van ‘n aanwysing ingevolge subartikel (1)(c) moet onverwyld gevul word vir die oorblywende termyn van daardie aanwysing op die wyse wat in hierdie artikel voorgeskryf word.</p> | <p style="margin-bottom: 10px;">35</p> <p style="margin-bottom: 10px;">40</p> <p style="margin-bottom: 10px;">45</p> <p style="margin-bottom: 10px;">50</p> <p style="margin-bottom: 10px;">55</p> |
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Meetings of Committee

- 9.** (1) The Committee meets at any time and place determined by the Chairperson.
 (2) (a) The Committee may determine the procedure to be followed at its meetings, but decisions of the Committee must be supported by a majority of its members.
 (b) In the event of an equality of votes being cast by the Committee members present at a meeting, the person presiding at that meeting has a deciding vote in addition to his or her deliberative vote.
 (3) Meetings of the Committee may only be attended by the members of the Committee and persons whose presence are required or permitted in terms of this Act, unless the Committee on account of public interest and for good cause decides otherwise.

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Objects of Committee

- 10.** (1) The objects of the Committee are to receive, consider and deal with complaints in terms of Part III of this Chapter.
 (2) The Committee must report on its activities to the Commission at least once every six months.

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Judicial conduct**Judge not to hold other office of profit or receive payment for any service**

- 11.** (1) A judge performing active service—
 (a) may not hold or perform any other office of profit; and
 (b) may not receive in respect of any service any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge.
 Provided that such a judge may, with the written consent of the Minister acting in consultation with the Chief Justice, receive royalties for legal books written or edited by that judge.
 (2) A judge who has been discharged from active service may only with the written consent of the Minister, acting after consultation with the Chief Justice, hold or perform any other office of profit or receive in respect of any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge.
 (3) (a) Written consent as contemplated in subsection (2) may only be given if the Minister is satisfied that the granting of such consent will not—
 (i) adversely affect the efficiency and effectiveness of the administration of justice, including the undermining of any aspect of the administration of justice, especially the civil justice system;
 (ii) adversely affect the image or reputation of the administration of justice in the Republic;
 (iii) in any manner undermine the legal framework which underpins the judge for life concept;
 (iv) result in any judge engaging in any activity that is in conflict with the vocation of a judge; and
 (v) bring the judiciary into disrepute or have the potential to do so.
 (b) The Minister, acting after consultation with the Chief Justice, may, by notice in the *Gazette*, issue guidelines regarding any other criteria to be applied when considering the granting of consent contemplated in subsection (2).

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Vergaderings van Komitee

9. (1) Die Komitee vergader te enige tyd en plek deur die Voorsitter bepaal.

(2) (a) Die Komitee kan die prosedure bepaal wat by sy vergaderings gevolg word, maar besluite van die Komitee moet deur 'n meerderheid van sy lede gesteun wees.

(b) In die geval van 'n gelykheid van stemme wat deur Komiteelede by 'n vergadering teenwoordig uitgebring word, het die persoon wat by daardie vergadering voorsit 'n beslissende stem bykomend tot sy of haar beraadslagende stem.

(3) Vergaderings van die Komitee mag slegs bygewoon word deur lede van die Komitee en persone wie se teenwoordigheid ingevolge hierdie Wet verlang of toegelaat word, tensy die Komitee op grond van openbare belang en om goeie rede anders besluit.

Oogmerke van Komitee

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10. (1) Die oogmerke van die Komitee is om klagtes ingevolge Deel III van hierdie Hoofstuk te ontvang, te oorweeg en te hanteer.

(2) Die Komitee moet minstens een keer elke ses maande aan die Kommissie oor sy werkzaamhede rapporteer.

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DEEL II***Regterlike gedrag*****Regter beklee geen ander winsbetrekking of ontvang geen betaling vir ander diens nie**

11. (1) 'n Regter wat aktiewe diens verrig—

- (a) mag geen ander winsbetrekking hou of daarin diens verrig nie; en
- (b) mag nie ten opsigte van enige diens enige gelde, emolumente of ander besoldiging of toelaes onvang nie anders as sy of haar salaris en enige ander bedrag wat aan hom of haar betaalbaar is in sy of haar hoedanigheid as 'n regter:

Met dien verstande dat so 'n regter, met die skriftelike toestemming van die Minister handelende in oorleg met die Hoofregter, tantiémes kan ontvang vir regsboeke wat deur daardie regter geskryf of gerедigeer is.

(2) 'n Regter wat van aktiewe diens onthef is, mag slegs met die skriftelike toestemming van die Minister, handelende na oorleg met die Hoofregter, 'n ander winsbetrekking hou of daarin diens verrig of ten opsigte van enige diens enige gelde, emolumente of ander besoldiging of toelaes onvang anders as sy salaris en enige ander bedrag wat aan hom of haar betaalbaar is in sy of haar hoedanigheid as 'n regter.

(3) (a) Skriftelike toestemming beoog in subartikel (2) mag slegs verleen word indien die Minister tevreden is dat die verleen van sodanige toestemming nie—

- (i) 'n negatiewe uitwerking op die doeltreffendheid en geslaagdheid van dieregspleging sal hê nie, met inbegrip van die ondermyning van enige aspek van dieregspleging, veral die sivieleregspleging;
- (ii) 'n negatiewe uitwerking op die beeld of reputasie van dieregspleging in die Republiek sal hê nie;
- (iii) op enige wyse dieregsraamwerk wat diekonsep van lewenslange regterskap onderlê, sal ondermyn nie;
- (iv) sal meebring dat 'n regter 'n werkzaamheid aanpak wat onversoenbaar met die roeping van 'n regter is nie; en
- (v) die regbank in oneer sal bring of die potensiaal het om dit te doen nie.

(b) Die Minister, handelende na oorleg met die Hoofregter, kan by kennisgewing in die Staatskoerant riglyne uitreik betreffende enige ander maatstawwe wat toegepas moet word by dieoorweging van die verlening van toestemming beoog in subartikel (2).

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(c) Written consent as contemplated in subsection (2) may be granted on the conditions, if any, that the Minister deems appropriate.

(4) The Minister must cause the Registrar of Judges' Registrable Interests referred to in section 13(1) to be informed of all instances where written consent as contemplated in subsections (1) and (2) has been granted.

(5) The Minister must, once every twelve months, table a report in Parliament containing particulars, including the outcome, of every application made in terms of subsection (1) or (2), including any conditions attached to any application granted, during the period covered by the report.

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Code of Judicial Conduct

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12. (1) The Chief Justice, acting in consultation with the Minister, must compile a Code of Judicial Conduct, which must be tabled by the Minister in Parliament for approval.

(2) The Minister must table the first Code under this section in Parliament within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (1) both versions of the Code must be tabled in Parliament within the said period.

(3) When the Code or any amendment thereto is tabled in Parliament in terms of subsection (1) or (2), Parliament may, after obtaining and considering public comment thereon, approve the Code or such amendment—

- (a) without any changes thereto; or
- (b) with such changes thereto as may be effected by Parliament.

(4) The Code must be reviewed at least once in every three years by the Chief Justice, acting in consultation with the Minister, and the result of such review, including any proposed amendment to the Code, must be tabled in Parliament, for approval, as contemplated in subsection (3).

(5) The Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the *Gazette*.

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Disclosure of registrable interests

13. (1) The Minister, acting in consultation with the Chief Justice, must appoint a senior official in the Office of the Chief Justice as the Registrar of Judges' Registrable Interests.

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(2) The Registrar must open and keep a register, called the Register of Judges' Registrable Interests, and must—

- (a) record in the Register particulars of Judges' registrable interests;
- (b) amend any entries in the Register when necessary; and
- (c) perform the other duties in connection with the Register as required in terms of this Act.

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(3) Every judge must disclose to the Registrar, in the prescribed form, particulars of all his or her registrable interests and those of his or her immediate family members.

(4) The first disclosure in terms of subsection (3) must be within 60 days of a date fixed by the President by proclamation, and thereafter annually and in such instances as prescribed.

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(5) The Minister, acting in consultation with the Chief Justice, must make regulations regarding the content and management of the Register referred to in subsection (2), which regulations must at least prescribe—

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- (a) the format of the Register;
- (b) the kinds of interests of judges and their immediate family members that are regarded as registrable interests;

(c) Skriftelike toestemming beoog in subartikel (2) kan verleen word op die voorwaardes, indien enige, wat die Minister gepas vind.

(4) Die Minister moet die Registrateur van Regters se Registreerbare Belange bedoel in artikel 13(1) laat inlig van alle gevalle waar skriftelike toestemming bedoel in subartikels (1) en (2) verleen is.

(5) Die Minister moet, een keer elke twaalf maande, 'n verslag in die Parlement ter tafel lê wat besonderhede bevat, met inbegrip van die uitslag, van elke aansoek wat ingevolge subartikel (1) of (2) gebring is, met inbegrip van enige voorwaardes gekoppel aan 'n aansoek wat goedkeur is, gedurende die tydperk wat deur die verslag gedek word.

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Regterlike Gedragskode

12. (1) Die Hoofregter, handelende in oorleg met die Minister, moet 'n Regterlike Gedragskode saamstel, wat deur die Minister vir goedkeuring in die Parlement ter tafel gelê moet word.

(2) Die Minister moet die eerste Kode kragtens hierdie artikel binne vier maande vanaf die inwerkingtreding van hierdie Wet in die Parlement ter tafel lê, met dien verstande dat indien konsensus soos in subartikel (1) beoog nie bereik kon word nie, beide weergawes van die Kode binne dieselfde tydperk in die Parlement ter tafel gelê moet word.

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(3) Wanneer die Kode of enige wysiging daarvan ingevolge subartikel (1) of (2) in die Parlement ter tafel gelê word, kan die Parlement, na die inwin en oorweging van publieke kommentaar daarop, die Kode of die wysiging goedkeur—

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(a) sonder enige veranderings daaraan; of

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(b) met sodanige veranderings daaraan as wat die Parlement mag aanbring.

(4) Die Kode moet minstens een keer elke drie jaar deur die Hoofregter hersien word, handelende in oorleg met die Minister, en die uitslag van sodanige hersiening, met inbegrip van enige voorgestelde wysiging van die Kode, moet vir goedkeuring in die Parlement ter tafel gelê word, soos beoog in subartikel (3).

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(5) Die Kode dien as die heersende maatstaf vir regterlike gedrag, waaraan regters moet voldoen, en die Kode en enige daaropvolgende wysiging moet in die *Staatskoerant* gepubliseer word.

Bekendmaking van registreerbare belang

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13. (1) Die Minister, handelende in oorleg met die Hoofregter, moet 'n senior beample in die Kantoor van die Hoofregter aanstel as die Registrateur van Regters se Registreerbare Belange.

