司法倫理（外國篇）

法務部司法官學院　編印

正己　才能正人

法律是規範人民行為的準則，司法則是伸張正義維持社會秩序的力量。司法官每個決定都與民眾權益息息相關，會影響社會大眾的價值觀念，引領人們的行為舉止，甚至左右國家社會的未來發展。所以堅持人權之保障及公平正義之實現，本於良知做出明智的判斷，為人民指出正確的方向，是司法官無可迴避的重責大任。

為達成以上使命，司法官除了具有法律專業職能外，更應廉潔自持，重視榮譽，舉止端莊，交遊謹慎，謹守分際，有所不為，有所不取，生活清簡，不受物質迷惑，隨時反省惕勵，才能培養高尚的品操，贏得民眾的信任，提昇人民對於司法之信賴。

本部司法官學院肩負培育司法官之任務，在林前院長輝煌指導下，於民國 92 年輯成「司法倫理資料彙編」一書供作學員教材。95 年間增補內容，更名為「司法倫理」，101 年再度充實內容改版，資料更加豐富。現任蔡院長清祥指示再蒐集添增文獻資料，編為本國篇及外國篇等上、下 2 冊，方便學員研讀收藏，也供法官、檢察官及其他司法人員做為執行職務行為準則之重要參考。

值此新輯付梓，期盼所有司法官學員，無論投入司法工作多久，切記莫忘初衷。只要保持熱情及勇氣，堅持不懈，必能從中學習成長，獲得成就，同時由挑戰中領略樂趣。期待大家在司法領域中不斷精進，成為司法機關之中流砥柱。

法務部部長 羅瑩雪 謹識

中華民國 104 年 7 月 2 日

Those who can command themselves command others.

Law is to govern people's behavior while judicatory is the authorities to uphold justice and maintain social order. Every decision a judiciary make has an impact on the rights of parties involved, influences morale ethics of the public, guides people's behaviors or even sways the future of the country. Therefore, it is the judiciary's mandatory responsibilities to protect human rights, achieve justice, make conscientious decisions and indicate people the correct direction.

To achieve these missions, the judiciary, apart from maintaining professional competence, should contain oneself, uphold integrity, act solemnly, avoid impropriety, choose friends wisely, observe standards, lead a simple life, and introspect oneself constantly to have decent characters and promotes public confidence in the judiciary system.

The Academy for the Judiciary, Ministry of Justice is in charge of nurturing judiciaries. In 2003, under the supervision of the then president, Dr. Lin Huei-huang, "Compilation of Judicial Ethics Cases" was published as trainees' reference. In 2006, with replenished content, the book was renamed as "Judicial Ethics" and the 2012 edition was further expanded. Now, under the instruction of current President Tsai Ching- hsiang, more literature and cases have been added and the book is divided into 2 volumes: domestic and foreign cases. It is a useful reference to the code of conduct for not only trainees but also serving judges, prosecutors and other legal personnel.

Hope all the trainees never forget their original intentions to join the profession. With passion, courage and persistence, one may develop a sense of accomplishment and enjoy challenges encountered. I anticipate all the trainees to keep advancing themselves and become the mainstay in judicial field.

Minister of Ministry of Justice
Luo Ying-shay
July 2, 2015

改版序

司法官學院職司司法官養成教育，除專注於司法官學員專業領域實務能力之培養、增長外，亦致力於將司法倫理深化於課程中，希冀司法官學員得以將司法倫理核心概念吸納為其全人格之一部分，於未來職業生涯中，行止均能維護職位尊嚴，廉潔自持、莊重謹慎、適切合宜。

為達上開目標，司法官學院所編纂之教材，除已編印之以國內司法倫理規範及案例為核心之《司法倫理講義》外，另一重要參考資料，即為收錄、翻譯各國司法官倫理規範之本書《司法倫理（外國篇）》。慮及本書關於美國法官行為守則、國家追訴準則、刑事司法準則，與加拿大法官倫理守則，均有增修，而聯合國毒品及犯罪問題辦公室亦陸續發布法官使用社群媒體討論指引、非拘束性指南，另歐洲人權法院亦通過司法倫理之決議，極具參考價值，為期與時俱進以完善本書，爰由司法官學院全體導師協力分工翻譯校對、更正錯漏，且為求閱讀、參照之便利，將本書排版改為中、英文跨頁對照，終完成本書全新改版之面貌，對於專任導師林季緯法官、吳若萍法官、王筑萱法官、莊哲誠法官、劉奕榔法官、田雅心法官、蔡逸品檢察官、林希鴻檢察官、林書伃檢察官、曾柏涵檢察官、謝幸容檢察官、蔡少勳檢察官及楊舒雯檢察官之辛苦付出，特誌於此，以申謝忱。

「天下何思何慮？天下同歸而殊塗，一致而百慮。天下何思何慮！」《易經・繫辭下》，國際間對於司法倫理相關規範之建立，思維角度或有不同，立論或亦寬嚴有別，但均係為達建立司法正直廉潔、可受信賴之一致理想目標。期勉學員們藉由觀覽、比較、分析本書所蒐集之國際

司法倫理規範，能爬梳貫穿其中之重要精神，融為心中倫理概念成長、茁壯之根基與養分。

司法官學院院長  謹識

2024 年 12 月

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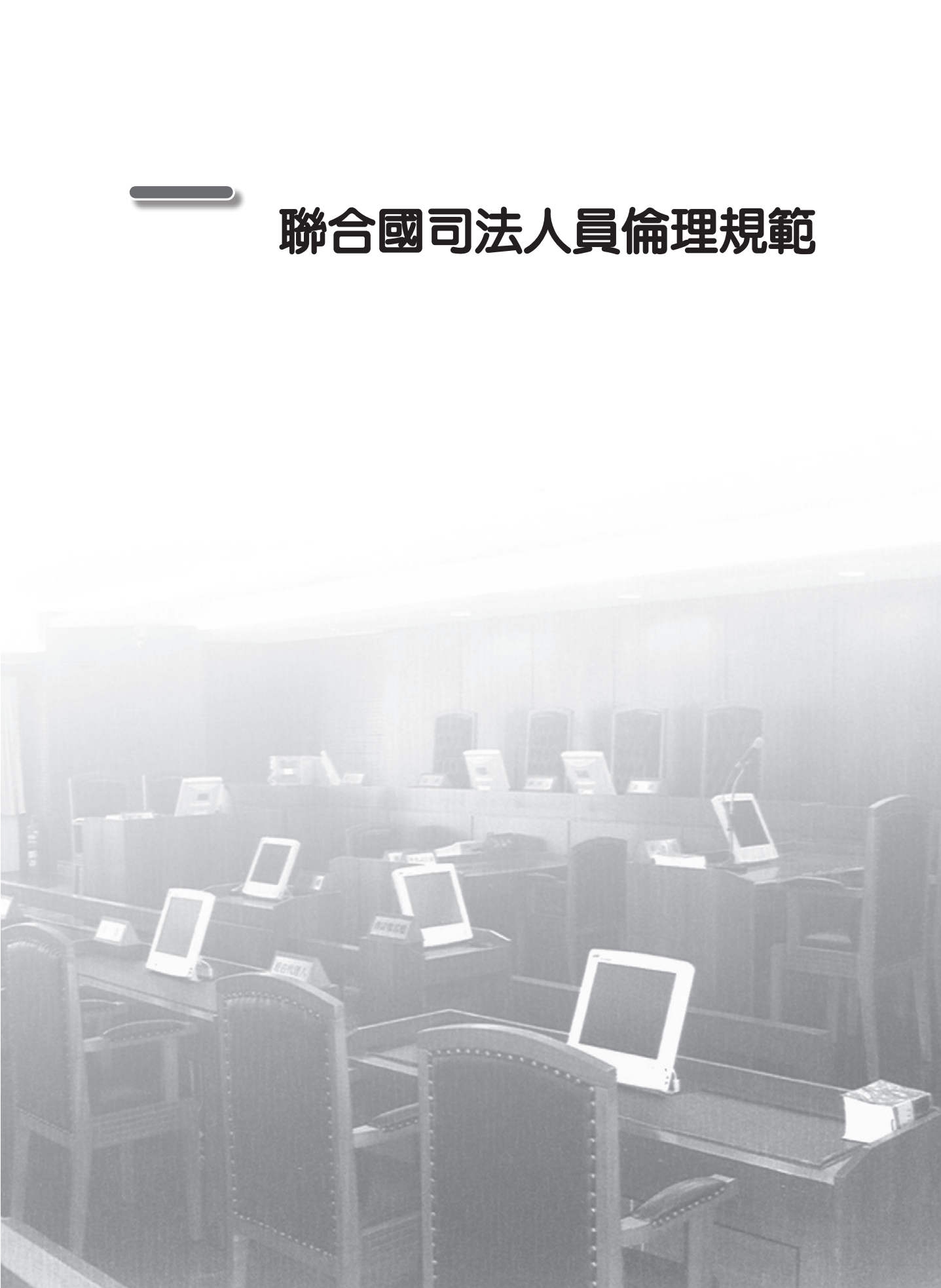
聯合國司法人員倫理規範



一、聯合國司法人員倫理規範

（一）檢察官角色之指引

第八屆聯合國預防犯罪和罪犯待遇大會
1990 年 8 月 27 日至 9 月 7 日 哈瓦那

基於聯合國憲章規定，各國人民確堅信，其本國應建立一個完備制度，以維護正義，並鼓勵國際合作，促進人權及基本自由之尊重，不因種族、性別、語言或宗教之不同受差別待遇為宗旨。

基於世界人權宣言，慎重宣示法律面前人人平等原則、無罪推定原則及有權得到獨立超然之司法機關公正及公開審判原則。

基於目前在這些原則基本願景及實際情況間仍有差距。

基於各國應該依照該原則精神去組織及展開司法工作，努力使該原則完全成為現實。

基於檢察官在司法工作中具有決定性作用，有關執行其重要職務之規則應促進其尊重，並依照前述原則行事，以助於刑事司法公平而合理，以有效保護公民免受犯罪行為之侵害。

基於透過改進檢察官徵聘方式，及其法律與專業培訓，並向其提供一切必要手段，使其在打擊犯罪行為，特別是打擊新形式及新規模犯罪行為方面得以克盡職守，確保檢察官具備執行其職務所需之專業資歷具有十分重要之意義。

基於聯合國大會依據第五屆聯合國預防犯罪及罪犯待遇大會之建議，於 1979 年 12 月 17 日第 34/169 號決議中通過執法人員行為守則。

基於第六屆聯合國預防犯罪及罪犯待遇大會在第 16 號決議中要求犯罪預防及控制委員會將制定有關法官獨立及有關法官及檢察官甄選、專業培訓及地位之指導方針，列為工作重點。

基於第七屆聯合國預防犯罪及罪犯待遇大會，通過關於司法機關獨立性基本原則，隨後又由聯合國大會於 1985 年 11 月 29 日以第 40/32 號及 1985 年 12 月 13 日以第 40/146 號決議加以批准。基於為罪行及濫用權力

Guidelines on the Role of Prosecutors Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990

Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international cooperation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language or religion, Whereas the Universal Declaration of Human Rights enshrines the principles of equality before the law, the presumption of innocence and the right to a fair and public hearing by an independent and impartial tribunal, Whereas frequently there still exists a gap between the vision underlying those principles and the actual situation, Whereas the organization and administration of justice in every country should be inspired by those.

principles, and efforts undertaken to translate them fully into reality, Whereas prosecutors play a crucial role in the administration of justice, and rules concerning the performance of their important responsibilities should promote their respect for and compliance with the above-mentioned principles, thus contributing to fair and equitable criminal justice and the effective protection of citizens against crime, Whereas it is essential to ensure that prosecutors possess the professional qualifications required for the accomplishment of their functions, through improved methods of recruitment and legal and professional training, and through the provision of all necessary means for the proper performance of their role in combating criminality, particularly in its new forms and dimensions, Whereas the General Assembly, by its resolution 34/169 of 17 December 1979, adopted the Code of Conduct for Law Enforcement Officials, on the recommendation of the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Whereas in resolution 16 of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Committee on Crime Prevention and Control was called upon to include among its priorities the elaboration of guidelines relating to the independence of judges and the selection, professional training and status of judges and prosecutors, Whereas the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders adopted the Basic Principles on the Independence of the Judiciary, subsequently endorsed by the General Assembly in its resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985,

行為受害者取得公理基本原則宣言建議於國際及國家二方面採取措施，使犯罪行為受害者能更好地獲得正義與公平待遇、回償原物、賠償及援助。

基於第七屆聯合國預防犯罪大會於其第 7 號決議中要求犯罪預防及控制委員會考慮是否需要制訂有關以下各方面準則：檢察官之甄選、專業培訓及地位，對檢察官職責行為之要求，使檢察官對刑事司法制度之順利運作為更大貢獻，並增進檢察官與警方合作之手段，檢察官裁量權範圍，及檢察官在刑事訴訟程序中之角色，並就此向今後各屆聯合國預防犯罪大會提出報告。

下列各項指引之制訂，目的在於協助會員國確保及促進檢察官在刑事訴訟程序中能發揮有效、公平及公正無私之角色，各國政府於其國內立法及實踐中應尊重並考慮到該指引規定，同時另應使檢察官、法官、律師、行政及立法部門之人員及一般公眾注意到本指引。本指引制定時主要係以公訴檢察官為考量對象，但其同樣可視情適用於特別任命之檢察官。

資格、甄選及培訓

1. 檢察官之派任，須從才德兼備，曾受訓練，考評合格者遴選之。
2. 各國政府應確保：
   (a) 檢察官之遴選不得有偏頗派任情事，亦不得基於種族、膚色、性別、語言、宗教、政治或其他言論、社群、人種、財富、出身、經濟或其他身分等因素考量而為遴選差別待遇。
   (b) 檢察官須受專業教育及訓練，使懷有檢察官職務之理想及道德責任，熟稔犯罪嫌疑人及被害人受憲法及實定法相關規定，及內國法及國際法所保障之人權及基本自由。

Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime, Whereas, in resolution 7 of the Seventh Congress the Committee was called upon to consider the need for guidelines relating, inter alia, to the selection, professional training and status of prosecutors, their expected tasks and conduct, means to enhance their contribution to the smooth functioning of the criminal justice system and their cooperation with the police, the scope of their discretionary powers, and their role in criminal proceedings, and to report thereon to future United Nations congresses, The Guidelines set forth below, which have been formulated to assist Member States in their tasks of securing and promoting the effectiveness, impartiality and fairness of prosecutors in criminal proceedings, should be respected and taken into account by Governments within the framework of their national legislation and practice, and should be brought to the attention of prosecutors, as well as other persons, such as judges, lawyers, members of the executive and the legislature and the public in general. The present Guidelines have been formulated principally with public prosecutors in mind, but they apply equally, as appropriate, to prosecutors appointed on an ad hoc basis.

Qualifications, selection and training

1. Persons selected as prosecutors shall be individuals of integrity and ability, with appropriate training and qualifications.
2. States shall ensure that:
   (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
   (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognized by national and international law.

職務身分及工作條件

3. 檢察官定位為司法不可或缺之官員，應牢記自己職務身分，隨時維護其職務之榮譽及尊嚴。
4. 檢察官執行職務，不得有恐嚇、妨礙、騷擾、不當介入或以莫須有之民、刑事及其他法律責任作威脅等行為。
5. 檢察官如因執行職務而致其自己及家人受到人身安全威脅者，有關當局應給與特別保護。
6. 營造適宜之檢察官工作條件，給予合理薪俸及退養金、法定任期保障及退休年齡規定。
7. 有關檢察官之升遷，應法制化，設各種客觀評量標準，特別是其專業資歷、能力、品行及經驗為依據，並依照公平及公正程序決定。

言論及結社自由

8. 檢察官與一般公民同，皆享有言論、信仰、集會及結社之自由，但身為檢察官，尤應著力於有關法律、司法、人權保障與促進等事項之公開討論。檢察官有權加入或自組地方性、全國性或國際性組織及會議，不會因其成立或參加這些合法組織或會議而遭受職業上之不利益。但檢察官行使上開言論及結社權時，仍應隨時注意恪遵法律及公認之檢察官職務倫理規範。
9. 檢察官為維護其自身利益，提升其專業訓練及保障其身分得組成協會與組織，以促進其專業培訓及保障其地位。

Status and conditions of service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.

4. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability.

5. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.

6. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.

7. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.

Freedom of expression and association

8. Prosecutors like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.

9. Prosecutors shall be free to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status.

在刑事訴訟中之角色

10. 檢察機關與審判機關應嚴格分隸分離。

11. 檢察官在刑事程序中應扮演積極角色，職司公訴之提起，並依其本國法制之規定，實施犯罪之偵查、偵查作為合法性之監督、法院判決之執行，及代表公益行使其他法定職權。

12. 檢察官應以迅速且公平地依法行事，尊重及保護人類尊嚴，維護人權，並有助於確保法律訴訟程序於刑事司法系統的職務順利地運行。

13. 檢察官執行職務應確實遵循：

    (a) 公正執行職務，避免一切政治、社會、宗教、種族、文化、性別，或其他形式之歧視；

    (b) 以保障公益為念，客觀行事，對被告及被害人之地位號應注意維護，對被告有利、不利之相關情形，亦應一律注意。；

    (c) 除為執行務或維護公平公正之必要者外，檢察官對其所有之事務，應嚴守秘密。

    (d) 考量被害人之觀點，關切其個人利益所受損害，確實依照聯合國所頒布之「犯罪及濫權被害人保護基本原則宣言」，告知被害人得享有之一切權利。

14. 檢察官發覺偵查有所偏頗，犯罪缺乏證據支持時，不應輕率啟動或繼續追訴，而應盡力使審判程序停止。

15. 檢察官依其內國法規之授權，得偵辦公務員犯罪者，對於公務員之貪瀆，濫權、重大侵害人權及其他國際法公認之罪行等犯罪，尤應努力偵辦。

Role in criminal proceedings

10. The office of prosecutors shall be strictly separated from judicial functions.

11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecution and, where authorized by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.

12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.

13. In the performance of their duties, prosecutors shall:

    (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

    (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim, and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;

    (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;

    (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.

15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law and, where authorized by law or consistent with local practice, the investigation of such offences.

16. 檢察官明知或可得而知其不利於被告之證據係以不正方法取得者，此種不正方法，特別是用嚴刑逼供，不合人道或貶抑人性之處遇，或其他踐踏人權等，已構成對被告人權之重大違犯者，除非用為訴追施用此不正方法取得證據者之責任外，檢察官應拒絕使用這些不法證據起訴被告，或告知法院這些證據不法性；且應採取一切必要步驟，依法將因為用此不正之方法取得證據而負責之人，繩之以法。

裁量權之行使

17. 法規如定賦予檢察官裁量權時，該法規對於檢察官是否發動訴追之決定過程，包括起訴或不起訴之決定，應訂定法則，提供檢察官明確指引，以強化其決定方法之公平性及一致性。

起訴之替代方案

18. 檢察官基於尊重被告及被害人之權益，應依法慎重考量放棄追訴、附條件或無條件暫緩追訴、或將刑事案件轉向，使脫離正式的刑事司法系統。為達此目的，各會員國應竭力評估採行「起訴轉向」制度之可能性，以利減輕法院過重的案件負荷，並避免因審前羈押、起訴、判刑所造成之烙印，及執行徒刑所可能引發之許多不良後遺症。

19. 檢察官對少年犯罪案件之追訴與否，依其內國法如擁有裁量權者，其裁量應特別審慎考量該犯罪之罪質及其嚴重性、維護社會安全，及該少年犯之性格、生長背景等因素。如其內國法定有處理少年事件之特別法律或程序者，檢察官尤應注意斟酌適用該特別法之起訴替代規定。檢察官應盡其所能，僅於有絕對必要之情形時，始對少年犯起訴。

與其他政府機關或機構之關係

20. 為確保起訴之公正與有效，檢察官應竭力與警察、法院、法律專業人員、公設辯護人及其他政府或機構合作。

16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods, or inform the Court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.

19. In countries where prosecutors are vested with discretionary functions as to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with other government agencies or institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

懲戒程序

21. 檢察官應受懲處之行為應以法規明定。對檢察官有逾越專業行為準則之行為提出舉發時，應依適當程序，迅速、公正處理。檢察官有權申辯。對檢察官懲處之決定，應設審查之救濟方法。

22. 依懲戒程序所作之檢察官懲處決定，應力求客觀並引據專業行為規範、公認的倫理、守則，以及本指引所示。

指引之遵守

23. 檢察官應嚴格遵行本指引。竭盡所能，預防與本指引之規範有正面違逆情事。

24. 檢察官知悉有違逆或可能違逆本指引所提示各項規範之情事，應即時陳報其上級機關，或其他負有督導本指引執行之權責機關處理。

Disciplinary proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege that they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.

22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.

24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

（二）法官使用社群媒體討論指引[1]

社群媒體平台在社會生活、交際和資訊散佈中扮演著越來越重要的角色。它們不可避免地碰觸到大部分人們的生活，就連法官也不例外。然而，鑒於司法職務的特性，法官使用社群媒體有其特定的問題，應該加以解決。這是由於法官使用社群媒體的方式，可能會衝擊到社會大眾對法官的觀感以及對司法系統的信心。這會潛在地導致人們認為法官有偏見或受制於外部影響的狀況。此外，使用社群媒體也會對法官的隱私權和安全構成潛在威脅，並可能將法官置於身受負面評論攻擊或網路霸凌的處境。按照《班加羅爾司法行為原則》，法官在他們所有的訴訟中，應尊重獨立、公正、廉正及合宜的價值，但同時也不應與社會隔絕並應致力於創造開放和公平的環境。在技術進步不斷演進的世界中，他們要如何在這些相互競爭的優先事項與交際方法之間找到平衡呢？

關於法官使用社群媒體，目前尚無共識，且大部分司法制度的規則和規章對於這個主題亦尚未言明。然而，眾人已開始更為關注這個主題，且一些司法管轄區和區域機構已準備就緒表述明確規則，或是在判例或諮詢意見中處理這些新出現的問題。我們可以從現有資源觀察到，關於法官使用社群媒體各方面的意見不盡相同，且某個司法管轄區所認同的意見，另一個司法管轄區可能並不接受。然而，連結這些不同態度者，正是法官應該永遠尊重司法獨立、公正、廉正、合宜、平等、以及能力和勤奮之重要價值的基本原則。

有鑒於此，法官使用社群媒體已被視為是「全球司法廉正網絡」工作事項的優先領域之一[2]。這包含了正視法官使用社群媒體的現有挑戰和實務，以及致力於發展一組非約束性指導方針，可以作為司法制度開始處理

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[1] 最初草擬討論指導方針旨在協助 2018 年 11 月 8 日在維也納聯合國總部由 UNODC 所召開就使用社群媒體之專家小組會議所舉行之討論。此指導方針後來於 2019 年年初經過審查，以結合從專家小組會議上所收集到的意見輸入以及透過 UNODC 針對此主題所散佈之線上調查。

[2] 於 2018 年 4 月「全球司法廉正網絡」發表會上所採用的「司法廉正聲明」（第 8 節），可於此網址獲得 https://www.unodc.org/ji/en/restricted/network-launch.html；由此網之諮詢委員會所開發之「全球司法廉正網工作計畫」。

The Use of Social Media by Judges Discussion Guide[1]

Social media platforms play an increasingly vital part of social life, communication and dissemination of information. They inevitably touch the lives of most people, with judges being no exception. However, given the nature of the judicial office, the use of social media by judges raises specific questions that should be addressed. This is because the way judges use social media might have an impact on the public's perception of judges and its confidence in the judicial systems. It can potentially lead to situations where judges are seen as biased or subject to outside influences. In addition, the use of social media also poses potential threats to judges' privacy and safety and may place judges in a position to be under attack from negative comments or cyberbullying. In line with the Bangalore Principles of Judicial Conduct, judges should respect the values of independence, impartiality, integrity and propriety in all their actions, but at the same time they should not be isolated from society and should strive to create an environment of open justice. How can they find a balance between these competing priorities in the ever-evolving world of technological advancements and means of communication?

There is currently no consensus on judges' use of social media and most judiciaries' rules and regulations are silent on the topic. However, more attention is starting to be paid to the topic and several jurisdictions and regional bodies have put explicit rules in place or addressed the emerging questions in case law or advisory opinions. It can be observed from the existing sources that the opinions regarding the various aspects of the use of social media by judges vary and what is considered acceptable in one jurisdiction may not be acceptable in another. However, what links the various approaches is the underlying principle that judges should always respect the fundamental values of judicial independence, impartiality, integrity, propriety, equality and competence and diligence.

With this in mind, judges' use of social media has been identified as one of the priority areas for the work of the Global Judicial Integrity Network.[2] This includes looking at the existing challenges and practices on the use of social media by judges and aiming to develop a set of non-binding guidelines that could serve as a source of inspiration for judiciaries that are beginning to address the topic and inform judges of the various risks and opportunities in using social media. The Global Judicial Integrity Network, with the support of UNODC as its secretariat,

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[1] The discussion guide was first draft to assist in the discussions held on 5-7 November 2018 at the UN Headquarters in Vienna at the Expert Group Meeting on the Use of Social Media convened by UNODC. The guide was later reviewed in early 2019 to incorporate the inputs collected at the expert group meeting and through an online survey disseminated by UNODC on the topic.

[2] Declaration on Judicial Integrity (paragraph 8) adopted at the launch of the Global Judicial Integrity Network in April 2018, available at https://www.unodc.org/ji/en/restricted/network-launch.html; Workplan of the Global Judicial Integrity Network developed by the Advisory Board of the Network.

這些主題的靈感來源，並讓法官可以得知使用社群媒體時的各種風險和機會。「全球司法廉正網絡」在「聯合國毒品及犯罪問題辦公室 UNODC」作為其秘書處的支援下已著手從事這項工作，且針對法官使用社群媒體之主題的以下行動方案已經在推行或在未來幾個月內計畫推出：

1. 書面審查針對此議題的現有規章、指導方針、資料、案例和意見。
2. 參考此議題納入針對「司法行為和倫理」數位學習課程第一模組中，此課程之發展是作為「司法倫理訓練工具」的一部分[3]。
3. 對法官和其他相關利害關係人以英語、法語和西班牙語發布線上全球調查，目的在於針對法官使用社群媒體之各種層面，收集資料和意見並蒐集額外資源。這項調查是於 2018 年 9 月進行設計並發布給參加者，且於 2019 年 2 月結束。對參加調查人員之邀請寄發至司法界的二千多位成員，後續收到來自 86 個國家共 504 封回應。參加者主要是法官、地方法官、或司法官員，但是法院工作人員、檢察官、律師、司法行政事務人員、學者、以及非營利組織和國際組織成員也參與這項調查。
4. 於 2018 年 10 月組織專責的全球「專家小組會議」，目的在於識別出關鍵議題、討論現有實務以及針對此項主題收集新資訊。在此會議中，來自不同領域的司法和法律專家草擬了一份初步提案，基於現有區域和國家標準及經驗，就法官使用社群媒體提出一組指導方針，其中包含《班加羅爾司法行為原則及其評論》。
5. 針對法官使用社群媒體草擬非約束性指導方針。
6. 從「全球司法廉正網」的參加者，針對法官使用社群媒體之非約束性指導方針草案，收集額外的意見輸入和評論。一旦諮議期結束，UNODC 就會編輯這些收到的評論並最後定出指導方針。全新內容將會於下一次「全球司法廉正網高階會議」中呈現，預計在 11 月 18、19 兩日於卡達杜哈舉行。

[3] 有關「司法倫理訓練工具」更多資訊請造訪 https://www.unodc.org/ji/en/judicial_ethics.html。

has embarked on this task and the following activities have taken place or are planned for the coming months on the topic of the use of social media by judges:

1. Desk review of existing regulations, guidelines, materials, cases and opinions on the issue.
2. Reference to the issue was included in the first module of the e-Learning course on Judicial Conduct and Ethics, developed as part of the Judicial Ethics Training Tools[3].
3. Dissemination of an online global survey in English, French and Spanish to judges and other relevant stakeholders with a view to collecting data and opinions on the various aspects of the use of social media by judges and gathering additional resources. The survey was designed and disseminated to participants in September 2018 and closed in February 2019. The invitation to participate in the survey was sent to more than 2,000 members of the judiciary and 504 responses were received from 86 countries. The majority of participants were judges, magistrates, or judicial officers, but court staff, prosecutors, lawyers, members of the judicial administration, scholars, and members of NGOs and international organizations also participated in the survey.
4. Organization of a dedicated global Expert Group Meeting in November 2018, with the aim of identifying key issues, discussing existing practices and collecting new information on the topic. During this meeting, judicial and legal experts from different regions drafted an initial proposal for a set of guidelines on judges' use of social media, based on existing regional and national standards and experiences, including the Bangalore Principles of Judicial Conduct and its Commentary.
5. Drafting of non-binding guidelines on the use of social media by judges.
6. Collection of additional input and comments from the participants of the Global Judicial Integrity Network on the draft non-binding guidelines on the use of social media by judges. Once the consultation period is over, UNODC will compile the comments received and finalize the guidelines. The new text will be presented at the next High-Level Meeting of the Global Judicial Integrity Network, scheduled to take place on 18 and 19 November in Doha, Qatar.

[3] More information about the Judicial Ethics Training Tools is available at https://www.unodc.org/ji/en/judicial_ethics.html.

7. 透過此網路散佈針對使用社群媒體的現有優良實務和資源，特別是透過其網站：www.unodc.org/ji。

目前文件的主旨在於編輯各種現有相關指導方針、資料、案例、以及來自全世界的意見，目的在於就有關法官使用社群媒體的最相關專題議題，提供有用的背景資訊。

此文件並非旨在針對可能存在的問題提供清楚答案。另外應注意的是，目前此文件之內容並不完善。本文件之內容旨在促進法官、司法界成員以及其他相關利害關係人間之討論，並發布目前為止「全球司法廉正網絡」就法官使用社群媒體所編輯之資訊。

班加羅爾司法行為原則及其評論

在查看法官使用社群媒體之現有相關資源和實務之前，應先關注《2002 年班加羅爾司法行為原則》，作為司法行為國際公認之原則，同時亦應關注《2007 年班加羅爾原則評論》的細節。[4]

當《班加羅爾原則》和《班加羅爾原則評論》初次草擬時，社群媒體平台尚未存在。因此，兩份文件都沒有提到社群媒體之使用。然而，有些原則和評論章節涉及法官在法庭外之行為，並且與目前的討論具有高度相關性。其中包含了：

→「法官應確保在法官與司法制度公正上，其於法庭內外之行為可維持並強化公眾、法律專業人士和訴訟當事人之信任」（班加羅爾原則 2.2）。

→「法官如同任何其他公民一樣，具有表達、信仰、結社和集會之自由，但在行使此等權利時，法官之行為應永遠以維護司法職務之尊嚴以及司法體系之公正和獨立為念。」（班加羅爾原則 4.6）。

[4] 有關《班加羅爾原則》和《班加羅爾原則評論》的更多資訊，請參考：https://www.unodc.org/ji/resdb/index.jspx 以及 https://www.unodc.org/ji/resdb/data/2006/_220_/the_bangalore_principles_of_judicial_conduct_ecosoc_resolution_200623.html?lng=en。

7. Dissemination of existing good practices and resources on the use of social media through the Network, in particular, through its website: www.unodc.org/ji.

The purpose of the present document is to compile various existing relevant guidelines, materials, cases, and opinions from across the world with a view to providing useful background information on the most relevant thematic issues related to judges' use of social media.

The document does not aim to provide clear-cut answers to the questions it will raise. In addition, it should also be noted that the document is currently not comprehensive in its content. The content of this document aims to spark discussions among judges, members of the judiciary and other relevant stakeholders and disseminate the information compiled by the Global Judicial Integrity Network thus far on judges' use of social media.

Bangalore Principles of Judicial Conduct and its Commentary

Before looking at the existing relevant resources and practices on the use of social media by judges, attention should be paid to the 2002 Bangalore Principles of Judicial Conduct, as the universally recognized principles of judicial conduct, and the detailed 2007 Commentary on the Bangalore Principles. [4]

When the Bangalore Principles and the Commentary were first drafted, social media platforms did not exist. As such, neither document makes any reference to the use of social media. Nevertheless, several principles and Commentary paragraphs touch upon judges' behaviour outside of court and are highly relevant for the present discussion. Among others, these include:

→ "A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary" (*Bangalore Principle 2.2*).

→ "A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary" (*Bangalore Principle 4.6*).

[4] For more information about the Bangalore Principles and the Commentary on the Bangalore Principles: https://www.unodc.org/ji/resdb/index.jspx andhttps://www.unodc.org/ji/resdb/data/2006/_220_/the_bangalore_principles_of_judicial_conduct_ecosoc_resolution_200623.html?lng=en.

→「雖然法官必須維持一種比其他人更為嚴謹與受限的生活和行為方式，但期待法官從公眾生活中完全退出，只能進入完全以家庭、家人和朋友為中心的私生活，也是不合理。法官與其所生活的社群團體完全隔絕，既不可能亦屬無益。」（評論，第 31 節）。

→「法官不僅具有充實的真實世界知識；現代法律的性質需要法官『在真實世界裡生活、呼吸、思考及參與意見』。[…] 脫離現實的法官比較不切實際。」（評論，第 32 節）。

→「公正的見解是經由公平合理觀察者的標準作衡量。法官不公正之見解可能是以一些方式出現，例如透過可以察覺到的利益衝突、法官於法庭執行職務的行為或其在法庭外的結社和活動。」（評論，第 52 節）。

→「[…] 有些活動意味著法官的判決可能受到外在因素的影響，例如在一個社交聚會中的私人關係，或者個案中的利益，法官必須避免所有這類活動。」（評論，第 55 節）。

→「從法官的結社或商業利益，到法官可能認為只是無害的玩笑談論，任何這些事都可能降低法官意識到的公正性。」（評論，第 65 節）。

→「[…] 與媒體關係的議題是相關的。三個可能的重要事項層面可識別如下：(a) 第一層面是媒體之使用（在法庭內或法庭外）以提升法官之公眾形象和職業或處理媒體對特定判決的可能反應。對法官而言，讓他或她受到媒體任一方向的影響，幾乎將必然違反《班加羅爾原則》第 1.1 節和其它節，包含 2.1、2.2、3.1、3.2 和 4.1；(b) […]；(c) 第三層面是涉及到對該法官或其他法官的判決之評論（即使是在學術論文中）。[…] 通常而言，法官較為謹慎的作法是，不要涉入對過去判決之不必要爭論，尤其當那些爭論可能被視為試圖在法官已發布之判決中增加理由。」（評論，第 76 節）。

→ "While a judge is required to maintain a form of life and conduct more severe and restricted than that of other people, it would be unreasonable to expect him or her to retreat from public life altogether into a wholly private life centred on home, family and friends. The complete isolation of a judge from the community in which the judge lives is neither possible nor beneficial" (*Commentary, paragraph 31*).

→ "A judge is not merely enriched by knowledge of the real world; the nature of modern law requires that a judge "live, breathe, think and partake of opinions in that world". […] A judge who is out of touch is less likely to be effective" *(Commentary, paragraph 32).*

→ "The perception of impartiality is measured by the standard of a reasonable observer. The perception that a judge is not impartial may arise in a number of ways, for instance through a perceived conflict of interest, the judge's behaviour on the bench or his or her associations and activities outside the court" (*Commentary, paragraph 52*).

→ "[…] a judge must avoid all activity that suggests that his or her decision may be influenced by external factors such as a personal relationship with a party or interest in the outcome of a case" (*Commentary, paragraph 55*).

→ "Everything—from a judge's associations or business interests, to remarks that he or she may consider to be nothing more than harmless banter—may diminish the judge's perceived impartiality" (*Commentary, paragraph 65*).

→ "[…] the issue of relations with the media is relevant. Three possible aspects of concern may be identified as follows: (a) The first is the use of the media (in or out of court) to promote a judge's public image and career or to address the media's possible reaction to a particular decision. For a judge to allow himself or herself to be influenced in either direction by the media would almost certainly infringe paragraph 1.1 of the Bangalore Principles, as well as other paragraphs, including 2.1, 2.2, 3.1, 3.2 and 4.1; (b) […]; (c) The third aspect concerns comments, even in an academic article, on the judge's or another judge's decision. […] Generally speaking, it is prudent for judges not to enter into needless controversy over past decisions, especially when the controversy may be seen as an attempt to add reasons to those stated in the judge's published judgement" (*Commentary, paragraph 76*).

→「依照具體情況，對偏見的合理顧慮可能會被認為出現在以下狀況：(a) 法官和涉及案例的任何公眾成員之間的私人友誼或仇恨；[…]」（評論，第 90 節）。

→「法官必須預期成為公眾持續監督和評論的對象，且必須因此接受對其活動之限制，這些限制可能會被一般民眾視為負擔。[…] 這適用於法官之職業行為和個人行為。雖有相關性，但法官行為的合法性並非行為合宜的完整衡量。」（評論，第 114 節）。

→「通常情況下，法官不應審理與他或她有牽涉到社交關係或情感關係之律師的案件，除非此律師的出庭純粹是形式上或以其他方式記錄在案 […]」（評論，第 131 節）。

→「目前任職的法官無需放棄其他社群成員所享有的自由表達、結社及集會之權利，也不必放棄任何先前的政治信仰以及中止對政治議題之興趣。然而，為維持社會大眾信任司法之公正與獨立，限制是必須的。

在界定司法參與公開辯論的適當程度時，有兩項重要考量。第一項為法官的涉入是否會合理減損信任其公正性。第二項為此等涉入是否可能不必要地將法官暴露於政治攻擊或不符合司法職務之尊嚴。若有任何一項之情形，則法官應避免此等涉入。」（評論，第 134 節）。

→「法官不應不當捲入公共爭議之中。[…] 對法官而言，同等重要的是，社會大眾認為法官能展現出那種獨立、無偏見、無成見、公正、開明以及公平的態度，這是法官的特點。若一位法官進入政治領域並參加公開辯論（無論是藉由對爭議話題表達意見、在社群中與公眾人物發生爭執，或是公開指責政府），則當他或她以法官身分在法庭中主持時，將被認為無法依司法行事。當判決觸及關於法官已表達輿論話題之爭議時，法官會被認為不公正；可能更重要的是，當法官先前已公開批評之公眾人物或政府部門以當事人、訴訟當事人甚或是證人的身分在他或她必須裁決的案件中出庭時，法官也會被認為不公正。」（評論，第 136 節）。

→ "Depending on the circumstances, a reasonable apprehension of bias might be thought to arise in the following cases: (a) If there is personal friendship or animosity between the judge and any member of the public involved in the case; […]" (*Commentary, paragraph 90*).

→ "A judge must expect to be the subject of constant public scrutiny and comment, and must therefore accept a restriction on his or her activities that might be viewed as burdensome by the ordinary citizen. […] This applies to both the professional and the personal conduct of a judge. The legality of a judge's conduct, although relevant, is not the full measure of its propriety" (*Commentary, paragraph 114*).

→ "A judge should not, ordinarily, sit on cases involving a lawyer with whom he or she is socially or romantically involved, unless the appearance of the lawyer is purely formal or otherwise put on the record […]" (*Commentary, paragraph 131*).

→ "A serving judge does not surrender the rights to freedom of expression, association and assembly enjoyed by other members of the community, nor does the judge abandon any former political beliefs and cease having an interest in political issues. However, restraint is necessary to maintain public confidence in the impartiality and independence of the judiciary.

In defining the appropriate degree of involvement of the judiciary in public debate, there are two fundamental considerations. The first is whether the judge's involvement could reasonably undermine confidence in his or her impartiality. The second is whether such involvement may unnecessarily expose the judge to political attacks or be inconsistent with the dignity of judicial office. If either is the case, the judge should avoid such involvement" (*Commentary, paragraph 134*).

→ "A judge should not involve himself or herself inappropriately in public controversies. […] It is equally important for judges to be seen by the public as exhibiting that detached, unbiased, unprejudiced, impartial, open-minded and even-handed approach which is the hallmark of a judge. If a judge enters the political arena and participates in public debates—either by expressing opinions on controversial subjects, entering into disputes with public figures in the community, or publicly criticizing the Government—he or she will not be seen to be acting judicially when presiding as a judge in court. The judge will also not be seen as impartial when deciding disputes that touch on the subjects about which the judge has expressed public opinions; nor, perhaps more importantly, will he or she be seen as impartial when public figures or Government departments that the judge has previously criticized publicly appear as parties, litigants or even witnesses in cases that he or she must adjudicate" (*Commentary, paragraph 136*).

→「有一些限制情況，其中，法官可能適當說出一件政治上有爭議之事，也就是當此事直接影響法庭運作、司法獨立（可能包含司法人員薪俸和利益）、司法行政重要層面或法官操守。然而，即使在這樣的事件中，法官之行為應有極大程度之克制。雖然法官可能適當地向政府公開陳述這些事件，但不必將法官視為向政府游說或指示、或者視為若出庭時發生特殊情形暗示著他或她的裁定方式。此外，法官必須牢記，其公開評論可能會被當作反映出司法界的觀點；將法官表達之意見當作純粹個人意見而非司法界通常觀點，是困難的。」（評論，第 138 節）。

→「法官可以參加基於教育目的之法律討論並指出法律的缺陷 [⋯]」（評論，第 139 節）。

→「在法官的司法管轄權之內或其外，法官是處在一個改善法律、法律制度和司法行政作出貢獻的獨特地位。這些貢獻可能採演說、書寫、教學或參加其它司法程序以外之活動的形式。只要這些事情無損於法官履行其法律義務且時間上允許，應當鼓勵法官從事這些活動。」（評論，第 156 節）。

→「法官可以參加適當之司法程序以外的活動，方不致於變得與社會隔絕。因此，若無損於法官職責的尊嚴或不干預到司法職責之履行，法官可以針對非法律主題進行寫作、演講、教學和談論，並參加藝術、運動和其它社交及娛樂活動。[⋯] 在最終分析當中，難免總是會被問到：在特定社交情況下且在理性觀察者的眼中，法官是否有參加實際上會降低其獨立性或公正性或可能出現此情形之活動。」（評論，第 166 節）。

→ "There are limited circumstances in which a judge may properly speak out about a matter that is politically controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary (which may include judicial salaries and benefits), fundamental aspects of the administration of justice or the personal integrity of the judge. However, even on these matters, a judge should act with great restraint. While a judge may properly make public representations to the Government on these matters, the judge must not be seen as lobbying Government or as indicating how he or she would rule if particular situations were to come before the court. Moreover, a judge must remember that his or her public comments may be taken as reflecting the views of the judiciary; it may sometimes be difficult for a judge to express an opinion that will be taken as purely personal and not as that of the judiciary in general" (*Commentary, paragraph 138*).

→ "A judge may participate in a discussion of the law for educational purposes and point out weaknesses in the law […]" (*Commentary, paragraph 139*).

→ "A judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, both within and outside the judge's jurisdiction. Such contributions may take the form of speaking, writing, teaching or participating in other extrajudicial activities. Provided that this does not detract from the discharge of judicial obligations, and to the extent that time permits, a judge should be encouraged to undertake such activities" (*Commentary, paragraph 156*).

→ "A judge may engage in appropriate extrajudicial activities so as not to become isolated from the community. A judge may, therefore, write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities if such activities do not detract from the dignity of the judge's office or interfere with the performance of the judge's judicial duties. […] In the final analysis, the question must always be asked whether, in the particular social context and in the eyes of a reasonable observer, the judge has engaged in an activity that could objectively compromise his or her independence or impartiality or that might appear to do so" (*Commentary, paragraph 166*).

法官使用社群媒體 – 是或否？

首先要處理的主題之一就是法官是否應該使用社群媒體。

→法官可以／應該使用社群媒體嗎？（是？是的，但…？否？）這適用於所有平台、或者對平台類型要有任何限制嗎？

→ 法官使用社群媒體的風險為何？法官使用社群媒體的機會為何？要如何找到這兩者間的平衡點？

→ 如果第一題的答案為「是」，對法官應有任何限制嗎？

→ 如果應該限制，評估在社群媒體上的特定行為是否可以接受、或問題是否應交由司法制度加以規範（例如透過行為準則、指導方針、通知等），是法官個人的責任嗎？

→ 您有看到法官使用社群媒體時產生的任何具體司法廉正問題嗎？

→ 在 *(a)* 法官個人社群媒體帳戶；和 *(b)* 法官建立之「官方」社群媒體帳戶之間，應該可能加以區分。對於上述問題，您的答案會依類別而異嗎？如果一個司法機構為法官建立一個官方帳戶，會發生什麼狀況？

→ 特有的司法制度應規範法官使用社群媒體的問題嗎？若是，您認為最好的方法是什麼？（例如，通令、指導方針、行為準則中的規定、訓練活動等）

一些司法管轄權和區域實體已經回答發生的問題：

→「不禁止司法界成員寫部落格。但是，身居要職者在寫部落格時（或者在其他人的部落格上發表評論時）不可透露自己的身分是司法界成員。如果被認出在司法界身居要職，他們也必須避免表達可能傷害到他們自己的公正性或一般司法界之大眾信任的意見。」*（英格蘭及威爾斯資深審裁處庭長、資深首席法官，司法界身居要職者寫部落格，2012 年 8 月 8 日，英國）*。

Use of Social Media by Judges - Yes or No?

One of the first topics to tackle is whether judges should or should not use social media.

→ Can/should judges use social media platforms? (Yes? Yes, but…? No?) Does this apply to all platforms or should there be any limitations concerning the type of platform?

→ What are the risks for judges in using social media? What are the opportunities for judges in using social media? How can a balance be found between the two?

→ If the answer to the first question is "yes", should there be any restrictions placed upon judges?

→ If restrictions should apply, should it be the responsibility of individual judges to assess whether certain behaviour on social media is (un)acceptable or should the issue be regulated by judiciaries (e.g. through codes of conduct, guidelines, circulars etc.)?

→ Are there any concrete judicial integrity issues that you see arise when judges use social media?

→ A distinction should probably be made between *(a)* personal social media accounts of judges; and *(b)* "official" social media accounts that have been established by courts. Would your answers to the above-mentioned questions differ for each category? What happens in the event that a judicial institution were to create an official account for a judge?

→ Should individual judiciaries regulate the issue of the use of social media by judges? If yes, what do you see as the best way to do so? (e.g. circulars, guidelines, provisions in codes of conduct, training activities etc.)

Several jurisdictions and regional bodies have addressed the issues raised:

→ "Blogging by members of the judiciary is not prohibited. However, office holders who blog (or who post comments on other people's blogs) must not identify themselves as members of the judiciary. They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general" *(Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom).*

→「允許法官使用臉書和其它社群媒體也必須符合以下前提：法官並不『喪失 [他們的] 聯繫 [他們的] 朋友和認識的人之權利；若 [他們] 想過隱居生活也不會遭到譴責。事實上，這樣的管理體制會 [. . .] 降低司法官員的效能。」*（司法倫理委員會，德克薩斯州律師公會，Op. 39，上訴法院，達拉斯，德克薩斯州，第五區，德克薩斯州 Youkers v，2013 年 5 月 15 日，美國）*。

→「法官可使用電子社群媒體，但他或她在使用時，應該考量《首席大法官委員會對司法行為之指導方針》中所列舉的公正性、司法獨立、以及廉正和個人行為等指導原則。法官應避免會損害這些原則或產生不正當或偏見觀感的任何行為。」*（首席大法官 Allsop，澳大利亞聯邦法院，法官使用電子社群媒體之指導原則，2013 年 12 月 6 日，澳大利亞）*。

→「所有種類的社交互動，包含 [使用社交媒體網站]，可以 [. . .] 避免讓 [法官] 被認為與世隔絕或脫離現實」*（美國律師協會 ABA，正式意見 462，2013 年，美國）*。

→ 若法官符合行為準則，則社群媒體之適當使用對於傳播機關和個人內容是一項有用的工具。*（名人委員會，哥斯大黎加司法系統，社群媒體之使用，介紹，1-2015，N3，2015 年，哥斯大黎加）*。[5]

→ 法官必須牢記須調和他們的表達自由和他們的倫理義務。他們應該避免損害司法體系之廉正和獨立。*（國立法官學院，社群媒體和法官：推特上的實務，2016 年 5 月 1 日，法國）*。[6]

[5] *西班牙語原始資源摘要：Por una parte, es conveniente que el juez utilice las redes sociales, lo cual y en muchas ocasiones viene propiciado por las instituciones de Gobierno de los jueces (supremas cortes, consejos de la magistratura o ministerios de justicia) así como por instancias supranacionales (comisión europea). El networking también contribuye a que los jueces se relacionen y enriquezcan humana y profesionalmente.（Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015 年，哥斯大黎加）。*

[6] *法語原始資源非官方翻譯：Les juges [et magistrats] doivent se rappeler la nécessité de concilier leur liberté d'expression avec leurs obligations déontologiques. Ils doivent au premier chef, éviter de porter atteinte à l'intégrité et l'indépendance de la magistrature et du système judiciaire.（École nationale de la magistrature, Réseaux sociaux et magistrats : quelles pratiques sur Twitter?, 1 mai 2016, 法國）。*

→ "Allowing judges to use Facebook and other social media is also consistent with the premise that judges do not "forfeit [their] right to associate with [their] friends and acquaintances nor [are they] condemned to live the life of a hermit. In fact, such a regime would [. . .] lessen the effectiveness of the judicial officer" *(Commission on Judicial Ethics, State Bar of Texas, Op. 39, Court of Appeals, Dallas, Texas, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America).*

→ "A judge may use electronic social media, but in doing so he or she shall have regard to the guiding principles of impartiality, judicial independence, and integrity and personal behaviour set out in the Council of Chief Justices' Guide to Judicial Conduct. Any conduct by a judge that would undermine these principles or create a perception of impropriety or bias shall be avoided" *(Chief Justice Allsop, Federal Court of Australia, Guidelines for Judges about using electronic social media, 6 December 2013, Australia).*

→ "Social interactions of all kinds, including [the use of social media websites], can [. . .] prevent [judges] from being thought of as isolated or out of touch" *(The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America).*

→ Adequate use of social media is a useful tool for the dissemination of institutional and personal content, if the judge complies with the Code of Conduct. *(Council of Notables, Costa Rica Judicial System, The use of social media, Recommendation, 1-2015, N3, 2015, Costa Rica).*[5]

→ Judges must remember the need to reconcile their freedom of expression with their ethical obligations. They should avoid undermining the integrity and independence of the judiciary *(National School of Judges, Social Media and Judges: practice on Twitter, 1 May 2016, France).*[6]

[5] *Summary of the original source in Spanish: Por una parte, es conveniente que el juez utilice las redes sociales, lo cual y en muchas ocasiones viene propiciado por las instituciones de Gobierno de los jueces (supremas cortes, consejos de la magistratura o ministerios de justicia) así como por instancias supranacionales (comisión europea). El networking también contribuye a que los jueces se relacionen y enriquezcan humana y profesionalmente. (Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015, Costa Rica).*

[6] *Unofficial translation of an original source in French: Les juges [et magistrats] doivent se rappeler la nécessité de concilier leur liberté d'expression avec leurs obligations déontologiques. Ils doivent au premier chef, éviter de porter atteinte à l'intégrité et l'indépendance de la magistrature et du système judiciaire. (École nationale de la magistrature, Réseaux sociaux et magistrats : quelles pratiques sur Twitter?, 1 mai 2016, France).*

→「法官使用公共論壇時應該行為謹慎，因為機關之形象有賴於他們的行為。」（*司法事務司，法務部，合理且負責使用之指導原則，私人使用社群媒體良好實務，F.15，2017 年 6 月，法國*）。[7]

→「由於對司法人員有較高的廉正、坦誠和公平標準，可為一般大眾所接受的社群媒體活動，對司法人員而言可能並不恰當。」（*最高法院，司法行政辦公室，一級和二級法院之所有法官和法庭人員，OCA Circular N.173-2017，適當使用社群媒體，2017 年，菲律賓*）。

→「司法人員可以使用社群媒體和社群媒體平台作為其如同公民所享有的言論自由」（*以法語為主要語言的司法委員會網，工作小組報告，社群媒體和司法制度，聯繫地方法官：在什麼條件下？，2018 年 11 月*）。[8]

→「雖不禁止法官參與像是 Facebook、Instagram 或 Snapchat 之線上社群網路，他們在使用上應該克制且小心。當參與不符合本規則限制之評論或互動時，法官不應透過文字或圖像表明身分」（*司法行為規則，準則 3，評論 5，愛達荷州，美國*）。

→「司法行為準則中管理司法官員之面對面、書面、或透過電話的社交和交際能力之類似規則，也適用於網路和像是 Facebook 之社群網路網站」（*司法行為準則，西維吉尼亞州，美國*）。

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[7] *法語原始資源非官方翻譯：F.15 L'expression d'un magistrat ès qualités, quel que soit le support ouvert au public, nécessite la plus grande prudence, afin de ne pas porter atteinte à l'image et au crédit de l'institution judiciaire. Il en est de même de la publication, par des magistrats, de souvenirs professionnels personnels.（Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, 法國）。*

[8] *法語原始資源非官方翻譯：Le Réseau reconnaisse que les membres de la magistrature peuvent utiliser les réseaux et médias sociaux, composantes de la liberté d'expression de tout citoyen.（Réseau Francophone des Conseils de la Magistrature Judiciare, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché: à quelles conditions?, 2018 年 11 月）。*

→ "Judges should act prudently when using public forums because the image of the institution relies on their behaviour" *(Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017, France).*[7]

→ "The activity in social media that might be acceptable for the general public may be considered inappropriate for members of the judiciary due to the higher standard of integrity, candour and fairness reposed on them" *(Supreme Court, Office of the Court Administrator, All Judges and court personnel of first and second level court, OCA Circular N.173-2017, Proper use of social media, 2017, Philippines).*

→ "Members of the judiciary are allowed to use social media and social media platforms as part of the freedom of expression that they have as citizens" *(Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018).*[8]

→ "While judges are not prohibited from participating in online social networks, such as Facebook, Instagram or Snapchat, they should exercise restraint and caution in doing so. A judge should not identify himself or herself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code" *(Code of Judicial Conduct, Canon 3, Commentary 5, Idaho, United States of America).*

→ "The same Rules of the Code of Judicial Conduct that govern a judicial officer's ability to socialize and communicate in person, on paper, or over the telephone also apply to the Internet and social networking sites like Facebook" *(Code of Judicial Conduct, West Virginia, United States of America).*

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[7] *Unofficial translation of an original source in French: F.15 L'expression d'un magistrat ès qualités, quel que soit le support ouvert au public, nécessite la plus grande prudence, afin de ne pas porter atteinte à l'image et au crédit de l'institution judiciaire. Il en est de même de la publication, par des magistrats, de souvenirs professionnels personnels. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France).*

[8] *Unofficial translation of an original source in French: Le Réseau reconnaisse que les membres de la magistrature peuvent utiliser les réseaux et médias sociaux, composantes de la liberté d'expression de tout citoyen. (Réseau Francophone des Conseils de la Magistrature Judiciare, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché: à quelles conditions?, november 2018).*

社群媒體上法官之身分辨認

→ 在社群媒體平台上法官應如何表明自己呢？用真實姓名嗎？用別名嗎？是否要寫上專業頭銜呢？使用筆名、標註自己是法官等等，有任何風險或好處嗎？

→ 您對先前問題的答案是否因社交媒體類型不同而有不同答案？（例如，有些社群媒體平台（像是LinkedIn）是基於分享專業細節之前提，而其它媒體（像是Snapchat或Pinterest）比較聚焦於私人生活和愛好，因此使用真實姓名不那麼重要）。

→ 特定社群媒體簡介的公開程度為何？有一個可以得知您親近家人的簡介（有個人／專業細節）是一回事，而有一個具有數百位跟隨者之公開簡介，可能又是另外一回事。

→ 法官具有分開的私人和專業簡介是良好的做法嗎？

→ 什麼樣的個人資料不應揭露？（例如，全名、生日、位置、家庭關係、像是電子郵件和電話號碼等之聯絡資訊）。

有些司法管轄區已經在思考這些問題：

→ 「您也必須注意不要表明自己是法官或允許他人這麼做。章節2B『法官不應藉著司法職務威信去促進法官或他人之私人利益；法官也不應表達或允許他人去表達他們有特殊職位以影響法官之印象。』；例如，對章節2B之評論『司法抬頭和司法頭銜不應用於行使法官的私人事務』」（*麻薩諸塞州最高司法法院司法倫理委員會，CJE意見No. 2011-6，2011年11月28日，美國*）。

→ 聽證時使用社群媒體與法官職責不相稱。（*高級司法委員會，紀律委員會，檢察，2014年4月29日，法國*）。[9]

[9] *法語原始資源非官方翻譯：L'usage des réseaux sociaux pendant ou à l'occasion d'une audience est à l'évidence incompatible avec les devoirs de l'état de magistrat. Cet usage est d'autant plus inapproprié que les messages échangés peuvent être lus en temps réel par des personnes extérieures à l'institution judiciaire et qu'ils permettent d'identifier tant leurs auteurs que les circonstances de leur émission.（Conseil supérieur de la magistrature, Conseil de discipline des magistrats du parquet, 29 avril 2014, 法國）。*

Judges' Identification on Social Media

→ How should judges identify themselves on social media platforms? With their real names? With nicknames? With or without their professional title? Are there any risks or advantages in using pseudonyms, identifying oneself as a judge, etc.?

→ Do your answers to the previous questions differ depending on the type of social media in question? (For example, some social media platforms (such as LinkedIn) are based on the premise of sharing professional details, while other media (like Snapchat or Pinterest) focus more on personal life and preferences and the use of real names is of less importance).

→ How relevant is how "public" a certain social media profile is? It may be one thing to have a profile (with personal/professional details) visible to your close family, and it may be another thing to have a public profile with hundreds (or more) followers.

→ Is it good practice for judges to have separate private and professional profiles?

→ What personal information could be shared, and what personal information should not be disclosed? (e.g. full name, date of birth, location, family relationships, contact information such as emails and telephone numbers etc.).

Several jurisdictions have looked at these issues:

→ "You must also take care not to identify yourself as a judge or permit others to do so. Section 2B 'A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge.'; e.g., Commentary to Section 2B '[J]udicial letterhead and the judicial title should not be used in conducting a judge's personal business'" *(The Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court, CJE Opinion No. 2011-6, 28 December 2011, United States of America).*

→ The use of social media during a hearing is incompatible with the judge's duties. *(Superior Judicial Council, Disciplinary Council, Prosecution, 29 April 2014, France).*[9]

[9] *Unofficial translation of an original source in French: L'usage des réseaux sociaux pendant ou à l'occasion d'une audience est à l'évidence incompatible avec les devoirs de l'état de magistrat. Cet usage est d'autant plus inapproprié que les messages échangés peuvent être lus en temps réel par des personnes extérieures à l'institution judiciaire et qu'ils permettent d'identifier tant leurs auteurs que les circonstances de leur émission. (Conseil supérieur de la magistrature, Conseil de discipline des magistrats du parquet, 29 avril 2014, France).*

→「法官不應表明自己為法官或司法界成員」*（英格蘭和威爾斯司法制度，司法行為指導原則，2018 年，英國）*。

→「參與不符合本準則限制之評論或互動時，法官不應透過文字或圖像表明自己為法官」*（司法行為準則，愛達荷州，美國）*。

尤其，不同司法管轄區已進一步闡述法官使用假名或匿名之議題：

→「[…) 指導原則也適用於聲稱為匿名的部落格。這是因為有些人匿名編寫部落格保證他或她的身分無法被發現是不可能的」*（資深庭長，英格蘭和威爾斯資深首席法官，司法界身居要職者寫部落格，2012 年 8 月 8 日，英國）*。

→「如果被認出在司法界身居要職，法官不得發表可能會損害對其公正性或整個司法機關信任之意見。這也適用於聲稱匿名的部落格。」*（波隆那和米蘭和全球司法倫理準則，2015 年，於司法獨立國際會議批准，由司法獨立和世界和平國際協會所組織，2015 年 6 月，8.2.6.2.）*。

→「某些特定社群媒體平台所謂的匿名無法使法官不受職責約束，尤其是他們負有的的謹慎、公正和中立的義務」*（高級司法委員會，紀律委員會，訴訟，2014 年 4 月 29 日，法國）*。[10]

→ 法官使用假名在網站上發表有關他所承辦案件之評論（有些具辱罵性質），會被視為是不符合司法標準的行為。*（司法行為調查辦公室，司法行為調查辦公室之陳述，記錄之 Jason Dunn-Shaw，司法行為調查辦公室之陳述 JCIO 15/17，2017 年 4 月 11 日，美國）*。[11]

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[10] *法語原始資源非官方翻譯：Le prétendu anonymat qu'apporteraient certains réseaux sociaux ne saurait affranchir le magistrat des devoirs de son état, en particulier de son obligation de réserve, gage pour les justiciables de son impartialité et de sa neutralité. (Superior Judicial Council, Discipline Council, Prosecution, 29 April 2014, France). Also mentioned at : Conseil supérieur de la magistrature, Conseil de discipline des magistrats du siège, 30 avril 2015 and at Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, 法國。*

[11] *英語原始資源摘要。*

→ "Judges shall not identify themselves as judges or members of the judiciary" *(Judiciary of England and Wales, Guide to Judicial Conduct, 2018, United Kingdom).*

→ "A judge should not identify himself or herself as such, either by words or images, when engaging in commentary or interaction that is not in keeping with the limitations of this Code" *(Code of Judicial Conduct, Idaho, United States of America).*

In particular, different jurisdictions have elaborated further on the issue of the use of pseudonyms or anonymity by judges:

→ "[…) guidance also applies to blogs which purport to be anonymous. This is because it is impossible for somebody who blogs anonymously to guarantee that his or her identity cannot be discovered" *(Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom).*

→ "A judge must not express an opinion, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This also applies to blogs which purport to be anonymous." *(Bologna and Milan Global Code of Judicial Ethics, 2015, Approved at the International Conference of Judicial independence, organized by International Association of Judicial Independence and World Peace, June 2015, 8.2.6.2.).*

→ "The alleged anonymity granted by certain social media platforms cannot liberate judges from their duties, in particular their obligations of discretion, impartiality, and neutrality" *(Superior Judicial Council, Discipline Council, Prosecution, 29 April 2014, France).*[10]

→ A judge using a pseudonym to post comments, some of them abusive, on a website about a case over which he presided, constitutes behaviour below the standard expected of a judicial office holder. *(The Judicial Conduct Investigations Office, Statement from the Judicial Conduct Investigations Office, Recorded Jason Dunn-Shaw, Statement from the Judicial Conduct Investigation Office JCIO 15/17, 11 April 2017, United States of America).*[11]

[10] *Unofficial translation of an original source in French: Le prétendu anonymat qu'apporteraient certains réseaux sociaux ne saurait affranchir le magistrat des devoirs de son état, en particulier de son obligation de réserve, gage pour les justiciables de son impartialité et de sa neutralité. (Superior Judicial Council, Discipline Council, Prosecution, 29 April 2014, France). Also mentioned at : Conseil supérieur de la magistrature, Conseil de discipline des magistrats du siège, 30 avril 2015 and at Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France.*

[11] *Summary of the original source in English.*

→ 法官應避免揭露關於其專業活動之資訊並應尊重保密性。使用假名可能有助於保護法官的身分，因為當使用真名，法官很容易被辨識出來，而且他們的活動很容易在 Google 上以簡單的搜尋受到追蹤。*（司法事務司，法務部，合理且負責使用之指導原則，私人使用社群媒體良好實務，F.15，2017 年 6 月，法國）*。[12]

在社群媒體上的行為和分享的內容

→ 法官在社群媒體上的哪種行為是可接受的／不被接受的？（在連結／分享／反映／轉發資訊等方面）

→ 法官的社群媒體活動的哪些主題和內容可能為（不）適當？（例如，有爭議的問題、政治、關於司法、法律意見、廣告或物品或服務之促銷等議題，如何呢？）

→ 在社群媒體上分享關於法院行政、聽證會、案件等等的哪些內容，可能（不）適當？

→ 法官在社群媒體上的哪種行為可能會削弱公眾信任和司法信心？

→ 哪種行為很可能被跟隨者／朋友／社群媒體群組誤解或誤傳？

→ 在社群媒體上分享的哪些觀點可被視為係對法官之客觀司法審判能力所提出之合理質？

→ 若法官有只開放給他的家人和朋友的「私人」帳號，應運用哪些限制（若有任何限制）？

→ 若法官有「公開帳號」，應運用哪些限制（若有任何限制）？

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[12] *法語原始資源非官方翻譯：[...] D'éviter de divulguer toute information liée à son activité professionnelle, et de respecter les règles de discrétion. Evidemment l'utilisation d'un pseudo sera le plus protecteur car votre seul nom permet de vous identifier sur Google par les décrets de nomination qui y sont diffuses. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, 法國）。*

→ Judges should avoid disclosing information related to their professional activity and should respect confidentiality. The use of pseudonyms might help to protect judges' identities because when using their name, judges could be easily identified, and their activity tracked in a simple search on Google. *(Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017, France).*[12]

Behaviour on Social Media and Content Shared

→ Which behaviour is acceptable/unacceptable for judges on social media? (in terms of linking/sharing/reacting/re-posting information, etc.)

→ Which topics and content of judges' social media activities might be (in)appropriate? (e.g. what about controversial issues, politics, issues related to the judiciary, legal opinions, advertising or promotion of goods or services, etc.?)

→ What content might be (in)appropriate to share on social media with regard to court administration, hearings, cases, etc.?

→ Which behaviour of judges on social media could possibly erode public trust and confidence in the judiciary?

→ Which behaviour could possibly be misinterpreted or misrepresented by followers/friends/social media groups?

→ Which views shared on social media could be seen as casting reasonable doubt on a judge's ability to try an issue with an objective judicial mind?

→ If judges have "private" accounts open only to their family and friends, which restrictions, if any, should apply?

→ If judges have "public accounts", which restrictions, if any, should apply?

[12] *Unofficial translation of an original source in French: […] D'éviter de divulguer toute information liée à son activité professionnelle, et de respecter les règles de discrétion. Evidemment l'utilisation d'un pseudo sera le plus protecteur car votre seul nom permet de vous identifier sur Google par les décrets de nomination qui y sont diffuses. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France).*

→ 法官應該回應負面評論或批評嗎？他們應該允許／不允許在他們貼文下評論？

→ 法官在保護他們隱私權和安全性的方面，應該運用哪些限制？

→ 當議題是關於捍衛司法價值時，法官可以在社群媒體表達他們對司法議題的意見嗎？

若想了解更多關於社群媒體上之聯繫和互動問題，請參考本文以下部分。

一些司法管轄區已在嘗試解決這些問題：

→「法官之不負責任或不當行為會削弱公眾對司法之信任。法官必須避免出現所有不恰當行為。法官必須預期成為公眾持續監督的對象。因此，法官必須自由且出於自願地接受對其行為之限制，這些限制會被一般民眾視為負擔（*肯塔基州司法界倫理委員會，官方司法倫理意見 JE-119，基於網際網路之社交網路網站上的法官會員身分，2010 年 1 月 10 日，美國*）。

→ 有些實例是法官在他們的社群媒體簡介上放置免責聲明，述說所有表達的內容和意見只是以他們個人的名義。這可以是個預防措施，然而在美國，有些為諮詢意見提出的免責聲明無法消除其有特別影響力的印象 (…) 而且無法保證那些看到網頁的人會去查看或閱讀免責聲明。（佛羅里達州最高法院的司法倫理諮詢委員會之意見 2010-06，2010 年 3 月 26 日。*（審查佛羅里達州諮詢意見 2009-20）。美國*）。[13]

→「法官在社群媒體上所分享的每則評論、相片、和其它資訊必須維護尊嚴。如同 Jud. Cond. Rule 1.2 所要求，法官必須總是以能夠提升司法獨立、廉正、和公正之公眾信任的方式行事，並必須避免出現行為不恰當。維護法律就是維護職務尊嚴的主要部分，此乃不言而喻」*（俄亥俄州最高法院委員理事會申訴和紀律委員會，使用社群網路網站的俄亥俄州法官之指導原則，意見 2010-7，2010 年 12 月 3 日，美國*）。

[13] *英語原始資源摘要。*

→ Should judges respond to negative comments or criticism? Should they allow/disallow the comments section under their posts?

→ Which restrictions should judges apply in terms of preserving their privacy and safety?

→ Can judges express their opinions on social media on judicial issues when these are related to the defence of judicial values?

For more questions relating to connections and interactions on social media, please refer to the following section of the paper.

Several jurisdictions have tried to address these issues:

→ "Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of contestant public scrutiny. A judge must, therefore, accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly" *(The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, Judges' membership on internet-based social networking sites, 10 January 2010, United States of America).*

→ There have been instances where judges placed a disclaimer in their social media profiles stating that all the content or opinions expressed are only in their personal capacity. It might be a precautionary measure, nevertheless, some advisory opinions in the United States of America explained that the proposed disclaimers fail to cure the impression of having special influence (…) and there is no assurance that someone viewing the page would see or read the disclaimer. (The Florida Supreme Court's Judicial Ethics Advisory Committee's Opinion 2010- 06, 26 March 2010. *(Reviewing Florida Advisory Opinion 2009-20). United States of America).*[13]

→ "A judge must maintain dignity in every comment, photograph, and other information shared on the social network. As required by Jud. Cond. Rule 1.2, a Judge must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and must avoid impropriety and the appearance of impropriety. It should go without saying that upholding the law is a key component of maintaining the dignity of office" *(The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Guidelines for Ohio Judges who use social network sites, Opinion 2010-7, 3 December 2010, United States of America).*

[13] *Summary of the original source in English.*

→「有部落格的司法界要職者必須遵守本指導原則，並應立即移除與本指導原則牴觸的任何現有內容。未能遵守終將導致紀律處分。建議所有司法界要職者要熟悉即將發布的全新IT和資訊安全指導方針」*（資深庭長，英格蘭和威爾斯資深首席法官，司法界身居要職者寫部落格，2012年8月8日，英國）*。

→「[…] 法官必須總是以能夠提升 […] 司法獨立之公眾信任的方式行事並應避免出現不恰當之行為。不恰當行為之標準為在合情理的理智下，其行為是否會產生使法官違反本準則或使法官從事不利於法官之誠實、公正、性格、或適任與否等行為之觀點」*（評論司法程序以外的活動；電子社群媒體；Facebook，規則 1.2) 康乃狄克州司法倫理委員會，對司法程序以外活動之非官方意見；電子社群媒體；Facebook，2013-06，2013年3月22日，美國）*。

→ 法官不應為了政治立場而公開支持或反對候選人*（康乃狄克州司法倫理委員會，對司法程序以外活動之非官方意見；電子社群媒體；Facebook，2013-06，2013年3月22日，美國）*。[14]

→ 除別有原因外，譴責一位在公共數位論壇發表性別歧視言論的法官*（司法紀律和殘疾人士委員會 v. Maggio, Arkansas. 366，440 S.W.3d 333，2014年，美國）*。[15]

→「由於不禁止法官成為社群網路活動之成員並參與其中，我們提醒法官們，不必因此而擺脫他們的法官身分。他們在網路空間中揹負著相同的倫理責任和義務，公眾期待每位法官都能在他們／她們的每日活動中加以遵循。有鑒於此，當她以公眾可以看見之方式貼上她的照片，我們斷定應答者行為不恰當」*（Antonio M. Lorenzana v. 法官 Ma. Cecilia I. 奧地利，RTC, Br. 2, 八打雁市，A.M. No. RTJ-09-2200，2014年4月2日，菲律賓）*。

[14] *英語原始資源摘要。*
[15] *英語原始資源摘要。*

→ "Judicial office holders who maintain blogs must adhere to this guidance and should remove any existing content which conflicts with it forthwith. Failure to do so could ultimately result in disciplinary action. It is also recommended that all judicial office holders familiarize themselves with the new IT and Information Security Guidance which will be available shortly" *(Senior President of Tribunals, Senior Presiding Judge for England and Wales, Blogging by Judicial Office Holders, 8 August 2012, United Kingdom).*

→ "[…] A Judge should act at all times in a manner that promotes public confidence in the […] impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge" *(Commenting on Extrajudicial Activities; Electronic Social Media; Facebook, Rule 1.2) The Connecticut Committee on Judicial Ethics, Informal Opinion on Extrajudicial Activities; Electronic Social Media; Facebook, 2013-06, 22 March 2013, United States of America).*

→ A judge shall not endorse or oppose candidates for political positions *(The Connecticut Committee on Judicial Ethics, Informal Opinion on Extrajudicial Activities; Electronic Social Media; Facebook, 2013-06, 22 March 2013, United States of America).*[14]

→ Condemnation of a judge for, among other reasons, making sexist remarks in a public electronic forum *(The Judicial Discipline and Disability Commission v. Maggio, Arkansas. 366, 440 S.W.3d 333, 2014, United States of America).*[15]

→ "While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public" *(Antonio M. Lorenzana v. Judge Ma. Cecilia I. Austria, RTC, Br. 2, Batangas City, A.M. No. RTJ-09-2200, April 2, 2014, Philippines).*

[14] *Summary of the original source in English.*
[15] *Summary of the original source in English.*

→「法官應避免參加或涉入關於屬於他或她的法院之司法管轄區內事項之討論。此亦延伸至他人發布，而可能進入訴訟之矚目案件或法律議題貼文。這些交流會產生其他人或組織有能力影響法官的印象。他們也會因此擔憂法官的公正性」*（亞利桑那州最高法院司法倫理諮詢委員會，諮詢意見 14-01，2014 年 8 月 5 日，美國）*。

→ 建議法官在使用社群媒體的時候，能避免使政黨和法官之間產生連結。法官不應發表關於侵害司法系統使用者權利之司法程序的資訊或意見。*（名人委員會，哥斯大黎加司法系統，Uso de redes sociales，Recomendación 1-2015，2015 年，哥斯大黎加）*。[16]

→ 法官應明白他們的表現可能會受到操縱或脫離語境。由於社群媒體是公共空間，法官應避免分享非公開資訊。*（伊比利美洲司法倫理委員會，社群媒體之使用道德，伊比利美洲司法倫理委員會之建議，2015 年）*。[17]

→ 在公共論壇和社群媒體上一再支持政治候選人，會導致法官遭永久退職，並禁止其未來擔任司法職務。*（新墨西哥州最高法院關於 Hon. Phillip J. Romero, 臨時法官事件，No. 30,316，2015 年 2 月 13 日，美國）*。[18]

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[16] *西班牙語原始資源非官方翻譯：Recomendación. De acuerdo con lo señalado, se enlistan los puntos esenciales de la presente recomendación: iv) Evitar crear o participar en perfiles, grupos o páginas de sitios que se utilicen para el intercambio de opiniones sobre beligerancia política o partidaria; v) No realizar publicaciones en redes sociales (texto, fotografías u otros) que contengan información u opiniones sobre los procesos judiciales que vulneren la dignidad, los derechos, la seguridad u otros derechos propios, de otras personas servidoras o usuarias. (Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015 年，哥斯大黎加）。*

[17] *9.Tomar en cuenta que cualquier actuación, imagen o manifestación, puede ser documentada y hecha de conocimiento público por medio de las redes sociales. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).*

[18] *英語原始資源摘要。*

→ "A judge should avoid participating in or being associated with discussions about matters falling within the jurisdiction of his or her court. This extends to postings by others regarding high profile cases or legal issues that could come before the court. Such communications could give the impression that other people or organizations are in a position to influence the judge. They could also raise concerns about the judge's impartiality" *(The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America).*

→ It is recommended that judges use social media in a way that prevents linkages between political parties and judges. Judges shall not publish information or opinions about judicial processes that violate the rights of judicial system users. *(Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, 2015, Costa Rica).*[16]

→ Judges should be aware that their manifestations could be manipulated or decontextualized. Judges shall avoid sharing non-public information due to the fact that social media constitutes a public space. *(Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015).*[17]

→ The repeated endorsement of political candidates in public fora and on social media could lead to judges' permanent retirement and being barred from holding judicial office in the future. *(The New Mexico Supreme Court in the Matter of Hon. Phillip J. Romero, Pro Tempore Judge, No. 30,316, 13 February 2015, United States of America).*[18]

[16] *Unofficial translation of an original source in Spanish: Recomendación. De acuerdo con lo señalado, se enlistan los puntos esenciales de la presente recomendación: iv) Evitar crear o participar en perfiles, grupos o páginas de sitios que se utilicen para el intercambio de opiniones sobre beligerancia política o partidaria; v) No realizar publicaciones en redes sociales (texto, fotografías u otros) que contengan información u opiniones sobre los procesos judiciales que vulneren la dignidad, los derechos, la seguridad u otros derechos propios, de otras personas servidoras o usuarias. (Consejo de Notables, Sistema Judicial de Costa Rica, Uso de redes sociales, Recomendación 1-2015, N3, 2015, Costa Rica).*

[17] *9.Tomar en cuenta que cualquier actuación, imagen o manifestación, puede ser documentada y hecha de conocimiento público por medio de las redes sociales. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).*

[18] *Summary of an original source in English.*

→ 法官不可在 Facebook 更新或討論關於待決案件之議題和當事人。*（德克薩斯州司法行為委員會，CJC No. 14-0820-DI & 14- 0838-DIO，2015 年 4 月 20 日，美國）。*[19]

→ 法官分享資訊時，必須權衡資訊對他們自己、其他人的形象、其他使用者、或機構可能造成的後果。*（名人委員會，哥斯大黎加司法系統，Uso de redes sociales, Recomendación 1-2015，2015 年，哥斯大黎加）。*[20]

→「切勿使用社群媒體來寫私人日記。切勿未介紹他人就將他人加到交談之中。注意字詞拼法的正確性。避免張貼廣告或在政治上可能並不正確或帶有偏見的政治訊息。參加封閉式群組。對政治議題不要提供意見 [⋯] 切勿分享令人討厭或粗暴的貼文。切勿分享關於飲酒或包含裸露內容之貼文。避免貼文過於炫耀」*（地方法官使用社群媒體手冊，巴西地方法官協會，2017 年，巴西）。*[21]

→ 法官若在 Facebook 上發表性別歧視和政治評論則予以解聘。審理委員會解釋，法官必須在其個人和職業生涯裡成為司法獨立和公正之典範，並維護司法職務之榮譽。*（波多黎各自由邦最高法院，關於：Mercado Santaella，2017 年，TSPR064. 違反準則 2, 8, 23 and 28. 美國）。*[22]

→ 當法官按「喜歡」按鈕或在社群媒體上分享 Tweet 推文，即代表他們表達了意見。*（波多黎各自由邦最高法院，關於：Mercado Santaella，2017 年，TSPR064，美國）。*[23]

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[19] *英語原始資源摘要。*

[20] *西班牙語原始資源非官方翻譯。*

[21] *葡萄牙語原始資源非官方翻譯：Aqui, destacamos seis pontos que consideramos essenciais a serem observados não apenas por magistrados, mas por qualquer indivíduo que utilize as mídias digitais: Utilizar as redes sociais como diário pessoal; Adicionar pessoas desconhecidas sem se apresentar; Não se manifestar publicamente sobre questões de natureza político-partidária nas redes sociais ; Não compartilhar publicações que sugerem incentivo à violência; Não postar cenas de nudez e uso de bebidas alcoólicas; Não publicar postagens que denotem ostentação. (Manual da AMB para Magistrados o uso das redes sociais, Associação dos Magistrados Brasileiros, 2017 年，巴西）。*

[22] *西班牙語原始資源摘要。*

[23] *西班牙語原始資源摘要。*

→ Judges cannot post Facebook updates and comments about the issues and the parties of pending cases. *(The Texas State Commission on Judicial Conduct, CJC No. 14-0820-DI & 14- 0838-DIO, 20 April 2015, United States of America).*[19]

→ When sharing information, judges must balance the consequences for themselves, the image of other persons, other users, or the institution. *(Council of Notables, Costa Rica Judicial System, Uso de redes sociales, Recomendación 1-2015, 2015, Costa Rica).*[20]

→ "Do not use social media to write a personal diary. Do not add people to a conversation without introducing them. Pay attention to correct spelling. Refrain from posting advertisements or political messages, which might be politically incorrect or prejudiced. Take part in closed groups. Do not give opinions on political issues. […] Do not share hateful or violent posts. Do not share posts about alcohol consumption or containing nudity. Avoid posts that are ostentatious" *(Manual for the Magistrates' Use of Social Media, The Brazilian Magistrates Association, 2017, Brazil).*[21]

→ Dismissal of a judge for his sexist and political comments on Facebook. The Tribunal explained that a judge must be an example of judicial independence and impartiality and uphold the honour of the judicial career, both in their personal and professional life. *(Supreme Court Puerto Rico, in Re: Mercado Santaella, 2017, TSPR064. Violations of canons 2, 8, 23 and 28. United States of America).*[22]

→ When a judge presses a "like" button or shares a Tweet on social media, they are expressing their opinion. *(Supreme Court Puerto Rico, in Re: Mercado Santaella, 2017, TSPR064, United States of America).*[23]

[19] *Summary of an original source in English.*
[20] *Unofficial translation of an original source in Spanish.*
[21] *Unofficial translation of an original source in Portuguese: Aqui, destacamos seis pontos que consideramos essenciais a serem observados não apenas por magistrados, mas por qualquer indivíduo que utilize as mídias digitais: Utilizar as redes sociais como diário pessoal; Adicionar pessoas desconhecidas sem se apresentar; Não se manifestar publicamente sobre questões de natureza político-partidária nas redes sociais ; Não compartilhar publicações que sugerem incentivo à violência; Não postar cenas de nudez e uso de bebidas alcoólicas; Não publicar postagens que denotem ostentação. (Manual da AMB para Magistrados o uso das redes sociais, Associação dos Magistrados Brasileiros, 2017, Brasil).*
[22] *Summary of an original source in Spanish.*
[23] *Summary of an original source in Spanish.*

→ 1. 法官所作的所有交流（貼文、評論、相片等）必須尊重司法職責的尊嚴，且不可質疑他或她的公正性或獨立性。[…] 3. 法官不應對進行中的法庭訴訟進行評論。4. 法官不應提供法律諮詢。5. 法官應避免作政治判斷（尤其是支持候選人之政治活動，不應「喜歡」政黨或政治活動，不應對有爭議的政治問題提供意見，除非事關司法制度）*（捷克共和國法官聯盟，關於法官使用社群媒體之六項結論，布拉格，2017 年 5 月 24 日，捷克共和國）*。[24]

→ 社群媒體上帶有種族主義暗示的歧視評論在在紀律懲戒程序中屬可彈劾的行為。*（司法行為委員會，有關 Vuyani Richmond Ngalwana，黑人律師協會 BLA，警方和囚禁公民權利聯盟，Okyerebea Ampofo-Anti 和其他人，Ahmed Kathrada 基金會，Gillian Schutte, Ms Liezl van der Merwe，南非人權委員會，進步職業論壇和 Maria Mabel Jansen 法官，2017 年 2 月 13 日，南非）*。[25]

→ 在波多黎各自由邦的一個 Colon Colon 案件中，一位法官在社群媒體上以嘲弄語氣評論案件的當事人。這被認定為違反公正原則和道德規範。*（波多黎各自由邦最高法院，DTS 049, in Re: Hon. Eric Colon Colon, 31 March 2017 TSPR 49。違反準則 19 和 23，美國）*。[26]

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[24] *捷克語和俄羅斯語原始資源非官方翻譯：Závěry k působení soudce na sociálních sítích: 1) Všechny projevy soudce (příspěvky, komentáře, fotografie aj.) musí zachovávat důstojnost soudcovské funkce a nesmí vzbuzovat pochybnosti o jeho nestrannosti či nezávislosti. 3) Soudce nekomentuje probíhající soudní řízení. 4) Soudce nedává právní rady. 5) Soudce se vyhýbá politickým hodnocením (mj. podpoře konkrétního kandidáta na politickou funkci, „nelajkuje" politické strany či hnutí, nevyjadřuje se ke kontroverzním politickým otázkám, netýkají-li se justice).*

[25] *英語原始資源摘要：在作成判決時法院必須調查並報告起訴狀，除了別項事物外，委員會要考量：i)「這些陳述已得到廣泛宣傳並在此國家中個人和組織代表中引發憤慨」。*

[26] *西班牙語原始資源摘要。*

→ 1. All communications by a judge (posts, comments, photos, etc.) must respect the dignity of judicial functions and cannot cast doubt on his or her impartiality or independence. […] 3. A judge should not comment on ongoing court proceedings. 4. A judge should not provide legal advice. 5. A judge should avoid political judgments (among others to support a candidate for a political function, should not "like" political parties or movements, should not give an opinion on controversial political questions unless they concern justice matters). *(The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic).*[24]

→ Discriminatory comments with a racist overtone on social media amounted to impeachable conduct in the disciplinary proceedings. *(Judicial Conduct Committee, in the matter of Vuyani Richmond Ngalwana, Black Lawyers Association, Police and Prisons Civil Rights Union, Okyerebea Ampofo-Anti and Others, Ahmed Kathrada Foundation, Gillian Schutte, Ms Liezl van der Merwe, South African Human Rights Commission, the Progressive Professionals Forum and Judge Maria Mabel Jansen, 13 February 2017, South Africa).*[25]

→ In the case of Colon Colon in Puerto Rico, a judge commented mockingly on social media about the parties of a case. It was considered as a violation of the principle of impartiality and a transgression of the ethical canons *(Supreme Court Puerto Rico, DTS 049, in Re: Hon. Eric Colon Colon, 31 March 2017 TSPR 49. Violation of canons 19 and 23, United States of America).*[26]

[24] *Unofficial translation of an original source in Czech and Russian: Závěry k působení soudce na sociálních sítích: 1) Všechny projevy soudce (příspěvky, komentáře, fotografie aj.) musí zachovávat důstojnost soudcovské funkce a nesmí vzbuzovat pochybnosti o jeho nestrannosti či nezávislosti. 3) Soudce nekomentuje probíhající soudní řízení. 4) Soudce nedává právní rady. 5) Soudce se vyhýbá politickým hodnocením (mj. podpoře konkrétního kandidáta na politickou funkci, „nelajkuje" politické strany či hnutí, nevyjadřuje se ke kontroverzním politickým otázkám, netýkají-li se justice).*

[25] *Summary of an original source in English: In reaching the decision that the complaints must be investigated and reported on by a Tribunal, the Committee took into account, inter alia that: i) "the statements have received widespread publicity and provoked genuine outrage in a fair cross section of individuals and organisations in this country".*

[26] *Summary of an official source in Spanish.*

→ 司法委員會對於他們司法管轄區內之法官使用社群媒體，應根據以下規範採用指導方針或倫理準則：i) 法官使用社群網路或社群媒體時，應隨時遵守適用於他或她的倫理準則、獨立公正行事、並維護司法制度和法官之廉正與形象；ii) 使用社群媒體不應干預司法之行使。*（以法語為主要語言的司法委員會網，工作小組報告，社群媒體和司法制度，聯繫地方法官：在什麼條件下？，2018 年 11 月）*。[27]

→「如果被認出在司法界身居要職，他們也必須避免表達可能傷害到他們自己的公正性或一般司法界之公眾信任的意見。這項指導原則也適用於聲稱為匿名的部落格。[…] 法官也應謹慎：2. 張貼可能導致人身安全的資訊。例如，假日計畫細節和關於家庭的資訊」*（英格蘭和威爾斯司法制度，司法行為指導原則，2013 年和 2018 年，英國）*。

[27] *法語官方資源非官方翻譯：Que les conseils de la magistrature adoptent des lignes directrices ou principes déontologiques sur l'utilisation des réseaux ou médias sociaux pour les magistrats relevant de leur juridiction, en s'inspirant des paramètres suivants : i) lorsqu'il s'exprime ou utilise un réseau ou média social, le magistrat se conforme en tout temps aux principes déontologiques qui s'imposent à lui, à son indépendance, à son impartialité et à son devoir de réserve notamment et il préserve l'intégrité et l'image de la magistrature et du système judiciaire ; ii) l'utilisation des réseaux ou médias sociaux ne doit pas interférer dans l'exercice de ses fonctions judiciaires. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, 2018 年 11 月）*。

→ The judicial councils should adopt guidelines or ethical principles for the use of social media by judges within their jurisdictions based upon the following parameters: i) when using a social network or social media, the judge shall at all times comply with the ethical principles that apply to him or her, act with independence, impartiality and preserve the integrity and image of the judiciary and the judges; ii) the use of social media should not interfere in the judicial exercise. *(Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018).*[27]

→ "They must also avoid expressing opinions which, were it to become known that they hold judicial office, could damage public confidence in their own impartiality or in the judiciary in general. This guidance also applies to blogs which purport to be anonymous. […] Judges should also be wary of: 2. posting information which could result in a risk to personal safety. For example, details of holiday plans and information about family" *(Judiciary of England and Wales, Guide to Judicial Conduct, 2013 and 2018, United Kingdom).*

[27] *Unofficial translation of an official source in French: Que les conseils de la magistrature adoptent des lignes directrices ou principes déontologiques sur l'utilisation des réseaux ou médias sociaux pour les magistrats relevant de leur juridiction, en s'inspirant des paramètres suivants : i) lorsqu'il s'exprime ou utilise un réseau ou média social, le magistrat se conforme en tout temps aux principes déontologiques qui s'imposent à lui, à son indépendance, à son impartialité et à son devoir de réserve notamment et il préserve l'intégrité et l'image de la magistrature et du système judiciaire ; ii) l'utilisation des réseaux ou médias sociaux ne doit pas interférer dans l'exercice de ses fonctions judiciaires. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, novembre 2018).*

→ 司法人員被允許像其他公民一樣使用社群媒體平台，並作為其言論自由行使之一部分。然使用社群媒體時應謹慎和勤勉，以能在言論自由和法官道德倫理義務之間取得平衡：公正、獨立並尊重審議之保密。社群媒體之使用不可對法官形象產生偏見。此外，法官有義務確保他們自己了解使用社群媒體之優點、缺點和風險，為了個人或職業上之目的並因而調整他們的行為（*以法語為主要語言的司法委員會網，工作小組報告，社群媒體和司法制度，聯繫地方法官：在什麼條件下？，2018 年 11 月*）。[28]

→「針對個別法官使用社群媒體之建議：i) 對司法懷抱敬意；ii) 避免政治和商業評論；以及 iii) 絕不評論待決案件」（*個別法官使用社群媒體之建議：中歐和東歐背景，中歐和東歐法律議題，CEELI 學院*）。

社群媒體上的友誼和聯繫

→ 在社群媒體上的哪些聯繫是（沒）有問題的？

- 家庭
- 朋友
- 法官同事
- 法院工作人員
- 律師

[28] *法語原始資源非官方翻譯：Le consensus semble établi sur le fait que les membres de la magistrature qui, comme tous les autres citoyens, jouissent de la liberté d'expression, peuvent utiliser les réseaux et médias sociaux. Cette utilisation implique toutefois prudence et vigilance, afin de concilier liberté d'expression et respect des obligations déontologiques attachées à la qualité de magistrat. Elle doit notamment s'inscrire en conformité avec les devoirs d'impartialité, d'indépendance et de réserve et avec le respect du secret du délibéré. Elle ne peut porter atteinte à l'image de la justice. Aussi les magistrats ont-ils l'obligation de s'assurer qu'ils comprennent les avantages, les inconvénients et les risques que comporte l'utilisation des réseaux sociaux, à titre personnel ou professionnel, et d'adapter leur conduite en conséquence. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, 2018 年 11 月）。*

→ The members of the judiciary are allowed to use social media platforms as any other citizen and as a part of their right to freedom of expression. Prudence and diligence should apply when using social media, in order to balance freedom of expression and respect for the ethical obligations of the judge: impartiality, independence and the respect for the secrecy of deliberations. Social media use cannot create prejudice in the image of justice. Furthermore, judges have the obligation to ensure that they understand the advantages, disadvantages and risks of the use of social media, for personal or professional purposes and consequently adapt their behaviour *(Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018).*[28]

→ "Recommendations on the use of social media by individual judges: i) represent respectfully the judiciary; ii) avoid political and commercial comments; and iii) never comment on pending cases" *(Recommendations on use of social media by individual judges: Central and Eastern European context, Central and Eastern European Law Initiative, CEELI Institute).*

Friendships and Connections on Social Media

→ Which connections on social media are (non-)problematic?

- Family
- Friends
- Fellow judges
- Court personnel
- Lawyers

[28] *Unofficial translation from an original source in French: Le consensus semble établi sur le fait que les membres de la magistrature qui, comme tous les autres citoyens, jouissent de la liberté d'expression, peuvent utiliser les réseaux et médias sociaux. Cette utilisation implique toutefois prudence et vigilance, afin de concilier liberté d'expression et respect des obligations déontologiques attachées à la qualité de magistrat. Elle doit notamment s'inscrire en conformité avec les devoirs d'impartialité, d'indépendance et de réserve et avec le respect du secret du délibéré. Elle ne peut porter atteinte à l'image de la justice. Aussi les magistrats ont-ils l'obligation de s'assurer qu'ils comprennent les avantages, les inconvénients et les risques que comporte l'utilisation des réseaux sociaux, à titre personnel ou professionnel, et d'adapter leur conduite en conséquence. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, novembre 2018).*

- 檢察官
- 其他執法人員
- 案件當事人及其親屬
- 證人
- 報案人
- 專家
- 政府官員
- 以上任何人員的親屬
- 一般大眾

→ 當談到揭露／資格取消／迴避時，「線上」友誼和聯繫之處理方式應該與真實世界友誼相同嗎？

→ 就以上所列類別而言，哪一種社群媒體聯繫（若有）會潛在地影響法官的判決？哪一種聯繫（若有）可能被理性第三人認為足以影響法官？

→ 在社群媒體平台上與上述類別人員的哪一種互動是（不）可接受的？

→ 法官在社群媒體上互動的許多人是潛在的法庭使用者，因此，期待法官與他們沒有聯繫乃不切實際，這樣的論點適宜嗎？法官可以加入任何社群媒體群組嗎？或者法官可以在行使其審判權時與可能在其面前出庭的人們互動嗎？

→ 如果我們不打算直接聯繫，而只是在社群媒體上分享一般的群組／社群／朋友／關注，則對以上問題的答案會改變嗎？

→ 在社群媒體上的哪些聯繫（若有）應該要求揭露／資格取消／迴避？

- Prosecutors
- Other law enforcement personnel
- Parties to cases and their relatives
- Witnesses
- Reporting persons
- Experts
- Government officials
- Relatives of any of the above
- General public

→ Should "online" friendships and connections be treated the same way as real-life friendships when it comes to disclosures/disqualifications/recusals?

→ For the categories listed above, which social media connections, if any, may potentially influence a judge's decision? Which connections, if any, may be seen by a reasonable observer as able to influence a judge?

→ Which type of interaction on social media platforms with the above-mentioned categories is (un)acceptable?

→ How relevant is the argument that many people who a judge interacts with on social media are potential court users and as such it is unrealistic to expect a judge not to be connected to them? Can a judge belong to any social media group or interact with persons that might appear in front of him or her in the exercise of his or her jurisdiction?

→ Would the answers to the above questions change if we do not mean direct connections, but instead sharing common groups/communities/friends/interests on social media?

→ Which connections on social media, if any, should require disclosure/disqualification/recusal?