(2) Die Registrateur moet 'n register open en byhou, wat die Register van Regters se Registreerbare Belange genoem word, en moet—

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(a) besonderhede van regters se registreerbare belang in die Register aanteken;

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(b) enige inskrywings in die Register wysig wanneer nodig; en

(c) die ander pligte in verband met die Register verrig wat ingevolge hierdie Wet vereis word.

(3) Elke regter moet, op die voorgeskrewe wyse, besonderhede van al sy of haar registreerbare belang sowel as dié van sy of haar nabye familielede aan die Registrateur bekend maak.

(4) Die eerste bekendmaking ingevolge subartikel (3) moet geskied binne 60 dae vanaf 'n datum deur die President by proklamasie bepaal, en jaarliks daarna en in die voorgeskrewe gevalle.

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(5) Die Minister, handelende in oorleg met die Hoofregter, moet regulasies uitvaardig betreffende die inhoud en bestuur van die Register bedoel in subartikel (2), welke regulasies minstens moet voorskryf—

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(a) die formaat van die Register;

(b) die soorte belang van regters en hul nabye familielede wat as registreerbare belang beskou word;

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(c) the manner and the instances in which, and the time limits within which, registrable interests must be disclosed to the Registrar;	5
(d) a confidential and a public part of the Register and the interests to be recorded in those parts respectively;	
(e) the recording, in the public part of the register, of all registrable interests derived from the application of section 11;	
(f) a procedure providing for public access to the public part of the Register and a procedure for providing access to, and maintaining confidentiality of, the confidential part of the Register; and	
(g) the lodging of a complaint in terms of section 14(1) by the Registrar, in the event of—	10
(i) failure to register any registrable interest by any judge, including any failure to register any such interest within a prescribed time limit; or	
(ii) disclosure of false or misleading information by any judge.	15
(6) The regulations may determine different criteria for judges in active service and judges who had been discharged from active service or judges in an acting capacity, including in respect of matters referred to in subsection (5)(d).	
(7) The Minister must table the first regulations under this section in Parliament, for approval, within four months of the commencement of this Act, provided that if consensus could not be achieved as contemplated in subsection (5) both versions of the regulations must be tabled in Parliament within the said period.	20
(8) When the regulations or any amendment thereto is tabled in Parliament, Parliament may, after obtaining and considering public comment thereon, approve the regulations or such amendment—	25
(a) without any changes thereto; or	
(b) with such changes thereto as may be effected by Parliament.	

PART III*Consideration of complaints by Committee***Lodging of complaints**

14. (1) Any person may lodge a complaint about a judge with the Chairperson of the Committee.	35
(2) When a complaint is lodged with the Chairperson in terms of subsection (1), the Chairperson must deal with the complaint in accordance with section 15, 16 or 17, but in the event of a complaint falling within the parameters of section 15, the Chairperson may designate a Head of Court to deal with the complaint, unless the complaint is against the Head of Court.	40
(3) A complaint must be—	
(a) based on one or more of the grounds referred to in subsection (4); and	
(b) lodged by means of an affidavit or affirmed statement, specifying—	
(i) the nature of the complaint; and	
(ii) the facts on which the complaint is based.	
(4) The grounds upon which any complaint against a judge may be lodged, are any one or more of the following:	45
(a) Incapacity giving rise to a judge's inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177(1)(a) of the Constitution;	50

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- (c) die wyse waarop en die gevallen wanneer, en die tydsbeperkings waarbinne, regstreerbare belang aan die Registrateur bekend gemaak moet word;
 - (d) 'n vertroulike en 'n publieke deel van die Register en die belang wat in daardie onderskeie dele aangeteken moet word;
 - (e) die aanteken, in die publieke deel van die Register, van alle regstreerbare belang afkomstig uit die toepassing van artikel 11;
 - (f) 'n prosedure wat voorsiening maak vir publieke toegang tot die publieke deel van die Register en 'n prosedure vir toegang tot, en die handhaaf van vertroulikheid van, die vertroulike deel van die Register; en
 - (g) die lê van 'n klage ingevolge artikel 14(1) deur die Registrateur, in die geval van—
 - (i) versuim deur enige regter om 'n regstreerbare belang te regstreer, met inbegrip van 'n versuim om enige sodanige belang binne 'n voorgeskrewe tydsbeperking te regstreer; of
 - (ii) die verstrek van valse of misleidende inligting deur 'n regter.
- (6) Die regulasies kan verskillende maatstawwe bepaal vir regters wat aktiewe diens verrig en regters wat van aktiewe diens onthef is of regters in 'n waarnemende hoedanigheid, met inbegrip van aangeleenthede bedoel in subartikel (5)(d).
- (7) Die Minister moet die eerste regulasies kragtens hierdie artikel uitgevaardig in die Parlement ter tafel lê, vir goedkeuring, binne vier maande na die inwerkingtreding van hierdie Wet, met dien verstande dat indien konsensus nie bereik kon word soos beoog in subartikel (5) nie, beide weergawes van die regulasies binne die genoemde tydperk in die Parlement ter tafel gelê moet word.
- (8) Wanneer die regulasies of enige wysiging daarvan in die Parlement ter tafel gelê word, kan die Parlement, na die inwin en oorweging van publieke kommentaar daarop, die regulasies of die wysiging goedkeur—
- (a) sonder enige veranderings daaraan; of
 - (b) met sodanige veranderings daaraan as wat die Parlement mag aanbring.

DEEL III***Oorweging van klagtes deur Komitee***

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Lê van klagtes**14. (1) Enige persoon kan 'n klage oor 'n regter by die Voorsitter van die Komitee lê.**

(2) Wanneer 'n klage ingevolge subartikel (1) by die Voorsitter gelê word, moet die Voorsitter daardie klage hanteer ooreenkomsdig artikel 15, 16 of 17, maar in die geval van 'n klage wat binne die bestek van artikel 15 val, kan die Voorsitter 'n Hosprinsipaal aanwys om die klage te hanteer, tensy die klage teen die Hosprinsipaal is.

(3) 'n Klage moet—

- (a) gebaseer wees op een of meer van die gronde in subartikel (4) bedoel; en
- (b) gelê word by wyse van 'n beëdigde of plegtige verklaring, waarin uiteengesit word—
 - (i) die aard van die klage; en
 - (ii) die feite waarop die klage gebaseer is.

(4) Die gronde waarop 'n klage teen 'n regter gelê kan word, is enige een of meer van die volgende:

- (a) Onvermoë wat daartoe aanleiding gee dat 'n regter nie in staat is om die werkzaamhede wat met die regterlike amp gepaard gaan ooreenkomsdig heersende maatstawwe uit te voer nie, of uitermate onbevoegdheid, of growwe wangedrag, soos beoog in artikel 177(1)(a) van die Grondwet;

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- (b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13(5);
 (c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
 (d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17(8), imposed in terms of this Act; and
 (e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.

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Lesser complaints may be summarily dismissed

15. (1) (a) If the Chairperson or the Head of Court designated in terms of section 14(2) is of the view that the complaint falls within the parameters of the grounds set out in subsection (2), he or she must dismiss the complaint.

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(b) If the Head of Court designated in terms of section 14(2) is of the view that the complaint should not be dismissed under paragraph (a), he or she must refer the complaint to the Chairperson to be dealt with in terms of section 16 or 17.

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(2) A complaint must be dismissed if it—

- (a) does not fall within the parameters of any of the grounds set out in section 14(4);
 (b) does not comply substantially with the provisions of section 14(3);
 (c) is solely related to the merits of a judgment or order;
 (d) is frivolous or lacking in substance; or
 (e) is hypothetical.

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(3) If a complaint is dismissed in terms of subsection (1) by a Head of Court, that Head of Court must inform the Chairperson in writing of that dismissal and the reasons therefore.

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(4) If a complaint is dismissed in terms of subsection (1), the Chairperson must inform the complainant in writing of—

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- (a) the reasons for the dismissal; and
 (b) the right to appeal to the Committee against that dismissal in terms of subsection (5).

(5) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (1) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.

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Committee may recommend appointment of Tribunal in respect of impeachable complaints

16. (1) If the Chairperson is satisfied that, in the event of a valid complaint being established, it is likely to lead to a finding by the Commission that the respondent suffers from an incapacity, is grossly incompetent or is guilty of gross misconduct, as envisaged in section 14(4)(a), the Chairperson must—

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- (a) refer the complaint to the Committee in order to consider whether it should recommend to the Commission that the complaint should be investigated and reported on by a Tribunal; and
 (b) in writing, inform the respondent of the complaint.

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(2) If a complaint is referred to the Committee in terms of subsection (1) or section 15(1)(b) or section 17(4)(c) or 17(5)(c)(iii), the Chairperson must determine a time and a place for the Committee to meet in order to consider a recommendation envisaged in subsection (1)(a), and must inform the complainant and the respondent in writing that he or she may—

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- (b) Enige opsetlike of growwe nalatige verbreking van die Regterlike Gedragskode bedoel in artikel 12, met inbegrip van 'n versuim om aan 'n regulasie bedoel in artikel 13(5) te voldoen;
- (c) Die ontvangs, hou of verrigting van 'n ander winsbetrekking of ontvangs van enige gelde, emolumente of vergoeding of toelaes in stryd met artikel 11;
- (d) Enige opsetlike of growwe nalatige versuim om te voldoen aan 'n regstellende stap, beoog in artikel 17(8), wat ingevolge hierdie Wet opgelê is; en
- (e) Enige ander opsetlike of growwe nalatige gedrag, anders as gedrag in paragraaf (a) tot (d) beoog, wat nie versoenbaar is nie met, of onwaardig is vir, die bekleding van 'n regterlike amp, met inbegrip van enige gedrag wat benadelend is vir die onafhanklikheid, onpartydigheid, waardigheid, toeganklikheid, doeltreffendheid of geslaagdheid van die howe.

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Mindere klagtes kan summier afgewys word

15. (1) (a) Indien die Voorsitter of die Hofprinsipaal ingevolge artikel 14(2) aangewys van oordeel is dat die klagte binne die bestek val van die gronde in subartikel (2) uiteengesit, moet hy of sy die klagte afwys.

(b) Indien die Hofprinsipaal ingevolge artikel 14(2) aangewys van oordeel is dat die klagte nie kragtens paragraaf (a) afgewys moet word nie, moet hy of sy die klagte na die Voorsitter verwys om ingevolge artikel 16 of 17 gehanteer te word.

(2) 'n Klagte moet afgewys word indien dit—

- (a) nie binne die bestek van enige van die gronde in artikel 14(4) uiteengesit, val nie;
- (b) nie wesenlik aan die bepalings van artikel 14(3) voldoen nie;
- (c) slegs verband hou met die meriete van 'n hofuitspraak of bevel;
- (d) beuselagtig of nietig van aard is; of
- (e) hipoteties is.