有些司法體系已嘗試回應這些問題：

→「社群網絡朋友是朋友嗎？不見得，社群網路朋友在傳統字面意義上可能是朋友，也可能不是」（*俄亥俄州最高法院委員理事會申訴和紀律委員會，意見 2010-7，2010 年 12 月 3 日，p2，美國*）。

→ 法官可以參加像是 Facebook、LinkedIn 和 Twitter 之類的社群網路網站，且可以在有限制的狀況下，和律師、執法官員和其他在該法官面前出庭者交朋友。法官是否必須揭露社交關係或取消其對某案件之資格取決於與該關係的密切程度，但是在社群網路上被稱呼為朋友，這件事本身並無法傳達特殊關係之印象。（*肯塔基州司法體系倫理委員會，正式司法倫理意見 JE-119，2010 年 1 月 10 日，美國*）。[29]

→「『朋友』、『粉絲』和『跟隨者』是社群媒體專用術語 […] 並不帶有一般字義」（*肯塔基州司法體系倫理委員會，正式司法倫理意見 JE-119，2010 年 1 月 10 日，美國*）。

→「該人是否實際在該職位上乃無關緊要，重要的是可能的印象。[…] 我們相信，公眾信任司法系統之公正與公平最為重要，極為重要的是在『充滿危險』的情況下，寧可過於謹慎也不要冒險犯錯。（*俄克拉荷馬州諮詢意見 2011-3，2011 年，美國*）。

→「委員會認為，只不過是『Facebook 朋友』的狀態沒有其它關係即要求迴避，基礎並不充分。委員會也不認為，只根據某法官之前有個『朋友』特定人士，該朋友現在以某種方式涉入一件進行中的訴訟，就可以合理質疑該名法官的公正（查看 22 NYCRR 100.3[E][1]）或認為有行為不恰當之情形（查看 22 NYCRR 100.2[A]）」（*紐約州司法倫理諮詢委員會，意見 13-39，2013 年，美國*）。

[29] *英語原始資源摘要。*

Several judiciaries have tried to respond to these questions:

→ "A friend is a friend? Not necessarily, a social network friend may or not be a friend in the traditional sense of the word" *(The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, p2, United States of America).*

→ Judges may join social networking sites such as Facebook, LinkedIn and Twitter, and may be friends with lawyers, law enforcement officers and others who appear before them, with limitations. Whether a judge must disclose a social relationship or disqualify from a case depends on the closeness of the relationship but being designated a friend on a social network does not in itself convey the impression of a special relationship. *(The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, 10 January 2010, United States of America).*[29]

→ "'Friend', 'fan' and 'follower' are social media terms of art […] that do not carry the ordinary sense of those words" *(The Ethics Committee of the Kentucky Judiciary, Formal Judicial Ethics Opinion JE-119, 10 January 2010, United States of America).*

→ "It is immaterial whether the person actually is in such a position, it is the possible impression that matters. […] We believe that public trust in the impartiality and fairness of the judicial system is so important that [it] is imperative to err on the side of caution where the situation is 'fraught with peril'. *(The Oklahoma Advisory Opinion 2011-3, 2011, United States of America).*

→ "The Committee believes that the mere status of being a 'Facebook friend,' without more, is an insufficient basis to require recusal. Nor does the Committee believe that a judge's impartiality may reasonably be questioned (see 22 NYCRR 100.3[E][1]) or that there is an appearance of impropriety (see 22 NYCRR 100.2[A]) based solely on having previously 'friended' certain individuals who are now involved in some manner in a pending action" *(The New York State Advisory Committee on Judicial Ethics, Opinion 13-39, 2013, United States of America).*

[29] *Summary of the original source in English.*

→「來龍去脈很重要。簡單將某人標記為 [社群媒體] 聯繫，並不能代表法官與一位人士關係的程度或強度。[…] 僅是在 Facebook 上將某些人指定為『朋友』並無法顯示法官與該人士關係的程度或強度。[…] 法官應該小心行事並評估在社群網路中將一個人加為聯絡人的意義。[…] 如果該聯繫包含目前的交流且經常交流，該名法官必須非常謹慎考量，該聯繫是否要公開」*（美國律師協會 ABA，正式意見 462，2013 年，美國）*。

→「重申此規則：法官在透過社群網路交流和社交的過程中必須謹記，不管是私人事務或是其司法職務，他們傳遞的事項都會影響人們對法官本人及所屬司法界的看法。當法官的貼文不僅他或她的家人和密友可以看到，認識的人和社會大眾都可以看到時，這一點尤為重要」*（Antonio M. Lorenzana v. 法官 Ma. Cecilia I. 奧地利，RTC，Br. 2，八打雁市，A.M. No. RTJ-09-2200，2014 年 4 月 2 日，菲律賓）*。

→「Facebook 的友誼事實上可說僅僅是點頭之交。[…] 只有客觀上顯現密切且私人的關係才可認定違反班加羅爾原則而導致迴避」*（歐洲司法訓練網，Themis 競賽 2015. 法官和社群媒體：管理風險，Semi Final D，司法倫理和專業行為，Team Greece 3, 23-26 June 2015, 捷克共和國 . p.10-11）*。

→「[…] 2. 有些人會給人一種影響法官決策的印象，法官不應與這種人建立關係」*（捷克共和國法官聯盟，關於法官使用社群媒體的六項結論，布拉格，2017 年 5 月 24 日，捷克共和國）*。[30]

[30] *捷克語和俄羅斯語原始資源非官方翻譯：Závěry k působení soudce na sociálních sítích: 2) Soudce si nemá vytvářet takové vztahy, které by mohly vzbudit dojem, že mohou ovlivnit soudcovo rozhodování..*

→ "Context is significant. Simple designation as a [social media] connection does not, in and of itself, indicate the degree or intensity of a judge's relationship with a person. […] Merely designating someone as a 'friend' on Facebook does not show the degree or intensity of a judge's relationship with a person. […] Judges shall act carefully and evaluate the meaning of adding a person as a contact in a social network. […] If that connection includes current and frequent communication, the judge must very carefully consider whether that connection must be disclosed" *(The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America).*

→ "To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate –regardless of whether it is a personal matter or part of his or her judicial duties – creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public" *(Antonio M. Lorenzana v. Judge Ma. Cecilia I. Austria, RTC, Br. 2, Batangas City, A.M. No. RTJ-09-2200, 2 April 2014, Philippines).*

→ "A Facebook friendship may actually amount to mere acquaintanceship. […] Only objective manifestation of a close and personal relationship could constitute a violation of the Bangalore principles guiding to consequences, as disqualification" *(European Judicial Training Network, Themis competition 2015. Judges and Social Media: Managing the risks, Semi Final D, Judicial Ethics and Professional Conduct, Team Greece 3, 23-26 June 2015, Czech Republic. p.10-11).*

→ "[…] 2. A judge should not create relationships that would give an impression that they could affect a judge's decision-making" *(The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic).*[30]

[30] *Unofficial translation from an original source in Czech and Russian: Závěry k působení soudce na sociálních sítích: 2) Soudce si nemá vytvářet takové vztahy, které by mohly vzbudit dojem, že mohou ovlivnit soudcovo rozhodování..*

聯繫律師

→「法官不得將在他面前出庭的律師加為『好友』，律師也不可以加該法官為好友。法官接受律師為好友會造成一種某人有特殊位置可以影響法官的印象（或讓其他人傳達此印象），即使這並非事實」（*佛羅里達州最高法院司法倫理諮詢委員會，意見 2009-20，2009 年 11 月 17 日，美國*）。

→ 律師和其他人可以將自己列為法官的跟隨者（或法官的活動委員會，法庭的官方 Facebook 網頁），而這可能會影響對法官裁判的看法。（*佛羅里達州最高法院司法倫理諮詢委員會意見 2010-06，2010 年 3 月 26 日，審查佛羅里達州諮詢意見 2009-20，美國*）。[31]

→「法官可以加入社群網路，即使該社群包含可能會在該法官面前出庭的律師在內，但是，當該律師在該法官面前有案件時，該法官必須揭露社群網路聯繫且必須解除該律師的好友關係。[…] 當法官和律師在社群媒體上是朋友時，有些因素可以用來判斷行為不恰當：i) 特定社群媒體網頁的性質，ii) 法官擁有好友的數量（數量越少表示關係較密切），iii) 法官對於接受『好友』邀請的實際做法，以及 iv) 特定律師『朋友』在該法官面前出庭之情形有多常發生。[…] 不管社群網路的性質為何，法官總是應該揭露他有一個與律師有關的社群網路，且必須迴避來自親密程度更高的朋友有參與其中的任何案件。[…] 當律師因某案件在法官面前出庭時，該法官應解除該律師的好友關係」（*加利福尼亞州法官協會司法倫理委員會，意見 66，2010 年 11 月 23 日，美國*）。

→ 委員會持有的意見為「準則禁止法官以任何方式在社群網路網站上結交會在他面前出庭的律師。換言之，就明確標準方面來說，法官只能在律師出現在他們面前時迴避的情況下，與律師結為『好友』」（*麻薩諸塞州最高法院司法庭司法倫理委員會，CJE 意見 No. 2011-6，2011 年 12 月 28 日，美國*）。

[31] 英語原始資源摘要。

Connections with lawyers

→ "Judge may not add as 'friends' lawyers who appear before the judge, nor allow lawyers to add the judge as a friend. The judge's acceptance of a lawyer as a friend would convey the impression, or allow others to convey the impression, that a person is in a special position to influence the judge, even if that is not true" *(The Florida Supreme Court's Judicial Ethics Advisory Committee's, Opinion 2009-20, 17 November 2009, United States of America).*

→ Lawyers and others could list themselves as followers of a judge (or the campaign committee of a judge, the official Facebook page of a tribunal) and it could create the perception of influence over the judge's decision. *(The Florida Supreme Court's Judicial Ethics Advisory Committee's Opinion 2010-06, 26 March 2010, reviewing Florida Advisory Opinion 2009-20, United States of America).*[31]

→ "The judge may join a social network, even one which includes lawyers who may appear before the judge, but the judge must disclose the social network connection and must defriend the lawyer when the lawyer has a case before the judge. […] A number of factors can be used to determine the appearance of impropriety when judges and lawyers are friends on social media: i) the nature of the particular social media page, ii) the number of friends the judge has (with a lower number suggesting a closer relationship), iii) the judge's practice as to accepting 'friendship' requests, and iv) how regularly the particular 'friend'-lawyer appears before the judge. […] Regardless of the nature of the social network, the judge shall always disclose that the judge has a social network tie to a lawyer and must recuse from any case in which a friend from the first kind of network, the more personal one, is participating. […] Judge shall de-friend the lawyer when the lawyer appears in a case before the judge" *(The Judicial Ethics Committee of the California Judges Association, Opinion 66, 23 November 2010, United States of America).*

→ The Committee is of the opinion that "the Code prohibits judges from associating in any way on social networking web sites with attorneys who may appear before them. Stated another way, in terms of a bright-line test, judges may only 'friend' attorneys as to whom they would recuse themselves when those attorneys appeared before them" *(The Committee on Judicial Ethics of the Massachusetts Supreme Judicial Court, CJE Opinion No. 2011-6, 28 December 2011, United States of America).*

[31] *Summary from the original source in English.*

→「司法官員不應在社群往絡與可能在他面前出庭之律師結為『好友』。[…] 當司法官員在社群網路與律師的關係可能導致關於此律師成為當事人的偏差或成見時，司法官員應迴避」*（康乃狄克州司法倫理委員會，非正式意見 2013-06，2013 年 3 月 22 日，美國）*。

→ 法官並未被要求當出庭律師是他在 Facebook 上的朋友時，法官必須迴避，但法官應個別評估每一情況。當律師屬於『密切朋友』類別時，則更傾向於迴避。律師和法官之間的友誼會導致出現偏見或不當影響之情況下，並引起足以導致迴避疑慮之案件中，單純只是解除友好關係並非足夠的應對措施。*（亞利桑那州最高法院司法倫理諮詢委員會，諮詢意見 14-01，2014 年 8 月 5 日，美國）*。[32]

→「比利時高等司法委員會認定被告對一位法官的控訴有理，原因是法官於該案中與對造律師在 Facebook 上是好友，而且法官在律師的公開 Facebook 個人資料上所發表之評論證明了法官與律師間無可置疑的曖昧關係。在高級司法委員會的意見中，這項曖昧關係已依法被視為缺乏『客觀的』公正性」*（高等司法委員會，報告起訴狀之處理 2014 年，2015 年 6 月 18 日，比利時）*。[33]

[32] 英語原始資源摘要。

[33] 法語原始資源非官方翻譯：*Voir en ce sens la décision prise le 15 mai 2014 par le Conseil supérieur de la Justice belge – à l'intermédiaire de sa Commission d'avis et d'enquête – qui a déclaré fondée la plainte d'un justiciable à l'encontre d'un magistrat ayant prononcé le jugement le condamnant alors que ledit magistrat était ami sur Facebook de l'avocat de la partie adverse et que les commentaires postés par le magistrat sur le profil public Facebook de cet avocat témoignaient d'une incontestable intimité entre eux. Cette intimité a légitimement, à l'estime du CSJ, pu être perçue par le plaignant comme un défaut d'impartialité « objective » au sens de l'article 6 de de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales, garantissant à toute personne le droit d'accès à un tribunal indépendant et impartial. (Conseil supérieur de la Justice, Rapport sur le traitement des plaintes 2014, 18 Juin 2015, Belgique).*

→ "A judicial official should not become a social networking 'friend' of attorneys who may appear before the judicial official. […] A judicial official should disqualify himself or herself from a proceeding when the judicial official's social networking relationship with a lawyer is likely to result in bias or prejudice concerning the lawyer for a party or the party" *(The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America).*

→ Judges are not required to automatically disqualify themselves from cases in which lawyers who are their Facebook friends appear, but they shall evaluate each situation individually. Recusal is more likely when the lawyer is in the "close friend" category. In the cases in which the friendship between a lawyer and a judge could lead to the appearance of bias or undue influence and raises concerns sufficient for disqualification, simply un-friending is not an adequate response. *(The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America).*[32]

→ "The Belgian High Council of Justice declared the complaint of a defendant as well-founded against a magistrate who pronounced the judgment condemning him, as this magistrate was a friend on Facebook of the lawyer of the opposite party and the comments posted by the magistrate on the lawyer's public Facebook profile testified to an incontestable intimacy between them. In the opinion of the Superior Judicial Council, this intimacy had legitimately been perceived by the complainant as a lack of 'objective' impartiality" *(High Council of Justice, Report on the handling of complaints 2014, 18 June 2015, Belgium).*[33]

[32] *Summary of an original source in English.*

[33] *Unofficial translation of an original source in French : Voir en ce sens la décision prise le 15 mai 2014 par le Conseil supérieur de la Justice belge – à l'intermédiaire de sa Commission d'avis et d'enquête – qui a déclaré fondée la plainte d'un justiciable à l'encontre d'un magistrat ayant prononcé le jugement le condamnant alors que ledit magistrat était ami sur Facebook de l'avocat de la partie adverse et que les commentaires postés par le magistrat sur le profil public Facebook de cet avocat témoignaient d'une incontestable intimité entre eux. Cette intimité a légitimement, à l'estime du CSJ, pu être perçue par le plaignant comme un défaut d'impartialité « objective » au sens de l'article 6 de de la Convention européenne de sauvegarde des Droits de l'Homme et des Libertés fondamentales, garantissant à toute personne le droit d'accès à un tribunal indépendant et impartial. (Conseil supérieur de la Justice, Rapport sur le traitement des plaintes 2014, 18 Juin 2015, Belgique).*

→ 法官在社群媒體上應完全排除律師或其他法律專業人士作為聯絡人。*（伊比利美洲司法倫理委員會，社群媒體之使用道德，伊比利美洲司法倫理委員會之建議，2015 年）*。[34]

→ 不鼓勵法官在社群媒體上與律師建立友誼*（位於斯利那加之查謨和喀什米爾高等法院，首席法官秘書，通報，N8，2015 年 8 月 27 日，印度）*。[35]

與檢察官聯繫

→「法官應考量迴避，若他們是檢察官在社群媒體上的朋友，且若基於友誼，足以製造被告不會得到公平且公正審判之恐懼。*（佛羅里達州區上訴法院，第 4 區，在 Domville v. State, WL 3826764 Fla. Dist. Ct. App., 第 4 區，2012 年，美國）*。[36]

→ 在法官和檢察官之間的推文交談被視為對法官的中立不信任。（國家上訴，罪犯與矯正事項第四辦公室，2013 年 8 月 9 日 c. 4139/2013，阿根廷）。[37] 法官成為地方郡保安官的（或其他地方執法官員的）Facebook 網頁的『好友』或在該網頁按『喜歡』也違反了規則 1.2。因為郡保安官的職務會經常參與大部分法院出庭事務，這樣的關係在道德上是有問題的*（亞利桑那州最高法院司法倫理諮詢委員會，諮詢意見 14-01，2014 年 8 月 5 日，美國）*。[38]

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[34] *西班牙語原始資源非官方翻譯：3. El juez debe evaluar el significado que tiene admitir o no admitir a una persona a su universo de contactos en el marco de una red social, restringiendo de manera absoluta cualquier comunicación con aquellas personas que como partes o como abogados y otros profesionales de la justicia litiguen en un asunto del que en ese momento esté conociendo el juez. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015 年）。*

[35] *英語原始資源摘要。*

[36] *英語原始資源摘要。*

[37] *西班牙語原始資源摘要：*Sala VI de la Cámara Nacional de Apelaciones en lo Criminal y Correccional, 9 agosto 2013 c. 4139/2013, 阿根廷。

[38] *英語原始資源摘要。*

→ Judges should completely exclude lawyers or other legal professionals as contacts on social media. *(Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015).*[34]

→ The friendship of judges on social media with lawyers is discouraged *(High Court of Jammu and Kashmir at Srinagar, Chief Justice's Secretariat, Circular, N8, 27 August 2015, India).*[35]

Connections with prosecutors

→ "Judges shall consider if disqualifying themselves if they are friends of the prosecutor on social media, and if based on the friendship, it is sufficient to create a fear that the defendant would not receive a fair and impartial trial. *(The Florida District Court of Appeal, Fourth District, in Domville v. State, WL 3826764 Fla. Dist. Ct. App., 4th Dist., 2012, United States of America).*[36]

→ The exchange of tweets (between judges and prosecutors) constitutes distrust in the neutrality of the judge. (National Appeal, Chamber IV on Criminal and Corrective matters, 9 August 2013 c. 4139/2013, Argentina).[37] It would also violate Rule 1.2 for a judge to be a "friend" of the local sheriff's (or other local law enforcement officials') Facebook page or to "like" such a page. Because the sheriff's office regularly participates in matters before most courts, such associations are ethically problematic *(The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America).*[38]

[34] *Unofficial translation from an original source in Spanish: 3. El juez debe evaluar el significado que tiene admitir o no admitir a una persona a su universo de contactos en el marco de una red social, restringiendo de manera absoluta cualquier comunicación con aquellas personas que como partes o como abogados y otros profesionales de la justicia litiguen en un asunto del que en ese momento esté conociendo el juez. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).*
[35] *Summary of an original source in English.*
[36] *Summary of an original source in English.*
[37] *Summary of an original source in Spanish: Sala VI de la Cámara Nacional de Apelaciones en lo Criminal y Correccional, 9 agosto 2013 c. 4139/2013, Argentina.*
[38] *Summary of an original source in English.*

與當事人及其親屬聯繫

→ 若交流與某案件有關，且法官有接觸在他們的法院面臨審判的家庭成員，則對此案件也會考量譴責和暫停（*喬治亞州司法資格委員會，關於法官 J. William Bass, Sr. 之研究，Docket No. 2012-31，2013 年 3 月 18 日，美國*）。[39]

→「僅是指定某人為 Facebook 上的『朋友』『並無法顯現法官與某人關係的程度或強度。』ABA Op. 462。一個人不能僅是基於這項指定就斷言，不論法官和這位『朋友』是否有見面；僅見面一次是否就熟識；是否為先前生意上認識的人；或是否有一些更深、更有意義的關係。因此，單憑這樣的指定無法洞察出關係的本質」（*上訴法院，達拉斯，德克薩斯州，第 5 區，Youkers v 德克薩斯州，2013 年 5 月 15 日，美國*）。

→ 若只因為法官與某些受被告行為影響之未成年人的父母在 Facebook 上是朋友，而其社交關係僅是「認識」，則不需要求法官須針對某刑事案件取消自己的資格。這種友誼本身並無法確立理由去質疑法官的公正性，也無法顯出行為不恰當。若以後產生問題，也不需要陳述為迴避下結論的基礎之檔案備忘錄。（*紐約州司法倫理諮詢委員會，意見 13-39，2013 年，美國*）。[40]

→ 若法官在社群媒體上跟隨某組織或線上表示喜歡其簡介，此法官可能必須考量，當該組織出庭為訴訟當事人時，法官是否要在此案件中取消自己的資格（*亞利桑那州最高法院司法倫理諮詢委員會，諮詢意見 14-01，2014 年 8 月 5 日，美國*）。[41]

[39] *英語原始資源摘要。*
[40] *英語原始資源摘要。*
[41] *英語原始資源摘要。*

Connections with parties and their relatives

→ Reprimands and suspensions are also contemplated for the cases in which judges are in contact with family members of people facing trial in their court if the communication is related to the case *(Georgia Commission on Judicial Qualifications, Inquiry Concerning Judge J. William Bass, Sr., Docket No. 2012-31, 18 March 2013, United States of America).*[39]

→ "Merely designating someone as a "friend" on Facebook "does not show the degree or intensity of a judge's relationship with a person." ABA Op. 462. One cannot say, based on this designation alone, whether the judge and the "friend" have met; are acquaintances that have met only once; are former business acquaintances; or have some deeper, more meaningful relationship. Thus, the designation, standing alone, provides no insight into the nature of the relationship" *(Court of Appeals, Dallas, Texas, Fifth District, Youkers v The State of Texas, 15 May 2013, United States of America).*

→ A judge is not required to disqualify themselves from a criminal case just because the judge is Facebook friends with the parents of some minors affected by the defendant's conduct if the social relationship is that of a mere "acquaintance". This friendship in itself does not establish grounds for calling a judge's impartiality into question nor create an appearance of impropriety. A memorandum for the file stating the basis for concluding that recusal is not necessary, in case questions arise later *(The New York State Advisory Committee on Judicial Ethics, Opinion 13-39, 2013, United States of America).*[40]

→ If a judge is following an organization or liking its profile online on social media, the judge might have to consider if they should disqualify themselves in a case where the organization appears as a litigant *(The Arizona Supreme Court Judicial Ethics Advisory Committee, Advisory Opinion 14-01, 5 August 2014, United States of America).*[41]

[39] *Summary of an original source in English.*
[40] *Summary of an original source in English.*
[41] *Summary of an original source in English.*

→ 法官不應嘗試在社群媒體上對案件當事人發出交友邀請（*佛羅里達州區上訴法院，第 5 區，in Chace v. Loisei, So. 3d, 39 Fla. L. Weekly D221, 2014 WL 258620, 2014 年，美國*）。[42]

與證人及報告人聯繫

→ 法官和證人及／或機密線人之間的線上關係可能違反道德（若他們之間有認識）。線上關係可能導致取消法官資格，但僅在查明案件情況和關係種類確屬違反道德。（*田納西州刑事上訴法院，in State v. Forguson, James Curwood Witt, Jr. Tenn., 2014 WL 631246，2014 年，美國*）。[43]

一般群組／朋友／關注

→ Facebook 聯繫、加入相同群組成為一員（例如運動俱樂部）不能自動取消法官在某一案件的資格（*田納西州刑事上訴法院，in Statev. Madden, WL 931031，2014 年，美國*）。[44]

→「如果社群網路上的交流會削弱司法決策獨立性之信任，法官不可鼓勵個人或組織進行互動。[…] 例如，頻繁且特殊地與對出庭事項感興趣之倡議團體在社群網路上交流，可能會傳達出外部影響司法的印象」（*俄亥俄州最高法院委員理事會申訴和紀律委員會，意見 2010-7，2010 年 12 月 3 日，美國*）。

使用社群媒體用於證據收集和非屬法律研究

→ 雖然現有態度已達一般共識，法官在使用社群媒體用於研究與案件有關的資訊時，不應該使用，但您認為沒有那麼明確的任何現實生活環境，有存在嗎？

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[42] *英語原始資源摘要。*
[43] *英語原始資源摘要。*
[44] *英語原始資源摘要。*

→ Judges shall not try to friend request the parties in a case on social media *(The Florida District Court of Appeal, Fifth District, in Chace v. Loisei, So. 3d, 39 Fla. L. Weekly D221, 2014 WL 258620, 2014, United States of America).*[42]

Connections with witnesses and reporting persons

→ Online relationship between judges and witnesses and/or confidential informers, in the event they are known, could be an ethical violation. Online relationships could cause the disqualification of a judge, but only if the circumstances of the case and the kind of relationship is determined to be an ethical violation *(The Tennessee Court of Criminal Appeals, in State v. Forguson, James Curwood Witt, Jr. Tenn., 2014 WL 631246, 2014, United States of America).*[43]

Common groups/friends/interests

→ Facebook connections, belonging to the same group (for instance sports clubs) does not automatically disqualify a judge from a case *(The Tennessee Court of Criminal Appeals, in State v. Madden, WL 931031, 2014, United States of America).*[44]

→ "A judge must not foster social networking interactions with individuals or organizations if such communications will erode confidence in the independence of judicial decision making. […] For example, frequent and specific social networking communications with advocacy groups interested in matters before the court may convey such impression of external influence" *(The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, United States of America).*

Use of Social Media for Evidence Gathering and Non-Legal Research

→ While there is a general consensus in the existing approaches that a judge should not use when using social media for research on case-related information, are there any real-life situations that you consider to not be so clear-cut?

[42] *Summary of an original source in English.*
[43] *Summary of an original source in English.*
[44] *Summary of an original source in English.*

→ 在這方面，法官應遵循什麼建議？

→ 在這個領域可能發生任何實務上的問題嗎？

有些司法管轄區和機構已嘗試回應這些問題：

→「法官 [⋯] 必須避免使用任何 ESM 網站以獲取關於他們面對事項之資訊」（*美國律師協會 ABA，正式意見 462，2013 年，美國*）。

→ 當事人的聽證正在進行時，法官不應獨立研究案件事項（*北卡羅來納州司法標準委員會，公開譴責 Terry，2009 年 4 月 1 日，美國*）。[45]

→「法官不應看社群網路網站上一方當事人的或證人的網頁，且不應使用社群網路網站以獲得關於其所面對事項的資訊。[⋯] 在社群網路網站上容易尋找資訊不應誘使法官去調查他所面臨案件之活動」（*俄亥俄州最高法院委員理事會申訴和紀律委員會，意見 2010-7，2010 年 12 月 3 日，美國*）。

→「司法官員不應看社群網路網站上當事人的或證人的網頁，且不應使用該網站以獲得關於法官所面對事項的資訊」（*康乃狄克州司法倫理委員會，非正式意見 2013-06，2013 年 3 月 22 日，美國*）。

社群媒體上的隱私權

→ 談到社群媒體平台之隱私權和安全時，法官應發展哪些行為和洞察（對他們來說，他們的家庭和司法系統）？

→ 如同以上所問，應限制法官上社群媒體帳戶嗎？「公開的」簡介的機會／風險是什麼？法官應該同時擁有私人的和職業的社群媒體帳戶嗎？

→ 法官應該允許／不允許在他們貼文之下的評論部分嗎？

[45] *英語原始資源摘要。*

→ What advice should judges follow in this regard?

→ Are there any practical problems that may arise in this area?

Some jurisdictions and institutions have tried to respond to these questions:

→ "Judges […] must avoid using any ESM site to obtain information regarding a matter before them" *(The American Bar Association (ABA), Formal Opinion 462, 2013, United States of America).*

→ Judges shall not independently research case matters while the party's hearing is ongoing *(North Carolina Judicial Standards Commission, Public reprimand of Terry, 1 April 2009, United States of America).*[45]

→ "A Judge should not view a party's or witness' page on a social networking site and should not use social networking sites to obtain information regarding the matter before the judge. […] The ease of finding information on a social networking site should not lure the judge into investigative activities in cases before the judge" *(The Ohio Supreme Court's Board of Commissioners on Grievances and Discipline, Opinion 2010-7, 3 December 2010, United States of America).*

→ "A judicial official should not view parties' or witnesses' pages on a social networking site and should not use such a site to obtain information regarding a matter before the judge" *(The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America).*

Privacy on Social Media

→ Which behaviours and insights should judges develop when it comes to privacy and safety on social media platforms (for themselves, their family and the judiciary)?

→ As already asked above, should judges limit their access to social media accounts? What are the opportunities/risks of "public" profiles? Should judges have both personal and professional social media accounts?

→ Should judges allow/not allow comments' sections under their posts?

[45] *Summary of an original source in English.*

有些司法體系已嘗試回應這些問題：

→「選擇加入線上社群網路的法官應該要非常謹慎。法官不應在不熟悉網站隱私權設定和修改方式的情況下參加該線上社群網路網站」*（加利福尼亞州法官協會司法倫理委員會，意見 66，2010 年 11 月 23 日，美國）*。

→「司法官員應清楚意識到他／她的社群網路簡介網頁中的內容，熟悉網站的政策和隱私權控管，並了解最新功能和變更的情況。在這些功能引發進一步倫理議題的情況下，司法官員應向委員會諮詢以尋求指導方針”*（康乃狄克州司法倫理委員會，非正式意見 2013-06，2013 年 3 月 22 日，美國）*。

→「自動的隱私權設定。在社群媒體論壇內提高隱私權設定經常是可以的」*（英格蘭和威爾斯司法制度，司法行為之指導，2018 年，第 20 頁，英國）*。

→「[…] 8.2.4 法官必須檢查隱私權設定並限制存取他的簡介以確保資訊保存妥當，只提供給有限的群組。法官必須檢查他或她註冊的任何網站之條款與條件，並確保已清楚認知是誰擁有網站上的資料以及網站所有者可以對他們的資料做些什麼事」*（波隆那和米蘭全球司法倫理準則，2015 年，於司法獨立國際會議上批准，2015 年 6 月）*。

→ 法官在社群媒體上應使用高水平的安全措施，例如密碼、防火牆和反惡意軟體以防範身分盜竊、或對抗網路釣魚*（伊比利美洲司法倫理委員會，社群媒體之使用道德，伊比利美洲司法倫理委員會之建議，2015 年）*。[46]

[46] *西班牙語原始資源非官方翻譯：8. Hacer uso de medidas de seguridad informática de alta seguridad (contraseñas, antivirus, antimalware, prevención contra la suplantación de la identidad — antiphishing—, entre otros. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015 年）*。

Several judiciaries have tried to respond to these questions:

→ "Judges who choose to participate in online social networks should be very cautious. A Judge should not participate in an online social networking site without being familiar with that site's privacy settings and how to modify them" *(The Judicial Ethics Committee of the California Judges Association, Opinion 66, 23 November 2010, United States of America).*

→ "A Judicial Official should be aware of the contents of his/her social networking profile page, be familiar with the site's policies and privacy controls, and stay abreast of new features and changes. To the extent that those features raise further ethical issues, a Judicial Official should consult the Committee for guidance" *(The Connecticut Committee on Judicial Ethics, Informal Opinion 2013-06, 22 March 2013, United States of America).*

→ "Automatic privacy settings. Often it is possible to raise privacy settings within social media forums" *(Judiciary of England and Wales, Guide to Judicial Conduct, 2018, p. 20, United Kingdom).*

→ "[…] 8.2.4 A Judge must check privacy settings and restrict access to their profile to ensure information is kept to a restricted group. 8.2.5 A Judge must check the terms and conditions of any sites to which he or she signs up and ensure they are aware of who owns data posted on the site and what the owners of the site can do with their data" *(Bologna and Milan Global Code of Judicial Ethics, 2015, Approved at the International Conference of Judicial independence, June 2015).*

→ Judges should use high-level security measures on social media, such as passwords, firewalls and anti-malware to prevent identity theft, or against phishing *(Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015).*[46]

[46] *Unofficial translation from an original source in Spanish: 8. Hacer uso de medidas de seguridad informática de alta seguridad (contraseñas, antivirus, antimalware, prevención contra la suplantación de la identidad — antiphishing—, entre otros. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).*

→ 當貼文或使用應用程式時，法官應關閉網際網路定位技術，並刪除電話號碼，或他們的生日（*司法事務司，法務部，合理且負責使用之指導原則，私人使用社群媒體良好實務，2017 年 6 月，法國*）。[47]

→ 6. 法官應謹記他們永遠無法確定關於他們的交流會不會以出庭告終，即使本意只是發給有限的一小圈收件人（*捷克共和國法官聯盟，關於法官使用社群媒體之六項建議，布拉格，2017 年 5 月 24 日，捷克共和國*）。[48]

→「司法服務司闡述了一系列法官必須遵守的規則：i) 調整社群媒體簡介（Facebook、Twitter、Myspace、Copain d'avant 等）的保密設定以避免交流被所有人看到，並經常檢查安全設定，這些設定有時候會在沒有事先注意的情況下遭到修改；ii) 調整社群媒體帳戶設定，使得簡介不會在搜尋引擎（Google、Yahoo 等）的結果中出現；iii) 使用線上訊息時，勿使用網際網路定位技術選項；iv) 若使用帶有照相機的智慧型手機或平板電腦時，調整設定以阻止在相片中的網際網路定位資料；v) 不要公開個人資訊，例如生日、電話號碼、地址、聯絡資訊、或假日，若相片／影片背景可能會顯露個人資訊，則公開前要先作檢查；vi) 基於相片和簡介有可能造假，在加一個人為好友之前，要先作評估；vii) 謹記任何線上資訊隨時都存在而且是公開的；viii) 讓親屬了解適當地使用社群網路及其包含的風險」（*司法事務司，法務部，合理且負責使用之指導原則，私人使用社群媒體良好實務，F.15，*

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[47] *法語原始資源非官方翻譯：[...] lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisationde ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés [...] dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo) [...] vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, 法國）。*

[48] *捷克語和俄羅斯語原始資源非官方翻譯：Závěry k působení soudce na sociálních sítích: 6) Soudce by měl mít na paměti, že si nemůže být nikdy jist, kde všude se jeho komunikace objeví, byť původně byla určena jen omezenému okruhu adresátů.*

→ Judges should disable geo-localization when posting or using applications, and delete telephone numbers, or their birthday *(Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, June 2017, France).*[47]

→ 6. A judge should bear in mind that they can never be certain as to where their communication might end up appearing, even if it was originally meant only for a limited circle of addressees *(The Union of Judges of the Czech Republic, Six conclusions with regards to the use of social media by judges, Prague, 24 May 2017, Czech Republic).*[48]

→ "The Judicial Services Division elaborated a series of rules to be followed by judges: i) adjust confidentiality settings of social media profiles (Facebook, Twitter, Myspace, Copain d'avant..) to avoid communications being visible to all and regularly check security settings which are sometimes modified without previous notice; ii) adjust the settings of the social media account so that the profile does not appear in search engines' results (Google, Yahoo, etc.); iii) when using online messages, do not use the geolocation option; iv) in the case of using a smartphone or a tablet with a camera, adjust the settings to prevent the geolocation data in the photo; v) do not publish personal information, such as date of birth, telephone number, address, contact details, or holiday dates, and check before publishing if the backgrounds of photos/videos may reveal personal information; vi) evaluate adding a person as a friend, based upon the fact that photos and profiles could be fake. Only accept people who they know; vii) keep in mind that any information online is public and exists for all time; viii) make relatives aware of the appropriate use of social networks and the risks involved" *(Judicial Services Division, Ministry of Justice, Guidelines for a reasoned and responsible use, Good practices for the private use of social media, F.15, June 2017,*

[47] *Unofficial translation from an original source in French : […] lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisationde ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés […] dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo) […] vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France).*

[48] *Unofficial translation from an original source in Czech and Russian : Závěry k působení soudce na sociálních sítích: 6) Soudce by měl mít na paměti, že si nemůže být nikdy jist, kde všude se jeho komunikace objeví, byť původně byla určena jen omezenému okruhu adresátů.*

2017 年 6 月，法國）。[49]

→「鼓勵司法界身居要職者應謹記，社群網路會建立公開簡介，可能的話，在位時最好避免。若您一定要使用社群網路，請謹記資訊的散佈和科技的使用意味著進行『拼圖遊戲』之研究已經越來越容易，它可以將各種資料來源的資訊拼湊在一起。無論在任何情況下，都不可以將特殊類別資料放置在任何社群網路上。i) 試著確認有關您的個人生活和您的住家地址之資料，在線上都找不到。一個簡單的檢查方法就是把您的姓名輸入到像是 Google 之網際網路蒐尋引擎。您也可能想要告訴家人關於社群網路系統，例如 Facebook，其中，帶有一些風險的個人詳細資料（例如，休假） 可能不知情地被放到公開領域。ii) 小心公開個人資訊超出必要的程度，尤其是電話號碼、生日和地址是身分詐騙犯想要的重要資訊。其他使用者可能不需要知道這些細節 – 如果任何聯絡人確實需要這些細節資訊，可以個別傳送給他們個人」*（英格蘭及威爾斯首席法官 . 資深審裁處庭長 . 資料保護和 IT 安全 . 司法職責，使用社群網路，21. 版 1/2018，2018 年 5 月 25 日，英國）。*

[49] *法語原始資源非官方翻譯：Les règles d'or de la prudence que la DSJ a souhaité diffuser sont les suivantes : i) de régler les paramètres de confidentialité de son profil (Facebook, twitter, Myspace, Copain d'avant…) afin d'éviter que les publications ne soient visibles de tous et prendre soin de vérifier régulièrement ces paramétrages qui sont parfois modifiés sans préavis ; ii) de régler les paramètres de son compte afin que son profil ne figure pas dans les résultats des moteurs de recherche (Google, Yahoo, etc.); iii) lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisation ; iv) dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo); v) de ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés ; vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles ; vi) de bien évaluer les personnes acceptées comme "amis". Les photos et les profils sont souvent trompeurs. N'accepter que des personnes connues ; vii) de garder à l'esprit que toute information publiée sur Internet est persistante ; viii) de sensibiliser ses proches sur une utilisation adaptée des réseaux sociaux et les risques encourus. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, 法國）。*

France).[49]

→ "Judicial office holders are encouraged to bear in mind that social networking creates a public profile and is probably best avoided whilst in office. If you do use social networks, bear in mind that the spread of information and the use of technology means it is increasingly easy to undertake 'jigsaw' research which allows the piecing together information from various sources. Under no circumstances should special category data be placed on any social network. i) Try to ensure that information about your personal life and your home address is not available online. A simple way of checking can be by typing your name into an internet search engine such as Google. You may also want to talk to your family about social networking systems, such as Facebook, where personal details which carry some risk (for example, holiday absences) can unwittingly be put into the public domain. ii) Be wary of publishing more personal information than is necessary. In particular phone numbers, dates of birth and addresses are key pieces of information for identity fraudsters. Other users probably don't need to know such details – if any contacts do need them send them to individuals separately" *(Lord Chief Justice of England and Wales. Senior President of Tribunals. Data Protection and IT Security. The Responsibilities of the Judiciary, Use of social networking, 21. Version 1/2018, 25 May 2018, United Kingdom).*

[49] *Unofficial translation of an original source in French : Les règles d'or de la prudence que la DSJ a souhaité diffuser sont les suivantes : i) de régler les paramètres de confidentialité de son profil (Facebook, twitter, Myspace, Copain d'avant…) afin d'éviter que les publications ne soient visibles de tous et prendre soin de vérifier régulièrement ces paramétrages qui sont parfois modifiés sans préavis ; ii) de régler les paramètres de son compte afin que son profil ne figure pas dans les résultats des moteurs de recherche (Google, Yahoo, etc.); iii) lors de la rédaction d'un message, de ne pas utiliser l'option de géolocalisation ; iv) dans le cas de l'utilisation d'un smartphone ou d'une tablette équipé d'un appareil photo, de régler les paramètres pour éviter que ne soient inscrites les données de géolocalisation dans la photo (données qui permettent de retrouver la date et le lieu précis où a été prise la photo); v) de ne pas publier d'informations personnelles, telles que sa date de naissance, son numéro de téléphone, son adresse ou ses dates de congés ; vérifier avant de les publier les arrière-plans des photos/vidéos qui peuvent révéler des informations personnelles ; vi) de bien évaluer les personnes acceptées comme "amis". Les photos et les profils sont souvent trompeurs. N'accepter que des personnes connues ; vii) de garder à l'esprit que toute information publiée sur Internet est persistante ; viii) de sensibiliser ses proches sur une utilisation adaptée des réseaux sociaux et les risques encourus. (Direction des services judiciaires, Ministère de la Justice, Du bon usage des réseaux sociaux à titre privé, Conseils pour une utilisation éclairée et responsable, F.15, juin 2017, France).*

→「[…] i) 檢查您的隱私權設定。您可以限制存取至您的簡介以確保您的資訊保存在有限的群組。ii) 檢查您註冊的任何網站的條款與條件，以確保您已認知是誰擁有張貼在網站上的資料以及網站擁有者可以對您的資料做些什麼事。iii) 我們了解有些司法界身居要職者擔任非商務之領導職務。在這種情況，「公司註冊處」會需要個人的家庭地址。這個資訊會分享給第三方。但是，您可以要求不洩露這項資訊」（*英格蘭及威爾斯首席法官．資深審裁處庭長．資料保護和 IT 安全．司法職責，使用社群網路，21. 版 1/2018，2018 年 5 月 25 日，英國*）。

訓練

→ 法官應接受使用社群媒體之訓練嗎？

→ 法官的親屬應接受訓練嗎？

→ 若需要，是哪些領域呢？（例如，使用社群媒體之風險和機會，使用社群媒體之限制，隱私權設定，廉正和倫理議題，技術層面，評估內容作為潛在的證據）

→ 以何種課程模式？（例如，親自，網上研討會，數位學習；資料手冊等等）

有些司法體系已嘗試回應這些問題：

→ 法院除了可以訓練司法官員外，也可以提供訓練及／或指導方針給他的家人，了解關於社群媒體之「倫理議題和可能的安全考量」（*猶他州州法院，司法擴大服務委員會社群媒體專門小組，法官使用社群媒體之報告和建議，2011 年 10 月 18 日，美國*）。[50]

[50] *英語原始資源摘要。*

→ "[…] i) Check your privacy settings. You can restrict access to your profile to ensure your information is kept to a restricted group. ii) Check the terms and conditions of any sites you sign up to ensure you are aware of who owns data posted on the site and what the owners of the site can do with your data. iii) We are aware that some judicial office holders hold non- commercial directorships. In such cases, Companies House will need the individual's home address. This information is shared with third parties. You can, however, request that such information is not divulged" *(Lord Chief Justice of England and Wales. Senior President of Tribunals. Data Protection and IT Security. The Responsibilities of the Judiciary, Use of social networking, 21. Version 1/2018, 25 May 2018, United Kingdom).*

Training

→ Should judges be trained on the use of social media?

→ Should judges' relatives be trained?

→ If yes, in which areas? (e.g. risks and opportunities in the use of social media, restrictions on the use of social media, privacy settings, integrity and ethical issues, technical aspects, evaluation of content as potential evidence)

→ In what format? (e.g. in-person, webinars, e-Learning; brochures, etc.)

Several judiciaries have tried to respond to these questions:

→ The courts can provide training and/or guidelines to judicial officers' families, in addition to training for judicial officers, regarding "ethical issues and potential security concerns" associated with social media *(Utah State Courts, Social Media Subcommittee of the Judicial Outreach Committee, Report and Recommendations for Judges Using Social Media, 18 October 2011, United States of America).*[50]

[50] *Summary of an original source in English.*

→ 訓練法官使用社群媒體，如今已成為必要。「司法培訓中心」應提供社群媒體應用以及使用社群媒體之倫理意涵的訓練（*伊比利美洲司法倫理委員會，社群媒體之使用道德，伊比利美洲司法倫理委員會之建議，2015 年*）。[51]

→「建議：對所有司法官員建立強制的教育計畫，闡述個人及專業背景下使用社群媒體之優點、缺點和風險；建立一對一的或小組的實地培訓計畫，闡述個人及專業背景下司法官員使用社群媒體之優點、缺點和風險」（*加拿大法院技術中心，加拿大司法官員使用社群媒體，加拿大法院技術中心討論文件，2015 年 5 月 . F. 建議，章節 4-7，加拿大*）。

→「法官的家人和法院工作人員討論、或評論在法官前出庭之案件需要詳加斟酌，他們對於這種情況應保持警覺。法官可能相當不清楚家人使用社群媒體之情況。但是，公眾人士可能會想當然地認為，從法官家人或法院工作人員散發出來的資料是歸因於法官或反映出法官的觀點。就像法官、法官的家人透過社群媒體可能會聯繫到涉及在法官面前出庭案件的一些人，對這種情況應保持警覺。」（*澳大利亞司法管理公司機構，司法行為指導方針，2017 年 3 月，第 3 版，第 4 章*）。

→ 工作小組建議以下這些方法給地方法官：i) 在他們司法管轄區的範圍內提升法官的訓練課程，考慮到更加了解社群媒體關於他們之使用風險的良好知識，特別是關於倫理原則方面；ii) 詳盡說明回應在社群媒體平台之法官個人批評（冒犯的或中傷的評論）的規則，或第三人未經法官同意即使用法官姓名之回應規則；iii) 提供支援給法官，回答他們關於使用社群媒體的問題，例如，在完全保密之下諮詢他們的

[51] *西班牙語原始資源非官方翻譯：2. Es necesario que los Poderes Judiciales contemplen la posibilidad de brindar, por medio de escuelas judiciales y otros centros de capacitación, enseñanza adecuada para familiarizar a los servidores de la justicia con las características y posibilidades de cada red social y sus implicancias éticas. Especial énfasis cabe poner en el alcance potencial de las redes y la escasa o nula posibilidad de quien participa de ellas de restringir la comunicación de los datos, opiniones o perfiles, que ingrese a la red. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015 年）。*

→ Training on the use of social media is a necessity nowadays for judges. The Judicial Training Centres shall provide training on social media applications and the ethical implications of using them *(Iberoamerican Commission for Judicial Ethics, Ethical use of social media, Recommendations of the Iberoamerican Commission for Judicial Ethics, 2015).*[51]

→ "Recommendations: Creating mandatory education programmes to address the advantages, disadvantages and risks of the use of social media in personal and professional contexts for all judicial officers; Creating one-on-one or small group on-site training programs to address the advantages, disadvantages and risks of the use of social media by judicial officers in personal and professional contexts" *(Canadian Centre for Court Technology, The Use of Social media by Canadian Judicial Officers, A Discussion Paper of the Canadian Centre for Court Technology, May 2015. F. Recommendations, Section 4-7, Canada).*

→ "Family members of a judge and court staff should be alerted to the circumstance that their discussion of, or comment about, cases coming before the judge requires consideration. A judge might be quite unaware of a family member's use of social media. But members of the public may assume that material emanating from a member of a judge's family or from court staff is attributable to the judge or reflects the judge's views. Like a judge, members of the judge's family should be alert to the possibility of a connection through social media with someone involved in a case before the judge" *(Australasian Institute of Judicial Administration Incorporated, Guide to Judicial Conduct, March 2017, 3rd Edition, chapter IX).*

→ The working group recommends these measures for magistrates: i) promoting training sessions for judges within their jurisdictions, allowing for the better understanding of social media and good knowledge of the risks related to their use, in particular in relation to the ethical principles; ii) elaborating upon rules to respond to personal criticism of judges (offensive or defamatory comments) on social media platforms, or the use of the judge's name by a third person without his or her consent; iii) providing support to judges to answer their questions regarding the use of social media, for instance, the possibility to consult in complete confidentiality the authorities of their court, an ethics committee or a discussion forum for any issues related to the use of social media *(Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A*

[51] *Unofficial translation of an original source in Spanish: 2. Es necesario que los Poderes Judiciales contemplen la posibilidad de brindar, por medio de escuelas judiciales y otros centros de capacitación, enseñanza adecuada para familiarizar a los servidores de la justicia con las características y posibilidades de cada red social y sus implicancias éticas. Especial énfasis cabe poner en el alcance potencial de las redes y la escasa o nula posibilidad de quien participa de ellas de restringir la comunicación de los datos, opiniones o perfiles, que ingrese a la red. (Comisión Iberoamericana de ética judicial, Uso ético de las redes sociales, Recomendación de la Comisión Iberoamericana de Ética Judicial, 2015).*

法院權責機構之可能性，倫理委員會或討論論壇以解答關於使用社群媒體的任何議題（*以法語為主要語言的司法委員會網，工作小組報告，社群媒體和司法制度，聯繫地方法官：在什麼條件下？，2018年11月*）。[52]

→「使用社群媒體之訓練 […] 可以包含（例如）使用社群網路和社群媒體的方法，包括確保保密性和安全性的決定因素，以及下列事實：i) 社群媒體並非評論懸決案件的適合平台；ii) 冒犯的評論，即使以幽默方式，關於種族、性別、性取向、血統等，應予避免；iii) 法官應避免衝突、攻擊式溝通、以及損害名譽；iv) 可能會影響司法形象的評論、相片、和影片總是不適當的；v) 法官不應報告他們的資產；vi) 若法官是律師或專家的朋友，法官應保持他們的公正或獨立；vii) 法官在社群媒體上自我表達時應謹慎並了解社群簡介的風險；以及viii) 法官應避免在社群媒體簡介上使用他們身為法官的職稱，除非是在組織中或與他們同事間的聯繫」（*以法語為主要語言的司法委員會網，工作小組報告，社群媒體和司法制度，聯繫地方法官：在什麼條*

[52] *法語原始資源非官方翻譯：Le Groupe de travail recommande les conseils de la magistrature: i) favorisent l'instauration de sessions de formation pour les magistrats relevant de leur juridiction, permettant une meilleure maîtrise des réseaux et médias sociaux et une connaissance suffisante des risques attachés à leur utilisation, notamment sur le plan déontologique (voir l'annexe au présent rapport); ii) élaborent des règles36 pour répondre aux critiques personnelles formulées contre des magistrats (propos offensants ou diffamatoires) publiées sur les réseaux ou médias sociaux ou à l'utilisation, sur les réseaux ou médias sociaux, par une tierce personne, de leur nom ou de leur titre, sans leur consentement; iii) offrent un soutien aux magistrats pour répondre à leurs interrogations dans leur utilisation des réseaux et médias sociaux, comme la possibilité de consulter, au besoin et en toute confidentialité, les autorités de leur tribunal, un comité d'éthique ou un forum de discussion pour toute question ou problématique relative à l'utilisation des réseaux ou des médias sociaux. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché: à quelles conditions?, 2018年11月）。*

magistrate connected: under which conditions?, November 2018).[52]

→ "Training on the use of social media […] could include, for example, the ways in which social networks and social media are used, including the parameters that ensure confidentiality and security, and the fact that: i) social media is not an adequate platform to comment on a pending case; ii) offensive comments, even in the form of humour, regarding race, sex, sexual orientation, origin, etc, are to be avoided; iii) judges should avoid conflicts, hostile communications, and damage to reputation; iv) comments, photos, and videos that may affect the image of the judiciary are always improper; v) judges should not report their assets; vi) if the judge is a friend of a lawyer or expert, judges should preserve their impartiality or independence; vii) judges should express themselves on social media with prudence and understand the risks of social profiling; and viii) judges should avoid using their title as judges on social media profiles, except in institutional communications or with their colleagues" *(Francophone Network of the Judicial Council, Report of the Working Group, Social Media and the Judiciary, A magistrate connected: under which conditions?, November 2018).*[53]

[52] *Unofficial translation of an original source in French : Le Groupe de travail recommande les conseils de la magistrature: i) favorisent l'instauration de sessions de formation pour les magistrats relevant de leur juridiction, permettant une meilleure maîtrise des réseaux et médias sociaux et une connaissance suffisante des risques attachés à leur utilisation, notamment sur le plan déontologique (voir l'annexe au présent rapport) ; ii) élaborent des règles36 pour répondre aux critiques personnelles formulées contre des magistrats (propos offensants ou diffamatoires) publiées sur les réseaux ou médias sociaux ou à l'utilisation, sur les réseaux ou médias sociaux, par une tierce personne, de leur nom ou de leur titre, sans leur consentement; iii) offrent un soutien aux magistrats pour répondre à leurs interrogations dans leur utilisation des réseaux et médias sociaux, comme la possibilité de consulter, au besoin et en toute confidentialité, les autorités de leur tribunal, un comité d'éthique ou un forum de discussion pour toute question ou problématique relative à l'utilisation des réseaux ou des médias sociaux. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, novembre 2018).*

[53] *Unofficial translation of an original source in French : La formation sur l'utilisation des réseaux et médias sociaux pourrait notamment porter, à titre d'illustration, sur les modalités d'utilisation des réseaux et médias sociaux, notamment les paramètres assurant la confidentialité et la sécurité, et sur le fait que: i) un réseau ou média social n'est pas un forum approprié pour commenter une cause en cours ou un jugement rendu; ii) les commentaires offensants (race, sexe, orientation sexuelle, origine, etc.), même sous la forme de l'humour, sont à proscrire; iii) le magistrat doit éviter les conflits, les communications hostiles et les atteintes à la réputation; iv) les commentaires, les photos et vidéos pouvant porter atteinte à l'image de la magistrature sont en tout temps inappropriées ; v) le magistrat doit éviter de faire état de son patrimoine; vi) lorsqu'il est ami avec des avocats ou des experts, le magistrat doit veiller à préserver son impartialité et son indépendance; vii) le magistrat doit faire preuve d'une grande prudence lorsqu'il se manifeste sur les réseaux et médias sociaux, compte tenu des risques de profilage social; viii) le magistrat évite d'utiliser son titre de magistrat, sur un réseau ou un média social, sauf dans ses communications institutionnelles ou avec ses collègues. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, novembre 2018).*

件下？，2018 年 11 月）。[53]

→「個別法官使用社群媒體之建議：i) 保護您的個人資料；以及 ii) 教育您的家人和朋友；iii) 使用社群媒體來教育人們 iv) 持續自我教育關於社群媒體之知識」*（個別法官使用社群媒體之建議：中歐和東歐背景，中歐和東歐法律議題，CEELI 學院）。*

[53] *法語原始資源非官方翻譯：La formation sur l'utilisation des réseaux et médias sociaux pourrait notamment porter, à titre d'illustration, sur les modalités d'utilisation des réseaux et médias sociaux, notamment les paramètres assurant la confidentialité et la sécurité, et sur le fait que: i) un réseau ou média social n'est pas un forum approprié pour commenter une cause en cours ou un jugement rendu; ii) les commentaires offensants (race, sexe, orientation sexuelle, origine, etc.), même sous la forme de l'humour, sont à proscrire; iii) le magistrat doit éviter les conflits, les communications hostiles et les atteintes à la réputation; iv) les commentaires, les photos et vidéos pouvant porter atteinte à l'image de la magistrature sont en tout temps inappropriées; v) le magistrat doit éviter de faire état de son patrimoine; vi) lorsqu'il est ami avec des avocats ou des experts, le magistrat doit veiller à préserver son impartialité et son indépendance; vii) le magistrat doit faire preuve d'une grande prudence lorsqu'il se manifeste sur les réseaux et médias sociaux, compte tenu des risques de profilage social; viii) le magistrat évite d'utiliser son titre de magistrat, sur un réseau ou un média social, sauf dans ses communications institutionnelles ou avec ses collègues. (Réseau Francophone des Conseils de la Magistrature Judiciaire, Rapport du Groupe de travail, Les réseaux sociaux et la magistrature, Un magistrate branché : à quelles conditions?, 2018 年 11 月）。*

→ "Recommendations on the use of social media by individual judges: i) protect your personal data; and ii) educate your family and friends; iii) Use social media to educate people iv) keep educating yourself about social media" *(Recommendations on use of social media by individual judges: Central and Eastern European context, Central and Eastern European Law Initiative, CEELI Institute).*

（三）法官使用社群媒體之非拘束指南[1]

全球司法廉正網絡製作
聯合國毒品及犯罪問題辦公室 2019 年訂於維也納

概述

聯合國毒品及犯罪問題辦公室發起《多哈宣言》全球方案，協助會員國落實 2015 年第十三屆聯合國預防犯罪和刑事司法大會上通過之《多哈宣言》。該宣言重申會員國承諾，即“按照《聯合國反貪腐公約》，盡一切努力預防和打擊貪腐，並採取措施提高公共行政之透明度，並提升刑事司法系統的廉正和問責制”。

為實現上開目標，《全球方案》中司法廉正基礎的關鍵舉措之一為 2018 年 4 月在奧地利維也納建立之全球司法廉正網絡。全球司法廉正網絡旨在協助司法機關促進司法系統中之司法廉正和預防貪腐平台。

2018 年 4 月，在全球司法廉正網絡啟動儀式上發布 2017 年線上調查結果，來自世界各地之法官和其他司法部門利益相關者表達渠等對於司法機關成員使用社群媒體之關切。該等關切也體現在啟動儀式結束時通過之《司法廉正宣言》和廉正網絡之優先安排事項中。特別是《司法廉正宣言》強調制定指引參考資料與其他知識產物以協助法官應對司法廉正和審判獨立方面挑戰之重要性，包括新資訊技術工具和社群媒體出現所帶來之問題。

考慮此點，廉正網絡已著手制定一套國際範圍內之非約束性指引，該等指導方針得以（1）成為正在考慮研究該專題的司法機關之靈感來源；（2）使法官了解使用社群媒體之各種風險和機遇。有鑒於此，2018 年 11 月在聯合國奧地利維也納總部舉行了專家小組會議，並於同年啟動了一項全球調查，以確定法官在使用社群媒體時面臨之具體挑戰。

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[1] 此繁體中文版係參考聯合國毒品及犯罪問題辦公室網站中文版本所翻譯而成，可見 https://www.unodc.org/ji/resdb/data/2019/non-binding_guidelines_on_the_use_of_social_media_by_judges.html?lng=en&match=social%20media%20guidelines（最後瀏覽時間：2024 年 9 月 21 日）。

Non-binding Guidelines on the Use of Social Media by Judges

Produced by the Global Judicial Integrity Netwok
United Nations Office on Drugs and Crime
Vienna 2019

Introduction

The Global Programme for the Implementation of the Doha Declaration was launched by the United Nations Office on Drugs and Crime to assist Member States in implementing the Doha Declaration, adopted by the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice in 2015. The Declaration reaffirms Member States' commitment to "make every effort to prevent and counter corruption, and to implement measures aimed at enhancing transparency in public administration and promoting the integrity and accountability of our criminal justice systems, in accordance with the United Nations Convention against Corruption".

In order to achieve these objectives, one key initiative of the Judicial Integrity pillar of the Global Programme was the establishment of a Global Judicial Integrity Network last April 2018 in Vienna, Austria. The Global Judicial Integrity Network is a platform to provide assistance to judiciaries in strengthening judicial integrity and preventing corruption in the justice system.

During the launch event of the Global Judicial Integrity Network in April 2018 and through an online survey disseminated in 2017, judges and other justice sector stakeholders from around the world expressed their concerns regarding the use of social media by members of the judiciary. This concern has also been reflected in the Declaration on Judicial Integrity, adopted at the end of the launch event and setting out the Network's priorities. In particular, the Declaration highlighted the importance of the development of guidance materials and other knowledge products to help judges address challenges to judicial integrity and independence, including those created by the emergence of new information technology tools and social media.

With this in mind, the Global Judicial Integrity Network has embarked on the development of a set of international, non-binding guidelines that could (a) serve as a source of inspiration for judiciaries that are contemplating addressing the topic; and (b) inform judges on the various risks and opportunities in using social media. As part of this initiative, an Expert Group Meeting took place at the United Nations Headquarters in Vienna, Austria in November 2018, and a worldwide survey was launched in the same year to determine what specific challenges judges are facing when using social media.

以下文本和建議來自於專家組會議期間的討論，全球調查結果以及廉正網絡參與者的廣泛商討。

前言

社群媒體已經成為個人及團體社交生活之重要組成，改變人們收集、溝通和傳播訊息之方式。

考慮到司法職位之特性和公眾信任法院廉潔與公正之重要性，法官無論是作為個人或是代表職務使用社群媒體，都帶來需加以解決之具體問題和道德風險。

儘管法官與普通公民一樣享有言論、信仰、結社及集會自由，但法官行為應始終與司法職位的尊嚴相符並保證司法公正和審判獨立。個別法官使用社群媒體之方式，可能會影響公眾對所有法官之普遍看法以及對司法系統的信心。

關於法官使用社群媒體之主題較為複雜。一方面，一些特殊實例中法官使用社群媒體導致了該等法官被認為有偏見或受到不適當之外部影響。然另一方面，社群媒體可以創造機會，幫助法官傳播專業知識，提高公眾對法律的理解，為群體營造司法公開和近用司法服務之環境。此外，個別案例顯示，社群媒體也曾成為對法官進行網路暴力或騷擾之平台。

被普遍認可之《班加羅爾司法行為原則》確立指引每位法官工作及生活之六項核心價值，即獨立、公正、廉正、合宜得體、平等、稱職與盡責。在使用社群媒體時，法官應始終遵循《班加羅爾原則》及評注。惟需注意該文件首次起草時，社群媒體平台尚不存在，因此未具體提及如何使用社群媒體，也沒有提供針對社群媒體平台可能帶來之獨特挑戰和機會之建議。

The following text and recommendations stem from the discussions during the Expert Group Meeting, the outcomes of the survey as well as wider consultations with Network participants.

Preamble

Social media has become an important part of the social life of many people and communities, changing the way in which information about them is collected, communicated and disseminated.

Given the nature of judicial office and the vital importance of public confidence in the integrity and impartiality of the courts, the use of social media by judges, both individually and collectively, raises specific questions and ethical risks that should be addressed.

Although judges, like other citizens, are entitled to freedom of expression, belief, association and assembly, they should always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary. The way an individual judge uses social media may have an impact on the public perception of all judges and confidence in judicial systems generally.

The topic of the use of social media by judges is complex. On the one hand, particular instances of judges using social media have led to situations where those judges have been perceived to be biased or subject to inappropriate outside influences. On the other hand, social media can create opportunities to spread the reach of judges' expertise, increase the public's understanding of the law, and foster an environment of open justice and closeness to the communities that judges serve. Additionally, there have been instances where social media has served as a platform for online abuse or harassment of judges.

The universally recognized Bangalore Principles of Judicial Conduct identify six core values that should guide each judge's work and life, namely independence, impartiality, integrity, propriety, equality, and competence and diligence. When using social media, judges should always be guided by the Bangalore Principles as well as the detailed accompanying Commentary. However, it should be noted that when these documents were first drafted, social media platforms did not exist, and so neither document makes specific reference to their use or provides advice regarding the unique challenges and opportunities that social media platforms may create.

There is nowadays a vast array of social media platforms available, with each platform offering different services, providing different opportunities for interaction, and targeting different audiences. Thus, different expectations may arise regarding the content, type and frequency of engagement for different platforms. In addition, most social media platforms constantly evolve. Consequently, different approaches may be appropriate depending on the nature and type of the social media platform.

現今有多種社群媒體平台可供使用，每個平台都提供不同服務和互動方式，並針對不同的受眾。因此不同平台之內容、類型和參與頻率不同，對其產生之期望亦不相同。此外，大多數社群媒體平台也在不斷發展變化。故根據社群媒體平台之性質和類型，可能適用不同方法。

社群媒體有助於增加各種與法官在線溝通聯絡機會。可能會對涉及單方面溝通、偏見或歧視以及外部影響等規則和原則產生影響。

社群媒體中“加好友”、“關注”等概念通常與傳統用法不同。在某些情況下，渠等關係可能不會超出線上內容提供者（例如報紙專欄作家）與讀者或訂閱者之間建立的關係。在其他情況下，在線互動程度可能使私人關係更加緊密，甚至變得親密，因此需要法官格外謹慎，注意防範可能導致披露、退出審判、迴避行為或其他傳統線下之類似禁止行為。這很大程度上取決於社群媒體平台本身性質，及該平台為促進其用戶間聯繫而開發之方式。

以下內容旨在為法官和司法機關（同樣適用其他擁有司法職務人員和法院工作人員，因渠等行為亦會對司法廉正及公眾對司法之信心產生影響）提供指引，並制定一個更廣泛之框架以指引及培訓法官在符合國際和地區之司法行為、道德標準及現行之行為守則情況下，使用不同社群媒體平台。

最後，於處理法官使用社群媒體相關問題，並提供指引及培訓時，亦應考量文化及法律傳統之差異。

法官認識與使用社群媒體之風險與機遇

1. 重要的是，法官不僅僅是普通公民，還承擔著司法職責。渠等應參與所服務之群體。在此種參與越來越多地體現於線上活動之時代，不應禁止法官適當參與社群媒體。然而，此種司法參與之公共利益必須與維護公眾對司法機關信任、公眾獲得公正審判權利以及整體司法系統之公正、廉潔和審判獨立相平衡。

Social media facilitates increasing opportunities for a wide variety of online connections and relationships with judges. This may have an impact, among others, on rules and principles governing ex parte communications, bias or prejudice, and outside influences.

Concepts like "friending", "following" in the social media context usually differ from traditional usage. In some cases, they may not mean much more than the relationship established between a content provider (such as a newspaper columnist) and a reader or subscriber. In other cases, however, the degree of online interaction may become more personally engaged or even intimate and thus will require circumspection on the part of the judge, and possibly disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships. Much will depend on the nature of the social media platform itself and the methods it has developed for facilitating contact between its users.

What follows is intended to provide guidance to both judges and judiciaries (as well as other judicial office holders and court personnel, as applicable, given that their conduct can also have an impact on judicial integrity and public confidence in the judiciary), and to delineate a broader framework on how to guide and train judges on the use of different social media platforms consistent with international and regional standards of judicial conduct and ethics and existing codes of conduct.

Finally, differences in cultures and legal traditions should also be taken into consideration when addressing the various questions related to the use of social media by judges and tailoring guidance and training to be provided to them.

Risks and opportunities in Judges' awareness and Use of Social Media

1. It is important that judges, both as citizens and in their judicial role, should be involved in the communities they serve. In an era where such involvement increasingly includes online activities, judges should not be prohibited from appropriate participation in social media. The public benefit of such judicial involvement and participation must, however, be balanced with the need to maintain public confidence in the judiciary, the right to a fair trial and the impartiality, integrity and independence of the judicial system as a whole.

2. 《班加羅爾司法行為原則》和其他現行的國際、地區和國家司法行為規則、標準、慣例及司法道德同等適用於法官的數位生活和現實生活。社群媒體開闢了有趣之挑戰和機遇，並以不同的方式體現《班加羅爾原則》，法官應意識該等事實。針對法官自由使用社群媒體可以有附加要求，惟此類附加要求不應限於特定時間使用之特定技術，而應具有普遍適用性。
3. 無論法官是否使用社群媒體，他們應掌握社群媒體之一般知識，包括在法官可能需裁決涉及社群媒體證據之案件。法官也應了解包括人工智能技術在內之現行的線上交流工具及技術。
4. 法官應接受有關個人以及其家庭成員、親近朋友及法院工作人員使用社群媒體之益處、風險和陷阱之特定培訓。
5. 法官個人使用社群媒體應維護其司法職位之權威、廉正、禮儀和尊嚴。
6. 法官應當知曉並考慮實際線上言論和結社引發之情況，包括可能造成更大範圍公開，或擴散至更大之網絡，言論存續時間更久，以及相對微小且隨意之行為（如“關注”）或者轉發他人訊息造成潛在之重要暗示。
7. 鼓勵司法機關尋求法律專業人士和民間團體之協助，以揭開法院神秘面紗並讓更多人理解司法概念。法官應意識到全體法院或司法機關之權責部門可以考慮並利用社群媒體和線上社群在此提供之機會。
8. 《班加羅爾司法行為原則》及其註解中提及法官可以教育公眾和法律專業人士、或參與公共評論，其中提到可採取其他形式之交流，應該也包括使用社群媒體。
9. 法官應確保其使用社群媒體不會對其盡職盡責地履行司法職責產生不利影響。

2. The Bangalore Principles of Judicial Conduct and other existing international, regional, and national rules, standards, and conventions of judicial conduct and judicial ethics apply to judges' digital lives as much as to their real lives. Social media opens up interesting challenges and opportunities and engages the Bangalore Principles in different ways, and judges should be aware of those. There may also be additional requirements that would inform judges' discretion in using this technology. Any such additional requirements should not, however, be specific to particular technologies in use at any given time but should be of general applicability.
3. Irrespective of whether they use social media or not, judges should have a general knowledge of social media, including how it may generate evidence in cases that judges may decide. Judges should also have an understanding of existing online communication tools and technology, including artificial-intelligence-powered technology.
4. Judges should receive specific training on the benefits, risks and pitfalls of their personal use of social media, as well as on its use by their family members, close friends and court personnel.
5. Use of social media by individual judges should maintain the moral authority, integrity, decorum, and dignity of their judicial office.
6. Judges should be aware of, and take into consideration, practical aspects of online forms of expression and association. These aspects include a potentially greater reach in terms of publicity or amplification to larger networks, and greater permanence of statements, as well as the potentially significant implications of relatively small and casual actions (such as "liking") or otherwise relaying information presented by others.
7. Judiciaries are encouraged to seek the assistance of the legal profession and civil society in demystifying courts and access to justice concepts. Judges should be aware that the competent bodies of the courts or judiciaries at large may consider and act upon the opportunities presented by social media and online communities in this regard.
8. Where the Bangalore Principles of Judicial Conduct and the Commentary refer to judges' ability to educate the public and the legal profession or engage in public commentary, that may include the use of social media in addition to other forms of communication.
9. Judges should ensure that the level of their social media use does not adversely impact their capacity to perform judicial duties with competence and diligence.

10. 在適當的情況下，法院（而非個人）使用社群媒體可以成為改善以下問題的寶貴工具，包括：（1）接近正義；（2）司法管理，特別是司法效率及案件流程；（3）問責制度；（4）透明性；（5）公眾對法院和司法機關之信任、理解及尊重。

11. 致力於為訴訟建置入口網站之法院，應考慮到允許法院用戶使用其社群媒體資料訪問此類入口網站之風險，特別是針對數據聚合之社群媒體平台。

法官於社群媒體之身分

12. 法官可以使用其真實姓名並在社群媒體上透露其司法身分，前提是這樣做不違反適用之道德標準和現行規則。

13. 在本指南之制定過程中，法官在社群媒體上是否可以使用假名一直存在著爭議，至今也無法達成一致觀點。因此本指南既不建議也不禁止使用假名。然而，法官在社群媒體上之行為必須與他們職業相關道德準則相合。永遠不應該使用假名在社群媒體上從事不道德行為。另外，使用假名也無法保障其真名或司法身分將來不被知曉。

14. 法官應該注意到各種社群媒體平台之不同，並應意識在某些平台上將個人和職業身分區分或許有益。了解不同社群媒體平台如何運作以及在不同的社群媒體平台必須或適合於分享何種訊息，均適合作為法官培訓之內容。

關於社群媒體的內容與行為

15. 現行關於法院尊嚴、司法公正和公平原則，同樣適用於社群媒體上之溝通交流。

16. 法官應避免在網路上表達可能破壞審判獨立性、廉正性、合宜得體性、公正性、公平性或影響公眾對司法機關信任觀點或分享個人訊息。不論法官是否在社群媒體平台公布渠等真實名字或司法身分，該原則均同等適用。

10. Institutional (as opposed to individual) use of social media by the courts can, in appropriate circumstances, be a valuable tool for promoting issues such as (a) access to justice; (b) administration of justice, in particular judicial efficiency and expedition of case processing; (c) accountability; (d) transparency; and (e) public confidence in, understanding of, and respect for, the courts and the judiciary.
11. Courts working to create online portals for litigation should consider the risks of allowing court users to use their social media profiles to access such portals, in particular with regards to the data aggregation practices of social media platforms.

Judges' Identification on Social Media

12. Judges may use their real names and disclose their judicial status on social media, provided that doing so is not against applicable ethical standards and existing rules.
13. During the development of the present guidelines, contrasting views have been shared with regard to the use of pseudonyms by judges on social media and no consensus has been reached on this issue. As such, the present guidelines neither recommend nor forbid theuse of pseudonyms. However, it can be said that, in their behaviour on social media, judges must comply with all ethical standards related to their profession. Pseudonyms should never be used to enable unethical behaviour on social media. Additionally, the use of a pseudonym offers no guarantee that the real name or judicial status will not become known.
14. Judges should have regard to the range of social media platforms and should recognize that, with some platforms, it may be beneficial to separate private and professional identities. Understanding how the various social media platforms operate and what type of information may be necessary or appropriate to share on various social media platforms would be an appropriate area for the training of judges.

Content and Behaviour on Social Media

15. Existing principles relating to the dignity of the courts, judicial impartiality and fairness apply equally to communications on social media.
16. Judges should avoid expressing views or sharing personal information online that can potentially undermine judicial independence, integrity, propriety, impartiality, the right to fair trial or public confidence in the judiciary. The same principle applies to judges regardless of whether or not they disclose their real names or judicial status on social media platforms.

17. 法官不應通過社群媒體網站或通訊服務平台與當事人、當事人代表或一般公眾就其正在審理之案件或可能由其審理之案件進行交流。

18. 法官應該在語氣和語言方面保持謹慎，並在所有社群媒體平台上的所有互動中保持專業及謹慎態度。應認真考慮每一項社群媒體內容（如張貼、回覆評論、狀態更新、照片等）如披露予公眾會給司法尊嚴帶來何種影響，這對法官來說可能是有幫助的。對其他人上傳之社群媒體內容做出回應時也需同樣謹慎。

19. 法官應尊重他人，不要利用社群媒體貶低他人，或就任何爭議話題發表歧視性言論。

20. 普遍認為社群媒體使線上研究各方當事人更容易，並易發現不存於法院或法庭的證據。根據不同司法管轄區之證據規則，法官應謹慎對案件進行線上研究，包括當事人或證人，因可能影響法官對案件之裁決（或導致外界認為有該等影響）。

21. 法官應考慮發布超越其職權的數位內容是否會減損公眾對其公正性或司法機關公正性之信心。法官應遵守其司法機關關於披露或刪除該內容之相關規則。如無相關規則，法官應考慮刪除該內容。有必要時得就是否將其刪除以及如何刪除聽取建議。

22. 倘法官在網路上被侮辱或謾罵，應向更資深之司法界同事或其司法機關相關部門尋求建議，但應避免直接回應。鼓勵司法機關向法官提供如何處理此類問題之指引。

23. 法官可以使用社群媒體平台關注感興趣的主題。關注不同主題或評論者可避免“回音室效應”。然而法官應謹慎關注特定之律師社團、活動或評論者，因此種關注可能損害公眾對法官或整體司法機關公正性之信心。

24. 法官應確保不使用其社群媒體帳戶直接或間接地提高自己或第三方的財務或商業利益。

17. Judges should not engage in exchanges over social media sites or messaging services with parties, their representatives or the general public about cases before or likely to come before them for decision.

18. Judges should be circumspect in tone and language and be professional and prudent in respect of all interactions on all social media platforms. It may be helpful to consider in respect of each item of social media content (such as posts, comments on posts, status updates, photographs, etc.) what its impact on judicial dignity might be if disclosed to the general public. The same caution applies when reacting to social media content uploaded by others.

19. Judges should treat others with dignity and respect, not use social media to trivialize the concerns of others, or make remarks that discriminate on any prohibited ground.

20. It is recognized that social media makes it much easier to research parties online and discover things that are not part of evidence that is before the court or tribunal. Subject to the rules of evidence of different jurisdictions, judges should refrain from researching the aspects of a case online, including parties and witnesses, as this could potentially influence judges' decisions on a case (or lead to a perception that it has had such an influence).

21. Judges should consider whether any digital content antedating their ascension to the bench might damage public confidence in their impartiality or in the impartiality of the judiciary in general. Judges should follow the applicable rules of their jurisdictions regarding the disclosure and removal of such content. If no rules are in place, judges should consider removing the content. It may be necessary to take advice on whether it would be correct to remove it and how to do so.

22. If a judge has been insulted or abused online, he or she should seek advice from senior judicial colleagues or other mechanisms in place in the judiciary but should refrain from responding directly. Judiciaries are encouraged to provide guidance for judges on how to deal with harassment or abuse online.

23. A judge may use social media platforms to follow topics of interest. It may be worth following a diverse range of topics and commentators to avoid creating their own "echo chambers". However, a judge should be wary of following or liking particular advocacy groups, campaigns, or commentators where association with them could damage public confidence in the judge's impartiality or the impartiality of the judiciary in general.

24. Judges should ensure that they do not use their social media accounts to directly or indirectly advance their own or third-party's financial or commercial interest.

線上友誼和關係

25. 法官應該意識到，社群媒體中“加好友”、“關注”等概念可能與傳統用法不同，沒有傳統意義那　親密。

    但是若線上或其他互動度變得更加個人化或親密，法官應繼續遵守《班加羅爾司法行為原則》，在適當情況下，採取謹慎、披露、退出、迴避或其他類似於傳統線下關係所採取之行為。

26. 法官應定期審核過去和現在的社群媒體帳戶，並在必要時採取措施審查內容和關係。

27. 法官應當在移除和 / 或封鎖跟隨者或好友方面，制定或逐步適用適當之禮儀規則，特別是在不這樣做會讓他人合理地認為法官抱有偏見或歧視時。

28. 法官在建立線上友誼、聯繫和 / 或接受在線好友請求時應審慎調查，保持謹慎及明智。

29. 當線上關係或內容存在不確定性時，鼓勵法官向受認可之社群媒體專家和 / 或司法機關提供之道德顧問尋求指引。

30. 法官應避免向當事人或其法律代理人發送或接受加好友請求，以及與他們進行任何其他社群媒體互動。這同樣適用於證人或任何其他已知之利益相關人士。

31. 應培訓法官如何告知其直系親屬、親近朋友、法院工作人員等有關法官之道德義務，以及了解使用社群媒體會如何破壞對該等義務之履行。

隱私和安全

32. 建議法官熟悉所使用之社群媒體平台之安全和隱私政策、規則和設置，定期審查並謹慎操作，以確保個人、職業和機構之廉正及安全。

33. 無論在何種情況下，建議法官不要在社群媒體上發表或從事任何可能令人尷尬或不當之言論和行為，避免為公共廣泛傳播。

Friendships and Relationships Online

25. Judges should be aware that concepts like "friending", "following", etc., in the social media context, can differ from traditional usage and may be less intimate or engaged. However, where the degree of interaction, online or otherwise, becomes more personally engaged or intimate, judges, should continue to observe the Bangalore Principles of Judicial Conduct, necessitating, in appropriate situations, circumspection, disclosure, disqualification, recusal, or other actions similar to those established for conventional offline relationships.
26. Judges should periodically monitor past and present social media accounts and should take steps to review content and relationships as and when necessary.
27. Judges should develop and consistently apply an appropriate etiquette for removing and/or blocking followers/friends/etc., especially where failure to do so would reasonably create an appearance of bias or prejudice.
28. It is prudent and wise for judges to exercise due care and diligence when creating online friendships and connections and/or accepting online friend requests.
29. Whenever there is uncertainty as to either online relationships or content, judges are encouraged to seek guidance of approved social media experts and/or judicial ethics advisers provided by the judiciaries.
30. Judges should avoid accepting or sending friend requests from or to parties or their legal representatives, and engaging in any other social media interactions with them. The same applies to witnesses or any other known interested persons.
31. Judges should be trained on how to inform their immediate families, close friends, court personnel, etc. about the ethical obligations of a judge and how use of social media can undermine compliance with those obligations.

Privacy and Security

32. Judges are advised to acquaint themselves with the security and privacy policies, rules, and settings of the social media platforms they use, periodically review them, and exercise caution, with a view to ensuring personal, professional, and institutional integrity and protection.
33. Regardless of the settings, it is advisable for judges not to make any comment or engage in any conduct on social media that might be embarrassing or improper were it to become public knowledge.

34. 法官應了解在社群媒體上分享其個人訊息之風險和正當性。法官應特別注意透過社群媒體之貼文直接或間接透露其地理位置或任何類似訊息所引發之隱私和安全風險。另外，法官應知悉即使自己不是社群媒體之活躍用戶，渠等之家庭成員、親近朋友、法院工作人員等使用社群媒體也可能給法官帶來隱私和安全風險。

35. 法官應知曉，在社群媒體上對渠等之認知可能不僅僅基於社群媒體使用活躍度，也基於接受何種訊息以及自何處接受訊息，即便並非由法官主動進行聯繫。

36. 無論是否使用社群媒體，法官都應注意其在公共場合之表現，因照片或影音可以在社群媒體平台上迅速傳播。

37. 法院和司法機關應優先考慮和加強法官對社群媒體使用之培訓，使渠等得以有效管理所使用之帳戶。

培訓

38. 應定期向法官提供培訓，以解決相關問題和事宜，例如：

i. 何種社群媒體平台可供使用；

ii. 該等平台如何運作；

iii. 參與該等平台有什　好處；

iv. 參與之潛在風險或後果為何；

v. 法官應如何以適當沈默之方式參與，以保護其安全，同時履行維護審判獨立、職位尊嚴和公眾信任之義務；

vi. 如何使法官之家庭成員充分了解情況，以確保法官不受安全風險之影響，並成功履行其作為法官的義務；

vii. 法院工作人員如何使用社群媒體也會使公眾對司法機關之信心、司法廉潔、公正和審判獨立造成影響；及

viii. 何以要避免調查當事人以及發現本不屬於法院或法庭證據之事項。

34. Judges should be aware of the risks and propriety of sharing personal information on social media. Judges should be particularly aware of the privacy and security risks of revealing their location or any similar information directly or indirectly through posts on social media. Additionally, judges should be aware that even if they are not active social media users, privacy and security risks may arise from the use of social media by their family members, close friends, court personnel, etc.

35. Judges should be aware that how they are perceived on social media may be based notonly on their active use of social media, but also based on what information they receive and from whom they received it, even if the contact was not requested by them.

36. Irrespective of whether they use social media or not, judges should be wary of how they behave in public because photos or recordings may be taken that can be spread quickly on social media platforms.

37. Courts and judiciaries should prioritize and facilitate the training of judges on the use of social media to enable them to effectively manage the accounts they use.

Training

38. Judges should be periodically provided with training to address pertinent questions and issues, such as:

    i. What social media platforms are available for use;

    ii. How these platforms operate;

    iii. What benefits there are to participating in these platforms;

    iv. What the potential risks/consequences of such participation are;

    v. How judges should participate with appropriate reticence to protect their security and to fulfil their obligations to maintain judicial independence, the dignity of office and public confidence;

    vi. How family members should be adequately informed to play their part in ensuring that judges are not subject to security risks and are successfully fulfilling their obligations as judges;

    vii. How the use of social media by court personnel may also have an impact on public confidence in the judiciary, judicial integrity, impartiality and independence; and

    viii. Why to avoid researching parties and discovering things that are not part of evidence that is before the court or tribunal.

39. 應對新任命之法官提供培訓。另外，應提供一定程度之長期持續培訓，如有可能，並應以電子方式提供培訓。

40. 應建立持續可供查詢及諮詢之保密資源，在有需要時可供使用。司法機關應考慮以匿名方式彙整公布該等建議和指示，並就使用社群媒體此一課題為法官提供其他可操作之指南。

39. Training should be provided to newly appointed judges. In addition, training should be provided to judges with some level of permanency and on a continuous basis and, if possible, should also be available electronically.

40. There should be ongoing confidential resources for inquiry and advice as needed. The judiciary should consider publishing an anonymous compilation of such advice and direction. The judiciary may also consider preparing other practical guidance for judges on the topic of the use of social media.

二 美國司法人員倫理規範

二、美國司法人員倫理規範

（一）美國法官行為守則

序言

本守則適用於下列法官：巡迴上訴法院法官，地方法院法官，國貿法庭法官，破產程序法官，治安法庭法官。此外，稅務法庭、退伍軍人法庭、軍事上訴法庭皆適用本守則。適用本守則之法官須在上任後一年內儘速合理地安排調整個人事務，以符合本守則之規定。

當本守則所適用之法官對守則內容有疑義請求解釋時，司法會議授權其所屬法官守則審議委員會對於守則之解釋適用提出意見。對於守則請求解釋，或提出其他關於守則適用上之疑義時，須對法官守則審議委員會主席為之。

行為守則審議委員會主席
轉交總顧問
美國法院行政辦公室
瑟古德．馬歇爾聯邦司法大廈
哥倫布圓環東北角 1 號
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202-502-1100

程序問題請洽

總顧問室
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Code of Conduct for United States Judges (effective March 12, 2019)

Introduction

This Code applies to United States circuit judges, district judges, Court of International Trade judges, Court of Federal Claims judges, bankruptcy judges, and magistrate judges. Certain provisions of this Code apply to special masters and commissioners as indicated in the "Compliance" section. The Tax Court, Court of Appeals for Veterans Claims, and Court of Appeals for the Armed Forces have adopted this Code.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions about this Code only when requested by a judge to whom this Code applies. Requests for opinions and other questions concerning this Code and its applicability should be addressed to the Chair of the Committee on Codes of Conduct by email or as follows:

Chair, Committee on Codes of Conduct

c/o General Counsel

Administrative Office of the United States Courts

Thurgood Marshall Federal Judiciary Building

One Columbus Circle, N.E.

Washington, D.C. 20544

202-502-1100

Procedural questions may be addressed to:

Office of the General Counsel

Administrative Office of the United States Courts

Thurgood Marshall Federal Judiciary Building One Columbus Circle, N.E.

Washington, D.C. 20544

202-502-1100

第 1 則：法官需維護司法獨立與純潔

一個獨立且受尊敬的司法體系是社會所不可或缺的。法官必須共同建立、維持、執行本守則所訂定之高道德標準，並且身體力行之。如此，司法獨立與純潔才能被維護。本守則之條文皆是為了達此目的而設。

註釋

社會大眾對於法官以及法院判決之尊重，取決於司法之獨立與純潔。唯有法官在執行職務時不受個人好惡左右、且不受外在影響時，司法才有獨立與純潔可言。雖然法官必須獨立，但他們仍須遵守法律與法官守則。人民對司法公正客觀之信心，繫於每位法官對於法律與法官守則之遵守。相對地，若法官違反本守則，將會減低社會對司法的信心並傷害整體國家法治。

本守則所規定事項均為理性法則。它們必須符合憲法、法律、以及其他各種相關情況。解釋本守則時，不得損及法官在做個案判斷時之獨立性。本守則提供法官以及其他司法公職之被提名人一個行為準則。本守則亦提供行為準則給法官懲戒程序做參考（該程序依照「1980 年司法改革與法官行為及失職法」進行），不過本守則並不建議對每個違反守則規定的行為都予以處罰。是否施予懲戒，及懲戒之程度，應取決於守則之合理適用以及具體事實，例如違反之程度、意圖、頻率、對其他法官以及司法體系之影響。本守則中許多禁止規定都以不確定法律概念為之，當一個理智的法官無法確定他的行為是否被禁止時，該行為就不應受到懲戒。此外，本守則並非用以作為民事求償或刑事追訴之工具。最後，若律師在訴訟程序中利用本守則作為訴訟策略，本守則之原有意義將遭到顛覆。

CANON 1: A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice in our society. A judge should maintain and enforce high standards of conduct and should personally observe those standards, so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

COMMENTARY

Deference to the judgments and rulings of courts depends on public confidence in the integrity and independence of judges. The integrity and independence of judges depend in turn on their acting without fear or favor. Although judges should be independent, they must comply with the law and should comply with this Code. Adherence to this responsibility helps to maintain public confidence in the impartiality of the judiciary. Conversely, violation of this Code diminishes public confidence in the judiciary and injures our system of government under law.

The Canons are rules of reason. They should be applied consistently with constitutional requirements, statutes, other court rules and decisional law, and in the context of all relevant circumstances. The Code is to be construed so it does not impinge on the essential independence of judges in making judicial decisions.

The Code is designed to provide guidance to judges and nominees for judicial office. It may also provide standards of conduct for application in proceedings under the Judicial Councils Reform and Judicial Conduct and Disability Act of 1980 (28 U.S.C. §§ 332(d)(1), 351-364). Not every violation of the Code should lead to disciplinary action. Whether disciplinary action is appropriate, and the degree of discipline, should be determined through a reasonable application of the text and should depend on such factors as the seriousness of the improper activity, the intent of the judge, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. Many of the restrictions in the Code are necessarily cast in general terms, and judges may reasonably differ in their interpretation. Furthermore, the Code is not designed or intended as a basis for civil liability or criminal prosecution. Finally, the Code is not intended to be used for tactical advantage.

第 2 則：法官在各種場合都應避免不當行為

A. 法官應尊重並遵守法律，行為時應時時使公眾相信司法的公正與純潔。

B. 法官不可因家庭或私人關係影響自己的判斷或行為。法官不可藉司法上的權力追尋自己或其他人的利益，亦不可使他人感受到自己有特殊地位可以影響法官。法官不可自願成為他人的人格證人。

C. 法官不可參加有歧視性別、種族、宗教、國籍的團體。

註釋

第 2 則 A. 在知悉所有經由適當調查而發現的相關情況後，一般人會合理認為擔任法官的誠實、廉潔、無私或適當性已受損時，即屬不當行為。公眾對司法的信任會因為法官不負責或不適合的行為而受侵蝕。法官必須避免所有不當行為及不當行為之外觀。法官應持續受公眾檢驗並心甘情願地接受平常人可能會認為繁重的限制。因為無法列舉所有禁止行為，所以必須以一般性的用語來描述，且適用於本守則未規定的法官的有害行為。

第 2 則 B. 以性格證人所為之證詞是將司法機關之威望繫於法官作證之程序而且可能會被視為官方的證詞。法官應該勸阻當事人要求法官擔任性格證人，除非基於正義之要求的特殊情況。本條並非創設拒絕證言權。

法官必須避免司法權成為自己或他人追求自我利益的工具。例如，法官不可利用自己的地位去影響親友的訴訟。法官出版自己的著作時，需保留廣告的權利，以免他人藉由廣告利用司法遂行私人利益。

法官必須留意可能的權力濫用。法官不可主動提供資料給量刑法官、保釋官、觀護人。但若上述之人經正式程序提出請求者，不在此限。法官得參與法官遴選程序，與提名機關合作，篩選可能之法官人選、提出對該人選之意見。

CANON 2: A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. Respect for Law. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

B. Outside Influence. A judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge. A judge should not testify voluntarily as a character witness.

C. Nondiscriminatory Membership. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.

COMMENTARY

Canon 2A. An appearance of impropriety occurs when reasonable minds, with knowledge of all the relevant circumstances disclosed by a reasonable inquiry, would conclude that the judge's honesty, integrity, impartiality, temperament, or fitness to serve as a judge is impaired. Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges, including harassment and other inappropriate workplace behavior. A judge must avoid all impropriety and appearance of impropriety. This prohibition applies to both professional and personal conduct. A judge must expect to be the subject of constant public scrutiny and accept freely and willingly restrictions that might be viewed as burdensome by the ordinary citizen. Because it is not practicable to list all prohibited acts, the prohibition is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the Code. Actual improprieties under this standard include violations of law, court rules, or other specific provisions of this Code.

Canon 2B. Testimony as a character witness injects the prestige of the judicial office into the proceeding in which the judge testifies and may be perceived as an official testimonial. A judge should discourage a party from requiring the judge to testify as a character witness except in unusual circumstances when the demands of justice require. This Canon does not create a privilege against testifying in response to an official summons.

A judge should avoid lending the prestige of judicial office to advance the private interests of the judge or others. For example, a judge should not use the judge's judicial position or title to gain advantage in litigation involving a friend or a member of the judge's family. In contracts for publication of a judge's writings, a judge should retain control over the advertising to avoid exploitation of the judge's office.

第 2 則 C. 若法官加入一個有歧視他人傾向的團體，法官的公正性會受到質疑。一個團體是否帶有歧視性，其實判斷不易，但法官必須對此十分敏感。為判斷時，不能只檢視該團體現有會員的名冊上有哪些成員，而是應該檢視該團體如何選取成員，是否基於宗教、種族、文化取向上的判斷，或者成員的選取只是出於私人情誼而無違反憲法上禁止歧視之虞。其他應考量的因素尚包括：該團體的大小、本質、位處地點之居民的多樣性（哪些人可能會成為潛在的會員）。因此僅有缺乏多樣性的會員這個事實，並不會立即構成歧視，除非一個理性之人在類似情況下亦會認為若非團體帶有歧視性，其會員應該具有多樣性。除了上述情況，若一個團體武斷地以種族、宗教、性別、國籍來排除一個本來有資格加入之人，該團體即具有歧視性。

雖然第 2 則 C 文義上僅限於團體以種族、宗教、性別、國籍來歧視，法官加入一個因歧視而違反第 2 則、第 2 則 A 的團體也是被認為不當的。此外，若法官加入一個以種族、宗教、性別、國籍歧視他人的俱樂部，或在該俱樂部進行會議，也是違反第 2 則和第 2 則 A。另外，若使得大眾認知到法官加入或認許那些有歧視性的團體，會損害社會對司法公平、無私的信心，也會違反第 2 則及第 2 則 A。

A judge should be sensitive to possible abuse of the prestige of office. A judge should not initiate communications to a sentencing judge or a probation or corrections officer but may provide information to such persons in response to a formal request. Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees seeking names for consideration and by responding to official inquiries concerning a person being considered for a judgeship.

Canon 2C. Membership of a judge in an organization that practices invidious discrimination gives rise to perceptions that the judge's impartiality is impaired. Canon 2C refers to the current practices of the organization. Whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive. The answer cannot be determined from a mere examination of an organization's current membership rolls but rather depends on how the organization selects members and other relevant factors, such as that the organization is dedicated to the preservation of religious, ethnic or cultural values of legitimate common interest to its members, or that it is in fact and effect an intimate, purely private organization whose membership limitations could not be constitutionally prohibited. See New York State Club Ass'n. Inc. v. City of New York, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988); Board of Directors of Rotary International v. Rotary Club of Duarte, 481 U.S. 537, 107 S. Ct. 1940, 95 L. Ed. 2d 474 (1987); Roberts v. United States Jaycees, 468 U.S. 609, 104 S. Ct. 3244, 82 L. Ed. 2d 462 (1984). Other relevant factors include the size and nature of the organization and the diversity of persons in the locale who might reasonably be considered potential members. Thus the mere absence of diverse membership does not by itself demonstrate a violation unless reasonable persons with knowledge of all the relevant circumstances would expect that the membership would be diverse in the absence of invidious discrimination. Absent such factors, an organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, religion, sex, or national origin persons who would otherwise be admitted to membership.

Although Canon 2C relates only to membership in organizations that invidiously discriminate on the basis of race, sex, religion or national origin, a judge's membership in an organization that engages in any invidiously discriminatory membership practices prohibited by applicable law violates Canons 2 and 2A and gives the appearance of impropriety. In addition, it would be a violation of Canons 2 and 2A for a judge to arrange a meeting at a club that the judge knows practices invidious discrimination on the basis of race, sex, religion, or national origin in its membership or other policies, or for the judge to use such a club regularly. Moreover, public manifestation by a judge of the judge's knowing approval of invidious discrimination on any basis gives the appearance of impropriety under Canon 2 and diminishes public confidence in the integrity and impartiality of the judiciary, in violation of Canon 2A.

當一個法官認為他所參加的團體具有歧視性而為第 2 則、第 2 則 A、第 2 則 C 所禁止時，法官應立即設法使該團體停止該歧視行為。若該團體無法立即停止歧視行為（在所有情況下，於法官初次發現該情形時 2 年內），法官應立即退出該組織。

第 3 則：法官應公正勤勉執行職務

法官之職務優先於其他活動。執行法定職務時，應遵守下列標準：

A. 審判職務

(1) 法官應盡忠職守，並保持法學上之專業能力，不為黨派的利益、公眾的喝彩或批評的顧慮而有所動搖。

(2) 除有迴避情事，法官應審理所分派之案件，並於程序中維持法庭的秩序及禮儀。

(3) 法官應有耐心、威嚴、禮貌，並懇切地對待當事人、陪審員、證人、律師、及其他訴訟關係人。並應要求受法官監督之人，包括律師，於符合彼等在訴訟中所扮演角色之程度內，為相同之行為。

(4) 法官應給予與訴訟程序有法律利害關係之每一個人或其律師，依法充分陳述之權；除除以下列舉者外，不應對審理中或即將審理之訴訟，開始、允許或考慮單方溝通，抑或於當事人或其律師缺席狀況下為溝通。倘法官接獲與本案相關之未獲授權單方溝通，應立即通知當事人溝通內容，並於要求下給予回應之機會。法官可於：

(a) 法律授權下開始、允許或考慮單方溝通。

(b) 依情況需求，允許定期、行政或緊急目的之單方溝通，但僅於該溝通未涉及實體事項，且法官合理地相信無當事人可因該單方溝通，因而獲得程序、實質或策略上優勢。

When a judge determines that an organization to which the judge belongs engages in invidious discrimination that would preclude membership under Canon 2C or under Canons 2 and 2A, the judge is permitted, in lieu of resigning, to make immediate and continuous efforts to have the organization discontinue its invidiously discriminatory practices. If the organization fails to discontinue its invidiously discriminatory practices as promptly as possible (and in all events within two years of the judge's first learning of the practices), the judge should resign immediately from the organization.

CANON 3: A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

The duties of judicial office take precedence over all other activities. The judge should perform those duties with respect for others, and should not engage in behavior that is harassing, abusive, prejudiced, or biased. The judge should adhere to the following standards:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.

(3) A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge's control, including lawyers to the extent consistent with their role in the adversary process.

(4) A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:

(a) initiate, permit, or consider ex parte communications as authorized by law;

(b) when circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party

(c) 獲取無利害衝突之專家書面建議，但限於事前通知兩造將諮詢該專家及建議議題，且給予兩造合理反對及回應上開通知及所獲取建議之機會；或

(d) 於兩造同意下，分別給予兩造及其律師對案件所適用之法律學有專精之公正中立專家之意見，但法官須就所諮詢之人與所得意見之內容通知兩造當事人，並給與兩造當事人有合理回應的機會。法官為調解或和解審理中之案件，經兩造當事人之同意，得分別與兩造當事人及其律師協商，以促成審理中案件之調解或和解。

(5) 法官應迅速處理法院事務。

(6) 法官應避免公開評論審理中或即將審理之訴訟案情內容，法院內受該法官指揮監督之人員亦同。本禁止規定不及於法官職務上所為之公開陳述、法庭程序之解說、或為法律教學目的而為之學術論述。

will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;

(c) obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or

(d) with the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

(5) A judge should dispose promptly of the business of the court.

(6) A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's direction and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

B. 行政職責

(1) 法官應勤奮的執行行政職責，在執行司法時保持專業能力，並協助其他法官與法院人員履行行政職責。

(2) 法官應要求法院官員、職員及受法官指揮監督之其他人，亦遵守法官所適用之相同忠誠與勤勉準則。

(3) 法官應公平且不只以績效來行使任命權，避免不必要的任命、偏袒或循私。法官不應在受任命者所服勞務之公平價值之外核給報酬。

(4) 法官對待法院人員時，應實踐公民素養、具有耐心、保持尊嚴、待人恭敬、且謙恭有禮。法官不應以任何形式騷擾法院人員。法官不應對報告不當行為者進行報復。法官應維持法院人員達到類似的標準。

(5) 法官對其他法官有監督權者，應採取合理之措施以確保彼等適時且有效地執行職務。

(6) 一旦收到法官之行為違反本準則、司法人員之行為違反「司法人員行為準則」、或律師違反專業行為適用規則等可靠資訊時，法官應立即採取合適行動。

C. 迴避

(1) 法官如有使人合理地認為其審理案件有偏頗之虞之情形者，應自行迴避，其情形包括但不限於下列情況：

(a) 法官對當事人有私人成見或偏見，或自己對於案件內有爭執之事證知悉者。

(b) 法官曾為該案件之律師，或法官曾與該案件之律師合開事務所執行律師業務，或法官或該律師曾為該案件之主要證人者。

(c) 法官或法官因擔任受託人而知悉法官本身或其配偶或其同住之未成年子女，對該案件或當事人有財產上利益者，或享有受案

B. Administrative Responsibilities.

(1) A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.

(2) A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge.

(3) A judge should exercise the power of appointment fairly and only on the basis of merit, avoiding unnecessary appointments, nepotism, and favoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards.

(5) A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.

(6) A judge should take appropriate action upon receipt of reliable information indicating the likelihood that a judge's conduct contravened this Code, that a judicial employee's conduct contravened the Code of Conduct for Judicial Employees, or that a lawyer violated applicable rules of professional conduct.

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

(a) the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or lawyer has been a material witness;

(c) the judge knows that the judge, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

件之結果有相當影響之利益者。

(d) 法官或其配偶，或其二人之三等親內之親屬，或該親屬之配偶，有下列情形之一者：

(i) 為該案件之當事人或當事人之幹事、董事或理事者。

(ii) 為該案件之律師者。

(iii) 對案件之結果享有相當影響之利益而為法官所知者。

(iv) 可能成為該案件之重要證人而為法官所知者。

(e) 法官於政府機關任職時，曾以該身分，為有關該案件之律師、顧問、或重要證人，或曾就該案件之案情內容表示意見者。

(2) 法官應持續瞭解其個人及受託人之財產上利益，並應盡合理之所能，知悉其配偶及與其同住之未成年子女之財產上利益。

(3) 適用本則規定時：

(a) 親等係依民法規定計算之。三等親內之親屬包括：父母，子女，祖父母，孫子女，曾祖父母，曾孫子女，姐妹，兄弟，伯、叔、姑、舅、姨母，伯、叔、姑、舅、姨丈，姪子、外甥及姪女、外甥女，上述的親屬包括全血親、半血親及大部分前婚姻親等。

(b)「受託人」包括諸如遺囑執行人、遺產管理人、信託財產之受託人、監護人等關係者。

(c)「財產上利害關係」或「財產上利益」指擁有法律上或衡平法上利益（無論如何微小均屬之），或具有為當事人之理事、顧問或其他積極參與其事務者之關係，但下列情形，不在此限：

(i) 擁有相互或共同投資基金之有價證券者，除非法官參與該基金之管理，否則持有該有價證券非屬此之「財產上利益」。

(ii) 在教育、宗教、慈善、互助或民間組織內任職者，對該組織所擁有之有價證券，認無「財產上利益」。

(d) the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such a person is:

(i) a party to the proceeding, or an officer, director, or trustee of a party;

(ii) acting as a lawyer in the proceeding;

(iii) known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or

(iv) to the judge's knowledge likely to be a material witness in the proceeding;

(e) the judge has served in governmental employment and in that capacity participated as a judge (in a previous judicial position), counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

(2) A judge should keep informed about the judge's personal and fiduciary financial interests and make a reasonable effort to keep informed about the personal financial interests of the judge's spouse and minor children residing in the judge's household.

(3) For the purposes of this section:

(a) the degree of relationship is calculated according to the civil law system; the following relatives are within the third degree of relationship: parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew; the listed relatives include whole and half blood relatives and most step relatives;

(b) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(c) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policyholder in a mutual insurance company, or a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if

(iii) 相互保險公司之保險單持有人或相互儲蓄社團之存款人之正當權益，或類此之正當權益，僅於案件結果對該權益之價值有相當影響時，始認為對該組織有「財產上利害關係」。

(iv) 擁有政府債券者，僅於案件之結果對該債券之價值有相當影響時，對該債券之發行者，始認有「財產上利害關係」。

(d)「案件」包括預審、審判、上訴審或其他訴訟階段之案件。

(4) 本規則前開規定雖規範案件承辦法官於投入相當時間於該案件後，始知悉其本身或因擔任受託人或其配偶或與其同住之未成年子女，對當事人如有財產上利益（包括該案件之結果而受相當影響利益者），應迴避審理該案件，惟若該法官、配偶或未成年子女，已自行放棄該致使迴避之利益者，則法官無庸迴避。

D.迴避之免除

法官依第 3 則 C(1) 之規定應迴避時，除有 (a) 至 (e) 各款所明定之情形外，得於筆錄內載明迴避之原因，而不退出訴訟程序，在揭露迴避原因後，如兩造當事人及其律師於法官不在場時協商之結果，均同意法官無庸迴避，並以書面或在筆錄內載明，且為法官所願意者，則法官仍得審理該案件。該同意文書並應併入該案卷內。

註釋

第 3 則 A(3). 公正且有耐性地審理訴訟案件與快速處理法院事務的職務二者並非不一致，法院可以在達成效率目標的同時，也表現出耐性與慎重。

依據第 2 則所賦予的職務，所有法官的活動都要促進公眾對司法廉潔與公正的信心，包括履行法官裁判上與職務上職責。保持尊重的職責包括避免會被合理解釋為騷擾、偏見或成見的評論或行為。

the outcome of the proceeding could substantially affect the value of the securities;

(d) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation.

(4) Notwithstanding the preceding provisions of this Canon, if a judge would be disqualified because of a financial interest in a party (other than an interest that could be substantially affected by the outcome), disqualification is not required if the judge (or the judge's spouse or minor child) divests the interest that provides the grounds for disqualification.

D. Remittal of Disqualification.

Instead of withdrawing from the proceeding, a judge disqualified by Canon 3C(1) may, except in the circumstances specifically set out in subsections (a) through (e), disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

COMMENTARY

Canon 3A(3). The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate.

The duty under Canon 2 to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary applies to all the judge's activities, including the discharge of the judge's adjudicative and administrative responsibilities. The duty to be respectful includes the responsibility to avoid comment or behavior that could reasonably be interpreted as harassment, prejudice or bias.

第 3 則 A(4). 對訴訟案件禁止傳播資訊之規定，是適用於包括律師、法學院教授及其他並未參與此訴訟程序之人士，法官得向其他法官諮詢或是與那些在法庭上協助法官執行司法職責的相關人員溝通案件。法官應盡力確保法院辦事員或其他人員不會違背此項規定。

法官應鼓勵並尋求促進和解，但是不得使當事人覺得被法庭逼迫放棄權利來解決爭議。

第 3 則 A(5). 為迅速有效而公正處理事務，法官必須重視當事人的依法聽審權，且使爭議之解決，不會有無謂的成本浪費或遲延發生。法官應監督及指揮訴訟案件，以降低、排除案件程序遲延及增加無謂成本的情形產生。為迅速處理法院事務，法官必須貢獻足夠的時間於司法職務，準時開庭，迅速決定案件是否提付仲裁，並應要求法庭公務人員，訴訟當事人及其律師與法官協同合作，直至案件審理結束。

第 3 則 A(6). 對公眾針對審理中或尚未審理之案情內容進行評論，應持續採取告誡行動，直到完成上訴程序。如果公眾評論牽涉到法官法庭之個案，要特別小心這些評論未破壞公眾對司法制度公正無私之信心，以致違反第 2 則 A 之規定。惟此規定並未禁制法官本人即為當事人之訴訟案件所為之評論，但是當法官本人就是訴訟當事人時，法官不應做出超越判決紀錄以外的評論。但法官可依聯邦上訴程序規則第 21(b) 之規定予以回應。

「法庭人員」並未包括在法官前參與訴訟案件的律師。律師的行為另受適用於各司法權的專業行為規則所規範。

第 3 則 B(3). 受法官任命的公務員，包括仲裁人、委員、專家、破產管理人、監護人、事務員、秘書及法警等。被任命者對於法官所為之任命或報酬授與之同意，並未減輕本款對法官要求之責任。

第 3 則 B(4). 法官不應參與也不應容忍騷擾、侮辱行為、或對舉報該等行為進行報復之行為。避免報復之責任包括針對以前和目前的司法人員進行報復。

Canon 3A(4). The restriction on ex parte communications concerning a proceeding includes communications from lawyers, law teachers, and others who are not participants in the proceeding. A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out adjudicative responsibilities. A judge should make reasonable efforts to ensure that law clerks and other court personnel comply with this provision.

A judge may encourage and seek to facilitate settlement but should not act in a manner that coerces any party into surrendering the right to have the controversy resolved by the courts.

Canon 3A(5). In disposing of matters promptly, efficiently, and fairly, a judge must demonstrate due regard for the rights of the parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases to reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court personnel, litigants, and their lawyers cooperate with the judge to that end.

Canon 3A(6). The admonition against public comment about the merits of a pending or impending matter continues until the appellate process is complete. If the public comment involves a case from the judge's own court, the judge should take particular care so that the comment does not denigrate public confidence in the judiciary's integrity and impartiality, which would violate Canon 2A. A judge may comment publicly on proceedings in which the judge is a litigant in a personal capacity, but not on mandamus proceedings when the judge is a litigant in an official capacity (but the judge may respond in accordance with Fed. R. App. P. 21(b)).

Canon 3B(3). A judge's appointees include assigned counsel, officials such as referees, commissioners, special masters, receivers, guardians, and personnel such as law clerks, secretaries, and judicial assistants. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

Canon 3B(4). A judge should neither engage in, nor tolerate, workplace conduct that is reasonably interpreted as harassment, abusive behavior, or retaliation for reporting such conduct. The duty to refrain from retaliation includes retaliation against former as well as current judiciary personnel.

根據本準則，騷擾包含在工作場所中不具合法性的各種行為，包括構成歧視之騷擾以及針對司法人員或其他人之其它侮辱、壓迫、或不當行為之騷擾。請查閱《司法 - 行為和司法 - 失能程序規則》，規則 4(a)(2)（「不當行為例示包括：(A) 從事有害的、冒犯的、或性侵犯行為，包含性騷擾或性侵犯；(B) 以可證明為極其嚴重和敵意的方式對待訴訟當事人、律師、司法工作人員、或其他人；或 (C) 營造對司法工作人員有敵意的工作環境」）以及規則 4(a)(3)（「不當行為例示包括基於種族、膚色、性別、性別角色、性別認同、懷孕、性傾向、宗教、國籍、年齡、或殘疾之故意歧視」）。

第 3 則 B(6)。法官能於收到不當行為之資訊而採取適當行為時，可提高對司法廉正和公正之公眾信任。適當行為取決於個別案件狀況，但該等行為之首要目標應為避免傷害受不當行為影響的人並避免該等事件再次發生。法官於研判哪些行為屬於適當時，可考量控訴或舉報不當行為者所提出之秘密請求。請參閱《司法 - 行為和司法 - 失能程序規則》，規則 4(a)(6)（「不當行為之例示包括未能提醒相關首席地區法官和首席巡迴法院法官注意可能構成司法不當行為或失能之任何可靠資訊。接獲這些可靠資訊的法官應尊重保密請求，然而應揭露此資訊給首席地區法官和首席巡迴法院法官知悉，兩者亦應保密此資訊。根據法規或規則，特定可靠資訊可能不得揭露，然當威脅到任何人士之安全與保全，或威脅到司法廉正和功能情形嚴重或非常嚴重時，法官就必須揭露該資訊。舉報不當行為或失能之人士必須在法官揭露此等資訊給首席地區法官和首席巡迴法院法官的一開始就接到通知。若司法不當行為或失能之資訊是關於某位首席巡迴法院法官時，應提醒讓第二資深的現任巡迴法院法官知悉並加以注意。關於某位首席法官的此類資訊則應提醒讓首席巡迴法院法官知悉並加以注意。」）。

適當行為可能包含與法官或律師直接聯繫、其它直接行為（若有）、向適當權責機構報告該行為，或者，當法官認為法官的或律師的不當行為是因藥品、酒類、或其他醫療情況所引起時，秘密轉介給可協助的計畫。適當行為也可能包含接受傳喚作證、或與司法或律師紀律單位合作或參與

Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that "cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner; or (C) creating a hostile work environment for judicial employees") and Rule 4(a)(3) (providing that "cognizable misconduct includes intentional discrimination on the basis of race, color, sex, gender, gender identity, pregnancy, sexual orientation, religion, national origin, age, or disability").

Canon 3B(6). Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence. A judge, in deciding what action is appropriate, may take into account any request for confidentiality made by a person complaining of or reporting misconduct. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(6) (providing that "cognizable misconduct includes failing to call to the attention of the relevant chief district judge or chief circuit judge any reliable information reasonably likely to constitute judicial misconduct or disability. A judge who receives such reliable information shall respect a request for confidentiality but shall nonetheless disclose the information to the chief district judge or chief circuit judge, who shall also treat the information as confidential. Certain reliable information may be protected from disclosure by statute or rule. A judge's assurance of confidentiality must yield when there is reliable information of misconduct or disability that threatens the safety or security of any person or that is serious or egregious such that it threatens the integrity and proper functioning of the judiciary. A person reporting information of misconduct or disability must be informed at the outset of a judge's responsibility to disclose such information to the relevant chief district judge or chief circuit judge. Reliable information reasonably likely to constitute judicial misconduct or disability related to a chief circuit judge should be called to the attention of the next most-senior active circuit judge. Such information related to a chief district judge should be called to the attention of the chief circuit judge.").

Appropriate action may include direct communication with the judge or lawyer, other direct action if available, reporting the conduct to the appropriate authorities, or, when the judge believes that a judge's or lawyer's conduct is caused by drugs, alcohol, or a medical condition, making a confidential referral to an assistance program. Appropriate action may also include responding to a subpoena to testify or otherwise cooperating with or participating in judicial or lawyer disciplinary proceedings; a judge should be candid and honest with disciplinary authorities.

其中；法官面對紀律單位應坦誠且誠實。

第 3 則 3C. 法官對其配偶之迴避理由也適用於法官共組家庭且有親密關係之人。

第 3 則 3C(1)(c). 在刑事程序，有賠償請求權之被害人並非本守則所稱的程序當事人或系爭案件的主體。法官對於犯罪被害人有財產利益者不須依第 3 則 3C(1) 而迴避該刑事程序，但若法官公正性可能被依第 3 則 3C(1) 而合理質疑或若該法官之利益會實質地受第 3 則 C(1)(d)(iii) 程序結果之影響。

第 3 則 C(1)(d)(ii). 隸屬於律師事務所之案件律師，而該律師又是法官親屬之事實，並不會因此即讓該法官必須迴避。在某些相當情況下，依據第 3 則 C(1)，法官之公正性可能會被合理懷疑，或者律師為法官之親屬，法官被知悉與該律師事務所享有可能會因案件審判結果受相當影響之利益之事實存在時，依據第 3 則 C(1)(d)(iii)，該法官將被要求迴避。

第 4 則：法官得從事與其司法職位之義務相符之業餘活動

法官得從事業餘活動，包括法律相關事務及公民的、慈善的、教育的、宗教的、社交的、財務的、信託的、與政府的活動，亦可對法律及非法律主題從事演說、寫作、講課及教學。然而，法官不應從事會減損司法職位、干擾法官職責、影響法官公正性、導致頻繁的迴避、或違反下列限制之活動。

A. 法律相關活動

(1) 演說、寫作與教學。法官可以演說、寫作、講課及教學並參與其他與法律、法律制度及司法執行有關的活動。

(2) 諮詢。法官得諮詢或出席行政或立法機關或官員舉辦的公開聽證會：

Canon 3C. Recusal considerations applicable to a judge's spouse should also be considered with respect to a person other than a spouse with whom the judge maintains both a household and an intimate relationship.

Canon 3C(1)(c). In a criminal proceeding, a victim entitled to restitution is not, within the meaning of this Canon, a party to the proceeding or the subject matter in controversy. A judge who has a financial interest in the victim of a crime is not required by Canon 3C(1)(c) to disqualify from the criminal proceeding, but the judge must do so if the judge's impartiality might reasonably be questioned under Canon 3C(1) or if the judge has an interest that could be substantially affected by the outcome of the proceeding under Canon 3C(1)(d)(iii).

Canon 3C(1)(d)(ii). The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not of itself disqualify the judge. However, if "the judge's impartiality might reasonably be questioned" under Canon 3C(1), or the relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1)(d)(iii), the judge's disqualification is required.

CANON 4: A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE

A judge may engage in extrajudicial activities, including law-related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and nonlegal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, lead to frequent disqualification, or violate the limitations set forth below.

A. Law-related Activities.

(1) Speaking, Writing, and Teaching. A judge may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.

(2) Consultation. A judge may consult with or appear at a public hearing before an executive or legislative body or official:

(a) 關於法律、法律制度或司法執行之事項；

(b) 一般而言在法官的司法經驗於該領域可提供特別專業的範圍內；

(c) 法官代表自己參與與其自己或與其利益有關之事項。

(3) 組織。法官得參加關切法律、法律制度或司法執行之非營利組織或擔任會員、官員、董事、受託人或非法律的顧問，亦可協助該組織之經營與基金之投資。法官可以對公立與私立基金給與機構就關於法律、法律制度及司法執行之企劃與計畫提供建議。

(4) 仲裁與調解。除非法律明確授權，法官不應擔任仲裁人或調解人或其他在法官司法職位之外的司法功能。

(5) 執業。法官不應執業且不應擔任其家庭成員之律師。但法官可以代表自己而無償的為其家庭成員提供法律建議並撰寫或審閱文件。

B. 公民的與慈善的活動

法官可以參加並擔任非營利的公民、慈善、教育、宗教或社交組織之會員、職員、董事、受託人或非法律的顧問，並受以下限制：

(1) 法官不應加入有可能會常常與法官見面或經常在法院參與訴訟程序之組織。

(2) 法官不應提供投資建議給這類組織，但可擔任其董事會成員或受託人，即便其有核可投資決定之責任。

(a) on matters concerning the law, the legal system, or the administration of justice;

(b) to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area; or

(c) when the judge is acting pro se in a matter involving the judge or the judge's interest.

(3) Organizations. A judge may participate in and serve as a member, officer, director, trustee, or nonlegal advisor of a nonprofit organization devoted to the law, the legal system, or the administration of justice and may assist such an organization in the management and investment of funds. A judge may make recommendations to public and private fund-granting agencies about projects and programs concerning the law, the legal system, and the administration of justice.

(4) Arbitration and Mediation. A judge should not act as an arbitrator or mediator or otherwise perform judicial functions apart from the judge's official duties unless expressly authorized by law.

(5) Practice of Law. A judge should not practice law and should not serve as a family member's lawyer in any forum. A judge may, however, act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family.

B. Civic and Charitable Activities.

A judge may participate in and serve as an officer, director, trustee, or nonlegal advisor of a nonprofit civic, charitable, educational, religious, or social organization, subject to the following limitations:

(1) A judge should not serve if it is likely that the organization will either be engaged in proceedings that would ordinarily come before the judge or be regularly engaged in adversary proceedings in any court.

(2) A judge should not give investment advice to such an organization but may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

C. 資金募集

法官可協助非營利的法律相關公民、慈善、教育、宗教或社交組織的資金募集計畫活動也可以被列為其職員、董事或受託人。法官可以為這類組織向不受其監督或不行使上訴審查權的法官及法官之家人招徠資金。除此之外，法官本身不應參加資金募集活動，為任何組織招徠資金，或為上開目的而使用或同意使用司法職位之名聲。若可能被合理認為是強迫的或本質上屬於資金募集之機制，法官本身不應參加該會員之募

集。

D. 財務活動

(1) 法官可以保有並管理投資，包括不動產在內，並從事其他有報酬的活動，但應避免利用其司法職務或使其涉入頻繁交易行為或與律師或其他可能常在其任職法院出庭之人有繼續性商業關係所生之財務及商業交易。

(2) 法官只可以擔任由其家庭成員所緊密持有與控制的公司的職員、董事、合夥人、經理、顧問或雇員。基此目的，「家庭成員」是指第 3 則 C(3)(a) 所定義的與法官或其配偶有三親等關係之親屬，與法官或其配偶維持緊密家庭關係之親屬或上述親屬之配偶。

(3) 只要法官不受重大財務損失，法官應撤銷可能會使其頻繁迴避的投資或其他財務利益。

(4) 法官應遵守司法會議餽贈規則對於收受餽贈之限制及要求餽贈之禁止。法官應致力於防止任何同居的家庭成員要求或接受餽贈，除非是司法會議餽贈規則所允許之範圍內。「法官家庭成員」是指經由血緣、收養或婚姻、或任何其他被法官當作家庭成員之人。

(5) 法官不應基於其業務職責外之目的而揭露或使用其司法職務上所取得之非公開資訊。

C. Fund Raising.

A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

D. Financial Activities.

(1) A judge may hold and manage investments, including real estate, and engage in other remunerative activity, but should refrain from financial and business dealings that exploit the judicial position or involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves.

(2) A judge may serve as an officer, director, active partner, manager, advisor, or employee of a business only if the business is closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the third degree of relationship as defined in Canon 3C(3)(a), any other relative with whom the judge or the judge's spouse maintains a close familial relationship, and the spouse of any of the foregoing.

(3) As soon as the judge can do so without serious financial detriment, the judge should divest investments and other financial interests that might require frequent disqualification.

(4) A judge should comply with the restrictions on acceptance of gifts and the prohibition on solicitation of gifts set forth in the Judicial Conference Gift Regulations. A judge should endeavor to prevent any member of the judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference Gift Regulations. A "member of the judge's family" means any relative of a judge by blood, adoption, or marriage, or any person treated by a judge as a member of the judge's family.

(5) A judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's official duties.

E. 信託活動

法官只可以為遺產、信託或第 4 則 D(4) 所定義之家庭成員擔任執行人、管理人、受託管理人、監護人或其他受託人。法官擔任家庭的受託人時受有下列限制：

(1) 若擔任受託人需時常出庭或該遺產、信託或受監護人涉及在該法官任職的法院的訴訟程序或屬於其上訴管轄範圍。

(2) 擔任受託管理人時，法官所受限制與財務活動之限制相同。

F. 政府任命

法官只可接受被任命為與法律、法律制度或司法執行相關的政府委員會或其他職位，或是聯邦法律所要求的任命。若該政府職責會傾向於逐漸損及公眾對司法的廉潔、公正或信賴，則法官無論如何不應接受任命。法官可在慶典場合或歷史、教育及文化活動中代表其國家、州或地區。

G. 法官室、資源及行政人員

法官不應利用法官辦公室、資源或行政人員來從事本守則所允許的業餘活動。

E. Fiduciary Activities.

A judge may serve as the executor, administrator, trustee, guardian, or other fiduciary only for the estate, trust, or person of a member of the judge's family as defined in Canon 4D(4). As a family fiduciary a judge is subject to the following restrictions:

(1) The judge should not serve if it is likely that as a fiduciary the judge would be engaged in proceedings that would ordinarily come before the judge or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves or one under its appellate jurisdiction.

(2) While acting as a fiduciary, a judge is subject to the same restrictions on financial activities that apply to the judge in a personal capacity.

F. Governmental Appointments.

A judge may accept appointment to a governmental committee, commission, or other position only if it is one that concerns the law, the legal system, or the administration of justice, or if appointment of a judge is required by federal statute. A judge should not, in any event, accept such an appointment if the judge's governmental duties would tend to undermine the public confidence in the integrity, impartiality, or independence of the judiciary. A judge may represent the judge's country, state, or locality on ceremonial occasions or in connection with historical, educational, and cultural activities.

G. Chambers, Resources, and Staff.

A judge should not to any substantial degree use judicial chambers, resources, or staff to engage in extrajudicial activities permitted by this Canon.

H.報酬、補償及財產申報

法官可以接受本守則所允許法律相關的與業餘的活動之花費之報酬與補償，若其來源不會造成影響法官司法職權或不適當的感覺，並應受下列限制。

(1) 報酬不應超過合理額度或超過非法官者就相同活動所收受的額度。

(2) 花費之補償應限制在法官合理的旅遊、飲食及住宿的實際支出，以及基於場合所需，也包括其配偶或親屬之實際支出。任何其他額外的支付都是報酬性質。

(3) 法官應依法律及司法會議之法規與指令之要求而揭露包括餽贈與其他有價值之財物在內的財產。

註釋

第 4 則　完全阻絕法官的業餘活動不只不可能同時也不明智；法官不應與其所屬的社會隔離。作為一名司法官以及法律專業人士，法官對於法律、法律制度及司法執行之貢獻有著獨特的地位，包括修正實體與程序法及促進刑事與少年司法。在法官時間允許及不損及公正性的範圍內，應鼓勵法官獨自或經由律師公會、司法會議或其他法律組織來做這些事情。法官在同樣的限制之下，可以廣泛地從事與法律無關的活動。

法官在法律界限內（參照例如 18U.S.C. § 953）可以就世界上所發生律師與法官被迫害的情事表達反對立場，如果該法官在合理調查後已確認該迫害是被迫害的律師或法官之專業責任與相關政府之政策或做法之間的衝突所引起。

配偶以外而與法官共組家庭且有親密關係之人應被視為第 4 則 A(5) 法律協助、第 4 則 C 資金募集與第 4 則 D(2) 家庭事業活動所稱的法官家庭成員。

第 4 則 A. 法官可以教書及擔任法學院董事會，但在有營利的法學院則僅限於無決定權的諮詢董事會。

H. Compensation, Reimbursement, and Financial Reporting.

A judge may accept compensation and reimbursement of expenses for the law-related and extrajudicial activities permitted by this Code if the source of the payments does not give the appearance of influencing the judge in the judge's judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(1) Compensation should not exceed a reasonable amount nor should it exceed what a person who is not a judge would receive for the same activity.

(2) Expense reimbursement should be limited to the actual costs of travel, food, and lodging reasonably incurred by the judge and, where appropriate to the occasion, by the judge's spouse or relative. Any additional payment is compensation.

(3) A judge should make required financial disclosures, including disclosures of gifts and other things of value, in compliance with applicable statutes and Judicial Conference regulations and directives.

COMMENTARY

Canon 4. Complete separation of a judge from extrajudicial activities is neither possible nor wise; a judge should not become isolated from the society in which the judge lives. As a judicial officer and a person specially learned in the law, a judge is in a unique position to contribute to the law, the legal system, and the administration of justice, including revising substantive and procedural law and improving criminal and juvenile justice. To the extent that the judge's time permits and impartiality is not compromised, the judge is encouraged to do so, either independently or through a bar association, judicial conference, or other organization dedicated to the law. Subject to the same limitations, judges may also engage in a wide range of non-law-related activities.

Within the boundaries of applicable law (see, e.g., 18 U.S.C. § 953) a judge may express opposition to the persecution of lawyers and judges anywhere in the world if the judge has ascertained, after reasonable inquiry, that the persecution is occasioned by conflict between the professional responsibilities of the persecuted judge or lawyer and the policies or practices of the relevant government.

A person other than a spouse with whom the judge maintains both a household and an intimate relationship should be considered a member of the judge's family for purposes of legal assistance under Canon 4A(5), fund raising under Canon 4C, and family business activities under Canon 4D(2).

Canon 4A. Teaching and serving on the board of a law school are permissible, but in the case of a for-profit law school, board service is limited to a nongoverning advisory board.

與本守則相符，法官可以鼓勵律師提供義務法律服務。

第 4 則 A(4). 本守則一般性地禁止法官調解州法院所管轄的事件，除非在不尋常的情況（例如法官所調解的聯邦事件若不論及相關的州法案件將無法有效地解決）。

第 4 則 A(5). 法官可以在所有法律案件中代表自己，包括訴訟或出庭或與政府機關的往來。此時法官不得濫用職位而增加法官或其家人之利益。

第 4 則 B. 某些組織的變動性質及其面臨訴訟的情形使得法官必須定期檢視其所參與的活動以便決定法官與該組織之夥伴關係是否適當。例如許多地區的慈善醫院現在比以前更常上法院。

第 4 則 C. 法官可以參加與該條規定之非營利組織所舉辦的募款活動，但不得擔任這類活動的發言人，貴賓或節目的號召所在。在同時列有其他地位相當人物或團體的資料與形象標誌之情形下，使用法官之姓名、職銜及司法機關的形象標誌在上述組織的信封標頭上是不違反第 4 則 C 之規定。

第 4 則 D(1)(2)(3). 於第 3 則，要求不論進行任何程序的法官，若有得從中獲得經濟上利益者，無論多麼少，均必須迴避。第 4 則 D 則是要求法官於從事任何商業行為或理財活動時，若有任何可能妨礙其盡職務上應公正作為之司法責任的疑慮時，即應避免之。第 4 則 H 則是要求法官，於法庭外因活動而獲有報酬者，應有申報之義務。除了這些為了保障司法職務正確行使而要求的限制外，法官亦和一般公民相同擁有理財行為的權利。法官參與多數持股由家族持有之事業是可允許的，但若這樣的參與會耗費太多的時間，或是濫用司法威信，抑或其交易可能於該法官所任職的法院涉訟，那麼這樣的參與是被禁止的。從擁有投資標的或由投資活動中取得報酬不得影響法官職務之行使。

Consistent with this Canon, a judge may encourage lawyers to provide pro bono legal services.

Canon 4A(4). This Canon generally prohibits a judge from mediating a state court matter, except in unusual circumstances (e.g., when a judge is mediating a federal matter that cannot be resolved effectively without addressing the related state court matter).

Canon 4A(5). A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. In so doing, a judge must not abuse the prestige of office to advance the interests of the judge or the judge's family.

Canon 4B. The changing nature of some organizations and their exposure to litigation make it necessary for a judge regularly to reexamine the activities of each organization with which the judge is affiliated to determine if the judge's continued association is appropriate. For example, in many jurisdictions, charitable hospitals are in court more often now than in the past.

Canon 4C. A judge may attend fund-raising events of law-related and other organizations although the judge may not be a speaker, a guest of honor, or featured on the program of such an event. Use of a judge's name, position in the organization, and judicial designation on an organization's letterhead, including when used for fund raising or soliciting members, does not violate Canon 4C if comparable information and designations are listed for others.

Canon 4D(1), (2), and (3). Canon 3 requires disqualification of a judge in any proceeding in which the judge has a financial interest, however small. Canon 4D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of the judge's judicial duties. Canon 4H requires a judge to report compensation received for activities outside the judicial office. A judge has the rights of an ordinary citizen with respect to financial affairs, except for limitations required to safeguard the proper performance of the judge's duties. A judge's participation in a closely held family business, while generally permissible, may be prohibited if it takes too much time or involves misuse of judicial prestige or if the business is likely to come before the court on which the judge serves. Owning and receiving income from investments do not as such affect the performance of a judge's duties.

第 4 則 D(5). 對於不公開資訊使用限制的規定，原不包括去壓抑法官於為了保護自己，法官的家族成員，法院員工或其他司法官員的健康及安全狀態時，所可展現的能力。

第 4 則 E. 僅僅只有居住在法官家事實的人，並不當然是本條所指之法官家庭成員。必須於法官待其如對待家庭成員者，始屬之。本守則生效後，先前持續為信託服務關係亦適用之。本守則所規定下的法官義務，可能會和法官於信託關係中應盡之義務產生衝突，例如，當法官頻繁地符合須迴避的狀況，被要求依本守則第 4 則 D(3) 的規定處理，因而會導致信託財產的損害或剝奪時，法官應該辭任受信託人。

第 4 則 F. 法官在衡量是否接受其他非司法性質職務任命之妥適性時，必須考量司法資源的有限性，以及保護法院免於可能被捲入爭議事件之必要性。若政府任命的其他職務會影響司法的效能、獨立性、法官本於司法職責的行為義務或將侵蝕公眾對於司法之信賴感時，法官應予以拒絕。

第 4 則 H. 本守則除已規範之情形外，並不要求法官揭露其收入、債務或投資。但 1989 年之倫理改革法案和司法會議所頒布的施行細則，另對於法官收受報酬訂定額外的限制。在法官牽涉到接受報酬的任何安排時，均必須考慮到這個法案與施行細則的規定。上開所課予之限制包括下列數點，但並不以此為限：(1) 禁止收受謝禮（其定義為因演講、出席或寫作而取得之任何利益），(2) 禁止收受因擔任營利或非營利組織之董事、受信託人或主管而獲得之報酬，(3) 因教學活動而獲得報酬者，須經事前的批准，(4) 業外收入有一定金額的限制。

Canon 4D(5). The restriction on using nonpublic information is not intended to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Canon 4E. Mere residence in the judge's household does not by itself make a person a member of the judge's family for purposes of this Canon. The person must be treated by the judge as a member of the judge's family.

The Applicable Date of Compliance provision of this Code addresses continued service as a fiduciary.

A judge's obligation under this Code and the judge's obligation as a fiduciary may come into conflict. For example, a judge should resign as a trustee if it would result in detriment to the trust to divest holdings whose retention would require frequent disqualification of the judge in violation of Canon 4D(3).

Canon 4F. The appropriateness of accepting extrajudicial assignments must be assessed in light of the demands on judicial resources and the need to protect the courts from involvement in matters that may prove to be controversial. Judges should not accept governmental appointments that could interfere with the effectiveness and independence of the judiciary, interfere with the performance of the judge's judicial responsibilities, or tend to undermine public confidence in the judiciary.

Canon 4H. A judge is not required by this Code to disclose income, debts, or investments, except as provided in this Canon. The Ethics Reform Act of 1989 and implementing regulations promulgated by the Judicial Conference impose additional restrictions on judges' receipt of compensation. That Act and those regulations should be consulted before a judge enters into any arrangement involving the receipt of compensation. The restrictions so imposed include but are not limited to: (1) a prohibition against receiving "honoraria" (defined as anything of value received for a speech, appearance, or article), (2) a prohibition against receiving compensation for service as a director, trustee, or officer of a profit or nonprofit organization, (3) a requirement that compensated teaching activities receive prior approval, and (4) a limitation on the receipt of "outside earned income."

第 5 則：法官必須節制其政治性活動

第 5 則 A 概括禁止事項：法官不得

(1) 擔任政治組織的領導人或在其內辦公。

(2) 為政治組織或候選人發表演說，或公開支持或反對公職候選人。

(3) 捐獻給政治組織或候選人，或為其募集資金、支付稅捐、購買政治組織或候選人所發起之晚宴與其他集會之入場券。

第 5 則 B 因競選身分而辭職：無論法官所競選之公職為初選或普選，一旦法官成為候選人，即應辭去法官職務。

第 5 則 C 其他政治活動：法官不得從事任何政治性活動，但本守則不禁止法官從事關於第四則所規範之活動。

註釋

所謂「政治組織」，係指政黨、隸屬於政黨或公職候選人之團體，或其主要目的是為了要擁護或反對與公職選舉相關的候選人、政黨之團體。

本守則行為之遵從

凡是於聯邦司法系統內，有權執行司法職務之官員，即屬本守則所稱之法官，除下列規定外，所有的法官均應遵守本法官手則：

A. 兼職法官

兼職法官，係指無論是繼續性的或週期性的，以兼職之方式從事法官工作者。兼職法官被法律允許從事其他職業，也因此其等之報酬會較全職之法官為少。

CANON 5: A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

General Prohibitions. A judge should not:

(1) act as a leader or hold any office in a political organization;

(2) make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for public office; or

(3) solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.

Resignation upon Candidacy. A judge should resign the judicial office if the judge becomes a candidate in a primary or general election for any office.

Other Political Activity. A judge should not engage in any other political activity. This provision does not prevent a judge from engaging in activities described in Canon 4.

COMMENTARY

The term "political organization" refers to a political party, a group affiliated with a political party or candidate for public office, or an entity whose principal purpose is to advocate for or against political candidates or parties in connection with elections for public office.

Compliance with the Code of Conduct

Anyone who is an officer of the federal judicial system authorized to perform judicial functions is a judge for the purpose of this Code. All judges should comply with this Code except as provided below.

A. Part-time Judge

A part-time judge is a judge who serves part-time, whether continuously or periodically, but is permitted by law to devote time to some other profession or occupation and whose compensation for that reason is less than that of a full-time judge. A part-time judge:

(1) 毋庸遵守本守則第 4 則 A(4)、第 4 則 A(5)、第 4 則 D(2)、第 4 則 E、第 4 則 F 或第 4 則 H(3)。

(2) 除「兼任治安法官利益衝突規則」另有規定者外，不得在其任職之法院或該法院所管轄之任何下級法院執行律師業務，或者在其曾任法官之案件或與該案件有關之其他程序中擔任律師。

B. 義務臨時法官

指經任命暫時性地擔任法官或特別助理法官

(1) 義務臨時法官任職期間，毋庸遵守本守則第 4 則 A(4)、第 4 則 A(5)、第 4 則 D(2)、第 4 則 D(3)、第 4 則 E、第 4 則 F 或第 4 則 H(3)；若僅是擔任特別助理法官者，亦毋庸遵守第 4 則 A(3)、第 4 則 B、第 4 則 C、第 4 則 D(4) 或第 5 則。

(2) 曾經擔任義務臨時法官者，不得在其曾任法官之案件或與該案件有關之其他程序中擔任律師。

C. 退休法官

依美國法典第 28 編第 371 條 (b) 或第 372 條 (a) 之規定退休之法官，或依第 178 條 (d) 條件回任之法官，或退休後回任司法工作之法官，除第 4 則 F 外，應遵守本守則之全部規定，但仍應在擔任第 4 則 F 所不允許的司法以外職為期間，避免提供法律服務。其他具有回任資格的退休法官應遵守本守則對兼任法官之規定，但準州或屬地之退休法官不在此限。在準州和屬地之資深法官仍應依美國法典第 28 編第 373 條 (c)(5) 及 (d) 之規定，遵守本規則。

(1) is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4E, 4F, or 4H(3);

(2) except as provided in the Conflict-of-Interest Rules for Part-time Magistrate Judges, should not practice law in the court on which the judge serves or in any court subject to that court's appellate jurisdiction, or act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

B. Judge Pro Tempore

A judge pro tempore is a person who is appointed to act temporarily as a judge or as a special master.

(1) While acting in this capacity, a judge pro tempore is not required to comply with Canons 4A(4), 4A(5), 4D(2), 4D(3), 4E, 4F, or 4H(3); further, one who acts solely as a special master is not required to comply with Canons 4A(3), 4B, 4C, 4D(4), or 5.

(2) A person who has been a judge pro tempore should not act as a lawyer in a proceeding in which the judge has served as a judge or in any related proceeding.

C. Retired Judge

A judge who is retired under 28 U.S.C. § 371(b) or § 372(a) (applicable to Article III judges), or who is subject to recall under § 178(d) (applicable to judges on the Court of Federal Claims), or who is recalled to judicial service, should comply with all the provisions of this Code except Canon 4F, but the judge should refrain from judicial service during the period of extrajudicial appointment not sanctioned by Canon 4F. All other retired judges who are eligible for recall to judicial service (except those in U.S. territories and possessions) should comply with the provisions of this Code governing part-time judges. However, bankruptcy judges and magistrate judges who are eligible for recall but who have notified the Administrative Office of the United States Courts that they will not consent to recall are not obligated to comply with the provisions of this Code governing part-time judges. Such notification may be made at any time after retirement, and is irrevocable. A senior judge in the territories and possessions must comply with this Code as prescribed by 28 U.S.C. § 373(c)(5) and (d).

評論

2014 年對遵循一節之修訂係考量到退休破產法官和地方法官，若他們通知「美國法院行政辦公室」不再回任，即豁免這些兼職法官無須遵守本準則，這些修訂並非旨在改變這些法官對於養老金保險、生活費用調整、或任何其它退休福利政策的法定資格。

遵循之期限

適用本守則之人應於合理期間儘快安排自己的財務與信託事務，以符合本守則之規定，並於其接受任命後一年內完成。但在特殊情況下，對於某人要求上開時間完成與其發生利益衝突的可能性是不相當的，那麼該人可以繼續無償擔任不動產或非家族成員之執行者、管理人、受信託人或其他受託人，以免終止該關係將不必要地危害該不動產或他人之任何實質利益，但仍應經巡迴法院司法會議的核准。

COMMENTARY

The 2014 amendment to the Compliance section, regarding retired bankruptcy judges and magistrate judges and exempting those judges from compliance with the Code as part-time judges if they notify the Administrative Office of the United States Courts that they will not consent to recall, was not intended to alter those judges' statutory entitlements to annuities, cost-of-living adjustments, or any other retirement benefits.

Applicable Date of Compliance

Persons to whom this Code applies should arrange their financial and fiduciary affairs as soon as reasonably possible to comply with it and should do so in any event within one year after appointment. If, however, the demands on the person's time and the possibility of conflicts of interest are not substantial, such a person may continue to act, without compensation, as an executor, administrator, trustee, or other fiduciary for the estate or person of one who is not a member of the person's family if terminating the relationship would unnecessarily jeopardize any substantial interest of the estate or person and if the judicial council of the circuit approves.

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National District Attorneys Association

National Prosecution Standards (Fourth Edition with Revised Commentary, January 2023)

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簡　介

本標準係作為履行檢察機關職能專業行為之指南。除另有說明，其應適用於任何辦公室之檢察長（不論頭銜為何）、副檢察官及助理檢察官。

本標準為補充而非取代適用於司法管轄區之現有道德行為規範。一般而言，本標準之解釋應符合現行法律和適用之道德行為規範。本標準為指導檢察官日常履行起訴職能，但專業道德問題相當多樣繁雜，無法遵循一成不變之規則。因此，判斷是否遵循本標準一項或多項規定可能違反專業素養時，須視於伴隨該判斷而來的情況。本標準並不用於：(a) 由司法機構判定檢察官是否犯有錯誤或從事不當行為；(b) 供紀律機構用於決定違反道德行為規則之指控；(c) 向任何人提供任何訴訟權；(d) 於任何方面變更現行法規。

本文所附評論可協助檢察官理解並解釋本標準，但其並非本標準之一部分。若評論與標準內文不一致，則應以標準內文為準。

PART IX. POST-SENTENCING

1. Post-Sentencing

INTRODUCTION

These standards are intended to be an aspirational guide to professional conduct in the performance of the prosecutorial function. Unless otherwise indicated, they are intended to apply to the chief prosecutor (by whatever title) in any office, as well as to deputy and assistant prosecutors.

These standards are intended to supplement rather than replace the existing rules of ethical conduct that apply in a jurisdiction. Generally, these standards should be construed in such a way that they are consistent with existing law and applicable rules of ethical conduct. These standards are intended to be guides for prosecutors in the day-to-day performance of the prosecution function, but the problems of professionalism and ethics are too varied to be subject to unvarying rules. Thus, the decision whether or not to follow one or more of these standards may or may not constitute an unacceptable lack of professionalism, depending on the attendant circumstances. These standards are not intended to: (a) be used by the judiciary in determining whether a prosecutor committed error or engaged in improper conduct; (b) be used by disciplinary agencies when passing upon allegations of violations of rules of ethical conduct; (c) create any right of action in any person; or (d) alter existing law in any respect.

The accompanying commentary is intended to help prosecutors understand and interpret these standards but is not an official part of the standards. If the commentary appears inconsistent with the text of the standard, the text should guide the prosecutor's actions.

「司法管轄區」

指檢察官權力所及之政治領域。於適用法律和道德行為規範之內涵下，「司法管轄區」亦包括州。

「知悉」

直接且清楚地知悉。「不當行為」－相關道德行為規範定義為不當行為之舉止。

「檢察官」

除非另有明確說明，其指履行起訴職能之任何人員。

「道德行為準則」

指各州或司法管轄區為規範律師行為而採用之專業行為規則、律師行為規範、專業責任規則或律師行為準則。其非指美國律師協會職業行為示範準則。

「特別檢察官」

指於一司法管轄區執行檢察職能之人員，但不包含該司法管轄區內選舉或任命之檢察長、助理檢察官、副檢察官。

第一部分：一般標準

1. 檢察官職責

1-1.1 主要職責

檢察官為獨立司法行政人員。檢察官之首要職責為尋求司法正義，並以陳述及真相實現之。該職責包括但不限於確保追究有罪者之責任，保護無辜者免受無理傷害，並確保所有參與者之權利，尤其應尊重犯罪被害人之權利。

DEFINITIONS

"Jurisdiction"

Means the political area over which the prosecutor's authority extends. However, in the context of applicable laws and rules of ethical conduct, "jurisdiction" includes a state as well.

"Knows," "Has Knowledge," or "Within the Knowledge of"

Means actual knowledge. "Misconduct"—Conduct defined as misconduct by the relevant Rules of Ethical Conduct.

"Prosecutor"

Unless otherwise specifically indicated, means any person performing the prosecution function.

"Rules of Ethical Conduct"

Refers to rules of professional conduct, rules of attorney conduct, rules of professional responsibility, or codes of attorney conduct as adopted by the various states or jurisdictions to regulate attorney conduct. The term does not refer to the ABA Model Rules of Professional Conduct.

"Special Prosecutor"

Means any person who performs the prosecution function in a jurisdiction who is not the chief prosecutor elected or appointed in the jurisdiction, or an assistant or deputy prosecutor in the jurisdiction.

Part I. General Standards

1. The Prosecutor's Responsibilities

1-1.1 Primary Responsibility

The prosecutor is an independent administrator of justice. The primary responsibility of a prosecutor is to seek justice, which can only be achieved by the representation and presentation of the truth. This responsibility includes, but is not limited to, ensuring that the guilty are held accountable, that the innocent are protected from unwarranted harm, and that the rights of all participants, particularly victims of crime, are respected.

1-1.2 社會及個人權益

檢察官應竭力保障個人權利，但不應代表任何個人而作為受託人。檢察官對個案行使檢察裁量權時，應優先考量社會大眾之權益。檢察官應於適當必要時尋求改革刑法之機會。

檢察官尋求刑法改革時，應以社會大眾利益，而非個人或特定團體利益為優先。

1-1.3 非歧視性決定

指控或不指控個人之決定以及於整體案件中做出之其他決定，均不應受個人種族、性別、宗教、國籍、性取向或其他此類特徵之影響，但屬犯罪其中任何要素者除外。

1-1.4 全職 / 兼任

司法管轄區之檢察長應為全職。全職檢察官—包含檢察長或其他人員—均不應經營私人律師業務或從中獲利。於無相關能力或不願意設立全職檢察官之司法管轄區，則其檢察長可為兼職，但於擔任兼職檢察官期間，不得從事與檢察獨立性不符之職業行為。

1-1.5 行為規則

檢察官應遵守其司法管轄範圍內道德行為規範之所有適用規定。

1-1.6 不符合行為規則

若檢察官受其司法管轄區道德行為規範與本標準不相符之約束，其應遵守此類規範，但應努力尋求修改此等規範以使其符合本標準。

1-1.7 應對不當行為之義務

檢察官應對業已、即將或可能干擾正常司法專業工作之不當行為做出回應：

1-1.2 Societal and Individual Rights and Interests

A prosecutor should zealously protect the rights of individuals, but without representing any individual as a client. A prosecutor should put the rights and interests of society in a paramount position in exercising prosecutorial discretion in individual cases. A prosecutor should seek to reform criminal laws whenever it is appropriate and necessary to do so. Societal interests rather than individual or group interests should also be paramount in a prosecutor's efforts to seek reform of criminal laws.

1-1.3 Nondiscriminatory Decisions

The decision to charge or not to charge an individual, as well as other decisions made throughout the case, shall not be influenced by the race, gender, religion, national origin, sexual orientation, or other such trait of the individual, unless relevant to an element of the offense.

1-1.4 Full-Time/Part-Time

The chief prosecutor in a jurisdiction should be a full-time position. A full-time prosecutor, whether the chief prosecutor or otherwise, should neither maintain nor profit from a private legal practice. A chief prosecutor may serve part-time in those jurisdictions that are unable or unwilling to fund a full-time prosecutor, but while serving as a part-time prosecutor may not engage in professional conduct that is inconsistent with the need for prosecutorial independence.

1-1.5 Rules of Conduct

A prosecutor shall abide by all applicable provisions of the rules of ethical conduct in his or her jurisdiction.

1-1.6 Inconsistency in Rules of Conduct

To the extent prosecutors are bound by his or her jurisdiction's rules of ethical conduct that are inconsistent with these standards, they shall comply with the rules but endeavor to seek modification of those rules to make them consistent with these standards.

1-1.7 Duty to Respond to Misconduct

A prosecutor is obligated to respond to professional misconduct that has, will, or has the potential to interfere with the proper administration of justice:

a. 若檢察官知悉檢察官辦公室相關之其他人員業已或擬進行可能干擾正常司法專業活動之不當行為，則檢察官應根據內部辦公室程序處理之。

b. 若辦公室欠缺充分內部程序以處理對職業不當行為之指控，獲知不當行為之檢察官可先行要求相關人員停止進行不當行為。若此類請求無效或可能無效，或不當行為之性質實屬重大，檢察官應向檢察官辦公室上級機關通報該不當行為。

c. 若檢察官盡最大努力後仍無法按先前程序採取行動更正不當行為，檢察官應向檢察官辦公室以外之適當官員通報不當行為（於州法律和道德行為規範允許之範圍內）。

d. 檢察官未能報告已知之不當行為，則可能構成對檢察官職責之違反。

評論

檢察官應負責揭示真相。於真相始終為所有刑事訴訟之首要目標下才能實現司法正義。檢察官不僅為一造之辯方，其與律師不同，檢察官不代表個人或實體，而是代表整體社會大眾。檢察官於作出決定時應運用獨立判斷，同時考量被害人、證人、執法人員、嫌疑人、被告以及與特定案件無直接利害關係但仍受其結果影響之社會成員之利益。

檢察官竭力尋求司法正義時，其行為即充滿熱忱。作為整體社會大眾之代表，檢察官應於立法過程中，於考量涉及刑事司法制度之建議時發揮正面作用。基此，檢察官應行使其獨立判斷，以支持符合社會最佳利益之立法。

檢察官之固有職位是確保審理案件過程中做出之決定（包括是否起訴）不得有歧視性。檢察官不得根據政治或大眾壓力做出反應及決定。檢察官應履行理想更崇高之職責，確保法律得以適當、公平和公正地執行。

全職檢察長於其管轄權具許多優勢。檢察官不得受私法實踐之影響；

a. Where the prosecutor knows that another person associated with the prosecutor's office has engaged or intends to engage in professional misconduct that could interfere with the proper administration of justice, the prosecutor should address the matter in accordance with internal office procedures.

b. If the office lacks adequate internal procedures to address allegations of professional misconduct, a prosecutor who learns of the misconduct may, in the first instance, request that the person desist from engaging in the misconduct. If such a request is, or is likely to be, futile or if the misconduct is of a sufficiently serious nature, a prosecutor should report the misconduct to a higher authority within the prosecutor's office.

c. If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to remedy the misconduct, a prosecutor should report the misconduct to appropriate officials outside the prosecutor's office (to the extent permitted by the law and rules of ethical conduct of the state).

d. A prosecutor's failure to report known misconduct may itself constitute a violation of the prosecutor's professional duties.

Commentary

A prosecutor is responsible for the presentation of the truth. Justice is not complete without the truth always being the primary goal in all criminal proceedings. A prosecutor is not a mere advocate and unlike other lawyers, a prosecutor does not represent individuals or entities, but society as a whole. In that capacity, a prosecutor must exercise independent judgment in reaching decisions while taking into account the interest of victims, witnesses, law enforcement officers, suspects, defendants and those members of society who have no direct interest in a particular case, but who are nonetheless affected by its outcome.

A prosecutor acts zealously when they pursue justice with great energy or enthusiasm. As a representative of society as a whole, a prosecutor should take an active role in the legislative process when proposals dealing with the criminal justice system are being considered. In that role, the prosecutor once again should exercise his or her independent judgment in supporting legislation in the best interest of society.

Inherent in the prosecutors' duty is to ensure that decisions made during a case, including whether or not to charge a person, are nondiscriminatory. Prosecutors should not react and make decisions based upon political or public pressure. It is the prosecutor's obligation to maintain a higher duty to ensure that the law is enforced appropriately, fairly and in an unbiased manner.

A full-time chief prosecutor confers many advantages on his or her jurisdiction. Among other advantages, the prosecutor is not distracted by a private law practice; is readily available for consultation with law enforcement officers; is more accountable to society for his or her

其可隨時與執法人員協商；其決策和表現應對社會大眾負責；且不得輕易受到困擾兼職檢察官之各種潛在利益衝突之影響。

縱有上述優勢，美國仍有許多兼職檢察官。造成此情況之原因通常社會大眾偏好當地問責及控制，此類地區人口稀少，且司法管轄區之地理規模、預算和案件數量都難以安排全職職位來處理之。但本標準認為如任何特定司法管轄區具有可能性，均應以全職型態運作辦公室。

不論全職或兼職，該職位均應視一專業職業，而非任何職涯之墊腳石或副業。因此檢察官應將其公共職責置於首位。檢察官參與任何活動時，均應優先考量公共職責。兼職檢察官不得在妨礙其檢察官職責和責任下受理刑事案件。

檢察官參與規則制定以及通過規則時參與當地司法管轄程序有其重要性。

使用適當程序以及於適當場合下，檢察官可對善意認為不公正或不適用之規則條款提出質疑。規範或規則並不消除檢察官尋求司法正義和公共利益之義務。基此，檢察官並非總與律師界其他人員具相同性質。當檢察官因相信其因尋求司法正義之義務之需要而選擇無視某項規範或規則時，則應留意司法管轄區內許可機構提出之不同意決定。

尋求正義之責任應由所有檢察官承擔，因此對於另一檢察官即將或可能干擾此一責任之不當行為均不可視而不見或充耳不聞。於因應該情況時，檢察長應該制定必要時應採取之內部程序。若無此類程序，檢察官應向檢察官辦公室內上級機關通報不當行為。

若於檢察官盡最大努力後仍未能按先前之程序採取行動解決不當行為，檢察官應於法律和檢察官道德行為規範允許之範圍內，向檢察官辦公室以外之適當官員通報不當行為。若檢察官認為辦公室之上級機構採取之行動並不充分，則應考量與指定之道德顧問或州道德顧問討論相關事宜，再予決定應採取何種其他行動。

decisions and performance; and, is not vulnerable to the various potential conflicts of interest that can plague a part-time prosecutor.

Despite those advantages, there are many part-time prosecutors in the United States. This situation is generally created by the societal preference for local accountability and control in locations where the sparse population, geographic size of the jurisdiction, budget and caseload do not warrant that the position be approached as a full-time one. The position of the standard is that the office be approached on a full-time basis insofar as that is possible in any given jurisdiction.

Whether full-time or part-time, the position should be approached as a career and not as a steppingstone or sideline. This means that the prosecutor is prepared to bring to his public duties an orientation of primacy. No matter what other activities the prosecutor is involved in, his public duties come first. A part-time prosecutor should not represent persons in criminal matters when it interferes with his duties and responsibilities as a prosecutor.

It is important for prosecutors to become involved in the rule making process and to be involved in local jurisdiction processes in adopting the rules.

Using appropriate procedures and in appropriate fora, a prosecutor may challenge such code provisions believed in good faith to be unjust or inapplicable. The existence of a code or rule does not eliminate the duty of the prosecutor to seek justice and serve the public interest. In this sense, the role of the prosecutor is not always the same as other members of the bar. If a prosecutor chooses to disregard a code or rule because of a belief that his or her duty to seek justice requires the same, it should be done with the awareness that the licensing authority in the jurisdiction may well disagree with that determination.

Because the responsibility to seek justice is one borne by each individual prosecutor, one cannot turn a blind eye or a deaf ear to misconduct by another prosecutor that will or has the potential to interfere with that responsibility. To prepare for such a situation, a chief prosecutor should establish an internal office procedure to be used when necessary. In the absence of such a procedure, a prosecutor should report the misconduct to a higher authority inside the prosecutor's office.

If, despite a prosecutor's best efforts, no action is taken in accordance with the prior procedures to address the misconduct, a prosecutor should report the misconduct to appropriate officials outside the prosecutor's office to the extent permitted by the law and rules of ethical conduct of the state. In the event that the prosecutor believes that action taken by a higher authority in the office is inadequate, the prosecutor should consider discussing the matter with a designated ethical advisor or a statewide ethical adviser before deciding what other action should be taken.

2. 專業素養

1-2.1 行為標準

檢察官應於法庭內外之所有職業關係表現高度尊嚴及正直。適當之行為包括但不限於以下：

a. 檢察官於所有職業關係中應秉持坦誠、真誠和禮貌之態度。

b. 檢察官與對造律師行溝通、互動和協商時應誠信行事。不論個人意見為何，檢察官均不應對對造律師表達個人敵意。

c. 檢察官應始終對司法機關表現適當尊重及體諒，同時亦不放棄於適當時間和情況下對司法機關個別人員進行合理批評之權利。

d. 檢察官應準時出庭。於確定缺席或遲到時應立即通知法庭和對造律師。

e. 檢察官於訴訟過程中應保持適當之克制和尊嚴。

f. 檢察官應公平、專業並適當對待證人。於詢問證人證詞時，檢察官不應進行一系列純粹以虐待、侮辱或貶損證人為目的之詢問。對證人可信度之審查應僅限於法律允許採用之彈劾技巧。

g. 檢察官應避免採取具阻礙性之不當策略。此類策略之範例包括但不限於：

   a. 故意提出無意義之反對意見，或提出反對意見之唯一目的僅為擾亂對造律師；

   b. 故意以明顯不符合法院先前裁決之方式進行事務；

   c. 故意提出明顯不恰當之問題或明顯不可接受之證據；或

   d. 故意實施拖延手段或策略。

2. Professionalism

1-2.1 Standard of Conduct

A prosecutor should conduct himself or herself with a high level of dignity and integrity in all professional relationships, both in and out of court. Appropriate behavior includes, but is not limited to, the following:

a. A prosecutor should act with candor, good faith, and courtesy in all professional relationships.

b. A prosecutor should act with integrity in all communications, interactions, and agreements with opposing counsel. A prosecutor should not express personal animosity toward opposing counsel, regardless of personal opinion.

c. A prosecutor should at all times display proper respect and consideration for the judiciary, without foregoing the right to justifiably criticize individual members of the judiciary at appropriate times and in appropriate circumstances.

d. A prosecutor should be punctual for all court appearances. When absence or tardiness is unavoidable, prompt notice should be given to the court and opposing counsel.

e. A prosecutor should conduct himself or herself with proper restraint and dignity throughout the course of proceedings.

f. A prosecutor should treat witnesses fairly and professionally and with due consideration. In questioning the testimony of a witness, a prosecutor should not engage in a line of questioning intended solely to abuse, insult or degrade the witness. Examination of a witness's credibility should be limited to legally permitted impeachment techniques.

g. A prosecutor should avoid obstructive and improper tactics. Examples of such tactics include, but are not limited to, knowingly:

   a. Making frivolous objections, or making objections for the sole purpose of disrupting opposing counsel;

   b. Attempting to proceed in a manner that is obviously inconsistent with a prior ruling by the court;

   c. Attempting to ask clearly improper questions or to introduce clearly inadmissible evidence; or

   d. Engaging in dilatory actions or tactics.

評論

檢察官應遵守其司法管轄範圍之道德行為規範，為最基本之行為規範要求。若檢察官之行為未達本標準，其將受有個案或個人之制裁。

該職業之尊嚴和榮譽應遵守更高程度之行為專業標準。本標準要求檢察官於所有互動中保持正直、公平和禮貌，包括對被害人、證人、執法人員、對造律師、法庭、陪審員或被告。

本標準遵循許多州及地方律師協會訂立之專業準則。其應用於啟發與振奮所有檢察官，凡舉甫到職的新人檢察官及經驗豐富之資深檢察官，使其面對可能之壓力影響時能有因應依據。這尤其適用於訴訟，原因在於訴訟中情緒最為激昂，當事人對立可能產生競爭之情。

雖然專業素養之定義頗為模糊，但本標準列出許多應予考量之行為類型。本文高度建議無論檢方採用何種專業準則，辯方律師均應予以相互互惠回報。

3. 利害衝突

1-3.1 避免衝突

檢察官不應持有與檢察官辦公室職責有所衝突、具重大衝突可能或有造成合理衝突之虞之利益或參與財務等他方面之活動。

1-3.2 與私人執業衝突

於不禁止檢察官私人執業之司法管轄區：

a. 私人執業之檢察官不得於任何刑事或準刑事相關事項中代表委託人，待定案件之司法管轄區為何在所不論；

b. 檢察官應避免向私人委託人或潛在委託人表示其檢察官身分可成為私人代理人之優勢；

c. 檢察官不得於涉及私人執業之任何書信、公告、廣告或其他通訊中表明其檢察官身份，且不得以任何方式將檢察官辦公室之資源用於非起訴目的之活動；

Commentary

A prosecutor's obligation to comply with the rules of ethical conduct of his or her jurisdiction is a fundamental and minimal requirement. When a prosecutor falls below that standard, he or she may expect sanctions impacting on a particular case or on the individual prosecutor.

The dignity and honor of the profession call for compliance with a higher standard of conduct—one of professionalism. This standard requires the prosecutor to bring integrity, fairness, and courtesy into all interactions, whether they are with victims, witnesses, law enforcement officers, opposing counsel, the court, jurors, or defendants.

This standard follows the lead of many state and local bar associations that have created codes of professionalism. It should be used to inspire and invigorate all prosecutors, from the recently admitted to the very experienced, as all can be affected by the stress of the situations encountered by prosecutors. This especially applies in litigation, where emotions run highest, and the adversary setting generates a competitive orientation.

While professionalism is a word of elusive definition, the standard lists a number of types of conduct that must be considered. It is strongly recommended that wherever prosecution adopts and abides by a code of professionalism, the defense bar should reciprocate.

3. Conflicts of Interest

1-3.1 Conflict Avoidance

A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office.

1-3.2 Conflicts with Private Practice

In jurisdictions that do not prohibit private practice by a prosecutor:

a. The prosecutor in his private practice should not represent clients in any criminal or quasi- criminal related matters, regardless of the jurisdiction where the case is pending;

b. The prosecutor should avoid representing to private clients or prospective clients that the status of a prosecutor could be an advantage in the private representation;

c. The prosecutor should not indicate his or her status as a prosecutor on any letterhead, announcement, advertising, or other communication involved in the private practice, and should not in any manner use the resources of the prosecutor's office for the purpose of such non-prosecutorial activities;

d. 檢察官應迴避對檢察官現有委託人之調查及起訴，並應撤回對該委託人之任何進一步代理。

1-3.3 特定衝突

於所有司法管轄區—包括禁止檢察官私人執業之司法管轄區：

a. 檢察官對於涉及先前代理事項或與先前代理事項具實質關聯之任何先前委託人之調查和起訴應予迴避，但經充分披露及該先前委託人提供知情書面同意允許檢察官參與調查或起訴者不在此限。

b. 若檢察官經由先前代理和律師與委託人保密特權所知悉之資訊與刑事案件相關，則檢察官應迴避對此類案件之調查和起訴，但經充分披露及該先前委託人提供知情書面同意允許檢察官參與調查或起訴者不在此限。

c. 檢察官應迴避對與該檢察官有親屬關係（如：父母、子女、兄弟姐妹、配偶或同居伴侶）之律師代理或與該檢察官具重大經濟關係之人員進行調查及起訴。

d. 若檢察官之個人利益使公正客觀之旁觀者認為將影響檢察官之中立性、判斷力或客觀執法能力，檢察官應迴避任何調查、起訴或其他事項。

e. 若助理檢察官或副檢察官獲悉可能發生特定衝突，其應立即向檢察長或其指定人員通報此事。

1-3.4 涉及槍擊案件之警官

具主要司法管轄權之地方或州檢察官應保留起訴涉及「警官槍擊」案件之權力，但：

a. 若檢察官認為其與涉案之當地執法機關之關係將影響其客觀辦案之能力，則應考慮迴避；

b. 若檢察官認為大眾對其辦公室之清廉觀感以及對辦案之信心將受有

d. The prosecutor should excuse himself or herself from the investigation and prosecution of any current client of the prosecutor and should withdraw from any further representation of that client.

1-3.3 Specific Conflicts

In all jurisdictions, including those prohibiting private practice by prosecutors:

a. The prosecutor should excuse himself or herself from the investigation and prosecution of any former client involving or substantially related to the subject matter of the former representation, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

b. The prosecutor should excuse himself or herself from the investigation and prosecution of any matter where information known to the prosecutor by virtue of a prior representation and subject to the attorney-client privilege would be pertinent to the criminal matter, unless, after full disclosure, the former client gives informed written consent permitting the prosecutor's involvement in the investigation or prosecution.

c. The prosecutor should excuse himself or herself from the investigation and prosecution of any person who is represented by a lawyer related to the prosecutor as a parent, child, sibling, spouse, or domestic partner, or who has a significant financial relationship with the prosecutor.

d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.

e. If an assistant or deputy prosecutor learns of the potential of a specific conflict, he or she should immediately report the matter to the chief prosecutor or a designee thereof.

1-3.4 Officer Involved Shootings

The local or state prosecutor with primary jurisdiction should retain the authority to prosecute cases involving "Officer Involved Shootings," however:

a. If the prosecutor believes that his/her relationship with the involved local law enforcement agency would impact the prosecutor objectively handling the case, then recusal should be considered;

b. If the prosecutor believes that public perception of the integrity of his/her office and public confidence in the handling of the case would negatively be impacted, the prosecutor should consider seeking assistance from other prosecutorial sources such as State or Local

負面影響，則檢察官應考量尋求其他檢察資源之幫助，如：其他司法管轄區之州或地方檢察官、州檢察總長、聯邦檢察官或特別檢察官等不按時支付報酬或其報酬不以起訴決定為依據之人員；

c. 若檢察官利用大陪審團做出起訴之決定，則為確保公平完整之審查，其應確保所有現有證據，包括執法人員、涉案被害人、專家之證詞，包括使用武力方面之專家、非專業證人和家庭成員；

d. 檢察官應始終堅持於不損害案件證據下盡量保持透明度，並應顧及執法人員、被害人、被害人家屬以及大眾之利益。

1-3.5 衝突處理

每一檢察官辦公室應制定處理實際或潛在利害衝突之程序。該程序應包括但不限於：

a. 創建防火牆和污點或篩選團隊，以確保有衝突關係之檢察官不會以不當之方式接觸資訊或不當揭露之；及

b. 製作記錄衝突處理方式之方法，以確保大眾對檢察官辦公室之信任和信心。

1-3.6 特別檢察官

若存在妨礙檢察官辦公室調查或起訴刑事案件之實際或潛在之利害衝突，檢察官辦公室應任命或嘗試任命一名「特別檢察官」，或依法將此類事項提交予適當之政府機關。於任命特別檢察官時：

a. 特別檢察官應為信譽良好之州律師協會會員，於其任命所涉事項方面應具適當經驗，並應被認為與檢察官辦公室保持分離互不隸屬，以免受任何實際或潛在衝突之影響；

b. 特別檢察官僅有對於受任命負責承辦之案件之權力；及

c. 於避免衝突下，檢察長及其助手和工作人員應當向特別檢察官提供一切適當之協助、合作和支援。

prosecutors from other jurisdictions, the State Attorney General, federal prosecutors, or a special prosecutor, who is not paid by the hour or where compensation does not depend on charging decisions;

c. If the prosecutor involves the use of a Grand Jury to make the charging decision, in order to ensure fairness and a complete review, he/she should make certain that all available evidence, including testimony from law enforcement officers, alleged victims, experts, including use of force experts, lay witnesses and family members is presented;

d. The prosecutor should always insist on as much transparency as possible without compromising the evidence in the case and should be mindful of the interest of the law enforcement officers, victims, victim's family members and the public at large.

1-3.5 Conflict Handling

Each prosecutor's office should establish procedures for handling actual or potential conflicts of interest. These procedures should include, but are not limited to:

a. The creation of firewalls and taint or filter teams to ensure that prosecutors with a conflict are not improperly exposed to information or improperly disclose information; and

b. Methods to accurately document the manner in which conflicts were handled to ensure public trust and confidence in the prosecutor's office.

1-3.6 Special Prosecutors

Where an actual or potential conflict of interest exists that would prevent the prosecutor's office from investigating or prosecuting a criminal matter, the prosecutor's office should appoint, or seek the appointment of a "special prosecutor," or refer the matter to the appropriate governmental authority as required by law. Under those circumstances where a special prosecutor is appointed:

a. The special prosecutor should be a member of the state bar in good standing, with appropriate experience in the subject matter of the appointment, and should be perceived as having sufficient detachment from the prosecutor's office so as not to be influenced by any actual or potential conflict;

b. The special prosecutor should have the authority only over the case or cases for which he or she is appointed; and

c. Subject to the need to avoid the appearance of a conflict, a chief prosecutor and his or her assistants and staff should give all appropriate assistance, cooperation, and support to a special prosecutor.

評論

鮮少有較利害衝突更普遍的道德性問題。衝突不僅可能源自與現任或先前客戶之關係，亦可能源自檢察官之財務或其他活動。

利害衝突問題以無法顧及兩名可預見具不同利益衝突之人員為前提。

由於檢察官最初並未選擇遭起訴之人員，因此與私人執業者相比，檢察官對衝突之呈現方式有所不同。我們通常也無法選擇應由何種檢察機關審理。

本標準承認所有司法管轄區內涉及先前客戶或經由先前代表所獲資訊之潛在衝突，且僅於個人做出經充分商議後之棄權聲明，檢察官始能持續處理案件。

檢察官應認知避免利害衝突之重要性，以確保能以誠信獨立之方式對執法人員之潛在犯罪不當行為進行調查。因此，檢察官於調查其司法管轄範圍內與之日常互動之執法機構時，應採取合理措施以避免衝突。

檢察官應支持建立相關制度並提供資源，以允許州或地方檢察官於適當時可移交管轄權。司法管轄區內獲選之檢察官最能為其所代表社區之成員伸張正義；事實上，由於該檢察官係由選民選出，才能賦予此一正當性。涉及警方刑事不當行為之起訴為最棘手的案件之一。當檢察官經要求審查動武案件時，其僅能於動武程度屬非法時才會提起訴訟；檢察官不可對僅因不明智使用武力之警官提起訴訟。沒有比州及地方檢察官更具備相關能力、豐富經驗豐富、及敬業之訴訟律師，透過向公正的州或地方檢察官提供資源及支援以審查警方之不當行為，檢察官將可確實追究執法界不良行為之責任。

防火牆及篩選措施之使用程度以辦公室和司法管轄範圍之規模、媒體對事件之報告、相關事件之類型以及辦公室中衝突檢察官之職位。若這些方法無效或可能無效，檢察長應尋找合格之特別檢察官並提供適當協助。

Commentary

There are few topics of ethical orientation more pervasive than conflicts of interest. Conflicts may arise not only from relationships with current or former clients, but also with a prosecutor's other activities—financial or otherwise.

Conflicts of interest problems are founded on the premise of the inability to serve two masters with foreseeable different interests that compete or contend.

Conflicts present themselves differently to the prosecutor, compared to the private practitioner, because the prosecutor does not initially select those subject to prosecution. Nor is there usually a choice of which prosecution office should proceed.

The standards recognize potential conflicts in all jurisdictions involving former clients or information obtained by virtue of former representation and allow the prosecutor to proceed on the case only if the individual makes a counseled waiver permitting the prosecutor's involvement.

Prosecutors recognize the importance of avoiding conflicts of interest to ensure that an investigation into the potential criminal misconduct of a law enforcement officer is conducted with integrity and independence. Thus, prosecutors should take reasonable steps to avoid conflicts when investigating those law enforcement agencies in their jurisdictions that they interact with on a daily basis. Prosecutors should be supportive of enacting systems and providing resources to allow a state or local prosecutor to transfer jurisdiction when appropriate. The elected prosecutor of the jurisdiction involved is in the best position to seek justice for the members of that community; indeed, that prosecutor has been elected by the constituents to do precisely that. Prosecutions involving the criminal misconduct of police officers are some of the most difficult cases to try. When prosecutors are called upon to review use of force incidents, they can only file charges if the amount of force used was illegal; prosecutors cannot charge an officer who may have used force that was just ill-advised.

There is no pool of more capable, experienced, dedicated trial lawyers than state and local prosecutors. By ensuring that an impartial state or local prosecutor is provided the resources and support to review police misconduct, prosecutors can be confident they can hold bad actors within the law enforcement community accountable.

The extent to which firewalls and filters may be used depend upon the size of the office and jurisdiction, the media coverage of the matter, the type of matter concerned, and the position of the conflicted prosecutor in the office. If such methods are or are likely to be ineffective, the chief prosecutor should seek a qualified special prosecutor and offer appropriate assistance.

4. 選任、報酬及解任

1-4.1 資格

除法律另有規定外，檢察官於申請選舉、任命或聘用時以及於任期或受聘期間應為州律師協會中信譽良好之會員。檢察長應為其服務司法管轄區之居民。

1-4.2 報酬及檢察長責任

檢察長應獲得與其職責相稱之報酬。全職檢察長之薪資不得低於普通司法管轄區首席法官之薪資，且於任期內不得調降。決定報酬時應考量之因素包括但不限於：

a. 鼓勵高素質人才尋求職業導向之檢察官職位可對司法管轄區帶來之益處；及

b. 於私人執業、私人產業和公共服務領域承擔類似責任之人員之報酬水準。

1-4.3 助理及副檢察官之報酬

檢察長之報酬不得作為助理檢察官最高報酬之依據。決定助理檢察官報酬時應考量之因素包括但不限於：

a. 鼓勵高素質人才尋求職業導向之助理檢察官職位可對司法管轄區帶來之益處；及

b. 於私人執業、私人產業和公共服務領域承擔類似責任之人員之報酬水準。

決定助理檢察官報酬時不得考量之因素如下（包括但不限於）：

a. 與助理檢察官執行職務無關之特質，且向來普遍被視為引人不快之歧視，包括種族、性別、宗教、國籍和性取向；

b. 黨派政治立場或活動；及

c. 該特定助理檢察官執行職務所產生之收入，如：資產沒收或收費。

4. Selection, Compensation, and Removal

1-4.1 Qualifications

At the time of filing for election, appointment, or hiring, and for the duration of the term of office or employment, a prosecutor shall be a member in good standing of the state's bar, except as otherwise provided by law. Chief prosecutors should be residents of the jurisdiction that they serve.

1-4.2 Compensation; Responsibilities of the Chief Prosecutor

Chief prosecutors should be compensated commensurate with their responsibilities. The salary of the full-time chief prosecutor should be at least that of the salary of the chief judge of general trial jurisdiction in the chief prosecutor's district and should not be lowered during a term of office. Factors that should be considered in determining compensation include, but are not limited to:

a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

1-4.3 Compensation of Assistant and Deputy Prosecutors

The compensation of the chief prosecutor should not serve as a basis for the highest compensation of assistant prosecutors. Factors that should be considered in determining the compensation for an assistant prosecutor include, but are not limited to:

a. The benefits to the jurisdiction of encouraging highly competent people to seek a position of assistant prosecutor with a career orientation; and

b. The level of compensation of people with analogous responsibilities in the private practice of law, in private industry, and in public service.

Factors that may not be considered in setting the compensation for an assistant prosecutor include, but are not limited to:

a. Characteristics of the assistant prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation;

b. Partisan political affiliation or activity; and

c. Revenues generated by that particular assistant prosecutor's performance such as asset forfeitures or collection of fees.

1-4.4 福利

檢察長應確保所有助理檢察官均享有與其職責相符之福利計劃。此類福利應包括補償或保險，以支付檢察官因執行職務而被提起民事訴訟所需之辯護費用及訴訟費用。

1-4.5 工作量

除特殊情況外，檢察官不應負擔及受要求而負擔與其職務不成比例之工作量，以確保正義在個案中獲得實現。

1-4.6 免職

檢察長享有任期保障，且僅應經由符合正當法律程序及準據法之程序予以免職。免職檢察官時不得考量之因素包括但不限於如下：

a. 與助理檢察官執行職務無關之特質，且向來普遍被視為引人不快之歧視，包括種族、性別、宗教、國籍和性取向；

b. 合法且符合倫理之政黨活動，但干擾辦公室有效行政管理者除外。

c. 拒絕參加政黨活動。

1-4.7 助理、副檢察官之解職

助理檢察官和副檢察官可根據其司法管轄區範圍內之法律及辦公室程序予以解職。解任檢察官時不得考量之因素包括但不限於如下：

a. 與助理檢察官執行職務無關之特質，且向來普遍被視為引人不快之歧視，包括種族、性別、宗教、國籍和性取向；

b. 合法且符合倫理之政黨活動，但干擾辦公室有效行政管理者除外。

c. 拒絕參加政黨活動。

1-4.4 Benefits

A chief prosecutor should seek to ensure that all assistant attorneys have access to a benefits program commensurate with their responsibilities. These benefits should include indemnification or insurance to pay all costs of defense against, and judgments rendered in, civil lawsuits arising from the prosecutor's performance of his or her official duties.

1-4.5 Workload

Except in extraordinary circumstances, a prosecutor should not maintain, and should not be asked to maintain, a workload that is inconsistent with the prosecutor's duty to ensure that justice is done in each case.

1-4.6 Removal

A chief prosecutor shall hold office during his or her term of office and shall only be removed by procedures consistent with due process and governing law. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

1-4.7 Discharge of Assistant and Deputy Prosecutors

Assistant and deputy prosecutors are subject to removal according to the laws of their jurisdictions and the procedures in their offices. Factors that may not be taken into account in the removal of a prosecutor include, but are not limited to, the following:

a. Characteristics of the prosecutor that are irrelevant to his or her ability to perform the job and historically have been the basis of invidious discrimination, including race, gender, religion, national origin, and sexual orientation.

b. Partisan activities that are legal and ethical unless those activities interfere with the efficient administration of the office.

c. The refusal to participate in partisan activities.

評註

有鑑於檢察長優先參與所代表之社群，且有與執法人員協商以及與緊急情況或異常情況下提供協助之必要，故檢察長應為其管轄範圍內之居民。即便於特定司法管轄區內，喪失檢察官資格並不會使其任期失效，但基於公共利益，其將被要求辭職。

檢察官辦公室欲以最高效率運作，提供充足之薪酬有絕對之必要。充足之薪酬對於吸引有能力之人選出任檢察官職務至關重要。若少了此類報酬，原本可至檢察官辦公室任職之人才將轉而從事私人律師執業或其他工作。

檢察官之薪酬不得低於檢察官所在地區具普通審判管轄權之法官之薪酬。詳如國家刑事司法標準及目標諮詢委員會—法院 230(1973) 所述：

薪酬方面，檢察官應視為與當地刑事司法系統最高審判法院院長處於同一級別。因為此二職位於執行職務時均具有廣泛且專業之自由裁量權。基此，此類職位之報酬應具相同基礎，係屬合理。

提供充足薪資對於減少地方檢察官的快速更換亦至關重要。檢察官所需之技能和判斷力會隨時間和經驗之累積逐漸發展。為求留住最優秀之人才，其薪資及福利應與其他領域之專業知識發展而取得之薪資和福利相稱。若未依能力而提供合理相應之薪資，檢察官辦公室將成為私人執業的訓練學校，民眾也無法得到最好的司法服務。

檢察官於所有案件中均應尋求並伸張司法正義。確保案件得到適當調查以及評估處理方式均相當耗時。於進入審判階段的案件中，有效進行審判所需的準備工作，通常包括各領域專家的教育訓練以及以科技方式呈現及展示，這些對於有效說明檢方的論告將日益重要。

由於每案都需徹底調查、評估、準備及審理，檢察官不應負擔大量待處理之案件。否則，司法品質將受影響，且留住優秀、經驗豐富的檢察官將有所困難。

本標準並未說明檢察長或助理檢察官免職之具體理由，但此類行動應

Commentary

Given the preference for involvement with the represented community, the need to be available for consultation with law enforcement personnel, and the need to be available in the event of an emergency or unusual situation, the chief prosecutor should be a resident of his or her jurisdiction. Even though, in some jurisdictions, disbarment of the prosecutor would not disqualify him or her from holding the office, the public interest would dictate resignation in that situation.

Provision of an adequate salary is an absolute necessity if the office of prosecutor is to function at maximum efficiency. An adequate salary is essential for attracting capable candidates to the position of prosecutor. Without such compensation, capable persons who might otherwise be attracted to the prosecutor's office are diverted to private practice of law or other endeavors.

The salary provided the prosecutor should be at least that of the salary of the judge of general trial jurisdiction in the district of the prosecutor. As noted by the National Advisory Commission on Criminal Justice Standards and Goals, Courts 230 (1973):

For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is therefore reasonable that the compensation for the holders of these offices has the same base.

Provision for an adequate salary level is also essential to reduce the rapid turnover of local prosecutors. The skills and judgment required by a prosecutor are developed with time and experience. To retain the best representatives of the people, the salary and benefits exchanged for services must be commensurate with the salary and benefits available in other areas for the expertise developed. Without the ability to earn a salary sufficient to justify remaining in the prosecutor's office, the office becomes a training ground for private practitioners and the people are denied the best representation.

A prosecutor has the responsibility to seek justice in every case. Ensuring that a matter has been properly investigated and evaluating how it should be handled are time consuming. In those cases that go to trial, the preparation required to proceed effectively is filled, in many instances, with education regarding experts in various fields and creation of technological presentations and exhibits which are increasingly necessary to effectively explain the prosecution's theory of the case.

Because of the need to thoroughly investigate, evaluate, prepare and try a variety of cases, prosecutors should not be overwhelmed by large numbers of cases needing disposition.

If they are, the quality of representation afforded the people suffers and the difficulty in retaining good, experienced prosecutors increases.

Without addressing specific reasons for the removal from office of the chief prosecutor or

受程序上之正當法律程序之約束。同理，不得因檢察官之種族、性別、宗教、國籍或性取向等偏見而予以免職。

參與或拒絕參與黨派政治活動不應構成免職之理由，除非該活動確實干擾辦公室之有效運作。

檢察官應謹記尋求司法正義之責任。若檢察官發現自身面臨大眾對檢察官辦公室之信任度下降，致使無法再履行主要職責時，則應考慮辭職。

鑑於刑事司法系統內特定人員之訴訟性質，提供賠償或保險以支付檢察官因民事訴訟辯護和支付因履行公務而產生之判決所有費用將有其重要性。這項福利能使檢察官面臨可能消耗時間和資源以進行防禦之民事訴訟（不論是否合理）時，仍可堅持尋求司法正義。

5. 人員配置和培訓

1-5.1 過渡期合作

對於獲選或經任命擔任檢察官者，現任檢察官應於可行下充分配合即將上任檢察官之內部培訓，以實現符合專業禮儀原則之有效過渡作業。於可行時，該合作可包括於新檢察官就職前指定一名特別助理，使新任檢察官可了解辦公室現正受理之重大訴訟及評議，包括大陪審團或其他調查事宜。

1-5.2 助理及副檢察官

a. 助理檢察官、副檢察官，不論職稱為何，除非法律另有規定或契約另有約定外，均應由檢察長選任，並依照檢察長之裁量進行任用。

b. 除法律另有規定，助理檢察官和副檢察官應為信譽良好之州律師協會之有效會員。

c. 助理檢察官和副檢察官之選任，應根據人選之成就、經驗以及與得以順利執行檢察官業務之個人特質等相關資格。與執行業務能力無正當關係之個人或政治因素，不得於助理檢察官和副檢察官之僱用、保留或晉升中予以考量。此外，亦應招募可反映公眾組成之多

assistant prosecutors, the standard requires that such actions be subject to procedural due process. Equally important is the necessity that such removals are not undertaken because of prejudice against the prosecutor's race, gender, religion, national origin or sexual orientation.

Engaging in partisan political activities, or the refusal to engage in the same should not be a basis for removal unless the activity interferes with the efficient operation of the office.

Prosecutors should be mindful of their responsibility to seek justice. Should a prosecutor find himself or herself in a situation in which the public trust in the office has diminished to the extent that he or she can no longer fulfill that primary responsibility, resignation should be considered.

Given the litigious nature of some persons involved in the criminal justice system, a program providing indemnification or insurance to pay all costs incurred by the prosecutor in defending against civil lawsuits and in paying judgments arising from the performance of his or her official duties is essential. That benefit will enable a prosecutor to seek justice despite the threats of civil litigation that, even if totally unfounded, can consume time and resources to defend.

5. Staffing and Training

1-5.1 Transitional Cooperation

When an individual has been elected or appointed prosecutor, the incumbent prosecutor should, when practicable, fully cooperate in an in-house orientation of the incoming prosecutor to allow for an effective transition consistent with the principles of professional courtesy. This cooperation may include, when possible, designating the incoming prosecutor a special assistant prior to the time the incoming prosecutor assumes office, so that the incoming prosecutor may be briefed on significant ongoing proceedings and deliberations within the office, including grand jury or other investigations.

1-5.2 Assistant and Deputy Prosecutors

a. Assistant and deputy prosecutors, by whatever title, should be selected by the chief prosecutor and should serve at the chief prosecutor's discretion, unless otherwise provided by law or contract.

b. Assistant and deputy prosecutors should be active members of the state bar in good standing, except as otherwise provided by law.

c. Assistant and deputy prosecutors should be selected on the basis of their achievements, experience, and personal qualifications related to their ability to successfully perform the work of the prosecutor's office. Personal or political considerations that have no legitimate bearing on the ability to perform the required work should not play a role in the hiring,

元化人員。

d. 除特別情況外，檢察長於聘任或晉升助理檢察官或副檢察官時，應尋求最低工作服務年限之承諾，前提為有持續良好之表現。

e. 新任檢察長就職時應行使專業自由裁量權，以利於保留具相當資歷經驗以及具適當工作績效之人員，後再考量僅因於前屆政府服務而受解僱之人員。

1-5.3 到職培訓及法律教育進修

檢察官於開始任職時及任職後之定期期間，應參加正式培訓及教育計劃，並應尋求針對起訴職能之法律教育進修機會，且：

a. 檢察長應確保受其指揮之所有檢察官均參加適當之培訓和教育計劃。檢察長亦應了解並利用適當之國家培訓計劃，為其本身及其辦公室之檢察官提供到職培訓及法律教育進修。

b. 檢察長應支持其指揮之所有檢察官參加由州或國家協會或組織主辦之培訓計劃。

c. 負主管責任之檢察官應於其培訓進修中納入管理問題之研究，如：工作人員關係和預算編制。

d. 檢察長應確保各新進檢察官熟悉本標準以及其司法管轄區已採用之行為倫理規範及專業精神。

e. 檢察長應確認辦公室內外各有一個以上可供檢察官尋求有關專業倫理問題指導之資源。

f. 檢察官應致力於達成或超出該管轄區域對於法律教育進修之強制要求。

g. 檢察官之預算應就內部培訓計劃和參加外部培訓活動編列充足資金。

retention, or promotion of assistant and deputy prosecutors. Recruitment efforts should also be made in order to hire a diverse staff that reflects the composition of the community.

d. Absent unusual circumstances, a chief prosecutor should seek a commitment for a minimum number of years of employment at the time of hiring or promoting assistant or deputy prosecutors, conditioned upon continuing good performance.

e. When a new chief prosecutor takes office, professional discretion should be exercised in favor of retaining those with seniority and experience alongside suitable work performance history prior to the consideration of any dismissals simply because of working under a prior administration.

1-5.3 Orientation and Continuing Legal Education

At the time they commence their duties and at regular intervals thereafter, prosecutors should participate in formal training and education programs. Prosecutors should seek out continuing legal education opportunities that focus specifically on the prosecution function and:

a. Chief prosecutors should ensure that all prosecutors under his or her direction participate in appropriate training and education programs. Chief prosecutors should also be knowledgeable of and make use of appropriate national training programs for both orientation and continuing legal education for both himself or herself and the prosecutors in his or her office.

b. Chief prosecutors should support all prosecutors under his or her direction in training programs sponsored by a state or national association or organization.

c. Prosecutors with supervisory responsibilities should include in their continuing training the study of management issues, such as staff relationships and budget preparation.

d. The chief prosecutor should ensure that each new prosecutor becomes familiar with these standards, as well as rules of ethical conduct and professionalism that have been adopted in the jurisdiction.

e. Chief prosecutors should identify one or more sources, both within and outside the office, to which the prosecutors can turn for guidance on questions related to ethical conduct and professionalism.

f. Prosecutors should be diligent in meeting or exceeding requirements for continuing legal education in those jurisdictions where the requirements are mandatory.

g. Adequate funds should be allocated in the prosecutor's budget to allow for both internal training programs and attendance at external training events.

1-5.4 辦公室政策及流程

各檢察官辦公室應制定書面和 / 或可電子檢索政策和程序聲明，以協助檢察官辦公室工作人員之工作表現。

評註

1-5.1：刑事調查、審判準備、審判以及檢察官辦公室日常運作與選任週期無關。因此，檢察官任期交接之過渡作業應盡量做到無縫接軌，以有效維護民眾利益。由於檢察官辦公室大部分活動都具保密性質，對即將上任之檢察長提供說明的最適當方式可為將其指定為特別檢察官，以就保密事項進行報告。對於即將卸任及上任之檢察官而言，其要務為應牢記為社區民眾伸張司法正義之責任，並需要以專業素養將不同訴求成見放在一旁。

1-5.2：除確認助理為司法管轄區律師界信譽良好之成員外，檢察長並應仔細檢視此類人員能提供予辦公室之優點為何。應對其教育背景、工作經驗、判斷力、書面和口頭溝通技巧、審判辯護技巧和其他個人資格進行評估，以作為僱用、晉升和留任決策之依據—而非其人脈如何。

招募符合資格之少數族群人士為達成此目標之重要一環，並應納入所有檢察機關之招募辦法和程序。雖然檢察官不負達到預定配額之責任，但檢察官辦公室將可因擁有反映社區人口構成之多元工作人員而獲益。

檢察長並應要求所有助理或副檢察官同意於獲聘後至少任職服務一定之最低期間；考慮到新任員工於提供辦公室最好之工作成果前，均需廣泛培訓和習得經驗，因此如此的時間投資將是較佳之選項。

雖獲選之檢察長有聘用及解僱助理檢察官之權，但僅因助理檢察官曾於前任政府服務就將其解僱並不相當適當。助理檢察官亦以檢察官之身分奉獻自身才華及職涯而為社區服務，若因上述原因而逕行解僱，可能會對社區產生重大負面影響，並可能使律師怯於將自身職業生涯奉獻於檢察官事業。因此，我們鼓勵獲選之檢察長認真考慮保留具無法替代之豐富經

1-5.4 Office Policies and Procedures

Each prosecutor's office should develop written and/or electronically retrievable statements of policies and procedures that assist in the performance of those who work in the prosecutor's office.

Commentary

1-5.1: Criminal investigations, trial preparation, trials, and the day-to-day operation of the prosecutor's office do not coincide with election cycles. Therefore, it is important for the efficient representation of the people that the transition from one prosecutor's term to another be as seamless as possible. Because of the confidential character of much of the activity in a prosecutor's office, it may be that the most appropriate manner in which to orient an incoming chief prosecutor is through his or her appointment as a special prosecutor, so that briefings on confidential matters can be accomplished. It is important for both the outgoing and incoming prosecutors to remember that his or her responsibility to seek justice for the people of the community may require the setting aside of campaign differences in a professional manner.

1-5.2: In addition to confirming that prospective assistants are members in good standing of the bar of the jurisdiction, the chief prosecutor should carefully examine the assets they would bring to the office. An assessment of their educational background, work experience, judgment, written and oral communication skills, trial advocacy skills and other personal qualifications without regard to who they know should form the basis for hiring, promotion and retention decisions.

The recruitment of qualified minorities is an essential aspect of this goal and should be incorporated into the hiring practices and procedures of all prosecution offices. While it is not the responsibility of the prosecutor to meet predetermined quotas, the office benefits by having a diverse staff that reflects the community that is served.

It is also desirable for the chief prosecutor to request that all prospective assistant or deputy prosecutors agree to serve for a minimum time period if hired; such a time commitment is preferable given the extensive training and acquired experience any new hire needs before they can deliver their best work for an office.

While recognizing the authority of a newly elected chief prosecutor to hire and fire assistant prosecutors, the practice of dismissing assistant prosecutors solely because they worked for a prior administration is not favored. The automatic dismissal of assistant prosecutors who have dedicated their talent and career to serving the community as a prosecutor can have a significant negative effect on the community and can discourage attorneys from dedicating their career to the profession. Newly elected chief prosecutors are encouraged to give strong consideration to retaining senior assistant prosecutors who bring a breadth of experience, expertise, institutional

驗、專業知識、機構知識和具體案件工作之資深助理檢察官。

1-5.3：就概念而言，員工訓練可分為兩大類。第一可稱為「到職培訓」，意即為新助理或副檢察官以及檢察長提供使其了解刑事司法系統職責以及所需技術技能之培訓。檢察長之培訓應以辦公室管理技能為主，尤其是對較大範圍之司法管轄區。助理之基本入職培訓可包括熟悉辦公室之組織、程序及政策；當地法院系統；當地警察機構之運作方式；專業倫理行為、法庭禮儀以及與法庭和辯護律師關係之培訓。

各檢察官培訓計劃應包含之第二面向為法律教育進修。首先，檢察官應遵守其司法管轄範圍內之法律教育進修規定。培訓內容應與檢察官職責具相關性。對於檢察長和其他擔任管理職位之檢察官方面，人事、管理和預算之相關培訓有其適當性。對於其他檢察官而言，則應以實體法、證據規則、鑑識證據、審判辯護以及與其職責相關之其他事項為準。雖然某些大規模辦公室設有培訓部門提供所需之大部分培訓，但檢察長應注意了解整體國家刑事司法最新情況之重要性。檢察官可經由此類學習及時了解最新的辯護知識，共同解決檢察官面臨的問題，並提升其為社區尋求司法正義之能力。

除為檢察官提供履行職責所需之資訊和技能之學習機會外，檢察長亦應勤懇要求檢察官徹底熟悉其道德行為準則及職業責任。檢察長應至少確保其辦公室所有檢察官均了解適用於司法管轄範圍之道德規範和專業準則以及本標準。此外，檢察長應努力營造鼓勵討論道德和專業考慮之氛圍。檢察長並應公告需進一步私人諮詢時可予運用之人員和程序。

於檢察官預算中分配資金時，本標準有助於強調培訓於確保高效履行檢察官職責方面之重要作用，同時可破除培訓僅為虛設或於預算吃緊時應先刪減額外內容之觀念。

1-5.4：檢察官辦公室應制定書面政策和程序，以幫助新員工能有效入職並接受培訓、並為員工提供辦公室運作方式之參考指南或手冊。其包括非實體法事項如：公平就業機會聲明、性騷防治政策和職場暴力防治政策。

knowledge and specific casework that cannot be replaced.

1-5.3: Conceptually, staff training can be divided into two broad categories. The first, which might be termed "orientation," would seek to provide new assistants or deputies, as well as chief prosecutors, with an understanding of their responsibilities in the criminal justice system, and with the technical skills they will be required to utilize. Orientation for the chief prosecutor should center on office management skills, especially for larger jurisdictions. A basic orientation package for assistants could include familiarization with office structure, procedures, and polices; the local court system; the operation of local police agencies; and training in ethics, professional conduct, courtroom decorum, and relationships with the court and the defense bar.

A second aspect of training which should be included in each prosecutor's training program is continuing education. First and foremost, the prosecutor must abide by any continuing legal education requirements of his or her jurisdiction. The content of the training should be relevant to the duties of the prosecutor. For the chief prosecutor and other prosecutors in management positions, training on personnel, management and budget issues would be appropriate. For other prosecutors, concentration on substantive law, rules of evidence, forensic evidence, trial advocacy, and other matters relevant to their duties should be sought. While some of the largest offices have training divisions which can provide much of the training needed, the chief prosecutor should be cognizant that it is important to have exposure to what is going on throughout the national criminal justice community. Prosecutors benefit from this exposure because it allows them to stay current regarding new defenses, jointly address concerns confronting prosecutors, and learn techniques that can improve their ability to seek justice for their communities.