(3) Indien 'n klagte ingevolge subartikel (1) deur 'n Hofprinsipaal afgewys word, moet daardie Hofprinsipaal die Voorsitter skriftelik inlig van die afwysing en die redes daarvoor.

(4) Indien 'n klagte ingevolge subartikel (1) afgewys word, moet die Voorsitter die klaer skriftelik inlig van—

- (a) die redes vir die afwysing; en
- (b) die reg om by die Komitee te appelleer teen daardie afwysing ingevolge subartikel (5).

(5) 'n Klaer wat ontevrede is met 'n besluit om 'n klagte ingevolge subartikel (1) af te wys, kan, binne een maand na kennisgewing van daardie besluit ontvang is, skriftelik by die Komitee teen daardie besluit appelleer, met uiteensetting van die gronde vir die appèl.

Komitee kan aanstelling van Tribunaal aanbeveel ten opsigte van ontslagbare klagtes

16. (1) Indien die Voorsitter tevreden is dat, in geval 'n geldige klagte uitgemaak word, dit waarskynlik aanleiding sal gee tot 'n bevinding deur die Kommissie dat die respondent aan 'n onvermoë ly, uitermate onbevoeg is of aan growwe wangedrag skuldig is, soos beoog in artikel 14(4)(a), moet die Voorsitter—

- (a) die klagte na die Komitee verwys ten einde te oorweeg of die Komitee by die Kommissie moet aanbeveel dat die klagte deur 'n Tribunaal ondersoek en oor gerapporteer moet word; en
- (b) die respondent skriftelik van die klagte inlig.

(2) Indien 'n klagte na die Komitee verwys is ingevolge subartikel (1) of artikel 15(1)(b) of artikel 17(4)(c) of 17(5)(c)(iii), moet die Voorsitter 'n tyd en 'n plek bepaal vir die Komitee om te vergader ten einde 'n aanbeveling beoog in subartikel (1)(a) te oorweeg, en die klaer en die respondent skriftelik mededeel dat hy of sy—

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- (a) submit a written representation for consideration by the Committee at that meeting; and
- (b) with the leave of the Chairperson, address the Committee at that meeting.
- (3) For the purpose of a meeting referred to in subsection (2), the Committee may request such further information from the complainant or any other person as it deems fit.
- (4) At the meeting referred to in subsection (2), the Committee must consider whether the complaint, if established, will *prima facie* indicate incapacity, gross incompetence or gross misconduct by the respondent, whereupon the Committee may—
- (a) refer the complaint to the Chairperson for an inquiry referred to in section 17(2); or
- (b) recommend to the Commission that the complaint should be investigated by a Tribunal.
- (5) The Committee must inform the complainant, the respondent and the Commission in writing of any decision envisaged in subsection (4) and the reasons therefore.
- (6) A meeting referred to in subsection (2) must be attended by at least three members of the Committee.

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Inquiry into serious, non-impeachable complaints by Chairperson or member of Committee**17. (1) If—**

- (a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or
- (b) a complaint is referred to the Chairperson in terms of section 15(1)(b) or section 16(4)(a), or section 18(4)(a)(ii), the Chairperson or a member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint.
- (2) Any inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation.
- (3) For the purpose of an inquiry referred to in subsection (2), the Chairperson or member concerned—
- (a) must invite the respondent to respond in writing or in any other manner specified, and within a specified period, to the allegations;
- (b) may obtain, in the manner that he or she deems appropriate, any other information which may be relevant to the complaint; and
- (c) must invite the complainant to comment on any information so obtained, and on the response of the respondent, within a specified period.
- (4) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, he or she must, on the strength of the information obtained by him or her in terms of subsection (3)—
- (a) dismiss the complaint;
- (b) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or
- (c) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.

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- (5) (a) If, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is of the opinion that a formal hearing is required in order to determine the merits of the complaint, he or she must determine a time and a place for a formal hearing and written notice of the hearing must, within a reasonable period before the date so determined, be given to the respondent and the complainant.
- (b) For purposes of a formal hearing contemplated in paragraph (a)—
- (i) the Chairperson or member concerned has all the powers of a Tribunal; and

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- (a) 'n skriftelike vertoe vir die Komitee se oorweging by daardie vergadering kan voorlê; en
 - (b) met die Voorsitter se verlof, die Komitee by die vergadering kan toespreek.
- (3) Vir die doel van 'n vergadering bedoel in subartikel (2), kan die Komitee die verdere inligting van die klaer of enige ander persoon versoek wat hy gepas vind.
- (4) By die vergadering bedoel in subartikel (2), moet die Komitee oorweeg of die klakte, indien dit uitgemaak word, *prima facie* aanduidend sal wees van onvermoë, uitermate onbevoegdheid of growwe wangedrag aan die kant van die respondent, waarna die Komitee—
- (a) die Klakte na die Voorsitter kan verwys vir 'n ondersoek bedoel in artikel 17(2); of
 - (b) by die Kommissie kan aanbeveel dat die klakte deur 'n Tribunaal ondersoek behoort te word.
- (5) Die Komitee moet die klaer, die respondent en die Kommissie skriftelik inlig van 'n besluit in subartikel (4) beoog en die redes daarvoor.
- (6) 'n Vergadering bedoel in subartikel (2) moet deur minstens drie lede van die Komitee hygewoon word.

Ondersoek na ernstige, nie-ontslagbare klagtes deur Voorsitter of Komiteelid 20

17. (1) Indien—

- (a) die Voorsitter tevrede is dat, in geval 'n geldige klakte uitgemaak word, die gepaste regstellende optrede beperk sal wees tot een of meer van die stappe in subartikel (8) beoog; of
 - (b) 'n klakte na die Voorsitter verwys word ingevolge artikel 15(1)(b) of artikel 16(4)(a), of artikel 18(4)(a)(ii), moet die Voorsitter of 'n Komiteelid deur die Voorsitter aangewys, ondersoek na die klakte instel ten einde die geldigheid van die klakte te bepaal.
- (2) 'n Ondersoek beoog in hierdie artikel word op 'n inkwisiatoriese wyse gehou en daar is geen onus op enige persoon om enige feit te bewys of te weerlê gedurende so 'n ondersoek nie.
- (3) Vir die doel van 'n ondersoek bedoel in subartikel (2)—
- (a) moet die Voorsitter of betrokke lid die respondent nooi om skriftelik of op enige ander bepaalde manier, en binne 'n bepaalde tydperk, op die bewerings te reageer;
 - (b) kan die Voorsitter of betrokke lid, op die wyse wat hy of sy gepas vind, enige ander inligting bekom wat relevant tot die klakte mag wees; en
 - (c) moet die Voorsitter of betrokke lid die klaer nooi om kommentaar te lewer op enige inligting aldus bekom, en op die reaksie van die respondent, binne 'n bepaalde tydperk.
- (4) Indien, na die stappe bedoel in subartikel (3), die Voorsitter of betrokke lid tevrede is dat dit nie redelikerwys waarskynlik is dat 'n formele verhoor oor die aangeleentheid tot die bepaling van die geldigheid van die klakte sal bydra nie, moet hy of sy, op grond van die inligting wat hy of sy ingevolge subartikel (3) bekom het—
- (a) die klakte awys;
 - (b) bevind dat die klakte uitgemaak is en dat die respondent opgetree het op 'n wyse wat onbetaamlik vir 'n regter is, en enige van die regstellende stappe in subartikel (8) bedoel aan die respondent oplê; of
 - (c) by die Komitee aanbeveel, om by die Kommissie aan te beveel dat die klakte deur 'n Tribunaal ondersoek behoort te word.
- (5) (a) Indien, na die stappe bedoel in subartikel (3), die Voorsitter of betrokke lid van mening is dat 'n formele verhoor aangewese is ten einde die geldigheid van die klakte te bepaal, moet hy of sy 'n tyd en 'n plek vir 'n formele verhoor bepaal en skriftelike kennis moet, binne 'n redelike tyd voor die datum aldus bepaal, aan die klaer en die respondent gegee word.
- (b) Vir doeleinades van 'n formele verhoor beoog in paragraaf (a)—
- (i) het die Voorsitter of betrokke lid al die bevoegdhede van 'n Tribunaal; en

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(ii) the provisions of sections 24, 26, 27, 28, 29, 30, 31 and 32 are applicable with the changes required by the context.	5
(c) Upon the conclusion of a formal hearing the Chairperson or member concerned must record his or her findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and his or her finding as to the merits of the complaint, and—	
(i) dismiss the complaint;	
(ii) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or	10
(iii) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal.	
(6) The Chairperson or member concerned must in writing inform the Committee, the complainant and the respondent of—	15
(a) a dismissal contemplated in subsection (4)(a) or (5)(c)(i); or	
(b) any finding and remedial steps contemplated in subsection (4)(b) or (5)(c)(ii); or	
(c) any recommendation contemplated in subsection 4(c) or (5)(c)(iii), and the reasons therefor.	20
(7) (a) A complainant who is dissatisfied with a decision to dismiss a complaint in terms of subsection (4)(a) or (5)(c)(i) may, within one month after receiving notice of that decision, appeal to the Committee in writing against that decision, specifying the grounds for the appeal.	
(b) A respondent who is dissatisfied with any finding or remedial steps contemplated in subsection (4)(b) or (5)(c)(ii) may, within one month after receiving notice of that finding and remedial steps, appeal to the Committee in writing against that finding or remedial steps or both such finding and remedial steps, specifying the grounds for the appeal.	25
(8) Any one or a combination of the following remedial steps may be imposed in respect of a respondent:	30
(a) Apologising to the complainant, in a manner specified.	
(b) A reprimand.	
(c) A written warning.	
(d) Any form of compensation.	35
(e) Subject to subsection (9), appropriate counselling.	
(f) Subject to subsection (9), attendance of a specific training course.	
(g) Subject to subsection (9), any other appropriate corrective measure.	
(9) The state shall not be responsible for any expenditure incurred as a result of, or associated with, any remedy referred to in subsection (8)(e), (f) or (g), unless such remedy was selected from a list of approved remedies or services compiled from time to time by the Minister, after consultation with the Chief Justice, and then only to the extent set out in that list.	40

Consideration of appeal by Committee

18. (1) The Committee must consider an appeal referred to in section 15(5) or 17(7) at a meeting determined by the Chairperson, and the Chairperson must inform the complainant and the respondent in writing—	45
(a) of the time and place of the meeting; and	
(b) that they may submit written representations within a specified period for consideration by the Committee.	50
(2) (a) A meeting referred to in subsection (1) must, subject to paragraph (c), be attended by at least three members of the Committee and be presided over by the Chairperson, but no member who made any decision or finding, or imposed any remedial step, that is the subject of the appeal, may participate in the consideration of the appeal.	55
(b) In the event of the absence of the Chairperson to preside in a specific appeal, the Chief Justice must appoint an acting chairperson from amongst the members of the Committee, to preside in that appeal.	