In addition to providing opportunities for prosecutors to learn the information and skills required to perform their duties, the chief prosecutor must be diligent in requiring his or her prosecutors to be thoroughly familiar with his or her rules of ethical conduct and professional responsibilities. At an absolute minimum, the chief prosecutor must ensure that all prosecutors in his or her office have a working knowledge of the ethical rules and professional codes applicable to the jurisdiction as well as these standards. In addition, the chief prosecutor should work to create an atmosphere in which the discussion of ethical and professional considerations is encouraged. The chief prosecutor should also make known persons and procedures that can be utilized if more private consultation is desired.

By calling for the allocation of funds in the prosecutor's budget, this standard may help to emphasize the essential role of training in assuring efficient and effective performance of prosecutorial duties while disabusing the notion that training is a frill or an extra to be cut at the first sign of any pressure on the budget.

1-5.4: A prosecutor's office should have written policies and procedures to aide in the effective orientation and training of new staff, as well as providing a reference guide or handbook

其他相關政策包括就業條件、工作時間、休假以及行為紀律等項目。

缺乏政策和程序聲明之檢察官應諮詢當地、州和國家協會以及其他檢察機關，以減少制定政策和程序聲明之成本。

6. 檢察官豁免權

1-6.1 豁免範圍

檢察官於執行職務時應享有最大限度之民事責任豁免權。檢察長應採取措施確保辦公室內所有檢察官因執行職務而被提起民事訴訟有關之律師費用、訴訟費用等所有費用，均應由檢察官之基金實體承擔。

for employees on how the office functions. These would consist of non-substantive law matters, such as an equal opportunity statement, sexual harassment policy and workplace violence policy. Other such policies would include conditions of employment, hours of work, available leaves, and employment actions such as discipline.

Prosecutors without statements of policies and procedures should consult with their local, state, and national associations and other prosecution offices to lessen the burden of the initial development.

6. Prosecutorial Immunity

1-6.1 Scope of Immunity

When acting within the scope of his or her prosecutorial duties, a prosecutor should enjoy the fullest extent of immunity from civil liability. The chief prosecutor should take steps to see that all costs, including attorneys' fees and judgments, associated with suits claiming civil liability against any prosecutor within the office arising from the performance of their duties should be borne by the prosecutor's funding entity.

評論

於 Imbler v. Pachtman, 424 U.S. 409 (1976) 一案中，美國最高法院裁定，檢察官就啟動及進行刑事追訴以及陳述該州案件之職務範圍內，應享有根據《美國法典》第 42 章第 1983 條對民事訴訟之絕對豁免權。法院指出，雖然此類豁免權將使真正蒙冤的刑事被告無法針對因惡意或不實行為而剝奪其自由之檢察官主張民事救濟，但限定檢察官豁免權之替代方案之重要度不及更為廣泛的公共利益，否則將妨礙檢察官毫無畏懼地履行職責，進而對於刑事司法系統之正常運作產生影響。

法院並未將此類絕對豁免延伸至檢察官於上述職責範圍之外所採取之行動。因此，Imbler 案並未改變履行傳統上將調查職責主要視為屬於警察職能範圍之現行法規。

儘管 Imbler 案之後出現大量判例法討論檢察官之「行政」和「調查」職責豁免權，但仍未制定明確規則。

為確保檢察官可自由、積極、無畏地履行其基本職責，檢察官之資金來源應提供費用，包括律師費和針對檢察官及其工作人員之民事訴訟判決費。檢察官不應於其履行職責時所產生之訴訟未獲充分支持下執行工作。

Commentary

In Imbler v. Pachtman, 424 U.S. 409 (1976), the U.S. Supreme Court ruled that prosecutors enjoy absolute immunity from Civil Rights Actions brought under Section 1983, 42 U.S.C., when acting within the scope of their duties in initiating and pursuing a criminal prosecution and in presenting the state's case. The Court noted that although such immunity leaves the genuinely wronged criminal defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty, the alternative of qualifying a prosecutor's immunity would outweigh the broader public interest in that it would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system.

The Court did not extend such absolute immunity to actions taken by a prosecutor outside of the scope of his or her duties as aforesaid. Thus, Imbler did not change pre-existing law with respect to the performance of duties that traditionally are viewed as investigative duties falling primarily within the police function.

Although there has been a multitude of case law subsequent to Imbler discussing the prosecutor's immunity for "administrative" and "investigative" duties, no bright line rule has been established.

In order to ensure that prosecutors are free to vigorously and fearlessly perform their essential duties, the prosecutor's funding source should provide the costs, including attorney fees and judgments associated with civil suits against the prosecutor and his or her staff. No prosecutor should be expected to function without full coverage for actions arising out of the performance of his or her duties.

第二部分：關係

1. 地方組織

2-1.1 檢察長參與

檢察長應在可行且為檢察官合理相信該組織將依法致力於維護公共安全之範圍內，參與於其司法管轄範圍內設立之地方組織，以提升刑事司法之有效性、效率和公平性。檢察官代表社區組織所承擔之義務應限於其可勤勉稱職履行之義務。

2-1.2 資訊提供

於法律允許之範圍內，檢察長應向上開刑事司法組織提供能解決司法管轄範圍內所發現問題之相關資訊、建議及資料，並應考量實施處理並解決此類問題之適當建議。

2-1.3 組織設立

於未設立地方跨機構組織以加強刑事司法有效、高效和公平管理之司法管轄區，檢察官應確定此類組織之潛在利益，若確認其可提供效益，則檢察官應於此類組織之設立過程中發揮領導功能。

2-1.4 社區實踐

檢察長應把握機會，使學校人員、社區青年組織、社會服務機構、社區犯罪觀察小組和其他相關組織與檢察官辦公室等執法機構合作努力預防並偵查犯罪。

2-1.5 強化檢察

檢察長應參加州及地方律師協會以加強並推動法界訴訟職能之目標。

Part II. Relationships

1. Local Organizations

2-1.1 Chief Prosecutor's Involvement

The chief prosecutor should be involved in local entities established and maintained in his or her jurisdiction for the purpose of enhancing the effectiveness, efficiency, and fairness of the administration of criminal justice, to the extent practicable and to the extent the prosecutor reasonably believes such entities are legitimately committed to protecting public safety. The obligations a prosecutor undertakes on behalf of community organizations should extend only to those that he or she can fulfill in a diligent and competent manner.

2-1.2 Information Input

To the extent permitted by law, the chief prosecutor should provide such criminal justice entities with information, advice, and data pertinent to the solution of problems identified in the jurisdiction and should consider the implementation of appropriate proposals designed to address and resolve such problems.

2-1.3 Organization Establishment

In those jurisdictions where there are no local inter-agency entities established for the enhancement of the effective, efficient, and fair administration of criminal justice, the chief prosecutor should determine the potential benefits of such organizations and, if deemed beneficial, provide leadership in their establishment.

2-1.4 Community Prosecution

The chief prosecutor should be mindful of opportunities to engage school officials, community youth organizations, social service agencies, neighborhood crime watch groups, and other such organizations with law enforcement agencies, including the prosecutor's office, in efforts to prevent and detect crime.

2-1.5 Enhancing Prosecution

The chief prosecutor should participate in state and local bar associations for the purpose of enhancing and advancing the goals of the prosecution function in the legal community.

2. 州刑事司法組織

2-2.1 州協會之需要

各州均應設立檢察官專業協會，以服務並滿足其會員之需求及強化起訴職能。檢察長應為其州協會之有效會員，並應允許其助理檢察官和副檢察官成為州協會之會員並參與協會事務。各州協會應提供最有利於全州發展之服務，包括但不限於：

a. 法律教育進修；

b. 對獲選檢察官及其工作人員進行培訓；

c. 管理培訓；

d. 內部培訓計劃支援；

e. 資訊傳播（時事通訊、公告等）；

f. 基於交互詰問目的而分享辯方專家證人之證詞筆錄；

g. 規劃、管理、訴訟及上訴之技術支援，包括維護資料及摘要庫；

h. 頒布辦公室政策和程序範例；

i. 協調原先無法取得或經常使用之資源；

j. 追蹤立法進度並草擬法規範例；

k. 維持各檢察官辦公室間之聯絡；

l. 制定創新計劃；及

m. 開發及監控電腦系統。

2-2.2 強化檢察

檢察長應盡量參與州委員會、工作小組和其他實體之活動，以強化並推動起訴職能之目標。檢察官於州實體組織承擔之義務應僅適用於其認定可勤勉並稱職履行之義務。

2. State Criminal Justice Organizations

2-2.1 Need for State Association

Each state should have a professional association of prosecuting attorneys for the purpose of serving and responding to the needs of its membership and enhancing the prosecution function. The chief prosecutor should be an active member of his or her state association and should allow his or her assistants and deputies to be members of and participate in the state association. Each state association should provide services that are most conducive to development at the statewide level, including, but not limited to, the following:

a. Continuing legal education;

b. Training of newly elected prosecutors and their staffs;

c. Management training;

d. Support for in-house training programs;

e. Information dissemination (newsletters, bulletins, etc.);

f. Sharing transcripts of testimony of defense experts for purposes of cross-examination;

g. Technical assistance in planning, management, litigation, and appeals, including the maintenance of data and brief banks;

h. Promulgating model office policies and procedures;

i. Coordinating resources not otherwise available or frequently used;

j. Monitoring legislative developments and drafting model legislation;

k. Maintaining liaisons between the offices of various prosecutors;

l. Developing innovative programs; and

m. Developing and monitoring computer systems.

2-2.2 Enhancing Prosecution

The chief prosecutor should participate, to the extent possible, in statewide committees, task forces and other entities for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in statewide entities should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

3. 國家刑事司法組織

2-3.1 強化檢察

檢察長應盡量於強化和推動起訴職能目標之國家刑事司法組織中發揮積極作用。檢察官於國家組織承擔之義務應僅適用於其認定可勤勉並稱職履行之義務。

2-3.2 檢察機關意見

檢察長應努力確保國家刑事司法組織針對與檢察官及檢察職能有關之標準、規則及協議，採取一切合理措施以在調查及研究中廣納現任州及地方檢察官之意見。

評論

檢察官應參與地方、州和國家事務以改善刑事司法系統。檢察官可進行之活動包括向政府機構和公民團體提供資訊及建議、審查並審議待定之州和國家法規以及參與刑事司法相關計劃或專案。優秀的檢察官同時亦為優秀的律師，並應積極參與當地及州層級之律師協會。

本標準肯認過往 20 年來專注於特定利益之社區組織之快速發展，如：酒駕法規、性侵預防 / 諮詢計劃、配偶及兒童虐待預防、毒品教育計劃和鄰里守望計劃等。感興趣且知情之公民可成為執法的寶貴合作夥伴。本標準鼓勵缺乏此類基層組織的社區檢察官考量採取適當方式激勵公民對相關活動之興趣。

由於檢察官辦公室為一地方性質之辦公室，因此此類辦公室職責可能較任何其他具專業能力之政府層級職責更為多元化。例如：公民投訴之範圍可能包括如何應付鄰居之孩童乃至空頭支票的處理。來自執法機構和法院的期望也同樣具多樣性且具更高要求標準。於許多司法管轄區中，檢察官也是其所在郡縣之律師。這項職責可能需要具備稅務、學校法規、都市區域規劃、財產法、員工紀律法規、健康法、環境法和勞動關係的等專業知識。

3. National Criminal Justice Organizations

2-3.1 Enhancing Prosecution

The chief prosecutor should take an active role, to the extent possible, in national criminal justice organizations that exist for the purpose of enhancing and advancing the goals of the prosecution function. The obligations a prosecutor undertakes in national organizations should extend only to those that he or she believes can be fulfilled in a diligent and competent manner.

2-3.2 Prosecutorial Input

The chief prosecutor should seek to ensure that national criminal justice organizations undertake all reasonable measures to include the substantial involvement and views of incumbent state and local prosecutors in the research and studies and promulgation of standards, rules, and protocols that impact on the prosecutor and the prosecution function.

Commentary

The prosecutor should participate in local, state, and national affairs for the improvement of the criminal justice system. Activities that the prosecutor might undertake include provisions of information and advice to governmental bodies and citizens' groups, review and consideration of pending state and national legislation, and participation in criminal justice- related programs or projects. A good prosecutor is a good attorney and would be expected to be active in his local and state bar associations.

The standards recognize the rapid growth in community organizations in the last 20 years devoted to specific interests, such as DUI enforcement, rape prevention/counseling programs, spousal and child abuse prevention, drug education programs, and neighborhood watch programs, to name just a few. An interested and informed citizenry can be a valuable partner in law enforcement. The standards encourage prosecutors in communities lacking such grass- roots organizations to consider appropriate ways and means whereby citizen interest in their formation can be stimulated.

Because the office of the prosecutor is a local one, the responsibilities placed on this office are probably more diverse than those at any other level of government which may have the capacities for specialization. For example, citizen complaints may range from how to cope with a neighbor's children to how to collect on a bad check. Expectations from law enforcement agencies and the courts are equally diverse and more demanding. In many jurisdictions, the prosecutor is also the attorney for his county. This responsibility may demand an expertise in taxation, school law, zoning, property law, employee disciplinary law, health law, environmental law, and labor relationships.

若檢察機關被設計成需應付轄區內之特別需求，不僅會帶來沉重的財政負擔，且會造成郡與郡、區與區間工作嚴重疊床架屋。換言之，對於檢察體系來說，由地方啟動、機動性及可責性是不可或缺要素。因此，緩解此問題之方法乃藉由成立全州之檢察官組織來解決，此亦是美國州檢察官協會（NDAA）長期以來懷抱之想法。

而此類組織應由全體檢察官組成，並應有 1 名全職職員。此組織應能積極回應成員之各項需求，其結果將產生不同之功能。人口密集之區域則可能含括了本守則所列之全部項目。

由於該協會之宗旨在於服務檢察官，因此檢察官協會之參與及支持運作是重要的。成為會員應是全體檢察官的責任，會費應由檢察官的預算支付。會員資格不應限於檢察長，亦應開放助理檢察官參與。

此外，認同州律師協會和檢察官協會職能價值之檢察官，更應投入時間，提供志願支援，例如在相關委員會中任職。

同理，地方選出之檢察官及其工作人員，應參與並支援全國性之組織，以促進有效執法之利益。此類組織可為當地檢察官提供其他組織無法提供之討論平台，為全國性之立法及政策決定有效發聲。而其相關計畫包括培訓、出版、技術支援和重點活動（如：毒品執法、受虐兒童執法、環境法律之相關執法等），可為地方檢察官提供高於州層級之視野。若地方檢察機關未能積極參與地方、州和國家協會，將導致彼此競爭關係。重點在於檢察官自願性的投入時間並非不切實際，因為可同時滿足其在工作上之需求。

4. 其他追訴機關

2-4.1 追訴合作

鑑於追求司法正義之共同目標，檢察官應就各自辦公室共同關注的案件，在調查、起訴、撤回或追訴部分，與其他聯邦、州、軍隊、部落和地方追訴機關合作。

If every prosecutor's office were designed on a level of specialization necessary to address each area it is responsible for, it would not only be a tremendous (and no doubt prohibitive) financial burden, but also an enormous duplication of effort on a county-by- county or district-by-district basis. On the other hand, local initiative, flexibility, and accountability are essential factors that must be maintained in prosecution. Thus, one method of alleviating this problem is through a statewide association of prosecuting attorneys, a concept that NDAA has long fostered.

Such an association should be made up of all local prosecutors in a state and should have a full-time staff. This organization must be responsive to the needs of its members. As a result, the various functions will differ. However, those areas of concentration may include those items set forth in the standard.

Because the purpose of such an association is to serve prosecutors, it is imperative that they be involved and support the operation of the association. Membership should be the responsibility of all prosecuting attorneys, and dues should be paid through the prosecutor's budget. Membership should not be limited to chief prosecutors but should be open to assistants as well.

In addition, prosecutors who recognize the value of the functions of their state bar associations and prosecutors' associations should be willing to commit time in volunteer support, such as serving on committees.

Likewise, the locally elected prosecutor and his staff should participate in and support their national organization for the advancement of the interests of effective law enforcement. The organization provides a forum for the local prosecutor that no other organization can and an effective voice in national legislative and policy-making activities. The programs of training, publications, technical assistance, and focused activities (such a drug enforcement, child abuse enforcement, environmental law enforcement, etc.), provide the local prosecutor with a perspective that reaches beyond the state level. The failure of local prosecution to be active in local, state, and national associations will result in the advancement of competing entities. At the same time, it is important that prosecutors not volunteer their time unrealistically and are able to meet the demands of their undertakings.

4. Other Prosecutorial Entities

2-4.1 Prosecutorial Cooperation

In recognition of their mutual goal of serving the interests of justice, the prosecutor should cooperate with other federal, state, military, tribal and local prosecutorial entities in the investigation, charging, dismissal, or prosecution of cases that may be of common concern to their respective offices.

2-4.2 共同追訴

檢察官應建立程序，盡可能探知被告之相似行為是否經其他有管轄權機關調查中或將被起訴之可能性；且應在偵查中與相關追訴機關相互合作，避免不必要之重複追訴，亦如減少一事不再理或免訴等偵查瑕疵。

2-4.3 資源共享

檢察官在合法及必要情況下，應分享資源及調查資訊給其他偵查機關，以確保司法正義得以實現;而不應考量政治力介入及黨派利益之影響。

2-4.4 通報不當行為之義務

檢察官得知其他檢察官有不當行為或不適任情形時，其應依照本守則第 1-1.6 規定呈報。當此行為牽涉到其他追訴機關之檢察官，而可能影響到司法行政運作時，檢察長應向其他追訴機關之監督者通報。

當檢察長發現其他檢察署檢察官有違反道德準則之行為，且此行為可能影響到其身為檢察官之適任性時，亦應向有管轄權之適當考核機構通報。

2-4.5 司法正義之促進

雖然檢察署及州檢察總長辦公室分屬不同機關，仍應共同促進司法正義之實現。

2-4.6 州檢察總長之協助

在州檢察總長有刑法管轄之地區，州檢察總長在地方檢察官要求下或法律規定授權下，應協助地方檢察官。當有案件涉及管轄競合而為避免不正義或法律資源無效利用時，州檢察總長經要求，得在地方檢察官間扮演居間協調之角色。

2-4.2 Coordinated Prosecutions

The prosecutor should establish procedures for ascertaining, to the extent possible, the likelihood that the defendant will be investigated and/or prosecuted by other jurisdictions for similar conduct, and coordinate prosecutions with the relevant prosecutorial agencies, in order to avoid unnecessarily duplicative investigations and/or prosecutions and to avoid impediments to prosecution such as defense claims of double jeopardy or grants of immunity.

2-4.3 Resource Sharing

The prosecutor should share resources and investigative information with other prosecutorial entities, when permitted by law and to the extent necessary, to ensure the fullest attainment of the interests of justice, without regard to political affiliation or partisan interest.

2-4.4 Duty to Report Misconduct

When a prosecutor has knowledge of misconduct or incompetence by another prosecutor, he or she should report that information in accordance with Standard 1-1.6. When the misconduct or incompetence involves the conduct of a prosecutor from another prosecutorial entity and it has the potential to interfere with the proper administration of justice, the chief prosecutor should report such conduct to the supervisor of the other prosecutorial entity.

When the chief prosecutor has direct knowledge of a violation of the rules of ethical conduct by a prosecutor in another office, he or she shall also report such ethical misconduct to the appropriate bar disciplinary authority in the relevant jurisdiction, provided such misconduct raises a substantial question as to the prosecutor's fitness to practice law.

2-4.5 Furtherance of Justice

The office of the prosecutor and the office of the state attorney general, where separate and distinct entities, should cooperate whenever practicable in the furtherance of justice.

2-4.6 Attorney General Assistance

In those states where the attorney general has criminal law responsibilities, the state attorney general may assist in local prosecutions at the request of the local prosecutor or otherwise as authorized by law. The state attorney general may also, when requested, play a role in mediating between local prosecutors when the possibility arises of prosecution in multiple jurisdictions, if such mediation is necessary to avoid injustice or the inefficient use of law enforcement resources.

評論

檢察官無論在哪個地區都有尋求正義之責任。鑑於高度流動之社會和日益增進之犯罪方法，追求正義有時必須超越管轄。基於此原因及充分符合首要責任，各級檢察機關應在最大程度上相互合作。此合作可達成更有效率及更高效益之調查，避免重複追訴，並對准許豁免之結果有更全面瞭解。

隨著合作強化，檢察官知悉其他檢察官之不當行為或不適任行為之可能性增大。正如不能坐視其管轄範圍內之此種行為，檢察官亦無法忽視其他檢察官之不當行為，是本守則列出了如何因應之方針。

檢察總長未經請求之介入不能促進正向之合作關係。本守則對州檢察總長進行介入之基本建議，僅限於地方之檢察官提出請求時。乃因在美國法律執行之主要負擔仍在於地方執法機關，亦即案件之起訴和調查工作都是由地方檢察署進行的。

5. 執法機關

2-5.1 溝通

檢察長應積極尋求改善其辦公室與其他執法機構間之溝通。檢察官在其轄區內應建立刑事訊息共享系統，並鼓勵全體調查單位共同使用。

2-5.2 案件進行狀態之建議

為了幫助執法人員履行職責，檢察長在可行情況下要讓地方執法人員能夠瞭解其所參與之案件，並提供該案件之相關信息。

2-5.3 執法之培訓

檢察長應促進相互合作，在可能情況下協助執法單位之訓練。檢察官亦應鼓勵當地執法人員參與由國家、州或地區提供之合適訓練課程。

Commentary

Every prosecutor, regardless of jurisdiction, has the responsibility to seek justice. Given our highly mobile society and the increasing methods by which crimes are committed, the quest for justice must sometimes cross jurisdictional lines. For that reason and to fully comply with their primary responsibility, prosecutors at all levels should cooperate to the fullest extent possible. Such cooperation can result in more efficient and effective investigations, the avoidance of double jeopardy claims, and a fuller awareness of the consequences of grants of immunity.

With increased cooperation, there is the increased possibility of a prosecutor gaining knowledge of another prosecutor's misconduct or incompetency. Just as one cannot turn a blind eye or deaf ear to such conduct in one's own jurisdiction, a prosecutor cannot ignore misconduct in another. The standard outlines the required course of action.

Intervention by the attorney general that is not requested is not likely to foster necessary, positive working relationships. The standard recommends that intervention by the state attorney general be only at the request of the local prosecutor. The major burden of law enforcement in America falls upon local law enforcement, and it is to the local chief prosecutor that such agencies turn for the prosecution of their cases and the initiation of investigations.

5. Law Enforcement

2-5.1 Communications

The chief prosecutor should actively seek to improve communications between his or her office and other law enforcement agencies. The prosecutor should prepare and encourage the use of uniform information sharing systems by all criminal investigative agencies within his or her jurisdiction.

2-5.2 Case Status Advisements

When it is practical to do so, the chief prosecutor should keep local law enforcement agencies informed of cases in which they were involved and provide information on those cases in order to aid law enforcement officers in the performance of their duties.

2-5.3 Law Enforcement Training

The chief prosecutor should encourage, cooperate with and, where possible, assist in law enforcement training. The prosecutor should also urge local law enforcement officers to participate in national, state, and regional training courses available to them.

2-5.4 訓練之檢方協助

檢察長應定期舉辦課程、討論或研討會以協助執法人員進行持續培訓，使之熟悉轄區內最新之法院判決、法律修正及刑事程序規則改變等。

2-5.5 聯絡窗口

檢察長應要求司法管轄範圍內各主要執法機關至少指派一名專職檢察官辦公室人員擔任各辦公室間之聯絡人，並使其向機構內相關人員提供刑事案件進展和處理情況。

2-5.6 法律諮詢

雖刑事執法機構、個別執法人員非係案件之當事人或檢察署之員工，檢察官仍可對執法單位提供特定追訴之個別法律諮詢。檢察官之建議可包括刑法之正確解釋、證據是否足以支持刑事指控或逮捕、對於物證搜查及電子監控等令狀之取得，及類似之有關刑事案件調查事項等。檢察官並應致力於促進合法之調查方式，使之足以通過司法審查，亦應鼓勵執法人員盡早尋求案件調查之法律意見。檢察官在可能之情況下，亦應指定連絡窗口以接受和受理各別執法機關之法律諮詢。但檢察官應留意超出傳統起訴職權範圍之活動，可能導致其喪失法院賦予之民事責任訴訟豁免權。

評論

維持檢察官和執法機關間之良好關係，對於刑事司法功能之順行是有必要的。雙方都有促進、維護和改善工作關係之義務，並應發展出有利於交換想法及訊息之交流方式。

刑事司法乃法律之一體系，而警方是其中之要件。此體系時有遭遇法院判決矛盾、輿論壓力、有效執法和個人權利保障平衡等之問題。警方必常面臨許多此類問題，而為了緩和此類問題之困境，檢察官可在審前之刑事程序中教育警方，包括搜索扣押、逮捕程序、武力使用限制及詢問技巧等。特別是針對於各種證據排除規則之證據採用，檢察官有責任教育警方

2-5.4 Prosecution Assistance in Training

The chief prosecutor should assist in the on-going training of law enforcement officers by conducting periodic classes, discussions, or seminars to acquaint law enforcement agencies within their jurisdiction with recent court decisions, legislation, and changes in the rules of criminal procedure.

2-5.5 Liaison Officer

The chief prosecutor should request that each major law enforcement agency within his or her jurisdiction assign at least one officer specifically to the prosecutor's office. That officer should serve as a liaison between offices and should be available to perform the duty of informing concerned officers within the officer's agency of the progress and disposition of criminal cases.

2-5.6 Legal Advice

Although law enforcement agencies or individual law enforcement officers are not clients in criminal cases or employees of the prosecutor's office, the prosecutor may provide independent legal advice to local law enforcement agencies concerning specific prosecutions. This advice may include the proper interpretation of the criminal laws, the sufficiency of evidence to commence criminal charges or arrest, the requirements for obtaining search warrants for physical evidence and electronic surveillance, and similar matters relating to the investigation of criminal cases. The prosecutor should serve in such an advisory capacity to promote lawful investigatory methods that will withstand later judicial inquiry. The prosecutor should encourage law enforcement officers to seek legal advice as early as possible in the investigation of a criminal case. Where possible, the prosecutor should identify a primary point of contact within the prosecutor's office to receive and refer legal inquiries from particular law enforcement agencies. However, the prosecutor should be aware that activities of this nature that go beyond the traditional prosecution function could result in the loss of her/his immunity afforded by the courts from civil liability suits.

Commentary

The maintenance of good relationships between the prosecuting attorney and the law enforcement agencies within the community is essential for the smooth functioning of the criminal justice system. Both parties have the burden of fostering, maintaining, and improving their working relationship and developing an atmosphere conducive to a positive exchange of ideas and information.

The criminal justice system, of which the police are only one element, is a structure of law. Many times, this structure suffers from seemingly contradictory court decisions, public pressure, and the problems that arise in trying to balance effective law enforcement and the protection of

關於法院判決之見解及影響，及在特別案件中法院對於證據排除之具體適用。在執行此項功能時，檢察官須認知並遵循對其職責之限制，並對於包含在倫理和專業規則中之代表人或團體之通訊禁止。

檢察官對於當地執法單位之培訓及專業化具有利害關係。執法單位對於案件之處理往往與檢察官案件之成功與否有重大攸關。因此，檢察官應鼓勵當地警方盡可能的參與州、地區或國家舉辦之課程計畫。若如此之課程並不存在或無法提供給轄區內之警方時，檢察官該去促進此類課程，因為似此之訓練將導致更多成功之犯罪追訴。除了警方訓練之表面效果外，亦是人際關係建立與個別警察間溝通之絕佳機會。

檢察官應告知警方刑事調查之法律面向。該法律諮詢功能僅適用於刑事問題，不應與警察內部之法律顧問功能混淆。若此一顧問角色給予了警方人員在民事或人事業務上之諮詢，則已超出了檢察署之職責範圍。在許多案例中，似此之顧問角色將使檢察官與其負責起訴之義務職責發生利益衝突。

進一步說，檢察官係被限制於積極參與警方功能之外，若其參與已經超出顧問之範圍時，可能造成無法在民事賠償中之免責，且已非司法程序之必要部分。檢察官必須始終認知到其民事準司法免責權僅限於傳統之檢察功能行為。

檢察官與執法機關間建立健全溝通管道之責任是雙向的。對於檢察官而言，其責任在於使警方知悉案件之偵查、起訴及相關進度。為保持刑事訊息流通管道之流暢以利雙方溝通，其中一個方法是建置資訊分享系統，藉由此系統可將全部有利於推動偵查之資料及時的傳遞。

the rights of individuals. The police face many of these problems. To alleviate these problems, the prosecutor could educate the police in the area of pre-trial criminal procedure, including search and seizure law, the arrest process, the use of force, and interrogation. In particular, with respect to the various exclusionary rules pertaining to the admissibility of evidence, the prosecutor has a responsibility to educate the police on the effect of court decisions in general and their application in specific cases where evidence was suppressed by a trial court. In performing such a function, the prosecutor must be aware of and follow the constraints imposed by duties of candor and restrictions on communication with represented persons or parties that may be included in ethical and professional codes to which they are subject.

The prosecutor has a large stake in the training and professionalization of local law enforcement. Its handling of a case is often crucial to the prosecutor's success. Therefore, the prosecutor should encourage the local police to participate to the fullest extent possible in training programs operated on state, regional, and national levels. If such a program does not exist or is not available to police in the jurisdiction, it is in the prosecutor's best interest to promote the development of such a program. Such training should result in more successful prosecutions. Besides the face value effectiveness of police training, it is an excellent opportunity to establish personal rapport and communications with individual police officers.

The prosecutor should advise the police on the legal aspects of criminal investigations. This advisory function pertains only to criminal matters and should not be confused with the function of police in-house counsel. Assuming the role of an advisor to any member of the police department on civil or personal matters is beyond the scope of the duties of the office of prosecuting attorney. In many cases, such a role would place the prosecutor in a position of possible conflict of interest with other duties prosecution is obliged to perform.

Furthermore, the prosecuting attorney may be restricted from any active participation in the police function by the threatened loss of immunity to civil damages in instances where participation is beyond the scope of advisor and, therefore, not an integral part of the judicial process. The prosecutor must always be cognizant that his quasi-judicial immunity afforded by the courts in civil liability suits is limited to actions taken in advancement of the traditional prosecution function.

The responsibility for sound communications between the prosecutor and law enforcement agencies is mutual. It is a goal of the prosecutor to keep police informed of developments in investigations, trials, and related matters. Both entities must seek to develop and implement systems and procedures that facilitate and enhance communications. One method of providing a consistent flow of information about all criminal matters is the development and use of a uniform information sharing system. Such systems ensure that all information necessary for successful investigations and prosecutions is available to all concerned parties in a timely manner.

6. 法院

2-6.1 尊重法院

檢察官應始終表現對司法系統及法院之適當尊重。

2-6.2 尊重法庭

檢察官應積極尋求一切適當論證途徑。但採取此類行動之方式不得貶抑司法之功能。

2-6.3 不當之影響

除法律或法院授權外，檢察官不得利用其與法官之任何私人關係，或就訴訟標的與法官進行任何單方接觸而以不公方式影響司法公正。

2-6.4 懷疑有刑事不法行為之處理

當檢察長合理懷疑司法體系之成員涉及刑事不法行為時，應採取合法之偵查行動以證實或排除其懷疑。若嫌疑經證實時，應開始偵查或移轉至其他檢察署審查，或指定特別檢察官偵辦。

2-6.5 通報刑事不法行為之義務

知悉司法體系之人員有違犯司法倫理相關規定，且 / 或導致法官適任性之疑義時，檢察官有義務呈報其長官。若係檢察長知悉上開情事，應直接反應至其轄區內掌管司法政風之機關。

2-6.6 迴避之適用

當檢察官因事實、情況、法律或司法倫理等有合理懷疑時，可以請求法官迴避。

評論

檢察官是法院之官員，是需要對其管轄權負責之公務人員，也是刑事

6. The Court

2-6.1 Judicial Respect

A prosecutor shall display proper respect for the judicial system and the court at all times.

2-6.2 Respect in the Courtroom

A prosecutor should vigorously pursue all proper avenues of argument. However, such action must be undertaken in a fashion that does not undermine respect for the judicial function.

2-6.3 Improper Influence

A prosecutor should not seek to unfairly influence the proper course of justice by taking advantage of any personal relationship with a judge, or by engaging in any ex parte communication with a judge on the subject matter of the proceedings other than as authorized by law or court order.

2-6.4 Suspicion of Criminal Misconduct

When a chief prosecutor has a reasonable suspicion of criminal conduct by a member of the judiciary, the prosecutor should take all lawful investigatory steps necessary to substantiate or dispel such suspicions and, if substantiated, should initiate prosecution or refer the case to another prosecutor's office for review or appoint a special prosecutor in the case.

2-6.5 Responsibility to Report Misconduct

When a prosecutor has knowledge of conduct by a member of the judiciary that may violate the applicable code of judicial conduct and/or that raises a substantial question as to the judge's fitness for office, the prosecutor has the responsibility to report that knowledge to his or her supervisor or if the chief prosecutor, directly to the relevant judicial conduct authority in his or her jurisdiction.

2-6.6 Application for Recusal

When a prosecutor reasonably believes that it is warranted by the facts, circumstances, law, or rules of judicial conduct, the prosecutor may properly seek that judge's recusal from the matter.

Commentary

The prosecutor is an officer of the court, a public official accountable to those of his jurisdiction, and a hub of the criminal justice system. All of these dimensions influence the

司法體系之樞紐。這些面向都會影響檢察官與法院之關係。

本守則承認法官與其他刑事程序角色一樣，有著不同之專業、技能及性格。儘管有些法官個性較好，也有法官個性有著社會上常見之缺陷。因此，當檢察官需要對司法機關保持應有之尊重時，亦有責任對抗不潔身自愛法官之罕見的權力濫用。

由此來看，需要在雙方維持在一個微妙平衡上。如同國家檢察官守則規定，有效率的司法是最重要之議題。因此，檢察官不應破壞對司法權之尊重，亦不可企圖不公正的影響法院。

當司法醜聞被揭發時，均將成為對全體司法體系之指控，並造成公眾認為所有司法人員都是腐敗的印象。檢察官須成為對抗不正義與貪腐之守護者，不可坐視刑事犯罪之不法行為。本守則認為檢察官有合理懷疑司法人員涉及刑事犯罪時，就有責任進行調查，若調查結果係起訴時，必須依適當程序進行。

本守則明確主張，檢察官在於法官涉及犯罪不法時有責任外，當法官無法完全適任其工作時亦有責任。

7. 犯罪嫌疑人及被告

2-7.1 與犯罪嫌疑人及被告之交談

檢察官應尊重犯罪嫌疑人及被告等得以請求辯護人協助之憲法上權利。檢察官亦應確保受其指揮監督人員尊重犯罪嫌疑人及被告等上揭憲法上之權利。儘管如此：

(1) 辯護人已同意或 (2) 經法律授權或經法院裁定或命令時，檢察官可在未有辯護人協助下與犯罪嫌疑人或被告進行交談。

檢察官與他案中被控為被告之證人（目擊者），在未經該證人（目擊者）辯護人事先許可下，對於該證人（目擊者）之證詞，可在不涉及該案件及內容不違反任何管轄區域內規則或法律之前提下進行交談。

prosecutor's relationships with the court.

The standard recognizes that judges, like all figures in the criminal justice system, are individuals of diverse talents, skills, and temperaments. While some are of superior character, others suffer from human frailties not uncommon in our society. Thus, while the prosecutor needs to have proper respect for the institution of the judiciary, at the same time, he has

a responsibility to guard against the infrequent abuses from those who fail to honor their responsibilities while serving on the bench.

While this approach may require a delicate balance, it is necessary both inside and out of the courtroom. As is true of all National Prosecution Standards, effective justice is the paramount issue. Therefore, the prosecutor should neither undermine respect for the judicial function nor in any manner attempt to unfairly influence the court.

When judicial scandals are uncovered, they become an indictment of the entire criminal justice system, creating a public perception that all those involved in the system are corrupt. The prosecutor must assume the role of guardian against injustice and corruption. It is unacceptable to turn a deaf ear to suspicions of criminal activity or misconduct. The standard places a duty on the prosecutor to follow through with a thorough investigation when there is reasonable suspicion of criminal activity by a member of the judiciary. If the investigation dictates prosecution, the prosecutor must take the appropriate steps to see that it is commenced.

The standards make it clear that the prosecutor has responsibilities not only when misconduct is at the level of criminal activity, but also when a judge demonstrates the inability to carry out his duties with a minimal level of competence.

7. Suspects and Defendants

2-7.1 Communications with Represented Persons

A prosecutor should respect a suspect's and defendant's constitutional right to the assistance of counsel. A prosecutor should also take steps to ensure that those persons working at his or her direction respect a suspect's and defendant's constitutional right to the assistance of counsel. Notwithstanding the foregoing:

A prosecutor may communicate with a defendant or suspect in the absence of his counsel when either (1) counsel has consented to the communication or (2) the communication is authorized by law or court rule or order.

A prosecutor may communicate with a witness who is also charged as a defendant in an unrelated criminal matter about the witness's upcoming testimony without the advance permission of the witness's attorney so long as the prosecutor does not discuss the criminal charges pending against the witness and the communication does not violate any rules or laws of the jurisdiction.

2-7.2 與未選任辯護人之被告交談

當檢察官與未選任辯護人之被告交談時，須確認被告在過程中受有誠實、公正、全面地告知其可能之刑事責任。

檢察官應向被告表明其身分為檢察官，並確立檢察官不代理被告的立場。法律要求在這種情況下，檢察官應充分告知被告擁有之權利。

若檢察官在與未有辯護人協助之被告進行交談中，被告改變主意並表達希望擁有辯護人協助之願望時，檢察官應立即中斷交談，以讓被告取得辯護人協助或是讓辯護人在場。在適當時候，檢察官應告知被告關於選任辯護人之程序。

2-7.3 未經請求之通信

無論被告是否有選任辯護人，檢察官都可能會收到、接受及利用來自於被告自發性之書面信函。若檢察官不知道被告是否有律師代理，則可於無事先通知之情況下接收被告主動提出之口頭通訊，且不必擔負事先查明被告是否有正當理由進行通訊或被告是否由律師代理之義務。但有時可能出現刑事被告由律師代理但要求無律師在場下即就代理事項與檢察官進行通訊之情況。則於進行此類通訊前，檢察官應事先確定被告是否已表達於律師不在場下與檢察官進行通訊之正當理由。若確定屬實，則僅於法律或法院授權命令下始能與被告進行通訊。

2-7.4 認罪協商

若檢察官與未委任律師之被告進行認罪協商，應確保被告了解協商時之權利、義務和責任。在可能的情況下，協商應製作書面，並提供被告一份副本。檢察官不可以不公正之方式利用未選任辯護人之被告。除聘請律師之建議外，檢察官不可提供任何法律諮詢建議給未選任律師的被告。

2-7.2 Communication with Unrepresented Defendants

When a prosecutor communicates with a defendant charged with a crime who is not represented by counsel, the prosecutor should make certain that the defendant is treated with honesty, fairness, and with full disclosure of his or her potential criminal liability in the matter under discussion.

A prosecutor should identify himself or herself to the defendant as a prosecutor and make clear that he or she does not represent the defendant. If legally required under the circumstances, the prosecutor should advise the defendant of his or her rights.

If a prosecutor is engaged in communications with a charged defendant who is not represented by counsel and the defendant changes his or her mind and expresses a desire to obtain counsel, the prosecutor should terminate the communication to allow the defendant to obtain counsel, or to secure the presence of counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.3 Unsolicited Communications

A prosecutor may receive, accept and use unsolicited written correspondence from defendants, regardless of whether the defendant is represented by counsel. If the prosecutor does not know that the defendant is represented by counsel, a prosecutor may receive unsolicited oral communications from defendants, of which he or she has no advance notice, without any duty of first ascertaining whether or not there is a valid reason for the communication or whether or not the defendant is represented by counsel. However, the situation may arise where a defendant who has been charged with a crime is represented by counsel, but requests to communicate with a prosecutor on the subject of the representation out of the presence of his or her counsel. Before engaging in such communication, the prosecutor should first ascertain whether the defendant has expressed a valid reason to communicate with the prosecutor without the presence of his or her attorney, and if so, should thereafter communicate with the defendant only if authorized by law or court order.

2-7.4 Plea Negotiations

If a prosecutor enters into a plea negotiation with a defendant who is not represented by counsel, he or she should seek to ensure that the defendant understands his or her rights, duties, and liabilities under the agreement. When possible, the agreement should be reduced to writing and a copy provided to the defendant. The prosecutor should never take unfair advantage of an unrepresented defendant. The prosecutor should not give legal advice to a defendant who is not represented by counsel, other than the advice to secure counsel.

2-7.5 法律諮詢權

若檢察官與未委任辯護人或辯護人不在場之被告進行交談，被告改變心意想要委任辯護人或請求辯護人在場時，檢察官應終止交談，允許被告選任辯護人或聯絡辯護人到場。在適當時機，檢察官於程序中應建議被告委任辯護人。

2-7.6 在偵查程序與辯護人之交談

檢察官執行犯罪偵查任務時，對於辯護人未到場之被告或犯罪嫌疑人應避免予以恐嚇或促使進入依法律或法院命令之協商。

檢察官可建議或授權執法人員與辯護人未到場之犯罪嫌疑人進行秘密協商，但必須要有法律或法院命令之授權。

評論

檢察官與被告之關係對於檢察功能是一個敏感區域。因此應平衡被告在與檢察官打交道時，由律師代理之普遍期望，以及被告於交通案件和輕罪，甚或特定重罪或較重輕罪中無律師代理下之權利。

本守則認為檢察官有時可不必知會辯護人就與被告進行協商，同時也有理由可直接進行雙方之交談。譬如被告表示其辯護人係受雇於其他人，並為他人之利益，期望被告能保持緘默。如在毒品案件，有傳遞者被查獲交易大量毒品及現金，立刻有辯護人接近被告，並保釋被告，且無待被告表示即代理被告；但被告卻抱怨該辯護人實係為他人之利益而工作，然因實際上或假設性之危險存在，不敢解除辯護人之委任。同樣情形，被告可能是公司之高階主管、雇主或代表人，面臨對於個人指控及對於公司指控時，辯護人之代理公司亦等於代理個人，但此時卻可能因個人之未察覺，或未察覺到利益衝突之存在。

檢察官與已選任辯護人之被告交手時必須提高警覺，因交談中不僅有憲法之限制；並在大部分管轄區域，甚至有司法倫理之限制，且是辯護

2-7.5 Right to Counsel

If a prosecutor is engaged in communications with a defendant who is not represented by counsel or whose counsel is not present, and the defendant changes his mind and expresses a desire to obtain counsel, or to have counsel present, the prosecutor should terminate the communication in order to allow the defendant to obtain counsel, or to secure the presence of his or her counsel. When appropriate, the prosecutor should advise the defendant on the procedures for obtaining appointed counsel.

2-7.6 Communications with Represented Persons During Investigations

A prosecutor performing his or her duty to investigate criminal activity should neither be intimidated nor discouraged from communicating with a defendant or suspect in the absence of his or her counsel when the communication is authorized by law or court rule or order.

A prosecutor may advise or authorize a law enforcement officer to engage in undercover communications with an uncharged, represented suspect in the absence of the suspect's counsel, provided such a communication is authorized by law or court order.

Commentary

Relationships with defendants is a sensitive area of a prosecutor's function. There must be a balancing of the general desirability to have defendants represented by counsel in their dealings with prosecutors and the right of defendants to represent themselves in traffic cases and minor misdemeanors, and even in felonies or serious misdemeanors under certain circumstances.

The standard recognizes that prosecutors are sometimes contacted by defendants without the knowledge of their counsel and give good reasons for their direct communications with the prosecutor. For example, a defendant may express that his attorney was hired by another person with an interest in keeping him quiet, to his legal detriment. In drug cases where couriers are caught transporting large amounts of drugs or cash, defendants may have attorneys appear, bail them out, and begin representation without the express authority of the defendant. Defendants complain that these attorneys are working for other interests, but they are afraid to discharge them because of actual or assumed danger. Similarly, a defendant may be the officer, employee, or agent of a corporation and face individual charges in addition to those against the corporation, where counsel for the corporation represents that he is also counsel for the individual. This situation may exist without the individual's knowledge or without the individual's knowledge of an inherent conflict of interest in the representation.

Prosecutors must be aware that in dealing with represented defendants, there are not only constitutional limitations on their communications, but also, in most jurisdictions, there are limitations imposed by ethical rules, which generally cannot be waived by the represented

人代表之被告所不能放棄的。是檢察官只有在不尋常之情況下，才可不先告知或知會辯護人，而接觸已選任辯護人之被告。在其他情形下，檢察官則最好先向法院取得授權，或經指定「影子辯護人」後再會見被告，且應向法院報告所有作為才是妥適的。在有些管轄區域內，可能會提供其他法律管道以讓檢察官在此情況下使用；檢察官也常常接到被告主動寄來之信件，其應有權利接收，且以合法方式加以使用。

本守則認為檢察官與未選任辯護人之被告交談時，可以肯定的是被告須受到公平對待，也應讓被告知所有作為所可能導致之後果。如被告期望轉換為證人之角色，以為政府作證換取檢察官向法院建議給予緩刑之機會時，則應讓被告知道檢察官只能提出建議（若這個案子是可以的），並無法保證如被告所要求之判決。被告即便有為國家作證之合作行為，仍有可能被判決入監服刑。若依當地法律或法律環境有「米蘭達告知」之要求，檢察官應在與被告對話前，先予以告知。本守則是假設檢察官若欲以與被告交談之內容來證明被告犯罪時，應要事先告知被告；於某些情形，檢察官只是要從被告處獲得訊息，而這些訊息並非要用來對被告不利的。但無論如何，為了確保未選任辯護人下之公平性，在被告未經事先警告或放棄權利之情形下，不應擔負對於其不利陳述之責任。

本守則知道有許多被告在未選任辯護人情形下，即想要和檢察官進行認罪協商。許多被告係因已有此程序之經驗，而不想花錢選任辯護人。於此情況下，檢察官仍須充分告知被告之權利及公平之標準。檢察官也須確認被告受到之待遇與有選任辯護人一樣，且書面之認罪協商亦因此才簽立。本守則意識到，若被告無力選任辯護人，且縱使被告一開始即表示無須辯護人代理、在場或協助時，法律仍要求必須滿足被告想得到辯護人協助之願望，是被告之願望在這方面被認為是最重要的。檢察官對於已選任辯護人之被告，在辯護人缺席時，則與被告交談之內容都要做成紀錄。

檢察官有調查犯罪活動之義務，與證人對話時，證人可能是其他不相關案件之被告或嫌疑者。一般來說，如此對話應得到該證人 / 被告辯護人

defendant. That being said, prosecutors may have the right under some uncommon circumstances to communicate with a represented defendant without prior knowledge or presence of his or her attorney. In these and other circumstances, prosecutors might be advised to seek authority from the court or the appointment of "shadow counsel" to interview the defendant and report to the court concerning what action might be appropriate. Some jurisdictions may provide other legal avenues that a prosecutor might use in such circumstances. Prosecutors also often receive unsolicited letters from defendants. They should have the right to receive them and use them in any legal manner.

The standard provides that prosecutors communicating with unrepresented defendants should be certain that they are treated fairly and that defendants be made aware of what could happen to them as the result of whatever actions are taken. For example, suppose a defendant wishes to become a witness for the state in return for a recommendation by the prosecutor that he receive a suspended sentence. The prosecutor must make it known that he cannot guarantee the desired sentence but can only make a recommendation (if that be the case) and that the defendant might indeed be sentenced to a jail term, even with his cooperation on behalf of the state. If local rules or the legal circumstances require Miranda-type warnings be given, the prosecutor should so advise the defendant before any conversation. The standard assumes that a prosecutor will tell a defendant if he intends to use the communications against him. There are circumstances in which a prosecutor will agree to receive information from a defendant but not use it against him. However, to ensure fairness to an unrepresented defendant, he should not be subjected to the liability of incriminating statements without a prior warning and waiver of rights.

The standard recognizes that many defendants wish to negotiate a plea with the prosecutor without representation. Many such defendants are experienced with the system or do not wish the expense of representation. In these circumstances, the prosecutor is held to full disclosure of the defendant's liabilities and a standard of fairness. The prosecutor should make certain that a defendant receives as favorable a disposition as he would have had had he been represented in the circumstances. The desirability of written plea agreements is also noted. The standard recognizes the general legal requirement of fulfilling a defendant's desire for counsel—even if he originally expressed a desire not to be represented or to have counsel present and assisting him—or to obtain counsel if he cannot afford to pay for representation. The defendant's wishes in this regard are recognized as paramount. The prosecutor should make a record of any communications with represented defendants that take place in the absence of counsel.

Prosecutors have a duty to investigate criminal activity. This may involve communicating with witnesses who are also defendants or suspects in unrelated cases. Ordinarily such communications must be made with the approval of the witness/defendant's counsel because the witness is seeking some benefits in the "subject matter of the representation." Whenever a witness/defendant seeks any benefit in his own case, the communication does involve the "subject matter of

之允許，因該證人本即要獲得辯護利益。無論情況如何，證人 / 被告都想要獲得其案件之辯護利益，而此對話都將牽扯到辯護之課題，且諮商也係包括在內的。於某些情形，證人或被告與案子（非選任範圍）不相關時，在沒有辯護人出席情形下，有些對話是法律所准許的。而在未起訴但具有嫌疑之臥底偵查情形中，檢察官可建議警方和嫌犯進行溝通，但此溝通必須明確且經法律授權。

在某些司法管轄區域內，本守則可能與判例及 / 或職業行為規範不一致。檢察官必須謹慎行事，並設法避免採取任何可能危及案件或導致適用規則下不當行為之行動。

8. 辯護律師

2-8.1 專業標準

檢察官與辯護律師之關係應遵守本標準第 1-2.1 條規定之專業標準，無論先前與辯護人之關係是否帶有敵意，檢察官應維持對於辯護人都是公平、一致地對待。

2-8.2 妥適的關係

檢察官與刑事辯護律師公會（Defense Bar）成員之接觸，應努力維持妥適之關係。

2-8.3 合作以實現正義

檢察官應在刑事程序中與辯護人合作，以達到正義實現及個案妥適決定之目的。檢察官對於濫用權利、無意義或僅為擾亂、遲延之辯護要求無須配合。

2-8.4 無罪證據支開示

檢察官應在符合法律及 / 或倫理規範下，適時地揭露無罪或減輕刑責之證據。

the representation," and counsel must be included. In circumstances that remain completely unrelated to the witness/defendant's case (the subject of the representation), a communication may be "authorized by law" even though counsel was not consulted. In circumstances involving "undercover" investigations of an uncharged but represented suspect, a prosecutor can advise police officers to communicate with the suspect so long as the communication is specifically "authorized by law."

In some jurisdictions, these standards may be inconsistent with case precedent and/or rules of professional conduct. The prosecutor must proceed with caution and seek to avoid any action that would jeopardize the case or result in misconduct under applicable rules.

8. Defense Counsel

2-8.1 Standards of Professionalism

The prosecutor should comply with the provisions of professionalism as identified in Standard 1-2.1 in his or her relationships with defense counsel, regardless of prior relationships with or animosity toward the attorney. The prosecutor should attempt to maintain a uniformity of fair dealing among different defense counsel.

2-8.2 Propriety of Relationships

In all contacts with members of the defense bar, the prosecutor should strive to preserve proper relationships.

2-8.3 Cooperation to Assure Justice

The prosecutor should cooperate with defense counsel at all stages of the criminal process to ensure the attainment of justice and the most appropriate disposition of each case. The prosecutor need not cooperate with defense demands that are abusive, frivolous, or made solely for the purpose of harassment or delay.

2-8.4 Disclosure of Exculpatory Evidence

The prosecutor shall make timely disclosure of exculpatory or mitigating evidence, as required by law and/or applicable rules of ethical conduct.

2-8.5 對於犯罪行為之懷疑

當檢察官對於辯護人之犯罪行為有合理懷疑時，有義務採取適當行動以證實或排除此項懷疑。

2-8.6 對於違反律師倫理之報告義務

當檢察官得知辯護人有違反律師倫理之行為，致有不適任法律業務執行之情形，應向其長官報告。知悉此情形之檢察長，應直接將情形報告給對該辯護人有管轄權之律師懲戒機構。任何檢察官在訴訟程序中發現此種不當行為時，亦應向主持審判之法官或其上級長官報告，並在符合法院規定下，請求適當懲處。

2-8.7 避免對所代表之客戶產生偏見

當檢察官確信辯護人有不當行為時，應針對該辯護人究責，而非其客戶。檢察官應隨時確保對於沒有參與不當行為之被告，不因其辯護人有違法或違反倫理之行為而產生偏見。

註釋

司法制度中，必須適當考量的是辯護人之專業。辯護人針對法庭上之攻防，所有討論都應坦率和公平，且不應表現出明示或暗示之敵意或不尊重。檢察官應努力與辯護人維護協商公平性，且勿對辯護人產生敵意或不良情緒，以免對該辯護人之客戶造成損害。

在任何情況下，檢察官都要有追求正義之精神，與自願提供信息之辯護人，或辯護人自願之協助、合理之請求等都可進行協力。若辯護人有辱罵、無聊或純粹延誤庭期行為時，檢察官則不須與之合作，而可請求法院裁示。無論如何，即使辯護人未顯現專業度，檢察官依法律和倫理守則規定，仍有證據開示之義務。

若檢察官與辯護人互動過程懷疑該辯護人參與犯罪活動時，檢察官應

2-8.5 Suspicion of Criminal Conduct

When a prosecutor has reasonable suspicion of criminal conduct by defense counsel, the prosecutor has a responsibility to take appropriate action.

2-8.6 Responsibility to Report Ethical Misconduct

When an assistant or deputy prosecutor has knowledge of ethical misconduct by defense counsel that raises a substantial question as to the attorney's fitness to practice law, the prosecutor should report such conduct to his or her supervisor. Any prosecutor who has knowledge of ethical misconduct by defense counsel which raises a substantial question as to the attorney's fitness to practice law should report such conduct directly to the appropriate bar disciplinary authority in his or her jurisdiction. When such misconduct occurs during the course of litigation, the prosecutor should also report it to the judge presiding over the case or to his or her supervisor, if required by office policy, and may seek sanctions as appropriate.

2-8.7 Avoiding Prejudice to Client

When the prosecutor believes that the defense counsel has engaged in misconduct, remedial efforts should be directed at the attorney and not at his or her client. The prosecutor should at all times make efforts to ensure that a defendant who is not involved in misconduct is not prejudiced by the unlawful or unethical behavior of his or her attorney.

Commentary

As with the judiciary, appropriate professional consideration is due opposing counsel. All actions directed at opposing counsel and all deliberations with opposing counsel should be conducted with candor and fairness and should be presented without any express or implied animosity or disrespect. The prosecutor should strive to maintain uniformity of fair dealing with all defense counsel and should endeavor to not allow any prior animosity or bad feelings toward a particular defense attorney to work to the detriment of that attorney's client.

In the spirit of seeking justice in all cases, the prosecutor should cooperate with defense counsel in providing information and other assistance as volunteered by the prosecutor or reasonably requested by defense counsel. In the event defense counsel makes demands that are abusive, frivolous or made solely for the purpose of delay, the prosecutor need not cooperate with such demands and may seek court guidance on what must be provided. The prosecutor must be mindful that at all times, even when defense counsel is not acting in a professional manner, there are discovery obligations dictated by law and ethical codes that must be fulfilled.

If at any time during his or her association with defense counsel a prosecutor suspects the attorney of involvement in criminal activity, the prosecutor should take such action as necessary,

採取必要行動，包括告知其主管、法官、執法部門、州律師代表或其他適當機關。

本守則規定，助理檢察官或副檢察官知悉辯護人有道德之不法行為，並將引起適任性問題時，應往上呈報。某些行為在某管轄區內，並不違反倫理規則時，助理或副檢察官不能舉報辯護人有不當行為，檢察長也才不會因之而有不當作為。且報告須及時進行，才不會損害被告之利益。

司法界普遍存在一個謠傳，誤以為辯護人在案件中較檢察官有更大之迴旋操作空間。此空間往往係基於必須平衡以避免讓所有資源集中在單一方面之理由。然而，在考量到對抗制之訴訟目的，及訴訟程序中已設有防衛措施等情況下，如此之理由係錯誤的。法庭並非舞台，而是討論會性質之場合；法院應維持控方與辯方間審判禮儀之一致性，避免可能對法官及陪審團造成不當影響之戲劇化表現。檢察官則應讓法官注意到其未能維持該一致性，並應維持一個為公眾服務專業人員該有之高水準行為表現。

9. 被害人

2-9.1 傳達給被害人之資訊

依犯罪被害人之聲請或依法律規定，檢察官應於可行限度內將刑事司法程序之各重要階段通知犯罪被害人。檢察官應了解其特定司法管轄範圍內被害人權法規規定之任何義務。檢察官並應留意提供予被害人的資訊範圍，要兼顧個案的公平及程序保障的必要性。

2-9.2 被害人說明會

檢察長在可能範圍且認為適當時，應為犯罪被害人提供一場審判程序說明會，並應就偵查決定及該決定之思考脈絡進行說明。在可行情況下，更應該給予虐童或家暴之被害人及家屬特別說明會。

including speaking to a supervisor, judge, law enforcement, state bar representative or other proper authority.

The standard requires that an assistant or deputy prosecutor who has knowledge of ethical misconduct by defense counsel which raises substantial question as to the attorney's fitness to practice law report such conduct to his or her supervisor. The assistant or deputy prosecutor needs to be aware that in some jurisdictions, such action may not be sufficient to comply with the ethical rules, and failure to report the defense attorney's misconduct, if the chief prosecutor does not, may, in itself, be misconduct by the assistant prosecutor. The timing of such report should be coordinated so as not to prejudice the defendant.

One continuing myth that pervades the judicial process is the misconception that the defense attorney should be allowed greater leeway in the presentation of his case than the prosecutor. This leeway is often sought to be justified on the grounds that it is necessary to counter-balance the more prolific resources of the state brought to bear upon a single individual. Such reasoning is fallacious, however, when viewed in relation to the purpose of the adversary proceeding and the safeguards already provided therein. The courtroom is not a stage but a forum, and uniformity of trial decorum by defense and prosecuting attorneys should be maintained by the court to prevent undue influence on judge and jury that might result from theatrical behavior. The prosecutor should be able to bring to the court's attention the failure to maintain such uniformity and should maintain the high standards of conduct befitting a professional advocate in public service.

9. Victims

2-9.1 Information Conveyed to Victims

Victims of crimes should be informed of all important stages of criminal justice proceedings to the extent feasible, upon request or as required by law. The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction. The prosecutor should take care to balance the extent of information provided to the victim with the need to protect the integrity of the case and process.

2-9.2 Victim Orientation

To the extent feasible and when it is deemed appropriate by the chief prosecutor, the prosecutor's office should provide an orientation to the criminal justice process for victims of crime and should explain prosecutorial decisions, including the rationale used to reach such decisions. Special orientation should be given to child and spousal abuse victims and their families, whenever practicable.

2-9.3 被害人之援助

提供犯罪被害人之援助除係法律賦予其他政府機構之法定義務外，檢察長在可能限度內，對於犯罪被害人應制定相關之政策及程序，提供包含但不限於以下之服務內容：

a. 協助取回扣押以供證據使用之財產。

b. 協助申請證人旅費，及法律或規定（當地）之賠償。

c. 判決時，協助取得賠償命令。

d. 對於法院出庭之關懷及陪同。

e. 協助必要交通與住宿安排。

f. 將被害人到庭等待時間降至最低。

g. 盡可能適當地減少所有不方便。

2-9.4 合作協力

檢察官應與其他執法部門協力於：

a. 與犯罪被害人支持者，一同致力於提供直接或相關服務。

b. 除非法院認為依法有必要或必須揭露者外，檢察官與其他執法部門均應致力於保護犯罪被害人之社會安全號碼、生日、地址、電話號碼、受雇地點、名字（當被害人為未成年人或性侵害之被害人時）等隱私權，或其他私人資訊。

2-9.5 設施

在可能情形下，檢察長應確保犯罪被害人有安全、舒適，並避免與被告或其朋友、家屬碰面之等待空間。

2-9.6 被害人補償計畫

檢察官應知悉在州法律下之犯罪被害人補償標準，並告知被害人可能之補償請求權，及其轄區內被害人補償計畫之必要條件。

2-9.3 Victim Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing services to victims of crimes, including, but not limited to the following:

a. Assistance in obtaining the return of property held in evidence;

b. Assistance in applying for witness fees and compensation if provided for by law or local rule;

c. Assistance in obtaining restitution orders at the sentencing;

d. Assistance in appropriate employer intervention concerning required court appearance;

e. Assistance with necessary transportation and lodging arrangements;

f. Assistance in reducing the time the victim has to wait for any court appearance to a minimum; and

g. Assistance in reducing overall inconvenience whenever possible and appropriate.

2-9.4 Cooperative Assistance

The prosecutor should work with other law enforcement agencies to:

a. Cooperate with victim advocates for the benefit of providing direct and referral services to victims of crime; and

b. Assist in the protection of a victim's right to privacy regarding a victim's Social Security number, birth date, address, telephone number, place of employment, name (when the victim is a minor or a victim of sexual assault,) or any other personal information unless either a court finds it necessary to that proceeding or disclosure is required by law.

2-9.5 Facilities

Whenever possible, the chief prosecutor should take steps to ensure that victims have a secure and comfortable waiting area that avoids the possibility of making contact with the defendants or friends and families of the defendants.

2-9.6 Victim Compensation Program

The prosecutor should be knowledgeable of the criteria for victim compensation under state law, and should inform victims with potential compensable claims of the existence and requirements of victim compensation programs within the jurisdiction.

2-9.7 被害人援助計畫

檢察長應在可行限度內，在其行政組織架構下發展及維持犯罪被害人援助計畫，並給予被害人提供服務及援助。

2-9.8 被害人保護

檢察官應留心因犯罪被害人與執法機關之合作，致造成被害人被恐嚇、傷害之可能性。檢察官應清楚其轄區內，可供保護目擊證人之計畫，並應適當的對計畫參與者提供參考及建議。

10. 證人

2-10.1 向證人傳達之資訊

檢察官應向證人告知下列事項：

a. 證人都可能被要求參加所有審前聆訊。

b. 審判日期和證人出庭之時程表。

2-10.2 辯方與證人之聯絡

檢察官不應建議證人（包括被害人）拒絕與辯護人接觸或提供訊息。檢察官應建議，證人於法庭外並無義務提供訊息予辯方。檢察官亦可告知對於提供信息予辯方之意義及可能之後果。

2-10.3 有法律代表之證人

當檢察官獲知證人於刑事程序取得法律上代表權限時；檢察官應依照程序規定，透過證人的律師安排與該證人就該訴訟標的進行之所有庭外接觸。

2-10.4 監獄線人

檢察官應評估監獄線人提供之證據，以確保所提供之資訊屬實。檢察官此時應考量線人之過往歷史、動機、資訊來源以及是否有獨立佐證證據等因素。

2-9.7 Victim Assistance Program

To the extent feasible, the chief prosecutor should develop and maintain a victim assistance program within the staffing structure of the office to provide services and give assistance to victims of crime.

2-9.8 Victim Protection

The prosecutor should be mindful of the possibility of intimidation and harm arising from a victim's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime and should make referrals and recommendations for program participation where appropriate.

10. Witnesses

2-10.1 Information Conveyed to Witnesses

The prosecutor should keep witnesses informed of:

a. All pre-trial hearings which the witnesses may be required to attend; and

b. Trial dates and the scheduling of that witness's appearance.

2-10.2 Contacts by Defense with Witnesses

The prosecutor shall not advise a witness (including victims) to decline to meet with or give information to the defense. The prosecutor may advise a witness that they are not required to provide information to the defense outside of court and the prosecutor may also inform a witness of the implications and possible consequences of providing information to the defense.

2-10.3 Represented Witnesses

When the prosecutor is informed that a witness has obtained legal representation with respect to the criminal proceeding, the prosecutor should arrange all out-of- court contacts with the witness regarding the subject of that proceeding through the witness's counsel.

2-10.4 Jailhouse Informant

The prosecutor should evaluate evidence provided by a jailhouse informant to ensure the information provided is truthful. In doing so, the prosecutor should consider factors such as the history of the informant, the motive of the informant, the source of the information, and whether there is independent corroborating evidence.

2-10.5 證人之面談與準備

檢察官不得建議或協助證人為虛偽陳述。檢察官可與證人討論證詞之內容、風格、態度等，但無論如何都應讓證人知道據實陳述之義務。

2-10.6 專家證人

若檢察官認為有專家證人作證之必要時，應尊重該專家之獨立性，且支付給專家證人之費用應當合理，不應依案件結果之不確定性而有所不同。

2-10.7 證人援助

提供證人援助除係法律賦予其他政府機構之法定義務外，檢察長在可能限度內，對於證人應制定相關政策及程序，以提供包含但不限於之以下服務：

a. 協助申請證人費用，及依照法律或地方法規給予適當之補償。

b. 經被告要求出庭時之人員協助。

c. 協助安排適當之交通和住宿。

d. 協助儘量減少證人出庭等待之時間。

e. 盡可能且適當地協助減少所有不便。

2-10.8 證人之保護

檢察官應注意證人因配合執法部門而有遭受恐嚇或傷害之可能。檢察官應知悉其轄區內相關證人保護之計畫，並應酌情提供計畫參與者指示及建議。

2-10.9 設施

在可能情形下，檢察長應確保證人有安全、舒適，並避免與被告或其朋友、家屬碰面之等待空間。

2-10.5 Witness Interviewing and Preparation

The prosecutor shall not advise or assist a witness to testify falsely. The prosecutor may discuss the content, style, and manner of the witness's testimony, but should at all times make efforts to ensure that the witness understands his or her obligation to testify truthfully.

2-10.6 Expert Witnesses

When a prosecutor determines that the testimony of an expert witness is necessary, the independence of the expert should be respected and if it is determined that a fee be paid to an expert witness, the fee should be reasonable and should not depend upon a contingency related to the outcome of the case.

2-10.7 Witness Assistance

To the extent feasible and unless a legal obligation to provide such assistance is imposed by law on another governmental entity, the chief prosecutor should develop policies and procedures for providing the services to witnesses of crimes including, but not limited to, the following:

a. Assistance in applying for witness fees, if available, and appropriate compensation if provided for by law or local rule;

b. Assistance in appropriate employer intervention concerning required court appearance(s);

c. Assistance in necessary transportation and lodging arrangements, if appropriate;

d. Assistance in minimizing the time the witness has to wait for any court appearance; and

e. Assistance in reducing overall inconvenience whenever possible and appropriate.

2-10.8 Witness Protection

The prosecutor should be mindful of the possibility of intimidation and harm arising from a witness's cooperation with law enforcement. The prosecutor should be aware of programs available in his or her jurisdiction to protect witnesses to crime and should make referrals and recommendations for program participation where appropriate.

2-10.9 Facilities

Whenever possible, the chief prosecutor should take steps to ensure that witnesses have a secure and comfortable waiting area that avoids the possibility of the witnesses making contact with defendants or the families and friends of defendants.

2-10.10 對證人施加犯罪之執法

檢察官與協力之執法單位應優先致力於對於證人之威脅、騷擾、強制或報復之調查工作，包含任何對證人家人或朋友之恐嚇行為。

2-10.11 證人援助計畫

檢察長應在可行最大限度內，於其行政組織架構下發展及維持證人援助計畫，並提供證人服務及援助。

註釋

有效控訴包含完全清楚犯罪被害人及證人在刑事司法體系內之價值。必須被害人個人提出犯罪之控訴及接續之指認、陳述與作證，乃其自己的證明。無論如何，本守則確定檢察官有促進其與被害人、證人等關係之義務。

犯罪被害人及證人都需知道刑事案件之發展。證人需要被安排以利作證，而被害人應更注意被告釋放之決定，以顧慮其自身安全及家人之安全。

應通知被害人及證人之訴訟程序重要階段包括：提出指控；任何可能導致犯嫌獲釋之聽證會或訴訟程序、審判日期、案件結果及認罪協商。檢察官應熟悉並遵守最新之被害人權利法規和規範司法權限之憲法修正案。除進行通知外，被害人也可能有想了解案件之相關事實和資訊。檢察官應牢記其不僅對被害者負有義務，亦有確保被告得到公平審判之義務。這項義務要求檢察官要在與被害人共享資訊及保護個案公平性之間應取得平衡。檢察官應對被害人之需求保持敏銳，並於可行情況下與被害人分享案件之相關部分，但應避免妨礙公平之判斷。除非司法管轄權有相反規定，檢察官不負向被害人、證人或任何利害關係人分享完整內容之義務。反之，檢察官應有權決定於調查和起訴過程中於其道德義務範圍內決定公佈何種資訊。

2-10.10 Enforcement of Crimes Against Witnesses

The prosecutor, working with other law enforcement agencies, should assign a high priority to the investigation and prosecution of any type of witness intimidation, harassment, coercion, or retaliation, including any such conduct or threatened conduct against family members or friends.

2-10.11 Witness Assistance Program

To the extent feasible, the chief prosecutor should develop and maintain a witness assistance program within the staffing structure of the office to provide services and give assistance to witnesses.

Commentary

Effective prosecution includes a sound understanding of the value of victims and witnesses within the criminal justice system. The necessity of individuals reporting crimes and following through with identifications, statements, and testimony is self- evident. The standard, however, identifies obligations of the prosecutor and others to facilitate the relationship with victims and witnesses.

Both victims and witnesses need notice of developments in criminal cases. Witnesses need to make arrangements in order to be available to testify, while victims may be more concerned with release decisions in apprehension of their personal safety and the safety of their families.

Important stages of the proceedings for which notice should be provided to victims and witnesses include the following: filing of charges; any hearing or proceeding that could result in the release of the offender; date of trial; and case resolutions and plea offers. Prosecutors should also be familiar with and comply with their duties under ever-evolving victims' rights laws and amendments to the Constitutions governing their jurisdiction. In addition to notice requirements, victims also have a true interest in learning facts and information relating to the case. The prosecutor should be mindful that she has an obligation not only to the victim but also to ensuring that a fair trial is afforded to the defendant. This obligation requires the prosecutor to balance the amount of information shared with the victim against the need to protect the integrity of the case. The prosecutor should be sensitive to the needs of the victim and, when possible, share those parts of the case with the victim when it would not otherwise interfere with the ability to provide a fair trial. Unless the jurisdiction has laws to the contrary, the prosecutor should not be obliged to share the entire file to the victim, witnesses or any interested party. Instead, the prosecutor should be given the authority to determine what information can be released during the course of the investigation and prosecution within the bounds of their ethical obligations.

Prosecution should not assume that victims or witnesses are familiar with the terminology, procedures, or even location of the courts. At a minimum, prosecutors should be sensitive to this.

檢察官不應假設犯罪被害人或證人熟悉專有名詞、程序，甚至是法院位置，至少應有此敏感度。理想上，亦應有正式之被害人及證人說明會計畫。

此說明會計畫係將提供之許多服務之一。檢察官對於犯罪被害人 / 證人之援助計畫，應立於發展與維護之主導地位。本守則建議援助之方式應該是可行的，如：人員介入及減少不便等。

援助計畫外，本守則要求提供適當設施以照顧犯罪被害人和證人。其等必須避免與被告或被告親友間有接觸之可能性。

作為與犯罪被害人或證人間之角色，檢察官並非被害人或證人所需資源之唯一提供者。此類需求應係合作之工作，例如被害人、證人等極易遭受到威脅、騷擾和恐嚇，故其等最大需求即是安全保障。被害人、證人之保護係執法機關之主要功能。而檢方必須與警方合作以減少此類威脅等，故本質上即是一項相互合作之工作。

11. 以社區為基礎之緩刑計畫

2-11.1 計畫之認知

檢察官應了解並熟悉罪犯經判刑後所有以社區為基礎之計畫，即緩刑條件或轉移處置。

2-11.2 程序之需要

在某管轄區之社區機構提供就業教育，家庭輔導和物質濫用之輔導服務，但有些社區機構則不提供；檢察長應鼓勵社區提供此類服務。檢察署則可作為此類機構之公共資訊來源。

2-11.3 通知

檢察署應採取步驟以確保其與相關之執法機構，在於其轄區內參與工作計畫之人將被釋放時，都能獲得通知。

Ideally, there should be a formal orientation program or written information on the procedural steps in a criminal prosecution available to all victims and witnesses.

Such an orientation program should be part of a number of services provided. Prosecutors should have a leading role in the development and maintenance of victim/witness assistance programs. The standard suggests the type of assistance that should be available, such as employer intervention and reduction in inconvenience.

In addition to a program of assistance, the standard calls for appropriate facilities for victims and witnesses to avoid the possibility of contact with the defendant or his friends and family.

As central a figure as the prosecutor is to relationships with victims and witnesses, he is certainly not the sole source to accommodate the needs of victims and witnesses. Addressing these needs should be a cooperative effort. For example, one of the greatest needs of victims and witnesses is the assurance of their safety. They are most vulnerable to threats, harassment, and intimidation. Their protection is primarily a law enforcement function. While prosecution should work with the police to minimize this, it is essentially a cooperative effort.

11. Community-Based Probation Programs

2-11.1 Knowledge of Programs

Prosecutors should be cognizant of and familiar with all community-based programs to which offenders may be sentenced, referred as a condition of probation, or referred as a diversionary disposition.

2-11.2 Need for Programs

In jurisdictions where community agencies providing services such as employment, education, family counseling, and substance abuse counseling are needed but not provided by community agencies, the chief prosecutor should encourage the agencies to provide such services. The prosecutor's office should be available as a source of public information for such community-based agencies.

2-11.3 Notice

The prosecutor's office should take steps to ensure that the prosecutor's office and appropriate law enforcement agencies are notified of individuals participating in work- release programs in their jurisdiction.

12. 監獄

2-12.1 設施之認知

檢察官應了解並熟悉位於其轄區內之所有適用於經起訴及遭判刑罪犯之矯正設施。

在可能範圍內，檢察長應設法使新進檢察官培訓時，有機會參觀其管轄區內之矯正機構。

2-12.2 矯正機構之改良

檢察長應針對機構訂立創新計畫方面提供支援，包括教育/行為服務，但此類計畫不可對司法及適當之刑事問責制度產生不利影響。

2-12.3 檢察官資源

檢察官應作為監獄、看守所及其接收部門之資訊來源，包括多重罪犯及職業罪犯的識別。

2-12.4 通知

檢察長應採取措施，以確保管束人犯之機構發生脫逃事件時、暫時或最終釋放前、假釋考量前，都會通知檢察官與執法機關。

2-12.5 矯正諮詢委員會

在可行範圍內，檢察長應促使建立並積極參與以州為單位之矯正諮詢委員會，該委員會之成員則由刑事司法體系與政府之重要成員組成。

13. 假釋與提前釋放

2-13.1 檢察官作為資訊來源

在法律允許範圍內，檢察署應成為假釋委員會、矯正部門或其他監管機構獲得訊息之來源，以供考量或監控羈押中人犯之釋放。

12. Prisons

2-12.1 Knowledge of Facilities

Prosecutors should be cognizant of, and familiar with, all penal facilities located within the jurisdiction to which offenders prosecuted in the jurisdiction may be sentenced.

Where practicable, the chief prosecutor should attempt to ensure that new prosecutors hired by his or her office have an opportunity, as part of their initial training, to tour the penal institutions in their jurisdictions to which defendants may be sentenced.

2-12.2 Improvement at Correctional Institutions

The chief prosecutor should support the creation of innovative programs in institutions, including educational/behavioral services, provided that such programs do not adversely impact justice and appropriate offender accountability.

2-12.3 Prosecutor as Resource

The prosecutor's office should be available as a source of information for prisons and jails and their intake divisions, to include the identification of multiple and career offenders

2-12.4 Notice

The chief prosecutor should take steps to ensure that any institution holding an offender should notify both the prosecutor and law enforcement agencies at the time of an escape, prior to any temporary or final release, and prior to parole consideration.

2-12.5 Corrections Advisory Committee

To the extent practicable, the chief prosecutor should participate in any established statewide correctional advisory committee involving representatives from all components of the criminal justice system and responsible members of the public.

13. Parole and Early Release

2-13.1 Prosecution as Resource

To the extent permitted by law, the prosecutor's office should be available as a source of information for the parole board, the department of corrections, or other supervisory agency considering or monitoring an offender's release from custody.

2-13.2 資訊系統

當檢察長認為妥當時，應建立並維護檢察署之資訊系統，以確保其轄區內或預計居住於其轄區內之人的假釋決定都會通知其檢察署。

2-13.3 假釋委員會與釋放裁量權

檢察長應認知到假釋委員會與其他授權機構經法律賦予釋放裁量權，能夠做出釋放之決定；檢察長則應對於裁量權之濫用情形發表聲明。

2-13.4 出庭之權利

檢察長出席假釋、赦免、減刑、行政赦免等聽證會，或被允許以其他方式提供訊息予聽證會時，應主張其和被告都能提前獲得通知。檢察官並應致力於其轄區內之犯罪被害人及執法機構獲得如此之訊息通知。

2-13.5 提前釋放

受刑人之提前釋放係基於矯正機構設施過度擁擠時，檢察長應予以反對，除非此項釋放決定是由法院之授權命令者。

2-13.6 釋放通知

檢察官應讓其辦公室、執法機關、及被害人能夠獲得釋放之通知。此包括了其轄區內之監獄人犯，或其轄區外但有計畫移居於其轄區內之監獄人犯。此監禁釋放包括了因假釋、赦免、減刑、行政赦免、易服勞役，或法院下令從監獄釋放到精神病院者。

2-13.2 Information System

When the chief prosecutor deems it appropriate, he or she should assist in the development and maintenance of an information system to keep the prosecutor's office informed of parole decisions concerning individuals from, or planning to reside in, the jurisdiction.

2-13.3 Parole Board and Release Discretion

The chief prosecutor should be cognizant of the discretion vested in parole boards and in other entities or agencies authorized by law to make release from custody decisions, and he or she should address abuses of this discretion that come to his or her attention.

2-13.4 Right to Appear

The chief prosecutor should advocate that prosecutors and victims have the opportunity to receive sufficient advance notice of and appear at hearings for parole, pardon, commutation, and grant of executive clemency, or be permitted to otherwise provide information at such hearings. Upon receipt of such notice, the prosecutor should endeavor, to the extent possible, to notify the victims of such crimes residing within the prosecutor's jurisdiction and local law enforcement agencies of this information.

2-13.5 Early Release

The chief prosecutor should oppose the early release of offenders where the release decision is made by correctional authorities solely or primarily on the basis of overcrowding of the correctional facility, unless such release is mandated by court order.

2-13.6 Notice of Release

The prosecutor should seek to have the prosecutor's office, law enforcement agencies, and victims notified of all releases from confinement or commitment of individuals from facilities within the jurisdiction, or releases from confinement or commitment of individuals outside the jurisdiction who plan to reside in the jurisdiction. For purposes of this standard, "release from confinement or commitment" includes changes in a convicted person's custody status due to parole, pardon, commutation, grant of executive clemency, service of sentence, or release from court-ordered commitment to a mental health facility.

2-13.7 性侵害之危險犯

檢察官發現受刑人具有性侵害之危險，且刑期已過時，可聲請法院之民事約束或繼續拘留。檢察官並應採取措施，以確保監獄和假釋委員會提早通知檢察署此類人犯即將釋放之日期，並使聲請程序能夠及時進行。

註釋

以社區為基礎之處遇計畫通常可為非重大刑事之罪犯提供傳統機構以外之可行替代方案。此外，近年來以社區處遇作為監禁替代措施之概念亦有進展。社區機構所承擔之責任也越來越有需要與檢察官進行協調和溝通。檢察官對此類機構之貢獻度可能與計劃範圍同樣廣泛。檢察官於最基本之層面上應了解轄區內罪犯可能適用之所有社區處遇、緩刑條件或轉移處置。此外，檢察官作為此類服務之資源亦顯重要。檢察長應向此類機構提供轉介至社區計劃之罪犯之資訊。

有些檢察官選擇在社區處遇執行上扮演積極角色。近年來，在檢察署主持下發展及實現之計畫有了較大之規模。處遇及志願計畫都是檢察官投入之範例。此外，檢察官在地方、社區、州等地方積極發展此類計畫。基本之社區服務，如職業、成人教育、家庭諮詢等，但藥物濫用諮詢則不提供或並不適當的，檢察官應考慮計畫之發展或升級。檢察官係當地主要之法律執行官員，應多關注此類計畫及諮詢委員會。

檢察官應了解監獄和拘留設施所提供給罪犯之各項服務和計畫。此外，一如緩刑和社區機構，檢察官對個人背景和行為之洞察應視為該領域之資源。矯正系統可採用仔細訂立之接收流程，而非利用先前確定之罪犯相關背景資訊。基此，檢察官應作為資源以提供初步資訊並確認來自其他來源之事實內容。

2-13.7 Sexually Dangerous Persons

Where the prosecutor is entitled to petition the court for civil commitment or continued detention of a prisoner after the term of the prisoner's sentence has expired based on a finding of sexually dangerous person status, the prosecutor should take steps to ensure that the board of prisons and parole notify the prosecutor's office of the prisoner's upcoming release date sufficiently in advance of that date to enable the prosecutor to file such a petition in a timely manner.

Commentary

Community-based programs often present viable alternatives to traditional institutions for less-serious offenders. In addition, the concept of supplementing incarceration with community-based services has been advanced in recent years. The responsibilities placed upon community-based agencies mandates an increasing need for coordination and communication with the prosecutor. The degree of the prosecutor's input into such agencies may have as wide a spectrum, as those programs do themselves. At the most basic level, the prosecutor must be cognizant of all community services which offenders in the jurisdiction may be sentenced to, referred to as a condition of probation, or referred to as part of a diversionary program. In addition, it is important for the prosecutor to be available as a resource to these services. The chief prosecutor should be in a position to supply these agencies with information concerning offenders who have been referred to community programs.

Some prosecutors have chosen to play an active role in community-based operations. Developing and implementing programs under the auspices of the office has been initiated on a wide scale in recent years. Diversionary and citizen volunteer programs are examples of the input the prosecutor's office may have. In addition, prosecutors are active in local, regional, and statewide planning boards with an emphasis on developing such programs, such as Drug Treatment Courts, Veterans Courts and Mental Health Dockets. Where basic community services such as employment, adult education, family counseling, and substance abuse counseling are not provided or are inadequate, the prosecutor should consider having input in their development or upgrading. The prosecutor's involvement in such planning and advisory boards is important because of his or her position as the chief local law enforcement official.

The prosecutor should be aware of services and programs offered by prison and detention facilities for offenders. Also, just as for probation and community agencies, the prosecutor's insight into the background and behavior of individuals should be viewed as a resource by officials in this area. Correctional systems may employ an elaborate intake formula without utilizing all previously developed background information concerning offenders. In this situation, the prosecutor should be available as a resource both to offer initial information and to verify facts derived from other sources.

由於檢察官於刑事司法系統具領導地位，故應對監獄系統貢獻己力。針對矯正機構需要更新之處，檢察官應致力於使監獄設施有更佳之設備服務，及訓練有素之人員。檢察官能夠有效提升設備及提供背景資訊能力，均有賴對其轄區內矯正機構之充分瞭解。因此檢察官對於矯正機構之現況必須充分掌握。

檢察官亦可協助鑑別人犯是否為累犯。檢察官應鼓勵並支援量刑實務所做之實驗性努力。對於特定犯罪之累犯採取強制性監獄服刑之觀念，應受到嚴格檢驗。

如同在此討論之因素，檢察官應積極促成彼此間之互助。檢察官必須被考慮成為假釋委員會及監督人員之資源。此外，檢察官應獲得人犯已被許可釋放，及人犯即將在其轄區內居住之相關資訊。此外，負責關押性侵害危險犯的檢察官應與將釋放此類人犯之監獄訂立相關程序，以確保檢察官於釋放前有充足時間備妥關押之聲請書。

雖然監獄過度擁擠會對刑事司法系統產生問題，但仍應反對以緩解拘留設施過度擁擠為主要理由之提前釋放計畫。此類計畫通常是預算有限或監禁狀況遭到抨擊所生之訴訟所做出之回應。然而監獄之狀況並非得作為受刑人提早准予假釋之適當原因，本守則即反對如此主張。解決監獄人犯超收及相關問題之方法均仰賴於立法機關，而非僅係簡單地釋放受刑人。檢察官對於應另分配額外之公共預算，以建設及維護必需設施之立法建議應給予支持。相同的，檢察官對於因應矯正設施現今問題所提出之提早假釋計畫，均應予以反對。不妥適之假釋制度將違害刑事司法體系改善所獲得之進展。

Prosecutors should have input into the prison system because of their positions as concerned leaders in the criminal justice system. Where correctional institutions need upgrading, the prosecutor should strive for better facilities and services within the prison setting, as well as better trained staff. The ability of the prosecutor to have valid input on upgrading facilities is dependent on his knowledge of the prison facilities within his state. The prosecutor, therefore, must be knowledgeable about the conditions of such facilities.

The prosecutor can also assist in the identification of multiple offenders. The prosecutor should encourage and support experimental efforts in regard to sentencing practices. Concepts such as mandatory prison sentences for multiple offenders of certain crimes should be closely examined.

As with all the other components discussed here, the prosecutor must urge cooperation. The prosecutor must be considered as a resource to both parole boards and supervisory personnel. In addition, the prosecutor should receive information concerning individuals who have been approved for release from institutions and who are planning to reside in the jurisdiction. And fundamental to the protective function of the prosecutor, he must have an opportunity to oppose parole release decisions that are not in the best interest of the community. Additionally, prosecutors charged with the commitment of sexually dangerous persons should develop procedures with the prisons from which release of such persons will occur to ensure that the prosecutor has sufficient time to prepare the petition for commitment prior to release.

Although prison overcrowding poses problems in the criminal justice system, early release programs that have as their primary motivation the alleviation of overcrowding in detention facilities should be opposed. Often such programs are a result of budget constraints or a reaction to jail litigation attacking conditions of confinement. Conditions of incarceration, however, are an improper basis for release of offenders and the standard takes an unequivocal position against it. The solution for prison overcrowding and related problems lies with the appropriate legislative bodies but is not to be found in simply releasing offenders. The prosecutor should support legislative proposals that solve this problem in the appropriate manner by allocating additional public funds for the construction and maintenance of needed facilities. Likewise, the prosecutor should oppose every program of early release based primarily on the problems facing our correctional system. Inappropriate release of offenders undermines every advance achieved in improving the criminal justice system.

14. 媒體

2-14.1 媒體關係

與媒體間維持適當及專業之關係在促進公共信賴及增加透明度上是必需的；故檢察官應與媒體維持適當關係，以與社會大眾有訊息適切互通之管道。

2-14.2 平衡利益

檢察官不僅應維護被告人權，亦應維護人民對於犯罪造成公眾危險及政府因應作為等問題之知的權利。檢察官可向大眾提供充足資訊，以使民眾知悉遭控犯罪者已逮捕，且有充足之有力證據可進行起訴。

依據檢察官守則 2-14.4 條及相關倫理守則規定，若訊息公開有助法律執行、提升公眾安全、驅散人民疑慮、或增強司法信心時，檢察官得釋出案件之偵查訊息。檢察官並應避免在被告判決前，對個案做出司法程序外之評論。

2-14.3 檢察官可向媒體傳播之訊息

在被告判決前，檢察官得就以下事項發表評論：

a. 被告之姓名、年齡、住居地、職業、家庭狀況和國籍。

b. 檢察官起訴之資料，包括移送書、起訴書之資訊、若妥適時對於告訴人之描述。

c. 有相當理由可信被告涉犯起訴之罪。

d. 調查及逮捕機關、調查期間、調查範圍、調查程序及執法人員之努力查獲人犯及逮捕等。

e. 逮捕情形（包括逮捕機關、逮捕依據、逮捕時間、逮捕地點、逮捕時被告有無反抗、逮捕機關是否使用武器等）。

f. 已公開之資訊，而其公開有利於公眾利益者。

14. The Media

2-14.1 Media Relationships

The prosecutor should seek to maintain a relationship with the media that will facilitate the appropriate flow of information to and from the public. An appropriate and professional relationship with the media is necessary to promote public accountability and transparency in government.

2-14.2 Balancing Interests

The prosecutor should strive to protect both the rights of the individual accused of a crime and the needs of citizens to be informed about public dangers and the conduct of their government. The prosecutor may provide sufficient information to the public so that citizens may be aware that the alleged perpetrator of a crime has been arrested and that there exists sufficient competent evidence with which to proceed with prosecution.

Subject to Standard 2-14.4 and applicable rules of ethical conduct, information may be released by the prosecution if such release will aid the law enforcement process, promote public safety, dispel widespread concern or unrest, or promote confidence in the criminal justice system. The prosecutor should refrain from making extrajudicial comments before or during trial that promote no legitimate law enforcement purpose and that serve solely to heighten public condemnation of the accused.

2-14.3 Information Appropriate for Media Dissemination by Prosecutors

Prior to and during a criminal trial the prosecutor may comment on the following matters:

a. The accused's name, age, residence, occupation, family status, and citizenship;
b. The substance or text of the charge such as the complaint, indictment, information, and, where appropriate, the identity of the complainant;
c. The existence of probable cause to believe that the accused committed the offense charged;
d. The identity of the investigating and arresting agency, the length and scope of the investigation, the thoroughness of the investigative procedures, and the diligence and professionalism of the law enforcement personnel in identifying and apprehending the accused;
e. The circumstances immediately surrounding the arrest, including the time and place of arrest, the identity of the arresting officer or agency, resistance, pursuit, possession and use of weapons, and a description of items seized at the time of arrest or pursuant to a search warrant; and
f. Information contained in a public record, the disclosure of which would serve the public interest.

2-14.4 資訊公開之限制

檢察官於刑事判決之前和審判期間不應發表任何可能嚴重損害司法程序之公開法庭外聲明。特別是刑事調查開始後，直至審判結束，檢察官不應就以下事項發表任何公開法庭外聲明，除非該訊息係屬刑事訴訟之公共紀錄：

a. 性格、聲譽，或犯罪嫌疑人、被告、證人等之先前犯罪紀錄；

b. 嫌疑人或被告之自白、供詞、陳述或不在場證明等內容；

c. 科學測試的表現或結果，或嫌疑人、被告拒絕接受測試；

d. 證人之信譽或預期證詞之陳述；

e. 認罪協商或獲得較輕罪行之可能性，或任何認罪協商之內容。

2-14.5 公開回應

檢察官可對辯護律師或其他人員之意見提出合理及公正之答覆。檢察官依據本款規定發表之公開評論應限於減輕他人公開言論所造成之不當偏見影響而合理必要者。檢察官於任何情況下均不得發表違反前開 2-14.4 或司法倫理之聲明。

2-14.6 資訊公開政策

檢察官應協助執法和其他調查機構以了解其資訊發布之法定責任。檢察官亦應協助其司法管轄範圍內之執法機構的培訓，以避免與媒體討論及尚在進行中之調查或偵查。

2-14.7 司法判決

檢察官對於判決違反法律、事實或公共利益時，可予公告周知；但不不應發表公開聲明指摘法官之正直或適格性。

2-14.4 Restraints on Information

Prior to and during a criminal trial the prosecutor should not make any public, extrajudicial statement that has a substantial likelihood of materially prejudicing a judicial proceeding. In particular, from the commencement of a criminal investigation until the conclusion of trial, the prosecutor should not make any public, extrajudicial statements about the following matters, unless the information is part of the public record of the criminal proceeding:

a. The character, reputation, or prior criminal conduct of a suspect, accused person or prospective witness;

b. Admissions, confessions, or the contents of a statement or alibi attributable to a suspect or accused person;

c. The performance or results of any scientific tests or the refusal of the suspect or accused to take a test;

d. Statements concerning the credibility or anticipated testimony of prospective witnesses;

e. The possibility of a plea of guilty to the offense charged or to a lesser offense, or the contents of any plea agreement.

2-14.5 Public Responses

The prosecutor may make a reasonable and fair reply to comments of defense counsel or others. A public comment made by a prosecutor pursuant to this paragraph shall be limited to statements reasonably necessary to mitigate the effect of undue prejudice created by the public statement of another. In no event should a prosecutor make statements prohibited by Standard 2-14.4 or applicable rules of ethical conduct.

2-14.6 Law Enforcement Policy on Information

The prosecutor should assist law enforcement and other investigative agencies in understanding their statutory responsibilities with respect to the release of criminal justice information. The prosecutor should also assist in the training of law enforcement agencies within his or her jurisdiction on subject matters to avoid when discussing pending criminal investigations or prosecutions with the media.

2-14.7 Judicial Decisions

The prosecutor may inform the public of judicial decisions that are contrary to law, fact, or public interest, but a prosecutor should not make any public statement that he or she knows to be false, or with reckless disregard for its truth or falsity, as to the integrity or qualifications of a judge.

2-14.8 宣判

檢察官不應於審判後發表任何公開批評陪審員之言論，但可對陪審團裁判表示不同意或失望。

評論

檢察官正常運作基本要求，是建立大眾對檢察官代表民眾尋求司法正義能力之信任。為維持大眾之信任度，檢察官應對自身行為負責。媒體是檢驗此類責任的主要途徑。媒體會報導犯罪調查和訴追之事件；案件於法院之進展；執法人員和檢察官調查和法庭活動之表現；以及法庭訴訟之結果。

檢察官作為所有人尋求司法正義之代表，若透過媒體散播未經刑事司法系統完備程序檢驗及證實之訊息，帶進未存有偏見、公正之陪審團，將減少被告受公平審判之權利，造成被告之不公平。。

同時，檢查官身為民眾之代表，有責任確保正義得以伸張，必須被允許提供充足資訊向大眾保證社會治安之維持和刑事司法系統之正常運行。維持此一平衡正是本守則之目標。

檢察官應發揮積極作用，對其司法管轄範圍內執法人員進行公開發言之訓練。經由此類預先訓練，檢察官可主動減少執法人員發表違法言論之可能性，並可減少被告對法庭提出異議之機率以及促進被告接受公平審判等相關事項。檢察官對司法判決之評論及程度，是最重要之訴訟倫理規範。至少在一定程度上，檢察官不能故意或疏失地指摘法官和陪審團裁決的公正性或適任性。此外，檢察官不得進行影響陪審員於未來陪審工作之行為。

15. 經費提供機關

2-15.1 需求評估

檢察長應與其經費提供機關充分合作，並提供檢察署足以有效運作之需求評估報告。

2-14.8 Verdicts

A prosecutor should not make any public statement after trial that is critical of jurors but may express disagreement with or disappointment in the jury verdict.

Commentary

A primary requirement for the proper functioning of the prosecutor's office is the establishment of public trust in the ability of the prosecutor to effectively represent the public in seeking to attain justice. In order to maintain that public trust, the prosecutor must be accountable for his or her actions. The media is a primary player in testing that accountability. The media reports information regarding: events leading up to criminal investigations and charges; the progress of the case thorough the court system; the performance of the law enforcement officers and prosecutors in the conduct of the investigation and the court proceedings; and, the results of court proceedings.

Because of the prosecutor's unique role as a representative of all of the people in the quest for justice, it would be unfair for him or her to diminish the rights of a defendant to a trial by an unprejudiced jury of his or her peers by broadcasting information through the media where it would go untested by the time-tested procedures incorporated into our criminal justice system.

At the same time, as a representative of the people with the duty to assure that justice is achieved, the prosecutor must be allowed to provide sufficient information to assure the public that community safety is being maintained and that the criminal justice system is operating properly. Maintaining such a balance is the purpose behind these standards.

The prosecutor should take an active role in training law enforcement agencies in his or her jurisdiction on the limitations on public statements. By conducting such advance training, the prosecutor proactively reduces the possibility of comments by law enforcement personnel that are in conflict with the law and legal rules. By that means, the prosecutor also reduces the incidents of challenges to venue and other matters relating to the ability of a defendant to receive a fair trial. The content and extent of a prosecutor's comments regarding judicial decisions are some of the most litigated ethical provisions. At a minimum, a prosecutor cannot knowingly make false or reckless statements about the integrity or qualifications of a judge and jury verdicts. Further, a prosecutor may not engage in conduct with a juror designed to alter that jurors conduct in future jury service.

15. Funding Entity

2-15.1 Assessment of Need

The chief prosecutor should cooperate with his or her funding entity by providing an assessment of resources needed to effectively administer the duties of the office.

2-15.2 獨立收益

檢察工作之預算應獨立，不得與罰金、沒收、規費等執法或刑事司法活動之收入相關。檢察官僅可於法律允許下使用沒收資產之收入。

評論

本守則之基礎前提在於應有適當之預算。一般而言，若無適當之預算，少有體系能運作，檢察機關亦然。若預算中無適當資金，立法機關不應對檢察官增加責任。

經費提供機關向來期望透過罰款和沒收以為執法預算。但就後者而言，係因近來依據州或聯邦沒收法等規定，而有預算收入可能增加之誤解。此類措施並不以成為主要預算之收入來源，因此認為此類收入可供司法機關預算來源之說法，乃是一種全然之誤解。如果此類措施確為執法機構提供些許資金，這也只是其主要目的的附帶效益。這些收入不可預測，因此，在考慮檢察官的預算需求時，不可將之視為資金來源。

16. 公共

2-16.1 社區組織

檢察官應對刑事司法、預防犯罪以及罪犯的懲罰和矯治感興趣之社區組織建立與成長予以鼓勵。

2-16.2 聯絡窗口

針對此類組織，於檢察官有充分資源時，檢察長應指派適當之機關人員擔任此類組織之聯絡窗口，並作為檢察署在上述組織就公益事務之發言及出席代表。

2-16.3 公共教育

檢察長應利用一切可用資源，鼓勵公民參與並為執法和檢察業務與相關議題之加以支持。檢察長並應教育公眾了解檢察業務之有關計劃、政

2-15.2 Independent Revenue

The budget for prosecution should be independent of and unrelated to revenues resulting from law enforcement and criminal justice activities, such as fines, forfeitures and program fees. The prosecutor may expend revenues from forfeited assets only as permitted by law.

Commentary

The basic premise of this standard is adequate funding. Little can happen in the way of system improvements in general, and the prosecutor's office in particular, without adequate funding. Added responsibilities by the legislature to the duties and responsibilities of the prosecutor should not be enacted without appropriate funding in the budget.

An expectation persists among funding bodies that funds for law enforcement can be generated from fines and forfeitures. The latter aspect, in particular, is the result of misconceptions concerning the potential for revenue generation that have grown up along with the relatively recent state and federal forfeiture statutes. Such remedies were never intended to be primary sources of revenue, and the notion that they can be "budgeted" into criminal justice agencies is totally misguided. To the extent that such remedies provide some funds for law enforcement agencies, this benefit is at best collateral to their primary purpose. Such revenues are not predictable and, therefore, it is doubly wrong for funding sources to rely upon them when considering budget requests from prosecutors.

16. The Public

2-16.1 Community Organizations

The prosecutor should encourage the formation and growth of community-based organizations interested in criminal justice, crime prevention, and the punishment and rehabilitation of offenders.

2-16.2 Staff Liaison

With respect to such organizations and to the extent that the prosecutor has the resources to do so, the chief prosecutor should assign an appropriate staff member(s) to act as liaison to such organizations and provide qualified speakers from the prosecutor's office to address and appear before such groups on matters of common interest.

2-16.3 Public Education

The chief prosecutor should use all available resources to encourage citizen involvement in the support of law enforcement and prosecution programs and issues. The chief prosecutor should educate the public about the programs, policies, and goals of his or her office and alert

策和目標，並提醒公眾留意其可參與之計劃、政策和目標以及可獲得之利益。

2-16.4 諮詢角色

檢察官有行使裁量權及作出最終決定之責任，而公共利益與公民團體之角色應被認知僅為諮詢性質。

評論

檢察官的工作與社區內犯罪密切相關，對於現有社區犯罪預防計劃，檢察官可提供個人和檢察署支援，為預防犯罪貢獻己力。

此外，檢察官可向犯罪學者、都市規劃者和其他人員提供專業意見，幫助其以最適合遏制犯罪活動之方式訂立社區成長和發展計劃。本守則之目的係指導檢察官發揮其於社區預防犯罪作用之指引，亦認為檢察官不僅需要與社區預防犯罪團體和社會服務團體互動，還需要在公民團體之形成過程中提供助力。

17. 非政府組織

2-17.1 總論

在與非政府組織互動時，檢察長應將公共利益置於一切考量之上。

2-17.2 財政與資源援助

a. 於法律允許範圍內，檢察署可接受非政府組織之財政或資源援助，但應經檢察長特別批准；

b. 決定是否接受非政府組織之援助時，檢察長應將公共利益考量優先於該組織利益之考量，尤其在與特案件有關，而非與檢察署之通盤運作有關時；

c. 檢察長應考量接受非政府組織之援助，是否會造成不當影響；

the public to the ways in which the public may be involved and benefit from those programs, policies, and goals.

2-16.4 Advisory Role

Because the prosecutor has the responsibility of exercising discretion and making ultimate decisions, the role of public interest and citizen groups must be understood to be advisory only.

Commentary

Since the prosecutor's work is intimately involved with crime in the community, the prosecutor can contribute significantly to crime prevention by lending personal support and the support of the prosecutor's office to existing community crime prevention programs.

Further, the prosecutor can lend expertise to criminologists, city planners, and others as they make plans for the growth and development of the community in a way best suited to deter criminal activity. The standard has been developed to serve as a guide to prosecutors in implementing their role in community crime prevention. It recognizes the need for the prosecutor to not only interact with community crime prevention and social service organizations that are community-based, but also to take a hand in the formation of such citizen groups where they presently do not exist.

17. Non-Governmental Entities

2-17.1 Generally

In all dealings with a non-governmental entity, the chief prosecutor should place the public interest above all other considerations.

2-17.2 Financial and Resource Assistance

a. Where permitted by law, a prosecutor's office may accept financial or resource assistance from a non-governmental source when such assistance is specifically approved by the chief prosecutor;

b. When determining whether to accept assistance from a non-governmental source, the chief prosecutor should give priority consideration to the public interest over the private interests of a non-governmental source, especially when the assistance relates to a specific case or cases rather than office-wide assistance;

c. The chief prosecutor should consider whether accepting assistance from a non-governmental source will create the appearance of undue influence;

d. 檢察長應在檢察署內設審核程序，保障檢察署獨立行使裁量權，並避免於調查或起訴特定個案或特定種類個案時，非政府組織提供之協助將產生不適當之影響。此類程序並應包括對任何援助（不論為財務或資源援助）進行嚴格記錄和會計記帳之要求，若法律另有規定者，並應包含公開程序。

評論

當機關於預算吃緊和資源不足下，應仔細審查非政府組織提供資金之來源，以確保無任何非法或不道德之援助條件。若檢察官決定接受援助，則應勤勉監督所提供之資金或設備。此外，檢察官應保持警惕，不可有干擾獨立檢察裁量權之行使。

第三部分：偵查

1. 偵查通則

3-1.1 偵查權限

檢察官應擁有於其司法管轄範圍內啟動調查犯罪活動之自由裁量權。該權限之行使取決於多項因素，包括但不限於可用資源、執法機關調查能量、檢察機關業務之優先事項以及潛在民事責任。檢察官應知悉其司法管轄範圍內予以豁免之限制。檢察官並應避免成為案件之必要證人;若可行，在與潛在證人進行談話時，應有調查人員在場。

3-1.2 偵查程序之公正性

基於（無論是全部或部分）被害人或犯罪者之種族、血緣、宗教、性別傾向或政治傾向等因素，而開啟或持續之犯罪偵查不應被准許，除非此類因素係其犯罪之構成要素或與罪犯之行為動機有所相關。犯罪偵查亦不應基於（無論是全部或部分）黨派政治壓力、職涯企圖或不當之個人考量而推動。

d. The chief prosecutor should have office procedures in place that protect the independent exercise of discretion of the office from the undue influence of a non-governmental resource that has provided assistance to the office during the investigation and prosecution of specific cases or types of cases. These procedures should include requirements for strict bookkeeping and accounting of any assistance received, whether financial or resource assistance, and if required by law, disclosure procedures.

Commentary

In times of strained budgets and inadequate resources, an offer of assistance from a non-government funding source should be carefully examined to make certain that no illegal or unethical strings are attached. If the prosecutor should decide to accept the assistance, he or she must be diligent in keeping track of the funds or equipment provided. In addition, the prosecutor must be vigilant to not allow the assistance to interfere with his or her independent exercise of prosecutorial discretion.

Part III.: Investigations

1. Investigations Generally

3-1.1 Authority to Investigate

A prosecutor should have the discretionary authority to initiate investigations of criminal activity in his or her jurisdiction. The exercise of this authority will depend upon many factors, including, but not limited to, available resources, adequacy of law enforcement agencies' investigation in a matter, office priorities, and potential civil liability. Prosecutors should be cognizant of the limits of qualified immunity in their jurisdiction. Prosecutors should also avoid becoming a necessary witness in at case; it is prudent to have an investigator present when conducting an interview of a potential witness if possible.

3-1.2 Fairness in Investigations

A criminal investigation should not begin or be continued if it is motivated in whole or part by the victim or perpetrator's race, ethnicity, religion, sexual orientation, or political affiliation unless these factors are an element of a crime or relevant to the perpetrator's motive. Nor should an investigation be motivated, in whole or significant part, by partisan political pressure or professional ambition or improper personal considerations.

3-1.3 檢察官舉證責任

檢察官應對於刑事案件中使用之證據負最終責任。檢察官知悉或留意有以不正當方式進行調查或執法部門非法取得證據之重大風險時，應採取積極措施調查和補正此類問題。

3-1.4 不法證據

檢察官不得故意以非法方法取得證據，也不得指導、慫恿他人以非法方法取證。

3-1.5 臥底偵查

縱使檢察官通常不會做出不實陳述或從事涉及詐欺之行為，但檢察官可於法律允許的範圍內參與或指導涉及此類行為的偵查程序。檢察官應採取一切合理措施，確保任何此類調查不會對無辜之當事人造成不必要之傷害，且不會在法庭上有詐欺之行為，亦不會干擾被告享有律師幫助之憲法權利或公平審判權利。本守則任何內容均不妨礙檢察官對司法機關、法院人員或律師進行經正式授權之調查。

3-1.6 檢察官調查

檢察長應聘用經適當訓練之偵查人員協助案件之準備、調查程序補遺、初始調查程序，以及履行檢察官指派之其他職責。檢察長應向適當之資助機構尋求調查資源。

評論

雖絕大多數刑事調查係由執法機構進行，但檢察官有時也須自行啟動偵查或持續調查。檢察官採取此類行動之適用情況通常包括進行調查之執法機構存在利害衝突；調查處理不當而需重新進行調查；調查需檢察官辦公室提供專業知識；執法機構無充足資源進行調查。

3-1.3 Prosecutor's Responsibility for Evidence

A prosecutor is ultimately responsible for evidence that will be used in a criminal case. A prosecutor who knows or who is aware of a substantial risk that an investigation has been conducted in an improper manner, or that evidence has been illegally obtained by law enforcement, must take affirmative steps to investigate and remediate such problems.

3-1.4 Illegally Obtained Evidence

A prosecutor should not knowingly obtain evidence through illegal means, nor should the prosecutor instruct or encourage others to obtain evidence through illegal means.

3-1.5 Undercover Investigations

Although prosecutors may not normally make false statements or engage in conduct involving deception, a prosecutor may, to the extent permitted by law, engage in or direct law enforcement investigations that involve such conduct. A prosecutor should take all reasonable steps to ensure that any such investigations do not create an unnecessary risk of harm to innocent parties, perpetuate a fraud on the court, or interfere with a defendant's constitutionally protected right to counsel or right to a fair trial. Nothing in this standard precludes a prosecutor from engaging in a duly authorized investigation of judicial or court officers, or members of the bar.

3-1.6 Prosecutorial Investigators

Chief prosecutors should employ properly trained investigators to assist with case preparation, supplement law enforcement investigations, conduct original investigations, and carry out other duties as assigned by the prosecutor. The chief prosecutor should seek investigative resources from appropriate funding authorities.

Commentary

While the vast majority of criminal investigations are undertaken by law enforcement agencies, there are times when the prosecutor must use his or her authority to initiate or continue an investigation. Some instances where such action by the prosecutor would be appropriate are: where the law enforcement agency that would normally conduct the investigation has a conflict of interest; where the investigation has been handled improperly and is in need of re-investigation; where the investigation calls for expertise that is available in the prosecutor's office; and, where the law enforcement agencies do not have sufficient resources to conduct the investigation.

為人民尋求正義乃檢察官被賦予之天職，此為關於偵查之至理名言。檢察官不應以被害人或罪犯之任何與犯罪要件或動機無關之特徵而啟動偵查。檢察官不得以非法或不正當方式進行調查，也不得允許其代理人進行此類調查。

臥底調查有時是取得犯罪證據以起訴犯罪行為之唯一有效方式。由於此類調查具重要性，檢察官應做出合理努力，確保檢察官不會被排除於進行此類調查之外。相關措施包括倫理規範之釐清與修訂。

為了避免重複調查，所有具有調查權限之政府機關，包括地方執法機關或其他相關機關，應隨時將正在進行之調查活動告知轄區內之檢察機關。

縱使檢察官享有與其履行「檢察」職能相關之民事責任絕對豁免權，詳見 Burns v. Reed, 500 U.S. 478, 486 (1991)，但於決定絕對豁免是否適用於特定情況時，法院之關注為「所履行職能之性質，而非行為人之身份」詳見 Forrester v. White, 484 U.S. 219, 229 (1988)。作為「司法程序的組成部分」或「與司法程序密切相關」的功能絕對不受民事訴訟的影響。Imbler v. Pachtman，424 U.S. 409, 430 (1976)。然而，偏向「調查」或「行政」性質之功能因與直接之司法程序較無關，因此僅適用於有條件之豁免，詳見 Burns, 500 U.S. at 486。因此，檢察官於進行調查時應謹慎行事。

2 令狀審查

3-2.1 搜索與逮捕令審查

執法機關向法院申請搜索、逮捕令狀前，應由檢察署進行先前法律審查，並應確保司法管轄範圍內之相關豁免法規並無相反之規定。

3-2.2 通訊監察令狀之審核

檢察署應審核其轄區域內所有執法機關之通訊監察。

Given the prosecutor's responsibility to seek justice for all the people, there are axioms regarding investigations that follow. A prosecutor should not conduct an investigation motivated by any characteristics of the victim or perpetrator that are categories irrelevant to the elements of the crime or the motive. The prosecutor should not conduct an investigation in an illegal or improper manner, nor should he or she allow his or her agents to do so.

Undercover investigations are at times the only effective way of obtaining evidence by which to prosecute criminal conduct. Because of the importance of these investigations, prosecutors should make reasonable efforts to see that prosecutors are not precluded from conducting such investigations. Those efforts might include seeking a clarification or modification of rules of ethical conduct.

To avoid duplicative investigations, it is important that each governmental entity with investigative responsibilities, be they local law enforcement or others, advise the prosecutor of investigations in the jurisdiction.

While prosecutors enjoy absolute immunity from civil liability related to their performance of "prosecutorial" functions, Burns v. Reed, 500 U.S. 478, 486 (1991), courts look to "the nature of the function performed, not the identity of the actor who performed it," Forrester v. White, 484 U.S. 219, 229 (1988) when determining whether absolute immunity applies in a particular situation. Functions that serve as an "integral part of the judicial process" or that are "intimately associated with the judicial process" are absolutely immune from civil suits.

Imbler v. Pachtman, 424 U.S. 409, 430 (1976). However, functions which are more "investigative" or "administrative" in nature, because they are more removed from the judicial process, are subject only to qualified immunity. Burns, 500 U.S. at 486. Therefore, a prosecutor should exercise caution when entering into an investigation.

2. Warrant Review

3-2.1 Search and Arrest Warrant Review

The prosecutor's office should develop and maintain a system for providing law enforcement with the opportunity for a prompt legal review of search and arrest warrant applications before the applications are submitted to a judicial officer, as long as the law on qualified immunity in their jurisdiction does not make it imprudent to do so.

3-2.2 Electronic Surveillance Review

The prosecutor's office should review and approve the use of all electronic surveillance by law enforcement entities that are within the prosecutor's jurisdiction.

3-2.3 執法培訓

檢察機關應協助對轄區內執法人員進行搜索、逮捕令等聲請、執行之法律訓練。

評論

基於發出逮捕令、搜索令和監視令所要求之數量和性質，此類要求應足以經受動議和其他法律上之攻訐，檢察官向執法機構提供法律援助方面之作用有其重要性。本守則建議在可行範圍內，應由檢察官審查令狀及其聲請程序。此一審查將確保適當性，並提升對有罪者定罪之機率。

檢察官應留意，於合格之豁免分析中，其行為應根據理性檢察官對於爭點行為於「明確制定之法規」和「所掌握之資訊」之合法性加以判斷。

除審查程序外，檢察官對於執法人員執法技巧之訓練，及建立標準程序均有助於執法機關在聲請令狀時，可以有效對抗辯方之挑戰。

3. 大陪審團調查

3-3.1 大陪審團調查範圍

除非法律另有明確許可外，檢察官不可基於以下目的使用大陪審團進行調查：

a. 僅針對非犯罪事項之協助。

b. 針對已起訴或受有指控之被告，僅基於在審判中使用之目的而收集證據。

3-3.2 證人之律師

若司法轄區內，規定大陪審團調查之證人不允許辯護人陪同到庭，僅得在程序外諮詢律師時；檢察官應在訊問程序中同意證人諮詢律師之合理請求。至於是否同意諮詢之決定權在於大陪審團者，檢察官應對大陪審團建議，證人應有諮詢律師之合理機會。

3-2.3 Law Enforcement Training

The prosecutor's office should assist in training law enforcement personnel within the prosecutor's jurisdiction on the law applicable to the issuance and execution of search and arrest warrants.

Commentary

Given the number and nature of requirements for the issuance of arrest, search and surveillance warrants that will withstand motions to suppress and other legal attacks, the role of the prosecutor in providing legal assistance to law enforcement agencies is essential. The standard suggests the prosecutor's review of warrants and applications for the same, whenever practical. This review would assure propriety that will enhance the probability of the conviction of the guilty.

A prosecutor should be aware that, in a qualified immunity analysis, their conduct will be judged on what a reasonable prosecutor would believe was lawful in light of "clearly established law" and "information possessed" at the time of the challenged conduct.

In addition to the review, the prosecutor's involvement in police training on the technical requirements and the design of uniform forms would also increase the probability that the resulting warrants would withstand defense challenges.

3. Grand Jury Investigations

3-3.1 Scope of Grand Jury Investigations

Unless the law of the jurisdiction specifically permits otherwise, a prosecutor should not use a grand jury investigation to:

a. Assist solely in a non-criminal matter; or

b. Gather evidence solely for the use at trial against a defendant who already has been charged by indictment or information.

3-3.2 Counsel for Witnesses

In jurisdictions where counsel for a witness is not permitted in the grand jury room but is permitted to consult with the witness outside the room, the prosecutor should grant a witness's reasonable requests to consult with counsel during questioning. If the decision whether to allow such consultation rests with the grand jury, the prosecutor should recommend to the grand jury that the witness be given reasonable opportunities to consult with counsel.

3-3.3 傳喚調查對象

若司法轄區內，作為調查之對象可被傳訊至大陪審團作證者，下列程序應被適用：

a. 檢察長或其指定人員應批准所有使調查對象於大陪審團前作證之嘗試；

b. 於在任何大陪審團面前出庭前，應以書面形式告知相關對象之身分狀態，並以書面建議該對象就其權利取得法律建議；

c. 為了避免不公平，檢察官應盡合理努力確保調查對象自願而非經由傳訊而在大陪審團面前出庭。

d. 當調查對象出現在大陪審團面前時，應告知其依照本守則第 3-3.4 條所享有之權利。

3-3.4 大陪審團調查時之告知義務

大陪審團調查程序中，不論該證人是偵查中被告（target）或與犯罪相關連者（subject），詢問證人之初，檢察官都應告知證人以下事項：

a. 若對於問題之真實陳述將會導致自身遭刑事追訴時，證人得拒絕回答；

b. 證人之陳述，可能在大陪審團程序或以後之法律程序中作為對該證人不利之使用；

c. 若有委任辯護人，在回答問題前，大陪審團會賦予證人合理諮詢辯護人之機會。

d. 該告知應以書面記載，且檢察官亦應確認證人完全瞭解告知之內容。

3-3.5 向大陪審團提出之證據

除法律另有規定或該轄區之司法倫理要求，向大陪審團提交之證據都必應遵守下列規定：

3-3.3 Subpoenaing the Target of an Investigation

In jurisdictions where it is permissible to call a person to testify before the grand jury even though the person is the target of the investigation, the following procedures should apply:

a. The chief prosecutor or his or her designee should approve all efforts to have a target of the investigation testify before a grand jury;

b. The target should be informed in writing of his or her status before any grand jury appearance and advised in writing to obtain legal advice as to his or her rights;

c. To avoid the appearance of unfairness, the prosecutor should make reasonable efforts to secure the target's grand jury appearance voluntarily rather than through a subpoena; and

d. At the outset of his or her appearance before the grand jury, the target should be informed of his or her rights as provided in Standard 3- 3.4.

3-3.4 Grand Jury Warnings

Before questioning a grand jury witness who is the target or subject of the investigation, a prosecutor should warn the witness as follows:

a. If the truthful answer to a question would tend to incriminate you in criminal activity, you may refuse to answer the question;

b. Anything you say may be used against you by the grand jury or in a later legal proceeding;

c. If you have retained counsel with you, the grand jury will grant your reasonable requests to consult with your counsel before answering a question.

d. These warnings should be given on the record, and the prosecutor should obtain from the witness an affirmation that he or she understands the warnings given.

3-3.5 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. 檢察官應依照法律或適用司法倫理準則之要求，揭露檢察官所知悉之任何真正無罪之可信證據或其他傾向於否定有罪定論之可信證據；

b. 檢察官不應向大陪審團提供檢察官明知為執法部門非法取得之證據；

c. 缺乏有效之權利拋棄聲明（valid waiver）時，檢察官明知或確信有受律師保密義務保護之訊息，不應向證人探詢；

d. 檢察官不得採取任何可能不當影響大陪審團證人證詞之行動；

e. 若檢察官深信證人在大陪審團前，將主張憲法修正案第 5 條（Fifth Amendment）不自證己罪之拒絕證言權時，檢察官不應使證人出庭，除非檢察官想要挑戰證人拒絕證言權之主張或想要尋求豁免許可（grant of immunity）。但得通知大陪審團關於證人不出席之原因；

f. 檢察官應告知大陪審團有親自聽取證人證言或傳訊有關資料等之權力；

g. 檢察官不得向大陪審團提供其明知為不實之證據；

h. 檢察官不得故意向大陪審團作出不實之事實或法律陳述。

3-3.6 作證義務

除非管轄區域法律另有規定，檢察官應批准調查對象於大陪審團面前作證的請求，但該請求有以下情況者不在此限：

a. 對大陪審團程序帶來過度負擔或延誤者；

b. 提供與調查確實無關之資訊者；

c. 不符合保護調查保密需要者；

d. 基於不正目的而提出者。

e. 於批准作證請求前，應要求調查對象放棄憲法修正案第五條之不自證己罪之拒絕證言權。

a. A prosecutor should disclose any credible evidence of actual innocence known to the prosecutor or other credible evidence that tends to negate guilt, as required by law or applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self-incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false;

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

3-3.6 Request by a Target to Testify

Except as otherwise governed by the law of the jurisdiction, the prosecutor should grant requests by the target of an investigation to testify before the grand jury unless such a request:

a. Would unduly burden or delay the grand jury proceedings;

b. Would clearly provide information that is irrelevant to the investigation;

c. Would be inconsistent with the need to preserve the secrecy of the investigation;

d. Is made for an improper purpose.

e. Before a request to testify is granted, the target should be required to waive on the record his or her Fifth Amendment privilege against self-incrimination.

3-3.7 大陪審團程序中之傳喚

雖然檢察官應盡力追查刑事調查範圍內所有相關資訊，但應合理減少第三方證人之調查負擔。檢察官應本於誠信原則，對於傳訊證人將造成不當負擔時，即應就傳訊範圍予以限制或修正。。

3-3.8 終止調查對象（target）身分之狀態

若特定人員先前已獲通知或發現其為大陪審團之調查對象且檢察官選擇不予起訴，或大陪審團未能提出經確認之起訴書且不擬對對象進行進一步調查時，檢察官應通知該人員已非調查對象，但該行為與刑法之有效執行相牴觸者除外。

評論

在司法轄區內，就犯罪行為之調查、起訴係適用大陪審團程序，該區域之法律及判例等應有關於大陪審團、檢察官、執法機關及證人程序等規定之細節。

因此，大陪審團調查之標準應鼓勵檢察官以公正態度進行大陪審團調查。為了刑事司法制度保持可行，多數人應相信此制度是公平性及有效率的。諸如允許證人諮詢律師、通知調查對象之身分狀態、針對證詞使用之警告以及允許調查對象作證等規定，可使檢察官得藉此主張此類規定表明該制度為追求司法正義的有效手段。

4. 豁免權之准許

3-4.1 通則

未經檢察長或其代理人事先批准，檢察官不得給予證人豁免或請求證人豁免。僅於經過仔細考量公共利益後始得能批准。豁免權之准許應以書面為之，並應說明所授予豁免之範圍及性質。

3-3.7 Grand Jury Subpoenas

While a prosecutor should zealously pursue all relevant information that is within the scope of a criminal investigation, reasonable efforts should be made to minimize the burden of investigation on third party witnesses. A prosecutor should consider in good faith requests to limit or otherwise modify the scope of subpoenas that are claimed to impose an undue burden on the recipients.

3-3.8 Termination of Target Status

If a person has previously been notified or made aware that he or she was the target of a grand jury investigation and the prosecutor elects not to seek an indictment or the grand jury fails to return a true bill and no further investigation against the target is contemplated, the prosecutor should notify the person he or she is no longer a target, unless doing so is inconsistent with the effective enforcement of the criminal law.

Commentary

In those jurisdictions that may use grand juries to investigate criminal activity and initiate charges, the procedures for the activities of the jurors, prosecutors, law enforcement officers, and witnesses are generally set forth in considerable detail in the statutes and case law of the jurisdiction.

As a result, the standards addressing the grand jury investigation are intended to encourage prosecutors to conduct the grand jury investigations with a sense of fairness. In order for the criminal justice system to remain viable, a large majority of the people must believe in its fairness and effectiveness. Provisions such as allowing a witness to consult with counsel, notification of target status, warning regarding the use of testimony, and allowing a target to testify allow the prosecutor to describe and defend the system by arguing that those provisions show it to be an effective tool in the pursuit of justice.

4. Grants of Immunity

3-4.1 Immunity Generally

A prosecutor should not grant or request immunity for a witness without the prior approval by the chief prosecutor or his or her designee. Approval should be granted only after careful consideration of the public interest. A grant of immunity should be in writing and should describe the scope and character of the immunity granted.

3-4.2 授予或聲請豁免權－公共利益

在檢察官考慮是否准許證人豁免權或為證人聲請豁免權時，應考量下列因素：

a. 准許豁免權後，可自證人處取得真實資訊之可能性；

b. 證人證詞或資訊對調查或起訴之價值；

c. 證人在大陪審團或審判中陪審團（Trial jury）前作證，其可信性之影響；

d. 在有強制令（compulsion order）情況下，證人及時完全配合之可能性，及不配合時對證人使用懲罰之效率性；

e. 證人與偵查、起訴犯罪行為之關聯性，及其犯罪歷史；

f. 強制證人作證前成功起訴該證人之可能性；及

g. 證人根據強制令作證時，於往後遭受人身傷害之風險。

3-4.3 給予豁免後起訴

針對先前已受豁免之證人之任何起訴均應由檢察長或其指定人員批准。檢察官辦公室應採取合理措施，以確保對受豁免之證人進行後續起訴之任何決定不會視為違反起訴之相關承諾。

3-4.4 給予強制被告作證之豁免權

除非法律另有規定，檢察官不負有代表被告授予或尋求豁免以取得證詞之義務。檢察官只有在確信合於公平正義的情況，才主動授予或尋求給證人即共同被告豁免權。

評論

於特定之起訴案中，實施犯罪行為者通常不只一人，因此需有一名以上犯罪者之合作和證詞始能成功起訴犯罪首腦。若無法說服需作證者以任何方式提供合作，則可考慮給予豁免。

3-4.2 Granting or Requesting Immunity—The Public Interest

Factors that should be considered before deciding whether to grant or request immunity from prosecution for a witness include, but are not limited to:

a. The likelihood that a grant of immunity will produce truthful information from the witness;

b. The value of the witness's testimony or information to the investigation or prosecution;

c. The impact on the witness's perceived credibility if he or she testifies before a grand jury or trial jury pursuant to a grant of immunity;

d. The likelihood of prompt and full compliance with a compulsion order, and the effectiveness of available sanctions if there is no such compliance;

e. The witness's relative culpability in connection with the offenses being investigated or prosecuted, and his or her criminal history;

f. The possibility of successfully prosecuting the witness prior to compelling his or her testimony; and

g. The likelihood of future physical harm to the witness if he or she testifies under a compulsion order.

3-4.3 Prosecution After Grants of Immunity

Any prosecution of a witness who has previously been immunized should be approved by the chief prosecutor or his or her designee. The prosecutor's office should take reasonable steps to ensure that any decision to pursue a subsequent prosecution of an immunized witness is not perceived as a breach of a prosecutorial commitment.

3-4.4 Grants of Immunity to Compel Testimony on Behalf of a Defendant

Except as otherwise required by law, a prosecutor is not obligated to grant or seek immunity to compel information on behalf of a defendant. A prosecutor may immunize or seek to immunize a defense witness if the prosecutor believes that it is necessary for a just prosecution.

Commentary

There are some prosecutions, usually those in which more than one person carried out the criminal act or acts, where the cooperation and testimony of one or more of the wrong doers is required for the successful prosecution of the most culpable. In those situations in which the person whose testimony is needed cannot be persuaded to cooperate in any other way, a grant of immunity may be required.

由於給予豁免將導致極重大之影響，只有檢察長—也就是對民眾直接負責之人士—才有行使豁免之權力。再者，考量維持民眾對刑事司法系統信任之需要，檢察長於行使自由裁量權前應仔細審查本標準規定之因素。

第四部分：審理前考量事項

1. 篩選

4-1.1 檢察機關責任

提起刑事訴訟之決定，應由檢察機關作成。若州法律允許執法部門或其他人提起刑事追訴，檢察官應儘早決定是否提起之。

4-1.2 檢察機關裁量權

檢察長應認同並強調初步追訴決定之重要性，並應向檢察官提供行使裁量權之適當培訓和指導。

4-1.3 應考慮因素

檢察官應對可能提出之追訴進行篩選，自刑事司法系統中消除不合理的起訴或不符公共利益之案件。該決定之考量因素包括：

a. 對被告有罪之懷疑；

b. 佐證定罪之合理證據不充足；

c. 起訴對被害人之負面影響；

d. 適當民事救濟措施之可行性；

e. 合適分流處遇和更生計劃的可行性；

f. 損害賠償之規定；

g. 另一刑事司法機構起訴之機率；

h. 不起訴是否有助於實現其他合法目的—如調查或起訴更嚴重之犯罪行為；

i. 過去對處境相似之被告作出之指控決定；

Because the grant of immunity carries with it very serious implications, only the chief prosecutor, the person most directly accountable to the people, should exercise the authority to grant immunity. Again, keeping in mind the need to maintain public trust in the criminal justice system, the chief prosecutor should carefully examine the factors set forth in the standards before exercising his or her discretion.

Part IV.: Pre-Trial Considerations

1. Screening

4-1.1 Prosecutorial Responsibility

The decision to initiate a criminal prosecution should be made by the prosecutor's office. Where state law allows criminal charges to be initiated by law enforcement or by other persons or means, prosecutors should, at the earliest practical time, decide whether the charges should be pursued.

4-1.2 Prosecutorial Discretion

The chief prosecutor should recognize and emphasize the importance of the initial charging decision and should provide appropriate training and guidance to prosecutors regarding the exercise of their discretion.

4-1.3 Factors to Consider

Prosecutors should screen potential charges to eliminate from the criminal justice system those cases where prosecution is not justified or not in the public interest. Factors that may be considered in this decision include:

a. Doubt about the accused's guilt;

b. Insufficiency of admissible evidence to support a conviction;

c. The negative impact of a prosecution on a victim;

d. The availability of adequate civil remedies;

e. The availability of suitable diversion and rehabilitative programs;

f. Provisions for restitution;

g. Likelihood of prosecution by another criminal justice authority;

h. Whether non-prosecution would assist in achieving other legitimate goals, such as the investigation or prosecution of more serious offenses;

i. The charging decisions made for similarly situated defendants;

j. 被告之態度和精神狀態；

k. 檢方追訴對被告造成之不當困難；

l. 不執行準據法未執行之記錄；

m. 執法部門未能履行必要職責或進行調查；

n. 在被告得到法律咨詢後，明白且自願地放棄對被害人、證人、執法機構及其同仁、或檢察官及其同仁提起潛在之民事訴訟；

o. 所指控的罪行是否與代表被告已重大背離過去的守法生活；

p. 被告是否因遭指控之犯罪而蒙受顯著的損失；

q. 被指控之犯罪造成之損失或傷害的範圍是否過於輕微，而不能為刑事制裁

4-1.4 不需考量之因素

篩選決定中不應考量之因素包括：

a. 檢察官個人或檢察官辦公室的定罪率；

b. 起訴對檢察官或檢察官辦公室其他人員帶來之潛在個人優勢或劣勢；

c. 起訴向檢察官帶來之潛在政治優勢或劣勢；

d. 被告具有令人負面歧視之特質，惟此些特質與犯罪之構成要件或動機並無關連；

e. 本標準第 4-7.4 條所述之任何潛在資產沒收造成之影響。

4-1.5 資訊共享

檢察官應嘗試蒐集所有可助於做出合理篩選決定之相關資訊。檢察官辦公室應採取措施確保其他政府機構和執法機構合作向檢察官提供此類資訊。

j. The attitude and mental status of the accused;

k. Undue hardship that would be caused to the accused by the prosecution;

l. A history of non-enforcement of the applicable law;

m. Failure of law enforcement to perform necessary duties or investigations;

n. The expressed desire of an accused to release potential civil claims against victims, witnesses, law enforcement agencies and their personnel, or the prosecutor and his personnel, where such desire is expressed after having the opportunity to obtain advice of counsel and is knowing and voluntary;

o. Whether the alleged crime represents a substantial departure from the accused's history of living a law-abiding life;

p. Whether the accused has already suffered substantial loss in connection with the alleged crime;

q. Whether the size of the loss or the extent of the harm caused by the alleged crime is too small to warrant a criminal sanction;

4-1.4 Factors Not to Consider

Factors that should not be considered in the screening decision include the following:

a. The prosecutor's individual or the prosecutor's office rate of conviction;

b. Personal advantages or disadvantages that a prosecution might bring to the prosecutor or others in the prosecutor's office;

c. Political advantages or disadvantages that a prosecution might bring to the prosecutor;

d. Characteristics of the accused that have been recognized as the basis for invidious discrimination, insofar as those factors are not pertinent to the elements or motive of the crime;

e. The impact of any potential asset forfeiture to the extent described in Standard 4-7.4.

4-1.5 Information Sharing

The prosecutor should attempt to gather all relevant information that would aid in rendering a sound screening decision. The prosecutor's office should take steps to ensure that other government and law enforcement agencies cooperate in providing the prosecutor with such information.

4-1.6 持續評估義務

若檢察官知悉以往未知之資訊可能影響先前作成之篩選決定，則檢察官應根據新資訊重新評估先前作成之決定。

4-1.7 拒絕之記錄

於法律允許下，檢察官辦公室應保留拒絕起訴理由之記錄。

4-1.8 拒絕之說明

若有因不起訴而直接受有影響之人員遭到質疑，檢察官應及時回應這些質疑。

評論

篩選決定可說是檢察官尋求司法正義時行使其自由裁量權做出之最重要決定。篩選可決定特定案件是否納入刑事司法系統。

雖然有時可能相當容易就作成決定，但有時亦需要審視檢察官對刑事司法系統之信念、起訴之目的以及其他因素。這些標準，可能在某些案件中的篩選決定中應納入考量，但某些案件在作成決定時就毋須考慮。檢察官應注意識別所列出之任何無司法管轄權之因素。

2. 起訴

4-2.1 檢察機關責任

檢察官機關之最重要的責任為確定應起訴什麼犯罪以及起訴對象為何。

4-2.2 起訴適當性

檢察官必須在確信犯罪合致於構成要件時始提出追訴，並有合理的確信這樣的起訴在法院審理時，將會因有充分的可採性證據（admissible evidence）而被維持。

4-1.6 Continuing Duty to Evaluate

In the event that the prosecutor learns of previously unknown information that could affect a screening decision previously made, the prosecutor should reevaluate that earlier decision in light of the new information.

4-1.7 Record of Declinations

Where permitted by law, a prosecutor's office should retain a record of the reasons for declining a prosecution.

4-1.8 Explanation of Declinations

The prosecutor should promptly respond to inquiries from those who are directly affected by a declination of charges.

Commentary

It could be argued that screening decisions are the most important made by prosecutors in the exercise of their discretion in the search for justice. The screening decision determines whether or not a matter will be absorbed into the criminal justice system.

While the decision may be very easy at times, at others it will require an examination of the prosecutor's beliefs regarding the criminal justice system, the goals of prosecution, and a broad assortment of other factors. These standards set forth some of the considerations that may be relevant to an informed screening decision as well as some that should not be used in making the determination. The prosecutor should take care to recognize any of the listed factors that are not appropriate for use in his or her jurisdiction.

2. Charging

4-2.1 Prosecutorial Responsibility

It is the ultimate responsibility of the prosecutor's office to determine which criminal charges should be prosecuted and against whom.

4-2.2 Propriety of Charges

A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

4-2.3 不當槓桿

若檢察官之唯一目的是讓被告放棄潛在民事索賠，則不應起訴。

4-2.4 應考慮因素

檢察官僅可提出符合司法正義之起訴。與該決定相關之可能因素包括：

a. 犯罪之性質，包括犯罪是否涉及暴力或人身傷害；

b. 定罪之機率；

c. 與被告之罪責或責任相關之人格特性，包括被告之犯罪記錄；

d. 起訴對罪犯和整個社會之潛在威懾價值；

e. 若無法使被告定罪對社會觀感之影響；

f. 被告配合執法單位之意願；

g. 被告於犯罪活動之可責程度之高低；

h. 被害人之狀況，包括被害人之年齡或特殊脆弱性；

i. 被告於犯罪時是否擔任受信任之職務；

j. 與罪行之嚴重度相比，起訴之成本較高；

k. 相關執法人員之建議；

l. 犯罪對社會之影響；

m. 任何其他加重或減輕之情況。

評論

於篩選審查決定起訴後，起訴決定即為檢察官之權力及責任。起訴決定之作成應確定以下事項：

a. 以何種罪名起訴被告之犯行是適當的；及

b. 如何起訴最符合司法正義。

作成起訴決定時，檢察官應銘記當時所行使之權力。檢察官作成之決

4-2.3 Improper Leveraging

The prosecutor should not file charges where the sole purpose is to obtain from the accused a release of potential civil claims.

4-2.4 Factors to Consider

The prosecutor should only file those charges that are consistent with the interests of justice. Factors that may be relevant to this decision include:

a. The nature of the offense, including whether the crime involves violence or bodily injury;

b. The probability of conviction;

c. The characteristics of the accused that are relevant to his or her blameworthiness or responsibility, including the accused's criminal history;

d. Potential deterrent value of a prosecution to the offender and to society at large;

e. The value to society of incapacitating the accused in the event of a conviction;

f. The willingness of the offender to cooperate with law enforcement;

g. The defendant's relative level of culpability in the criminal activity;

h. The status of the victim, including the victim's age or special vulnerability;

i. Whether the accused held a position of trust at the time of the offense;

j. Excessive costs of prosecution in relation to the seriousness of the offense;

k. Recommendation of the involved law enforcement personnel;

l. The impact of the crime on the community;

m. Any other aggravating or mitigating circumstances.

Commentary

Following an initial screening decision that prosecution should be initiated, the charging decision is the prerogative and responsibility of the prosecutor. The charging decision entails determination of the following issues:

a. What possible charges are appropriate to the offense or offenses; and

b. What charge or charges would best serve the interests of justice?

In making a charging decision, the prosecutor should keep in mind the power he or she is exercising at that point in time. The prosecutor is making a decision that will have a profound effect on the lives of the person being charged, the person's family, the victim, the victim's family, and the community as a whole. The magnitude of the charging decision does not dictate

定將對遭指控者、該人員之家屬、被害人、被害人之家屬以及整體社區之生活產生深遠影響。起訴決定之重要性並不表示檢察官作成決定時應該要怯弱膽小，而是表示應該要依照專業判斷而有智慧地作出決定。

有時候會有起訴時尚未知悉、但會影響案件未來行動之資訊存在。雖建議要在起訴前盡可能蒐集所有資訊，但這要完全做到這一點是不切實際的期待。但檢察官在確定何時具備充足資訊做出起訴決定時，應平衡考量蒐集充足資訊之重要性和公共安全利益之重要性。

雖然依照一般道德標準僅要對於犯罪的發生及被告係犯罪行為人具相當理由（probable casue）即可開始偵查之程序，惟刑事之起訴必須採取更高的標準。建議之起訴門檻，應是檢察官合理相信該起訴在審判中具可採性證據（admissible evidence）而被確認，此標準即表彰著開始刑事訴訟的堅實基礎。鑑於檢察官有尋求正義之責任，因此保護到所有人（甚至是偵查中之被告）的權利是必要的。

檢察官決定施行起訴所使用之方式與做出篩選決定所採用之機制應有相當之相關性；實際上這兩種職權也許可適當的合併整併至單一個人或辦公室部門之下。

分流僅可由檢察官自行決定，檢察官於選擇起訴或進行分流替代方案時不應屈服於外部壓力。分流可於訴訟任何階段進行，但仍可選擇繼續起訴。此舉並不排除於正式起訴後採取分流替代方案之機會。於此階段，被告受刑事起訴之機率會更高，因此積極參與分流替代方案並獲得有利結果之機率也可能更高。

最初之起訴標準或指南僅可由檢察長制定。於僅有一人之辦公室中，檢察長亦為執行此類準則之代理人。規模較大之辦公室可能發現將大部分起訴責任委託予指定之個人或設立單獨辦公室部門受理相關程序，較為便利，特別是針對輕微之犯罪。指定人員或辦公室應負責作出初步起訴之決定，並經檢察長審查批准。

that it be made timidly, but it does dictate that it should be made wisely with the exercise of sound professional judgment.

There will be times when information not known at the time of charging will influence future actions in a case. While it is advisable to gather all information possible prior to charging, that is simply an unrealistic expectation. The prosecutor must balance the importance of gathering information and the importance of public safety interests when determining when he or she has sufficient information to make a charging decision.

While commencing a prosecution is permitted by most ethical standards upon a determination that probable cause exists to believe that a crime has been committed and that the defendant has committed it, the standard prescribes a higher standard for filing a criminal charge. To suggest that the charging standard should be the prosecutor's reasonable belief that the charges can be substantiated by admissible evidence at trial is recognition of the powerful effects of the initiation of criminal charges. Pursuant to the prosecution's duty to seek justice, the protection of the rights of all (even the prospective defendant) is required.

The means by which a prosecutor elects to implement charging decisions is closely related to the mechanism utilized in reaching screening decisions; indeed, the two functions may be appropriately combined in a single individual or office division.

Diversion participation should only be done at the prosecutor's discretion, and the prosecutor should not yield to external pressures in either selecting a charge or deciding if diversion alternatives are a proper course of action. Diversion may be done at any stage of the proceeding, but with the option of continued prosecution. That does not preclude diversion alternatives after a formal charge. At that stage, the threat of criminal prosecution is even greater to the accused, and thus positive participation in diversion alternatives and favorable results may be more likely.

Initial standards or guidelines for charging will be established by the chief prosecutor only. In the one-person office, the chief prosecutor will also act as the agent for implementing these guidelines. Larger offices may find it convenient, particularly in respect to minor offenses, to delegate much of the responsibility for charging to selected individuals or to establish a separate office division for intake procedures. The designated individuals or office division should be responsible for reaching initial charging decisions, subject to review and approval by the chief prosecutor.

檢察長應制定執行起訴決定之指南。對於單人辦公室而言，該指南流程將提供操作一致性，並促進制定及闡明具體政策。其他規模之辦公室亦然。

有些檢察機關採用整合式起訴（vertical prosecution）並取得顯著成效，因此指南之使用對於一致之應用相當重要。

3. 分流

4-3.1 檢察機關責任

將案件從刑事司法系統進行分流之決定應為檢察官之職責。檢察官應在自由裁量權之範圍內判斷以治療替代等方案作出分流之決定是否最符合司法之利益。

4-3.2 分流之替代方案

檢察官應理解並知悉所有分流計劃之適用範圍及可用性。檢察機關應採取措施幫助確保所有分流計劃均可信且有效。

4-3.3 專案需求

於檢察長認為分流計劃不夠充分之司法管轄區，檢察機構應敦促建立、維持並加強必要之相關計劃。

4-3.4 資訊蒐集

檢察官應掌握所有必要之相關調查資訊、個人資料、案件記錄和犯罪記錄資訊，以便判斷將個人自刑事司法系統中分流時作成合理決定。檢察長應採取措施確保制定適當法規及法院規則，使檢察官能夠經由適當機構獲取此類資訊。

4-3.5 應考慮因素

若檢察官認定對於司法正義、社會及個人有利時，其可將被告自刑事司法系統中分流。該決定可能須考慮之因素包括：

The chief prosecutor should establish guidelines by which charging decisions may be implemented. For the one-person office this formulation process will provide consistency of operation and an incentive to develop and articulate specific policies. The same holds true for other size offices.

Some prosecution offices employ vertical prosecution with great success, making the use of guidelines important for consistent application.

3. Diversion

4-3.1 Prosecutorial Responsibility

The decision to divert cases from the criminal justice system should be the responsibility of the prosecutor. The prosecutor should, within the exercise of his or her discretion, determine whether diversion of an offender to a treatment alternative best serves the interests of justice.

4-3.2 Diversion Alternatives

A prosecutor should be aware and informed of the scope and availability of all alternative diversion programs. The prosecutor's office should take steps to help ensure that all diversion programs are credible and effective.

4-3.3 Need for Programs

In jurisdictions in which diversion programs are deemed insufficient by the chief prosecutor, the prosecutor's office should urge the establishment, maintenance, and enhancement of such programs as may be necessary.

4-3.4 Information Gathering

The prosecutor should have all relevant investigative information, personal data, case records, and criminal history information necessary to render sound and reasonable decisions on diversion of individuals from the criminal justice system. The chief prosecutor should take steps to ensure the enactment of appropriate legislation and court rules to enable the prosecutor to obtain such information from appropriate agencies.

4-3.5 Factors to Consider

The prosecutor may divert individuals from the criminal justice system when he or she considers it to be in the interest of justice and beneficial both to the community and to the individual. Factors which may be considered in this decision include:

a. 犯罪行為之性質、嚴重度或類別；

b. 犯罪者是否具備特殊之人格特質或困難；

c. 被告是否為初犯；

d. 被告配合分流計劃並因此受益之機率；

e. 可用計劃是否適合被告之需要；

f. 分流和犯罪對社會之影響；

g. 相關執法機關之建議；

h. 被告再犯之可能性；

i. 分流能夠使被告維持其原先就業就學狀態之程度；

j. 被害人之意見；

k. 賠償之規定；

l. 犯罪行為對被害人之影響；及

m. 過去針對處境相似被告之分流決定。

4-3.6 分流流程

被告之分流程序應包括以下步驟：

a. 以經被告簽署之協議或法庭記錄來列出所有對於被告之要求；

b. 使被告簽署速審要求放棄書（若符合情況）；

c. 檢察官有權力於指定時間內依照其判斷，為公共利益繼續本件刑事案件；

d. 以適當的機制保障案件得以起訴成功，如：被告認罪、不爭執事實的簡化協議（stipulations of facts）、或證人證詞。

4-3.7 分流記錄

除非法律禁止，檢察官辦公室應為每一案件建立被告參與分流計劃之記錄，包括分流之原因，並由檢察官辦公室留存供執法部門往後使用。

a. The nature, severity, or class of the offense;

b. Any special characteristics or difficulties of the offender;

c. Whether the defendant is a first-time offender;

d. The likelihood that the defendant will cooperate with and benefit from the diversion program;

e. Whether an available program is appropriate to the needs of the offender;

f. The impact of diversion and the crime on the community;

g. Recommendations of the relevant law enforcement agency;

h. The likelihood that the defendant will recidivate;

i. The extent to which diversion will enable the defendant to maintain employment or remain in school;

j. The opinion of the victim;

k. Provisions for restitution;

l. The impact of the crime on the victim; and

m. Diversion decisions with respect to similarly situated defendant.

4-3.6 Diversion Procedures

The process of diverting a defendant should include the following procedures:

a. A signed agreement or court record specifying all requirements for the accused;

b. A signed waiver of speedy trial requirements, where applicable;

c. The right of the prosecutor, for a designated time period, to proceed with the criminal case when, in the prosecutor's judgment, such action would be in the interest of justice;

d. Appropriate mechanisms to safeguard the prosecution of the case, such as admissions of guilt, stipulations of facts, and depositions of witnesses.

4-3.7 Record of Diversion

A record of the defendant's participation in a diversion program, including the reasons for the diversion, should be created for each case and maintained by the prosecutor's office for subsequent use by law enforcement, unless prohibited by law.

4-3.8 分流決定之說明

檢察官應根據要求向被害人、證人、執法人員、法院和州分流計劃以及認為適當時向其他利害關係人提供分流決定之相關充分說明。

評論

分流程序作為檢察官處理刑事追訴替代方案，也就是將刑事被告甚或潛在被告分流至刑事判決定罪以外之結果。此類分流之目的包括：

a. 減輕法院審理案件之負擔，並為較重大之案件節省司法資源；

b. 提供以社區為基礎之康復服務來減少累犯發生率，該康復服務作為替代方案比持續刑事起訴更有效且成本更低。

c. 在具體個案中，審酌一切情狀後，認為給予分流處分（diversion）較為適當，係相當主觀地認為被告及社會都能透過分流處分，獲得比起訴更多之利益。。

檢察官長期以來都處於利用社區和法院系統以替代傳統處罰之最前端，同時又負責解決公共安全和罪犯復歸社會之問題。1989 年首個藥物治療法庭在佛羅里達州戴德郡成立以來，檢察官一直都是替代治療計劃成功與否的重要一環。詳請參閱 www.uscourts.gov/sites/default/files/72_1_2_0.pdf。在國家檢察官的指揮下，心理健康案件和退伍軍人法庭等其他分流計劃均已成功建立並實施，以根治犯罪行為及其行為之根本原因。

檢察長應頒布指南，概述做出分流決定之方法和標準。此一指南有助於提供統一且符合檢察官目標之政策。

保護社會的利益與保護個人權利同等重要。請銘記，遭起訴之個人僅於認定替代程序更為合適有益時，才能免予起訴並適用分流程序。

4-3.8 Explanation of Diversion Decision

Upon request, the prosecutor should provide adequate explanations of diversion decisions to victims, witnesses, law enforcement officials, the court, and statewide diversionary program(s) and, when deemed appropriate, to other interested parties.

Commentary

An alternative available to prosecutors in the processing of a criminal complaint is that of diversion - the channeling of criminal defendants and even potential defendants, into

programs that may not result in a criminal conviction. The purposes of diversion programs include:

a. Unburdening court dockets and conserving judicial resources for more serious cases;

b. Reducing the incidence of offender recidivism by providing community-based rehabilitation that would be more effective and less costly than the alternatives available in continued criminal prosecution.

c. Determination of the appropriateness of diversion in a specified case will involve a subjective determination that, after consideration of all circumstances, the offender and the community will both benefit more by diversion than by prosecution.

Prosecutors have long been at the forefront in utilizing community and court programs as alternatives to traditional penalties while addressing public safety and offender rehabilitation. Dating back to 1989, when the first Drug Treatment Court was created in Dade County, FL, prosecutors have been integral to the success of alternative therapeutic programs. See www.uscourts.gov/sites/default/files/72_1_2_0.pdf. With the leadership of the nations' prosecutors, other diversionary programs such as Mental Health Dockets and Veterans' Courts have also been successfully created and implemented to address criminal behavior and the underlying causes of the behavior.

The chief prosecutor should promulgate guidelines outlining the approach and criteria under which he wishes diversion determinations to be made. These guidelines will aid in providing a policy that is both uniform and in accordance with the intentions of the prosecutor.

Equally important as protecting the rights of the individual is the necessity to protect the interests of society. It must be remembered that the individual involved in the diversion process is accused of having committed a criminal act and is avoiding prosecution only because an alternative procedure is thought to be more appropriate and more beneficial.

4. 審前釋放

4-4.1 檢察機關責任

針對被控犯有輕微非暴力犯罪之被告，檢察官應考慮是否不要反對提供非金錢之保釋。於其他情況下，不論該保釋金是事前提出抑或是事後擔負給付義務，檢察官應要求設定適當之保釋金額，以確保被告出庭參加所有必要之法庭訴訟，且於法律允許下，不得對任何人員或社會構成危險。若法律允許且檢察官有理由相信被告具以下情況，則檢察官應使被告繼續拘禁，不被保釋：

a. 審前釋放將對任何人或社會構成重大危險；

b. 有竄改證據、試圖不當影響證人或以其他方式干擾刑事案件有序解決之虞；或

c. 存在重大逃逸風險。

4-4.2 審前監禁替代方案

在檢察官已負責任地考量第 4-4.1 條之情形下，檢察官應建議保釋決定，以促進審前釋放而非拘留。

4-4.3 保釋金額要求

檢察官或其司法管轄區域之適當實體應嘗試蒐集犯罪相關事實以及被告自身情況和歷史之充分資訊，以尋求適當之保釋金額，包括使用可用之審前風險評估工具（若有）。檢察官或法院於決定適當之請求金額時可予以考量之因素包括：

a. 被告之就業情況和過往經歷；

b. 被告之經濟狀況、籌募資金之能力和資金來源；

c. 被告於社區居住之時間長短和角色，以及被告家庭與社區關聯之性質和程度；

4. Pretrial Release

4-4.1 Prosecutorial Responsibility

A prosecutor should consider not opposing a non-monetary bond for defendants accused of low-level, non-violent crimes. In other instances, a prosecutor should request that bail be set at an appropriate amount, whether secured or unsecured, to ensure that the defendant appears at all required court proceedings, and, where allowed by law, does not pose a danger to any person or to the community. Where permitted by law, a prosecutor should request that the defendant be held without bail if the prosecutor reasonably believes the accused:

a. Would present a significant danger to any person or the community if he or she were released prior to trial;

b. Is likely to tamper with evidence, attempt to improperly influence witnesses, or otherwise interfere with the orderly resolution of the criminal case; or

c. Is a substantial flight risk.

4-4.2 Alternatives to Pretrial Incarceration

Prosecutors should recommend bail decisions that facilitate pretrial release rather than detention to the extent such release is consistent with the prosecutor's responsibilities set forth in Section 4-4.1.

4-4.3 Bail Amount Request

A prosecutor, or the appropriate entity in their jurisdiction, should attempt to gather adequate information about the facts of the crime and the defendant's circumstances and history to request an appropriate bail amount, to include the use of a pretrial risk assessment tool, if one is available. Among the factors a prosecutor or court may consider in determining the proper amount to request are:

a. The defendant's employment status and history;

b. The defendant's financial condition, ability to raise funds and source of funds;

c. The defendant's length and character of residence in the community, and the nature and extent of the accused's family ties to the community;

d. 在考量犯罪之性質和嚴重程度、證據之強度以及定罪後可判處刑罰等因素之範圍內，判斷被告於候審期間未出庭和犯下其他罪行之可能性；

e. 被告之犯罪記錄，包括因其他刑事指控出庭或未出庭之任何記錄；

f. 被告試圖傷害任何人員、恐嚇證人或被害人或竄改證據之風險；

g. 願意為被告之可信性具保之社區內成員之身分；

h. 顯示被告與社區關聯之任何其他因素。

i. 檢察官不得尋求超過可確保他人和社區安全以及確保被告出庭所需之保釋金額或其他過於嚴苛之釋放條件檢察官要求保釋金額或條件時，應以可確保他人及社會安全。

4-4.4 持續義務

若於作出初步保釋決定後，檢察官獲悉之新資訊使初步保釋決定變為不適當，檢察官應採取措施要求修改被告之保釋狀況或條件。

4-4.5 定期報告

於某些情況下，檢察官應考量要求針對被拘留之被告提出定期報告，以確定當前條件下仍持續拘留是否合適。

檢察署依法應掌握候審釋放之被告（defendant released pending trial）有無任何違反審前釋放（pretrial release）條件之行為，進而視情形撤銷釋放決定、提高保釋金且（或）採取適當之處罰。。

評論

檢察官針對保釋金額和條件之建議於特定程度上受到其司法管轄範圍內法律和程序之影響。程序可能包括傳喚及逮捕之運用以及要求於適當條件下拘留被告而不給予保釋。

此類規定基於對無罪推定原則之尊重，因此明確傾向於優先釋放候審

d. The nature and severity of the crime, the strength of the evidence, and the severity of the sentence that could be imposed on conviction, to the extent these factors are relevant to the risk of non-appearance and the commission of other crimes while awaiting trial;

e. The defendant's criminal record, including any record of appearance or non- appearance on other criminal charges;

f. The likelihood of the defendant attempting to harm anyone, intimidate witnesses or victims, or to tamper with the evidence;

g. Identification of responsible members of the community who would vouch for the accused's reliability;

h. Any other factors indicating the defendant's ties to the community.

i. A prosecutor should not seek a bail amount or other release conditions that are greater than necessary to ensure the safety of others and the community and to ensure the appearance of the defendant at trial.

4-4.4 Continuing Obligation

If, after the initial bail determination is made, the prosecutor learns of new information that makes the original bail decision inappropriate, the prosecutor should take steps to request a modification the accused's bail status or conditions.

4-4.5 Periodic Reports

In certain situations, a prosecutor should consider requesting periodic reports on detained defendants to determine if continued detention under the current conditions is appropriate.

The prosecutor's office should be informed of any violations of pretrial release conditions of a defendant released pending trial, and should seek revocation of release status, higher bail and/or appropriate sanctions as deemed necessary, in accordance with applicable law or court rules.

Commentary

The prosecutor's recommendation regarding bail amounts and conditions will be shaped to some extent by the laws and procedures in his or her jurisdiction. The procedures may range from the use of a summons to arrest and a request to hold the defendant without bail under appropriate conditions.

These provisions recognize a respect for the presumption of innocence, and therefore state a clear preference for release of defendants pending trial. However, because a prosecutor must represent the public interest, the standards also recognize that in some circumstances in which the defendant is a significant flight risk, or where there is a threat to harm or intimidate witnesses

被告。但因檢察官所代表之公共利益，本標準於特定情況如認被告有重大潛逃風險或存在傷害或恐嚇證人、被害人或銷毀或操弄證據之虞時，則不予認同無罪推定，且若被告無法滿足相關條件，則不得保釋或訂立保釋金額。

於確立審前釋放之條件後，負責監督被告遵守情況之人員或機構應隨時向檢察官通報被告之表現。檢察官應持續行使合理自由裁量權，確定是否應修改條件以降低要求或尋求制裁或監禁。

5. 首次出庭

4-5.1 檢察機關責任

檢察官應與執法部門和法院合作，確保被告可順利被帶到司法人員面前，以避免不必要之拖延。

4-5.2 檢察官角色

除非法規、規則或法院命令要求，檢察官無需於首次出庭時到場。於檢察官首次出庭時，其應於可行範圍內確保：

a. 保釋金額與所指控之罪行成比例；

b. 起訴之正確及適當性；

c. 法院設定之任何未來訴訟時程均可避免不必要之延誤。

d. 若被告於首次出庭時無律師代理，檢察官不得尋求被告放棄預審或其他審前權利。

評論

雖然檢察官一般無法控制首次出庭之時間，但其應與執法部門和法院密切合作制定標準程序以確保提出準確起訴，避免造成不必要之延誤，但仍應有充足時間供檢察官執行職務。

or victims or to destroy or manipulate evidence, setting no bail or setting bail in an amount where the defendant will not be able to meet the conditions is appropriate.

Once the conditions for pre-trial release have been established, the person or agency responsible for monitoring the defendant's compliance should keep the prosecutor apprised of the defendant's performance. The prosecutor should continue to exercise reasonable discretion in determining whether modification of the conditions, either to lessen the requirements or to seek sanctions or incarceration, should be sought.

5. First Appearance

4-5.1 Prosecutorial Responsibility

The prosecutor should work with law enforcement and the courts to see that the accused is brought before a judicial officer without unnecessary delay.

4-5.2 Prosecutor's Role

A prosecutor need not be present at the first appearance unless required by statute, rule, or court order. When the prosecutor is present at the first appearance, he or she should, to the extent practicable, ensure that:

a. Bond is set commensurate with the offense charged;

b. The charges are correct and appropriate;

c. Any schedule of future proceedings that the court sets avoids unnecessary delay.

d. If the accused is not represented by counsel at the first appearance, a prosecutor should not seek a waiver from the accused of a preliminary hearing or other pretrial right.

Commentary

Although prosecutors usually do not control when a first appearance occurs, they should work very closely with law enforcement and the courts to establish standard procedures to assure the filing of accurate charges without unnecessary delay, but with sufficient time for prosecutor input.

6. 預審聽證會

4-6.1 檢察官角色

檢察官應出席預審聽證會，並提供足夠且可靠之資訊，供司法人員作出具備合理根據的裁決。

4-6.2 棄權

在確認被告放棄合理根據的裁決之前，檢察官應確信被告是否於知情且自願下作成決定。被告於放棄前有諮詢律師的機會是有效放棄的初步證據。

評論

不同司法管轄區對預審聽證會之要求差異頗大。本標準肯認舉行預審聽證會之重要性，以及檢察官和法院確保此類聽證會公平進行的責任。

7. 沒收

4-7.1 沒收法規

檢察官應支持制定並執行允許沒收供犯罪之用或因犯罪活動而獲得之財產或金錢之相關法規。

4-7.2 正當程序

檢察官應確保財產所有人之正當程序權利均獲保護，無論該人是否為犯罪行為人。國家或地方政府應向財產所有人發出扣押通知，並在司法人員面前有陳述意見之機會。政府應承擔證明金錢或財產為犯罪活動收益或供犯罪活動之用之責任。

4-7.3 對私人律師之影響

被告自行選擇私人法律顧問之能力不應成為檢察官依法執行沒收時應考量之因素。

6. Preliminary Hearing

4-6.1 Prosecutor's Role

The prosecutor should appear at the preliminary hearing and present such reliable information as is required for a judicial officer to make the probable cause determination.

4-6.2 Waiver

Before accepting a waiver by the defendant of a probable cause determination, the prosecutor should be satisfied that the defendant's decision was knowing and voluntary. A defendant's opportunity to consult with counsel prior to the waiver is prima facie evidence of a valid waiver.

Commentary

Requirements for preliminary hearings vary considerably from jurisdiction to jurisdiction. These standards recognize the importance of a preliminary hearing when held and the responsibility of the prosecutor with the court to assure the fairness in the conduct of such a hearing.

7. Forfeiture

4-7.1 Forfeiture Laws

The prosecutor should support the enactment and enforcement of statutes that permit the forfeiture of property or money used in or obtained as a result of criminal activity.

4-7.2 Due Process

The prosecutor should ensure that the due process rights of the property owner are protected, whether or not that person is the one who committed the crime. The state or local government should provide notice to property owners of the seizure and provide an opportunity to be heard before a judicial officer. The government should bear the burden of proving that the money or property is either the proceeds of criminal activity or used in connection with criminal activity.

4-7.3 Impact on Private Counsel

The ability of defendants to secure private legal counsel of their choice should not be a consideration in the prosecutor's enforcement of forfeiture statutes.

4-7.4 情節減輕之因素

在檢察官行使其良好專業判斷之情況下，可以決定對除了不法行為者以外的財產所有者或利益持有人豁免、減輕或放棄此類財產之沒收。檢察官於作成此類決定時可予考量之因素包括所有人或利益持有人是否有以下情況（且經檢察官確認）：

a. 該利益係善意取得並維持，且不知悉或無充分理由知悉有導致沒收之行為；

b. 沒收對原本無辜之所有人或利益持有人造成嚴重困難；及

c. 該財產不會用於促進往後之犯罪活動或使財產遭沒收之人員獲益。

4-7.5 不允許考量之因素

被沒收之資產或可用於資助執法工作，此一事實不可不當影響檢察官執行沒收法規或刑法時適當行使之自由裁量權，亦不得隨意以沒收替代刑事追訴。

評論

不允許任何人經由其不法行為獲利是沒收的基本原則。沒收非法活動所取得之收益以及用於促進犯罪或犯罪組織之財產是打擊非法活動的重要工具，因為它消除了與犯罪行為相關的經濟利益。這有助於嚇阻個人犯罪，因為他們擔心失去從非法活動中賺取的收益和現金流，或者失去用於犯罪的財產，包括房屋和汽車。犯罪組織，如非法毒品交易的獨佔利益團體，其經由非法販賣毒品獲取巨額利潤，他們更容易因為利潤損失而受到影響，更勝於對個別毒品走私者的追訴。此外，執法機構可利用沒收之資產打擊非法活動，並利用這些資金或財產強化調查及追訴的效能。

當不法行為人不擁有財產而以他人名義隱藏該財產時，則可以沒收經扣押之財產。但檢察官應留意並確保認定之財產所有人知悉其金錢或財產係用於犯罪活動，且該所有人不得為不知情之善意所有人。

4-7.4 Factors in Mitigation

A prosecutor may, in the exercise of his or her sound professional judgment, decide to remit, mitigate, or forgo the forfeiture of property to an owner or interest holder other than the wrongdoer. Factors a prosecutor may consider in making such a decision include whether an owner or interest holder has, to the prosecutor's satisfaction, established that:

a. The interest was acquired and maintained in good faith without knowledge or substantial reason to know of the conduct that gave rise to the forfeiture;

b. That the forfeiture would work a severe hardship on an otherwise innocent owner or interest holder; and

c. That the property will not be used in furtherance of future criminal activity or benefit the one whose conduct subjected the property to forfeiture.

4-7.5 Impermissible Considerations

The fact that forfeited assets might be available to fund law enforcement efforts should not unduly influence the proper exercise of the prosecutor's discretion in the enforcement of forfeiture statutes or the criminal law, nor should forfeiture be improperly used as a substitute for criminal prosecution.

Commentary

The concept that a person should not be allowed to profit from his or her wrongdoing is the underlying principle of forfeiture. Seizing profits from illegal activity and property used to facilitate a crime or criminal enterprise is an important tool to combat illegal activity by eliminating the financial gain associated with criminal conduct. It serves to deter individuals from committing crimes for fear of losing the proceeds and cash flow earned from illegal activity or losing property used in the commission of the crime, to include houses and cars. Criminal enterprises, such as cartels in the illegal drug trade, stand to gain tremendous profits by selling illegal narcotics, and they are better crippled by the loss of profits than prosecution of an individual drug runner. Furthermore, the seized assets can be used by law enforcement agencies to battle illegal activity by using the money or property to enhance investigations and prosecutions.

Forfeiture of seized property may occur when the wrongdoer does not own the property but hides it under subterfuge in another's name. The prosecutor should take care, however, to ensure that the named owner is knowledgeable that the money or property is being used in furtherance of criminal activity as opposed to an unknowing innocent owner.

資產沒收法因允許在沒有司法程序的情況下查封資產而受到質疑，而這些資產沒收法是根據聯邦法律訂立的，並不要求政府證明這些資產與犯罪活動有關。公眾也對根據聯邦法律的做法表示了關注，該做法將舉證責任轉移到財產所有者身上，要求他們證明這些資產與非法活動無關，並指責政府不當地沒收了這些資產。

州及地方檢察官堅持以下原則：保護個人財產權利，以及提供所有財產所有者正當程序。

沒收訴訟之指導原則應當以財產是否用於犯罪活動或因犯罪活動而取得為準，而非以金錢或財產遭扣押時不法行為人聘請辯護律師之難易度為依據。

通常而言，財產之所有權利益具混合性質，沒收會給其他人帶來不利後果。檢察官可酌情決定在情由可原的情況下，適當地免除、減免或減輕沒收。

本標準為行使此類自由裁量權提供指導。沒收之目的係阻止導致沒收之行為，並消除此類行為之工具和收益。

8. 大陪審團起訴

4-8.1 檢察機關責任

於司法管轄區法律或規則允許下，於大陪審團面前出庭之檢察官：

a. 可解釋法律並就證據之法律意義發表自身意見；

b. 應協助大陪審團處理適合其工作之程序和行政事務；

c. 可建議提出具體的指控；

d. 若檢察官認為所提供之證據不足以根據適用法律進行起訴，則應建議大陪審團不予起訴，且應鼓勵大陪審團成員考量足夠的證據必須存在，以使檢察官能可於審判中履行州的舉證責任；

e. 採取一切必要措施，保護大陪審團訴訟程序之保密性。

Asset forfeiture laws were called into question over the federal laws that permitted seizure of assets without a judicial proceeding requiring the Government to prove that the assets were connected to criminal activity. Public concern was also voiced over the practice under federal laws to shift the burden to the property owner to prove that the assets were not connected to illegal activity and that the Government improperly took the assets.

State and local prosecutors adhere to the principle that the individual property owners' rights must be protected, and that due process should be afforded to all property owners.

The guiding principle for bringing a forfeiture action should be whether the property was used in or obtained as a result of criminal activity as opposed to whether the wrongdoer will have difficulty hiring defense counsel if the money or property is seized.

Frequently, ownership interests in property are mixed and forfeiture would have adverse results for others. The prosecutor, in his discretion, may determine when extenuating circumstances exist such that foregoing, remitting, or mitigating forfeiture is appropriate. These standards provide guidance in exercising that discretion. The purpose of forfeiture is to deter conduct giving rise to forfeiture and to remove the instrumentalities and proceeds of such conduct.

8. The Grand Jury Charging Function

4-8.1 Prosecutorial Responsibility

To the extent permitted by the jurisdiction's law or rules, a prosecutor appearing before a grand jury:

a. May explain the law and express his or her opinion on the legal significance of the evidence;

b. Should assist the grand jury with procedural and administrative matters appropriate to its work;

c. May recommend that specific charges be returned;

d. Should recommend that a grand jury not indict if the prosecutor believes that the evidence presented does not warrant an indictment under governing law, and he or she should encourage members of the grand jury to consider the fact that sufficient evidence must exist to enable the prosecutor to meet the state's burden of proof at trial;

e. Should take all necessary steps to preserve the secrecy of the grand jury proceedings.

4-8.2 大陪審團面前所呈證據

除非司法管轄區之法律或司法倫理行為準則另有要求，否則以下內容應適用於向大陪審團提交之證據：

a. 檢察官應按照法律和適用司法倫理行為準則之要求，向大陪審團提供任何可信之證據或實際無罪之資訊，或檢察官有理由相信傾向否定有罪推論之其他可信證據；

b. 檢察官不得向大陪審團提供檢察官明知由執法部門非法取得之證據；

c. 於欠缺有效豁免之下，檢察官不應向證人尋求檢察官所知悉或認為應適用律師 - 客戶保密特權之資訊；

d. 檢察官不得採取任何有不當影響大陪審團證人證詞之虞之行動；

e. 若檢察官於大陪審團出庭前確信任何證人將援引憲法第五修正案之不自證己罪特權而不提供任何相關訊息，則檢察官不應將該證人引介予大陪審團，除非檢察官欲對該權利之主張題出異議或尋求給予豁免。大陪審團可經告知證人不出庭之原因；

f. 檢察官應告知大陪審團，其有權親自聽取任何既有證人或傳票之相關記錄；

g. 檢察官不得向大陪審團提供其明知為不實之證據；及

h. 檢察官不得故意向大陪審團作出不實之事實或法律陳述。

4-8.3 不允許之行為

檢察官不得採取任何可能不當損害大陪審團獨立性之行動，亦不得發表任何相關言論。

4-8.2 Evidence Before the Grand Jury

Unless otherwise required by the law or applicable rules of ethical conduct of the jurisdiction, the following should apply to evidence presented to the grand jury:

a. A prosecutor should present to the grand jury any credible evidence or information of actual innocence or other credible evidence that a prosecutor reasonably believes tends to negate guilt, as required by law and applicable rules of ethical conduct;

b. A prosecutor should not present evidence to the grand jury that the prosecutor knows was obtained illegally by law enforcement;

c. In the absence of a valid waiver, a prosecutor should not seek information from a witness that the prosecutor knows or believes is covered by a valid claim of attorney-client privilege;

d. A prosecutor should not take any action that could improperly influence the testimony of a grand jury witness;

e. If the prosecutor is convinced in advance of a grand jury appearance that any witness will invoke his or her Fifth Amendment privilege against self-incrimination rather than provide any relevant information, the prosecutor should not present the witness to the grand jury unless the prosecutor plans to challenge the assertion of the privilege or to seek a grant of immunity. The grand jury may be informed of the reason the witness will not appear;

f. The prosecutor should inform the grand jury that it has the right to hear in person any available witness or subpoena pertinent records;

g. A prosecutor should not present evidence to the grand jury that the prosecutor knows to be false; and

h. A prosecutor should not knowingly make a false statement of fact or law to the grand jury.

4-8.3 Impermissible Conduct

A prosecutor should take no action and should make no statements that have the potential to improperly undermine the grand jury's independence.

4-8.4 傳聞證據

檢察官可根據適用法律或法院規則向大陪審團提供傳聞證據。但僅於有善意基礎相信證據將於審判中予以接受時，傳聞證據始得提交予大陪審團。

4-8.5 記錄聲明

於記錄大陪審團程序之司法管轄區，除非法律另有規定，檢察官之意見、建議以及與大陪審員之其他溝通均應予以書面記錄。

評論

本標準概述檢察官於不損害大陪審團獨立性下允許採取之行動。考量尊重大陪審團之獨立性，本標準規定檢察官應負擔如同出席於法庭之誠實義務。

大陪審團之功能為確定是否有充足證據對某人提出指控。大陪審團之程序並不對案件實體部分進行全面審判，於州法規允許下即可放寬證據規則。若採納傳聞證據代替現場直接取得之證詞時，當檢察官提出無法直接於法庭上提出之證據時應格外謹慎，但屬傳聞證據者除外—且其應確保起訴係以預計於審判中可予採納之可靠證據為依據。

9. 發現

4-9.1 檢察機關責任

檢察官應始終真誠履行其證據發現義務，並以有助於發現目標的方式進行，以盡量減少意外發生，並提供有效交叉詰問之機會以加速審判流程，並滿足正當程序之要求。為進一步實現該目標，檢察官應尋求重要資訊之發現，並充分、及時遵守辯護律師之合法揭露請求。

4-9.2 揭露無罪和彈劾證據之義務

根據 Brady v. Maryland, 373 U.S. 83 (1963) 及其後續訴訟案，正當程序

4-8.4 Hearsay Evidence

The prosecutor may present hearsay evidence to a grand jury in accordance with applicable law or court rule. However, hearsay evidence should only be presented to the grand jury when there is a good faith basis to believe that the evidence would be admitted at trial.

4-8.5 Statements of Record

In jurisdictions where grand jury proceedings are recorded, a prosecutor's advice, recommendations, and other communications with the grand jurors should be of record except as otherwise provided by law.

Commentary

The standard outlines what action a prosecutor may be permitted without compromising the independence of the grand jury. Given the need to respect the independence of the grand jury, these standards impose a duty upon the prosecutor to conduct himself or herself with the same candor as is required before a court.

The function of the grand jury is to determine whether there is sufficient evidence to charge someone. The procedure before the grand jury is not a full trial on the merits and, so long as permitted by state law, allows for relaxed evidentiary rules. When hearsay is admitted in place of live direct testimony, the prosecutor should exercise great caution in introducing evidence that would not be able to be introduced directly in court unless it falls under a

hearsay exception. It is prudent to ensure that the charge is brought on reliable evidence that is expected to be admissible at trial.

9. Discovery

4-9.1 Prosecutorial Responsibility

A prosecutor should, at all times, carry out his or her discovery obligations in good faith and in a manner that furthers the goals of discovery, namely, to minimize surprise, afford the opportunity for effective cross-examination, expedite trials, and meet the requirements of due process. To further these objectives, the prosecutor should pursue the discovery of material information, and fully and promptly comply with lawful discovery requests from defense counsel.

4-9.2 Duty to Disclose Exculpatory and Impeachment Evidence

Due process requires that the prosecutor provide defendants with any evidence that is favorable to them whenever that evidence is material to either their guilt or punishment, pursuant to Brady v. Maryland, 373 U.S. 83 (1963), and its progeny. The "Brady Rule" applies

要求於某一證據對被告有罪或懲罰至關重要時，檢察官應向被告提供任何對被告有利之證據。「布雷迪規則」（Brady Rule）適用於否定被告有罪之證據或減輕犯罪人所犯罪行之證據。根據 Giglio v. United States, 405 U.S. 150 (1972) 及其後續訴訟案，正當程序亦要求政府揭露將於審判中作證之證人之彈劾證據。

4-9.3 持續義務

檢察官若於預審或審判程序之任何時期，發現有其他證人、資訊或先前要求或命令揭露或檢視之其他資料，則檢察官應立即通知辯護律師並提供所需資訊。

4-9.4 不受阻礙取證

除非法律或法院命令允許，檢察官不得妨礙對造律師對案件之調查或準備。

4-9.5 編輯證據

若特定資料之特定部分可予揭漏而其他部分不可揭露時，檢察官應該真誠努力刪減非應披露的部分，以避免混淆或損害被告的權益。。

4-9.6 相互發現

檢察官應採取措施確保辯方履行向檢方提供證據之義務。

4-9.7 個人識別資訊保護

檢察官應始終保護被害人和潛在證人之個人和身分資訊之隱私。若檢察機關能建立合理的信念，認為提供個人識別資訊將使被害人或潛在證人受有脅迫、經濟或身體傷害，則應保護並隱匿個人識別資訊。於必要時，檢察官應以書面形式並密封方式向法院證明揭露個人識別資訊可能會使被害人或證人蒙受重大傷害或脅迫，或者有其他特定而迫切的理由而不披露。

to evidence that negates the guilt of the accused or evidence that mitigates the crime committed by the offender. Due process also requires that the Government disclose impeachment evidence for witnesses who will be testifying at trial, pursuant to Giglio v. United States, 405 U.S. 150 (1972), and its progeny.

4-9.3 Continuing Duty

If at any point in the pretrial or trial proceedings the prosecutor discovers additional witnesses, information, or other material previously requested or ordered which is subject to disclosure or inspection, the prosecutor should promptly notify defense counsel and provide the required information.

4-9.4 Access to Evidence Not to Be Impeded

Unless permitted by law or court order, a prosecutor should not impede opposing counsel's investigation or preparation of the case.

4-9.5 Redacting Evidence

When portions of certain materials are discoverable and other portions are not, a prosecutor should make good faith efforts to redact the non-discoverable portions in a way that does not cause confusion or prejudice the accused.

4-9.6 Reciprocal Discovery

A prosecutor should take steps to ensure that the defense complies with any obligation to provide discovery to the prosecution.

4-9.7 Protection of Personal Identifying Information

A prosecutor should, at all times, provide for the privacy and protection of victim's and potential witness's personal and identifying information. Personal Identifying Information should be protected and withheld if the prosecution can establish a good faith belief that to provide the information would subject a victim or potential witness to coercion, economic or physical harm. If necessary, the prosecution shall certify in writing and under seal to the court that to disclose PII may subject the victim or witness to substantial harm or coercion, or that there is other particularized, compelling need not to disclose.

4-9.8 保護令

法院可於提出充分證明後發布保護令，以拒絕、限制或延遲揭露或檢查。於適當時，當揭露有損害第三方之虞時，法院可對被告及其律師發布保護令，防止其無理揭露其有權檢查之資料。法院亦可以發布保護令以限制或限縮證據資料之散佈，以確保公平公正之審判或保護合法執法策略或程序之完整性。

4-9.9 工作成果

檢察官之工作成果可免予發現揭露。

評論

不同司法管轄區之發現規則存在極大差異，包括各州和聯邦檢察官對法律要求之解釋亦有差異。因此，本標準為討論公平及責任，而不直接參照各司法管轄區之法律或規範之具體解釋內容。檢察官應熟悉並遵守其司法管轄區之規則和法律。

雖然眾所周知對於特定事項是否需予揭露，任何疑問均應以有利於被告之方式為之，且需揭露重要之無罪證據和彈劾證據，但特定司法管轄區之成文法、判例法和道德行為準則可能要求進一步之揭露。

根據憲法、其他法律和道德行為準則所賦予之揭露義務，如檢察官於初步揭露後得知資訊，該資訊均應立即移交之。

檢察官應教育並告知其司法管轄範圍內之執法機構，只有檢察官（而非執法人員或機構）才能決定是否向辯方揭露資訊，並應鼓勵執法單位向檢察官提供其掌握之所有資訊以便決定是否進行揭露。包括揭露任何可能作證之警員是否曾因撒謊、不誠實和/或竊盜而被定罪，或受有執法部門之紀律處分。

檢察官與辯護律師之關係或其對被告之看法，不得作為證據揭露過程中的考量因素。

4-9.8 Protective Order

The Court may, upon a sufficient showing, issue a protective order that denies, restricts, or defers discovery or inspection. When appropriate, the court may place a defendant and his counsel under a protective order against unwarranted disclosure of the materials that they may be entitled to inspect when disclosure might harm third parties. The Court may also issue a protective order to restrict or limit dissemination of discovery materials to ensure a fair and impartial trial or protect the integrity of legitimate law enforcement tactics or procedures.

4-9.9 Work Product

The work product of the prosecutor is exempt from discovery disclosures.

Commentary

Rules of Discovery vary significantly from jurisdiction to jurisdiction, including differences in interpretation of the legal requirements by various state and federal prosecutors. Therefore, these standards set out to discuss fairness and responsibility without direct reference to specific interpretations of the laws or rules of the various jurisdictions. The prosecutor should be familiar with and follow the rules and laws of their particular jurisdiction.

While it is well established that any doubt about whether something is subject to disclosure should be resolved in favor of the defendant, and that disclosure of material exculpatory and impeachment evidence is required, further disclosures may be required by statute, case law, and rules of ethical conduct in some jurisdictions.

Consistent with the duty to disclose imposed by the Constitution, other laws, and rules of ethical conduct, if information becomes known to the prosecutor after initial disclosures have been made, that information should be turned over promptly.

The prosecutor should educate and inform law enforcement agencies in his or her jurisdiction that the prosecutor, not the law enforcement officer or agency, is the arbiter of what information is disclosed to the defense. The law enforcement community should be encouraged to provide all information in its possession to the prosecutor so that he or she can make a disclosure decision. This includes disclosing whether any officers who may be testifying have been convicted of any crimes or disciplined by the law enforcement department for lying, dishonesty and/or theft.

The prosecutor's relationship with defense counsel or his or her opinion regarding the defendant is not a factor in the discovery process.

保護令（PO）是保護第三方所必要且適當之手段。拒絕揭露其他可發現資料之保護令對於保護證人免受威脅、騷擾、賄賂或其他貪腐影響或許有其重要性。保護令亦是限制資訊傳播的重要工具，該資訊有影響潛在陪審團人員之虞或保護重要合法的執法職能。

當雙方未能友善解決揭露必要性之相關問題時，應考量尋求法院之指示。

律師工作成果豁免權允許律師不提供為訴訟準備之文件和其他有形物品。

10. 案件排程及優先順序

4-10.1 檢察機關責任

檢察官不應因缺乏勤勉準備案件而尋求或造成拖延，亦不得以損害被告或其律師之利益而尋求或造成拖延。

4-10.2 設定優先順序時應考量之因素

於決定案件之優先順序時，檢察官應考量以下因素：

a. 刑事案件通常應優先於民事案件；

b. 被告是否處於審前羈押狀態；

c. 被告是否對他人構成重大暴力威脅；

d. 被害人是否為被告之子女或家屬；

e. 被告是否為慣犯；

f. 被告是否遭指控犯有極其重大之罪行；

g. 被告是否為公職人員；

h. 案件之年數；

i. 證人及其他證據之可得性

j. 社會特別關注之重大問題或利益；

k. 對證據進行科學測試之必要性和可行性；

l. 被害人及證人之年齡、健康狀況和情況。

A protective order (PO) is a necessary and appropriate means of protecting third parties. A protective order that denies disclosure of otherwise discoverable material may be essential to protect witnesses from threats, harassment, bribery or other corrupt influences. A PO may also be an essential tool to limit dissemination of information that may influence a potential jury pool or protect important legitimate law enforcement functions.

When a question regarding the necessity for disclosure is not resolved amicably among the parties, consideration should be given to obtaining guidance from the court.

The attorney work product privilege permits attorneys to withhold from production the documents and other tangible things prepared in anticipation of litigation.

10. Case Scheduling and Priority

4-10.1 Prosecutorial Responsibility

A prosecutor should not seek or cause delays because of a lack of diligent preparation, nor should the prosecutor seek or cause delays for the purpose of disadvantaging the defendant or his or her counsel.

4-10.2 Factors to Consider in Setting Priorities

In setting case priority, the prosecutor should consider the following factors:

a. Criminal cases should normally be given priority over civil cases;

b. Whether the defendant is in pre-trial custody;

c. Whether the defendant represents a significant threat of violence to others;

d. Whether the victim is a child or family member of the defendant;

e. Whether the defendant is a repeat offender;

f. Whether the defendant is charged with a heinous crime;

g. Whether the defendant is a public official;

h. The age of the case;

i. The availability of witnesses or other evidence;

j. Any significant problems or interests of particular concern to the community;

k. The need for and availability of scientific testing of evidence;

l. The age, health and circumstances of victims and witnesses.

4-10.3 審理排程

檢察官於準備審判時應盡職盡責，不得造成或同意無正當理由之拖延。於決定延遲是否合理時應考量之因素包括：

a. 案件屬刑事或民事案件；

b. 被告是否處於審前羈押狀態；

c. 被告是否對他人構成重大暴力威脅；

d. 被害人是否為被告之子女或家屬；

e. 對證據進行科學測試之必要性和可行性；

f. 被害人及證人之年齡、健康狀況和情況；

g. 被告是否為慣犯；

h. 罪行之嚴重程度；

i. 被告是否為公職人員；

j. 案件之年數；

k. 是否有證人；及

l. 依任一方之要求而有任何其他需予延遲或證明延遲合理之重要因素。

評論

於履行尋求司法正義之職責時，檢察官應銘記「遲來的正義不是正義」。從社會角度來看，拖延處理刑事違法行為將使刑事司法系統之可靠性和效率帶來不確定性。被害人及其家屬將缺乏尋求心理安慰的必要要素確定之處分結果。被告將對自身未來感到茫然。簡言之，拖延不符合任何人的最佳利益。

話雖如此，但實務上由於案件負擔過重以及檢辯雙方都需要進行全面調查，案件之處理時間往往比當事人所設想的更長。本標準之規定係盡可能合理縮短延遲之指南。

4-10.3 Trial Scheduling

A prosecutor shall exercise due diligence in preparing for trial and not cause or accede to any unreasonable delay. Some factors to be considered in deciding whether or not a delay is reasonable are:

a. Whether the case is criminal or civil;

b. Whether the defendant is in pre-trial custody;

c. Whether the defendant constitutes a significant threat of violence to others;

d. Whether the victim is a child or a family member of the defendant;

e. The need for and availability of scientific testing of evidence;

f. The age, health and circumstances of the victims and witnesses;

g. Whether the defendant is a repeat offender;

h. The seriousness of the crime(s);

i. Whether the defendant is a public official;

j. The age of the case;

k. The availability of witnesses; and

l. The existence of any other significant factor that requires or justifies a delay at the request of either party.

Commentary

In the pursuit of his or her duty to seek justice, the prosecutor needs to be mindful of the expression, "justice delayed is justice denied." From the view of society, delays in disposition of violation of criminal laws create uncertainty regarding the reliability and efficiency of the criminal justice system. Victims and families of victims are left without a necessary ingredient for closure. Defendants are kept in a state of limbo about their future. In short, delay does not serve anyone's best interests.

With that being said, the reality is that due to caseloads and the necessity for complete investigations by both the prosecution and defense, case disposition often takes longer than those involved would like. These standards set forth guidelines for keeping delay as short as reasonably possible.

第五部分：少年司法

1. 少年司法

檢察官的首要職責是在充分、忠實代表州利益的同時尋求司法正義。雖然包括受害者在內的社區安全和福祉是他們的首要關切，但檢察官應在不過度損害他們的首要職責下盡可能考量青少年之特殊情況和復歸機會。於所有提交少年或成人法庭案件之正式起訴文件應由檢察官準備或審查。在可能的情況下，檢察官應出席所有涉及被控犯有罪行的未成年人的聽證會。

5-1.1 人員和資源

檢察機關應投入專門之人員及資源以履行青少年犯罪訴訟職責，各檢察機關應當有專責之青少年工作單位或律師，負責代表國家處理青少年案件。對於較小和 / 或鄉村之司法管轄區，可適當地於可能的情況下整合資源，但除於成人法庭之職責外，亦應向出席少年法庭之檢察官提供專門之青少年司法培訓。

5-1.2 少年法庭檢察官資格和培訓

負責少年犯罪案件的檢察官應接受專門培訓並擁有相關經驗。檢察長應根據其技能和能力選擇少年法庭之檢察官，包括少年司法法規知識、對兒童和青少年司法工作之興趣度、對社區參與之興趣、教育和經驗。

少年司法部門的初級律師應與任何初級律師具相同資格，並接受關於少年司法事務之特別繼續培訓包括青少年發展方面的知識。

5-1.3 少年案件篩檢

檢察官或指定人員應應依據州法令審查所有案件，以確定其法律上的充分性，然後決定案件是否予以移轉、向少年法院正式請願或移交給刑事法院。若案件事實不足以合法繼續執行，則應終止該案件或將其退回轉介來源，以待進一步調查或收取其他報告。

Part V.: Juvenile Justice

1. Juvenile Justice

The primary duty of the prosecutor is to seek justice while fully and faithfully representing the interests of the state. While the safety and welfare of the community, including the victim, is their primary concern, prosecutors should consider the special circumstances and rehabilitative potential of the juvenile to the extent they can do so without unduly compromising their primary concern. Formal charging documents for all cases referred to juvenile or adult court should be prepared or reviewed by a prosecutor. To the extent possible, a prosecutor should appear at all hearings concerning a juvenile accused of an act that would constitute a crime if they were an adult.

5-1.1 Personnel and Resources

The prosecutor's office should devote specific personnel and resources to fulfill its responsibilities with respect to juvenile delinquency proceedings, and all prosecutors' offices should have an identified juvenile unit or attorney responsible for representing the state in juvenile matters. For smaller and/or rural jurisdictions, it may be appropriate to combine resources when possible, however, specialized juvenile training should be made available to prosecutors who will appear in juvenile court in addition to their adult court commitments.

5-1.2 Qualification and Training of Prosecutors in Juvenile Court

Specialized training and experience should be required for prosecutors assigned to juvenile delinquency cases. Chief prosecutors should select prosecutors for juvenile court on the basis of their skill and competence, including knowledge of juvenile law, interest in working with children and youth, interest in community engagement, education, and experience.

Entry-level attorneys in the juvenile unit should be as qualified as any entry-level attorney, and receive special, ongoing training regarding juvenile matters, including adolescent development.

5-1.3 Screening Juvenile Cases

The prosecutor or a designee should review all cases, which may be reviewed pursuant to their state statutes, for legal sufficiency and then decide whether a case will be diverted, formally petitioned with the juvenile court, or transferred to criminal court. If the facts of the case are not legally sufficient to warrant action, the matter should be terminated or returned to the referral source pending further investigation or receipt of additional reports.

5-1.4 轉化

檢察官或或其指定人員應負責建議應將哪些案件從正式審判中轉移。除非檢察官合理相信其能夠證明對青少年之刑事或犯罪提出指控，否則任何案件均不應移轉。其可利用辦公室制定之治療、賠償或公共服務計劃，或將案件轉介至現有之緩刑或社區服務機構。檢察官於確定移轉案件時，應盡可能考慮青少年的個人治療和服務需求，以便相應地量身定制服務。檢察官應盡可能支持青少年及家庭需求之計劃，以幫助青少年復歸。

5-1.5 起訴及轉化標準

檢察官或其指定人員應進一步審查具法律充分性之案件，以確定是否應將其正式提交少年法庭、移送或轉移以接受治療、服務或緩刑。於決定是否正式提起訴訟或於法律允許下進行轉化時，檢察官或案件之指定審查人員應考慮以下因素，以決定何種結果最符合社區及青少年之利益：

a. 所控罪行之嚴重度，包括其行為是否涉及對他人（包括被害人）之暴力或人身傷害；

b. 青少年於犯罪中的角色；

c. 執法部門或其他人員先前針對該青少年提出之案件之性質和數量，以及此類案件之處置情況；

d. 青少年之年齡、成熟度和精神狀況；

e. 是否可透過少年法庭、兒童保護服務或轉移程序提供適當治療或服務；

f. 青少年是否認罪或承認參與遭起訴之罪行（若法律允許認罪），是否接受該行為之責任以及青少年對犯罪之態度；

g. 青少年對他人之人身或財產是否構成危險或威脅；

h. 針對類似情況的青少年所作成之決定；及

i. 於考量青少年之康復機會下轉介機構、被害人、執法部門和青少年倡導者之建議。

5-1.4 Diversion

The prosecutor or a designee should be responsible for recommending which cases should be diverted from formal adjudication. No case should be diverted unless the prosecutor reasonably believes that they could substantiate the criminal or delinquency charge against the juvenile. Treatment, restitution, or public service programs developed in his or her office may be utilized, or the case can be referred to existing probation or community service agencies. To the extent possible, when determining the conditions of diversion, prosecutors should consider the individual treatment and service needs of the juvenile in order to tailor services accordingly. As much as possible, prosecutors should support efforts to address not only the needs of the juvenile, but also those of the juvenile's family that would help in rehabilitating the juvenile.

5-1.5 Charging and Diversion Criteria

The prosecutor or a designee must further review legally sufficient cases to determine whether they should be filed formally with the juvenile court, transferred or diverted for treatment, services, or probation. In determining whether to file formally or, where allowed by law, divert, the prosecutor or designated case reviewer should consider the following factors in deciding what result best serves the interests of the community and the juvenile:

a. The seriousness of the alleged offense, including whether the conduct involved violence or bodily injury to others, including the victim;

b. The role of the juvenile in that offense;

c. The nature and number of previous cases presented by law enforcement or others against the juvenile, and the disposition of those cases;

d. The juvenile's age, maturity, and mental status;

e. The existence of appropriate treatment or services available through the juvenile court, child protective services, or through diversion;

f. Whether the juvenile admits guilt or involvement in the offense charged (If allowed by statute), whether they accept responsibility for the conduct and the juvenile's attitude in regard to the crime;

g. The dangerousness or threat posed by the juvenile to the person or property of others;

h. The decision made with respect to similarly-situated juveniles; and

i. Recommendations of the referring agency, victim, law enforcement, and advocates for the juvenile, in consideration of the juvenile's rehabilitative potential.

5-1.6 移交刑事法庭

將案件移交刑事法庭應針對犯有最嚴重、暴力和長期慣犯者。檢察官應根據案件具體情況作成移交決定，並考量各案件之個人因素和州規定，其中應包括遭指控之青少年涉犯罪行之嚴重程度和暴力性質、犯罪行為之記錄，以及少年法庭是否提供適當治療、服務和處置替代方案。

5-1.7 認罪協議

雖然檢察官行使傳統檢察裁量權時時應先關切社區之保護，但簽訂認罪協議之決定應受州利益和青少年利益之約束。檢察官並應考量青少年之康復機會。

5-1.8 檢察官於審判中之作用（審判）

於審判聽證會上，檢察官應承擔檢察官傳統之對抗角色，並以司法和社區安全之最佳利益行事。

5-1.9 處置

檢察官應於處置聽證會中發揮積極作用，並於審查檢察人員、緩刑部門和其他人員準備之報告後，向法院提出符合社區安全之建議。檢察官於提出建議時應徵詢被害人之意見，並考量青少年罪犯之康復需要，但應符合社區安全和福祉。

5-1.10 被害人影響

於可行範圍內，應根據請求或法律要求向犯罪被害人通報刑事司法程序之所有主要階段。檢察官應了解其司法管轄範圍內被害人之權利法規所規定之任何義務。檢察官應注意提供予被害人之資訊範圍與保護案件程序完整性需要之平衡。

5-1.6 Transfer to Criminal Court

The transfer of cases to criminal court should be reserved for the most serious, violent, and chronic offenders. Prosecutors should make transfer decisions on a case-by-case basis and take into account the individual factors and state requirements of each case including,

among other factors, the gravity and violent nature of the current alleged offense, the record of previous delinquent behavior of the juvenile charged, and the availability of adequate treatment, services and dispositional alternatives in juvenile court.