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- (ii) is die bepalings van artikels 24, 26, 27, 28, 29, 30, 31 en 32 van toepassing met die veranderings wat die samehang verg.
- (c) By die afsluiting van 'n formele verhoor moet die Voorsitter of betrokke lid sy of haar feitebevindings notuleer, met inbegrip van die samehangendheid en toereikendheid van die getuenis en die houding en geloofwaardigheid van enige getuie, en sy of haar bevinding betreffende die geldigheid van die klagte, en—
- (i) die klagte awys;
- (ii) bevind dat die klagte uitgemaak is en dat die respondent opgetree het op 'n wyse wat onbetaamlik vir 'n regter is, en enige van die regstellende stappe in subartikel (8) bedoel aan die respondent oplê; of
- (iii) by die Komitee aanbeveel, om by die Kommissie aan te bevel dat die klagte deur 'n Tribunaal ondersoek behoort te word.
- (6) Die Voorsitter of betrokke lid moet die Kommissie, die klaer en die respondent skriftelik in kennis stel van—
- (a) 'n awysing beoog in subartikel 4(a) of (5)(c)(i); of
- (b) enige bevinding en regstellende stappe beoog in subartikel 4(b) of (5)(c)(ii); of
- (c) enige aanbeveling bedoel in subartikel (4)(c) of (5)(c)(iii), en die redes daarvoor.
- (7) (a) 'n Klaer wat ontevrede is met 'n besluit om 'n klagte ingevolge subartikel (4)(a) of (5)(c)(i) af te wys kan, binne een maand na kennisgewing van daardie besluit ontvang is, skriftelik by die Komitee teen daardie besluit appelleer, met uiteensetting van die gronde vir die appèl.
- (b) 'n Respondent wat ontevrede is met enige bevinding of regstellende stappe beoog in subartikel (4)(b) of (5)(c)(ii) kan, binne een maand na kennisgewing van daardie bevinding en regstellende stappe ontvang is, skriftelik by die Komitee teen daardie bevinding of regstellende stappe of teen beide so 'n bevinding en regstellende stappe appelleer, met uiteensetting van die gronde vir die appèl.
- (8) Enige een of 'n kombinasie van die volgende regstellende stappe kan ten opsigte van 'n respondent opgelê word:
- (a) Verskoning aanbied aan die klaer, op 'n bepaalde wyse.
- (b) 'n Berispig.
- (c) 'n Skriftelike waarskuwing.
- (d) Enige vorm van vergoeding.
- (e) Behoudens subartikel 9, gepaste berading.
- (f) Behoudens subartikel 9, bywoning van 'n bepaalde opleidingskursus.
- (g) Behoudens subartikel 9, enige ander gepaste regstellende maatreël.
- (9) Die staat is nie aanspreeklik nie vir enige onkoste aangegaan as gevolg van, of wat verband hou met, enige regstellende stap bedoel in subartikel (8)(e), (f) of (g), tensy so 'n regstellende stap gekies is vanaf 'n lys van goedgekeurde stappe of dienste wat van tyd tot tyd deur die Minister na oorleg met die Hoofregter saamgestel word, en dan slegs in die mate wat in daardie lys uiteengesit word.

Oorweging van appèl deur Komitee

- 18. (1)** Die Komitee moet 'n appèl bedoel in artikel 15(5) of 17(7) oorweeg by 'n vergadering deur die Voorsitter bepaal, en die Voorsitter moet die klaer en die respondent skriftelik in kennis stel—
- (a) van die tyd en plek van die vergadering; en
- (b) dat hulle skriftelike vertoe binne 'n bepaalde tydperk vir oorweging deur die Komitee kan voorlê.
- (2) (a) 'n Vergadering bedoel in subartikel (1) moet, behoudens paragraaf (c), deur minstens drie lede van die Komitee bygewoon word en vind plaas onder voorsitterskap van die Voorsitter, maar geen lid wat 'n besluit of bevinding gemaak het, of 'n regstellende stap opgelê het, wat die onderwerp van die appèl is, mag deelneem aan die oorweging van die appèl nie.
- (b) Indien die Voorsitter weens afwesigheid nie by 'n bepaalde appèl kan voorsit nie, moet die Hoofregter vanuit die geledere van die Komitee 'n waarnemende voorsitter aanstel om by daardie appèl voor te sit.

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(c) If any member of the Committee is for any reason unable to participate in the consideration of an appeal in terms of this section and there are not at least three of the other members available to so participate in the appeal, the Chief Justice may appoint any judge as a temporary member of the Committee for the purpose of the consideration of such an appeal.

(3) At the meeting referred to in subsection (1), the Committee must consider—

(a) the reasons for—

(i) the dismissal against which the appeal is brought, as contemplated in section 15(4)(a) or 17(6)(a); or

(ii) the finding or remedial steps, or the finding and the remedial steps, as the case may be, against which the appeal is brought, as contemplated in section 17(6)(b);

(b) the grounds for the appeal, as contemplated in section 15(5) or 17(7)(a) or (b), as the case may be;

(c) any representations submitted in terms of subsection (1)(b); and

(d) such further written or oral argument, if any, as may be requested by the Committee.

(4) After consideration of an appeal in terms of subsection (3), the Committee must—

(a) in the case of an appeal against a dismissal of a complaint as contemplated in section 15(4)(a)—

(i) confirm the dismissal;

(ii) set aside the dismissal and refer the complaint to the Chairperson for an inquiry in terms of section 17; or

(iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19;

(b) in the case of an appeal against a dismissal of a complaint as contemplated in section 17(7)(a)—

(i) confirm the dismissal;

(ii) set aside the dismissal, and find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in section 17(8) on the respondent; or

(iii) set aside the dismissal and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19; or

(c) in the case of an appeal against a finding or remedial steps, or a finding and remedial steps as contemplated in section 17(7)(b)—

(i) set aside the decision concerned; or

(ii) confirm the decision or set aside the decision concerned and substitute it with an appropriate decision, with or without any amendment of the remedial steps imposed, if applicable; or

(iii) set aside the decision and recommend to the Commission that the complaint should be investigated by a Tribunal in terms of section 19.

(5) The Committee must in writing inform the complainant and the respondent of its decision in terms of subsection (4) and the reasons therefore.

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PART IV***Request to appoint Tribunal and consideration of Tribunal report by Commission*****Commission to request appointment of Tribunal**

19. (1) Whenever it appears to the Commission—

(a) on account of a recommendation by the Committee in terms of section 16(4)(b) or 18(4)(a)(iii), (b)(iii) or (c)(iii); or

(b) on any other grounds, that there are reasonable grounds to suspect that a judge—

(i) is suffering from an incapacity;

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(c) Indien 'n lid van die Komitee om enige rede nie beskikbaar is om deel te neem aan die oorweging van 'n appèl ingevolge hierdie artikel nie en daar nie minstens drie van die ander lede beskikbaar is om aldus deel te neem nie, kan die Hoofregter enige regter as 'n tydelike lid van die Komitee aanstel vir die doel van die oorweging van so 'n appèl.

(3) By die vergadering bedoel in subartikel (1), oorweeg die Komitee—

(a) die redes vir—

(i) die afwysing waarteen die appèl gebring word, soos beoog in artikel 15(4)(a) of 17(6)(a); of

(ii) die bevinding of regstellende stappe, of die bevinding en die regstellende stappe, na gelang van die geval, waarteen die appèl gebring word, soos beoog in artikel 17(6)(b);

(b) die gronde vir die appèl, soos beoog in artikel 15(5) of 17(7)(a) of (b), na gelang van die geval;

(c) enige vertoë ingevolge subartikel (1)(b) voorgelê; en

(d) die verdere skriftelike of mondelinge betoog, indien enige, wat deur die Komitee verlang mag word.

(4) Na oorweging van 'n appèl ingevolge subartikel (3), moet die Komitee—

(a) in die geval van 'n appèl teen die afwysing van 'n klagte soos beoog in artikel 15(4)(a)—

(i) die afwysing bevestig;

(ii) die afwysing ter syde stel en die klagte na die Voorsitter verwys vir 'n ondersoek ingevolge artikel 17; of

(iii) die afwysing ter syde stel en by die Kommissie aanbeveel dat die klagte ingevolge artikel 19 deur 'n Tribunaal ondersoek behoort te word;

(b) in die geval van 'n appèl teen die afwysing van 'n klagte soos beoog in artikel 17(7)(a)—

(i) die afwysing bevestig;

(ii) die afwysing ter syde stel, en bevind dat die klagte uitgemaak is en dat die respondent opgetree het op 'n wyse wat onbetaamlik vir 'n regter is, en enige van die regstellende stappe in artikel 17(8) bedoel aan die respondent oplê; of

(iii) die afwysing ter syde stel en by die Kommissie aanbeveel dat die klagte ingevolge artikel 19 deur 'n Tribunaal ondersoek behoort te word; of

(c) in die geval van 'n appèl teen 'n bevinding of regstellende stappe, of 'n bevinding en regstellende stappe soos beoog in artikel 17(7)(b)—

(i) die betrokke bevinding ter syde stel; of

(ii) die bevinding bevestig of die betrokke bevinding ter syde stel en dit met 'n gepaste bevinding vervang, met of sonder enige wysiging van die regstellende stappe opgelê, indien van toepassing; of

(iii) die bevinding ter syde stel en by die Kommissie aanbeveel dat die klagte ingevolge artikel 19 deur 'n Tribunaal ondersoek behoort te word.

(5) Die Komitee moet die klaer en die respondent skriftelik in kennis stel van sy bevinding ingevolge subartikel (4) en die redes daarvoor.

DEEL IV

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Versoek om Tribunaal aan te stel en oorweging van Tribunaal se verslag deur Kommissie

Kommissie moet aanstelling van Tribunaal versoek

19.(1) Wanneer ook al dit vir die Kommissie voorkom—

(a) uit hoofde van 'n aanbeveling van die Komitee ingevolge artikel 16(4)(b) of 18(4)(a)(iii), (b)(iii) or (c)(iii); of

(b) op enige ander gronde, dat daar redelike gronde is om te vermoed dat 'n regter—

(i) aan 'n onvermoë ly;

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- (ii) is grossly incompetent; or
- (iii) is guilty of gross misconduct,

as contemplated in section 177(1)(a) of the Constitution, the Commission must request the Chief Justice to appoint a Tribunal in terms of section 21.

(2) The Commission must in writing state the allegations, including any other relevant information, in respect of which the Tribunal must investigate and report.

(3) The Commission must, unless it is acting on a recommendation referred to in section 16(4)(c) or 18(4)(a)(iii), (b)(iii) or (c)(iii), before it requests the appointment of a Tribunal, inform the respondent, and, if applicable, the complainant, that it is considering to make that request and invite the respondent, and, if applicable, the complainant, to comment in writing on the fact that the Commission is considering to so request.