5-1.7 Plea Agreements

The decision to enter into a plea agreement should be governed by both the interests of the state and those of the juvenile, although the primary concern of the prosecutor should be protection of the community as determined in the exercise of traditional prosecutorial discretion. The prosecutor should also consider the juvenile's potential for rehabilitation.

5-1.8 Prosecutor's Role in Adjudication (Trial)

At the adjudicatory hearing, the prosecutor should assume the traditional adversarial role of a prosecutor, acting in the best interests of justice and community safety.

5-1.9 Dispositions

The prosecutor should take an active role in the dispositional hearing and make a recommendation consistent with community safety to the court after reviewing reports prepared by prosecutorial staff, the probation department, and others. In making a recommendation, the prosecutor should seek the input of the victim and consider the rehabilitative needs of the juvenile offender, provided that they are consistent with community safety and welfare.

5-1.10 Victim Impact

Victims of crimes should be informed of all important stages of the criminal justice proceedings to the extent feasible, upon request or as required by law. The prosecutor should be aware of any obligations imposed by victims' rights legislation in his or her particular jurisdiction. The prosecutor should take care to balance the extent of information provided to the victim with the need to protect the integrity of the case and process.

5-1.11 評估計畫

檢察官應定期審查檢察署內外之轉介處分和處遇計劃，以確保為少年提供適當監督、治療、損害賠償或服務。檢察官應與所有提供轉化和處置服務之外部機構維持合作關係，以確保檢察官之決定可一致且適當。若檢察官發現少年並未享有處遇或轉介處分中設想之照護及處遇效果時，則應將此類情形通報法院。

5-1.12 報告義務

若檢察官知悉法院的指示和 / 或制裁並非由法院所指定之機構所執行，或機構執行者有從事不道德或可疑之行為時，檢察官至少應該向法院通報其疑慮。

評論

於近二十年來，少年司法領域受到極大關注。自 1997 年起，青少年犯罪案件數量有所下降，加上監禁替代方案和以研究為基礎之策略增加，檢察官更有機會於各自的社區中發揮更廣泛之作用。少年司法之檢察官不再局限於法庭，在犯罪預防和早期介入工作中可發揮重要且具影響力之效果。其作為制定創新計劃和政策的領導者，能使預防犯罪成為社區安全使命的關鍵一環。

檢察官的職責是追求司法正義，一如其於刑事訴訟之職責。然而，少年司法系統之檢察官亦應特別留意受起訴少年之情況和需要，但不得與充分和忠實代表州利益之義務相悖。平衡兩方權益之方法包括法律扶助、損害賠償或更廣泛之康復措施和制裁，勸阻少年不再從事犯罪，並增強社區安全和福祉。

為有效履行其職責，檢察官宜親自於訴訟所有階段出席。於該過程中，檢察官於各決策層面應始終留意社區安全和福祉。此外，由於少年司法系統逐漸趨向當事人主義進行，檢察官應扮演提出其他少年和社會服務

5-1.11 Evaluation of Programs

The prosecutor should periodically review diversion and dispositional programs, both within and outside the prosecutor's office, to ensure that they provide appropriate supervision, treatment, restitution requirements, or services for the juvenile. The prosecutor should maintain a working relationship with all outside agencies providing diversion and dispositional services to ensure that the prosecutor's decisions are consistent and appropriate. If the prosecutor discovers that a juvenile or class of juveniles is not receiving the care and treatment envisioned in disposition or diversion decisions, the prosecutor should inform the court of this fact.

5-1.12 Duty to Report

If the prosecutor becomes aware that the directives and/or sanctions imposed by the court are not being administered by an agency to which the court assigned the juvenile or that a treatment provider is engaging in unethical or questionable practices, the prosecutor, at minimum, should report the concerns to the court.

Commentary

Over the last twenty years, there has been significant attention paid to the field of juvenile justice. The decline in the number of juvenile delinquency cases since 1997, coupled with the increase in alternatives to incarceration and strategies based on research have created greater opportunities for prosecutors to serve a more expansive role in their respective communities. No longer confined to the courtroom, juvenile prosecutors play an important and influential role in delinquency prevention and early intervention efforts. They serve as leaders by creating innovative programs and policies that make crime prevention a key component of the community safety mission.

The prosecutor is charged to seek justice just as he does in criminal prosecutions. The prosecutor in the juvenile system, however, is further charged to give special attention to the circumstances and needs of the accused juvenile to the extent that it does not conflict with the duty to fully and faithfully represent the interests of the state. This balanced approach reflects the philosophy that the safety and welfare of the community is enhanced when juveniles, through counseling, restitution, or more extensive rehabilitative efforts and sanctions, are dissuaded from further criminal activity.

To efficiently carry out his or her duties, it is desirable that the prosecutor appear at all stages of the proceedings. In so doing, the prosecutor maintains a focus on the safety and well-being of the community at each decision-making level. Further, because the juvenile system is increasingly adversarial, the prosecutor fulfills an important role in addressing the positions of juvenile and social service advocates. The prosecutor's presence guarantees the opportunity to

支持主張論據的重要角色。檢察官到場可保證各階段都有持續監督之機會，並在廣泛之裁量自由下得以確保公平公正之實現。

本守則進一步強調少年法庭工作的專業性。其規定少年法庭的檢察官應富有經驗、能力及興趣。由於少年程序之對抗性逐漸增強，檢察官應負責審查以確定是否有充足證據認定犯罪已發生以及少年是否確實犯罪。僅於法律上充分之下才能進一步處理案件。「法律上充分」一詞指檢察官認為於審判時可透過足夠之合法證據證明少年之犯行。此類決定應由檢察官作成。

於確定法律上充分後，下一步應作成之決定為是否應將案件轉介、移送至少年法庭或刑事法庭。此一決定將對法律及社會產生影響。其應由對少年問題感興趣且經驗豐富之檢察官或於檢察官之指導下之其他案件人員進行。檢察官於行使此職能時，應考慮少年之需求，同時維護社區之安全及福祉。作成此類決定時不應無故拖延。因妥適之決定通常會增強被害人、社會大眾及少年對於制度之信心及公平性。此外，妥適決定更有望提供更立即之關注以使少年復歸社會。

對於輕微之犯罪，少年法庭將案件由正式起訴、裁決和處置程序中轉化而出已是常見做法。採取這項程序之主要理由，在於少年的人格、道德和社會性仍處於發展階段，可藉由少年法庭的過程獲得機會使其避免再度從事犯罪活動。神經科學的進步證實，青少年時期大腦正處於重要發育階段，神經可塑性為積極影響青少年心理方面創造巨大機會。但科學也證實青少年時期大腦對毒品和酒精的抵抗極為脆弱。這也是少年檢察官所關心的問題。若能經由有效的轉介計劃妥善處理案件，許多初犯或輕罪將不會再次進入司法系統。治療、賠償或服務計劃通常是法庭的可行替代方案。本守則則說明檢察官參與轉介計劃或轉介至現有緩刑或社區服務機構之機會。

於多數司法管轄區，將少年移送刑事法庭係受法律或實務慣例之約束。本守則僅為檢察官參與此一程序時進行裁量權時提供指南，並建議考

exercise continuous monitoring at each stage and broad discretion to ensure fair and just results.

These standards further emphasize professionalism in juvenile court work. They provide that attorneys in juvenile court should be experienced, competent, and interested. Because of the adversarial nature of juvenile proceedings, the prosecutor should be responsible for screening to determine whether there is sufficient evidence to believe that a crime was committed and that the juvenile committed it. A case should only be further processed if it is legally sufficient. "Legally sufficient" means a case in which the prosecutor believes that he can reasonably substantiate the charges against the juvenile by admissible evidence at trial. These determinations should be made by the prosecutor.

After a determination of legal sufficiency, the next decision to be made is whether the case should be diverted, referred to juvenile court or transferred to criminal court. This decision has both legal and social implications. It should be made either by an experienced prosecutor who has an interest in juveniles or by other case screeners under the guidance of a prosecutor. The prosecutor, in exercising this function, should consider the rehabilitative needs of the juvenile while upholding the safety and welfare of the community. These decisions should be made without unreasonable delay. Prompt determinations generally promote confidence in the system and fairness to the victim, the community, and the juvenile. Further, prompt decisions are more likely to result in rehabilitation of the juvenile by providing more immediate attention.

Diversion of cases in juvenile court from the formal charging, adjudication, and disposition procedure has become common for less serious offenses. The impetus for such a procedure is that because juveniles are in the process of cognitive, moral, and social development, there is a unique opportunity presented at the juvenile court level to dissuade them from criminal activity. Advances in neuroscience confirm that the adolescent brain is undergoing significant development, and the neuroplasticity creates tremendous opportunity to influence youth in a positive way. However, science also confirms the tremendous vulnerability of the adolescent brain to drugs and alcohol. This is a concern for juvenile prosecutors. Many first-time or minor offenders will never enter the justice system again if their cases are handled properly through a robust diversion program. Treatment, restitution, or service programs often are viable alternatives to court processing. These standards describe the opportunity for prosecutors to be involved either in diversion programs based in their offices or through referral to existing probation or community service agencies.

In many jurisdictions, transfer of juveniles to criminal court is controlled by statute or practice. This standard simply provides guidance for prosecutors in using discretion to the extent that they participate in this process, and includes consideration of the rehabilitative potential of a juvenile offender. Given the general decline in the number of cases being transferred, this option should be reserved for serious, violent, and chronic offenders.

量少年罪犯之改造機會。鑑於移送案件數量之普遍下降，移送刑事法庭之選項應限於犯有重大暴力及長期慣犯者。

本守則指出少年法庭亦適用認罪協商程序。但僅於具備充分之證據以證明少年確涉犯其認罪協商之犯行時始能簽訂認罪協議。認罪協商之適當性和範圍應由檢察長決定。檢察官應始終採取相關措施確保最終處置符合公共利益，並應適當考量青少年之康復需要。

對於經審判而未轉化或處置之案件，檢察官應於程序中承擔傳統之當事人角色，並藉由訴訟程序以確定少年有罪與否。因此，本守則建議適用證據規則。檢察官並應努力於少年法庭中區分無罪或有罪之事實認定和處置決定。該方法可促進對被害人和社會之公平性，並提高少年法庭裁決之完整性。

檢察官應向法院提供處置替代方案，以降低風險並增加保護因素，使青少年能於未來受益。當青少年對社會的安全和福祉構成威脅時，檢察官應該表達此一擔憂。另一方面，於適當情況下，檢察官可提出比少年法庭法官考慮實施之手段更低之處置建議。

鑑於檢察官於整體少年司法體系中發揮之獨特作用，其應負責確保所有作成之決定均公平公正。他們的決策必須基於社區安全、罪責和康復等因素。種族、民族和 / 或性別不得為決策之考量因素。為確保決策和政策公平、平等，追蹤案件處理及其結果有其重要性，因此數據導向之措施是公正司法之重要一環。檢察官應審查維護社會安全之同時減少種族、民族和性別差異的策略和替代方案。

本守則並建議，檢察官應盡力於社會上擔任領導角色，確保遭判有罪之少年有多種適當之處置選項。此外，亦應鼓勵檢察官對案件進行追蹤以確保處理結果得以維持、法院之裁決得以執行，並提供相關治療。同理，檢察官應盡量於預防和早期介入工作中發揮積極作用。

These standards reflect the consensus that plea agreements are appropriate for juvenile court. A plea agreement should only be entered into when there is sufficient admissible evidence to demonstrate a prima facie case that the juvenile has committed the acts alleged in the petition to which he is pleading guilty. The appropriateness and extent to which plea agreements are used are matters of office policy to be determined by the chief prosecutor. The prosecutor should always take steps to ensure that the resulting disposition is in the interest of the community with due regard being given to the rehabilitative needs of the juvenile.

In those matters that are not diverted or disposed of without trial the prosecutor should assume the traditional prosecution role in the adversarial process with respect to determination of guilt or innocence. This standard, therefore, suggests that the rules of evidence apply. Prosecutors should strive in the juvenile court setting to maintain a distinction between a factual determination of innocence or guilt and a determination of disposition.

This approach promotes fairness to both the victim and the community and enhances the integrity of juvenile court findings.

Prosecutors should offer dispositional alternatives to the court that reduce risk and increase the protective factors that will make a juvenile successful in the future. When a juvenile presents a danger to the safety and welfare of the community, the prosecutor should voice this concern. On the other hand, when appropriate, the prosecutor may offer a dispositional recommendation that is less restrictive than what the juvenile court judge may contemplate imposing.

Given the unique role that prosecutors play across the justice continuum, they have a responsibility to ensure that all decisions are fair and just. They must base decisions on factors such as community safety, offender accountability, and rehabilitation. Race, ethnicity, and/or gender are never appropriate factors in decision-making. In order to ensure that decisions and policies are fair and equal, it is important to track case processing and outcomes. Data-driven practices are an important component of the fair administration of justice. Prosecutors should examine strategies and alternatives that decrease racial, ethnic, and gender disparities while maintaining community safety.

This standard also suggests that, to the extent possible, the prosecutor should take a leadership role in the community in assuring that a wide range of appropriate dispositional alternatives are available for youth who are adjudicated delinquents. In addition, the prosecutor is encouraged to follow up on cases to ensure that dispositions are upheld, court ordered sanctions are administered, and treatment is provided. Similarly, prosecutors, to the extent possible, should take an active role in prevention and early intervention efforts.

第六部分：認罪協商及認罪協議之正當性

1. 總則

6-1.1 正當性

認罪協商程序有處理刑事控訴，並取代審判程序之效果，但檢察官並無義務進行認罪協商程序。但於符合公共利益下，檢方得進行協商以達成妥適之認罪協商目標。於達成可行之協議後，應以書面為之或於法庭上記錄之。

6-1.2 認罪協商之類型

檢方達成認罪協議時可同意對案件之處置可包括數個承諾，以作為認罪協商之交換條件：

a. 若被告認罪或不爭辯，則可就法院可能判處之刑罰提出建議；

b. 對於辯方提出之量刑請求同意不予反對；或

c. 若被告對其他罪行或其他由被告行為所致之罪行認罪或不爭辯，則對於起訴之犯行予以撤銷、請求駁回或不反對駁回遭起訴之罪行；

d. 若被告同意不對被害人、證人、執法機構或人員、或檢察官或檢察數人員或代理人提起潛在民事訴訟；則對於起訴犯行予以撤銷、請求駁回或不反對駁回遭起訴之罪行或不提出可能之訴訟；

e. 若被告對目前遭起訴之罪行認罪或不爭辯，則可同意放棄對被告其他犯罪活動之持續調查；和 / 或

f. 同意被告和檢方共同向法庭建議特定量刑，若法庭超出議定之量刑建議，檢方亦同意由被告聲請撤銷認罪協商。

6-1.3 有條件要約

於達成認罪協議之前，根據本守則及司法管轄區之法律，檢察官可對認罪協議提出條件如下：

a. 被告於指定期限內接受條件，以避免進行審前準備；

Part VI.: Propriety of Plea Negotiation and Plea Agreements

1. General

6-1.1 Propriety

The prosecutor is under no obligation to enter into a plea agreement that has the effect of disposing of criminal charges in lieu of trial. However, where it appears that it is in the public interest, the prosecution may engage in negotiations for the purpose of reaching an appropriate plea agreement. When agreement is reached, it should be reduced to writing or put on the record in court, if practicable.

6-1.2 Types of Plea Negotiations

The prosecution, in reaching a plea agreement, may agree to a disposition of the case that includes, but is not limited to, one or more of the following commitments from the prosecution in exchange for a plea of guilty:

a. To make certain recommendations concerning the sentence which may be imposed by the court if the defendant enters a plea of guilty or nolo contendere;

b. To agree not to oppose sentencing requests made by the defense; or

c. To dismiss, seek dismissal, or not oppose dismissal of an offense or offenses charged if the defendant enters a plea of guilty or nolo contendere to another offense or other offenses supported by the defendant's conduct;

d. To dismiss, seek dismissal, or not oppose dismissal of the offense charged, or not to file potential charges, if the accused agrees not to pursue potential civil causes of action against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his staff or agents;

e. To agree to forego an ongoing investigation into other criminal activity of the defendant if the defendant enters a plea of guilty or nolo contendere to a presently charged offense or offenses; and/or

f. To agree that the defendant and prosecution will jointly recommend a particular sentence to the court and that the prosecution will support the defendant's motion to withdraw his plea of guilty if the court exceeds this agreed upon sentencing recommendation.

6-1.3 Conditional Offer

Prior to reaching a plea agreement and subject to the standards herein and the law of the jurisdiction, the prosecutor may set conditions on a plea agreement offer, such as:

a. The defendant's acceptance of the offer within a specified time period that would obviate

b. 被告須放棄特定審前權利，如：請求證據開示之權利；

c. 被告須放棄特定審前請求，如：制止或駁回之請求；或

d. 被告放棄特定審判中或審判後權利，如：上訴之權利。

6-1.4 一致認罪機會

處境相似之被告應取得實質平等之認罪協商機會。於考慮是否向被告提供認罪協商之要約時，檢察官不應考慮被告之種族、宗教、性別、性取向、國籍、政治社團或信仰，除非其與遭起訴之罪行有法律上之關連性。

2. 可進行認罪協商之情況

6-2.1 協商意願

檢察官應提出協商意願單，以與被告進行認罪協商，且除審前聽證會外，應預留時間和地點以進行認罪協商。

6-2.2 辯護律師在場

除非被告之辯護人已在場，或已表示許可檢察官得直接與被告進行協商，否則檢察官不應直接與已選任辯護人之被告進行認罪協商。

3. 決定認罪協商之可行性及接受認罪之因素

6-3.1 應考慮要件

a. 於洽談認罪協商前，檢方應考慮以下要件：

b. 犯行之性質；

c. 遭起訴犯行之嚴重程度；

d. 有無可能減輕之情況；

e. 被告之年齡、背景和犯罪前科；

f. 被告表現出之懊悔或悔意，及為其犯行負責之意願；

g. 用以支持有罪判決之合法證據；

h. 是否對被告造成過度困難；

the need for extensive trial preparation;

b. The defendant's waiver of certain pre-trial rights, such as the right to discovery;

c. The defendant's waiver of certain pre-trial motions such as a motion to suppress or dismiss; or

d. The defendant's waiver of certain trial or post-trial rights, such as the right to pursue an appeal or post-conviction relief.

6-1.4 Uniform Plea Opportunities

Similarly situated defendants should be afforded substantially equal plea agreement opportunities. In considering whether to offer a plea agreement to a defendant, the prosecutor should not take into account the defendant's race, religion, sex, sexual orientation, national origin, or political association or belief, unless legally relevant to the criminal conduct charged.

2. Availability for Plea Negotiation

6-2.1 Willingness to Negotiate

The prosecutor should make known a policy of willingness to consult with the defense concerning disposition of charges by plea and should set aside times and places for plea negotiations, in addition to pre-trial hearings.

6-2.2 Presence of Defense Counsel

The prosecutor should not negotiate a plea agreement directly with a defendant who is represented by counsel in the matter, unless defense counsel is either present or has given his or her express permission for the prosecutor to negotiate directly with the defendant.

3. Factors for Determining Availability and Acceptance of Guilty Plea

6-3.1 Factors to Consider

a. Prior to negotiating a plea agreement, the prosecution should consider the following factors:

b. The nature of the offense(s);

c. The degree of the offense(s) charged;

d. Any possible mitigating circumstances;

e. The age, background, and criminal history of the defendant;

f. The expressed remorse or contrition of the defendant, and his or her willingness to accept

i. 審判具備之嚇阻效果；

j. 是否能以不起訴協助實現其他檢方目標；

k. 違反法律而未受執行之經歷；

l. 個案對法律原則建立之可能影響；

m. 被告經定罪後之可能刑度；

n. 案件進入審理之公共利益；

o. 被告配合調查和指控其他被告之意願；

p. 於其他司法管轄區遭起訴之可能性；

q. 被害人是否可取得民事救濟或經由刑事訴訟而恢復原狀之可行性；

r. 被告放棄上訴之意願；

s. 被告是否放棄其因受逮捕而對被害人、證人、執法機構或人員、檢察署人員或代理人提起潛在民事訴訟之權利；

t. 基於對證人之尊重，檢方應考慮以下因素：

u. 證人出庭作證之意願即可行性；

v. 證人任何身體或精神上之障礙；

w. 證人指認被告之準確度；

x. 證人之可信度；

y. 證人與被告之關係；

z. 證人有無可能有潛在不當動機；

aa. 證人之年齡；

bb. 證人因作證而可能造成之任何困難。

基於對被害人之尊重，檢方應考慮上述及下列因素：

a. 被害人所受之身體傷害及精神創傷及其程度（若有）；

b. 被害人遭受之經濟損失；

c. 被害人因作證而造成之任何困難。

responsibility for the crime;

g. Sufficiency of admissible evidence to support a verdict;

h. Undue hardship caused to the defendant;

i. Possible deterrent value of trial;

j. Aid to other prosecution goals through non-prosecution;

k. A history of non-enforcement of the statute violated;

l. The potential effect of legal rulings to be made in the case;

m. The probable sentence if the defendant is convicted;

n. Society's interest in having the case tried in a public forum;

o. The defendant's willingness to cooperate in the investigation and prosecution of others;

p. The likelihood of prosecution in another jurisdiction;

q. The availability of civil avenues of relief for the victim, or restitution through criminal proceedings;

r. The willingness of the defendant to waive his or her right to appeal;

s. The willingness of the defendant to waive (release) his or her right to pursue potential civil causes of action arising from his or her arrest, against the victim, witnesses, law enforcement agencies or personnel, or the prosecutor or his or her staff or agents;

t. With respect to witnesses, the prosecution should consider the following:

u. The availability and willingness of witnesses to testify;

v. Any physical or mental impairment of witnesses;

w. The certainty of their identification of the defendant;

x. The credibility of the witness;

y. The witness's relationship with the defendant;

z. Any possible improper motive of the witness; aa. The age of the witness;

bb. Any undue hardship to the witness caused by testifying.

With respect to victims, the prosecution should consider those factors identified above and the following:

a. The existence and extent of physical injury and emotional trauma suffered by the victim;

b. Economic loss suffered by the victim;

c. Any undue hardship to the victim caused by testifying.

6-3.2 無罪被告

檢察官自我警惕，因被告於無罪之情形下仍可能受到指控。檢察官應確信認罪協商案件之所有罪行均有合理之事實作為依據。

6-3.3 公正坦率

於認罪協商過程中，檢察官不應故意向被告做出任何不實或誤導之法律或事實上陳述。

4. 履行認罪協議

6-4.1 權力之限制

檢察官不可就法院將判處之刑罰或緩刑作出任何保證。檢察官可向辯護人說明檢察官於案件處理方面將採取之立場，包括檢察官根據目前對案件事實和被告之了解（包括其犯罪記錄）而準備向法院建議之科刑範圍。

6-4.2 權力之意義

檢察官不得向被告作出任何承諾而使被告相信法庭將對案件作出任何特定之具體判決或處置。檢察官應避免暗示其較實際擁有更大之本案處置影響力。

6-4.3 無法履行協議

除被告不遵守協議或基於法律之授權外，對於已被接受且被告已為不利於己之認罪動機，檢察官不應不予遵守。若檢察官無法履行先前於認罪協商中達成之內容，則應立即通知被告，並配合爭取法庭許可使被告撤回任何認罪，並採取其他適當措施之機會，且將被告之地位回復至認罪協商前之狀態。

6-4.4 其他人向法院陳述之權利

在認罪協議中，檢察官不得承諾限制或削弱任何被害人或法律授權之人員於認罪或判刑時向法庭發言之合法權利。檢察官應尊重被害人和經法

6-3.2 Innocent Defendants

The prosecutor should always be vigilant for the case where the accused may be innocent of the offense charged. The prosecutor must satisfy himself or herself that there is a sound factual basis for all crimes to which the defendant will plead guilty under any proposed plea agreement.

6-3.3 Candor

The prosecutor should not knowingly make any false or misleading statements of law or fact to the defense during plea negotiations.

4. Fulfillment of Plea Agreements

6-4.1 Limits of Authority

The prosecutor should not make any guarantee concerning the sentence that will be imposed by the court or concerning a suspension of sentence. The prosecutor may advise the defense of the position the prosecutor will take concerning disposition of the case, including a sentence that the prosecutor is prepared to recommend to the court based upon present knowledge of the facts of the case and the offender, including his or her criminal history.

6-4.2 Implication of Authority

The prosecutor should not make any promise or commitment assuring a defendant that the court will impose a specific sentence or disposition in the case. The prosecutor should avoid implying a greater power to influence the disposition of a case than the prosecutor actually possesses.

6-4.3 Inability to Fulfill Agreement

The prosecutor should not fail to comply with a plea agreement that has been accepted and acted upon by the defendant to his or her detriment, unless the defendant fails to comply with any of his or her obligations under the same agreement or unless the prosecutor is authorized to do so by law. If the prosecutor is unable to fulfill an understanding previously agreed upon in plea negotiations, the prosecutor should give prompt notice to the defendant and cooperate in securing leave of court for the defendant to withdraw any plea and take such other steps as would be appropriate to restore the defendant and the prosecution to the position they were in before the understanding was reached or plea made.

6-4.4 Rights of Others to Address the Court

The prosecutor should not commit, as part of any plea agreement, to limit or curtail the

律授權可於法庭上發言之其他人員之合法權利。

6-4.5 媒體通知

於被告於公開法庭認罪前，檢察官不應就與被告達成認罪協議之可能性或任何此類協議之性質或內容向媒體發表任何法庭外評論。

5. 認罪協商紀錄

6-5.1 協商紀錄

於刑事案件以認罪協商終結時，檢察官應將協商之事實及條款作為紀錄之一部分，並應於案件卷宗中記載處理之理由。

6-5.2 撤回起訴之理由

於重大犯罪之刑事係以撤回起訴或其他相類方式而由法院為不受理判決時，檢察官應記錄理由。

評論

於檢察官追求司法正義之過程中，無須進入法院審理程序而處理刑事案件有其必要且可取。且鮮少有檢察官擁有將全部案件送入法院審理之資源。基於此一現實情況，大多數檢察官於大多數案件中會積極參與協商以達成適當之處置。

大多數認罪協商與雙方之其他協議相同，都需要檢察官和被告雙方共同作成。此外，與大多數其他協議一樣，認罪協商應以誠實和坦率之方式為之，檢方以代表社會最大利益為原則，但應同時銘記公正誠實義務，並避免在與被告交流時有越權之情。檢察官應留意切勿同意其無法履行之條件。同理，被告應該留意未能履行協議時將可能導致檢察官撤銷協議。

若檢察官因故無法履行部分協議，則其應盡一切努力幫助被告和案件之追訴狀態恢復至協議前各自之地位情況。

此外，如同所有存在於對立雙方間之其他協議，認罪協議以書面為之

legal right of any victim or other person authorized by law to address the court at the time of plea or sentencing. The prosecutor should honor the legal rights of victims and other persons authorized by law to address the court.

6-4.5 Notification of Media

Prior to the entry of a plea of guilty by the defendant in open court, the prosecutor should not make any extrajudicial comments to the media about either the possibility or existence of a plea agreement with the defendant, or of the nature or contents of any such agreement.

5. Record of Plea Agreement

6-5.1 Record of Agreement

Whenever the disposition of a charged criminal case is the result of a plea agreement, the prosecutor should make the existence and terms of the agreement part of the record. The prosecutor should also maintain the reasons for the disposition in the case file.

6-5.2 Reasons for Nolle Prosequi

Whenever felony criminal charges are dismissed by way of a nolle prosequi or its equivalent, the prosecutor should make a record of the reasons for his or her action.

Commentary

In the prosecutor's quest for justice, it is necessary and desirable to dispose of criminal cases without going to trial. There are few prosecutors who have the resources that would be required to try every case. Given that reality, most prosecutors actively engage in negotiations to reach appropriate dispositions in most cases.

Like other agreements between parties, most plea negotiations require some action by both the prosecutor and the defendant. Also, like most other agreements, plea negotiations should be conducted in an honest and forthright manner in which the prosecution is guided by representing the best interest of society while being mindful of duties of candor and to avoid overreaching in dealing with the defendant. The prosecutor should be careful not to agree to an action that he or she cannot perform. Likewise, the defendant should be aware that his or her failure to perform his or her part of the agreement might well result in the prosecutor's withdrawal from the agreement.

In the event that the prosecutor is for some reason unable to fulfill a portion of the agreement, he or she should do everything possible to help restore the defendant and the prosecution to their respective positions prior to the agreement.

Further, like in other agreements between adverse parties, it is best that the deal be in

為佳並於協商審理中記錄之。

其他協議中較不常見的問題，在於無罪被告可能想透過談判認罪以避免受到更重之刑罰。檢察官應考慮到本守則中所有因素，以避免作出有損正義之事。

第七部分：審判

1. 誠實公正面對法院

7-1.1 真實性

檢察官不得故意向法庭作出不實之事實或法律陳述。若檢察官發現其先前向法庭所作之重要事實或法律陳述有誤，則應及時更正。

7-1.2 法律權限

檢察官應將其所知悉之司法管轄區法律權限告知法院，包括對其職位有直接不利影響之權限。

7-1.3 證據

檢察官應提供視為真實、準確之證據。檢察官若得知先前提出之證據為不實或不準確者，則應採取合理補救措施防止因不實證據而造成之損害。

7-1.4 一造辯論程序

檢察官於法律允許之一造辯論程序中，對於其所知悉且合理相信法院欲作成專精判決所需之全部重要事實，應告知法院。

評論

為求作成公正知情之決定，法院應掌握相關事實和法律之最準確資訊。檢察官身為司法正義之化身，應誠實坦率地向法院提供此類資訊。

writing and placed on the record in the plea hearing.

A concern that is not common to other agreements is the possibility that an innocent defendant would be interested in a negotiated guilty plea in order to avoid exposure to a greater sentence. A prosecutor who considers all of the factors in these standards is in the best position to avoid such a miscarriage of justice.

Part VII.: Trial

1. Candor with The Court

7-1.1 Veracity

The prosecutor shall not knowingly make a false statement of fact or law to a court. If a prosecutor learns that a previous statement of material fact or law made to the court by the prosecutor is incorrect, the prosecutor shall correct such misstatement in a timely manner.

7-1.2 Legal Authority

A prosecutor shall inform the court of legal authority in the controlling jurisdiction known to the prosecutor, including authority that is directly adverse to his or her position.

7-1.3 Evidence

A prosecutor shall offer evidence that is believed to be truthful and accurate. If a prosecutor learns that material evidence previously presented by the prosecutor is not truthful or accurate, the prosecutor shall take reasonable remedial measures to prevent prejudice caused by the false evidence.

7-1.4 Ex Parte Proceeding

A prosecutor, in an ex parte proceeding as authorized by law, shall inform the court of all material facts known to the prosecutor which he or she reasonably believes are necessary to make an informed decision by the court.

Commentary

In order to make just, informed decisions, the court must have the most accurate information available regarding the facts and the law. A prosecutor, in his or her role as a minister of justice, must provide information to the court in an honest and forthright manner.

2. 遴選陪審員

7-2.1 調查

檢察官可對任何潛在陪審員進行預先審查之預調查，但任何此類調查均不得騷擾或恐嚇潛在陪審員。檢察官可對潛在陪審員進行犯罪紀錄之檢查，並於法律或法院命令要求之範圍內與法院或辯方共享任何定罪資訊，藉以用於進行預先審查。

7-2.2 預先審查

檢察官進行預審訊問時不得造成任何潛在陪審員不必要之困窘；或故意使用預審程序提供檢方明知於不會由審判中採納之資訊。

7-2.3 無因迴避

檢察官不得以團體成員資格為由，以違憲方式或法律禁止之方式行使強制迴避。

7-2.4 持續時間

檢察官應毫不拖延地選擇陪審團。

7-2.5 陪審員身分

若有合理理由認定陪審員可能受有身體或精神傷害之虞，檢察官可要求初審法院不向被告或大眾公開其身分。

評論

陪審團遴選過程之主要目的為選出能夠代表社會之陪審團，且不得有個人利益或對當事人之偏見致使無法根據法律和事實作出裁決。本標準規定檢察官執行其甄選過程中應遵循之原則。

於允許之預先審查中，可考慮法院批准使用問卷收集基本資訊以節省時間。

2. Selection of Jurors

7-2.1 Investigation

A prosecutor may conduct a pre-voir dire investigation of any prospective juror, but any such investigation shall not harass or intimidate prospective jurors. Prosecutors may conduct criminal history record checks of prospective jurors and, to the extent required by law or court order, share any conviction information with the court or defense for use in conducting the voir dire examination.

7-2.2 Voir dire Examination

A prosecutor should not conduct voir dire examination in such a manner as to cause any prospective juror unnecessary embarrassment; or intentionally use the voir dire process to present information that he or she knows will not be admissible at trial.

7-2.3 Peremptory Challenges

A prosecutor shall not exercise a peremptory challenge in an unconstitutional manner based on group membership or in a manner that is otherwise prohibited by law.

7-2.4 Duration

A prosecutor should conduct selection of the jury without unnecessary delay.

7-2.5 Identity of Jurors

In cases where probable cause exists to believe that jurors may be subjected to threats of physical or emotional harm, the prosecutor may request the trial court to keep their identities from the defendant or the public in general.

Commentary

The primary purpose of the jury selection process is to empanel a jury that is representative of the community and does not have personal interests or prejudices for or against a party to the extent that they cannot render a verdict based upon the law and the facts. The standards set forth principles to be followed by prosecutors in conducting their part of the selection process.

In the permitted voir dire examination, consideration might be given to the court approved use of a questionnaire to gather basic information and serve as a time saving device.

在行使無因迴避時，檢察官應注意作為其身為司法管轄範圍內所有民眾代表之身分，任何人均不得因其作為特定群體團體成員之身份而受有阻礙。

本標準認同近年來陪審員有時會受到暴力威脅之情況。其認知保護此類陪審員之必要性，並對檢方可能要求法院向被告和大眾保密陪審員身份之案件採取可能原因測試。

3. 與陪審團之關係

7-3.1 直接溝通

檢察官不得於案件審理前或審理期間故意與任何陪審員或準陪審員交談或交流，除非在法庭上所有當事人和法官均在場並予以記錄。

7-3.2 解散後

陪審團解散後，於允許之司法管轄區內，除非法律另有禁止，檢察官可與整體陪審團或陪審團內任何成員進行溝通，討論判決和證據。若陪審員作成相關決定，檢察官可要求法庭告知陪審員於判決後與案件律師討論案件並無不妥。檢察官不應於此類溝通中批評判決、騷擾任何陪審員或故意尋求影響未來之陪審團事務。檢察官應依陪審員之要求停止相關溝通。

評論

檢察官於確保刑事司法制度可得到尊重和改善方面負有重大責任。基此，其應謹慎避免任何利用陪審員或陪審團不公平優勢之情況。於審後接洽時，檢察官不得批評判決或陪審員之行為，否則可能被視為試圖影響陪審員或於未來履行陪審員工作時之信賴。

In exercising peremptory challenges, the prosecutor should be mindful that as a representative of all of the people of his or her jurisdiction, it is important that none of those people be obstructed from serving on a jury because of their status as a member of a particular group.

The standard recognizes that in recent years jurors have sometimes been subjected to threats of violence. It recognizes the need to protect such jurors and adopts a probable cause test for cases in which the prosecution may request the court to keep their identity from the defendant and the public.

3. Relationships with Jury

7-3.1 Direct Communication

A prosecutor should not intentionally speak to or communicate with any juror or prospective juror prior to or during the trial of a case, except while in the courtroom with all parties and the judge present and on the record.

7-3.2 After Discharge

After the jury is discharged, in jurisdictions where permitted, the prosecutor may, unless otherwise prohibited by law, communicate with the jury as a whole or with any members of the jury to discuss the verdict and the evidence. The prosecutor may ask the court to inform jurors that it is not improper to discuss the case with the lawyers in the case after verdict, if the juror decides to do so. The prosecutor should not criticize the verdict, harass any juror, or intentionally seek to influence future jury service during such communication. A prosecutor should cease communication upon a juror's request.

Commentary

The prosecutor has a large responsibility in seeing that the criminal justice system is respected and improved. In that regard he or she must be careful to avoid any appearance of taking unfair advantage of a juror or jury. In post-trial contact, the prosecutor should not criticize the verdict or jurors' actions, as such might be seen as an attempt to influence the behavior of a juror or a person with whom the juror confides in any future instance of jury service.

4. 開場陳述

7-4.1 目的

檢察官於法律允許下可發表開庭陳述，以解釋特定審判之法律和事實問題、證據和程序。

7-4.2 限制

檢察官不應提及證據，但其善意認為此類證據將於審判中取得並採納者不在此限。

評論

檢察官應遵循以下原則：開庭陳述應僅限於其擬或善意期望予以證明之事實主張。縱使檢察官陳述預期予以證明之事實可能可予接受，但其主張應以檢察官善意合理為依據，並認定此類證據於提出時可被接受。

檢察官應熱心維護適當性及公平性，並應為其作為法院人員之行為特質，以稱職代表公民尋求司法正義。只要檢察官的言論屬善意並合理相信相關主張最終將由可予接受之證據佐證，檢方即符合開庭陳述之基本要求。

5. 提出證據

7-5.1 可受理性

檢察官不得於陪審團在場下提及或展示檢察官未善意認定將被接納為證據之任何證詞或物證。

7-5.2 具疑義之可受理性

若對證據之可採性有合理疑義時，檢察官於取得法院針對可採性之裁決前不得向陪審團公佈或展示該證據。

4. Opening Statements

7-4.1 Purpose

When permitted by law, a prosecutor may give an opening statement for the purpose of explaining the legal and factual issues, the evidence, and the procedures of the particular trial.

7-4.2 Limits

A prosecutor should not allude to evidence unless he or she believes, in good faith, that such evidence will be available and admitted into evidence at the trial.

Commentary

The prosecutor should be guided by the principle that the opening statement should be confined to assertions of fact that he or she intends or, in good faith, expects to prove. Although it may be acceptable for the prosecuting attorney to state facts that are expected to be proved, such assertions should be founded upon the prosecutor's good faith and reasonable basis for believing that such evidence will be tendered and admitted into evidence. The prosecutor should be zealous in maintaining the propriety and fairness which should characterize his or her conduct as an officer of the court whose duty it is to competently represent the citizenry of the state in seeking justice. So long as the prosecutor's remarks are guided by good faith and a reasonable belief that such assertions will ultimately be supported by the admissible evidence, the prosecution will have fulfilled the basic requirements of an opening statement.

5. Presentation of Evidence

7-5.1 Admissibility

A prosecutor should not mention or display, in the presence of the jury, any testimony or exhibit which the prosecutor does not have a good faith belief will be admitted into evidence.

7-5.2 Questionable Admissibility

When admissibility of evidence is reasonably questionable, a prosecutor should not publish or display the evidence to the jury prior to obtaining a ruling on the admissibility from the court.

評論

與檢察官應秉持之公平理念一致，在未先尋求法院裁決下，檢察官不應向陪審團揭示可採性存疑之證據。

6. 詰問證人

7-6.1 公平詰問

檢察官應公平地盤問所有證人，並適當考量其合理之隱私。

7-6.2 不當詰問

檢察官不應提出暗示存在檢察官明知不實、或缺乏合理客觀依據信其為真實之事實謂詞之問題。

7-6.3 交叉詰問之目的

檢察官應善意利用交叉詢問以查明真相。

7-6.4 彈劾和可信度

檢察官可以且應於證據規則適用範圍內使用交互詰問以檢驗證人之可信度。但若知悉證人為如實作證，則檢察官不得濫用該職權嘲弄、詆毀或蔑視事實證人。

評論

刑事司法系統欲維持大眾之信譽，則應建立一個讓人們能夠提供資訊且不必擔心受到騷擾或隱私受到不當侵犯之法庭。該制度要求公平對待所有證人，包括控方和辯方證人。提出暗示存在不真實事實謂詞或檢察官未於合理客觀之基礎相信之問題將為不公平且不恰當之情況。

若無此類的限制，極熱心之檢察官可能會利用對證人之詢問以暗示所需之任何證據，並期望陪審團不會過度仔細考慮尚未正式提出之事實。

交互詰問之目的係真誠探討真相，因此檢察官於知悉證人如實作證時

Commentary

Consistent with the concepts of fairness that should be embraced by the prosecutor, he or she should not expose the jury to evidence of questionable admissibility without first seeking a ruling from the court.

6. Examination of Witnesses

7-6.1 Fair Examination

A prosecutor should conduct the examination of all witnesses fairly and with due regard for their reasonable privacy.

7-6.2 Improper Questioning

A prosecutor should not ask a question that implies the existence of a factual predicate that the prosecutor either knows to be untrue or has no reasonable objective basis for believing is true.

7-6.3 Purpose of Cross-Examination

A prosecutor should use cross-examination as a good faith quest for the ascertainment of the truth.

7-6.4 Impeachment and Credibility

A prosecutor may and should use cross-examination to test the credibility of a witness within the bounds of the rules of evidence. However, the prosecutor should not abuse this power in an attempt to ridicule, discredit or hold a fact witness up to contempt, if the prosecutor knows the witness is testifying truthfully.

Commentary

If the criminal justice system is to retain credibility with the public, it must furnish a tribunal into which people can come to give information without the fear of being harassed or having their privacy unduly invaded. Our system requires that all witnesses, those brought in by both the prosecution and defense, be treated fairly. To ask a question that implies the existence of a factual predicate that is not true or for which the prosecutor has no reasonable objective basis for believing, is not fair and therefore not proper.

Without such limitations, the overzealous prosecutor could use the examination of a witness to imply the existence of whatever evidence might be needed in the hope that the jury would not consider too closely the fact that it was never really introduced.

不得於證據規則允許範圍之外試圖嘲諷或損害該證人之可信度。但這並不表示檢察官不能積極盤問證人。主動為之可導出其他有助於建立檢方案件推論之資訊。

最後，若檢察官都銘記其為社區所有人尋求司法正義之責任，則遵循本標準提出的指示就是一個常識問題。

7. 反對和動議

7-7.1 程序

檢察官於審判過程中提出反對意見時，應於陪審團在場下正式提出之並簡要說明反對理由。除非法院另有指示，通常而言應於陪審團聽證會以外進行進一步之論證。

7-7.2 防止偏見動議

於允許下，若檢察官認為在法官或陪審團面前可能存在可採性問題，則應嘗試於審判開始前透過防止偏見動議處理任何證據問題，以避免審判過程中產生不必要之延誤或防止於事實審判時存在偏見資訊之風險。同理，檢察官亦應要求法院處理辯護證據可採性之問題。

評論

證據、證物、論點或論證之可採性悉由法院決定。檢察官應該充分熟悉證據規則，以使其能夠以較高機率預測證據之可採性。

若檢察官善意相信所提供之證據、證詞、論點或論證為不可接受，則其應提出反對意見並簡要說明反對之理由。由於大多數（若非全部）反對意見涉及初審法院裁決之法律問題，因此陪審團鮮少或毫不關心法律論點。

此類論點亦可能涉及訴訟程序中尚未經由宣誓證詞提出之事實問題，此外，這些事實問題可能不會提出和 / 或可能不予受理。但此不應妨礙初審法院向陪審團提供足以消除陪審員一般可能產生之問題之反對理由和 /

Because cross-examination is to be used as a good faith quest for the truth, a prosecutor who knows the witness is testifying truthfully should not seek to ridicule or undermine the credibility of said witness beyond what the evidentiary rules would allow. That does not mean that the prosecutor cannot vigorously cross-examine a witness. The use of proactive techniques can elicit other information that is useful in establishing the prosecution's theory of the case.

In the end, if a prosecutor keeps in mind that his or her responsibility is to seek justice for all of the people of the community, then following the directives of these standards is simply a matter of common sense.

7. Objections and Motions

7-7.1 Procedure

When making an objection during the course of a trial, a prosecutor should formally state the objection in the presence of the jury along with a short and plain statement of the grounds for the objection. Unless otherwise directed by the court, further argument should usually be made outside the hearing of the jury.

7-7.2 Motions in Limine

Where permitted, a prosecutor should attempt to resolve by Motion in Limine prior to commencement of trial, any evidentiary matters when the prosecutor believes there may be an issue of admissibility before a judge or jury, to avoid unnecessary delays in the trial or to prevent the risk of prejudicial information before the trier of fact. Likewise, a prosecutor should also request the court to similarly resolve questions on the admissibility of defense evidence.

Commentary

The admissibility of evidence, exhibits, demonstrations, or argument is left to the court for determination. Prosecutors should be sufficiently acquainted with the rules of evidence so they are able to predict the admissibility of evidence to a high degree of probability.

When the prosecutor has a good faith belief that the evidence, exhibit, demonstration, or argument being offered is not admissible, he or she should object and give a short statement of the basis for the objection. Since most, if not all, objections involve questions of law to be ruled upon by the trial court, the legal arguments are of little or no concern to the jury. Such argument may also refer to factual matters that have not, up to that point in the proceedings, been brought out by sworn testimony and which, additionally, may not be brought out and/ or may be inadmissible. This should not, however, preclude the trial court from giving the jury an explanation of the basis for the objection and/or its ruling sufficient to dispel the questions that could normally arise in the minds of the jurors, so that no unfavorable inferences will be drawn

或其裁決之解釋，以免其對任一方作出不利之推論。

為了節省陪審團、證人和其他相關當事人之時間，檢察官應嘗試於審判前解決證據可採性之相關問題。除節省法庭時間外，預審裁決亦可提升預審準備之效率，並於情況允許時對不利裁決提出上訴。

8. 向陪審團提出之爭點

7-8.1 定性

於終結辯論中，檢察官應公正準確地討論法律、事實以及自事實可得出之合理推論。

7-8.2 個人意見

於終結辯論中，檢察官不得就案件之公正性、證人之可信度或被告之有罪與否發表個人意見，亦不得聲稱自身對爭議事實之了解，或提及任何於審判期間未予接受為證據之項目。

評論

終結辯論是大眾對於案件推論之最後機會，檢察官需要敏銳意識可用方法之局限性。終結辯論是許多上訴法院以檢察官言論有「檢察官不當行為」為由而退回初審法院之契機。

本標準規定指導建構及發表終結辯論之基本規則。檢察官應熟悉其司法管轄區之道德準則，並就正確結案提出上訴意見。

第八部分：量刑

1. 量刑

8-1.1 公平量刑

檢察官參與量刑過程時，應努力確保作出公正且充分知情之判決，並避免不公平量刑和不公平之判決。

by them reflecting upon a party.

In order to conserve the time of the jury, witnesses and other interested parties, the prosecutor should attempt to have questions regarding the admissibility of evidence resolved prior to trial. In addition to the savings of court time, the pre-trial rulings will also allow for more efficient pre-trial preparation and, where permitted, the appeal of adverse rulings.

8. Arguments to the Jury

7-8.1 Characterizations

In closing argument, a prosecutor should be fair and accurate in the discussion of the law, the facts, and the reasonable inferences that may be drawn from the facts.

7-8.2 Personal Opinion

In closing argument, a prosecutor should not express personal opinion regarding the justness of the cause, the credibility of a witness or the guilt of the accused, assert personal knowledge of facts in issue, or allude to any matter not admitted into evidence during the trial.

Commentary

Faced with closing argument, the final opportunity to espouse the people's theory of the case, prosecutors need to be keenly aware of the limitations on the methods available to them for that use. Closing arguments have been the ticket back to the trial court from many appellate courts that have uttered the words "prosecutorial misconduct" in relation to words uttered by the prosecutor.

These standards set forth the basic rules for guidance in constructing and delivering a closing argument. Prosecutors should become intimately familiar with his or her jurisdiction's ethical rules and appellate opinions on proper closings.

Part VIII.: Sentencing

1. Sentencing

8-1.1 Fair Sentencing

To the extent that the prosecutor becomes involved in the sentencing process, he or she should seek to assure that a fair and fully informed judgment is made and that unfair sentences and unfair sentence disparities are avoided.

8-1.2 量刑依據

檢察官可利用此一契機向量刑機構（包括陪審團或法院）發表陳詞，並可於適當情況下提出量刑建議。檢方亦應採取措施確保受害者享有向量刑機構陳述之權利。

8-1.3 減輕證據

檢察官應於量刑前向辯方揭露任何可減輕量刑之已知證據。除法律另有規定外，揭露義務並未附帶調查減輕證據之義務。

8-1.4 量刑前報告

a. 量刑係基於從量刑前報告和檢方掌握之任何其他資料中取得之完整準確資訊而進行量刑。

b. 檢察官應向法院或緩刑監督官揭露其檔案中與量刑過程相關之任何資訊。

c. 若發現量刑前報告中任何重要資訊與檢察官已知資訊不符，則檢察官應將此類衝突資訊通知相關當事人。

8-1.2 Sentencing Input

The prosecutor may take advantage of the opportunity to address the sentencing body, whether it is the jury or the court, and may offer a sentencing recommendation where appropriate. The prosecution should also take steps to see that the victim is afforded his or her rights to address the sentencing body.

8-1.3 Mitigating Evidence

The prosecutor should disclose to the defense prior to sentencing any known evidence that would mitigate the sentence to be imposed. This obligation to disclose does not carry with it additional obligations to investigate for mitigating evidence beyond what is otherwise required by law.

8-1.4 Pre-Sentencing Reports

a. The prosecutor should take steps to ensure that sentencing is based upon complete and accurate information drawn from the pre-sentence report and any other information the prosecution possesses.

b. The prosecutor should disclose to the court or probation officer any information in its files relevant to the sentencing process.

c. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

評論

檢察官參與量刑過程將有持續尋求司法正義之機會。檢察官應是最熟悉被告、犯罪事實以及將被告帶入量刑階段之人員。檢察官亦會根據以往經驗了解類似情況之人員所受之判決，以使法庭避免不公平之量刑和判決。

檢察官量刑參與也能提供機會確保犯罪被害人可表達其對量刑之看法和意見。量刑也為檢察官提供尋求充分保護社區、威懾罪犯和適當懲罰罪犯之機會。量刑亦可使檢察官向辯方提供其掌握之減刑證據，確保被告受有公平待遇，並確保量刑前調查報告向法庭提供之資訊均屬實準確。

2. 假釋

8-2.1 量刑前報告之作用

a. 檢察官應於量刑前報告製作及提交時發揮積極作用，包括以下內容：

b. 於製作量刑前報告時，檢察官辦公室應作為緩刑機構提供關於被告背景之資訊來源；

c. 檢察官辦公室應於向法院提交量刑前報告之前或之時審查此類報告；及

d. 若發現量刑前報告中任何重要資訊與檢察官已知資訊不符，則檢察官應將此類衝突資訊通知相關當事人。

8-2.2 作為資源之檢察官

檢察官辦公室應為緩刑機構提供受監督罪犯之資訊來源。

Commentary

Participation in the sentencing process provides the prosecutor the opportunity to continue his or her quest for justice. The prosecutor should be the person most familiar with the defendant, the facts surrounding the commission of the crime, and the procedures that brought the defendant to the sentencing stage. It is also the prosecutor who, from prior experience, will be aware of the sentences received by persons in similar situations so as to steer the court away from unfair sentences and unfair sentence disparities.

Sentencing participation also provides the prosecutor with an opportunity to assure that the victims of crimes are allowed to voice their thoughts and opinions regarding the sentence to be imposed. Sentencing also presents the opportunity for the prosecutor to seek a sentence that will adequately protect the community, deter persons from committing crimes and appropriately punish the offender. Sentencing further provides the means for the prosecutor to make sure the defendant is treated fairly by making mitigating evidence in his or her possession available to the defense and to ensure that the information provided to the court in the form of a pre-sentence investigation report is accurate.

2. Probation

8-2.1 Role in Pre-Sentence Report

a. The prosecutor should take an active role in the development and submission of the pre-sentence report, including the following:

b. The office of the prosecutor should be available as a source of information to the probation department concerning a defendant's background when developing pre-sentence reports;

c. The office of the prosecutor should review pre-sentence reports prior to or upon submission of such reports to the court; and

d. Upon noticing any material information within a pre-sentence report which conflicts with information known to the prosecutor, it is the duty of the prosecutor to notify the appropriate parties of such conflicting information.

8-2.2 Prosecutor as a Resource

The office of the prosecutor should be available as a source of information for the probation department for offenders under supervision.

8-2.3 通知

檢察官辦公室應尋求取得通知並有權出席緩刑撤銷和終止聽證會，並知悉司法管轄範圍內此類訴訟之結果。

3. 以社區為基礎之專案

8-3.1 專案知識

檢察官應於可行範圍內了解並熟悉被告可能被判刑或作為緩刑條件之社區專案計劃。

評論

檢察官與緩刑機構之關係應於量刑前報告準備過後持續存在。若被告受到緩刑機構或其他社區計劃之監督，檢察官作為公共利益之守護者，以確保法院對被告之指示得以遵守並共享資訊，並於允許時協助緩刑辦公室和其他相關計劃將不遵守規定之人員送回法庭。

第九部分：量刑後作業

1. 量刑後作業

9-1.1 檢方上訴

若有法律和事實依據，檢察官應對預審和審判裁決提出上訴。該依據不得無理，且可包括關於擴展、修改或推翻現有法律之善意論據，但應符合司法正義。

9-1.2 審判方和上訴律師合作

若上訴檢察官並非審判檢察官時，上訴檢察官和審判檢察官應相互合作，以確保資訊可充分流通。

若可行，則於承認錯誤前，上訴檢察官應通知審判檢察官並徵求後者對任何相關問題之意見。

8-2.3 Notice

The office of the prosecutor should seek to be notified of and have the right to appear at probation revocation and termination hearings and be notified of the outcome of such proceedings within the jurisdiction.

3. Community-Based Programs

8-3.1 Knowledge of Programs

The prosecutor, to the extent practicable, should be cognizant of and familiar with community-based programs to which defendants may be sentenced or referred to as a condition of probation.

Commentary

The prosecutor's relationship with the probation department must continue beyond the preparation of the pre-sentence report. If a defendant is placed under the supervision of the probation department or another community-based program, the prosecutor, as a guardian of the public interest in seeing that the court's directives to the defendant are followed, should share information and, where allowed, assist the probation office and other programs in bringing a non-complying person back before the court.

Part IX.: Post-Sentencing

1. Post-Sentencing

9-1.1 Prosecution Appeals

The prosecutor should appeal pre-trial and trial rulings when there is a basis in both law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law and when it is in the interests of justice to do so.

9-1.2 Cooperation of Trial and Appellate Counsel

When the appellate prosecutor is not the trial prosecutor, the appellate prosecutor and trial prosecutor should cooperate with each other to ensure an adequate flow of information.

When feasible, prior to confession of error, the appellate prosecutor should inform the trial prosecutor and obtain his or her input on any issue in question.

9-1.3 檢察官對定罪辯護之義務

除非收到新證據足以動搖原先之定罪或刑罰決定，檢察官應對合法獲得之定罪和適當評估之懲罰進行辯護。如同司法人員之職責，檢察官有義務要求遭定罪者履行適用之舉證責任，以獲得針對定罪之上訴或附帶攻詰之救濟措施。

9-1.4 上訴爭點

除非有法律及事實依據，檢察官不得對上訴中之問題提出主張或異議。依據不得無理，且可包括對現有法律之擴展、修改或推翻之善意論點。

9-1.5 上訴擔保

檢察官應對遭定罪之被告爭取上訴保釋之努力進行辯護，除非有理由任並該定罪不復享有法律或證據之支持，或反對保釋將造成明顯之不公正。

9-1.6 附帶審查

除非有法律及事實依據，檢察官不得對上訴中之問題提出主張或異議。依據不得無理，且可包括對現有法律之擴展、修改或推翻之善意論點。

第九部分：量刑後作業

9-1.7 於定罪後證據揭示程序中之合作義務

於以下情況檢察官應於定罪後訴訟期間向辯護律師提供證據：

a. 法律、法院命令或規則要求為之；

b. 證據於憲法上可證明無罪；或

c. 有合理理由認定遭定罪者之實際無罪主張有具體事實指控之支持，且若此類指控屬實，將使遭定罪者有權根據司法管轄區適用之法律標準獲得救濟，且證據與該主張具相關性。

9-1.3 Duty of Prosecutor to Defend Conviction

The prosecutor should defend a legally obtained conviction and a properly assessed punishment unless new evidence is received that credibly calls the conviction or sentence into question. A prosecutor has the duty, consistent with the responsibility as a minister of justice, to require the convicted person to meet the applicable burden of proof to obtain relief on both appeal from or collateral attack of a conviction.

9-1.4 Argument on Appeal

The prosecutor shall not assert or contest an issue on appeal unless there is a basis in both law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

9-1.5 Appeal Bonds

The prosecutor should defend against the efforts of convicted defendants to be released on appeal bond unless there is reason to believe that the conviction is no longer supported by the law or evidence or opposition to the bond would create a manifest injustice.

9-1.6 Collateral Review

The prosecutor shall not assert or contest an issue on collateral review unless there is a basis in law and fact for doing so. The basis should not be frivolous and may include good faith arguments for extension, modification or reversal of existing law.

Part IX.: Post-Sentencing

9-1.7 Duty to Cooperate in Post-Conviction Discovery Proceedings

A prosecutor shall provide discovery to the defense attorney during post-conviction proceedings where:

a. Required to do so by law, court order or rule;

b. The evidence is constitutionally exculpatory; or

c. He or she reasonably believes that the convicted person's claim of actual innocence is supported by specific factual allegations which, if true, would entitle the convicted person to relief under the legal standard applicable in the jurisdiction, and the evidence relates to that claim.

於檢察官同意針對定罪後取證請求採取任何平權行動前，檢察官可要求提供具體證據以證明其自身無罪。

9-1.8 檢察官針對實際無罪主張之義務

若檢察官獲悉重要且可信之證據其相信被告實際上可能無罪，則檢察官應盡職調查，採取適當行動，其可包括通知辯護律師、或若被告無律師代理，則應向適當法院提起訴訟。

評論

假設檢察官在整個調查、篩選、指控、發現、審判和量刑過程中一直勤勉地履行伸張正義的職責，則若要持續伸張司法正義，就需要檢察官持續以大努力回應被告的上訴或附帶攻詰。這些最大努力需要與律師合作並審查記錄，以確定是否應在允許情況下處理對不利於檢方之問題所提出之任何上訴。

與法庭之所有其他處置相同，上訴檢察官應以事實和法律為依據提出自身論點。由於此時已不再適用無罪推定，檢察官通常對上訴保證金應提出反對，除非有異常情況表明定罪不再由法律或證據支持。

在極少數情況下，檢察官獲得可靠證據證明遭定罪者實際上可能無罪，本標準對此規定有檢察官之相關責任，並與檢察官作為司法人員之角色相符。在履行該職責時，檢察官應在維護有效定罪責任和保護無罪者免受損害之責任間取得平衡。找出此一平衡可能是檢察官須面對的最大挑戰，特別是在證據經過合理評估後表明存在錯誤之情況下。於做出合理評估時，檢察官應拋開對個人包袱、對執法部門帶來之困窘以及任何其他阻礙其實現司法正義之因素。

若檢察官認為遭定罪者實際上無罪，若該人僅因該罪名而被監禁，檢察官應支持釋放該人，並支持撤銷對該人遭錯誤定罪之任何罪責。

A prosecutor may require a specific offer of proof to establish a claim of actual innocence before the prosecutor agrees to take any affirmative action in response to a post-conviction request for discovery.

9-1.8 Duty of Prosecutor Regarding Claims of Actual Innocence

In the circumstance when a prosecutor learns of material and credible evidence that leads the prosecutor to believe that a defendant may be actually innocent of a crime, the prosecutor should exercise due diligence in taking appropriate action, which may include notifying the defense attorney, the defendant, if not represented, and the appropriate court.

Commentary

Assuming that the prosecutor has been diligent in performing his or her duties in the quest for justice throughout the investigation, screening, charging, discovery, trial and sentencing, the continued quest for justice requires his or her continued best efforts in responding to the

defendant's appeal or collateral attacks. Those best efforts require cooperation with trial counsel and examination of the record to determine whether any appeal on issues decided unfavorably to the prosecution should be addressed, where permitted.

As in all other dealing with the court, the prosecutor on appeal must base his or her arguments on the facts and the law. Because there is no longer a presumption of innocence, prosecutors should typically oppose an appeal bond unless there is an unusual circumstance that would indicate that a conviction is no longer supported by the law or the evidence.

In those extremely rare instances in which a prosecutor is presented with credible evidence that a convicted person may actually be innocent, these standards set forth his or her responsibilities that are consistent with the role of the prosecutor as a minister of justice. In fulfilling that role, the prosecutor must strike a balance between his or her responsibility to see that valid convictions are upheld and the duty to see that the innocent are protected from harm. Finding that balance will perhaps pose the greatest challenge a prosecutor will have to face, especially in a situation where the evidence, after being reasonably evaluated, indicates that a mistake has been made. In making the reasonable evaluation, the prosecutor must put aside concerns of personal embarrassment and pride, the possible embarrassment to law enforcement, and any other factors that would deter him or her from seeing that justice is accomplished.

Where a prosecutor believes a convicted person is actually innocent, the prosecutor should support the release of the person if the person is incarcerated solely on that charge and support the reversal of any conviction for the crime of which the person was erroneously convicted.

（三）刑事司法準則第四版（2017 年）

美國律師協會版權所有。本文（刑事司法部門之準則）適用於非營利教育訓練以及司法改革（立法、司法及行政），不需書面許可，但應引用本來源出處。其他特定準則可以書籍形式購買。

第一編：總則

3-1.1 本準則適用範圍及功能

(a) 依本準則，「檢察官」是指參與偵查或起訴刑事案件，或向參與刑事案件調查或起訴之政府律師、代理人或辦事處就刑事事項提供法律建議之法律代理人，不論其所屬的機構、職稱為何，亦不論其全職或兼職與否或。本準則之目的為適用於上開法律代理人合理認為可能導致刑事起訴之任何情況。

(b) 本準則為檢察官之職業行為及履行提供指南。其編撰目的完全符合美國律師協會《職業行為規則範例》，並不修改檢察官於適用規則、法規或憲法下之義務。 本準則旨在提出「最佳實踐」，但並不作為施加專業紀律之基礎，不為被告或被定罪者創造實體性或流程性權利，不為民事責任注意義務訂立標準，亦不作為駁斥證據或駁回控告之依據。為保持規範之一致性，本準則有時會包括取自《職業行為規則範例》之內容；但本準則通常涉及相關行為或超出《職業行為規則範例》適用範圍之詳細資訊。因此，並不存在規範不一致之情況；於任何情況下，訴訟代理人應詳閱並遵守司法管轄區或特定事項中具約束力之職業行為規則及其他規範，包括規範訴訟代理人倫理行為之法律適用原則。

(c) 《刑事司法準則》為理想狀態之規範，因此本準則使用「應」或「不應」，而非「可」或「不可」等強制詞語以規範訴訟代理人之行為。本準則不提出任何低於適用強制規則、法規或其他具約束力主管機關所要求之行為標準。

Fourth Edition (2017) of the CRIMINAL JUSTICE STANDARDS for the PROSECUTION FUNCTION

PART I: GENERAL STANDARDS

Standard 3-1.1 The Scope and Function of These Standards

(a) As used in these standards, "prosecutor" means any attorney, regardless of agency, title, or full or part-time assignment, who acts as an attorney to investigate or prosecute criminal cases or who provides legal advice regarding a criminal matter to government lawyers, agents, or offices participating in the investigation or prosecution of criminal cases. These Standards are intended to apply in any context in which a lawyer would reasonably understand that a criminal prosecution could result.

(b) These Standards are intended to provide guidance for the professional conduct and performance of prosecutors. They are written and intended to be entirely consistent with the ABA's Model Rules of Professional Conduct, and are not intended to modify a prosecutor's obligations under applicable rules, statutes, or the constitution. They are aspirational or describe "best practices," and are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for accused or convicted persons, to create a standard of care for civil liability, or to serve as a predicate for a motion to suppress evidence or dismiss a charge. For purposes of consistency, these Standards sometimes include language taken from the Model Rules of Professional Conduct; but the Standards often address conduct or provide details beyond that governed by the Model Rules of Professional Conduct. No inconsistency is ever intended; and in any case a lawyer should always read and comply with the rules of professional conduct and other authorities that are binding in the specific jurisdiction or matter, including choice of law principles that may regulate the lawyer's ethical conduct.

(c) Because the Standards for Criminal Justice are aspirational, the words "should" or "should not" are used in these Standards, rather than mandatory phrases such as "shall" or "shall not," to describe the conduct of lawyers that is expected or recommended under these Standards. The Standards are not intended to suggest any lesser standard of conduct than may be required by applicable mandatory rules, statutes, or other binding authorities.

(d) 本準則旨在處理檢察官於專業工作各階段之行事方式，並參考美國律師協會其他刑事司法準則，以更加詳細考量檢察官於特定領域之行事方式。

3-1.2 檢察官職權及職責

(a) 檢察官為司法行政人員、勤奮之辯護者及法院人員。檢察機關在行使檢察職權時，應審慎運用自由裁量權及獨立判斷能力。

(b) 檢察官之首要職責係依法尋求正義，而非僅是定罪。檢察官為公共利益效力，應以誠信平衡之判斷行事，提出符合比例之適當刑事指控，並於適當情況下行使酌情權而不予起訴，但應以增進公共安全為目的。檢察官應努力保護無辜者，並使有罪者受到懲罰，考量被害人及證人之利益，尊重嫌疑人及被告在內所有人的憲法及法律權利。

(c) 檢察官應了解並遵守適用司法管轄區之適用法律、倫理準則及意見規定之職業行為準則。檢察官履行起訴職權時應避免不當行為。於察覺檢察行為之目標似乎不明確時，檢察官應該尋求監督建議及倫理指南，檢察機關應該提供監督建議及倫理指南。對倫理守則有異議之檢察官應於適當時尋求改變，並於必要時直接質疑該規則之適用，但除非法院命令，否則仍應遵守該規則。

(d) 檢察官應利用現有組織提供之倫理準則，並應尋求建立及利用與準則 4-1.11 所述倫理諮詢小組相類之機構之幫助。

(e) 檢察官應理解、考慮並酌情訂立或協助訂立適用於個別案件或案件類別之起訴或定罪替代方案。檢察機關應協助民眾解決導致犯罪活動或刑事司法系統缺失之問題。

(f) 檢察官不僅是案件處理者，也是問題解決者，其應考量刑事司法系統之廣泛目標。檢察官應尋求改革及改良刑事司法之管理方式，當留意到實體法或程序法的不足或不公正之處時，檢察官應鼓勵

(d) These Standards are intended to address the performance of prosecutors in all stages of their professional work. Other ABA Criminal Justice Standards should also be consulted for more detailed consideration of the performance of prosecutors in specific areas.

Standard 3-1.2 Functions and Duties of the Prosecutor

(a) The prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should exercise sound discretion and independent judgment in the performance of the prosecution function.

(b) The primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict. The prosecutor serves the public interest and should act with integrity and balanced judgment to increase public safety both by pursuing appropriate criminal charges of appropriate severity, and by exercising discretion to not pursue criminal charges in appropriate circumstances. The prosecutor should seek to protect the innocent and convict the guilty, consider the interests of victims and witnesses, and respect the constitutional and legal rights of all persons, including suspects and defendants.

(c) The prosecutor should know and abide by the standards of professional conduct as expressed in applicable law and ethical codes and opinions in the applicable jurisdiction. The prosecutor should avoid an appearance of impropriety in performing the prosecution function. A prosecutor should seek out, and the prosecutor's office should provide, supervisory advice and ethical guidance when the proper course of prosecutorial conduct seems unclear. A prosecutor who disagrees with a governing ethical rule should seek its change if appropriate, and directly challenge it if necessary, but should comply with it unless relieved by court order.

(d) The prosecutor should make use of ethical guidance offered by existing organizations, and should seek to establish and make use of an ethics advisory group akin to that described in Defense Function Standard 4-1.11.

(e) The prosecutor should be knowledgeable about, consider, and where appropriate develop or assist in developing alternatives to prosecution or conviction that may be applicable in individual cases or classes of cases. The prosecutor's office should be available to assist community efforts addressing problems that lead to, or result from, criminal activity or perceived flaws in the criminal justice system.

(f) The prosecutor is not merely a case-processor but also a problem-solver responsible for considering broad goals of the criminal justice system. The prosecutor should seek to reform and improve the administration of criminal justice, and when inadequacies or injustices in the substantive or procedural law come to the prosecutor's attention, the prosecutor should stimulate and support efforts for remedial action. The prosecutor should provide

並支援採取補正措施。檢察官應為民眾提供服務，包括參與公共服務及律師活動、公共教育、社區服務活動以及擔任訴訟代理業務之主導職位。檢察機關應支援此類活動，檢察機關之預算亦應包括此類活動之經費及有付款時間。

3-1.3 檢察官之委託人

檢察官應為大眾服務，而非任何特定政府機構、執法人員或單位、證人或被害者。於調查或起訴刑事案件時，檢察官不應代表參與該案件之執法人員，故此類執法人員亦非檢察官之委託人。公眾利益和意見應由司法管轄區域內的檢察長及指定的助理人員決定。

3-1.4 檢察官對於誠實的加重責任

(a) 因檢察官所負之公共責任、廣泛權力和自由裁量權，其對於法庭及履行其他職業義務應負更高之誠實責任。但檢察官於公開評論具體案件或辦公室業務時應謹言慎行。

(b) 檢察官不應向法院、律師、證人或第三方作出檢察官認為不實之事實或法律陳述或提供證據，但合法授權之調查目的不在此限。此外，於尋求顧及合理保密、安全或保安事項同時，若檢察官合理認為其為錯誤且有避免促進詐欺或犯罪或避免誤導法官或事實認定者之必要下，檢察官應更正其對重要事實或法律之陳述。

(c) 檢察官對於其所知悉轄區內對檢方立場直接不利且未遭他人揭露者，都應向法院揭露。

3-1.5 保全記錄

於聲明各階段，檢察官應採取必要措施以做出清晰完整之記錄以供審查。其步驟可能包括提交動議，包括復審動議及證據；提出異議並作出解釋及備案；要求舉行證據聽證會；請求或反對陪審團指示；提供證據及排除證據。

service to the community, including involvement in public service and Bar activities, public education, community service activities, and Bar leadership positions. A prosecutorial office should support such activities, and the office's budget should include funding and paid release time for such activities.

Standard 3-1.3 The Client of the Prosecutor

The prosecutor generally serves the public and not any particular government agency, law enforcement officer or unit, witness or victim. When investigating or prosecuting a criminal matter, the prosecutor does not represent law enforcement personnel who have worked on the matter and such law enforcement personnel are not the prosecutor's clients. The public's interests and views should be determined by the chief prosecutor and designated assistants in the jurisdiction.

Standard 3-1.4 The Prosecutor's Heightened Duty of Candor

(a) In light of the prosecutor's public responsibilities, broad authority and discretion, the prosecutor has a heightened duty of candor to the courts and in fulfilling other professional obligations. However, the prosecutor should be circumspect in publicly commenting on specific cases or aspects of the business of the office.

(b) The prosecutor should not make a statement of fact or law, or offer evidence, that the prosecutor does not reasonably believe to be true, to a court, lawyer, witness, or third party, except for lawfully authorized investigative purposes. In addition, while seeking to accommodate legitimate confidentiality, safety or security concerns, a prosecutor should correct a prosecutor's representation of material fact or law that the prosecutor reasonably believes is, or later learns was, false, and should disclose a material fact or facts when necessary to avoid assisting a fraudulent or criminal act or to avoid misleading a judge or factfinder.

(c) The prosecutor should disclose to a court legal authority in the controlling jurisdiction known to the prosecutor to be directly adverse to the prosecution's position and not disclosed by others.

Standard 3-1.5 Preserving the Record

At every stage of representation, the prosecutor should take steps necessary to make a clear and complete record for potential review. Such steps may include: filing motions including motions for reconsideration, and exhibits; making objections and placing explanations on the record; requesting evidentiary hearings; requesting or objecting to jury instructions; and making offers of proof and proffers of excluded evidence.

3-1.6 禁止不當偏見

(a) 檢察官不應以言語或行為表現實施針對種族、性別、宗教、國籍、身心障礙、年齡、性取向、性別認同或社會經濟地位之偏見或成見。檢察官於行使自由裁量權時不應有其他不當考量，例如：黨派、政治或個人因素。檢察官應致力消除隱性偏見，並於確信檢察官職權範圍內存在任何不當偏見或成見時採取行動消除之。

(b) 檢察機關應於其所有工作中積極主動發現、調查並消除不當偏見，尤其是種族等歷史上長期存在之偏見。檢察機關應定期評估其政策對檢察官管轄範圍內社區產生偏見或不公平差異之風險，並消除不合理之影響。

3-1.7 利害衝突

(a) 檢察官應理解並遵守司法管轄區內適用之利害衝突相關倫理指南，並對可能引起衝突之事實保持敏感。若存在需迴避之衝突但無法豁免或未獲知情同意之情況時，檢察官應迴避。於未涉及衝突之檢察官接手或獲充分豁免之前，該檢察官辦公室不應持續進行作業。

(b) 檢察官不得於其司法管轄區內之刑事訴訟中擔任被告之代理人。

(c) 檢察官不應參與其以往曾以非檢察官身分實質參與之事項，但適當政府部門以及（於必要時）前委託人以書面給予知情同意者不在此限。

(d) 檢察官不應參與針對前委託人之起訴。檢察官不應利用以往擔任其代理人而獲得之資訊損害前委託人之利益。

(e) 檢察官不應與被告或調查對象談判該檢察官親自並實質參與之私人聘僱就業事項，亦不應與被告或調查對象之律師或代理人進行談判。

(f) 檢察官不應使其職業判斷或義務受個人、政治、財務、專業、商業、

Standard 3-1.6 Improper Bias Prohibited

(a) The prosecutor should not manifest or exercise, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation, gender identity, or socioeconomic status. A prosecutor should not use other improper considerations, such as partisan or political or personal considerations, in exercising prosecutorial discretion. A prosecutor should strive to eliminate implicit biases, and act to mitigate any improper bias or prejudice when credibly informed that it exists within the scope of the prosecutor's authority.

(b) A prosecutor's office should be proactive in efforts to detect, investigate, and eliminate improper biases, with particular attention to historically persistent biases like race, in all of its work. A prosecutor's office should regularly assess the potential for biased or unfairly disparate impacts of its policies on communities within the prosecutor's jurisdiction, and eliminate those impacts that cannot be properly justified.

Standard 3-1.7 Conflicts of Interest

(a) The prosecutor should know and abide by the ethical rules regarding conflicts of interest that apply in the jurisdiction, and be sensitive to facts that may raise conflict issues. When a conflict requiring recusal exists and is non-waivable, or informed consent has not been obtained, the prosecutor should recuse from further participation in the matter. The office should not go forward until a non-conflicted prosecutor, or an adequate waiver, is in place.

(b) The prosecutor should not represent a defendant in criminal proceedings in the prosecutor's jurisdiction.

(c) The prosecutor should not participate in a matter in which the prosecutor previously participated, personally and substantially, as a non-prosecutor, unless the appropriate government office, and when necessary a former client, gives informed consent confirmed in writing.

(d) The prosecutor should not be involved in the prosecution of a former client. A prosecutor who has formerly represented a client should not use information obtained from that representation to the disadvantage of the former client.

(e) The prosecutor should not negotiate for private employment with an accused or the target of an investigation, in a matter in which the prosecutor is participating personally and substantially, or with an attorney or agent for such accused or target

(f) The prosecutor should not permit the prosecutor's professional judgment or obligations to be affected by the prosecutor's personal, political, financial, professional, business,

財產或其他利益或關係之影響。檢察官不應因個人行為或權力利益而影響對正義最佳利益之判斷。

(g) 檢察官應向適當之監督人員揭露任何可能合理視為將引發潛在利害衝突之事實或利益。於確定檢察官仍應持續處理該事項時，檢察官及監督人員應考量是否應向法院或辯護律師揭露資訊並於適當時揭露之。案件應以向法院及辯方揭露相關情況下，方得結案。

(h) 若檢察官與另一律師有父母、子女、兄弟姐妹、配偶或性伴侶之關係，則不應參與由該律師代理之人員之訴訟。若檢察官與另一律師有重大之個人、政治、財務、專業、商業、財產或其他關係者亦不應參與由該律師代理之人員之訴訟，但向檢察官主管揭露該關係並獲得批准或已無其他檢察官可以經授權接替該檢察官者不在此限。後一種情況極為罕見下，故應另向辯方及法庭充分揭露。

(i) 針對檢察機關處理之案件，檢察官不應向被告或證人推薦特定辯護律師。若要求提出此類建議，檢察官應考量將該人轉介至公設辯護人或可用之刑事辯護律師小組（如：律師公會之律師轉介服務機構），或轉介至法院。於須由檢察官提出具體建議之罕見情況下，應建議獨立且具相當能力之律師，且檢察官不應提出體現、造成或可能造成利害衝突之轉介。檢察官不得對檢察機關辦理中案件尋求辯護之被告、證人作出辯護律師名譽及能力方面之負面評價。

(j) 檢察官應立即向主管通報（除明顯草率不當之控訴外）所有公開或私下針對檢察官之不當行為控訴。若主管或法官認定控訴之嚴重程度需予正式調查時，則應採取合理措施—包括迴避—以確保起訴職權可公平有效地履行。僅控訴不當行為並不足以構成迴避之充分依據，亦不應妨礙檢察官履行其職責。

property, or other interests or relationships. A prosecutor should not allow interests in personal advancement or aggrandizement to affect judgments regarding what is in the best interests of justice in any case.

(g) The prosecutor should disclose to appropriate supervisory personnel any facts or interests that could reasonably be viewed as raising a potential conflict of interest. If it is determined that the prosecutor should nevertheless continue to act in the matter, the prosecutor and supervisors should consider whether any disclosure to a court or defense counsel should be made, and make such disclosure if appropriate. Close cases should be resolved in favor of disclosure to the court and the defense.

(h) The prosecutor whose current relationship to another lawyer is parent, child, sibling, spouse or sexual partner should not participate in the prosecution of a person who the prosecutor knows is represented by the other lawyer. A prosecutor who has a significant personal, political, financial, professional, business, property, or other relationship with another lawyer should not participate in the prosecution of a person who is represented by the other lawyer, unless the relationship is disclosed to the prosecutor's supervisor and supervisory approval is given, or unless there is no other prosecutor who can be authorized to act in the prosecutor's stead. In the latter rare case, full disclosure should be made to the defense and to the court.

(i) The prosecutor should not recommend the services of particular defense counsel to accused persons or witnesses in cases being handled by the prosecutor's office. If requested to make such a recommendation, the prosecutor should consider instead referring the person to the public defender, or to a panel of available criminal defense attorneys such as a bar association lawyer-referral service, or to the court. In the rare case where a specific recommendation is made by the prosecutor, the recommendation should be to an independent and competent attorney, and the prosecutor should not make a referral that embodies, creates or is likely to create a conflict of interest. A prosecutor should not comment negatively upon the reputation or abilities of a defense counsel to an accused person or witness who is seeking counsel in a case being handled by the prosecutor's office.

(j) The prosecutor should promptly report to a supervisor all but the most obviously frivolous misconduct allegations made, publicly or privately, against the prosecutor. If a supervisor or judge initially determines that an allegation is serious enough to warrant official investigation, reasonable measures, including possible recusal, should be instituted to ensure that the prosecution function is fairly and effectively carried out. A mere allegation of misconduct is not a sufficient basis for prosecutorial recusal, and should not deter a prosecutor from attending to the prosecutor's duties.

3-1.8 適當之工作負荷量

(a) 檢察官之工作負荷量不應因過於龐雜而妨礙訴訟代理服務之品質，進而危及其公正性、準確性或及時處理控訴方面之司法利益或導致違反職業義務。檢察官工作負荷量若已達妨礙其勝任訴訟代理之程度，則不應再受理額外案件，並應努力確保可勝任現有案件訴訟代理。若工作負荷量已接近或超過適當程度時，即應通知主管。

(b) 檢察機關應定期審查個別檢察官以及整個辦公室之工作負荷量，並於必要時調整工作量（包括人數），以確保起訴職權能有效執行並符合倫理。

(c) 司法管轄區內之檢察長應向政府人員通報檢察機關之工作負荷量，並請求提供足以滿足刑事案件量之資金及人力。檢察官應考量自所有適當來源尋求此類資金。 若工作負荷量超出檢察官或檢察機關之適當專業能力，其並應通知其司法管轄範區之法院以尋求司法救濟。

3-1.9 勤勉、及時、準時

(a) 檢察官應勤勉、迅速地調查、起訴及處理刑事控訴，以符合司法利益並適當考量公平性、準確性以及被告、被害人及證人之權益。檢察機關應配備足夠人員及設施並為其提供支援，使其可公平高效地處理並解決刑事控告。

(b) 於提出尋求延後之理由時，檢察官不應故意歪曲事實或以其他方式造成誤導。檢察官僅可於具有合法依據下始得利用延後流程，但不應將之用於獲得不公平之策略優勢。

(c) 檢察官不應無理反對辯護律師提出之延期請求。

(d) 檢察官應了解並遵守適用於刑事調查起訴之時間規範，以免損及刑事事務。

Standard 3-1.8 Appropriate Workload

(a) The prosecutor should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers the interests of justice in fairness, accuracy, or the timely disposition of charges, or has a significant potential to lead to the breach of professional obligations. A prosecutor whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in existing matters. A prosecutor within a supervisory structure should notify supervisors when counsel's workload is approaching or exceeds professionally appropriate levels.

(b) The prosecutor's office should regularly review the workload of individual prosecutors, as well as the workload of the entire office, and adjust workloads (including intake) when necessary to ensure the effective and ethical conduct of the prosecution function.

(c) The chief prosecutor for a jurisdiction should inform governmental officials of the workload of the prosecutor's office, and request funding and personnel that are adequate to meet the criminal caseload. The prosecutor should consider seeking such funding from all appropriate sources. If workload exceeds the appropriate professional capacity of a prosecutor or prosecutor's office, that office or counsel should also alert the court(s) in its jurisdiction and seek judicial relief.

Standard 3-1.9 Diligence, Promptness and Punctuality

(a) The prosecutor should act with diligence and promptness to investigate, litigate, and dispose of criminal charges, consistent with the interests of justice and with due regard for fairness, accuracy, and rights of the defendant, victims, and witnesses. The prosecutor's office should be organized and supported with adequate staff and facilities to enable it to process and resolve criminal charges with fairness and efficiency.

(b) When providing reasons for seeking delay, the prosecutor should not knowingly misrepresent facts or otherwise mislead. The prosecutor should use procedures that will cause delay only when there is a legitimate basis for such use, and not to secure an unfair tactical advantage.

(c) The prosecutor should not unreasonably oppose requests for continuances from defense counsel.

(d) The prosecutor should know and comply with timing requirements applicable to a criminal investigation and prosecution, so as to not prejudice a criminal matter.

(e) 檢察官應準時出庭、提交動議、案情摘要及其他文件並與對造律師、證人和其他人交流。檢察官應向助手及控方證人強調準時出庭之重要性。

3-1.10 與媒體的關係

(a) 就本準則而言，「公開聲明」是指任何理性之人期望經由公共傳播或媒體（包括社群媒體）散布之法庭外聲明。「法庭外聲明」則指於刑事訴訟期間未於法庭、司法文書或與法院或律師就刑事訴訟進行之通訊中作出之任何口頭、書面或可供檢視的陳述。

(b) 檢察官對司法機構、陪審員、其他律師或刑事司法系統之公開聲明，即使為不同意見，亦應予尊重。

(c) 檢察官不應發表、促使發表、授權或容許發表檢察官知悉或可得而知將可能嚴重損害刑事訴訟程序或加劇大眾對被告譴責之公開聲明。但檢察官可發表聲明告知大眾檢方或執法行動之性質及範圍，並遵守合法之執法目的。檢察官可發表公開聲明解釋刑事指控遭拒絕或駁回之原因，但應留意不應暗示有罪或以其他方式損害被害人、證人或調查對象之利益。檢察官之公開聲明應符合美國律師協會公平審判及輿論。

(d) 檢察官不應將聲明或證據納入法庭記錄，以規避本準則。

(e) 檢察官應採取合理注意義務，以防止調查人員、執法人員、從業人員、或協助檢察官、或與檢察官有聯絡關係之其他人員，作出法庭外聲明，或提供檢察官根據《刑事訴訟法》、本準則或其他適用規則或法律禁止作出或提供之非公開資訊。

(f) 檢察官可對任何來源的公開聲明作出回應，以保護檢方之合法官方利益，但可能對刑事訴訟流程造成重大損害者，檢察官應向辯護律師或法院尋求救濟。根據本款作出之聲明應僅限於減輕負面宣傳所必需之資訊。

(e) The prosecutor should be punctual in attendance in court, in the submission of motions, briefs, and other papers, and in dealings with opposing counsel, witnesses and others. The prosecutor should emphasize to assistants and prosecution witnesses the importance of punctuality in court attendance.

Standard 3-1.10 Relationship with the Media

(a) For purposes of this Standard, a "public statement" is any extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication or media, including social media. An extrajudicial statement is any oral, written, or visual presentation not made either in a courtroom during criminal proceedings or in court filings or correspondence with the court or counsel regarding criminal proceedings.

(b) The prosecutor's public statements about the judiciary, jurors, other lawyers, or the criminal justice system should be respectful even if expressing disagreement.

(c) The prosecutor should not make, cause to be made, or authorize or condone the making of, a public statement that the prosecutor knows or reasonably should know will have a substantial likelihood of materially prejudicing a criminal proceeding or heightening public condemnation of the accused, but the prosecutor may make statements that inform the public of the nature and extent of the prosecutor's or law enforcement actions and serve a legitimate law enforcement purpose. The prosecutor may make a public statement explaining why criminal charges have been declined or dismissed, but must take care not to imply guilt or otherwise prejudice the interests of victims, witnesses or subjects of an investigation. A prosecutor's public statements should otherwise be consistent with the ABA Standards on Fair Trial and Public Discourse.

(d) A prosecutor should not place statements or evidence into the court record to circumvent this Standard.

(e) The prosecutor should exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the prosecutor from making an extrajudicial statement or providing non-public information that the prosecutor would be prohibited from making or providing under this Standard or other applicable rules or law.

(f) The prosecutor may respond to public statements from any source in order to protect the prosecution's legitimate official interests, unless there is a substantial likelihood of materially prejudicing a criminal proceeding, in which case the prosecutor should approach defense counsel or a court for relief. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(g) 檢察官負有保密及忠誠之義務，未經適當授權，不得秘密或匿名向媒體提供非公開資訊，不論是否公開或私下均不應為之。

(h) 檢察官不應受到媒體或個人利益而影響其判斷。

(i) 未擔任發言人的檢察官，向媒體發表評論時，可就具體刑事案件提供概括性的評論，以教育公眾了解刑事司法系統，且不應危及對特定刑事訴訟的偏見。擔任發言人之檢察官，應盡力充分了解案件事實及適用法律。檢察官不應就進行中之刑事訴訟或調查發表評論，但於極少數解決明顯不公正現象之情況不在此限，且檢察官對相關事實及法律應有充分之了解。

(j) 於刑事案件審理期間，檢察官不應向媒體重演或協助執法部門重演執法事件。在無正當執法目的之情況下，檢察官不應將被告公之於眾，也不應在調查行動中未經慎重考慮所有涉及方的利益（包括嫌疑人、被告和公眾）的情況下，邀請媒體參與。但檢察官可合理滿足媒體獲取公共資訊及事件資訊之請求。

準則 3-1.11 禁止文學或媒體權協議

(a) 在檢察官各方面參與的事項做出完整結論前，檢察官不應達成任何協議或非正式協定，使檢察官可從中獲得文學或媒體敘事之利益。

(b) 檢察官不應使其判斷受到將來個人文學或其他媒體權利之影響。

(c) 於創作或參與任何對檢察官所涉事項之文學或其他媒體報導時，即使檢察官已不在政府公職服務，亦應遵循檢察官之保密義務。涉及保密事項時，檢察官或前檢察官未經檢察機關同意，不得洩露之。不應無理拒絕此類同意，且應考量大眾對長時間後對重大事件準確記錄之關注。

(g) The prosecutor has duties of confidentiality and loyalty, and should not secretly or anonymously provide non-public information to the media, on or off the record, without appropriate authorization.

(h) The prosecutor should not allow prosecutorial judgment to be influenced by a personal interest in potential media contacts or attention.

(i) A prosecutor uninvolved in a matter who is commenting as a media source may offer generalized commentary concerning a specific criminal matter that serves to educate the public about the criminal justice system and does not risk prejudicing a specific criminal proceeding. A prosecutor acting as such a media commentator should make reasonable efforts to be well-informed about the facts of the matter and the governing law. The prosecutor should not offer commentary regarding the specific merits of an ongoing criminal prosecution or investigation, except in a rare case to address a manifest injustice and the prosecutor is reasonably well-informed about the relevant facts and law.

(j) During the pendency of a criminal matter, the prosecutor should not re-enact, or assist law enforcement in re-enacting, law enforcement events for the media. Absent a legitimate law enforcement purpose, the prosecutor should not display the accused for the media, nor should the prosecutor invite media presence during investigative actions without careful consideration of the interests of all involved, including suspects, defendants, and the public. However, a prosecutor may reasonably accommodate media requests for access to public information and events.

Standard 3-1.11 Literary or Media Rights Agreements Prohibited

(a) Before the conclusion of all aspects of a matter in which a prosecutor participates, the prosecutor should not enter into any agreement or informal understanding by which the prosecutor acquires an interest in a literary or media portrayal or account based on or arising out of the prosecutor's involvement in the matter.

(b) The prosecutor should not allow prosecutorial judgment to be influenced by the possibility of future personal literary or other media rights.

(c) In creating or participating in any literary or other media account of a matter in which the prosecutor was involved, the prosecutor's duty of confidentiality must be respected even after government service is concluded. When protected confidences are involved, a prosecutor or former prosecutor should not make disclosure without consent from the prosecutor's office. Such consent should not be unreasonably withheld, and the public's interest in accurate historical accounts of significant events after a lengthy passage of time should be considered.

準則 3-1.12 報告及回應檢察官不當行為之職責

(a) 檢察機關應制訂政策，以處理對檢察官職業不當行為（包括違法行為）的指控。此類政策至少應要求向機關主管人員通報合理懷疑之不當行為，並授權主管人員迅速處理此類指控。對檢察機關內職業不當行為指控之調查應以獨立且無衝突之方式為之。

(b) 若檢察官有充分理由認定檢察機關之其他人士企圖或準備從事不當行為，應試圖勸阻。若無法阻止或阻止失敗，且檢察官合理認為不當行為正在發生、將要發生或業已發生，則應立即將此事提交檢察機關之上級機關，包括於考量事件嚴重性後提交予檢察長。

(c) 若檢察官依第 (a) 及 (b) 款執行，但檢察長仍允許、無法解決或堅持採取明顯違法之作為或不作為，檢察官應採取進一步救濟行動，包括向適當之司法、監管或檢察機關以外之其他政府官員揭露解決、補救或防止違法行為所需之資訊。

準則 3-1.13 訓練計劃

(a) 檢察機關應為新到任及具經驗之檢察官及職員訂立培訓及持續教育方案。檢察機關以及律師公會或法院，應要求現職及有意願之檢察官參加合理時數之相關訓練及教育。

(b) 除了對實體法學原理及法庭程序之知識外，檢察官之核心培訓課程亦應包括刑事司法系統的整體使命。核心訓練課程並應致力於紛爭解決、調查、談判及訴訟技巧；遵守適用的證據揭露程序；對鑑識科學證據的知識開發、使用和測試；可用的定罪及量刑替代方案、重新進入社會、緩刑之條件以及附帶後果；禮儀及對專業的承諾；相關辦公室、法院及辯護政策及流程及其正確之應用方式；自由裁量權；文明及專業精神；尊重多元性並消除不當偏見；以及任何可用技術之使用方式。有些訓練項目向檢察機關以外之人員開放並由其授課，例如辯護律師、法院工作人員和司法人員。

Standard 3-1.12 Duty to Report and Respond to Prosecutorial Misconduct

(a) The prosecutor's office should adopt policies to address allegations of professional misconduct, including violations of law, by prosecutors. At a minimum such policies should require internal reporting of reasonably suspected misconduct to supervisory staff within the office, and authorize supervisory staff to quickly address the allegations. Investigations of allegations of professional misconduct within the prosecutor's office should be handled in an independent and conflict-free manner.

(b) When a prosecutor reasonably believes that another person associated with the prosecutor's office intends or is about to engage in misconduct, the prosecutor should attempt to dissuade the person. If such attempt fails or is not possible, and the prosecutor reasonably believes that misconduct is ongoing, will occur, or has occurred, the prosecutor should promptly refer the matter to higher authority in the prosecutor's office including, if warranted by the seriousness of the matter, to the chief prosecutor.

(c) If, despite the prosecutor's efforts in accordance with sections (a) and (b) above, the chief prosecutor permits, fails to address, or insists upon an action or omission that is clearly a violation of law, the prosecutor should take further remedial action, including revealing information necessary to address, remedy, or prevent the violation to appropriate judicial, regulatory, or other government officials not in the prosecutor's office.

Standard 3-1.13 Training Programs

(a) The prosecutor's office should develop and maintain programs of training and continuing education for both new and experienced prosecutors and staff. The prosecutor's office, as well as the organized Bar or courts, should require that current and aspiring prosecutors attend a reasonable number of hours of such training and education.

(b) In addition to knowledge of substantive legal doctrine and courtroom procedures, a prosecutor's core training curriculum should address the overall mission of the criminal justice system. A core training curriculum should also seek to address: investigation, negotiation, and litigation skills; compliance with applicable discovery procedures; knowledge of the development, use, and testing of forensic evidence; available conviction and sentencing alternatives, reentry, effective conditions of probation, and collateral consequences; civility, and a commitment to professionalism; relevant office, court, and defense policies and procedures and their proper application; exercises in the use of prosecutorial discretion; civility and professionalism; appreciation of diversity and elimination of improper bias; and available technology and the ability to use it. Some training programs might usefully be open to, and taught by, persons outside the prosecutor's office such as defense counsel, court staff, and members of the judiciary.

(c) 檢察機關訓練計劃應包括定期審查機關政策及流程，並於必要時進行修改。檢察官應接受其專業領域之培訓。監督律師或工作人員之人士應接受如何進行有效監督之培訓。

(d) 檢察機關應提供辦公室外培訓與繼續教育之機會，包括非律師人員之培訓。

(e) 應向資金來源提出並請其提供充足資金，以供應辦公室內外繼續訓練及教育之用。

第二部分：檢察機關之組織

準則 3-2.1 檢察權歸屬於全職檢察官

(a) 檢察職權應由具以下身分之律師履行：

(i) 公職人員，

(ii) 經授權可於司法管轄區內執業者，且

(iii)遵守律師職業行為及紀律規範者。

全職專事起訴職能之檢察官優於承擔其他可能相衝突專業職責之兼任檢察官。

(b) 檢察官機關應採用公開、有效且廣為周知之方法與其服務之司法管轄區民眾進行溝通，並接收來自民眾之意見。

(c) 若某一特定事項需於機關外任命一名特別檢察官，則應為此目的提供充足資金。此類特別檢察官應適用並遵守檢察官利害衝突準則。由被指控犯罪的個人或實體支付費用、或與之有律師及客戶的委任關係、或對特定案件有個人或經濟利益、或在特定事務中表現出任何不允許的相關偏見的私人律師，不應該被允許擔任該事務的檢察官。

(d) 除非不可行或非法，檢察機關應實施允許合格之法學生、其他機關交叉指定之檢察官以及臨時指派至檢察機關之私人律師，了解並協助執行檢察職能。

(c) A prosecution office's training program should include periodic review of the office's policies and procedures, which should be amended when necessary. Specialized prosecutors should receive training in their specialized areas. Individuals who will supervise attorneys or staff should receive training in how effectively to supervise.

(d) The prosecutor's office should also make available opportunities for training and continuing education programs outside the office, including training for non-attorney staff.

(e) Adequate funding for continuing training and education, within and outside the office, should be requested and provided by funding sources.

PART II: ORGANIZATION OF THE PROSECUTION FUNCTION

Standard 3-2.1 Prosecution Authority to be Vested in Full-time, Public-Official Attorneys

(a) The prosecution function should be performed by a lawyer who is

(i) a public official,

(ii) authorized to practice law in the jurisdiction, and

(iii) subject to rules of attorney professional conduct and discipline.

Prosecutors whose professional obligations are devoted full-time and exclusively to the prosecution function are preferable to part-time prosecutors who have other potentially conflicting professional responsibilities.

(b) A prosecutor's office should have open, effective, and well-publicized methods for communicating with, and receiving communications from, the public in the jurisdiction that it serves.

(c) If a particular matter requires the appointment of a special prosecutor from outside the office, adequate funding for this purpose should be made available. Such special prosecutors should know and are governed by applicable conflict of interest standards for prosecutors. A private attorney who is paid by, or who has an attorney-client relationship with, an individual or entity that is a victim of the charged crime, or who has a personal or financial interest in the prosecution of particular charges, or who has demonstrated any impermissible bias relevant to the particular matter, should not be permitted to serve as prosecutor in that matter.

(d) Unless impractical or unlawful, the prosecutor's office should implement a system for allowing qualified law students, cross-designated prosecutors from other offices, and private attorneys temporarily assigned to the prosecutor's office, to learn about and assist with the prosecution function.

準則 3-2.2 確保檢察官聘任、保留及薪酬之卓越性及多樣性

(a) 良好專業資格及業績應為檢察官職位選拔及保留之基礎。應鼓勵採取有效措施保留優秀之檢察官，但同時應理解一定程度人員流動帶來的好處。監督檢察官應根據優點及專業知識選拔，不應將黨派、個人或政治因素或影響納入考量因素。

(b) 選拔人員時，檢察機關應考慮其所服務之社群內之多元利益及民眾構成，並尋求招募、聘用、晉升及保留可反映該社群多元性之檢察官及工作人員。

(c) 公訴機關之職能需高度發達之專業技能以及各種背景、才能與經驗。檢察機關應促進持續之專業發展和服務之連續性，同時為檢察官提供起訴職能各方面之經驗學習機會。

(d) 檢察官及其工作人員之薪酬福利應與檢察機關之職責相符並應足以與私部門之薪酬福利競爭，且應定期進行調整，以吸引並保留高素質人員。檢察官之報酬應該充足，並與管轄範圍內之公設辯護律師報酬相當。

準則 3-2.3 調查人員及專家

應根據特定事項之需要，向檢察官提供聘僱合格專家之資金。於檢察機關職責需要時，應向其提供資金，以聘僱專業調查人員及其他必要支援人力，並確保能夠接洽法醫及其他專家。

準則 3-2.4 機關政策及流程

(a) 各檢察機關應努力訂立指導行使檢察官自由裁量權之一般政策以及機關標準作業流程。此類政策及流程之目標應為於檢察官管轄範圍內實現公平、高效且有效之刑法執行。

(b) 為求延續性及明確性，檢察機關之政策及流程應予以記錄並供相關工作人員查閱。應定期審查和修訂機關政策及流程，且應以指

Standard 3-2.2 Assuring Excellence and Diversity in the Hiring, Retention, and Compensation of Prosecutors

(a) Strong professional qualifications and performance should be the basis for selection and retention for prosecutor positions. Effective measures to retain excellent prosecutors should be encouraged, while recognizing the benefits of some turnover. Supervisory prosecutors should select and promote personnel based on merit and expertise, without regard to partisan, personal or political factors or influence.

(b) In selecting personnel, the prosecutor's office should also consider the diverse interests and makeup of the community it serves, and seek to recruit, hire, promote and retain a diverse group of prosecutors and staff that reflect that community.

(c) The function of public prosecution requires highly developed professional skills and a variety of backgrounds, talents and experience. The prosecutor's office should promote continuing professional development and continuity of service, while providing prosecutors the opportunity to gain experience in all aspects of the prosecution function.

(d) Compensation and benefits for prosecutors and their staffs should be commensurate with the high responsibilities of the office, sufficient to compete with the private sector, and regularly adjusted to attract and retain well-qualified personnel. Compensation for prosecutors should be adequate and also comparable to that of public defense counsel in the jurisdiction.

Standard 3-2.3 Investigative Resources and Experts

The prosecutor should be provided with funds for qualified experts as needed for particular matters. When warranted by the responsibilities of the office, funds should be available to the prosecutor's office to employ professional investigators and other necessary support personnel, as well as to secure access to forensic and other experts.

Standard 3-2.4 Office Policies and Procedures

(a) Each prosecutor's office should seek to develop general policies to guide the exercise of prosecutorial discretion, and standard operating procedures for the office. The objectives of such policies and procedures should be to achieve fair, efficient, and effective enforcement of the criminal law within the prosecutor's jurisdiction.

(b) In the interest of continuity and clarity, the prosecution office's policies and procedures should be memorialized and accessible to relevant staff. The office policies and procedures should be regularly reviewed and revised. The office policies and procedures should be augmented by instruction and training, and are not a substitute for regular training

導及培訓方式予以補充，但不應以之替代通常之培訓計劃。

(c) 檢察機關之政策及流程於揭露時不應對檢察職能產生不利影響，並應向大眾公開。

(d) 檢察機關應訂立定期審查機關政策遵循情況之制度。

準則 3-2.5 檢察長免職、停職及替換

(a) 當檢察長因身心問題或嚴重偏離專業規範而有無法履行職責之情形，應訂立適當之法規以規定公平且客觀之流程，以授權州長或其他公職人員或機構於經合理通知並作出公開調查結果後，將任一司法管轄區之檢察長停職、免職或替換，並指定替代人選。

(b) 法律應同樣授權州長或其他公職人員或機構於特定事項或案件類別中，經同意或經公平流程後作出有重大利益衝突或嚴重偏離專業規範而需予替換之結論後，以特別律師代替檢察長。

(c) 不應以不當或無關之黨派或個人因素為由而允許罷免、停職或替換檢察官。

第三部分：檢察關係

準則 3-3.1 檢察機關之結構及相互關係

(a) 於可行時，檢察機關之地理管轄區應依人口、案件量及保證至少一名全職檢察官和必要支援人員之其他相關因素確定之。

(b) 所有州均應協調地方檢察機關之起訴政策，以改善州司法之行政管理和一致性。於需要時，州政府應維持一座由支援人力、法醫實驗室以及調查人員、補充檢察官、會計師和其他專家等人員組成之中央組織以協助地方檢察官。其亦應為檢察官提供協調平台，供檢察官討論專業責任問題。於特定司法管轄區應建立統一之州檢察系統，其中州檢察長為首席檢察官，地區或郡縣或其他地方檢察官則為檢察長之副手。

programs.

(c) Prosecution office policies and procedures whose disclosure would not adversely affect the prosecution function should be made available to the public.

(d) The prosecutor's office should have a system in place to regularly review compliance with office policies.

Standard 3-2.5 Removal or Suspension and Substitution of Chief Prosecutor

(a) Fair and objective procedures should be established by appropriate legislation that empowers the governor or other public official or body to suspend or remove, and supersede, a chief prosecutor for a jurisdiction and designate a replacement, upon making a public finding after reasonable notice and hearing that the prosecutor is incapable of fulfilling the duties of office due to physical or mental incapacity or for gross deviation from professional norms.

(b) The governor or other public official or body should be similarly empowered by law to substitute, in a particular matter or category of cases, special counsel in the place of the chief prosecutor, by consent or upon making a finding after fair process that substitution is required due to a serious conflict of interest or a gross deviation from professional norms.

(c) Removal, suspension or substitution of a prosecutor should not be permitted for improper or irrelevant partisan or personal reasons.

PART III: PROSECUTORIAL RELATIONSHIPS

Standard 3-3.1 Structure of, and Relationships Among, Prosecution Offices

(a) When possible, the geographic jurisdiction of a prosecution office should be determined on the basis of population, caseload, and other relevant factors sufficient to warrant at least one full-time prosecutor and necessary support staff.

(b) In all States, there should be coordination of the prosecution policies of local prosecution offices to improve the administration and consistency of justice throughout the State. To the extent needed, a central pool of supporting resources, forensic laboratories, and personnel such as investigators, additional prosecutors, accountants and other experts, should be maintained by the state government and should be available to assist local prosecutors. A coordinated forum for prosecutors to discuss issues of professional responsibility should also be available. In some jurisdictions, it may be appropriate to create a unified statewide system of prosecution, in which the state attorney general is the chief prosecutor and district or county or other local prosecutors are the attorney general's deputies.

(c) 不論州檢察機關之結構，均應建立州檢察官協會。於有可能在州範圍內創造重要先例之疑義或問題時，地方檢察官應向檢察長、州檢察官協會和其他地方檢察機關之檢察官建議及諮詢。

(d) 聯邦、州及地方檢察機關應訂立鼓勵與轄區內及其他轄區檢察官進行有效協調之做法及流程。檢察官應努力識別潛在衝突問題，提前與其他檢察機關協調，以友好且符合公共利益之方式解決部門間糾紛。

準則 3-3.2 與執法部門之關係

(a) 檢察官與執法人員互動時，應保持尊重，並獨立判斷。

(b) 檢察官可就具體刑事事項之行動和一般執法向執法部門提供獨立法律建議。

(c) 檢察官應熟悉並尊重執法人員之經驗及專業知識。檢察官應促進執法人員遵守適用之法規，包括禁止不當偏見之規則。檢察機關應向執法人員通報起訴事項相關之法律及法律倫理問題及其動態，並向執法人員告知相關起訴政策及程序。於符合司法及大眾最佳利益下，檢察官可對參與特定起訴之執法人員進行監督。

(d) 檢察機關之代表應定期與執法機關會面並就起訴和執法政策進行協商。檢察機關應協助制定並管理執法人員調查中之事項及案件、提請起訴之事項以及與執法活動相關之法律培訓。

準則 3-3.3 與法院、辯護律師及其他人員之關係

(a) 在與法官之所有接觸中，檢察官應保持專業及獨立之關係。檢察官不得與法官就審理中之特定事項進行未經授權之單方面討論或向法官提交資料。對於需進行司法討論之一般事項（如：案件管理或行政事項），檢察官應於實際可行之範圍內邀集辯護律師代表參加討論。

(c) Regardless of the statewide structure of prosecution offices, a state-wide association of prosecutors should be established. When questions or issues arise that could create important state-wide precedents, local prosecutors should advise and consult with the attorney general, the state-wide association, and the prosecutors in other local prosecution offices.

(d) Federal, state, and local prosecution offices should develop practices and procedures that encourage useful coordination with prosecutors within the jurisdiction and in other jurisdictions. Prosecutors should work to identify potential issues of conflict, coordinate with other prosecution offices in advance, and resolve inter-office disputes amicably and in the public interest.

Standard 3-3.2 Relationships With Law Enforcement

(a) The prosecutor should maintain respectful yet independent judgment when interacting with law enforcement personnel.

(b) The prosecutor may provide independent legal advice to law enforcement about actions in specific criminal matters and about law enforcement practices in general.

(c) The prosecutor should become familiar with and respect the experience and specialized expertise of law enforcement personnel. The prosecutor should promote compliance by law enforcement personnel with applicable legal rules, including rules against improper bias. The prosecutor's office should keep law enforcement personnel informed of relevant legal and legal ethics issues and developments as they relate to prosecution matters, and advise law enforcement personnel of relevant prosecution policies and procedures. Prosecutors may exercise supervision over law enforcement personnel involved in particular prosecutions when in the best interests of justice and the public.

(d) Representatives of the prosecutor's office should meet and confer regularly with law enforcement agencies regarding prosecution as well as law enforcement policies. The prosecutor's office should assist in developing and administering training programs for law enforcement personnel regarding matters and cases being investigated, matters submitted for charging, and the law related to law enforcement activities.

Standard 3-3.3 Relationship With Courts, Defense Counsel and Others

(a) In all contacts with judges, the prosecutor should maintain a professional and independent relationship. A prosecutor should not engage in unauthorized ex parte discussions with, or submission of material to, a judge relating to a particular matter which is, or is likely to be, before the judge. With regard to generalized matters requiring judicial discussion (for example, case-management or administrative matters), the prosecutor should invite a

(b) 於單方面討論或陳述獲得授權時，檢察官應向法院通報其所知悉之重要事實，包括足以使法院作出公正與知情決定之不利事實。除非授權不予揭露，否則律師應通知對造律師發生單方面接觸之事實，除非獲得許可，否則不應揭露其內容。

(c) 於書面資料中，檢察官應尊重對造律師之論點及陳述並作出適當回應，並避免不必要之個人貶損。

(d) 檢察官應與法官及辯護律師建立並維持禮貌文明之工作關係，並應與其合作制定解決方案，以解決案件中或刑事司法系統中可能出現之倫理、時間安排或其他問題。檢察官應與法院及律師協會合作制定專業、文明守則，並應遵守於其管轄範圍內適用之相關守則。

準則 3-3.4 與被害人及證人之關係

(a) 本準則中所謂「證人」指擁有或可能擁有特定事件資訊之任何人，包括被害人。

(b) 檢察官應了解並遵守司法管轄區關於被害人和證人之法規。在與證人溝通時，檢察官應了解並遵守不應欺騙以及與有代表、無代表及組織人員進行溝通之法律及倫理守則。

(c) 檢察官或檢察官代理人應設法會見所有證人，且不應採取恐嚇或不當影響任何證人之行為。

(d) 檢察官不得使用造成難堪、拖延或負擔等毫無實質性目的之手段，且不得使用侵犯合法權利之採證方式。檢察官及檢察人員在與證人交流時不得歪曲自身的身分或利益。

(e) 檢察官應允許向證人支付合理費用，如：出庭費用、根據法規或法院規則作證之費用以及審前面談之費用（包括交通費和收入損失補償）。除非法律、法規或公認慣例授權，否則不應向證人提供其他好處。向證人提供之所有好處均應記錄並向辯方揭露。檢

representative defense counsel to join in the discussion to the extent practicable.

(b) When ex parte communications or submissions are authorized, the prosecutor should inform the court of material facts known to the prosecutor, including facts that are adverse, sufficient to enable the court to make a fair and informed decision. Except when non-disclosure is authorized, counsel should notify opposing counsel that an ex parte contact has occurred, without disclosing its content unless permitted.

(c) In written filings, the prosecutor should respectfully evaluate and respond as appropriate to opposing counsel's arguments and representations, and avoid unnecessary personalized disparagement.

(d) The prosecutor should develop and maintain courteous and civil working relationships with judges and defense counsel, and should cooperate with them in developing solutions to address ethical, scheduling, or other issues that may arise in particular cases or generally in the criminal justice system. Prosecutors should cooperate with courts and organized bar associations in developing codes of professionalism and civility, and should abide by such codes that apply in their jurisdiction.

Standard 3-3.4 Relationship With Victims and Witnesses

(a) "Witness" in this Standard means any person who has or might have information about a matter, including victims.

(b) The prosecutor should know and follow the law and rules of the jurisdiction regarding victims and witnesses. In communicating with witnesses, the prosecutor should know and abide by law and ethics rules regarding the use of deceit and engaging in communications with represented, unrepresented, and organizational persons.

(c) The prosecutor or the prosecutor's agents should seek to interview all witnesses, and should not act to intimidate or unduly influence any witness.

(d) The prosecutor should not use means that have no substantial purpose other than to embarrass, delay, or burden, and not use methods of obtaining evidence that violate legal rights. The prosecutor and prosecution agents should not misrepresent their status, identity or interests when communicating with a witness.

(e) The prosecutor should be permitted to compensate a witness for reasonable expenses such as costs of attending court, depositions pursuant to statute or court rule, and pretrial interviews, including transportation and loss of income. No other benefits should be provided to witnesses unless authorized by law, regulation, or well-accepted practice. All benefits provided to witnesses should be documented and disclosed to the defense. A prosecutor should not pay or provide a benefit to a witness in order to, or in an amount

察官不應為求影響證人證詞之實質內容或真實性而向證人支付或提供好處。

(f) 檢察官應避免親自就證人面談之內容作證。檢察官對大多數一般證人或政府證人（如：記錄保管人或執法人員）之訪談不需有第三方觀察人員。但若合理預期需證實面談情況時，檢察官於面談期間應由另一名可信賴之人員陪同。檢察官應避免與其合理認為具潛在或實際刑事責任之任何證人或可預見之敵對證人單獨會面。

(g) 檢察官應告知接受詢問之證人有不自證己罪以及依法聘請獨立律師之權利。即使法律未有要求，於檢察官合理認為證人可能提出自證己罪之資訊且該證人似乎不知自身權利時，檢察官亦應考量向該證人提供上述建議。但檢察官不應出於恐嚇、影響或改變證人證詞之真實性或完整性為建議、討論，或誇大證人之潛在刑事責任。證人應自行決定是否提供此類資訊。

(h) 若符合適用之倫理守則，檢察官不應阻止或妨礙證人與辯護律師（政府人員或代理人除外）間之溝通。檢察官不應建議任何人或促使任何人拒絕向辯護律師提供其有權提供之資訊。 但檢察官可以公平、準確地向證人提供關於其所提供資訊可能產生之後果建議，但不應妨礙溝通之進行。

(i) 根據被害人之任何相關具體法規，檢察官應於做出重大決定（如：是否起訴、認罪處分或駁回指控）時，努力確保嚴重犯罪之被害人或其代表可及時收到以下通知：

(i) 案件之相關司法程序；

(ii) 案件之擬議處理；

(iii) 量刑程序；及

(iv) 案件中可能導致被告暫時或最終停止羈押或改變刑罰之任何決定或行動。

that is likely to, affect the substance or truthfulness of the witness's testimony.

(f) A prosecutor should avoid the prospect of having to testify personally about the content of a witness interview. The prosecutor's interview of most routine or government witnesses (for example, custodians of records or law enforcement agents) should not require a third-party observer. But when the need for corroboration of an interview is reasonably anticipated, the prosecutor should be accompanied by another trusted and credible person during the interview. The prosecutor should avoid being alone with any witness who the prosecutor reasonably believes has potential or actual criminal liability, or foreseeably hostile witnesses.

(g) The prosecutor should advise a witness who is to be interviewed of his or her rights against self-incrimination and the right to independent counsel when the law so requires. Even if the law does not require it, a prosecutor should consider so advising a witness if the prosecutor reasonably believes the witness may provide self-incriminating information and the witness appears not to know his or her rights. However, a prosecutor should not so advise, or discuss or exaggerate the potential criminal liability of, a witness with a purpose, or in a manner likely, to intimidate the witness, to influence the truthfulness or completeness of the witness's testimony, or to change the witness's decision about whether to provide information.

(h) The prosecutor should not discourage or obstruct communication between witnesses and the defense counsel, other than the government's employees or agents if consistent with applicable ethical rules. The prosecutor should not advise any person, or cause any person to be advised, to decline to provide defense counsel with information which such person has a right to give. The prosecutor may, however, fairly and accurately advise witnesses as to the likely consequences of their providing information, but only if done in a manner that does not discourage communication.

(i) Consistent with any specific laws or rules governing victims, the prosecutor should provide victims of serious crimes, or their representatives, an opportunity to consult with and to provide information to the prosecutor, prior to making significant decisions such as whether or not to prosecute, to pursue a disposition by plea, or to dismiss charges. The prosecutor should seek to ensure that victims of serious crimes, or their representatives, are given timely notice of:

(i) judicial proceedings relating to the victims' case;

(ii) proposed dispositions of the case;

(iii) sentencing proceedings; and

(iv) any decision or action in the case that could result in the defendant's provisional or final release from custody, or change of sentence.

(j) 檢察官應確保向需要免遭恐嚇或報復之被害人及證人提供建議，並於可行情況下為其提供保護。

(k) 根據倫理守則及刑事案件要求之保密性，除非法律或法院明令禁止，檢察官應向提出請求之被害人及證人提供所涉事項現狀之資訊。

(l) 檢察官應合理通知證人於訴訟中作證之預計時間，除非合理預期其將作證或法律要求證人出庭作證，不應要求證人必定出席。若需證人出庭，檢察官應設法使證人於訴訟之等待時間減至最少。檢察官應確保於實際可行下盡快向證人發出時間安排變更之通知。

(m)檢察官不應與任何被害人或其他證人建立任何不適當之私人關係。

準則 3-3.5 與專家證人之關係

(a) 專家可僅提供諮詢，或提出證據報告或證詞。檢察官應了解專家證人之相關規則，包括僅聘請諮詢專家所適用之不同揭露規則。

(b) 檢察官應獨立評估所有專家建議、意見或證詞，而非僅根據僱傭、從屬關係或聲望而簡單接受政府或其他專家之意見。

(c) 於聘請專家前，檢察官應調查專家之資歷、相關專業經驗以及其於該領域之聲譽。檢察官亦應檢查專家證人之背景及資歷，以了解潛在之彈劾問題。在提出專家作為證人之前，檢察官應調查專家作證之特定理論、方法或結論之科學接受程度。

(d) 檢察官聘請專家提出證詞意見時，應尊重專家之獨立性，不應試圖支配專家對相關問題之意見之實質內容。

(e) 提供專家作為證人之前，檢察官應設法充分了解專家專業知識之實質領域，包括適用於專家領域之倫理守則，以使專家可做充分準備，並就同一標的對任何辯方專家進行有效詰問。檢察官應向專家解釋其於訴訟中之作用是作為公正證人，經傳喚協助釐清事實，解釋對專家進行審查之方式，並提出可能之彈劾問題。

(j) The prosecutor should ensure that victims and witnesses who may need protections against intimidation or retaliation are advised of and afforded protections where feasible.

(k) Subject to ethical rules and the confidentiality that criminal matters sometimes require, and unless prohibited by law or court order, the prosecutor should provide information about the status of matters in which they are involved to victims and witnesses who request it.

(l) The prosecutor should give witnesses reasonable notice of when their testimony at a proceeding is expected, and should not require witnesses to attend judicial proceedings unless their testimony is reasonably expected at that time, or their presence is required by law. When witnesses' attendance is required, the prosecutor should seek to reduce to a minimum the time witnesses must spend waiting at the proceedings. The prosecutor should ensure that witnesses are given notice as soon as practicable of scheduling changes which will affect their required attendance at judicial proceedings.

(m) The prosecutor should not engage in any inappropriate personal relationship with any victim or other witness.

Standard 3-3.5 Relationship with Expert Witnesses

(a) An expert may be engaged for consultation only, or to prepare an evidentiary report or testimony. The prosecutor should know relevant rules governing expert witnesses, including possibly different disclosure rules governing experts who are engaged for consultation only.

(b) A prosecutor should evaluate all expert advice, opinions, or testimony independently, and not simply accept the opinion of a government or other expert based on employer, affiliation or prominence alone.

(c) Before engaging an expert, the prosecutor should investigate the expert's credentials, relevant professional experience, and reputation in the field. The prosecutor should also examine a testifying expert's background and credentials for potential impeachment issues. Before offering an expert as a witness, the prosecutor should investigate the scientific acceptance of the particular theory, method, or conclusions about which the expert would testify.

(d) A prosecutor who engages an expert to provide a testimonial opinion should respect the independence of the expert and should not seek to dictate the substance of the expert's opinion on the relevant subject.

(e) Before offering an expert as a witness, the prosecutor should seek to learn enough about the substantive area of the expert's expertise, including ethical rules that may be applicable in the expert's field, to enable effective preparation of the expert, as well as effective cross-examination of any defense expert on the same topic. The prosecutor should explain to the expert that the expert's role in the proceeding will be as an impartial witness called

(f) 檢察官不得為了影響專家證詞之實質內容而支付或扣留任何費用，或提供或扣留任何利益。檢察官不應根據專家之證詞或案件結果決定費用金額。檢察官亦不應根據專家之證詞承諾或暗示該專家未來之工作前景。

(g) 檢察官應向專家提供有助於充分公正意見之所有合理必要資訊。檢察官應該留意並向專家解釋，與專家證人之所有通訊及共享文件可能會向對方律師揭露。檢察官應了解專家證據提示之規則並採取行動保護機密性及公共利益，例如不共享檢察官不欲揭露之專家機密及工作成果。

(h) 檢察官應及時向辯方揭露自專家取得之所有傾向否定被告有罪或減輕罪行之證據或資訊，即使檢察官並不擬傳喚專家證人亦同。

準則 3-3.6 辯方揭露具犯罪暗示之物證

當物證按辯護準則 4-4.7 交付與檢察官時，檢察官不應將交付事實作為證據而提供予審判機關，而以之確立辯護律師委託人之罪責。然而，檢察官可提供此類交付事實之證據，以回應對證據本身效力之反對，或於訴訟中證明證據有關之犯罪或詐欺。

to aid the fact-finders, explain the manner in which the examination of the expert is likely to be conducted, and suggest likely impeachment questions the expert may be asked.

(f) The prosecutor should not pay or withhold any fee or provide or withhold a benefit for the purpose of influencing the substance of an expert's testimony. The prosecutor should not fix the amount of the fee contingent upon the expert's testimony or the result in the case. Nor should the prosecutor promise or imply the prospect of future work for the expert based on the expert's testimony.

(g) The prosecutor should provide the expert with all information reasonably necessary to support a full and fair opinion. The prosecutor should be aware, and explain to the expert, that all communications with, and documents shared with, a testifying expert may be subject to disclosure to opposing counsel. The prosecutor should be aware of expert discovery rules and act to protect confidentiality and the public interest, for example by not sharing with the expert confidences and work product that the prosecutor does not want disclosed.

(h) The prosecutor should timely disclose to the defense all evidence or information learned from an expert that tends to negate the guilt of the accused or mitigate the offense, even if the prosecutor does not intend to call the expert as a witness.

Standard 3-3.6 When Physical Evidence With Incriminating Implications is Disclosed by the Defense

When physical evidence is delivered to the prosecutor consistent with Defense Function Standard 4-4.7, the prosecutor should not offer the fact of delivery as evidence before a fact-finder for purposes of establishing the culpability of defense counsel's client. The prosecutor may, however, offer evidence of the fact of such delivery in response to a foundational objection to the evidence based on chain-of-custody concerns, or in a subsequent proceeding for the purpose of proving a crime or fraud regarding the evidence.

第四部分：調查；決定起訴、不起訴或駁回；以及大評審團

準則 3-4.1 檢察官之調查職權

(a) 檢察官執行調查職權時，應熟悉並遵循美國律師協會之起訴調查準則。

(b) 檢察官不得使用非法或不符倫理之手段獲取證據或資訊，或僱用、指示或鼓勵他人為之。檢察官於採取行動前應研究並了解相關法律，並知悉於特定情況下檢察官之倫理義務與律師倫理義務之不同之處。

準則 3-4.2 由檢察官決定起訴

(a) 逮捕與否係由執法人員負責決定，但提起正式刑事訴訟之決定則由檢察官作出。若法律允許執法人員或其他人直接向司法人員或大陪審團提出控訴以啟動訴訟，則應要求控訴人將控訴提交予檢察官事先審查，且檢察官應就控訴提出建議並轉知司法人員或大陪審團。

(b) 檢察機關應訂立評估控訴之標準及流程，以確定是否提起正式刑事訴訟。

(c) 於決定是否應提出正式刑事起訴時，檢察官應考量是否進行進一步調查。起訴後，檢察官應監督與案件相關之執法調查活動。

(d) 若被告遭起訴時未予拘留，檢察官應考量以自願出庭為主，而非拘留逮捕，但應考量保護大眾並確保被告確實出庭參加訴訟。

準則 3-4.3 提起及維持刑事起訴之最低要求

(a) 檢察官僅於合理認定起訴具合理理由支持、可採納之證據足以於合理懷疑範圍內支持定罪且起訴符合利益下，始可尋求或提出刑事指控。

(b) 提出刑事指控後，檢察官僅於持續合理相信存在相關理由且可採

PART IV: INVESTIGATION; DECISIONS TO CHARGE, NOT CHARGE, OR DISMISS; AND GRAND JURY

Standard 3-4.1 Investigative Function of the Prosecutor

(a) When performing an investigative function, prosecutors should be familiar with and follow the ABA Standards on Prosecutorial Investigations.

(b) A prosecutor should not use illegal or unethical means to obtain evidence or information, or employ, instruct, or encourage others to do so. Prosecutors should research and know the law in this regard before acting, understanding that in some circumstances a prosecutor's ethical obligations may be different from those of other lawyers.

Standard 3-4.2 Decisions to Charge Are the Prosecutor's

(a) While the decision to arrest is often the responsibility of law enforcement personnel, the decision to institute formal criminal proceedings is the responsibility of the prosecutor. Where the law permits a law enforcement officer or other person to initiate proceedings by complaining directly to a judicial officer or the grand jury, the complainant should be required to present the complaint for prior review by the prosecutor, and the prosecutor's recommendation regarding the complaint should be communicated to the judicial officer or grand jury.

(b) The prosecutor's office should establish standards and procedures for evaluating complaints to determine whether formal criminal proceedings should be instituted.

(c) In determining whether formal criminal charges should be filed, prosecutors should consider whether further investigation should be undertaken. After charges are filed the prosecutor should oversee law enforcement investigative activity related to the case.

(d) If the defendant is not in custody when charged, the prosecutor should consider whether a voluntary appearance rather than a custodial arrest would suffice to protect the public and ensure the defendant's presence at court proceedings.

Standard 3-4.3 Minimum Requirements for Filing and Maintaining Criminal Charges

(a) A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.

(b) After criminal charges are filed, a prosecutor should maintain them only if the prosecutor continues to reasonably believe that probable cause exists and that admissible evidence

納之證據足以於合理懷疑範圍內支持定罪下，始能維持指控。

(c) 若檢察官對指派予其之任何刑事案件之被告罪行或證據品質、真實性或充分性有重大疑問，則應向監督人員揭示此類疑問。檢察機關並應確定是否適合持續審理此案。

(d) 若檢察機關認定被告無罪，不論證據情況如何，均不應提出或維持指控。

準則 3-4.4 提出、拒絕、維持和駁回刑事訴訟之自由裁量權

(a) 為充分履行檢察官職權—包括行使合理裁量權時執行法律之義務—檢察官無提出或維持可能支持刑事指控之證據。即使滿足準則 3-4.3 之要求，檢察官於行使自由裁量權以提起、拒絕或駁回刑事訴訟時應適當考量之因素包括：

(i) 案件之強度；

(ii) 檢察官懷疑被告確實有罪；

(iii) 犯罪行為造成傷害之程度或無傷害；

(iv) 起訴與否對公共福祉之影響；

(v) 罪犯之背景及特徵，包括任何自願返還或復健之努力；

(vi) 法規所允許可能有的罰則或附帶後果是否對於特定犯罪或犯罪者符合比例原則；

(vii) 被害人或申訴人之觀點及動機；

(viii) 執法部門之任何不當行為；

(ix) 對處境相似之人士進行無理之差別對待；

(x) 對第三方（包括證人或被害人）之潛在附帶影響；

(xi) 犯人於被捕或定罪時之配合度；

(xii) 任何文化、種族、社會經濟或其他不當偏見之可能影響；

(xiii) 法律或政策之變更；

will be sufficient to support conviction beyond a reasonable doubt.

(c) If a prosecutor has significant doubt about the guilt of the accused or the quality, truthfulness, or sufficiency of the evidence in any criminal case assigned to the prosecutor, the prosecutor should disclose those doubts to supervisory staff. The prosecutor's office should then determine whether it is appropriate to proceed with the case.

(d) A prosecutor's office should not file or maintain charges if it believes the defendant is innocent, no matter what the state of the evidence.

Standard 3-4.4 Discretion in Filing, Declining, Maintaining, and Dismissing Criminal Charges

(a) In order to fully implement the prosecutor's functions and duties, including the obligation to enforce the law while exercising sound discretion, the prosecutor is not obliged to file or maintain all criminal charges which the evidence might support. Among the factors which the prosecutor may properly consider in exercising discretion to initiate, decline, or dismiss a criminal charge, even though it meets the requirements of Standard 3-4.3, are:

(i) the strength of the case;

(ii) the prosecutor's doubt that the accused is in fact guilty;

(iii) the extent or absence of harm caused by the offense;

(iv) the impact of prosecution or non-prosecution on the public welfare;

(v) the background and characteristics of the offender, including any voluntary restitution or efforts at rehabilitation;

(vi) whether the authorized or likely punishment or collateral consequences are disproportionate in relation to the particular offense or the offender;

(vii) the views and motives of the victim or complainant;

(viii) any improper conduct by law enforcement;

(ix) unwarranted disparate treatment of similarly situated persons;

(x) potential collateral impact on third parties, including witnesses or victims;

(xi) cooperation of the offender in the apprehension or conviction of others;

(xii) the possible influence of any cultural, ethnic, socioeconomic or other improper biases;

(xiii) changes in law or policy;

(xiv) 公平有效分配有限之檢察資源；

(xv) 被另一司法管轄區起訴之可能性；及

(xvi) 該事項中之大眾利益是否可以從現有之民事、監管、行政或私人救濟措施得到適當維護。

(b) 於行使提出及維持訴訟之自由裁量權時，檢察官不應考量以下因素：

(i) 黨派或其他不當之政治或個人因素；

(ii) 對潛在對象之敵意或個人惡意，或檢察官之任何其他不當動機；或

(iii) 上述準則 1.6 所述之不應允許之標準。

(c) 即使司法管轄範圍內之陪審團傾向宣判遭控犯有特定犯罪之人無罪，檢察官亦可以提出並維持訴訟。

(d) 檢察官提出或維持之訴訟的量或程度，不應超過審判時證據合理支持之範圍，且應為公平反映犯罪嚴重程度或威懾類似行為所必需者。

(e) 僅於給予被告知情同意並且向法院揭露此類同意下，檢察官始可以被告放棄尋求民事救濟之權利為條件提出駁回、撤回起訴或其他類似行動。檢察官不應利用民事上權利之放棄，規避對不當執法行為之善意主張，且應根據案情之內容作出不提起刑事訴訟之決定，而非以獲得民事上權利之放棄為目的。

(f) 檢察官於決定是否提起刑事訴訟時，應考量正式或非正式之非刑事處分、推遲起訴或其他轉移處分之可行性。檢察官應熟悉其他公共或私人機構之服務及資源，以尋求有助於評估案件是否應自刑事流程轉移或推遲之可行性。

(xiv) the fair and efficient distribution of limited prosecutorial resources;

(xv) the likelihood of prosecution by another jurisdiction; and

(xvi) whether the public's interests in the matter might be appropriately vindicated by available civil, regulatory, administrative, or private remedies.

(b) In exercising discretion to file and maintain charges, the prosecutor should not consider:

(i) partisan or other improper political or personal considerations;

(ii) hostility or personal animus towards a potential subject, or any other improper motive of the prosecutor; or

(iii) the impermissible criteria described in Standard 1.6 above.

(c) A prosecutor may file and maintain charges even if juries in the jurisdiction have tended to acquit persons accused of the particular kind of criminal act in question.

(d) The prosecutor should not file or maintain charges greater in number or degree than can reasonably be supported with evidence at trial and are necessary to fairly reflect the gravity of the offense or deter similar conduct.

(e) A prosecutor may condition a dismissal of charges, nolle prosequi, or similar action on the accused's relinquishment of a right to seek civil redress only if the accused has given informed consent, and such consent is disclosed to the court. A prosecutor should not use a civil waiver to avoid a bona fide claim of improper law enforcement actions, and a decision not to file criminal charges should be made on its merits and not for the purpose of obtaining a civil waiver.

(f) The prosecutor should consider the possibility of a noncriminal disposition, formal or informal, or a deferred prosecution or other diversionary disposition, when deciding whether to initiate or prosecute criminal charges. The prosecutor should be familiar with the services and resources of other agencies, public or private, that might assist in the evaluation of cases for diversion or deferral from the criminal process.

準則 3-4.5 與大陪審團之關係

(a) 向刑事大陪審團陳述案件時，基於其屬一造之角色，檢察官應尊重大陪審團之獨立性，不得僭越大陪審團之職能、誤導大陪審團或濫用大陪審團之程序。

(b) 若檢察官經授權擔任大陪審團之法律顧問，檢察官應適當解釋法律，並於法律允許下，就證據之法律意義發表意見，但應尊重大陪審團作為一獨立之法律機構。

(c) 檢察官不應向大陪審團作出陳述或論據，以試圖以審判所不允許之方式影響大陪審團之行動。

(d) 大陪審團進行之訴訟程序，包括檢察官與大陪審團之溝通、向大陪審團之陳述和指示，均應以特定方式記錄保全。檢察官應避免與大陪審團及個別大陪審員進行不公開之溝通。

準則 3-4.6 向大陪審團提交之證據品質及範圍

(a) 檢察官不應尋求起訴，除非合理相信指控具備合理理由支持，且於審判時有足夠之證據可支持其指控。檢察官應向大陪審團告知其意見，而若檢察官認為所提供之證據不足以支持起訴時，則應予不起訴。

(b) 除確定提出何種刑事訴訟外，大陪審團亦可適當調查潛在犯罪行為，並確定民眾對潛在犯行起訴之看法。

(c) 檢察官應僅向大陪審團提交其認定適當且法律授權可向大陪審團提交之證據。檢察官應熟悉司法管轄區內關於大陪審團之法律，並於法律允許之範圍內提出證人以總結相關證據。

(d) 於任命大陪審團成員時，檢察官應確保大陪審員可得到適當指導，符合司法管轄區之法律，理解大陪審團尋求證據、提出問題及直接聽取任何證人（包括目擊者）意見之權能。

(e) 當檢察官知悉足以直接否定受調查主體有罪之證據時，應向大陪

Standard 3-4.5 Relationship with a Grand Jury

(a) In presenting a matter to a criminal grand jury, and in light of its ex parte character, the prosecutor should respect the independence of the grand jury and should not preempt a function of the grand jury, mislead the grand jury, or abuse the processes of the grand jury.

(b) Where the prosecutor is authorized to act as a legal advisor to the grand jury, the prosecutor should appropriately explain the law and may, if permitted by law, express an opinion on the legal significance of the evidence, but should give due deference to the grand jury as an independent legal body.

(c) The prosecutor should not make statements or arguments to a grand jury in an effort to influence grand jury action in a manner that would be impermissible in a trial.

(d) The entirety of the proceedings occurring before a grand jury, including the prosecutor's communications with and presentations and instructions to the grand jury, should be recorded in some manner, and that record should be preserved. The prosecutor should avoid off-the-record communications with the grand jury and with individual grand jurors.

Standard 3-4.6 Quality and Scope of Evidence Before a Grand Jury

(a) A prosecutor should not seek an indictment unless the prosecutor reasonably believes the charges are supported by probable cause and that there will be admissible evidence sufficient to support the charges beyond reasonable doubt at trial. A prosecutor should advise a grand jury of the prosecutor's opinion that it should not indict if the prosecutor believes the evidence presented does not warrant an indictment.

(b) In addition to determining what criminal charges to file, a grand jury may properly be used to investigate potential criminal conduct, and also to determine the sense of the community regarding potential charges.

(c) A prosecutor should present to a grand jury only evidence which the prosecutor believes is appropriate and authorized by law for presentation to a grand jury. The prosecutor should be familiar with the law of the jurisdiction regarding grand juries, and may present witnesses to summarize relevant evidence to the extent the law permits.

(d) When a new grand jury is empanelled, a prosecutor should ensure that the grand jurors are appropriately instructed, consistent with the law of the jurisdiction, on the grand jury's right and ability to seek evidence, ask questions, and hear directly from any available witnesses, including eyewitnesses.

(e) A prosecutor with personal knowledge of evidence that directly negates the guilt of a subject of the investigation should present or otherwise disclose that evidence to the grand

審團提交或以其他方式揭露該證據。檢察官應向大陪審團轉達受調查主體或對象願意於大陪審團面前作證之任何請求，或提供其他聲稱無罪之重要證據。

(f) 若檢察官認為證人為刑事調查之對象，則檢察官不應於無豁免權之情況下強迫證人於大陪審團面前作證。但檢察官應尊重欲於大陪審團面前作證之對象或主體之合理請求。

(g) 除非有合理理由相信對象將逃逸、危及他人、干擾進行中之調查或妨礙司法公正，否則檢察官應向受大陪審團調查之對象發出通知，並為該對象提供機會於大陪審團面前作證。於聽取該對象之證詞前，檢察官應告知其有反對自證己罪之權利，並可自願放棄該權利。

(h) 若證人事先聲明一經傳喚則將主張不作證之憲法權利，並提供合理之主張依據，檢察官不應嘗試迫使該證人出現。但檢察官若獲得授權，可根據法律，於司法程序上對該權利提出異議或尋求豁免於該權利。

(i) 於未考慮管轄範圍內適用之法律和職業責任規則下，檢察官不應向刑事辯護律師或辯護小組成員，或其證詞可能合理受公認權利保障之其他證人發出大陪審團傳票。

(j) 除非法律允許，對於檢察官已準備起訴進行審判之被告，檢察官不應利用大陪審團來蒐集證據。但對已起訴之被告如有額外或新的指控，檢察官可利用大陪審團調查進行調查。

(k) 除非法律允許，檢察官不得單純（主要）為協助（幫助）行政或民事調查為目的，而使用刑事大陪審團。

jury. The prosecutor should relay to the grand jury any request by the subject or target of an investigation to testify before the grand jury, or present other non-frivolous evidence claimed to be exculpatory.

(f) If the prosecutor concludes that a witness is a target of a criminal investigation, the prosecutor should not seek to compel the witness's testimony before the grand jury absent immunity. The prosecutor should honor, however, a reasonable request from a target or subject who wishes to testify before the grand jury.

(g) Unless there is a reasonable possibility that it will facilitate flight of the target, endanger other persons, interfere with an ongoing investigation, or obstruct justice, the prosecutor should give notice to a target of a grand jury investigation, and offer the target an opportunity to testify before the grand jury. Prior to taking a target's testimony, the prosecutor should advise the target of the privilege against self-incrimination and obtain a voluntary waiver of that right.

(h) The prosecutor should not seek to compel the appearance of a witness whose activities are the subject of the grand jury's inquiry, if the witness states in advance that if called the witness will claim the constitutional privilege not to testify, and provides a reasonable basis for such claim. If warranted, the prosecutor may judicially challenge such a claim of privilege or seek a grant of immunity according to the law.

(i) The prosecutor should not issue a grand jury subpoena to a criminal defense attorney or defense team member, or other witness whose testimony reasonably might be protected by a recognized privilege, without considering the applicable law and rules of professional responsibility in the jurisdiction.

(j) Except where permitted by law, a prosecutor should not use the grand jury in order to obtain evidence to assist the prosecution's preparation for trial of a defendant who has already been charged. A prosecutor may, however, use the grand jury to investigate additional or new charges against a defendant who has already been charged.

(k) Except where permitted by law, a prosecutor should not use a criminal grand jury solely or primarily for the purpose of aiding or assisting in an administrative or civil inquiry.

第五部分：審判前活動及協商處分

準則 3-5.1 首次出庭及初步聽證之職責

(a) 被告首次出庭接受司法人員審判和預審時，檢察官應到場。

(b) 於首次出庭之時或之前，檢察官應考量：

(i) 被告是否有律師，若無，則是否以及何時提供或放棄律師；

(ii) 被告之表現是否有充分心智能力，若無，則是否尋求評估；

(iii) 被告是否應予釋放或拘留以待後續訴訟，若釋放，則是否應施加監督條件；及

(iv) 應安排何種後續流程以及時解決問題。

(c) 處理首次出庭之檢察官，應確保訴訟與現有執法報告及檢察官掌握之任何其他資訊所描述之行為相符。

(d) 若被告未聘請律師且未放棄律師，檢察官應要求法院除做出釋放被告之決定外，亦不進行實質訴訟。檢察官不應要求無人代理之被告放棄其他重要之審判前權利，如：獲得初步聽證之權利，除非該人已獲得司法授權進行自訴。

(e) 除非已自願放棄律師或被告律師同意，檢察官不應接洽或與被告溝通。若被告無律師，檢察官應做出合理努力確保被告已經被告知取得律師之權利及取得律師之程序，並有取得律師之合理機會。

(f) 若檢察官認為審前釋放為適當或已下令審前釋放，檢察官應於現行審前釋放制度下妥善安排之。

(g) 若檢察官對被告之心智能力有合理擔憂，檢察官應提請辯護律師注意，並於必要時亦提請司法官員留意之。

(h) 檢察官不應於無正當理由下試圖拖延對刑事訴訟迅速判決之要求，尤其是被告遭拘留時。

PART V: PRETRIAL ACTIVITIES and NEGOTIATED DISPOSITIONS

Standard 3-5.1 Role in First Appearance and Preliminary Hearing

(a) A prosecutor should be present at any first appearance of the accused before a judicial officer, and at any preliminary hearing.

(b) At or before the first appearance, the prosecutor should consider:

(i) whether the accused has counsel, and if not, whether and when counsel will be made available or waived;

(ii) whether the accused appears to be mentally competent, and if not, whether to seek an evaluation;

(iii) whether the accused should be released or detained pending further proceedings and, if released, whether supervisory conditions should be imposed; and

(iv) what further proceedings should be scheduled to move the matter toward timely resolution.

(c) The prosecutor handling the first appearance should ensure that the charges are consistent with the conduct described in the available law enforcement reports and any other information the prosecutor possesses.

(d) If the accused does not yet have counsel and has not waived counsel, the prosecutor should ask the court not to engage in substantive proceedings, other than a decision to release the accused. The prosecutor should not obtain a waiver of other important pretrial rights, such as the right to a preliminary hearing, from an unrepresented accused unless that person has been judicially authorized to proceed pro se.

(e) The prosecutor should not approach or communicate with an accused unless a voluntary waiver of counsel has been entered or the accused's counsel consents. If the accused does not have counsel, the prosecutor should make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel, and is given reasonable opportunity to obtain counsel.

(f) If the prosecutor believes pretrial release is appropriate, or it is ordered, the prosecutor should cooperate in arrangements for release under the prevailing pretrial release system.

(g) If the prosecutor has reasonable concerns about the accused's mental competence, the prosecutor should bring those concerns to the attention of defense counsel and, if necessary, the judicial officer.

(h) The prosecutor should not seek to delay a prompt judicial determination of probable cause for criminal charges without good cause, particularly if the accused is in custody.

準則 3-5.2 建議釋放或尋求拘留之決定

(a) 檢察官除非為保護個人或社群安全或確保被告能確實參加往後訴訟而有拘留之需，否則應批准審前釋放刑事被告。

(b) 檢察官建議審前釋放或尋求拘留之決定應以被告及其罪行之事實及情況而定，不應斷然作成。檢察官應考量來自所有來源（包括被告本身）與此決定相關之資訊。

(c) 檢察官應與審前人員、或負責審查 / 收集提交予法院之審前釋放決定資訊之人員合作。

(d) 檢察官應根據情況—包括意外過長之拘留期間—重新考量審前拘留或釋放決定。

準則 3-5.3 法庭訴訟之準備以及資訊記錄與傳遞

(a) 於可行時，檢察官應提前為法庭訴訟做好準備。充分之準備取決於訴訟事件的本質和可用的時間，這些事務通常包括審查可用的文件、考量可能出現之問題以及檢方對此類問題之觀點、提出問題之方式以及可行之解決方案、相關法律之研究和事實之調查、聯絡有助於解決預期問題之其他人員等等。若檢察官無充分之時間準備且無法確定相關之事實或法律，檢察官應向法庭傳達檢察官認知或準備訴訟所受之限制。

(b) 檢察官應努力出席其承辦案件之所有聽證會。於法庭訴訟中替代負責案件之其他名檢察官之檢察官應有合理努力以充分了解案件訴訟中可能出現之問題，並對此做好充分準備。

(c) 出庭之檢察官應記錄訴訟過程發生之情況，以協助日後回憶，並為將來可能處理案件之其他檢察官提供必要資訊。

(d) 檢察官應採取措施，確保向檢方發出之任何法院命令均轉交予執行該命令之適當人員。

(e) 檢察機關應被提供充足的資源並被適當的組織，以便為法庭訴訟做好充分的準備。

Standard 3-5.2 The Decision to Recommend Release or Seek Detention

(a) The prosecutor should favor pretrial release of a criminally accused, unless detention is necessary to protect individuals or the community or to ensure the return of the defendant for future proceedings.

(b) The prosecutor's decision to recommend pretrial release or seek detention should be based on the facts and circumstances of the defendant and the offense, rather than made categorically. The prosecutor should consider information relevant to these decisions from all sources, including the defendant.

(c) The prosecutor should cooperate with pretrial services or other personnel who review or assemble information to be provided to the court regarding pretrial release determinations.

(d) The prosecutor should be open to reconsideration of pretrial detention or release decisions based on changed circumstances, including an unexpectedly lengthy period of detention.

Standard 3-5.3 Preparation for Court Proceedings, and Recording and Transmitting Information

(a) The prosecutor should prepare in advance for court proceedings unless that is impossible. Adequate preparation depends on the nature of the proceeding and the time available, and will often include: reviewing available documents; considering what issues are likely to arise and the prosecution's position regarding those issues; how best to present the issues and what solutions might be offered; relevant legal research and factual investigation; and contacting other persons who might be of assistance in addressing the anticipated issues. If the prosecutor has not had adequate time to prepare and is unsure of the relevant facts or law, the prosecutor should communicate to the court the limits of the prosecutor's knowledge or preparation.

(b) The prosecutor should make effort to appear at all hearings in cases assigned to the prosecutor. A prosecutor who substitutes at a court proceeding for another prosecutor assigned to the case should make reasonable efforts to be adequately informed about the case and issues likely to come up at the proceeding, and to adequately prepare.

(c) The prosecutor handling any court appearance should document what happens at the proceeding, to aid the prosecutor's later memory and so that necessary information will be available to other prosecutors who may handle the case in the future.

(d) The prosecutor should take steps to ensure that any court order issued to the prosecution is transmitted to the appropriate persons necessary to effectuate the order.

(e) The prosecutor's office should be provided sufficient resources and be organized to permit adequate preparation for court proceedings.

準則 3-5.4 資訊及證據之識別及揭露

(a) 若非之前已作到，則在提起訴訟之後，檢察官應努力查明檢方或其代理人掌握之所有有助於否定被告有罪、減輕其指控之罪行、彈劾政府證人或證據，或減輕被告經定罪可能受到之懲罰之資訊。

(b) 檢察官應認真建議參與案件之其他政府機構，關於渠等識別、保全，及向檢察官揭露上述 (a) 中所述之資訊之繼續性義務。

(c) 於審理刑事案件前，檢察官應當及時向辯方揭露其所知悉之上述 (a) 中所述資訊，不論檢察官是否認為該資訊是否可改變訴訟之結果，且僅可於法院保護令予以免除時，始得不予揭露（關於認罪前之發現，請參閱下文準則 3-5.6(f)）。檢察官不應故意將根據本準則應揭露之資訊納入大量資料而未作任何識別。

(d) 於刑事案件起訴過程中，應始終負有查明及揭露此類資訊之義務。

(e) 檢察官應及時回應合法正當之證據開示請求，並努力遵守合法正當之揭露義務，法院另有授權不在此限。當辯方要求提供具體資訊時，檢察官應提供具體回覆，而非籠統回答。請求及回覆應根據具體情況進行調整，不應採用「範本」之請求及回覆方式。

(f) 檢察官應立即努力查明並向辯方揭露調查中蒐集到之任何物證，並為辯方提供合理機會進行審查。

(g) 檢察官不應認定不利檢方案件審理或對被告有利而規避追查特定資訊或證據。

(h) 檢察官應確定其他法規、規則或判例法是否管轄或限制資訊之揭露，若無法院命令則應遵守此類規定。

Standard 3-5.4 Identification and Disclosure of Information and Evidence

(a) After charges are filed if not before, the prosecutor should diligently seek to identify all information in the possession of the prosecution or its agents that tends to negate the guilt of the accused, mitigate the offense charged, impeach the government's witnesses or evidence, or reduce the likely punishment of the accused if convicted.

(b) The prosecutor should diligently advise other governmental agencies involved in the case of their continuing duty to identify, preserve, and disclose to the prosecutor information described in (a) above.

(c) Before trial of a criminal case, a prosecutor should make timely disclosure to the defense of information described in (a) above that is known to the prosecutor, regardless of whether the prosecutor believes it is likely to change the result of the proceeding, unless relieved of this responsibility by a court's protective order. (Regarding discovery prior to a guilty plea, see Standard 3-5.6(f) below.) A prosecutor should not intentionally attempt to obscure information disclosed pursuant to this standard by including it without identification within a larger volume of materials.

(d) The obligations to identify and disclose such information continue throughout the prosecution of a criminal case.

(e) A prosecutor should timely respond to legally proper discovery requests, and make a diligent effort to comply with legally proper disclosure obligations, unless otherwise authorized by a court. When the defense makes requests for specific information, the prosecutor should provide specific responses rather than merely a general acknowledgement of discovery obligations. Requests and responses should be tailored to the case and "boilerplate" requests and responses should be disfavored.

(f) The prosecutor should make prompt efforts to identify and disclose to the defense any physical evidence that has been gathered in the investigation, and provide the defense a reasonable opportunity to examine it.

(g) A prosecutor should not avoid pursuit of information or evidence because the prosecutor believes it will damage the prosecution's case or aid the accused.

(h) A prosecutor should determine whether additional statutes, rules or caselaw may govern or restrict the disclosure of information, and comply with these authorities absent court order.

準則 3-5.5 資訊及證據保全

(a) 檢察官應以合理努力於刑事案件審理期間及其後保全並指示檢察官代理人保全相關資料，包括：

(i) 與調查及起訴相關之證據，無論是否納入審判中；

(ii) 依準則 3-5.4(a) 確定之資訊；及

(iii) 支持檢方於調查、起訴過程中作出重大決定及結論所必需之其他資料。

(b) 檢察機關應制定關於保全此類資料之方法與期限之政策。此類政策應符合司法管轄區內適用之規則及法律（如：公文書法）。此類政策及個別保全決定應考量個案特性及嚴重程度、特定證據或資訊之特徵、定罪判決受質疑之可能性以及可用於保全之資源。物證應當合理保全其司法鑑定特徵及實用性。

(c) 資料應至少保全至刑事案件最終解決或上訴終了以及上訴期限屆滿為止。於重罪案件中，資料應保全至定罪訴訟結束或期限屆滿。於死刑案件則應保全至執行或撤銷刑罰為止。

(d) 檢察官應遵守適用於證據保全之法規、規則或判例法。

準則 3-5.6 進行協商處分討論

(a) 檢察官應於刑事案件各階段與辯護律師針對認罪或其他協商處理方式等問題討論保持開放態度。

(b) 除非得到辯護律師批准，檢察官不應直接與律師代表之被告進行處分討論。若被告經適當方式放棄由律師代理，檢察官可與被告進行處分討論，並應製作並保全此類討論之記錄。

(c) 除非取得足以評估被告實際罪責之資訊，檢察官不應簽訂處分協議。檢察官於簽訂處分協議前應考慮定罪之附帶後果。檢察官應考量準則 3-4.4(a) 中列出之因素，且不應受準則 3-1.6 及 3-4.4(b) 列出之不適當因素之影響。

Standard 3-5.5 Preservation of Information and Evidence

(a) The prosecutor should make reasonable efforts to preserve, and direct the prosecutor's agents to preserve, relevant materials during and after a criminal case, including

(i) evidence relevant to investigations as well as prosecutions, whether or not admitted at trial;

(ii) information identified pursuant to Standard 3-5.4(a); and

(iii) other materials necessary to support significant decisions made and conclusions reached by the prosecution in the course of an investigation and prosecution.

(b) The prosecutor's office should develop policies regarding the method and duration of preservation of such materials. Such policies should be consistent with applicable rules and laws (such as public records laws) in the jurisdiction. These policies, and individual preservation decisions, should consider the character and seriousness of each case, the character of the particular evidence or information, the likelihood of further challenges to judgments following conviction, and the resources available for preservation. Physical evidence should be preserved so as to reasonably preserve its forensic characteristics and utility.

(c) Materials should be preserved at least until a criminal case is finally resolved or is final on appeal and the time for further appeal has expired. In felony cases, materials should be preserved until post-conviction litigation is concluded or time-limits have expired. In death penalty cases, information should be preserved until the penalty is carried out or is precluded.

(d) The prosecutor should comply with additional statutes, rules or caselaw that may govern the preservation of evidence.

Standard 3-5.6 Conduct of Negotiated Disposition Discussions

(a) The prosecutor should be open, at every stage of a criminal matter, to discussions with defense counsel concerning disposition of charges by guilty plea or other negotiated disposition.

(b) A prosecutor should not engage in disposition discussions directly with a represented defendant, except with defense counsel's approval. Where a defendant has properly waived counsel, the prosecutor may engage in disposition discussions with the defendant, and should make and preserve a record of such discussions.

(c) The prosecutor should not enter into a disposition agreement before having information sufficient to assess the defendant's actual culpability. The prosecutor should consider collateral consequences of a conviction before entering into a disposition agreement. The

(d) 檢察官不應設定不合理之過短期限，或對處分定下將使認罪自願性或有效辯護受到質疑之強制條件。但檢察官可於審判或聽證會之前設定接受處分協議之合理期限。

(e) 檢察官不應於處分討論過程中故意作出不實之事實或法律陳述。

(f) 於簽訂處分協議前，檢察官應當向辯方揭露可充分支持擬議協議所載指控之事實依據，以及檢察官目前所知傾向否定有罪、減輕罪行或可減輕處罰之資訊。

(g) 若檢察官合理認為案件進入審判階段，將缺乏足夠可採納證據支持定罪，則檢察官不應同意認罪。

準則 3-5.7 協商處分條件之訂定及履行

(a) 檢察官不應於協商處分時要求非法或違反公共政策之條款。

(b) 檢察官可適當向辯方承諾將會或不會就刑罰及條件採取特定立場。但檢察官不應暗示其有超出其實際上所擁有能影響案件處分之權力。

(c) 檢察官應記住協議中所有承諾及條件，並確保任何書面處分協議均準確完整地反映協議之對應條款，包括檢察官之承諾及被告之義務。於任何確立協商處分的法庭聽證會上，檢察官應確保協議之所有相關細節均記錄在案。聽證會和紀錄預設為公開，但於特定情況下，聽證會或記錄（或其部分）可能因正當理由而不予公開。

(d) 於處分協議最終確立並由法院接受後，檢察官應遵守並真誠努力履行政府義務。檢察官應以誠信及善意方式解釋協議條件，並評估被告之表現，包括其合作情況。

prosecutor should consider factors listed in Standard 3-4.4(a), and not be influenced in disposition discussions by inappropriate factors such as those listed in Standards 3-1.6 and 3-4.4(b).

(d) The prosecutor should not set unreasonably short deadlines, or demand conditions for a disposition, that are so coercive that the voluntariness of a plea or the effectiveness of defense counsel is put into question. A prosecutor may, however, set a reasonable deadline before trial or hearing for acceptance of a disposition offer.

(e) A prosecutor should not knowingly make false statements of fact or law in the course of disposition discussions.

(f) Before entering into a disposition agreement, the prosecutor should disclose to the defense a factual basis sufficient to support the charges in the proposed agreement, and information currently known to the prosecutor that tends to negate guilt, mitigates the offense or is likely to reduce punishment.

(g) A prosecutor should not agree to a guilty plea if the prosecutor reasonably believes that sufficient admissible evidence to support conviction beyond reasonable doubt would be lacking if the matter went to trial.

Standard 3-5.7 Establishing and Fulfilling Conditions of Negotiated Dispositions

(a) A prosecutor should not demand terms in a negotiated disposition agreement that are unlawful or in violation of public policy.

(b) The prosecutor may properly promise the defense that the prosecutor will or will not take a particular position concerning sentence and conditions. The prosecutor should not, however, imply a greater power to influence the disposition of a case than is actually possessed.

(c) The prosecutor should memorialize all promises and conditions that are part of the agreement, and ensure that any written disposition agreement accurately and completely reflects the precise terms of the agreement including the prosecutor's promises and the defendant's obligations. At any court hearing to finalize a negotiated disposition, the prosecutor should ensure that all relevant details of the agreement have been placed on the record. The presumption is that the hearing and record will be public, but in some cases the hearing or record (or a portion) may be sealed for good cause.

(d) Once a disposition agreement is final and accepted by the court, the prosecutor should comply with, and make good faith efforts to have carried out, the government's obligations. The prosecutor should construe agreement conditions, and evaluate the defendant's performance including any cooperation, in a good-faith and reasonable manner.

(e) 若檢察官認為被告違反法庭接受之協議，則檢察官應將其想法及任何擬採取之不利行動通知辯方。若辯方提出善意異議，而當事人無法迅速解決，則檢察官不應於循司法途逕前採取任何行動。

(f) 若檢察官合理認為法院之行為不符合協商處分之任何條款，則應向法院提出此事。

準則 3-5.8 放棄處分協議條件之權利

(a) 檢察官不應以放棄對超出商定或合理預期刑期之刑罰提出上訴之權利，作為達成處分協議之條件。放棄刑罰上訴之任何權利，對被告及檢方均應具同等約束力。

(b) 檢察官不應建議或要求放棄任何律師無效協助、檢方不當行為或證據銷毀等定罪後主張權利，以作為處分協議之條件，但此類主張係基於過往相關行為之實例且於協議或涉及協議之訴訟紀錄中明確指出者不在此限。若擬議處分亦包含律師無效協助之放棄，檢察官應確保被告可於同意處分前，就該權利之放棄與否徵詢獨立律師之意見。

(c) 若被告知情且自願同意，檢察官可根據個人情況建議或要求其他類型之棄權。只要無基於新發現之證據或實際上無罪而明顯不公正之例外，否則任何形式的棄權均應被接受。

(d) 縱有特定權利被放棄，但檢察官不應以完全放棄提交人身保護令或其他類似定罪後上訴權利為條件達成處分協議。

(e) 檢察官不應請求或以棄權為由規避案件中未向辯方揭露之不公正或重大瑕疵。

準則 3-5.9 記錄駁回指控之理由

於刑事指控因檢方動議而遭駁回時，包括撤訴或類似方式，檢察官應製作並保留駁回理由之適當記錄，並於紀錄載明駁回是否存有偏頗。

(e) If the prosecutor believes that a defendant has breached an agreement that has been accepted by the court, the prosecutor should notify the defense regarding the prosecutor's belief and any intended adverse action. If the defense presents a good-faith disagreement and the parties cannot quickly resolve it, the prosecutor should not act before judicial resolution.

(f) If the prosecutor reasonably believes that a court is acting inconsistently with any term of a negotiated disposition, the prosecutor should raise the matter with the court.

Standard 3-5.8 Waiver of Rights as Condition of Disposition Agreements

(a) A prosecutor should not condition a disposition agreement on a waiver of the right to appeal the terms of a sentence which exceeds an agreed-upon or reasonably anticipated sentence. Any waiver of appeal of sentence should be comparably binding on the defendant and the prosecution.

(b) A prosecutor should not suggest or require, as a condition of a disposition agreement, any waiver of post-conviction claims addressing ineffective assistance of counsel, prosecutorial misconduct, or destruction of evidence, unless such claims are based on past instances of such conduct that are specifically identified in the agreement or in the transcript of proceedings that address the agreement. If a proposed disposition agreement contains such a waiver regarding ineffective assistance of counsel, the prosecutor should ensure that the defendant has been provided the opportunity to consult with independent counsel regarding the waiver before agreeing to the disposition.

(c) A prosecutor may propose or require other sorts of waivers on an individualized basis if the defendant's agreement is knowing and voluntary. No waivers of any kind should be accepted without an exception for manifest injustice based on newly-discovered evidence, or actual innocence.

(d) Although certain claims may have been waived, a prosecutor should not condition a disposition agreement on a complete waiver of the right to file a habeas corpus or other comparable post-conviction petition.

(e) A prosecutor should not request or rely on waivers to hide an injustice or material flaw in the case which is undisclosed to the defense.

Standard 3-5.9 Record of Reasons for Dismissal of Charges

When criminal charges are dismissed on the prosecution's motion, including by plea of nolle prosequi or its equivalent, the prosecutor should make and retain an appropriate record of the reasons for the dismissal, and indicate on the record whether the dismissal was with or without prejudice.

第六部分：法庭聽證會和審判

準則 3-6.1 安排法庭聽證會

刑事案件出庭、聽證和審判的最終控制權應由法院（而非當事人）所有。若檢察官認為有影響日程安排的事實時，其應向法庭提出建議，若該事實係針對具體案件，則應向辯護律師提出建議。

準則 3-6.2 對法院、對造律師及其他人士之禮儀

(a) 作為法院工作人員，檢察官應遵守專業文明守則，並對法官、對造律師、證人、陪審員、法院工作人員及其他人士表現專業禮貌之態度，以支持法院權威和法庭尊嚴。於法庭及其他地方，檢察官不應表現任何不當或非法之偏見或採取任何不當或非法之偏見。

(b) 法庭開庭時，除非法庭另有許可，檢察官應於法庭上發言，不應就案件相關之任何事項直接向其他律師或被告發言。

(c) 檢察官應迅速文明遵守法院命令或尋求此類命令之適當救濟。若檢察官認為命令明顯錯誤或有所偏見，則應確保記錄足以充分反映該事件。檢察官有權提出異議及合理之複議請求，並於法律允許下尋求其他救濟。若法官禁止提出充分之異議、提議或記錄，檢察官可採取其他合法措施保護公共利益。

準則 3-6.3 陪審員之選擇

(a) 檢察機關應了解規範陪審員選擇之法律標準，並培訓檢察官遵循之。檢察官就選任陪審團部分，應做好有效履行其檢方職責之準備，包括行使附理由及不附理由迴避請求，檢察機關亦應了解選擇及召集陪審團之程序，並提請法院注意法律缺陷。

(b) 檢察官不應根據憲法、法規、司法管轄區適用規則或相關標準不允許考量之任何標準—包括種族、性別、宗教、國籍、身心障礙、性取向或性別認同—而打擊陪審員。檢察官應考慮對辯護律師疑似基於此類標準之附理由迴避請求提出反對。

PART VI: COURT HEARINGS AND TRIAL

Standard 3-6.1 Scheduling Court Hearings

Final control over the scheduling of court appearances, hearings and trials in criminal matters should rest with the court rather than the parties. When the prosecutor is aware of facts that would affect scheduling, the prosecutor should advise the court and, if the facts are case-specific, defense counsel.

Standard 3-6.2 Civility With Courts, Opposing Counsel, and Others

(a) As an officer of the court, the prosecutor should support the authority of the court and the dignity of the courtroom by adherence to codes of professionalism and civility, and by manifesting a professional and courteous attitude toward the judge, opposing counsel, witnesses, defendants, jurors, court staff and others. In court as elsewhere, the prosecutor should not display or act out of any improper or unlawful bias.

(b) When court is in session, unless otherwise permitted by the court, the prosecutor should address the court and not address other counsel or the defendant directly on any matter related to the case.

(c) The prosecutor should comply promptly and civilly with a court's orders or seek appropriate relief from such order. If the prosecutor considers an order to be significantly erroneous or prejudicial, the prosecutor should ensure that the record adequately reflects the events. The prosecutor has a right to make respectful objections and reasonable requests for reconsideration, and to seek other relief as the law permits. If a judge prohibits making an adequate objection, proffer, or record, the prosecutor may take other lawful steps to protect the public interest.

Standard 3-6.3 Selection of Jurors

(a) The prosecutor's office should be aware of legal standards that govern the selection of jurors, and train prosecutors to comply. The prosecutor should prepare to effectively discharge the prosecution function in the selection of the jury, including exercising challenges for cause and peremptory challenges. The prosecutor's office should also be aware of the process used to select and summon the jury pool and bring legal deficiencies to the attention of the court.

(b) The prosecutor should not strike jurors based on any criteria rendered impermissible by the constitution, statutes, applicable rules of the jurisdiction, or these standards, including race, sex, religion, national origin, disability, sexual orientation or gender identity. The prosecutor should consider contesting a defense counsel's peremptory challenges that appear to be based upon such criteria.

(c) 檢察官對潛在陪審員之背景進行審前調查時，其調查方法不應騷擾、恐嚇或過度羞辱或侵犯潛在陪審員之隱私。除特殊情況外，此類調查應僅限於審查已存在且合法允許查閱之記錄及資訊來源。若檢察官使用被告無法獲得之記錄，如：刑事記錄資料庫，則檢察官應與辯護律師分享結果或尋求司法保護令。

(d) 親自詢問陪審員之機會應僅用於獲取與充分知情之異議活動相關之資訊。檢察官不應要求陪審員就案件可能出現之事實問題作出承諾，亦不應故意提出檢察官理應知悉於審判中不會採納之論點、事實或證據。預審不應用來向陪審團辯論檢察官之案件，或不適當地討好陪審員。

(e) 在預審期間，檢察官應設法盡量減少任何不當之尷尬或侵犯潛在陪審員之隱私，如：設法於沒有其他潛在陪審員在場情況下調查敏感事項，同時公平有效地選擇陪審員。

(f) 若不允許律師進行訊問，檢察官應提前向法院提供建議問題，並於必要時要求於選擇過程中提出具體之後續問題，以確保陪審員之公平選擇。

(g) 若檢察官掌握之可靠資訊與潛在陪審員之答覆有所衝突，或合理支持任一方提出「合理」之質疑，檢察官應通知法院，且除非法院另有命令，亦應通知辯護律師。

準則 3-6.4 與陪審員之關係

(a) 於審判前或審判期間，檢察官不應與知悉被傳喚擔任陪審員或被選為陪審員之人士進行交流，但法庭程序合法進行者除外。檢察官應避免與陪審員進行任何不當溝通，並儘量減少於法庭外與陪審員之接觸。若無法避免於庭外接觸，檢察官不應就具體案件進行交流或談論。

(c) In cases in which the prosecutor conducts a pretrial investigation of the background of potential jurors, the investigative methods used should not harass, intimidate, or unduly embarrass or invade the privacy of potential jurors. Absent special circumstances, such investigation should be restricted to review of records and sources of information already in existence and to which access is lawfully allowed. If the prosecutor uses record searches that are unavailable to the defense, such as criminal record databases, the prosecutor should share the results with defense counsel or seek a judicial protective order.

(d) The opportunity to question jurors personally should be used solely to obtain information relevant to the well-informed exercise of challenges. The prosecutor should not seek to commit jurors on factual issues likely to arise in the case, and should not intentionally present arguments, facts or evidence which the prosecutor reasonably should know will not be admissible at trial. Voir dire should not be used to argue the prosecutor's case to the jury, or to unduly ingratiate counsel with the jurors.

(e) During voir dire, the prosecutor should seek to minimize any undue embarrassment or invasion of privacy of potential jurors, for example by seeking to inquire into sensitive matters outside the presence of other potential jurors, while still enabling fair and efficient juror selection.

(f) If the court does not permit voir dire by counsel, the prosecutor should provide the court with suggested questions in advance, and request specific follow-up questions during the selection process when necessary to ensure fair juror selection.

(g) If the prosecutor has reliable information that conflicts with a potential juror's responses, or that reasonably would support a "for cause" challenge by any party, the prosecutor should inform the court and, unless the court orders otherwise, defense counsel.

Standard 3-6.4 Relationship With Jurors

(a) The prosecutor should not communicate with persons the prosecutor knows to be summoned for jury duty or impaneled as jurors, before or during trial, other than in the lawful conduct of courtroom proceedings. The prosecutor should avoid even the appearance of improper communications with jurors, and minimize any out-of-court proximity to or contact with jurors. Where out-of-court contact cannot be avoided, the prosecutor should not communicate about or refer to the specific case.

(b) 檢察官應禮貌對待並尊重陪審員，同時避免為滿足陪審員之舒適或便利而表現出過分關心。

(c) 陪審員經解職後，檢察官應避免有騷擾或令陪審員難堪，或批評陪審團之行為或裁決，或發表可能對未來擔任陪審員產生不利影響觀感之意見，檢察官應了解並遵守相關之適用規則及法律。

(d) 陪審團經解散後，除非相關法規、規則或命令禁止相關行為，檢察官可與陪審員溝通，調查判決是否可能受到法律質疑，或評估檢方表現，以改善檢方未來之表現。檢察官應考量要求法院指示陪審團，除非法律禁止，陪審員與律師討論案件並非不適宜，縱使他們並未被要求討論。庭外與陪審員之任何交流均不應貶損刑事司法系統及陪審團之審判程序，亦不應對陪審團之行為或裁決表示批評。

(e) 檢察官獲悉合理可靠之資訊說明陪審團審議或行為存在問題或可能會支持對定罪判決之攻擊時，於該資訊於司法管轄範區內被認定有效下，除法院另有命令外，檢察官應立即將該資訊通報予適當之司法機關人員和辯護律師。

準則 3-6.5 庭審開庭陳述

(a) 檢察官應於提示證據前作開庭陳述。

(b) 檢察官於審判中之開庭陳述應僅限於自檢察官之角度對案件進行公正陳述，並討論檢察官合理認為可取得、提供和認定佐證檢方之證據。檢察官之開庭陳述應避免猜測辯方可能會提出之辯護，除非檢察官確實知悉對方確將提出。

(c) 檢察官之開庭陳述不應表達個人意見、為證人提供擔保、不恰當地訴諸情感或對對造律師進行人身攻擊。檢察官應謹慎避免對被告緘默權發表任何評論。

(b) The prosecutor should treat jurors with courtesy and respect, while avoiding a show of undue solicitude for their comfort or convenience.

(c) After discharge of a juror, a prosecutor should avoid contacts that may harass or embarrass the juror, that criticize the jury's actions or verdict, or that express views that could otherwise adversely influence the juror's future jury service. The prosecutor should know and comply with applicable rules and law governing the subject.

(d) After a jury is discharged, the prosecutor may, if no statute, rule, or order prohibits such action, communicate with jurors to investigate whether a verdict may be subject to legal challenge, or to evaluate the prosecution's performance for improvement in the future. The prosecutor should consider requesting the court to instruct the jury that, if it is not prohibited by law, it is not improper for jurors to discuss the case with the lawyers, although they are not required to do so. Any post-discharge communication with a juror should not disparage the criminal justice system and the jury trial process, and should not express criticism of the jury's actions or verdict.

(e) A prosecutor who learns reasonably reliable information that there was a problem with jury deliberations or conduct that could support an attack on a judgment of conviction and that is recognized as potentially valid in the jurisdiction, should promptly report that information to the appropriate judicial officer and, unless the court orders otherwise, defense counsel.

Standard 3-6.5 Opening Statement at Trial

(a) The prosecutor should give an opening statement before the presentation of evidence begins.

(b) The prosecutor's opening statement at trial should be confined to a fair statement of the case from the prosecutor's perspective, and discussion of evidence that the prosecutor reasonably believes will be available, offered and admitted to support the prosecution case. The prosecutor's opening should avoid speculating about what defenses might be raised by the defense unless the prosecutor knows they will be raised.

(c) The prosecutor's opening statement should be made without expressions of personal opinion, vouching for witnesses, inappropriate appeals to emotion or personal attacks on opposing counsel. The prosecutor should scrupulously avoid any comment on a defendant's right to remain silent.

(d) 當檢察官具相當理由相信開庭陳述之任何部分可能引人反感時，應事先向辯護律師提及，並於必要時向法院提出。同理，檢察官擬於開庭陳述期間使用之視覺輔助工具或證物應提前向辯護律師提示之。

準則 3-6.6 提示證據

(a) 檢察官不應提供檢察官認為不實之證據（包括文件、有形證據或證人證詞）。當檢察官具相當理由懷疑特定證據之真實性或準確性時，檢察官應採取合理措施確定該證據是否可靠或不提供該證據。

(b) 若檢察官合理認為對方律師、證人、法庭或其他人士有不當行為而影響證據之公正呈現，則應向法庭提出上訴或反對或以其他方式對其認為不當之行為提出質疑，但不應進行檢察官明知不適當之報復行為。

(c) 若於審判過程中檢察官發現檢方提出不實證據或證詞，則應採取合理補正措施。若證人出庭，檢察官應嘗試以進一步審查以糾正錯誤。若不實資訊仍未得以糾正或於證人出庭時後始發現不實，檢察官應通知法庭和對方律師以確定適當之補正措施。

(d) 檢察官不應提供或提示不可受理之證據、提出法律上引人反感之問題或提出不允許之評論或爭點，提出檢察官明知不可受理之事實。若檢察官不確定證據之可採性，則檢察官於可行時應於聽證會或審判前尋求並取得法院之解決方案，並於向陪審團提供證據之時間前合理提前提示之。

(e) 針對對於檢方重大不利之證據裁決，檢察官應採策略性判斷決定是否提出異議或採取例外措施，而非提出一切可行之異議。檢察官不得在於缺乏合理依據下提出異議，或以騷擾或擾亂對方律師陳述流暢等不當方式提出反對異議。檢察官應備妥上訴之充分紀錄，於可行時，考慮對重大不利裁決為中間上訴之可能。

(d) When the prosecutor has reason to believe that a portion of the opening statement may be objectionable, the prosecutor should raise that point with defense counsel and, if necessary, the court, in advance. Similarly, visual aids or exhibits that the prosecutor intends to use during opening statement should be shown to defense counsel in advance.

Standard 3-6.6 Presentation of Evidence

(a) The prosecutor should not offer evidence that the prosecutor does not reasonably believe to be true, whether by documents, tangible evidence, or the testimony of witnesses. When a prosecutor has reason to doubt the truth or accuracy of particular evidence, the prosecutor should take reasonable steps to determine that the evidence is reliable, or not present it.

(b) If the prosecutor reasonably believes there has been misconduct by opposing counsel, a witness, the court or other persons that affects the fair presentation of the evidence, the prosecutor should challenge the perceived misconduct by appealing or objecting to the court or through other appropriate avenues, and not by engaging in retaliatory conduct that the prosecutor knows to be improper.

(c) During the trial, if the prosecutor discovers that false evidence or testimony has been introduced by the prosecution, the prosecutor should take reasonable remedial steps. If the witness is still on the stand, the prosecutor should attempt to correct the error through further examination. If the falsity remains uncorrected or is not discovered until the witness is off the stand, the prosecutor should notify the court and opposing counsel for determination of an appropriate remedy.

(d) The prosecutor should not bring to the attention of the trier of fact matters that the prosecutor knows to be inadmissible, whether by offering or displaying inadmissible evidence, asking legally objectionable questions, or making impermissible comments or arguments. If the prosecutor is uncertain about the admissibility of evidence, the prosecutor should seek and obtain resolution from the court before the hearing or trial if possible, and reasonably in advance of the time for proffering the evidence before a jury.

(e) The prosecutor should exercise strategic judgment regarding whether to object or take exception to evidentiary rulings that are materially adverse to the prosecution, and not make every possible objection. The prosecutor should not make objections without a reasonable basis, or for improper reasons such as to harass or to break the flow of opposing counsel's presentation. The prosecutor should make an adequate record for appeal, and consider the possibility of an interlocutory appeal regarding significant adverse rulings if available.

(f) 縱使檢察官可於開庭陳述期間請求允許提示可接受之證據，於採納該證據前，檢察官不應提示有形證據（並應反對辯方提示證據），除非其提示為其代理之附帶條件。檢察官應避免以過度偏頗之方式提示業已採納之證據。

準則 3-6.7 法庭上對證人詰問

(a) 檢察官應公平詰問證人，並適當考量證人之尊嚴及合法隱私問題，且不應訴諸不必要之恐嚇或羞辱。

(b) 若檢察官知悉證人之證詞正確屬實，則檢察官不應利用交叉詰問詆毀或破壞證人證詞。

(c) 當檢察官知悉證人將主張不作證之權利時，其不應傳喚證人於陪審團在場下作證或要求辯方為之。若檢察官不確定特定證人是否會主張不作證之權，則應於陪審團不在場下提前通知法庭及辯護律師。

(d) 檢察官不應提出暗示欠缺善意事實陳述之問題。

標準 3-6.8 對審判機關之結案辯論

(a) 向陪審團（或作為事實審判者之法官）進行結案辯論時，檢察官應提出論據並公正總結證據，排除合理懷疑以證明被告有罪。檢察官可根據紀錄所載證據提出所有合理推論，但其知悉推論有誤者除外。於時間允許下，檢察官應於結案辯論前審查紀錄之證據。檢察官不應故意錯誤陳述紀錄所載之證據，或稱紀錄中無善意佐證之推論。檢察官應謹慎避免提及被告不作證之決定。

(b) 檢察官不應根據律師之個人意見進行辯論，亦不應暗示對真相或證人可信度有特殊或私密之了解。

(c) 檢察官不應故意提出爭點以訴諸事實審判者之不當偏見。檢察官僅能提出與審判者根據證據提出決定之義務相一致之論點，且不

(f) The prosecutor should not display tangible evidence (and should object to such display by the defense) until it is admitted into evidence, except insofar as its display is necessarily incidental to its tender, although the prosecutor may seek permission to display admissible evidence during opening statement. The prosecutor should avoid displaying even admitted evidence in a manner that is unduly prejudicial.

Standard 3-6.7 Examination of Witnesses in Court

(a) The prosecutor should conduct the examination of witnesses fairly and with due regard for dignity and legitimate privacy concerns, and without seeking to intimidate or humiliate a witness unnecessarily.

(b) The prosecutor should not use cross-examination to discredit or undermine a witness's testimony, if the prosecutor knows the testimony to be truthful and accurate.

(c) The prosecutor should not call a witness to testify in the presence of the jury, or require the defense to do so, when the prosecutor knows the witness will claim a valid privilege not to testify. If the prosecutor is unsure whether a particular witness will claim a privilege to not testify, the prosecutor should alert the court and defense counsel in advance and outside the presence of the jury.

(d) The prosecutor should not ask a question that implies the existence of a factual predicate for which a good faith belief is lacking.

Standard 3-6.8 Closing Arguments to the Trier of Fact

(a) In closing argument to a jury (or to a judge sitting as trier of fact), the prosecutor should present arguments and a fair summary of the evidence that proves the defendant guilty beyond reasonable doubt. The prosecutor may argue all reasonable inferences from the evidence in the record, unless the prosecutor knows an inference to be false. The prosecutor should, to the extent time permits, review the evidence in the record before presenting closing argument. The prosecutor should not knowingly misstate the evidence in the record, or argue inferences that the prosecutor knows have no good-faith support in the record. The prosecutor should scrupulously avoid any reference to a defendant's decision not to testify.

(b) The prosecutor should not argue in terms of counsel's personal opinion, and should not imply special or secret knowledge of the truth or of witness credibility.

(c) The prosecutor should not make arguments calculated to appeal to improper prejudices of the trier of fact. The prosecutor should make only those arguments that are consistent with the trier's duty to decide the case on the evidence, and should not seek to divert the

應試圖轉移此項審判者義務。

(d) 若檢察官提出反駁辯論，檢察官可公平回應辯方結案辯論之爭點，但不應提出新問題。若檢察官認為辯方結案辯論不當，應及時提出異議並請求法庭予以救濟，且不應以公訴人明知不恰當之爭點予以回應。

準則 3-6.9 紀錄未載明之事實

於陪審團在場下，檢察官不應故意提及紀錄未載明之事實或據此進行辯論，但此類事實可於通常之經驗而由大眾週知者、法院可明確採取司法認知，或檢察官合理認為將於訴訟中紀錄之事實不在此限。於陪審團未在場下，檢察官可提出與法院詢問之問題相關之紀錄未載明事實，但應注意此類事實並未載於紀錄內。

準則 3-6.10 檢察官於判決或裁決後之評論

(a) 檢察官應恭敬接受無罪釋放之決定。對於其他不利裁決（包括法官對可上訴案件之罕見無罪釋放決定），雖檢察官可公開表示尊重不同意見並尋求合法審查措施，但應避免公開批評任何參與人員。判決或裁定做出後之大眾評論應尊重法律制度及程序。

(b) 檢察官可公開讚賞陪審團或法院作出之裁決，政府代理人或其他協助人員，並指明裁決或事件之社會價值。檢察官不應公然幸災樂禍或誇大個人對判決或裁決之功用。

trier from that duty.

(d) If the prosecutor presents rebuttal argument, the prosecutor may respond fairly to arguments made in the defense closing argument, but should not present or raise new issues. If the prosecutor believes the defense closing argument is or was improper, the prosecutor should timely object and request relief from the court, rather than respond with arguments that the prosecutor knows are improper.

Standard 3-6.9 Facts Outside the Record

When before a jury, the prosecutor should not knowingly refer to, or argue on the basis of, facts outside the record, unless such facts are matters of common public knowledge based on ordinary human experience, or are matters of which a court clearly may take judicial notice, or are facts the prosecutor reasonably believes will be entered into the record at that proceeding. In a nonjury context the prosecutor may refer to extra-record facts relevant to issues about which the court specifically inquires, but should note that they are outside the record.

Standard 3-6.10 Comments by Prosecutor After Verdict or Ruling

(a) The prosecutor should respectfully accept acquittals. Regarding other adverse rulings (including the rare acquittal by a judge that is appealable), while the prosecutor may publicly express respectful disagreement and an intention to pursue lawful options for review, the prosecutor should refrain from public criticism of any participant. Public comments after a verdict or ruling should be respectful of the legal system and process.

(b) The prosecutor may publicly praise a jury verdict or court ruling, compliment government agents or others who aided in the matter, and note the social value of the ruling or event. The prosecutor should not publicly gloat or seek personal aggrandizement regarding a verdict or ruling.

第七部分：審後申請及量刑

準則 3-7.1 審後申請

檢察官應對審後申請進行公正評估，確定其可行之處，並做出對應且尊重之回應。檢察官不應於無合理依據下於任何階段反對該申請。

準則 3-7.2 量刑

(a) 刑罰之懲戒程度不應作為衡量檢察官效率之標準。

(b) 檢察官應熟悉相關量刑法律、規則、後果及選擇，包括替代性非監禁刑罰。於提出起訴之前或之後，以及整體案件審理期間，檢察官應評估起訴之潛在後果及可用之量刑選項，如：沒收、返還及出入境限制，並於量刑時積極向法院提供建議。

(c) 檢察官應努力確保作出公正和有依據的量刑判決，並避免不公平的判決和差異。

(d) 為求統一，檢察機關應制定一致之評估及量刑建議政策，而非將量刑政策之自由裁量權交由個別檢察官定之。

(e) 檢察官應了解有關被害人權利之相關法規，並於法律要求或允許下，為被害人參與量刑過程提供便利措施。

準則 3-7.3 量刑相關資訊

(a) 檢察官應協助法院獲取用於量刑之完整準確資訊，並應充分配合法院及工作人員之出庭調查。檢察官應向法庭和辯護律師提供檢方認為與量刑相關之任何資訊。其應記錄向法院和律師提供之資訊，以便日後必要時進行審查。若檢察官留意出庭報告中有任何重大不完整或不準確之處，則應採取措施向法庭和辯護律師提供完整且正確之資訊。

(b) 檢察官應於量刑期間或之前向辯方及法院揭露其所知悉之所有有助於減輕刑罰之資訊，除非法院命令免除檢察官此一責任。

PART VII: POST-TRIAL MOTIONS AND SENTENCING

Standard 3-7.1 Post-trial Motions

The prosecutor should conduct a fair evaluation of post-trial motions, determine their merit, and respond accordingly and respectfully. The prosecutor should not oppose motions at any stage without a reasonable basis for doing so.

Standard 3-7.2 Sentencing

(a) The severity of sentences imposed should not be used as a measure of a prosecutor's effectiveness.

(b) The prosecutor should be familiar with relevant sentencing laws, rules, consequences and options, including alternative non-imprisonment sentences. Before or soon after charges are filed, and throughout the pendency of the case, the prosecutor should evaluate potential consequences of the prosecution and available sentencing options, such as forfeiture, restitution, and immigration effects, and be prepared to actively advise the court in sentencing.

(c) The prosecutor should seek to assure that a fair and informed sentencing judgment is made, and to avoid unfair sentences and disparities.

(d) In the interests of uniformity, the prosecutor's office should develop consistent policies for evaluating and making sentencing recommendations, and not leave complete discretion for sentencing policy to individual prosecutors.

(e) The prosecutor should know the relevant laws and rules regarding victims' rights, and facilitate victim participation in the sentencing process as the law requires or permits.

Standard 3-7.3 Information Relevant to Sentencing

(a) The prosecutor should assist the court in obtaining complete and accurate information for use in sentencing, and should cooperate fully with the court's and staff's presentence investigations. The prosecutor should provide any information that the prosecution believes is relevant to the sentencing to the court and to defense counsel. A record of such information provided to the court and counsel should be made, so that it may be reviewed later if necessary. If material incompleteness or inaccuracy in a presentence report comes to the prosecutor's attention, the prosecutor should take steps to present the complete and correct information to the court and defense counsel.

(b) The prosecutor should disclose to the defense and to the court, at or before the sentencing proceeding, all information that tends to mitigate the sentence and is known to the prosecutor, unless the prosecutor is relieved of this responsibility by a court order.

(c) 除非違反司法管轄區之法律或規則或已申請之保護令，於量刑前，檢察官應向辯方揭露其提供之任何證據或資訊，包括書面及口頭揭露者，並向法庭或出庭調查人員提供有助量刑之證據或資訊。

第八部分：上訴及其他定罪異議

準則 3-8.1 定罪之辯護並非絕對義務

檢察官負有為經公平程序而作成之定罪辯護之義務。但此一義務並非絕對，檢察官應以獨立專業判斷和自由裁量權來辯護義務。若檢察官認為被告無罪或被錯誤定罪或有誤判，則檢察官不應為定罪辯護。

準則 3-8.2 上訴一般原則

(a) 所有檢察官均應充分了解上訴之實務做法，以做出足以保全上訴問題及爭點之記錄，並應於初審法院做成此類記錄。

(b) 檢察官收到不利裁決時，應考量是否可上訴。若裁決可上訴，檢察官應考量是否提出上訴，並於適當情況下將其提交上訴檢察官作出決定。

(c) 考慮是否對不利裁決提出上訴時，檢察官不僅應評估法律依據，亦應考量上訴是否符合正義，同時考量檢方、司法體系及大眾之利益，以及上訴程序和拖延對檢方、被告、被害人及證人造成之成本。

(d) 處理刑事上訴之檢察官應了解司法轄區內關於上訴之具體規則、慣例及程序。

(e) 檢察機關應指定一名以上檢察官於機關內培養上訴法規及程序之專業知識，並應與其他機關擁有此類專業知識之檢察官聯絡。檢察機關應針對上訴程序或法院常見或經常出現之問題達成一致政策和立場。檢察機關應定期向檢察官和執法人員通報法律或司法判決之最新發展，並定期對檢察官和執法人員進行此類培訓。

(c) Prior to sentencing, the prosecutor should disclose to the defense any evidence or information it provides, whether by document or orally, to the court or presentence investigator in aid of sentencing, unless contrary to law or rule in the jurisdiction or a protective order has been sought.

PART VIII: APPEALS AND OTHER CONVICTION CHALLENGES

Standard 3-8.1 Duty To Defend Conviction Not Absolute

The prosecutor has a duty to defend convictions obtained after fair process. This duty is not absolute, however, and the prosecutor should temper the duty to defend with independent professional judgment and discretion. The prosecutor should not defend a conviction if the prosecutor believes the defendant is innocent or was wrongfully convicted, or that a miscarriage of justice associated with the conviction has occurred.

Standard 3-8.2 Appeals -- General Principles

(a) All prosecutors should be sufficiently knowledgeable about appellate practice to be able to make a record sufficient to preserve issues and arguments for appeal, and should make such a record at the trial court level.

(b) When the prosecutor receives an adverse ruling, the prosecutor should consider whether it may be appealed. If the ruling may be appealed, the prosecutor should consider whether an appeal should be filed, and refer it to an appellate prosecutor if appropriate for decision.

(c) When considering whether an adverse ruling should be appealed, the prosecutor should evaluate not only the legal merits, but also whether it is in the interests of justice to pursue such an appeal, taking into account the benefits to the prosecution, the judicial system, and the public, as well as the costs of the appellate process and of delay to the prosecution, defendant, victims and witnesses.

(d) A prosecutor handling a criminal appeal should know the specific rules, practices and procedures that govern appeals in the jurisdiction.

(e) The prosecutor's office should designate one or more prosecutors in the office to develop expertise regarding appellate law and procedure, and should develop contacts with other offices' prosecutors who have such expertise. The prosecutor's office should develop consistent policies and positions regarding issues that are common or recurring in the appellate process or court. The prosecutor's office should regularly notify its prosecutors and law enforcement agents about new developments in the law or judicial decisions, and should provide regular training to such personnel on such topics.

(f) 若處理刑事上訴之檢察官如並非初審法院之律師，則應與初審檢察官協商，但於審查紀錄和辯方爭點時應做出獨立判斷。上訴檢察官不應於缺乏合理法律依據下提出或反對上訴之爭點。

準則 3-8.3 對新或新發現證據或法律之回應

檢察官若發現可信的、具決定性的資訊可能產生被告遭錯誤定罪判刑或被告實際上是無辜，則檢察官應遵守美國律師協會職業行為規範第 3.8(g) 及 (h) 條之規定。檢察官機關應制定政策及程序以處理此類資訊，並採取符合適用法律、規則及伸張正義義務之行動。

準則 3-8.4 對辯護律師效力之質疑

(a) 在對辯護律師效力提出任何定罪後質疑時，檢察官應知悉被告與辯護律師之間潛在律師 - 委託人特權以及辯護律師的其他倫理或法律義務，且除非有明確法律依據或法院命令，否則不應尋求廢除此類特權或義務。

(b) 若檢察官於刑事訴訟任何階段發現辯護律師之作為或不作為可能合理構成律師之無效協助，檢察官應採取合理措施維護被告取得有效協助之權利及大眾利益，同時不應侵犯被告取得律師幫助之憲法權利。於辯護代理過程中，若無明確之法律依據或法院命令，檢察官不應對公共紀錄中可能存在之無效協助表示擔憂，亦不應直接向被告傳達任何此類擔憂。

準則 3-8.5 定罪之附帶攻擊

若需對定罪之附帶攻擊作出回應，檢察官應考量所有合法回應，包括適用之流程或其他辯護。但檢察官無需對附帶攻擊援引一切可行之辯護手段，且當檢察官及檢察機關合理得出結論認為此舉符合正義利益，則應考量協商或其他救濟措施。

(f) A prosecutor handling a criminal appeal who was not counsel in the trial court should consult with the trial prosecutor, but should exercise independent judgment in reviewing the record and the defense arguments. The appellate prosecutor should not make or oppose arguments in an appeal without a reasonable legal basis.

Standard 3-8.3 Responses to New or Newly-Discovered Evidence or Law

If a prosecutor learns of credible and material information creating a reasonable likelihood that a defendant was wrongfully convicted or sentenced or is actually innocent, the prosecutor should comply with ABA Model Rules of Professional Conduct 3.8(g) and (h). The prosecutor's office should develop policies and procedures to address such information, and take actions that are consistent with applicable law, rules, and the duty to pursue justice.

Standard 3-8.4 Challenges to the Effectiveness of Defense Counsel

(a) In any post-conviction challenge to the effectiveness of defense counsel, the prosecutor should be cognizant of the defendant's potential attorney-client privilege with former defense counsel as well as former defense counsel's other ethical or legal obligations, and not seek to abrogate such privileges or obligations without an unambiguous legal basis, or court order.

(b) If a prosecutor observes, at any stage of a criminal proceeding, defense counsel conduct or omission that might reasonably constitute ineffective assistance of counsel, the prosecutor should take reasonable steps to preserve the defendant's right to effective assistance as well as the public's interest in obtaining a valid conviction, while not intruding on a defendant's constitutional right to counsel. During an ongoing defense representation, the prosecutor should not express concerns regarding possible ineffective assistance on the public record without an unambiguous legal basis or court order, and should not communicate any such concerns directly to the defendant.

Standard 3-8.5 Collateral Attacks on Conviction

If required to respond to a collateral attack on a conviction, the prosecutor should consider all lawful responses, including applicable procedural or other defenses. The prosecutor need not, however, invoke every possible defense to a collateral attack, and should consider potential negotiated dispositions or other remedies, if the prosecutor and the prosecutor's office reasonably conclude that the interests of justice are thereby served.