(4) Whenever the Commission requests the appointment of a Tribunal in terms of subsection (1), the Commission must forthwith in writing—

- (a) inform the President that it has so requested; and
- (b) advise the President as to—
 - (i) the desirability of suspending the respondent in terms of section 177(3) of the Constitution; and
 - (ii) if applicable, any conditions that should be applicable in respect of such suspension.

Commission to consider report and make findings

20. (1) The Commission must consider the report of a Tribunal at a meeting determined by the Chairperson, and the Commission must inform the respondent and, if applicable, the complainant, in writing—

- (a) of the time and place of the meeting; and
- (b) that he or she may submit written representations within a specified period for consideration by the Commission.

(2) At the meeting referred to in subsection (1) the Commission must consider—

- (a) the report concerned; and
- (b) any representations submitted in terms of subsection (1)(b).

(3) After consideration of a report and any applicable representations in terms of subsection (2), the Commission must make a finding as to whether the respondent—

- (a) is suffering from an incapacity;
- (b) is grossly incompetent; or (c) is guilty of gross misconduct.

(4) If the Commission finds that the respondent is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct, the Commission must submit that finding, together with the reasons therefore and a copy of the report, including any relevant material, of the Tribunal, to the Speaker of the National Assembly.

(5) If the Commission, after consideration of a report and any applicable representations in terms of subsection (2) finds that the respondent—

- (a) is not grossly incompetent, but that there is sufficient cause for the respondent to attend a specific training or counselling course or be subjected to any other appropriate corrective measure, the Commission may make a finding that the respondent must attend such a course or be subjected to such measure; or

- (b) is guilty of a degree of misconduct not amounting to gross misconduct, the Commission may, subject to section 17(9), impose any one or a combination of the remedial steps referred to in section 17(8)

(6) The Commission must in writing inform the respondent in respect of whom a finding referred to in subsection (4) or (5) is made, and, if applicable, the complainant, of that finding and the reasons therefore.

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- (ii) uitermate onbevoeg is; of
 - (iii) skuldig is aan growwe wangedrag,
soos beoog in artikel 177(1)(a) van die Grondwet, moet die Kommissie die Hoofregter versoek om 'n Tribunaal ingevolge artikel 21 aan te stel.
- (2) Die Kommissie moet skriftelik die bewerings stel, met inbegrip van enige ander relevante inligting, ten opsigte waarvan die Tribunaal ondersoek moet instel en verslag moet doen.
- (3) Die Kommissie moet, tensy hy optree op 'n aanbeveling bedoel in artikel 16(4)(c) of 18(4)(a)(iii), (b)(iii) (c)(iii), voordat hy die aanstelling van 'n Tribunaal versoek, die respondent en, indien toepaslik, die klaer, inlig dat hy oorweeg om daardie versoek te rig en die respondent en, indien toepaslik, die klaer, uitnooi om skriftelik kommentaar te lewer op die feit dat die Kommissie oorweeg om aldus te versoek.
- (4) Wanneer ook al die Kommissie die aanstelling van 'n Tribunaal ingevolge subartikel (1) versoek, moet die Kommissie onverwyd skriftelik—
- (a) die President inlig dat hy aldus versoek het; en
 - (b) die President adviseer oor—
 - (i) die wenslikheid daarvan om die respondent ingevolge artikel 177(3) van die Grondwet te skors; en
 - (ii) indien van toepassing, enige voorwaardes wat ten opsigte van so 'n skorsing van toepassing behoort te wees.

Kommissie moet verslag oorweeg en bevindings maak

- 20.** (1) Die Kommissie moet 'n Tribunaal se verslag oorweeg by 'n vergadering deur die Voorsitter bepaal, en die Kommissie moet die respondent en, indien van toepassing, die klaer, skriftelik inlig—
- (a) van die tyd en plek van die vergadering; en
 - (b) dat hy of sy binne 'n bepaalde tydperk skriftelike vertoë vir oorweging deur die Kommissie kan voorlê.
- (2) By 'n vergadering bedoel insubartikel (1) oorweeg die Kommissie—
- (a) die betrokke verslag; en
 - (b) enige vertoë ingevolge subartikel (1)(b) voorgelê.
- (3) Na oorweging van 'n verslag en enige toepaslike vertoë ingevolge subartikel (2), maak die Kommissie 'n bevinding oor die vraag of die respondent—
- (a) aan 'n onvermoë ly;
 - (b) uitermate onbevoeg is; of
 - (c) skuldig is aan growwe wangedrag.
- (4) Indien die Kommissie bevind dat die respondent aan 'n onvermoë ly, uitermate onbevoeg is of aan growwe wangedrag skuldig is, moet die Kommissie daardie bevinding, tesame met die redes daarvoor en 'n afskrif van die verslag, met inbegrip van enige relevante stukke van die Tribunaal, aan die Speaker van die Nasionale Vergadering voorlê.
- (5) Indien die Kommissie, na oorweging van 'n verslag en enige toepaslike vertoë ingevolge subartikel (2) bevind dat die respondent—
- (a) nie uitermate onbevoeg is nie, maar dat daar genoegsame gronde is vir die respondent om 'n bepaalde opleiding of berading kursus by te woon of aan 'n ander gepaste regstellende stap onderwerp te word, kan die Kommissie bevind dat die respondent so 'n kursus moet bywoon of aan sodanige stap onderwerp moet word; of
 - (b) skuldig is aan 'n graad van wangedrag wat nie op growwe wangedrag neerkom nie, kan die Kommissie, behoudens artikel 17(9), enige of 'n kombinasie van die regstellende stappe bedoel in artikel 17(8) ople.
- (6) Die Kommissie moet die respondent ten opsigte van wie 'n bevinding ingevolge subartikel (4) of (5) gemaak word, en, indien van toepassing, die klaer, skriftelik van daardie bevinding en die redes daarvoor inlig.

CHAPTER 3**JUDICIAL CONDUCT TRIBUNALS****Part 1***Introductory provisions*

Appointment of Tribunal	5
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21. (1) The Chief Justice must appoint a Judicial Conduct Tribunal, whenever requested to do so by the Commission.

(2) The Chief Justice must, after consultation with the Minister, designate a place in the Republic as the seat of each Tribunal established in terms of this Act, but a Tribunal may sit at any place for the purpose of a hearing or of deliberating.

(3) Before appointing any judge to a Tribunal, the Chief Justice must consult with the head of the court on which that judge serves.

(4) Upon appointing a Tribunal, the Chief Justice must give written notice of the composition, terms of reference, and seat of the Tribunal, and the date by which the Tribunal is to commence proceedings, to—

- (a) the members of the Tribunal
- (b) the Minister;
- (c) the respondent; and
- (d) the complainant.

(5) The Chief Justice—

- (a) must delegate the functions assigned to the Chief Justice in terms of this Part or section 10(2) to the Deputy Chief Justice, if the Chief Justice—
 - (i) is the respondent; or—
 - (ii) is personally implicated in the allegations against a judicial officer; and
- (b) may delegate any of the functions assigned to the Chief Justice in terms of this Part or section 29(2) to the Deputy Chief Justice, in any other case.

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Composition of Tribunal

22. (1) A Tribunal comprises—

- (a) two judges, one of whom must be designated by the Chief Justice as the Tribunal President; and
- (b) one person whose name appears on the list maintained in terms of section 23(1).

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(2) At least one member of every Tribunal must be a woman.

(3) If a vacancy arises among the members of a Tribunal, or if a member of a Tribunal for any reason becomes unable to continue to serve on the Tribunal, and—

- (a) there are at least two members remaining on the Tribunal, the Tribunal must continue its functions; or
- (b) in any other case—
 - (i) the Tribunal is dissolved;
 - (ii) the Chief Justice must appoint a new Tribunal; and
 - (iii) any evidence gathered by or submitted to the former Tribunal, and any record kept by the former Tribunal, may be considered by the new Tribunal.

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HOOFSTUK 3**REGTERLIKE GEDRAGSTRIBUNALE****Deel 1***Inleidende bepalings***Aanstelling van Tribunaal**

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21. (1) Die Hoofregter moet 'n Regterlike Gedragstribunaal aanstel wanneer ook al deur die Kommissie versoek om dit te doen.

(2) Die Hoofregter moet, na oorleg met die Minister, 'n plek in die Republiek aanwys as die setel van elke Tribunaal ingevolge hierdie Wet ingestel, maar 'n Tribunaal kan by enige plek sitting hou vir die doel van 'n verhoor of vir beraadslagting.

(3) Voor die aanstelling van 'n regter op 'n Tribunaal, moet die Hoofregter oorleg pleeg met die hofprinsipaal van die hof waarop daardie regter dien.

(4) By die aanstelling van 'n Tribunaal, moet die Hoofregter skriftelik kennis gee van die samestelling, mandaatsbeskrywing, en die setel van die Tribunaal, en die datum waarop die Tribunaal met sy werksaamhede moet begin, aan—

- (a) die lede van die Tribunaal;
- (b) die Minister;
- (c) die respondent; en
- (d) die klaer.

(5) Die Hoofregter—

(a) moet die funksies wat ingevolge hierdie Deel of artikel 10(2) aan die Hoofregter opgedra is, aan die Adjunkhoofregter deleger, indien die Hoofregter—

- (i) die respondent is; of
- (ii) persoonlik geïmpliseer word by die bewerings teen 'n regterlike beampie; en

(b) kan enige van die funksies wat ingevolge hierdie Deel of artikel 29(2) aan die Hoofregter opgedra is aan die Adjunkhoofregter deleger, in enige ander geval.

Samestelling van Tribunaal**22.** (1) 'n Tribunaal bestaan uit—

(a) twee regters, van wie een deur die Hoofregter as die Tribunaal-president aangewys moet word; en

(b) een persoon wie se naam verskyn op die lys wat ingevolge artikel 23(1) bygehou word.

(2) Minstens een lid van elke Tribunaal moet 'n vrou wees.

(3) Indien 'n vakature in die lidmaatskap van 'n Tribunaal ontstaan, of indien 'n lid om enige rede nie in staat bly om op die Tribunaal te dien nie, en—

(a) daar minstens twee lede op die Tribunaal oorbly, moet die Tribunaal voortgaan met sy werksaamhede; of

(b) in enige ander geval—

- (i) word die Tribunaal ontbind;
- (ii) moet die Hoofregter 'n nuwe Tribunaal aanstel; en
- (iii) kan enige getuenis wat deur die voormalige Tribunaal ingesamel is of aan hom voorgelê is, en enige oorkonde wat deur die voormalige Tribunaal gehou is, deur die nuwe Tribunaal oorweeg word.

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Act No. 20, 2008**JUDICIAL SERVICE COMMISSION
AMENDMENT ACT, 2008****Non-judicial members of tribunals**

23. (1) The Executive Secretary must, in the prescribed manner and form, establish and maintain a list of persons who are not judicial officers and who have been approved by the Chief Justice, acting with the concurrence of the Minister, as being suitable to serve on Tribunals in terms of section 22(1)(b).

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(2) The Minister, in consultation with the Cabinet member responsible for finance, may by notice in the *Gazette* prescribe a tariff of allowances to be paid for service as a member of a Tribunal to a person appointed in terms of section 22(1)(b).

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Tribunal investigative and administrative support

24. (1) The President of a Tribunal may, after consulting the Minister and the National Director of Public Prosecutions, appoint a member of the National Prosecuting Authority to collect evidence on behalf of the Tribunal, and to adduce evidence at a hearing;

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(2) The Executive Secretary in the Office of the Chief Justice must assign such other employees of the Office to the Tribunal as may be necessary to assist the Tribunal in the performance of its functions.

Rules and procedure

25. (1) The Chief Justice must make rules regulating procedures before a Tribunal.

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(2) Rules made under subsection (1)—

- (a) are applicable to all Tribunals;
- (b) may be amended or repealed at any time;
- (c) must be tabled in Parliament by the Minister before publication in the *Gazette*; and
- (d) must be published in the *Gazette*.

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(3) The first rules made under this section must be made within six months from the date of the commencement of this section.

(4) Subject to this Act, a Tribunal has the power to regulate and protect its own proceedings.

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PART 2***Hearings of Tribunal*****Objects and nature of Tribunal**

26. (1) The objects of a Tribunal are—

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(a) to inquire into allegations of incapacity, gross incompetence or gross misconduct against a judge, as contemplated in section 177 of the Constitution, by—

- (i) collecting evidence;
- (ii) conducting a formal hearing;
- (iii) making findings of fact; and
- (iv) making a determination on the merits of the allegations; and

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(b) to submit a report containing its findings to the Judicial Service Commission.

(2) A Tribunal conducts its inquiry in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact before a Tribunal.

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(3) When considering the merits of any allegations against a judge, the Tribunal must make its determination on a balance of probabilities.

(4) A Tribunal must keep a record of its proceedings.

Nie-regterlike lede van Tribunale

23. (1) Die Uitvoerende Sekretaris moet, op die voorgeskrewe wyse en vorm, 'n lys opstel en byhou van persone wat nie regterlike beampies is nie en wat deur die Hoofregter goedgekeur is, handelende met die instemming van Minister, as geskik om op Tribunale te dien ingevolge artikel 22(1)(b).

(2) Die Minister, in oorleg met die Kabinetsslid verantwoordelik vir finansies, kan by kennisgewing in die *Staatskoerant* 'n tarief van toelaes voorskryf wat betaalbaar is vir diens as 'n lid van 'n Tribunaal aan 'n persoon ingevolge artikel 22(1)(b) aangestel.

Ondersoekende en administratiewe ondersteuning van Tribunaal

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24. (1) 'n Tribunaalpresident kan, na oorleg met die Minister en die Nasionale Direkteur van Openbare Vervolgings, 'n lid van die Nasionale Vervolgingsgesag aanstel om getuenis ten behoeve van die Tribunaal in te samel, en om getuenis by 'n verhoor aan te bied.

(2) Die Uitvoerende Sekretaris in die Kantoor van die Hoofregter moet die anders werknemers van die Kantoor aan die Tribunaal toewys wat nodig mag wees ten einde die Tribunaal by die verrigting van sy werksaamhede by te staan.

Reëls en procedures

25. (1) Die Hoofregter moet reëls uitvaardig wat die procedures van 'n Tribunaal reguleer.

(2) Reëls kragtens subartikel (1) uitgevaardig—

- (a) is op alle Tribunale van toepassing;
- (b) kan te enige tyd gewysig of herroep word;
- (c) moet in die Parlement ter tafel gelê word deur die Minister voor publikasie in die *Staatskoerant*; en
- (d) moet in die *Staatskoerant* gepubliseer word.

(3) Die eerste reëls kragtens hierdie artikel uitgevaardig, moet binne ses maande vanaf die datum van die inwerkingtreding van hierdie artikel uitgevaardig word.

(4) Behoudens hierdie Wet, het 'n Tribunaal die bevoegdheid om sy eie verrigtings te reguleer en te beskerm.

DEEL 2**Verhore van Tribunaal****Oogmerke en aard van Tribunaal**

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26. (1) Die oogmerke van 'n Tribunaal is—

(a) om ondersoek in te stel na bewerings van onvermoë, uitermate onbevoegdheid of growwe wangedrag teen 'n regter, soos beoog in artikel 177 van die Grondwet, deur—

- (i) getuenis in te samel;
- (ii) 'n formeel verhoor te hou;
- (iii) feitebevindings te maak; en
- (iv) 'n bevinding oor die geldigheid van die bewerings te maak; en

(b) om 'n verslag waarin sy bevindings vervat is aan die Regterlike Dienskommissie voor te lê.

(2) 'n Tribunaal hou sy ondersoek op 'n inkwasatoriese wyse en daar is geen onus op enige persoon om enige feit te bewys of te weerlê voor 'n Tribunaal nie.

(3) By corweging van die geldigheid van enige bewerings teen 'n regter, moet die Tribunaal sy bevinding maak op 'n oorwig van waarskynlikhede.

(4) 'n Tribunaal moet 'n oorkonde hou van sy verrigtings.

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Hearing to begin and be concluded without unreasonable delay

27. (1) In the interests of protecting and enhancing the dignity and effectiveness of the judiciary and the courts, a Tribunal must—

(a) as soon as reasonably practicable after its appointment, determine a date, time and place for conducting a hearing in respect of the allegations referred to it; and

(b) conclude the hearing without unreasonable delay.

(2) Subject to subsection (1)(b), a Tribunal may adjourn its proceedings at any time, to any date, time and place.

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Involvement of judicial officer whose conduct is subject of hearing

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28. (1) Notice of a hearing must be served on the respondent within a reasonable period before the date set for that hearing.

(2) The respondent is entitled to attend the hearing and to be assisted by a legal representative, but the Tribunal may begin or continue a hearing, in whole or in part, in the absence of the respondent, or the respondent's legal representative, or both of them, if the Tribunal is satisfied that the respondent was properly informed of the hearing.

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(3) The respondent is entitled—

(a) to give and adduce evidence;

(b) to call witnesses, and to cross-examine any witness;

(c) to have access to any books, documents or other objects produced in evidence; and

(e) to make a submission to the Tribunal before the conclusion of the hearing.

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Attendance at hearing and disclosure of evidence

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29. (1) A hearing of a Tribunal may be attended only by—

(a) the respondent;

(b) the respondent's legal representative, if one has been appointed;

(c) any person who lodged a formal complaint against the respondent, if that complaint is related to the hearing;

(d) the legal representative of each person contemplated in paragraph (c);

(e) any person subpoenaed in terms of section 30, or called as a witness by the respondent, each of whom may attend—

(i) with or without a legal representative; and

(ii) only for the period that person is required by the Tribunal;

(f) any person contemplated in section 24(2), if that person's presence is required by the Tribunal; and

(g) any other person whose presence the Tribunal considers to be necessary or expedient.

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(2) Subject to sections 32 and 33, a person may not disclose to any other person the contents of a book, document or other object in the possession of a Tribunal or the record of any evidence given before a Tribunal, except to the extent that the Tribunal President, in consultation with the Chief Justice, determines otherwise.

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(3)(a) Notwithstanding subsection (1), the Tribunal President may, if it is in the public interest and for the purposes of transparency, determine that all or any part of a hearing of a Tribunal must be held in public.

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(b) A determination contemplated in paragraph (a) must be made in consultation with the Chief Justice.

(c) Subsection (2) does not apply if a determination is made under paragraph (a), but the Tribunal President may prohibit the publication of any information or document placed before the Tribunal if that publication is not in the public interest.

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**WYSIGINGSWET OP DIE
REGTERLIKE DIENSKOMMISSIE, 2008**

Wet No. 20, 2008

Verhoor sonder onredelike vertraging begin en afgehandel te word

27. (1) In die belang van die beskerming en bevordering van die waardigheid en doeltreffendheid van die howe, moet 'n Tribunaal—

- (a) so gou as wat redelikerwys moontlik is na sy aanstelling, 'n datum, tyd en plek bepaal vir die hou van 'n verhoor ten opsigte van die bewerings wat na hom verwys is; en
 - (b) die verhoor sonder onredelike vertraging afhandel.
- (2) Behoudens subartikel 1(b), kan 'n Tribunaal sy verrigtings verdaag tot enige datum, tyd en plek.

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Betrokkenheid van regterlike beampte wat onderwerp is van verhoor 10

28. (1) Kennisgewing van 'n verhoor moet aan die respondent beteken word binne 'n redelike tydperk voor die datum vir daardie verhoor bepaal.

(2) Die respondent is geregtig om die verhoor by te woon en om bygestaan te word deur 'nregsverteenwoordiger, maar die Tribunaal kan met 'n verhoor begin of voortgaan, hetsy in die geheel of gedeeltelik, in die afwesigheid van die respondent, of die respondent seregsverteenwoordiger, indien die Tribunaal tevrede is dat die respondent behoorlik van die verhoor ingelig is.

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(3) Die respondent is geregtig—

- (a) om getuenis te lever en aan te bied;
- (b) om getuies te roep, en om enige getuie te kruisondervra;
- (c) om toegang te geniet tot enige boeke, dokumente of ander voorwerpe wat by getuenis aangebied is; en
- (d) om 'n voorlegging aan die Tribunaal te doen voor die afsluiting van die verhoor.

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Bywoning van verhoor en bekendmaking van getuenis

29. (1) 'n Verhoor van 'n Tribunaal mag bygewoon word slegs deur—

- (a) die respondent;
- (b) die respondent seregsverteenwoordiger, indien een aangestel is;
- (c) enige persoon wat 'n formele klagte teen die respondent gelê het, indien daardie klage op die verhoor betrekking het;
- (d) dieregsverteenwoordiger van elke persoon bedoel in paragraaf (c);
- (e) enige persoon wat ingevolge artikel 30 gedagvaar is, of wat as getuie deur die respondent geroep is, elk van wie mag bywoon—
 - (i) net of sonder 'nregsverteenwoordiger; en
 - (ii) slegs vir die tydsduur wat daardie persoon deur die Tribunaal benodig word;
- (f) enige persoon beoog in artikel 24(2), indien daardie persoon se teenwoordigheid deur die Tribunaal verlang word; en
- (g) enige ander persoon wie se teenwoordigheid deur die Tribunaal as noodsaaklik of dienstig beskou word.

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(2) Behoudens artikels 32 en 33, mag 'n persoon nie aan 'n ander persoon die inhoud van 'n boek, dokument of ander voorwerp in die besit van 'n Tribunaal of die oorkonde van enige getuenis wat voor die Tribunaal afgelê is, bekend maak nie, behalwe in die mate waar toe die Tribunaalpresident, in oorleg met die Hoofregter, anders bepaal.

(3) (a) Neteenstaande subartikel (1), kan die Tribunaalpresident, indien dit in die openbare belang is of vir doeleindes van deursigtigheid, bepaal dat die geheel of enige deel van 'n verhoor in die openbaar gehou moet word.

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(b) 'n Bepaling in paragraaf (a) beoog, word in oorleg met die Hoofregter gemaak.

(c) Subartikel (2) is nie van toepassing indien 'n bepaling kragtens paragraaf (a) gemaak word nie, maar die Tribunaalpresident kan die publikasie verbied van enige inligting of dokument wat voor die Tribunaal geplaas is indien daardie publikasie nie in die openbare belang is nie.

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Tribunal may subpoena witnesses

30. A Tribunal may subpoena any person to appear before it in person at a hearing and—

- (a) to produce any book, document, statement or object relating to the hearing; and
- (b) to answer questions under oath or affirmation.

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Evidence to be given under oath or affirmation

31. (1) No person may testify before, or be questioned by, a Tribunal unless the oath or affirmation that is usually administered or accepted in a court of law, has been administered to or accepted from that person by the Tribunal or, if evidence is to be given by such person through an interpreter, by the Tribunal through the interpreter.

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(2) An oath or affirmation administered to or accepted from a person in terms of subsection (1) remains binding on that person until the Tribunal has concluded the hearing or finally excused that person.

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(3) A person giving evidence at a hearing of the tribunal must answer any relevant question.

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(4) A tribunal may order a person giving evidence to answer any question, or to produce any article or document, even if it is self-incriminating to do so.

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(5) A self-incriminating answer given or statement made by a person giving evidence to a Tribunal in terms of this Act is inadmissible as evidence against that person in any criminal proceedings against that person instituted in any court, except in criminal proceedings for perjury, or in which that person is tried for an offence contemplated in section 34(1)(b), and then such an answer or statement is admissible only to the extent that it is relevant to prove the offence charged.

Evidence disclosing offence

32. If the Tribunal is of the opinion that evidence before the Tribunal discloses the commission of an offence by the respondent, the Tribunal President must notify the National Director of Public Prosecutions accordingly during or after the hearing and cause a copy of the record or the relevant part of the record in question to be submitted to the National Director of Public Prosecutions.

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Findings and report

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33. (1) Upon the conclusion of a hearing, the Tribunal must—

- (a) record its findings of fact, including the cogency and sufficiency of the evidence and the demeanour and credibility of any witness, and its findings as to the merits of the allegations in question; and

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- (b) submit a report to the Judicial Service Commission, containing—
 - (i) its findings and the reasons for them;
 - (ii) a copy of the record of the hearing; and
 - (iii) all other relevant documents.

(2) The Tribunal must submit a copy of its report, and all other relevant documents, to the Chief Justice for safekeeping.

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Tribunaal kan getuies dagvaar

30. 'n Tribunaal kan enige persoon dagvaar om self voor hom te verskyn by 'n verhoor en—

- (a) om enige boek, dokument, verklaring of voorwerp voor te lê wat op die verhoor betrekking het; en
- (b) om vrae onder eed of bevestiging te beantwoord.

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Getuienis onder eed of bevestiging afgelê te word

31. (1) Niemand mag getuienis afgelê voor, of ondervra word deur, 'n Tribunaal nie tensy die eed of bevestiging wat normaalweg deur 'n gereghof opgelê of aanvaar word, aan daardie persoon opgelê of van hom of haar aanvaar is deur die Tribunaal of, indien getuienis deur daardie persoon deur middel van 'n tolk aangebied staan te word, deur die Tribunaal deur middel van die tolk.

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(2) 'n Eed of bevestiging opgelê aan of aanvaar van 'n persoon ingevolge subartikel (1) bly op daardie persoon bindend totdat die Tribunaal die verhoor afgesluit het of daardie persoon finaal verskoon het.

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(3) 'n Persoon wat getuienis lewer by 'n verhoor van 'n Tribunaal moet enige relevante vraag beantwoord.

(4) 'n Tribunaal kan 'n persoon wat getuienis lewer, gelas om enige vraag te beantwoord, of om enige voorwerp of dokument voor te lê, selfs indien dit self-inkriminerend sal wees om so te doen.

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(5) 'n Self-inkriminerende antwoord gegee of verklaring gemaak deur 'n persoon wat ingevolge hierdie Wet getuienis lewer voor 'n Tribunaal, is nie toelaatbaar as getuienis teen daardie persoon in enige strafregtelike verrigtings teen daardie persoon in 'n hof ingestel nie, behalwe in strafregtelike verrigtings vir meineed, of waarin daardie persoon verhoor word vir 'n misdryf bedoel in artikel 34(1)(b), en dan is so 'n antwoord of verklaring toelaatbaar slegs in die mate waartoe dit relevant is om die ten laste gelegde misdryf te bewys.

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Getuienis wat misdryf openbaar

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32. Indien 'n Tribunaal van mening is dat getuienis voor die Tribunaal die pleging van 'n misdryf deur die respondent openbaar moet die Tribunaalpresident die Nasionale Direkteur van Openbare Vervolgings gedurende of na afloop van die verhoor dienooreenkomsdig in kennis stel en 'n afskrif van die oorkonde of die relevante gedeelte van die betrokke oorkonde aan die Nasionale Direkteur van Openbare Vervolgings laat voorlê.

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Bevindings en verslag

33. (1) By die afsluiting van 'n verhoor, moet die Tribunaal—

(a) sy feitebevindings notuleer, met inbegrip van die samehangendheid en toereikendheid van die getuienis en die houding en geloofwaardigheid van enige getuie, en sy bevindings betreffende die geldigheid van die betrokke bewerings;

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(b) 'n verslag aan die Registerlike Dienskommissie voorlê, bevattende—

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- (i) sy bevindings en die redes daarvoor;
- (ii) 'n afskrif van die oorkonde van die verhoor; en
- (iii) alle ander relevante dokumente.

(2) Die Tribunaal moet 'n afskrif van sy verslag, en alle ander relevante dokumente, aan die Hoofregter voorlê vir veilige bewaring.

PART 3*Offences relating to Tribunals***Offences**

34. (1) A person is guilty of an offence in terms of this Act if the person—

- (a) having been subpoenaed in terms of section 29 to appear before a Tribunal, fails without reasonable excuse to—
 - (i) attend a hearing of a Tribunal;
 - (ii) remain in attendance until excused by the Tribunal; or
 - (iii) produce any book, document, statement or object relating to the hearing which he or she has been subpoenaed to produce;
- (b) having taken an oath or affirmation as a witness—
 - (i) refuses to answer a question; or
 - (ii) knowingly provides false information to the Tribunal;
- (c) wilfully hinders or obstructs a Tribunal in the performance of its functions; or
- (d) other than as contemplated in section 29(2), or in the performance of a function in terms of this Act, wilfully or negligently discloses to any other person the contents of a book, document or other object in the possession of a Tribunal or the record of any evidence given before a Tribunal.

(2) Any person who is convicted of an offence in terms of this Act is liable to a fine or to imprisonment for a period not exceeding five years.

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CHAPTER 4

MISCELLANEOUS PROVISIONS

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Regulations

35. (1) The Minister—

- (a) must make the regulations required to be made in terms sections 13 of this Act; and
- (b) may make regulations regarding any matter that may be necessary or expedient to prescribe regarding—
 - (i) the finances and financial management and accountability of the Commission and Office of the Registrar of Judges Registrable Interests;
 - (ii) the manner in which a judge may apply for written consent of the Minister as contemplated in section 11 (1) and (2); and
 - (iii) the administration and functioning of the Commission or Conduct Committee, the Secretariat of the Commission, or any other aspect of this Act.

(2) Any regulation made under this section must be tabled in Parliament before publication thereof in the *Gazette*.

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Finances and accountability

36. (1) Expenditure in connection with the administration and functioning of the Commission must be defrayed from monies appropriated by Parliament for this purpose to the Department of Justice and Constitutional Development vote (hereinafter referred to as the Departmental vote) in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

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- (2) Monies appropriated by Parliament for this purpose—
- (a) constitute earmarked funds on the Departmental vote; and

DEEL 3*Misdrywe betreffende Tribunale***Misdrywe**

34. (1) 'n Persoon is skuldig aan 'n misdryf ingevolge hierdie Wet indien die persoon—

- (a) indien gedagvaar ingevolge artikel 29 om voor 'n Tribunaal te verskyn, sonder redelike verskoning in gebreke bly om—
 - (i) 'n verhoor van die Tribunaal by te woon;
 - (ii) teenwoordig te bly totdat hy of sy deur die Tribunaal verskoon is; of
 - (iii) enige boek, dokument, verklaring of voorwerp voor te lê betreffende die verhoor wat hy of sy gedagvaar is om voor te lê;
- (b) na aflegging van die eed of bevestiging as 'n getuie—
 - (i) weier om 'n vraag te beantwoord; of
 - (ii) bewustelik vals inligting aan die Tribunaal verskaf;
- (c) opsetlik 'n Tribunaal hinder of dwarsboom by die verrigting van sy werkzaamhede; of
- (d) anders as beoog in artikel 29(2), of by die uitvoering van 'n werkzaamheid ingevolge hierdie Wet, opsetlik of nalatiglik aan 'n ander persoon die inhoud van 'n boek, dokument of ander voorwerp in die besit van 'n Tribunaal of die oorkonde van enige geuienis voor 'n Tribunaal gelewer, bekend maak.

(2) 'n Persoon wat skuldig bevind word aan 'n misdryf ingevolge hierdie Wet is strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van nie meer nie as vyf jaar.

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HOOFTUK 4**DIVERSE BEPALINGS****Regulasies**

35. (1) Die Minister—

- (a) moet die regulasies uitvaardig wat ingevolge artikel 13 van hierdie Wet nodig is om uitgevaardig te word; en
- (b) kan regulasies uitvaardig betreffende enige aangeleentheid wat nodig of dienstig mag wees om voor te skryf betreffende—
 - (i) die finansiële bestuur en verantwoordingspligtigheid van die Kommissie en Kantoor van die Registrateur van Regters se Registreerbare Belange;
 - (ii) die wyse waarop 'n regter kan aansoek doen om skriftelike toestemming van die Minister soos beoog in artikel 11(1) en (2); en
 - (iii) die administrasie en funksionering van die Kommissie of Gedragskomitee, die Sekretariaat van die Kommissie, of enige ander aspek van hierdie Wet.

(2) 'n Regulasie kragtens hierdie artikel uitgevaardig, moet in die Parlement ter tafel gelê word voor publikasie daarvan in die *Staatskoerant*.

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Finansies en verantwoordingspligtigheid

36. (1) Uitgawes in verband met die administrasie en funksionering van die Kommissie word bestry uit gelde wat die Parlement vir hierdie doel bewillig aan die begroting van die Departement van Justisie en Staatkundige Ontwikkeling (hierna die Departementele begroting genoem) ingevolge die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

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(2) Gelde deur die Parlement vir hierdie doel bewillig—

- (a) is bestemde fondse op die Departementele begroting; en

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(b) may not be used by the Department for any other purpose, without the approval of Treasury and the Chief Justice as Chairperson of the Commission.

(3) The Minister must consult with the Chief Justice on the funds required for the administration and functioning of the Commission, as part of the budgetary process of departments of state, in the manner prescribed.

(4) Subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999), the Director-General of the Department—

(a) is charged with the responsibility of accounting for monies received or paid out for or on account of the administration and functioning of the Commission; and

(b) must cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

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Secretariat of Commission

37. (1) The Executive Secretary in the Office of the Chief Justice must assign an appropriate number of personnel, one of whom must be designated as the Secretary of the Commission, from the staff in the Office of the Chief Justice to provide administrative support to the Commission.

(2) Subject to section 36, the Secretary of the Commission, under the supervision, control and direction of the Executive Secretary, must—

(a) provide secretarial and administrative services to the Commission, the Committee and any Tribunal;

(b) cause all records of matters dealt with by the Commission in terms of this Act to be safeguarded;

(c) maintain a register of all complaints dealt with in terms of Chapter 2;

(d) perform such functions as may from time to time be prescribed; and

(e) generally, perform such secretarial and administrative tasks related to the work of the Commission, Committee or any Tribunal, as may from time to time be directed by the Chief Justice.

(3) Subject to section 36, the Registrar of Judges' Registrable Interests, under the supervision, control and direction of the Chief Justice, must—

(a) maintain the Register of Judges' Registrable Interests;

(b) cause all records of matters dealt in relation to the Register in terms of this Act to be safeguarded;

(c) perform such functions as may from time to time be prescribed; and

(d) generally, perform such secretarial and administrative tasks related to maintenance of the Register, as may from time to time be directed by the Chief Justice.

Protection of confidential information

38. (1) No person, including any member of the Commission, Committee, or any Tribunal, or Secretariat of the Commission, or Registrar or his or her staff, may disclose any confidential information or confidential document obtained by that person in the performance of his or her functions in terms of this Act, except—

(a) to the extent to which it may be necessary for the proper administration of any provision of this Act;

(b) to any person who of necessity requires it for the performance of any function in terms of this Act;

(c) when required to do so by order of a court of law; or

(d) with the written permission of the Chief Justice.

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- (b) mag nie sonder die toestemming van Tesourie en die Hoofregter as Voorsitter van die Kommissie, vir enige ander doel deur die Departement aangewend word nie.
- (3) Die Minister moet oorleg pleeg met die Hoofregter oor die fondse wat benodig word vir die administrasie en funksionering van die Kommissie, as deel van die begrotingsproses van staatsdepartemente, op die voorgeskrewe wyse.
- (4) Behoudens die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), is die Direkteur-generaal van die Departement—
 - (a) belas met die verantwoordelikheid van rekenpligtigheid vir gelde ontvang of uitbetaal vir of as gevolg van die administrasie en funksionering van die Kommissie; en
 - (b) verantwoordelik om die nodige rekenkundige en ander verwante rekords te laat hou, welke rekords deur die Ouditeur-generaal geoudit moet word.

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Sekretariaat van Kommissie

37. (1) Die Uitvoerende Sekretaris in die Kantoor van die Hoofregter moet 'n gepaste aantal personeellede toewys, van wie een as die Sekretaris van die Kommissie aangewys moet word, vanuit die personeel van die Kantoor van die Hoofregter om administratiewe ondersteuning aan die Kommissie te bied.

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(2) Behoudens artikel 36, moet die Sekretaris van die Kommissie, onder die toesig, beheer en leiding van die Uitvoerende Sekretaris—

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- (a) sekretariële en administratiewe dienste aan die Kommissie, die Komitee en enige Tribunaal lewer;
- (b) alle rekords van aangeleenthede wat ingevolge hierdie Wet deur die Kommissie gehanteer is, in veilige bewaring laat hou;
- (c) 'n register byhou van alle klagtes ingevolge Hoofstuk 2 gehanteer;
- (d) die werksaamhede verrig wat van tyd tot tyd voorgeskryf mag word; en
- (e) in die algemeen, sodanige sekretariële en administratiewe take verrig wat verband hou met die werksaamhede van die Kommissie, Komitee of enige Tribunaal, as wat van tyd tot tyd deur die Hoofregter aangedui mag word.

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(3) Behoudens artikel 36, moet die Registrateur van Regters se Registreerbare Belange, onder die toesig, beheer en leiding van die Hoofregter—

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- (a) die Register van Regters se Registreerbare Belange byhou;
- (b) die rekords van alle aangeleenthede betreffende die Register wat ingevolge hierdie Wet gehanteer is, in veilige bewaring laat hou;
- (c) die werksaamhede verrig wat van tyd tot tyd voorgeskryf mag word; en
- (d) in die algemeen, sodanige sekretariële en administratiewe take verrig wat verband hou met die byhou van die Register, as wat van tyd tot tyd deur die Hoofregter aangedui mag word.

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Bewaring van vertroulike inligting

38. (1) Geen persoon, met inbegrip van 'n lid van die Kommissie, Komitee, of enige Tribunaal, of Sekretariaat van die Kommissie, of Registrateur of sy of haar personeel, mag enige vertroulike inligting of vertroulike dokument wat in die loop van sy of haar werksaamhede ingevolge hierdie Wet deur daardie persoon bekom is, bekend maak nie, behalwe—

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- (a) in die mate waartoe dit nodig mag wees vir die behoorlike toepassing van enige bepaling van hierdie Wet;
- (b) aan 'n persoon wat dit nodig het vir die uitvoering van 'n werksaamheid ingevolge hierdie Wet;
- (c) wanneer verlang word om dit te doen deur 'n bevel van 'n gereghof; of
- (d) met die skriftelike toestemming van die Hoofregter.

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(2) Any person who contravenes a provision of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(3) Every member of the Commission, the Committee, any Tribunal and every member of the secretariat of the Commission and Office of the Registrar must, in the prescribed manner—

- (a) before assuming office or duty; or
- (b) if he or she is holding such office on the date of the commencement of this section, make and subscribe to an affirmation of secrecy in the following form:

“I, solemnly declare:

- (a) **I have taken cognizance of the provisions of section 38(1) and (2) of the Judicial Service Commission Act, 1994.**
 - (b) **I understand that I may not disclose any confidential information or document obtained by me in the performance of my functions in terms of that Act, except in accordance with the provisions of section 38(1) of the Act.**
 - (c) **I am fully aware of the serious consequences which may follow any breach or contravention of the above-mentioned provisions.**
- (Signature)”.**

(4) Any person who wilfully or negligently in any manner discloses any confidential information that came to his or her knowledge by means of a person who conveyed that information in contravention of subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment not exceeding a period of five years.”.

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Substitution of long title of Act 9 of 1994

10. The following long title is substituted for the long title of the principal Act:

“ACT

To regulate matters incidental to the establishment of the Judicial Service Commission by the Constitution of the Republic of South Africa, [1993] 1996; to establish the Judicial Conduct Committee to receive and deal with complaints about judges; to provide for a Code of Judicial Conduct which serves as the prevailing standard of judicial conduct which judges must adhere to; to provide for the establishment and maintenance of a register of judges’ registrable interests; to provide for procedures for dealing with complaints about judges; to provide for the establishment of Judicial Conduct Tribunals to inquire into and report on allegations of incapacity, gross incompetence or gross misconduct against judges; and to provide for matters connected therewith.”.

Short title

11. This Act is called the Judicial Service Commission Amendment Act, 2008, and comes into operation on a date fixed by the President by Proclamation in the *Gazette*.

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(2) Enige persoon wat 'n bepaling van subartikel (1) oortree, is skuldig aan 'n misdryf en strafbaar by skuldigbevinding met 'n boete of met gevangenisstraf vir 'n tydperk van nie meer nie as vyf jaar.

(3) Elke lid van die Kommissie, die Komitee, enige Tribunaal en elke lid van die Sekretariaat van die Kommissie en Kantoor van die Registrateur moet, op die voorgeskrewe wyse—

- (a) voor in die amp of diens begin word; of
- (b) indien hy of sy die amp beklee op die datum van die inwerkingtreding van hierdie artikel,

'n bevestiging van geheimhouding in die volgende vorm aflê en dit onderskryf:

'Ek, verklaar plegtig:

- (a) **Ek het kennis geneem van die bepalings van artikel 38(1) en (2) van die Wet op die Regterlike Dienskommissie, 1994.**
- (b) **Ek verstaan dat ek nie enige vertroulike inligting of dokument wat deur my in die uitvoering van my werksaamhede ingevolge daardie Wet bekom is, mag bekend maak nie, behalwe ooreenkomsdig die bepalings van artikel 38(1) van die Wet.**
- (c) **Ek is ten volle bewus van die ernstige gevolge wat meegebring kan word deur enige verbreking of oortreding van die bovermelde bepalings.**
(Handtekening).

(4) Enige persoon wat opsetlik of op nalatige wyse op enige manier vertroulike inligting bekend maak wat tot sy of haar kennis gekom het deur middel van 'n persoon wat daardie inligting teenstrydig met subartikel (1) oorgedra het, is skuldig aan 'n misdryf en strafbaar by skuldigbevinding met 'n boete of met gevangenisstraf vir 'n tydperk van nie meer nie as vyf jaar.'.

Vervanging van lang titel van Wet 9 van 1994

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10. Die lang titel van die Hoofwet word deur die volgende lang titel vervang:

"Wet

Tot reëling van aangeleenthede bykomstig by die instelling van die Regterlike Dienskommissie deur die Grondwet van die Republiek van Suid-Afrika, [1993] 1996; om die Regterlike Gedragskomitee in te stel om klagtes oor regters te ontvang en te hanteer; om voorsiening te maak vir 'n Regterlike Gedragskode wat dien as die heersende maatstaf vir regterlike gedrag waarby regters moet hou; om voorsiening te maak vir die instelling en byhou van 'n register van regters se registreerbare belang; om voorsiening te maak vir procedures om klagtes oor regters te hanteer; om voorsiening te maak vir die instelling van Regterlike Gedragstribunale om onderzoek in te stel na en verslag te doen oor bewerings van onvermoë, uitermate onbevoegdheid of growwe wangedrag teen regters; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan."

Kort titel

11. Hierdie Wet is die Wysigingswet op die Regterlike Dienskommissie, 2008, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.