（四）美國法官遭撤職或停職典型案例選錄

1、法官生錯氣

法官開庭時動怒，若是夾雜個人情緒，有時會影響到公平正義，甚至導致法官被撤職，這是發生在美國紐約州的實際案例，值得我國參考。

2005 年 3 月 11 日，紐約州尼加拉瀑布市（Niagara Falls City）家暴事件法庭 Restaino 法官開庭時，多名被告與律師一起在法庭裡面候審，被點名者逐一上前接受審問，由法官裁決交保、羈押或其他處置。當時在法庭裡，還有多位檢察官、觀護人、庭務員、法警與旁聽民眾。當天庭期滿檔，約有七十名被告待審。

開庭後約一小時，已有 30 多名被告訊問完畢，其中有 11 名經諭令「飭回候傳」（即不用繳保釋金）。此時法庭後方突然有手機響起，坐在庭上的 Restaino 法官抬起頭來，不悅地說「手機的所有人馬上交出機子來，否則所有在場者均須到牢裡待上一個禮拜」，但沒人承認。經過再次警告，並休庭五分鐘後，仍然無人交出手機。

Restaino 這時動怒了，他開口問面前應訊的一名被告手機是何人的，該被告答稱不知道，Restaino 即撤銷先前「飭回」的裁定，而改為交保一千五百美元。

接下來應訊的 34 名被告都逐一被 Restaino 質問手機的所有人為誰，但他們都答稱不知道，Restaino 即連續將所有原已諭令「飭回」者均改為「交保」，原已「交保」者則加重保釋金額。其間有數名被告以「家有老母」、「探視小孩」、「與律師有約」、「剛找到新工作」等多種理由向 Restaino 求情，但他均不為所動。結果有 46 名被告因交不出保釋金，統統被銬上手銬，送到郡立看守所關進牢裡。

一直到隔天下午，Restaino 經書記官通知已有媒體在採聽此事後，才趕緊下令釋放被關在看守所的被告們。

一年之後，紐約州「司法行為委員會」（the State Commission on Judicial Conduct）以九比一的投票數做出決定，認為 Restaino 因違反法官守則，恣意剝奪被告之人身自由，應予「撤職」（remove from the office）。Restaino 不服，依法向紐約州最高法院起訴請求撤銷委員會之決議，但遭該法院於 2008 年 6 月 5 日判決駁回而維持撤職之決議。

Restaino 法官的抗辯著重在「精神狀態」，強調其因婚姻不美滿壓力過大，導致一時衝動而犯錯，並有二位心理學專家證人為其出庭做證。但紐約州最高法院在判決文中指出，Restaino 法官所犯錯誤並非單一，其原本有 46 次的機會檢討自己的做法是否妥當（即手機響後訊問了 46 名的被告），但其卻仍連續將「交保」目的從「保證被告日後能夠出庭」扭曲成「報復的工具」，此情形「確已非比尋常」（truly egregious）。

紐約州最高法院進一步指出：法官懲戒程序的目的並不是在懲罰，而是在防止不適任的人坐上法官的席位。所以認為本案光是「公開譴責」（public censure）尚不足夠，而必須採取「撤職」處分。

（作者陳瑞仁檢察官）

2、法官講錯話

法官生錯氣會被撤職，若講錯話，有時也同樣嚴重，美國紐約州 Onondaga 郡法官 Mulroy 的丟官記就是一例。

Mulroy 法官於一九九六年八月承審一件共同侵入住宅強劫殺人案，被告一共有四名，被害人是一名六十七歲的非洲裔婦女。在開庭前的一個晚上，Mulroy 法官在某個鄉村俱樂部打完高爾夫球吃晚餐時，遇到該案的蒞庭檢察官，即向他表示，該案件中有二名被告他不想審判，檢方最好答應認罪協商，而且檢方不用擔心外界反應，因為被害人只不過是一名「黑鬼母狗」（some old nigger bitch）。

到了開庭當天，檢方礙於形勢，即同意其中二名被告有期徒刑五年至十二年的認罪協商。Mulroy 法官當庭又說檢方雖然應將被害人列入考量，但該名被害人「並沒什麼了不起」（no great shakes）。

Mulroy 法官的種族歧視語言並不止這一次，同年七月間，其競選連任法官時，在慈善晚宴碰到一位競選連任的檢察長，該檢察長向 Mulroy 法官抱怨說「有些人疲於競選，但有些人卻是坐在那邊等人用銀盤奉上席位給他坐」。Mulroy 法官明知該檢察長是義大利裔後代，卻仍挖苦說「對呀，你也知道你們義大利人與黑手黨掛勾多深」（You know how you Italian types are with your Mafia connections.）

除了種族歧視語言外，Mulroy 法官也在開庭時使用極其粗鄙的語言。同年二月間，他在審理一件強姦案時，因不耐陪審團在密室評議過久，急著要下班回家，當庭指責檢察官小題大作，不悅地說「我想要回 Syracuse 的家，因為現在是星期四晚上，是男人外出的晚上」、「你為何不給這傢伙一個 X 他媽的輕罪，好讓我脫離這 X 他媽的 Utica（審判地點之地名）黑洞」（Why don’t you give this guy a fucking misdemeanor so I can get out of this fucking black hole of Utica.）。但檢察官堅不讓步，不久之後陪審團做出有罪裁決。

事隔二年後，紐約州「司法行為委員會」接受告發進行調查，並在一九九九年決定將 Mulroy 法官撤職（remove from the office）。理由是 Mulroy 法官所使用的種族歧視語言令人懷疑其能否公平審判案件，其所顯現的偏見與「低敏感度」（insensitivity）不容在法官身上發生。

此外，該委員會並認為 Mulroy 法官二度逼迫檢察官同意認罪協商，完全是基於「減輕案件負荷」（to lighten the caseload）與想要快點回家的「個人便利」（personal convenience）考量，所以應處以「撤職」的最嚴厲懲戒。

Mulroy 法官不服委員會之決定，上訴至紐約州最高法院，辯稱其之所以有不當發言，或是為了要安撫檢察官的不安，或是被對方挑撥而起。但該法院於二〇〇〇年四月六日駁回上訴，並認定 Mulroy 法官已經違反紐約州法官守則（Code of Judicial Conduct）第一條「法官應維護司法之獨立與完整」、第二條「法官應避免不當與看似不當的法官作為」以及第三條之「法官應公平謹慎行使職權」的規定而應撤職。

（作者陳瑞仁檢察官）

3、法官不結案

法官的淘汰，是司法改革的重心之一。對於「不清不明」或「明而不清」之法官的淘汰，並非難事。然對於「清而不明」的法官的淘汰，則是最難決定的司改手段。換言之，一位法官操守良好，但因為無能（或偷懶）而長期積案未結，我們可否將其淘汰？有二件美國案例可供參考。

第一個案例是紐約州 Westchester 郡 White Plains 市的 Washington 法官，她是一位「兼職法官」，負責在每隔一週的星期三審理小額的民事案件，每年的案件量只不過七十五至八十件。但在就任四年後，Washington 法官即累積了六十七件的遲延案件（辯論終結後遲未宣判），其中有二十件遲延半年至一年；十九件遲延一年至一年半；十二件遲延一年半至二年；九件遲延二年至二年半。

這期間 Washington 法官不但故意短報未結案的件數，並且連續七次忽視「行政法官」（Administrative Judge，負責行政與管考的資深法官）的書面與口頭催辦。此外，法院為幫助其結案，多派了一位助理給她，但她卻未交辦任何事務給該助理。

紐約州的「司法行為委員會」在聽審後，援引紐約州的 Greenfield 案判例，於 2002 年 10 月決議將 Washington 法官撤職。該判例之要旨是：遲延案件並不足以將一位法官撤職，除非其在遲延後，仍抗拒行政督導（defy administrative directives），或是假報遲延資料。

Washington 法官不服，上訴至紐約州最高法院，但被駁回。

另一個案例是加州 Riverside 郡上訴法院的全職法官 Spitzer，他同樣是未結案過多（致其審判長不得不將案件打散給別的法官）。但他的麻煩顯然比紐約州 Washington 法官多，原因在於加州對於法官的結案速度有特別規定。

加州憲法第 6 條第 19 項明文規定法官應在辯論終結後 90 天內宣判（90 days after it has been submitted for decision），若未遵行，在宣判前不得支領薪資。因此，法官在每個月底都必須填具一份「領薪切結書」

（salaryaffidavit），表明手上沒有遲延案件。所以 Spitzer 法官的不當行為，不僅是遲延案件，另涉及在切結書做「不實陳述」。

Spitzer 法官另外被質疑的一件事是，其所為書面裁定的日期，與公告日期之間隔，有多件長達六個月至十三個月，疑似倒填日期（backdating）。加上 Spitzer 法官曾經多次私下（未知會檢方）促請被害人家屬說服檢察官接受認罪協商，加州「司法行為委員會」（The Commission on Judicial Performance）遂於 2007 年 10 十月決議將其撤職。Spitzer 法官不服上訴，遭加州最高法院駁回。

由上可知，美國紐約州與加州均有指定資深法官監督承審法官的案件進度，而且會採取「催告」、「打散積案」、「協助擬訂清理計畫」等行政補救措施，若仍無法改善，法官即有可能被撤職。加州甚至將法官的結案速度與薪資支領結合，更是獨具創意。凡此機制，至今並未被宣告為「妨害司法獨立」。

（作者陳瑞仁檢察官）

4、法官亂發飆

法官在法庭上的言行，應能彰顯司法的尊崇，避免顯露個人的好惡、情緒，而有害於司法公正。美國的司法實務上，亦曾發生法官於開庭時，對律師粗魯無禮，經密西根州最高法院認定構成法官不當行為，而處以無薪停職 3 天的懲罰，值得作為我國殷鑑。

法官 G. Michael Hocking 承審一件未成年子女監護權事件（McPherson v. McPherson, Eaton Circuit Court, File No. 82-409-DM），律師 Elaine Sharp 於 1991 年 12 月 5 日代表未成年人之父親出庭，對法院先前所作終止共同監護的裁定提出異議，Hocking 法官以嚴厲的口吻且很快地告知 Sharp 律師，其認為這次的動議跟上次所提出的是一樣的，要律師提出此動議為新動議的理由，而當 Sharp 律師試圖說明法律依據時，Hocking 法官又很快地打斷她，裁定這個動議只是要求重新考慮的動議，並且以草率提出動議為由，裁定訴訟費用及律師費作為對律師及該案被告的懲罰。在 Sharp 律師對其表達不滿時，Hocking 法官又以藐視法庭罪處以罰款並將律師逐出法庭。（關於藐視法庭部分，嗣經認定不構成濫用權力情事）

茲節錄 Hocking 法官與 Sharp 律師的部分對話內容如下：

法官：「我看不出來本件有何實益，我要你告訴我何以本件改定共同監護的動議不是為了重新處理原已作成的裁定……」

律師：「好，告訴我證據何在？……你可曾考慮親子間的愛及情感上的連結？」

法官：「夠了，你的動議被否決了，那只不過是個要求重新考慮的動議，本院認為提出這個動議是輕率且欠缺訴之利益的，因此裁定訴訟費用及律師費作為對律師及被告的懲罰。……」

律師：「請鈞院明示法律依據。」

法官：「好的，依據是 M C L 600.2591。」

律師：「我是指輕率動議的法律依據何在，而非指訴訟費用的法律依據。」

法官：「如果你不喜歡我的裁決，女士，上訴法院等待著你。」

律師：「好，可以給我一個否決監護的命令嗎？」

法官：「我現在唯一要簽署的命令就是關於罰款、訴訟費用的命令，以及……」

律師：「你……」

法官：「不要打斷我。」

律師：「不要打斷我。」

法官：「這樣好了，這是第一次警告。」

律師：「你真要否決動議嗎？」

法官：「第一次警告。三次你就構成藐視法庭。」

律師：「很好，鈞院否決了是嗎？」

法官：「很好，第二次警告。」

律師：「鈞院否決了？」

法官：「是的，本院否決了。」

律師：「鈞院否決…」

法官：「本院否決你的動議。」

律師：「關於改定共同監護的動議？」

法官：「是的，女士。」

律師：「鈞院否決了？」

法官：「本院否決了。」

律師：「沒有確實可信的證據？」

法官：「女士，我不知道你是從那個星球來的。」

律師：「我也不知道你是從那個——來的。」

法官：「你藐視法庭，罰款是 250 元。」

律師：「你深諳此道。」

法官：「而且你將被拘禁在郡立監獄 5 天……」

律師：「很好。」

法官：「……直到你給付罰款為止。」

律師：「很好，那麼現在給我報社記者及律師。」

法官：「你已經有了，女士。」

律師：「你是在另一個星球上的人，你不正常，你完全……」

法官：「帶他出去。」

律師：「我要求法庭紀錄繼續下去，讓紀錄顯現律師在表達抗議、顯現藐視法庭是毫無根據的、顯現律師要求法院立即給予辯護律師及報社。」

法官：「你藐視法庭，罰款是 250 元。」

律師：「你深諳此道。」

法官：「而且你將被拘禁在郡立監獄 5 天……」

律師：「很好。」

法官：「……直到你給付罰款為止。」

律師：「很好，那麼現在給我報社記者及律師。」

法官：「你已經有了，女士。」

律師：「你是在另一個星球上的人，你不正常，你完全……」

法官：「帶他出去。」

律師：「我要求法庭紀錄繼續下去，讓紀錄顯現律師在表達抗議、顯現藐視法庭是毫無根據的、顯現律師要求法院立即給予辯護律師及報社。」

法官任期委員會（Judicial Tenure Commission）於 1994 年 5 月 12 日對 Hocking 法官正式作出指控（於同年 10 月 6 日修正指控內容），認為 Hocking 法官前述在法庭中辱罵的行為，構成法官不當行為。密西根州

最高法院於 1994 年 6 月 14 日指派 Joseph B. Sullivan 為主席，於同年 10 月、11 月間召開聽證會，旋即於同年 12 月 28 日公布報告，結論亦認為 Hocking 法官前開行為構成法官不當行為。

兩造均對前開報告聲明異議，因而於 1995 年 3 月 20 日在法官任期委員會進行言詞辯論，委員會於同年 4 月 12 日，採納上述報告的主要意見，認為 Hocking 法官前開對律師粗魯無禮之言行，構成法官不當行為，建議對 Hocking 法官作出無薪停職之懲處。

Hocking 法官嗣於 1995 年 5 月 24 日，向密西根州最高法院起訴請求駁回或減輕法官任期委員會所為之前開懲處建議，主張委員會認定其行為不當係屬錯誤。密西根州最高法院審理認為，Hocking 法官前開對律師 ElaineSharp 粗魯無禮之行為，構成法官不當行為，因而處以無薪停職 3 天的懲罰。

密西根州最高法院認為，Hocking 法官的言行顯然欠缺思考，以質疑 Sharp 律師的方式挑起彼此針鋒相對的應答，並用尖酸的語言、辱罵的語調，對 Sharp 律師作出人身攻擊，明顯有害於司法正義的實現，而違反了法官行為守則。雖然 Sharp 律師在法官制止後仍不斷發言，但法官得以運用藐視法庭的權力，控制脫序行為，自應避免顯露出過度的不滿或生氣的情緒，Hocking 法官上開言行全然喪失了自制，已構成法官不當行為。

由此可知，司法官代表國家行使司法權，一言一行，必須展現謹慎、莊重、沈穩、持平的態度，以符合人民對司法崇高的印象及對司法公正的期待，避免受主觀好惡、個人情緒影響，產生率性妄為、言行失當之情事，以致侵蝕了人民對司法的信賴，上述的案例值得吾人引以為鑒。

（作者蔡名堯主任檢察官）

三 加拿大法官倫理守則

三、加拿大法官倫理守則

簡介

目的

1. 法官倫理守則 [倫理守則] 旨在訂立聯邦任命之法官之倫理指南，說明法官這一職務的願景。獨立、正直敬重、勤勉有能、平等公正之原則是司法人員的特質。《倫理守則》期望藉由法官和大眾之理解，以傳達司法部門以正義法治為最高倫理之願望。
2. 獨立公正的司法機構是所有人民的權利，也是加拿大民主法治及正義的基石。人們有權透過公正、稱職且令人敬重的法官解決爭端。司法機構所有人員應承諾以公正方式履行職責，以維護大眾信心。以下指南說明法官在職業及個人生活應當維持的高度道德標準。雖然司法的整體守則大致上不變，但大眾的期望會持續變化，社會的發展以及對司法相關問題的新詮釋將不斷為未來倫理守則的解釋提供資訊。
3. 法官應當根據法律與證據，在不受外部壓力或影響下，誠實公正地獨立做出裁決，不必擔心受到任何人員干擾。倫理守則中的任何內容均不以任何方式限制司法獨立性。法官應維護並捍衛司法獨立，且司法獨立不得視為司法人員之特權，而應作為憲法保障之權利，以使公正獨立的法官以公平方式聽取並裁決人們的爭端。
4. 本文提出理想的倫理守則，但不得將之作為最低標準的行為準則。這些守則本質上為建議性質，可用於 (i) 說明所有法官應當維持之模範行為；(ii) 協助法官解決困難之道德專業問題；(iii) 幫助大眾更加理解司法人員之角色。倫理守則所提供之指南並不排除特定情況下合理存在之歧見，亦不代表任何背離這些守則的行為必然會受到反對。倫理守則適用與否應考量所有相關情況，並應符合司法獨立和法律要求。這些守則不應視為法官在職業或個人生活面臨之道德難題的詳盡解決方法。

Canadian Ethical Principles for Judges (2021)

Introduction

Purpose

1. *Ethical Principles for Judges [Ethical Principles]* provides ethical guidance for federally appointed judges. In doing so, it expresses a vision of what it means to be a judge. Taken together, the principles of independence, integrity and respect, diligence and competence, equality and impartiality define the judicial role. *Ethical Principles* was drafted with confidence that it would be read by judges and the public as an expression of the judiciary's highest ethical aspirations in the service of justice and the rule of law.
2. An independent and impartial judi-ciary is the right of all and constitutes a fundamental pillar of democratic gov-ernance, the rule of law and justice in Canada. Everyone needs and deserves impartial, competent, and respectful judges. All members of the judiciary commit to perform their role in such a manner so as to maintain the confidence of the public. The guidance that follows describes the high ethical standards that all judges strive to maintain in their professional and personal lives. While the overarching principles that guide the judiciary are largely immutable, evolv-ing expectations of the public, societal developments and new understandings of issues relevant to the judiciary will serve to constantly inform the interpretation of *Ethical Principles* in the future.
3. A judge must be and be seen to be free to decide honestly and impartially on the basis of the law and the evidence, without external pressure or influence and without fear of interference from anyone. Nothing in *Ethical Principles* can or is intended to limit or restrict this judicial independence in any manner. Judges have the duty to uphold and defend judicial independence, not as a privilege of judicial office but as the constitutionally guar-anteed right of everyone to have their disputes heard and decided in a fair way by impartial and independent judges.
4. The ethical principles articulated in this document are aspirational. They are not intended to be a code of conduct that sets minimum standards. They are advisory in nature and are designed to (i) describe exemplary behaviour which all judges strive to maintain; (ii) assist judges with the difficult ethical and professional issues that confront them; and (iii) help members of the public better understand the judicial role. The guidance provided in *Ethical Principles* does not preclude reasonable disagreements about their application in particular cases or imply that any departure from them neces-sarily warrants disapproval. The ethical principles are intended to be applied in light of all of the relevant circumstances and consistently with the requirements of judicial independence and the law. They should not be viewed as an exhaustive expression of the ethical considerations that judges may face in their professional or personal lives.

內文

5. 加拿大司法委員會 [CJC] 數十年來一直關注司法倫理。其於 1991 年出版了《Commentaries on Judicial Conduct》。隨後又出版《法官倫理守則》（1998 年倫理守則），為法官提供符合一系列核心原則之倫理指南，並讓大眾更加了解法官所維護並實現的崇高理想。在大量利用現有資源的同時，《1998 年倫理守則》為當時加拿大對該議題最全面之論述。此外，這也是加拿大法官的獨特業務。司法部門內外廣泛的協商過程讓《1998 年倫理守則》成為經過艱苦審查與激烈辯論的標的。其目的是讓加拿大法官接受《1998 年倫理守則》，將其視為崇高倫理願景的具體象徵，並在面臨道德問題時能夠予以使用及仔細審視。

6. 二十年以來，《1998 年倫理守則》讓聯邦法官在面臨各種複雜情況下有寶貴的道德倫理可供依循。其已成為法官在職培訓的重要資源，並成為法官職涯中專業發展內容持續討論的一部分。此外，《1998 年倫理守則》出版時恰逢司法倫理諮詢委員會成立，法官可向該委員會提出具體的道德倫理問題，並由諮詢委員會以諮詢意見方式給予回應，更進一步幫助《1998 年倫理守則》涉及之議題進行持續審查與闡述。委員會的意見更可指出本版《倫理守則》未直接解決的新問題，且諮詢委會也能確保讓尋求指導的法官隨時獲得幫助。

7. 此類性質的文件絕不能視為這般重要複雜議題的「最終解釋」。自，《1998 年倫理守則》首次出版後已超過二十年，需要進行現代化改造，以因應重大的社會、司法機構角色以及法官事務的社會環境變遷。2016 年，CJC（獨立委員會）的司法獨立和任命程序委員會開始對《1998 年倫理守則》進行修訂，並聽取加拿大各地首席法官和一般法官的意見。正如 1998 年當時的工作，他們在司法機構內外進行廣泛協商，以確保倫理守則能夠滿足法官的需求並考量社會的期望。協商包括對司法道德相關問題的線上調查以及與司法部門代表和其他利害關係人組織舉行一系列會議與對話。文件草案於完成後立即公開，並邀請法官、法官組織、其他專業組織和大眾提供意見與反饋。於整體工作過程中，獨立委員會

Context

5. The Canadian Judicial Council [the CJC] has been attentive to judicial ethics for decades. It published Commentaries on Judicial Conduct in 1991. This was followed by *Ethical Principles for Judges [Ethical Principles 1998].* It provided ethical guidance to judges aligned with a set of central principles and better informed the public about the high ideals which judges embrace and toward which they strive. While drawing heavily on existing resour-ces, *Ethical Principles* 1998 was the most comprehensive treatment of the subject at that time in Canada. Further, it was uniquely the work of Canadian judges. An extensive process of consultation within the judiciary and beyond ensured that *Ethical Principles* 1998 was the subject of painstaking examination and vigorous debate. The intention was that Canadian judges would accept *Ethical Principles* 1998 as reflective of their high ethical aspirations and would find it worthy of respect and deserving of careful con-sideration when facing ethical issues

6. Over the past twenty years *Ethical Principles* 1998 has provided valuable ethical guidance to federally appointed judges in a broad range of complex circumstances. It has become a crucial resource in the training provided to judges upon appointment, and forms part of ongoing discussions in professional development settings throughout a judge's career. In addition, the publica-tion of *Ethical Principles* 1998 coincided with the establishment of an Advisory Committee on Judicial Ethics [Advisory Committee] to which specific ethical questions have been submitted by judges. The Advisory Committee continues to respond to these queries with advisory opinions that contribute to the ongoing review and elaboration of the subjects dealt with in *Ethical Principles* 1998. These opinions may also identify new issues that this version of *Ethical Principles* does not directly address. The Advisory Committee continues to ensure that help is readily available to judges looking for guidance.

7. A document of this nature can never be viewed as the "final word" on such an important and complex subject. After more than twenty years from its initial publication, *Ethical Principles* 1998 needed modernization to address signifi-cant societal changes, changes in the role of the judiciary, and the social context in which judges serve. In 2016, the revision of *Ethical Principles* 1998 was com-menced by the Judicial Independence and Appointment Process Committee of the CJC [Independence Committee], with input from Chief Justices and puisne judges from across Canada. As was done in 1998, broad consultations were con-ducted within the judiciary and beyond to ensure that *Ethical Principles* is responsive to the needs of judges and takes com-munity expectations into account. The consultations included an on-line survey of issues relevant to judicial ethics and a series of meetings and dialogue with organizations representing the judiciary and other interested parties. Once a draft document was prepared it was made pub-lic and judges, judges' organizations, other professional organizations and members of the public were invited to provide comments and

審查每一份提案和每一項擬議修正，並將提交的諸多提案和建議納入倫理守則的最終版本之中。

8. 如今，法官的工作包括案件管理、和解會議、司法調解以及與當事人互動。這些責任需要進一步考量倫理標準。同理，數位時代、社群媒體現象、法官專業發展的重要性以及離職後司法人員的角色過渡，都產生二十年前尚未充分考量的道德倫理問題。法官應關注加拿大原住民的歷史、經歷與處境，以及構成加拿大國家的文化和社區多樣性。本著此一精神，司法機構現在要更加積極參與到廣泛群眾之中，此舉不但可強化大眾信心，又能擴大其對當今加拿大人經歷多樣性的了解。
9. 《1998 年倫理守則》的格式留存。每一章節都按層次架構組織編寫，開頭是聲明，然後是一系列原則，最後對每項原則的評述。聲明是位於最高抽象位階，表達司法倫理的基本價值或精神。原則即確定每項聲明的組成內容，並明確構成法官應具備的最高道德行為標準。除有例外狀況外，聲明和原則均以「聲明性」措辭表述—本質上是要求法官該做什麼或法官如何做的說明，與描述道德法官屬性的目標一致。每項原則的評述則提供對相關原則的解釋、背景和進一步闡明，並以鼓勵字眼行文，且經常使用具體範例。
10. 當法官發生道德問題時，可能涉及一項以上的原則。倫理守則採取的方法是獨立討論各項原則的各方面，並說明解決道德問題時可能需要考量多個原則和倫理守則，始能獲得較全面的指示。綜合索引以及電子版文件中的連結可讓讀者查找相關的原則和評述。
11. 本《倫理守則》的英文版和法文版之間含義一致。本《倫理守則》以英文及法文共同撰寫，兩種版本具同等效力。此外，本文件使用中性詞語編寫的。於使用代名詞時，其包含所有詞性。

feedback. Throughout the project, the Independence Committee reviewed every submission and every proposed amendment, and incorporated into the final version of *Ethical Principles* many of the proposals and suggestions submitted to it.

8. Today, judges' work includes case management, settlement conferences, judicial mediation, and frequent interaction with self-represented litigants. These responsibilities invite further consideration with respect to ethical guidance. In the same manner, the digital age, the phenomenon of social media, the importance of professional development for judges and the transition to post-judicial roles all raise ethical issues that were not fully considered twenty years ago. Judges are expected to be alert to the history, experience and circumstances of Can-ada's Indigenous peoples, and to the diversity of cultures and communities that make up this country. In this spirit, the judiciary is now more actively involved with the wider public, both to enhance public confidence and to expand its own knowledge of the diversity of human experiences in Canada today.

9. The format of *Ethical Principles* 1998 is preserved. Each chapter is organized hierarchically, beginning with a Statement, followed by a set of Principles and then a series of Commentaries aligned with each Principle. At the highest level of abstrac-tion, each Statement expresses a fundamental value or theme of judicial ethics. The Principles identify components of each Statement and articulate behav-iours that would constitute the highest aspirations of an ethical judge with respect to that Principle. With occasional exceptions, the Statements and Principles are stated in 'declarative' language – essentially statements of what an ethical judge does or how an ethical judge acts, consistent with the goal of describing the attributes of an ethical judge. The Com-mentaries associated with each Principle provide explanations, context and further elucidation of the Principles, almost always in aspirational language, often using concrete examples.

10. When an ethical issue arises for a judge more than one principle may be relevant. The approach taken in *Ethical Principles* is to discuss the aspects of each Principle discretely, recognizing that multiple Principles and chapters of *Ethical Principles* may need to be considered in obtaining comprehensive guidance in the resolution of the ethical issue. The com-prehensive Index, as well as links within electronic versions of *Ethical Principles*, will enable the reader to identify and access associated Principles and Commentaries.

11. The language adopted in this edition of *Ethical Principles* provides greater consistency of meaning between the English and French versions. *Ethical Principles* was co-drafted in English and French and each version is equally authoritative. As well, the document is written in gender-neutral language. Whenever pronouns are used, they are intended to be inclusive of all genders.

12. 本《倫理守則》亦探討法官考量或從事離職後司法職涯之相關情況。其特別探討離職後司法法律職業過程中可能出現的獨特道德問題以及法官離任後將繼續存在的問題。本指南適用對象是現任及前任法官，在考量其利益下同時維持大眾對司法機構的信心。

第 1 條：司法獨立

聲明：守法公正的司法必須具備獨立的司法機構。法官在個人與機構層面都必須維護並展現司法獨立。

原則

A. 法官應獨立行使司法職權，不得受外來影響。

B. 法官不得受不當方式影響而做成法庭審理之任何事項之決定。

C. 法官應展現並促進高標準的司法行為，以強化大眾對司法獨立之信心。

D. 法官應鼓勵、維護及強化司法機構行政獨立之保障措施。

評述

概述

1.A.1 司法獨立指法官有按照自身良心審理並裁決案件且不受他人干涉之自由及責任。保障司法獨立的目的將使法官履行職責時不受外部之不當干擾。法官在個人與機構層面都應超然獨立，且應合理視為獨立自主。司法獨立不是法官的私人權利，而是司法公正的基礎，也是所有人享有的憲法權利。使用獨立公正之法庭進行審判是《加拿大權利與自由憲章》保障的基本正義原則之一。

1.A.2 法官需要解決廣泛的爭議並統一確認相關法律權利義務。大眾對司法機構的信心取決於法官是否依法作出決定。

1.A.3 司法獨立指實際行使司法職權時的心態或態度，更與他人的地位或關係—包括政府行政部門和其他法官—有所關聯。司法獨立是公正決策的基礎。做為一名法官，首要資格是能夠做出獨立、公正的裁

12. This edition of *Ethical Principles* also addresses circumstances associated with judges contemplating or undertaking post-judicial legal careers. In particular, it discusses unique ethical issues that may arise in the transition to post-judicial legal careers and those that continue after judges leave office. This guidance is provided to present and former judges for their benefit and with a view to main-taining public confidence in the judiciary.

1. Judicial Independence

Statement: An independent judiciary is indispensable to impartial justice under law. Judges uphold and exemplify judicial independence in both its individual and institutional aspects.

Principles

A. Judges exercise their judicial functions independently and free of extraneous influence.

B. Judges firmly reject improper attempts to influence their decisions in any matter before the court.

C. Judges exhibit and promote high standards of judicial conduct so as to reinforce public confidence in the independence of the judiciary.

D. Judges encourage and uphold arrangements and safeguards to maintain and enhance the institutional and administrative independence of the judiciary.

Commentary

General

1.A.1 Judicial independence refers to the liberty and responsibility of judges to hear and decide cases that come before them in accordance with their conscience, without interference from others. The guarantee of judicial independence aims to make judges impervious to improper external inter-vention in the exercise of their functions. Judges are, and must reasonably be perceived to be, independent, both individually and institutionally. Judicial independence is not the private right of judges. It is the foundation of judi-cial impartiality and a constitutional right of all. The right to be tried by an independent and impartial tribunal is an integral principle of fundamental justice protected by the *Canadian Charter of Rights and Freedoms.*

1.A.2 Judges are called upon to resolve a wide array of disputes and generally to determine legal rights and obligations. Public confidence in the judiciary rests on the fact that their decisions are made according to law.

1.A.3 Judicial independence refers to a state of mind or attitude in the actual exercise of judicial functions. It also connotes a status or relationship with others, including the

決。法官在執行法律時不應感受到恐懼或偏袒，也不得顧慮其判決是否受到人們歡迎。這是法治的基石，並以尊重司法獨立原則予以保障。

1.A.4 司法獨立對於確保決策不受外部影響以及維持個人和大眾對司法之信心至關重要。維護司法獨立的構成要素對於大眾對法官公正性之觀感亦屬重要。基此，司法獨立是實現根本目標的重要手段。司法獨立可確保法官的實質公正，並使法官被視為公正。

1.A.5 法官保護司法獨立並非出於自身之利益，而是全體加拿大人民的利益。純粹出於自身利益而主張司法獨立可能會損害大眾對司法機構之信心。

1.A.6 使大眾了解司法機構的作用和司法獨立是司法的重要職能之一。法官應利用適當機會提升大眾對司法獨立根本重要性的認識，以促進大眾之利益。

避免與拒絕不當影響

1.B.1 法官應避免與案件以外之任何人進行可能引起對司法獨立有合理憂慮之所有溝通。法官應堅決拒絕影響其判決之不當意圖。企圖影響特定司法決定之聯繫僅能於司法程序內受理。

1.B.2 影響法官的行為可能來自多種來源，包括社群媒體。法官在社群媒體上討論可能訴諸法庭的事項時，應當謹慎。此外，法官的社群媒體活動應避免損害大眾對司法機構之信心。

大眾信心

1.C.1 司法獨立與司法道德具相互關聯性。法官應樹立並促進高標準的司法行為，以作為確保司法獨立的要素之一。同時，司法機構的獨立廉潔也能維護大眾對法治與接受法院裁決之信心。法官的不道德行為會導致信心減弱。因此，法官應共同承擔促進與遵守高行為標準之責任。

executive branch of government and other judges. Judicial independence is the foundation for impartial decision-making. The first qualification of a judge is the ability to make independent and impartial deci-sions. Judges apply the law without fear or favour and without regard to whether the decision is popular. This is a corner-stone of the rule of law, and it is secured through respect for the principle of judicial independence.

1.A.4 Judicial independence is fun-damental to ensuring that decisions are made without external influence and to maintaining individual and public con-fidence in the administration of justice. Preserving the constituent elements of judicial independence is critical to the public's perception of the impartiality of judges. In that sense, judicial independ-ence is an important means to a fundamental end. Judicial independence ensures that judges are impartial in fact, and also that they are perceived to be so.

1.A.5 Judges protect judicial independence not for their own benefit but for the benefits of all Canadians. Solely self-interested claims for judicial independence risk undermining public confidence in the judiciary.

1.A.6 Informing the public with respect to the role of the judiciary and judicial independence is an important judicial function. It is in the public interest for judges to take advantage of appropriate opportunities to enhance the public's understanding of the fundamental importance of judicial independence.

Avoiding and Rejecting Improper Influence

1.B.1 Judges should avoid all communications with anyone external to a case that might raise reasonable concerns about judicial independence. Judges must firmly reject improper attempts to influence their decisions. Communications intended to influence a specific judicial decision can only be received within the judicial process.

1.B.2 Attempts to influence judges may come from many sources, including social media. Judges should be cautious in their communications on social media relating to matters that could come before the court. Also, their social media activities should be undertaken in ways that avoid compromising public confi-dence in the judiciary.

Public Confidence

1.C.1 Judicial independence and judicial ethics are interrelated. Judges should exemplify and promote high stan-dards of judicial conduct as one element of assuring the independence of the judiciary. In turn, the independence and integrity of the judiciary preserves public confidence in the rule of law and acceptance of court decisions. Unethical conduct by judges erodes that confidence. Thus, judges share a collective responsibility to promote and observe high standards of conduct.

機構及行政獨立

1.D.1 司法獨立展現在保障法官及法院之不受外部影響的體制及運作架構，以得依公正程序依法作成判斷。例如：法官有任期保障，薪資數額以獨立程序確定，因此不必懼怕遭到制裁或獎勵誘因而妨礙正義之伸張。同理，法官也享有其判斷的相關責任豁免權。

1.D.2 根據司法獨立原則，法官的專業發展應受司法機關監督下規劃、設計並實施。

1.D.3 於制度層面，法院應具備充分之自主權，以保證司法不受任何政治或其他不當影響。

1.D.4 司法機構應對任何可能損害其機構或行政獨立性之舉措保持警惕。但並非所有影響司法部門的行政變更提議都會對司法獨立構成威脅。

第 2 條：誠信與尊重

聲明：法官應以敬重正直之方式執行事務，以維持並強化大眾對司法機構之信心。

原則

A. 法官應恪遵法律，在法庭內外的行為模式不得引起理性知情人士的非議。

B. 法官應謹言慎行，不得基於與司法職責無關之任何目的使用或揭露其職務或身份所獲知的機密資訊。

C. 法官履行司法職責時應以禮貌及尊重之態度待人。

D. 法官應促進人們訴諸司法之機會。法官履行職責時應適當考量所有當事人—不論他們是否有訴訟代理—並確保其受有公平且尊重之對待，以提供合理進行法庭程序之機會。

E. 法官應避免一切形式之騷擾及職權或地位濫用。

Institutional and Administrative Independence

1.D.1 Judicial independence is secured by institutional and operational structures that protect judges and courts from external influence so that judicial decisions are made according to law in a fair process. For example, judges have security of tenure and their remuneration is set through an independent process so that neither fear of sanction nor hope of reward stands in the way of rendering justice. For the same reasons, judges also have immunity from liability in relation to their decisions.

1.D.2 In keeping with the principle of judicial independence, professional development for judges is organized, designed and delivered under the authority of the judiciary.

1.D.3 At an institutional level, courts require sufficient autonomy to guaran-tee that the administration of justice is free from any political or other improper influence.

1.D.4 The judiciary should remain vigilant with respect to any initiative that may have the effect of undermining its institutional or administrative independ-ence. That said, not every proposed change in the administrative arrange-ments affecting the judiciary constitutes a threat to judicial independence.

II. Integrity and Respect

Statement: Judges conduct themselves respectfully and with integrity so as to sustain and enhance public confidence in the judiciary.

Principles

A. Judges comply with the law and conduct themselves both inside and outside the courtroom in a manner that is above reproach in the view of reasonable and informed persons.

B. Judges are discreet and do not use or disclose confidential informa-tion acquired in their judicial capacity for any purpose not related to judicial duties.

C. Judges treat everyone with civility and respect in the performance of their judicial duties.

D. Judges foster access to justice for all. Judges carry out their duties with appropriate consideration for all the parties, whether or not they are represented, and ensure that they are treated fairly and respectfully, so as to provide them with reasonable access to court processes.

E. Judges avoid all forms of harass-ment and abuse of authority or status.

F. 法官不得利用其地位或司法職務之威望謀取私利。

G. 法官應鼓勵並支持其司法同仁遵守倫理守則。

評述

概述

2.A.1 大眾對司法機構的信心對於有效的司法制度以及最終的法治至關重要。於該體系中，法官擔任備受信任、充滿信心及負責任的職位。在法庭內外，法官應誠信行事以確保大眾對法官的敬重與信任，重點在於有助於大眾對司法機構和整體司法系統的信心。因此，法官應具備高度禮儀、禮節和良好人品。

2.A.2 大眾對法官誠信有很高的期望，這也可以理解。有些行為若是民眾所為則屬於可以接受的範圍，但對司法人員則不適當。因此，法官應留意理性且知情的社會人士會如何看待自身的行為，以及這種觀感是否會降低對法官或整體司法機構的尊重。因此應當避免削弱人們尊重的行為。

私人生活中的行為

2.A.3. 大眾對法官的期望不僅限於法官在司法領域中的行為。法官在私人生活中亦應尊重法律並誠實行事，並應避免出現不當行為。

2.A.4 經過任命後，法官不必離群索居。他們仍然可以在社會過正常生活，同時保留司法職位的尊嚴，並認同大眾對法官行為的高道德期望。

2.A.5 法官在法庭內外的行為也可能會受大眾監督評論。同時，法官也有私人生活，並有權盡可能享有所有人普遍享有的權利和自由。儘管如此，法官仍會接受對其活動的某些限制—即使是由社會其他成員進行且不會引起不利關注的活動。例如，法官在使用社群媒體時應謹言慎行。法官應努力在司法職務的期望與個人生活之間取得平衡。在建立這種平衡時，法官即應遵循相關倫理守則。

F. Judges do not allow their status or the prestige of judicial office to be used to advance a private interest.

G. Judges encourage and support the observance of *Ethical Principles* by their judicial colleagues.

Commentary

General

2.A.1 Public confidence in the judiciary is essential to an effective judicial system and, ultimately, the rule of law. Within that system, judges hold positions of significant trust, confidence and responsibility. Conduct, in and out of court, that exhibits integrity ensures public respect for and confidence in the individual judge and, more significantly, contributes to public confidence in the judiciary and the judicial system as a whole. Judges should therefore act with a high degree of decorum, propriety and humanity.

2.A.2 Public expectations of the integrity of judges are understandably high. Behaviour considered accept-able if exhibited by some members of the public may not be appropriate for members of the judiciary. Judges should therefore be mindful of the ways in which their conduct would be perceived by reasonable and informed members of the community and whether that perception is likely to lessen respect for the judge or the judiciary as a whole. Behaviour that would diminish that respect in the minds of such persons should be avoided.

Behaviour in Private Life

2.A.3. Public expectations of judges are not limited to the actions of judges in their judicial capacities. Judges should exhibit respect for the law and act with integrity in their private lives and should avoid the appearance of impropriety.

2.A.4 After appointment, judges are not required to withdraw from the world. They may lead a normal life in the community, while retaining a sense of the dignity of judicial office and real-izing that the public expects virtually irreproachable conduct from judges.

2.A.5 A judge's conduct, in and out of court, may be the subject of public scrutiny and comment. At the same time, judges have private lives and are entitled to enjoy, as much as possible, the rights and freedoms generally available to all. Nevertheless, judges accept some restrictions on their activities — even activities that would not elicit adverse notice if carried out by other members of the community. For example, judges should exercise caution in their use of social media. Judges should strive to strike a balance between the expecta-tions of judicial office and their personal lives. In finding this balance, judges should be guided by these *Ethical Principles*.

保密義務與自由裁量權[1]

2.B.1 法官有保密之義務。履行司法職權必然使法官接收或掌握機密資訊。雖以正義原則來看應當透明、公開及開放，但爭端所涉及之特定事實、文件、紀錄和情況則可能受保密令之約束，包括當事人或他方的身份資訊。法官不得使用或洩露機密資訊，除非是履行司法職權時必要之揭露，或按相關建檔及揭露規則進行揭露。當法官進行團隊工作時，其內部討論亦應保密。

2.B.2 法官在討論其工作時應謹言慎行，包括在其言談可能被他人無意間聽到之情況下。

2.B.3 法官離職後仍應有保密和自由裁量權。

禮貌及尊重

2.C.1 司法程序的其中一項特點是包括法官在內的所有參與者行為，都會影響個人訴訟程序和廣泛司法行政之榮譽和尊嚴。法官應致力以禮貌及尊重之方式對待司法程序內所有的參與者。

2.C.2 法官對禮貌及尊重之承諾不僅限於司法程序。法官在與他人（包括司法工作的同仁）的所有往來中，應努力按照此價值觀行事。法官對他人表現的尊重，將可強化大眾對司法機構的敬重與信心。

2.C.3 某些案件的情況以及律師和當事人的行為，有時將使法官採取適當之堅定措施，並強調果斷、及時，防止濫用程序或不當對待審判過程中的參與者。保持禮貌和尊重需要法官在維護當事人表達意見之權利以及程序效率之間取得適當之平衡。

2.C.4 法官於裁決過程中往往需做出可信度調查並就特定人士之行為是否恰當做出決定。但在法庭訴訟或判決中，法官不應對特定人士的行為或動機做出不恰當之評論。此外，法官不可對未出席法庭之人士發表評論，除非認定此舉對於妥善處理案件有所必要。

[1] 加拿大司法委員會，《判決中個人資訊使用及建議協定》（2005 年）

Confidentiality and Discretion[1]

2.B.1 Judges are entrusted with preserving confidentiality. The per-formance of judicial duties necessarily entails that judges receive or come into possession of confidential information. While justice is, in principle, transpar-ent, open and public, some of the facts, documents, records and circumstances of a dispute may be subject to confiden-tiality orders, including the identity of one or more parties. Judges should not use or reveal confidential information except where, in the performance of their judicial duties, such disclosure is necessary, or done in accordance with relevant rules on archiving and disclo-sure. When judges work as a group, their internal discussions remain confidential.

2.B.2 Judges should be discreet when discussing their work, including in contexts in which what they say may be inadvertently overheard by others.

2.B.3 Confidentiality and discretion extend past a judge's departure from judicial office.

Civility and Respect

2.C.1 A hallmark of judicial proceed-ings is that all participants, including judges, will conduct themselves in a manner that preserves the honour and dignity of both the individual proceed-ings and the administration of justice more generally. Judges should endeavor to treat all participants in the judicial process with civility and respect.

2.C.2 The commitment of judges to civility and respect is not limited to judicial proceedings. Judges should attempt, in all of their engagements with others, including their judicial col-leagues, to act in accordance with these values. By showing dignified consideration for others, judges enhance public respect for and confi-dence in the judiciary as an institution.

2.C.3 The circumstances of some cases and the conduct of counsel and parties sometimes require judges to act with an appropriate measure of firmness and to emphasize decisiveness, prompt-ness, the prevention of abuse of process or improper treatment of participants in the adjudicative process. Maintaining civility and respect requires judgesto ensure a proper balance between upholding the right of parties to be heard and ensuring the efficiency of the process.

2.C.4 It is often necessary for judges in the adjudication process to make findings of credibility and to rule on the propriety of a person's conduct. That being said, in court proceedings or in their judgments, judges should not make inappropriate remarks about a person's conduct or motives. Furthermore, judges should not make comments about persons who are not before the court unless, in the judge's opinion, it is necessary for the proper disposition of the case.

[1] Canadian Judicial Council, Use of Personal Information in Judgments and Recommended Protocol (2005)

2.C.5 法官應留意思慮不周、荒誕不經（通常是隨性作成且具幽默性質）並有冒犯或損害訴訟程序尊嚴之虞之言論。

2.C.6 法官是否以及於何種情況下應向律師專業管理機構通報律師之行為，是一個極為微妙的問題。採取此類行動可能會影響法官是否能繼續出席由所通報律師出庭之訴訟程序，理由在於人們會合理懷疑法官對該律師行為之看法可能引起對律師或律師委託人的偏見。另一方面，法官所處的特殊地位可觀察律師在法庭上的行為。法官應留意律師代表委託人進行之辯護以對委託人之承諾的法定及道德義務。當法官發現律師有不當之行為或嚴重損害司法利益時，應當採取或促使採取適當行動。當法官打算採取相關行動時，應遵守法庭規則，並考量司法利益是否要求進行此類行動，或實際情況是否需要提前採取行動。

近用司法及自我代理之當事人[2]

2.D.1 法官應促進人們訴諸司法之機會。於履行職權時，法官應了解公平有效解決爭端的各式方式。

2.D.2 消極中立以及採取相同方式對待所有人並非永遠適當。當事人往往會親自出庭。法官應酌情主動提供關於程序和證據規則之資訊和合理協助，同時警惕切勿損及司法公正和訴訟程序之公平性。

待人接物之準則

2.E.1 法官待人接物之舉止為恪守誠信及尊重其中一個重要面向。法官應留意不可有對他人—尤其是屬於法官下屬之人員—產生不利影響或恐嚇之虞的冒犯性言論、舉措或不當行為。法官於該方面之行為會影響其個人以及整體司法機構之聲譽。

2.E.2 現代職場常見的一項憂慮是不當利用職權之可能。司法機關的工作場所亦不例外。法官不得在工作場所進行任何形式的騷擾。對法官而言，避免與共事工作或往來之他人建立感情關係有其重要性，理

[2] 加拿大司法委員會，《自我代理訴訟人及被告之原則聲明》（2006 年）

2.C.5 Judges should be alert to the possibility that ill-considered, comical or facetious remarks, often made spontan-eously and intended to be humorous, may give offence or diminish the dignity of the proceedings.

2.C.6 It is a delicate question whether and in what circumstances a judge should report, or cause to be reported, a lawyer's conduct to the lawyer's professional governing body. Taking such action may affect the ability of the judge to continue in the proceeding in which that lawyer is appearing, given that the judge's view of the lawyer's conduct may give rise to a reasonable apprehension of bias against the lawyer or the lawyer's client. On the other hand, a judge is in a special position to observe lawyers' conduct before the court. Judges should remain alert to the lawyer's legal and ethical duty of reso-lute advocacy on behalf of a client and commitment to the client's cause. A judge should take, or cause to be taken, appropriate action where the judge becomes aware of misconduct by a lawyer or incompetence that seriously compromises the interests of justice. Where a judge intends to take action, the judge should follow court protocols and consider whether the interests of justice require that such action await the end of the proceeding or whether the circumstances require earlier action.

Access to Justice and Self-Represented Litigants[2]

2.D.1 Judges have a responsibility to promote and foster access to justice. In fulfilling their role, judges should be aware of the different ways in which disputes can be resolved fairly and efficiently.

2.D.2 Passive neutrality and treating everyone in the same manner may not always be appropriate. Parties often appear before the court as self-represented litigants. Judges should provide infor-mation and reasonable assistance, proactively where appropriate, on procedural and evidentiary rules, while being alert not to compromise judicial impartiality and the fairness of the proceeding.

Conduct Towards Others

2.E.1 The conduct of judges towards others is an important aspect of their commitment to integrity and respect. Judges should be attentive to the ways in which offensive remarks, or con-duct, or inappropriate behaviour may adversely affect or intimidate others, particularly those in subordinate pos-itions to the judge. A judge's conduct in this respect affects their individual reputation and that of the judiciary as a whole.

2.E.2 A common concern in the modern workplace is the possibility that authority may be used in inappropriate ways. The workplace of the judiciary is no exception. Judges refrain

[2] Canadian Judicial Council Statement of Principles on Self-represented Litigants and Accused Persons (2006)

由在於應當避免使此一關係被合理視為法官濫用其職權。

地位或職權之利用

2.F.1 法官不可利用其地位、職權或職務地位，而為自身或他人謀取原本無權取得之利益。

募款

2.F.2 法官不可利用司法職位之威望為特定事業籌集資金，不論其價值高低有無。法官不得索要資金（向司法同仁或家庭成員除外）或利用司法機構之威信進行此類索討。

推薦信

2.F.3 法官可能會被要求提供推薦信。而司法職位的威望不得用以促進他人之私人利益或使特定人士享有對法官之影響力或產生偏袒特定地位之印象。法官應考量之因素包括：(i) 提供推薦信是否損害司法公正；(ii) 法官應對索要推薦信之人士有詳細之了解；(iii) 法官確信若拒絕提供推薦信將對該人士有所不公。法官應切記推薦信之內容可能會被公開。往後情況的變化也可能使此類信件變為不恰當或不準確，從而對法官或司法機構產生不利影響。法官可於保密之基礎上協助司法任命諮詢委員會。

同仁支援

2.G.1 法官應鼓勵並支持司法同仁遵守倫理守則。當法官發現司法同仁可能存在不符倫理之行為跡象時，法官的行事方式應盡可能確保維護大眾對司法之信心。根據具體情況，此類行動可能包括與法院首席法官溝通。

from any form of harassment in the workplace. It is also important for judges to avoid relationships with others with whom they work or associate that could be reasonably perceived as the judge taking advantage of their position or authority.

Use of Status or Authority

2.F.1 Judges should not use their status or authority, or the status of their office, to seek, for themselves or others, an advantage or benefit to which they would not otherwise be entitled.

Fundraising

2.F.2 Judges should not allow the prestige of judicial office to be used in aid of fundraising for particular causes, however worthy. They should not solicit funds (except from judicial colleagues or from family members) or lend the prestige of their judicial office to such solicitations.

Letters of Reference

2.F.3 Judges may be called upon to provide letters of reference. It is import-ant that the prestige of judicial office not be used to advance another person's private interests or create an impression that certain persons stand in a particular position of influence or favour with the judge. Factors for the judge to consider include whether: (i) providing the refer-ence will not compromise the integrity of judicial office; (ii) it is the judge's per-sonal knowledge of the individual that is called for; and (iii) the judge has an important perspective about the individ-ual to contribute such that it would be unfair to the individual were the judge to refuse. Judges should keep in mind that letters of reference may be made public. Such letters may also be rendered inappropriate or inaccurate by a subse-quent change in circumstances, thereby having the potential to reflect adversely on the judge or the judiciary. Judges may assist judicial appointment advisory committees on a confidential basis.

Collegial Support

2.G.1 Judges should encourage and support their judicial colleagues' observance of ethical principles. Judges may become aware of circumstances that indicate a strong likelihood of unethical conduct by a judicial col-league. In such instances, judges should act in a manner that best ensures that action is taken to preserve public con-fidence in the administration of justice. Depending on the circumstances, such action may include communication with the Chief Justice of the court.

第 3 條：勤勉有能

聲明：法官應勤勉並具備履行職責之能力。

原則

A. 法官致力於履行廣義的司法職權，包括主持法庭及作出判決，以及對法院運作和司法行政而言極為重要之職責。法官不得從事與勤勉履行司法職責相抵觸之活動。

B. 法官應準時、合理且迅速履行所有司法職責，包括作成事後書面判決，並適當考量事項之急迫程度及其他特殊情況。

C. 法官應保持並提升履行司法職責所需之知識、技能、對社會環境之敏銳度及個人素質。

D. 法官努力維持健康之身心，以更好履行司法職責。

評述

概述

3.A.1 勤勉指熟練、細心、專注、及時履行司法職責。

3.A.2 法官應勤勉有能地履行所有司法職責，包括審判、案件管理、預審訊工作或和解會議以及參與法院之管理。

3.A.3 《法官法》第 55 條[3]規定：「法官不得直接或間接為自身或他人從事其司法職責以外之任何職業或業務，且法官應致力於其自身專責履行之司法職責」。於遵守《法官法》之規定限制及《倫理守則》的引導下，法官可參與不妨礙其履行司法職責或不損害其獨立性或公正性之其他活動。

3.A.4 一經任命擔任法官者，即應迅速退出專業、商業及營業活動。

3.A.5 一般而言，法官有權進行不構成「經營業務」之「被動」投資，但以所需主動經營性較低且不會干擾勤勉履行司法職責者為前提。因此，法官應該仔細檢視其投資行為。

[3] 《法官法》，RSC 1985, c J-1

III. Diligence and Competence

Statement: Judges perform their duties with diligence and competence.

Principles

A. Judges devote themselves to their judicial duties, broadly defined, which include presiding in court and making decisions, as well as those duties essential to court operations and to the administration of justice. Judges do not engage in activities incompatible with the diligent discharge of judicial duties.

B. Judges perform all judicial duties, including the delivery of reserved judgments, with punctuality and reasonable promptness, having due regard to the urgency of the matter and other special circumstances.

C. Judges maintain and enhance their knowledge, skills, sensitivity to social context and the personal qualities necessary to perform their judicial duties.

D. Judges strive to maintain their wellness to optimize the performance of judicial duties.

Commentary

General

3.A.1 Diligence is concerned with the performance of judicial duties in a skillful, careful, attentive and timely way.

3.A.2 Judges should exhibit diligence and competence in the performance of all their judicial duties, including adjudi-cation, case management, pre-trial or settlement conferences and participation in court administration.

3.A.3 Section 55 of the *Judges Act*[3] provides that: "No judge shall, either directly or indirectly, for himself or herself or others, engage in any occupation or business other than his or her judicial duties, but every judge shall devote himself or herself exclusively to those judicial duties". Subject to the limitations imposed by the Judges Act and guided by these Ethical Principles, judges may participate in other activities that do not detract from the performance of judicial duties or compromise their independ-ence or impartiality.

3.A.4 Upon appointment, judges should withdraw expeditiously from professional, commercial and business activities.

3.A.5 Generally speaking, a judge is entitled to have 'passive' investments that do not constitute 'carrying on business', provided that little active management is required and there is no interference with the diligent performance of judicial duties. For these reasons, judges should undertake a careful examination of their investments.

[3] Judges Act, RSC 1985, c J-1

3.A.6 政府有時會要求法官擔任委員會、調查或其他公共職務。於考量此類請求時，除《法官法》規定之限制和《倫理守則》提供之引導外，法官亦應考量所有影響並與首席法官討論之，以確保接受任命不會干擾法院之有效運作。法官並應仔細審視職權範圍、時間和資源等其他條件，以評估其與司法職能是否有所牴觸。[4]

3.A.7 法官的獨特地位可為司法做出各式各樣的貢獻。於遵守司法機關規定之限制下，鼓勵法官參加針對學生、律師和法官法律教育計劃以及大眾法律常識和法律程序推廣之活動，例如講座、模擬法庭或法律文章。

及時性

3.B.1 法官應及時履行經指派之所有司法職責。

3.B.2 判決之作成往往困難且耗時。法官應考量情況之急迫度以及案件之時間長度或複雜度，以盡快做出決定並提出判決理由。基此，最高法院決議，除特殊情況外，事後書面判決應於言詞辯論後最遲六個月內作成。[5] 法官亦應遵守其職權範圍內適用之及時判決相關法律規定。

3.B.3 雖然法官應努力勤勉履行司法職責，但其履行職責之能力可能因多種因素而受有影響，包括疾病、工作負擔過重或支持其工作的資源不足。

專業發展[6]

3.C.1 受良好教育、資訊充足、恪守高技術標準之司法機構對於維持大眾信心至關重要。

3.C.2 法官應具備並保持法律知識，其範疇不僅應涵蓋實體法和程序法，亦應包括對法律對其適用對象之影響。

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4 加拿大司法委員會任命調查委員會法官之決議文（2010 年）
5 加拿大司法委員會針對延期判決之決議文（1985 年）
6 加拿大司法委員會專業發展政策指南（2018 年）

3.A.6 On occasion, judges are asked by governments to serve on commis-sions, inquiries or in other public roles. In considering such a request, in addition to the limitations imposed by the *Judges Act* and the guidance provided by *Ethical Principles*, judges should consider all implications and discuss the matter with their Chief Justice to ensure that acceptance of an appointment will not unduly interfere with the effective functioning of the court. The terms of reference and other conditions such as time and resources should be examined carefully so as to assess their compatibil-ity with the judicial function.[4]

3.A.7 Judges are uniquely placed to make a variety of contributions to the administration of justice. Subject to the limitations imposed by judicial office, judges are encouraged, for example, to take part in legal education programs for students, lawyers and judges, and in activities to make the law and the legal process more understandable and accessible to the public, such as giving lectures, participating in moot courts or through legal writing.

Timeliness

3.B.1 Judges should perform all assigned judicial duties in a timely manner.

3.B.2 The preparation of judgments is frequently difficult and time consuming. Judges are expected to produce their decisions and reasons for judgment as soon as reasonably possible, having regard to the urgency of the matter and the length or complexity of the case. In this respect, the CJC has resolved that reserved judgments should be deliv-ered within a maximum of six months after hearings, except in special cir-cumstances.[5] Judges must also comply with legal requirements associated with timeliness of judgments applicable in their jurisdiction.

3.B.3 While judges strive to be dili-gent in the performance of their judicial duties, their ability to do so may be affected by various factors, including illness, exceptionally heavy burdens of work or the inadequacy of resources supporting their work.

Professional Development[6]

3.C.1 A well-educated and informed judiciary that adheres to high standards of competence is essential to preserving public confidence.

3.C.2 Judges should have and main-tain knowledge of the law. Knowledge extends not only to substantive and procedural law but also to an under-standing of the impact of the law on those it affects.

[4] Canadian Judicial Council Protocol on the Appointment of Judges to Commissions of Inquiry (2010)
[5] Canadian Judicial Council Resolution on Reserved Judgments (1985)
[6] Canadian Judicial Council Professional Development Policies and Guidelines (2018)

3.C.3 法官應保持並提升有效做出裁判所需之知識、技能和個人素質。勤勉有能的司法素質與持續專業發展有所關聯。

3.C.4 專業發展描述正式及非正式之學習活動，包括教育、培訓及私人學習。其包含影響司法之社會背景問題教育。社會背景包括對出庭者生活現實之理解，囊括原住民之相關歷史、遺產及法律，以及性別、種族、民族、宗教、文化、性取向、性別認同或表達、不同身心能力、年齡及社會經濟背景等問題。

3.C.5 法官應培養並保持對其司法職責性質及履行相關之技術熟練度。

3.C.6 作為法官持續專業發展承諾之一部分，法官應對其司法職責相關之知識、技能和個人素質發展進行自我評估與自我發展。

3.C.7 為支持法官對其持續專業發展之承諾，司法委員會及國家司法學院等組織已訂立相關之全面優質教育計劃。法官應參與此類計劃，以持續獲取、保持並強化其司法知識及技能。

3.C.8 法官根據其司法職責，可利用機會與更廣大民眾接觸並向後者學習，包括法官鮮少或缺乏於其內生活之經驗之社群。

健康

3.D.1 雖然法官在履行司法職責時應勤勉盡責，但法官對其家庭的責任也相當重要。

3.D.2 法官應騰出充足時間維護身心健康，並於適當時利用司法援助計劃。[7]

[7] 法官諮詢計劃 – 為法官及其家屬提供保密協助

3.C.3 Judges are responsible for maintaining and enhancing their know-ledge, skills and personal qualities necessary for effective judging. This important element of judicial diligence and competence involves participation in continuing professional development.

3.C.4 Professional development describes formal and informal learning activities that include education, training and private study. It also covers educa-tion on social context issues affecting the administration of justice. Social context encompasses knowledge and understanding of the realities of the lives of those who appear in court. This includes the history, heritage and laws related to Indigenous peoples, as well as matters of gender, race, ethnicity, reli-gion, culture, sexual orientation, gender identity or expression, differing mental or physical abilities, age and socio-economic background.

3.C.5 Judges should develop and maintain proficiency with technology relevant to the nature and performance of their judicial duties.

3.C.6 As part of a judge's com-mitment to continuing professional development, judges should engage in self-assessment and self-development, taking responsibility for their standard of knowledge, skill and the development of personal qualities related to judicial duties.

3.C.7 To support judges' commit-ments to their continuing professional development, the CJC and National Judicial Institute, as well as other organizations, have developed relevant, comprehensive, quality educational programs. Judges should participate in these programs in their continuing commitment to acquire, maintain and strengthen their judicial knowledge and skills.

3.C.8 Consistent with their judicial duties, judges are encouraged to take advantage of opportunities to engage with and learn from the wider public, including communities with which the judge has little or no life experience.

Wellness

3.D.1 While judges should exhibit diligence in the performance of their judicial duties, the importance of judges' responsibilities to their families is also recognized.

3.D.2 Judges should set aside sufficient time and make a commitment to the maintenance of physical and mental wellness, and take advantage of judicial assistance programs as appropriate.[7]

[7] Judges Counselling Program – Confidential Assistance for Judges and their Families

第 4 條：公平性

聲明：法官之行為及訴訟程序均應依法確保公平。

原則

A. 法官於履行職責時應尊重所有人，包括當事人、律師、證人、法庭工作人員和司法同仁，不得有任何歧視或偏見。

B. 法官不得有歧視行為。其與法院工作人員、律師或參與司法程序之任何其他人員之冒犯性或歧視性言論或行為均不得有所牽涉，亦不得贊同此行為。

C. 法官應留意基於成見、迷信或偏見之態度，且不得受其影響。並應致力認識並擺脫此類態度。

D. 法官不屬於任何參與或支持任何形式違法歧視行為之組織。

評述

概述

4.A.1 憲法及各法規均保障法律前及法律下之平等以及不受歧視之保障和法定利益。法律對實質平等之承諾係保護社區成員免受雖然表面上係中立立場，但仍可能產生不利影響或歧視之法律及政策之影響。此平等承認所有人的平等價值和尊嚴，並確保防止並糾正系統性或結構性的歧視，影響及於社會中處於不利地位之個人或群體。該法律堅定的社會承諾使平等成為司法之核心。

4.A.2 法律上平等是司法的基石，與司法公正及大眾對司法之信心密切相關。因此，法官應確保其對平等之承諾堅定不移，其行為應使任何理性且知情之大眾對法官對於平等之尊重和承諾有充分之信心。

IV. Equality

Statement: Judges conduct themselves and the proceedings before them to ensure equality according to law.

Principles

A. Judges carry out their duties with respect for all persons, including parties, counsel, witnesses, court per-sonnel and judicial colleagues, without discrimination or prejudice.

B. Judges refrain from discrimina-tory behaviour. They disassociate themselves from and disapprove of offensive or discriminatory comments or conduct by court staff, counsel or any other person involved in judicial proceedings.

C. Judges are sensitive to and are not influenced by attitudes based on stereotype, myth or prejudice. They make meaningful efforts to recognize and dissociate themselves from such attitudes.

D. Judges do not belong to any organization that engages in or coun-tenances any form of discrimination that contravenes the law.

Commentary

General

4.A.1 The Constitution and a variety of statutes guarantee equality before and under the law and equal protec-tion and benefit of the law without discrimination. The law's commitment to substantive equality seeks to pro-tect members of the community from both direct discrimination and from the impact of laws and policies that, though neutral on their face, produce adverse effects, or adverse impact, discrimin-ation. This approach to equality seeks to acknowledge the equal worth and dignity of all persons and to ensure that discrimination is prevented and rectified as it affects individuals or groups experi-encing disadvantage in our society, often on a systemic or structural basis. The law's strong societal commitment places concern for equality at the core of justice according to law.

4.A.2 Equality, according to law, is fundamental to justice and is strongly linked to judicial impartiality and to public confidence in the administration of justice. Accordingly, judges should ensure that their commitment to equality is unwavering and that their conduct is such that any reasonable and informed member of the public would have confi-dence in the judge's respect for and commitment to equality.

訴訟程序平等

4.B.1 法官應避免做出可能被合理解釋為對任何人不顧及或不尊重之評論、表達、手勢或行為。例如基於性別、種族、民族、宗教、文化、性取向、性別認同或表達、不同的心理或體力、年齡和社會經濟背景相關之刻板觀念之不當評論，或其他可能使人認為在法庭上人員無法得到平等考量及尊重之深刻印象之行為。法官於法庭內外發表不當言論，也可能會使人們質疑其對平等性之承諾和公正能力。

4.B.2 法官應避免於社群媒體上參與可能使其平等的保證產生負面影響之活動。

4.B.3 審理案件時，法官遇到歧視性言論或行為時應進行干預。然而，平等原則並不要求法庭審理性別、種族或其他類似因素等問題時限制適當之辯護或可接受之證詞。對抗制為當事人及其律師提供相當廣泛之發揮餘地，而證據之相關性和重要性可能難以在證據提出時進行準確評估。法官應公正聽取意見，但於必要時應控管訴訟程序，並以適當之堅定態度行事，以維持法庭尊嚴、平等和守秩序之氛圍。法官應該留意法庭上出現之問題，並於適當情況下尋求釐清，並就特定問題之相關性提供平衡裁決。

4.B.4 法官不應允許法庭工作人員或受其權力指揮或控制之其他人員從事可能對他人表現出不尊重、構成歧視或合理地反映對平等承諾有負面影響之行為。

避免刻板印象

4.C.1 法官不可根據一般特徵做出先行假設，亦不得對人們建立先行立場，從而引發對其行為或特徵之刻板假設。刻板印象是簡化的思維路徑，會產生誤導性觀點，並導致事實和法律上之錯誤。

4.C.2 對刻板印象依賴可能基於不同原因而產生，且往往是無意為之而產生的。法官可能沒有正確認識到其推導與刻板思維之關聯。法官可能不熟悉文化傳統，而當了解這些文化傳統後，就能更好地理解當事人或證人呈現之外表、舉止或行為邏輯。

Equality in Proceedings

4.B.1 Judges should avoid comments, expressions, gestures or behaviour that may reasonably be interpreted as showing insensitivity to or disrespect for anyone. Examples include inappro-priate comments based on stereotypes linked to gender, race, ethnicity, religion, culture, sexual orientation, gender identity or expression, differing mental or physical abilities, age and socio-economic background, or other conduct that may create the impres-sion that persons before the court will not be afforded equal consideration and respect. Inappropriate statements by judges, in or out of court, have the potential to call into question their com-mitment to equality and their ability to be impartial.

4.B.2 Judges should avoid engaging in activities on social media that could reasonably reflect negatively on their commitment to equality.

4.B.3 In proceedings before them, judges should intervene when con-fronted with discriminatory comments or behaviour. The principle of equality does not, however, require that proper advocacy or admissible testimony be curtailed where, for example, matters of gender, race or other similar factors are properly before the court. The adver-sarial system gives the parties and their counsel considerable leeway, and the relevance and importance of evidence may be difficult to assess accurately as it is being presented. Judges are expected to listen impartially, but, when necessary, should assert control over the proceeding and act with appropri-ate firmness to maintain an atmosphere of dignity, equality and order in the courtroom. Judges should be alive to the issues before the court and, where appropriate, seek clarification and pro-vide balanced rulings on the relevance of a given line of questioning.

4.B.4 Judges should not permit court staff or others subject to their authority or control to engage in conduct that may: show disrespect toward others; constitute discrimination; or reasonably reflect negatively on their commitment to equality.

Avoidance of Stereotypes

4.C.1 Judges do not make assump-tions based on general characterizations or attach labels to people that invite stereotypical assumptions about their behaviour or characteristics. Stereotypes are simplistic mental short cuts that gen-erate misleading perceptions and cause mistakes and errors in fact and in law.

4.C.2 Reliance on stereotypes may arise for different reasons, often unintentionally. Judges may not properly appreciate that their reasoning is linked to stereotypical thinking. A judge may be unfamiliar with cultural traditions that would, if known, provide a greater understanding of a party's or a witness's appearance, mannerisms or behaviour.

4.C.3 法官應自我學習，以了解假設立場有多少比例係基於定型思維，並應了解社會態度和價值觀的不斷變遷。法官應抓住機會接觸與自己生活經歷不同之文化和社群，以擴大自身知識和理解。於此過程中，法官應注意強化認識得同時不可削弱其獨立性和公正性。此外，在這方面，法官應藉由教育機會和自學機會來幫助他們。

與歧視性組織之關聯

4.D.1 法官之個人生活應有榮譽感且不得被他人合理視為支持任何令人不快之歧視形行為。法官應與從事或支持違法歧視之組織保持迴避。法官於此類組織之成員身分可令他人質疑法官對平等之承諾，並可能削弱大眾對司法機構之信心。法官亦應對其活動、政策及公開立場雖不違法但仍可違背對平等之合法期望之組織保持距離。

4.D.2 屬宗教活動或宗教組織成員則均不違反倫理則。

第 5 條：公正

聲明：法官應公正不阿，並且於履行司法職責時表現公正。

原則

A. 法官確保其行為始終保持並可強化對其公正性和司法機關公正性之信心。

B. 法官避免做出可能導致他人質疑其公正性之行為。

C. 法官處理事務時應避免其私人利益與其司法職責之間存在實際或明顯之利害衝突。

D. 於保持公正性之同時，法官應努力告知並教育大眾和法界關於法律、司法獨立以及法官和法院在司法之角色作用。

E. 擬退休之法官和前任法官應避免採取可能損害司法機關聲譽或損害大眾對司法獨立、廉正及公正期望之行為。

4.C.3 Judges should educate themselves on the extent to which assumptions rest on stereotypical thinking and should become and remain informed about changing attitudes and values. They should take up oppor-tunities to engage with cultures and communities that are different from their own life experiences to expand their knowledge and understanding. In doing this, judges should take care that these efforts enhance and do not detract from their independence and impartiality. In addition, judges should take advantage of educational opportunities and self-study that will assist them in this regard.

Association with Discriminatory Organizations

4.D.1 Judges should conduct their personal lives honourably and in ways that would not reasonably be perceived as an endorsement of any invidious form of discrimination. Judges should avoid associations with organizations that engage in or countenance discrimination contrary to law. A judge's membership in such an organization has the potential to call into question the judge's commitment to equality and may erode public confi-dence in the judiciary. Judges should also be sensitive to the fact that some organ-izations' activities, policies and public positions, though not unlawful, may still be offensive to legitimate expectations of equality.

4.D.2 Neither the practice of religion nor membership in a religious organiza-tion is inconsistent with *Ethical Principles.*

V. Impartiality

Statement: Judges are impartial and appear to be impartial in the performance of their judicial duties.

Principles

A. Judges ensure that their conduct at all times maintains and enhances confidence in their impartiality and that of the judiciary.

B. Judges avoid conduct which could reasonably cause others to question their impartiality.

C. Judges conduct their affairs so as to avoid real or apparent conflicts of interest between their private interests and their judicial duties.

D. While preserving their impartiality, judges make meaningful efforts to inform and educate the public and the legal profession regarding the law, judicial independence, and the role of judges and the courts in the administration of justice.

E. Judges contemplating retirement and former judges avoid conduct that is likely to bring the judicial office into disrepute or put at risk public expectations of judicial independence, integrity and impartiality.

評述

概述

5.A.1 數百年來，公正及獨立法官之裁決一直被視為法治之基石。公正是法官的基本素質，也是司法機關的核心特質。

5.A.2 公正不僅要求不得有偏見及成見，更要求不得有任何偏袒之跡象。公正的雙重性體現在人們經常說的一句話：「正義不僅必須得以伸張，更要以明顯可見的方式予以伸張」。公正與否的檢驗標準係任何一位通情達理、了解所有相關情況、可切實實際看待此事之人是否會意識到法官缺乏公正性為準。

5.A.3 雖然法官的公正道德義務和法律義務密切關連，但倫理守則並不處理與撤銷司法相關資格或迴避之法律。

司法職責

5.A.4 法官有保持公正並表現公正之基本義務。此公正義務並不以法官不具生活經歷、同情心或觀點為前提。反之，其要求法官留意自身之偏見，並以開放心態考慮不同觀點。法官應當公平、公正與所有人互動。

5.A.5 法官應避免於法庭內外採取可能引發合理偏見之言論或行為。訴訟當事人對司法都有極高之期望。當實際發生的偏見及對偏見之合理理解都不存在時，失望的訴訟當事人有時會感受到偏見。法官的言論或語調可能削弱法官之公正性。對律師的無理斥責、對訴訟當事人或證人的不當評論、證明偏見之陳述或無節制和不耐煩的行為都可能損害公正形象。與律師或訴訟當事人的隨興交談或表示熟稔可能會被其他人視為一種排擠。因此，法官應確保其評論或行為不會成為形成特定觀感、看法的偏見。

5.A.6 雖然法官可能會透過言語、佩戴或展示象徵性物件表達其對某種原因或觀點之支持，即便看來無傷大雅，但此一行為可能會被視為利用法官之立場發表政治或其他欠缺公正性之言論。基此，法官應避

Commentary

General

5.A.1 For centuries, adjudication by impartial and independent judges has been recognized as fundamental to the rule of law. Impartiality is a fundamen-tal qualification of a judge and a core attribute of the judiciary.

5.A.2 Impartiality requires not only the absence of bias and prejudgment, but also the absence of any appearance of partiality. This dual aspect of impartiality is captured in the oft-repeated words that justice must not only be done, but manifestly be seen to be done. The test is whether a reasonable and informed person with knowledge of all relevant circumstances, viewing the matter realistically and practically, would appre-hend a lack of impartiality in the judge.

5.A.3 While there is a close association between the judge's ethical and legal duties of impartiality, Ethical Principles is not intended to deal with the law relating to judicial disqualification or recusal.

Judicial Duties

5.A.4 Judges have a fundamental obligation to be and to appear to be impartial. This obligation of impartiality does not presuppose that judges are free of life experiences, sympathies or opinions. Rather, it requires judges to be sensitive to their own biases and to consider different points of view with an open mind. Judges should interact with all parties fairly and even-handedly.

5.A.5 Judges should avoid using words or conduct, in and out of court, that might give rise to a reasonable perception of bias. The expectations of litigants are high. Disappointed litigants will sometimes perceive bias when neither actual bias nor a reasonable apprehension of bias exists. A judge's remarks or tone may diminish the judge's perceived impartiality. An unjustified reprimand of counsel, an improper remark about a litigant or a witness or a statement evidencing prejudgment or intemperate and impatient behav-iour may undermine the appearance of impartiality. Casual conversations or familiarity with counsel or participants in the proceedings may be perceived by others as a form of exclusion. Therefore, judges should ensure that their com-ments or conduct do not provide reasonable grounds for a perception of bias.

5.A.6 While judges may wish to signal support for causes or viewpoints through words or in the wearing or dis-play of symbols of support, even if they seem innocuous, such communications may be interpreted as reflecting a lack of impartiality or the use of the position of the judge to make a political or other statement. For these reasons, judges

免發表聲明或展示明顯之支持標語—尤其是在法庭訴訟期間。

5.A.7 法官應確保訴訟程序之井然有序及效能，並確保法庭程序不被濫用。為此可能需採取適當之強硬措施。於面對挑釁或無理取鬧之訴訟當事人時，法官應堅定、果斷，且同時尊重當事人，以確保訴訟雙方之權利得以受保障。

5.A.8 法官應為所有人提供了解司法程序並落實人們對於案件陳述意見之機會，不論當事方是否有合法的訴訟代理人。親自出庭且無訴訟代理人之人有時可能不了解自己的權利及其所做選擇之後果。法官應採取適當合理之措施提供公平公正之程序，並防止親自出庭且無訴訟代理人之當事人陷入不公平且不利益之地位。[8] 只要對其他當事人亦公平展現這些措施，即符合公正性之要求。

5.A.9 法官應特別留意應對無訴訟代理人之當事人可能出現之偏見。對無代表之訴訟當事人提供適當協助可能會被對造有訴訟代理人之當事人方視為明顯偏見。向無訴訟代理人之當事人提供之協助不應使另一方認為不公平。與雙方進行清晰透明之溝通可避免不必要之偏見。

5.A.10 法官司法責任其中一項擴展面向係其於和解會議及調解的工作。在這些非訟事件的場域，與訴訟當事人和律師的直接接觸往往使法官超出其傳統角色範疇，並使公正性面臨額外挑戰。鑑於這項工作會在各式種各樣的場域中產生，因此不可能針對所有情況窮盡說明明確之統一規則。但法官在這些情況下應尊重特定之價值觀和界限。於進行非訟事件的爭端解決工作時，法官應確保：(i) 過程和結果為當事人雙方所接受；(ii) 結果為雙方之共識且知情；(iii) 該過程對雙方均透明；(iv) 結果不具強迫性、不合情理或存有非法之處；(v) 有考量已知非相關第三方之合法利益。基此，透明度在此脈絡下意味最廣義之公開，並不會阻止於適當情況下舉行協商。

[8] 加拿大司法委員會針對無代表當事人及被告之原則聲明（2006 年）

should avoid statements or visible symbols of support, particularly in the context of court proceedings.

5.A.7 Judges should ensure that pro-ceedings are conducted in an orderly and efficient manner and that the court process is not abused. An appropriate measure of firmness may be necessary to achieve this end. In the presence of challenging or vexatious litigants, judges should be firm, decisive and at the same time respectful to ensure that litigants' rights are protected.

5.A.8 Judges have a responsibility to promote opportunities for all persons to understand the judicial process and to meaningfully present their case, whether or not they have legal representation. Self-represented persons may some-time be uninformed about their rights and about the consequences of the options they choose. Judges should take appropriate and reasonable measures to provide a fair and impartial process and prevent an unfair disadvantage to self-represented persons.[8] Such meas-ures are consistent with impartiality provided that they are fair to other parties.

5.A.9 Judges should be particularly attuned to the perception of bias that might arise in circumstances where one or more parties are self-represented. Appropriate assistance to a self-represented litigant may be perceived by the opposing, represented party as manifesting bias. Accommodations extended to self-represented litigants should not extend to the point where they become unfair to the other party. Clear and transparent communication with all parties is necessary to avoid unwarranted apprehension of bias.

5.A.10 An expanding aspect of judicial responsibility for judges is their work in settlement conferences and the judicial mediation of disputes. Direct engage-ment with litigants and counsel in these non-adjudicative settings often takes judges outside the confines of their traditional roles and presents additional challenges in relation to impartiality. Given the variety of settings in which this work takes place, it is not possible to articulate bright line rules to provide guidance in every situation. However, there are values and boundaries which judges should respect in these settings. When engaging in non-adjudicative dispute resolution, judges should ensure that: (i) the process and outcomes are acceptable to the parties themselves;(ii) the outcomes are the subject of informed decision-making by the parties; (iii) the process is transparent to the parties; (iv) the outcomes are not coercive, unconscionable, or illegal; and (v) the legitimate interests of known non-involved third parties are con-sidered. Transparency in this context means openness in the broadest sense and is not intended to discourage caucusing in appropriate circumstances.

[8] Canadian Judicial Council Statement of Principles on Self-represented Litigants and Accused Persons (2006)

限制

5.B.1 法官經任命後並不放棄加拿大人享有之所有權利和自由。然而法官之職位會施加必要限制，以維持大眾對司法機關公正性及獨立性之信心。於確定法官社會參與之適當程度時，應考量兩項基本因素。首先是參與是否會合理削弱人們對法官公正性之信心。二是參與是否會使法官受到批評或有悖於司法職務之尊嚴和廉正。

政治活動

5.B.2 法官於就任後應停止一切黨派政治活動。此外，法官不得做出可能使理性知情之人員認為法官參與政治活動之行為。因此，法官應避免：(i) 加入政黨及從事政治募款；(ii) 出席政治集會和政治募款活動；(iii) 向政黨或競選活動提供財政或其他捐助；(iv) 簽署請願書以影響政治決策；(v) 公開參與具爭議之政治討論，但直接影響法庭運作、司法獨立或司法行政基本方面之事項不在此限。

5.B.3 與黨派政治活動同理，法官就社會大眾之爭議問題發表之庭外聲明可能損害公正性，還可能導致大眾對司法機構與政府行政機構、立法機構間之關係、性質感到混淆。根據定義，黨派活動和政治聲明涉及公開選擇辯論之雙方。為保持公正性，法官應避免任何政治活動或參與。若法官之行為引起批評和 / 或反駁，則會加深偏袒的觀感，進一步削弱大眾對司法機構之信心。法官不應利用司法職務之特權進入公共領域，進而損害大眾對司法公正和獨立之信心。

5.B.4 首席法官和其他負有行政責任之法官應與政府行政部門（包括檢察總長、副檢察長及法院行政人員）保持互動，但其互動本質上不得有黨派之爭。

Restraints

5.B.1 On appointment, judges do not surrender all of the rights and freedoms enjoyed by everyone else in Canada. Nevertheless, the office of the judge imposes restraints that are necessary to maintain public confidence in the impartiality and independence of the judiciary. In defining the appro-priate degree of public involvement by a judge there are two fundamental considerations. The first is whether the involvement could reasonably undermine confidence in the judge's impartiality. The second is whether such involvement may expose the judge to criticism or be inconsistent with the dignity and integrity of judicial office.

Political Activity

5.B.2 Judges must cease all partisan political activity upon the assumption of judicial office. Moreover, judges refrain from conduct that, in the mind of a reasonable and informed person, could give rise to the appearance that the judge is engaged in political activ-ity. For this reason, judges must refrain from: (i) membership in political parties and political fundraising; (ii) attendance at political gatherings and political fundraising events; (iii) contributing financially or otherwise to political par-ties or campaigns; (iv) signing petitions to influence a political decision; and (v) taking part publicly in controversial pol-itical discussions, except in respect of matters directly affecting the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice.

5.B.3 Like partisan political activity, out of court statements by a judge concerning issues of public controversy may undermine impartiality. They are also likely to lead to public confusion about the nature of the relationship between the judiciary on the one hand and the executive and legislative branches of government on the other. Partisan actions and political statements by definition involve publicly choosing one side of a debate over another. In order to preserve their impartiality, judges should refrain from any political action or involvement. The perception of partiality will be reinforced if the judge's activities attract criticism and/or rebuttal. This in turn tends to undermine public confidence in the judiciary. Judges should not use the privileged platform of judicial office to enter the public arena because it puts at risk public confidence in the impartiality and the independence of the judiciary.

5.B.4 Chief Justices and other judges with administrative responsibilities will necessarily have contact and interaction with the executive branch of govern-ment, including attorneys general, deputy attorneys general and court services officials. These engagements are appropriate provided that the interactions are not partisan in nature.

5.B.5 若法官之家屬積極參與政治活動，法官應意識到至親家屬之相關活動可能會使大眾對法官公正性之看法產生不利影響。於可能出現此類觀感時，法官應考慮在特定案件中是否採行迴避措施作為適當補救。

公開聲明

5.B.6 於有限情況下，法官可以適當但克制之方式就社會爭議事項發表意見，即：該事項直接影響法院運作、司法獨立或司法行政基本面向。首席法官就此負有特殊責任。法官應遵守法院就此類事項訂立之任何規範。

5.B.7 若法官之個人誠信受社會大眾質疑，法官應尋求首席法官指示，並於適當情況下尋求其他可信賴的顧問之指引。

司法晉升機會

5.B.8 法院主管領導職位、晉升至上級法院之機會以及法官之其他職涯機會時常出現。這些晉升決定最終由政府行政部門做出。法官有權尋求這些職位並提升其專業能力，但應於自身利益交流或他人代表其進行之利益交流中迴避，以避免出現任何損害任命程序公正性或破壞廉正之行為。

公共參與、公民及慈善活動

5.B.9 許多法官希望成為或持續積極參與各種形式的社區公共服務。此類參與有利於社區和但也可能為法官帶來風險。

5.B.10 首先，法官積極參與適當形式之公共服務帶來之好處。法官代表社會執行法律，並經任命為社會大眾服務。因此，法官不必與社會完全隔離，這無助於促進明智或公正之判決。為求與司法職責一致之專業能力與勤勉方式執行工作，法官是被鼓勵應抓住機會與廣大民眾接觸學習，包括法官鮮少或未曾經歷其生活之社區。

5.B.11 另一方面，於特定情況下，法官的公民參與可能會損害對公正性之

5.B.5 If a member of a judge's family is politically active, the judge should recognize that such activities of close family members may adversely affect the public perception of the judge's impar-tiality. In cases where such public perceptions may arise, a judge should consider whether recusal is the appro-priate remedy in a given case.

Public Statements

5.B.6 There are limited circumstances in which judges may properly speak out, though with restraint, about a matter that is publicly controversial, namely, when the matter directly affects the operation of the courts, the independence of the judiciary or fundamental aspects of the administration of justice. Chief Justices have particular responsibilities in this regard. Judges should follow any protocol established by their Court on these matters.

5.B.7 If their personal integrity has been called into question in a public context, judges should seek guidance from their Chief Justice and, if appropriate, other trusted advisors.

Judicial Promotion and Opportunities

5.B.8 Leadership positions in courts, opportunities for elevation to a higher court and other opportunities for judges arise from time to time. These decisions are ultimately made by the executive branch of government. Judges are entitled to seek these positions and advance their qualifications, but should exercise reserve in their communication of interest, or the communication of interest by others on their behalf, so as to avoid any conduct that would com-promise their impartiality or undermine the integrity of the appointment process.

Public Engagement, Civic and Charitable Activity

5.B.9 Many judges wish to become or continue to be active in various forms of public service to their communities. This involvement benefits the community and judges but also carries risks.

5.B.10 On one hand, there are likely to be beneficial aspects of the judge being active in appropriate forms of public service. Judges administer the law on behalf of the community and are appointed to serve the public. Therefore, unnecessary isolation from the com-munity does not promote wise or just judgments. In order to undertake their work with competence and diligence, and in ways that are consistent with judicial duties, judges are encouraged to take up opportunities to engage with and learn from the wider public, includ-ing communities with which they have little or no life experience.

5.B.11 On the other hand, the judge's civic involvement may, in some cases, jeopardize the perception of impartiality. Judges should exercise caution when considering their

觀感。法官在考慮參與社區活動時應謹慎行事，並留意司法職位身分對其參與相關活動之限制。應根據公共服務之形式、組織活動和目標、法官於其中扮演之角色、組織參與之潛在訴訟風險和任何其他相關因素以評估法官之社區參與。

5.B.12 一般而言，法官應避免加入或參與理性知情之人員認為將損害人們對法官公正性信心之團體或組織或參與公共討論。於社區服務時，法官不得提供法律或投資建議，並應避免參與可能涉及訴訟之事業或組織。法官於考慮是否擔任社區組織人員或董事時應更加謹慎。

5.B.13 加拿大法官過去曾於大學及宗教團體等組織中擔任主管職務，但該服務可能存在問題。這些組織進入訴訟或成為大眾爭論標的時，其風險可能導致法官處於尷尬境地，而可能動搖大眾對法官公正性之信心，亦可能影響人們對司法機構之信心。雖然法官可能考慮接受此類職務，但在此之前應該反思可預見或實際發生之衝突問題，以決定是否可以以這種方式擔任角色，以避免衝突或形成衝突的表象。

5.B.14 參與曾經參與之社區組織也可能不甚適當。法官應根據實際情況重新評估其適當性。

社群媒體

5.B.15 社群媒體活動應遵守指導司法行為之總則性原則。法官應知悉其於社群媒體之活動是否影響其自身及司法部門，並應留意對其履行司法職責之潛在影響。法官亦應留意並告知家屬，社群媒體之活動可能會對法官產生不利影響。

5.B.16 社交群體之傳播較其他形式之媒體更公開也更持久，使得資訊可於發出者無法控制且未經同意之下傳輸。針對有限受眾之留言或圖片幾乎可立即與大量受眾共享，且可能會產生遠超人們所想之不良反應。社群媒體亦可能大幅創造法官群體與他人間溝通障礙之可能性。

involvement in com-munity activities and be attentive to the limits that judicial appointment places upon their freedom to undertake these activities. Community involvement on the part of the judge should be assessed in light of the form of public service under consideration, the activities and goals of the organization, the role to be played by the judge within it, the risk that the organization may become engaged in litigation and any other relevant factor.

5.B.12 Generally speaking, judges should refrain from membership in or association with groups or organizations or participation in public discussion which, in the mind of a reasonable and informed person, would undermine confidence in a judge's impartiality with respect to issues that could come before the courts. In service to their communities, judges must not give legal or investment advice, and should avoid involvement in causes or organizations that are likely to be engaged in litigation. Judges should use even greater caution in considering whether to become officers or directors of community organizations.

5.B.13 While, in the past, Canadian judges have served in leadership positions with organizations such as universities and religious bodies, this service is potentially problematic. The risk that such organizations will become involved in litigation or be the subject of public controversy creates the possibility that the judge will be placed in an awkward position, both in relation to public confidence in the judge's impartiality and in the judiciary as a whole. While judges may consider accepting such positions, they should reflect on issues of perceived or actual conflict before doing so, all with a view to determining whether the role can be structured in such a way so as to avoid conflicts and appearances of conflict.

5.B.14 Involvement with a community organization that at one time was appropriate may become inappropriate. Judges should re-evaluate these associations in light of changing circumstances.

Social Media

5.B.15 Social media activities are subject to the overarching principles that guide judicial behaviour. Judges should be aware of how their activities on social media may reflect on them-selves and upon the judiciary and should be attentive to the potential implications for their ability to perform their judicial role. Judges should also be attentive to and may wish to inform family members of the ways in which their social media activities could reflect adversely on the judge.

5.B.16 Communication by social media is more public and more permanent than many other forms of communication. It enables messages to be re-transmitted beyond the originators' control and without their consent. Comments or images intended for a limited audience can be shared, almost instantaneously, with a vast audience and may create an adverse

5.B.17 法官與他人之溝通交流通常會被視為主張其缺乏公正性之依據。法官應保持警惕，盡量降低合理對這些交流產生之偏見的憂慮。在社群媒體當道的當下，這一點尤為重要，但執行也更加困難。選擇使用社群媒體的法官進行溝通交流時應格外謹慎，包括表達支持或反對之意見時。包括法官了解適合其使用之社群媒體的安全和隱私設定功能。

5.B.18 數位時代下，法庭外資訊更容易獲取，法官獲取此類資訊也更容易被發現。因此，法官應保持警惕，避免不當獲取或接收與當事人、證人或審議事項相關之法庭外資訊。若發生相關情況，法官可能需考量公平問題。

餽贈及報酬

5.B.19 法官不可於有合理存在偏見之虞之情況下接受訴訟當事人、律師、律師事務所或任何其他人員之餽贈。此並不妨礙法官因活動或會議發言或做出貢獻而接受象徵性價值之禮品，或核銷合理費用。當餽贈不代表報酬，且接受時不會使理性知情之人員產生偏袒觀感，即可接受之。

演講及會議

5.B.20 法官受邀進行公開演講屬於極常見之情況。法官參與公共事務之目標是為了教育大眾，將有利於司法部門及其所服務之社會。鼓勵法官可作為講者參加活動，既可貢獻專業知識，又可實現自我專業發展。但公開演講也可能影響大眾對法官公正性之看法，因此應當謹慎對待。法官決定是否接受演講邀約時，應仔細考量一系列因素，若接受邀約，應審視於演講時適宜宣講之項目，包括：(i) 邀請法官演講之組織；(ii) 預期觀眾；(iii) 演講討論之主題或大致主題；(iv) 該主題與司法機關或法院事務之相關度；(v) 該主題或法官之言論是否涉及公共政策或公共爭議問題；(vi) 該演講被報導、記錄或向廣大民眾公開之可能性；(vii) 法官言論對於告知或教育目標受眾之

reaction far beyond what one may have considered possible. Social media can also create greater opportunities for inappropriate com-munications to judges from others.

5.B.17 Judges' communications and associations with others are commonly used as a basis for claims of lack of impartiality. Judges should be vigilant in minimizing reasonable apprehensions of bias arising from these communica-tions and associations. This is all the more important, and difficult, in the age of social media. Judges who choose to use social media should exercise great caution in their communications and associations within these networks, including expressions of support or dis-approval. This includes judges informing themselves about the functioning, and the application, of security and privacy settings appropriate to their use of social media.

5.B.18 In a digital world, out-of-court information is much more accessible and the acquisition of such information by a judge is more readily discoverable. Accordingly, judges should be vigilant to avoid inappropriately acquiring or receiving out-of-court information related to the parties, witnesses or issues under consideration in matters before them. Fairness issues may need to be considered by the judge should this happen.

Gifts and Remuneration

5.B.19 Judges must not accept gifts from litigants, lawyers, law firms or any other person in contexts that give rise to a reasonable apprehension of bias. This does not prevent judges from accepting gifts of nominal value in appreciation for having spoken at or contributed to events or conferences, or have their reasonable expenses reimbursed. Such gifts are acceptable, provided that they do not represent remuneration and their acceptance would not create, in the mind of a reasonable and informed person, a perception of partiality.

Speeches and Conferences

5.B.20 It is common for judges to be asked to speak in public. Judges' public engagement aimed at educat-ing others is a benefit to the judiciary and the public they serve. Judges are encouraged to attend events as speak-ers, both to contribute their knowledge and to undertake their own professional development. However, speaking in pub-lic carries risks to the public perception of the judge's impartiality and must be approached with care. Judges should give careful consideration to a range of factors when deciding whether to accept a speaking invitation and, if so, what the judge may properly address in a speech. These include: (i) the organ-ization inviting the judge to speak; (ii) the anticipated audience; (iii) the topic or general theme to be addressed in the speech; (iv) the degree to which the topic relates to matters concerning the judiciary or the courts; (v) whether the topic or the judge's remarks relates to a matter of public policy or public contro-versy; vi) the

價值。若法官對接受演講之適當性有任何疑問，則應尋求首席法官之建議。

出席活動

5.B.21 法官可以參加社交或公共活動或會議，但其出席不得損害其公正性，且活動或主辦方之性質不得引起與倫理守則相關之其他問題。

5.B.22 法官可參加會議上的社交活動，但此類活動應可供與會者或講者參加，且社交活動之贊助、性質和範圍不使理性知情之人員形成缺乏公正性之觀感。

5.B.23 法官參加企業或組織主辦之會議和社交活動可能產生問題。若受邀，法官應考慮主辦該活動之組織性質，其是否亦向社區領導者發出邀請、邀請法官之目的以及因出席是否有引起大眾不良印象之虞。

5.B.24 法官受邀參加與法律或法律職業相關之社交活動或由律師事務所主辦之社交活動時，應考慮社交活動之性質、其贊助、其他受邀者及參加者、邀請之目的、與主辦方和參加者之前是否存在個人關係，以及出席對法官、司法部門和法律職業之效益。若活動之目的為促進商業利益、展示主持人與法官之關係、主辦方的客戶在觀眾之列，則法官應避免參加此類活動。

利害衝突

5.C.1 《倫理守則》對利害衝突之探討並非用以闡述與司法資格撤銷或迴避相關之法律。而是為法官識別及評估其個人利益是否被他人合理視為與其司法職責相衝突之情況提供說明。評估此背景下的倫理義務時，法官應始終明白健全司法之要求以及審理其負責案件之責任。

5.C.2 當法官（或與法官有密切關係者）之個人利益與法官公正裁決之職責發生衝突時，即有出現利害衝突之可能。司法公正涉及事實公正以及理性知情人員之觀感。因此，法官應關注自身利益與公正裁決

likelihood that the speech will be reported on, recorded or made available to a broader public; and (vii) the value of the judge's remarks in informing or educating the intended audience. If judges have any doubts regarding the appropriateness of accepting a speaking engagement they should seek the advice of their Chief Justice.

Attendance at Events

5.B.21 Judges may attend social or public events, or conferences provided that such attendance does not com-promise their impartiality and the nature of the event, or host, does not raise other concerns related to *Ethical Principles*.

5.B.22 Judges may participate in social programs at conferences provided that they are generally available to attendees or speakers and the sponsorship, nature and extent of social programs would not create, in the view of a reasonable and informed person, a perception of lack of impartiality.

5.B.23 Attendance by a judge at conferences and social events spon-sored by businesses or organizations is potentially problematic. Where invited, the judge should consider the organiza-tion hosting the event, whether the invitation has also been extended to community leaders, the purpose for which the judge was invited and the potential for adverse public perception as a result of the attendance.

5.B.24 When judges are invited to attend social events associated with the law or the legal profession, or hosted by law firms, they should consider the nature of the social event, its sponsor-ship, the other invitees and attendees at the event, the purpose for which the judge has been invited, the existence of a previous personal relationship with the host and attendees, as well as the benefit to the judge, the judiciary and the legal profession as a result of the judge's attendance. Judges should avoid attendance at such events if a purpose of the event is to advance a commercial interest, to showcase the host's relationship with the judge, or if clients are in attendance.

Conflicts of Interest

5.C.1 The discussion of conflicts of interest in *Ethical Principles* is not intended to state the law relating to judicial disqualification or recusal. It is intended to provide guidance to judges as they identify and assess the circum-stances in which their personal interests may be reasonably viewed by others as conflicting with their judicial duties. In assessing their ethical duties in this con-text, judges should remain conscious of the demands of the sound administra-tion of justice and their duty to hear the cases assigned to them.

5.C.2 The potential for a conflict of interest arises when the personal inter-est of the judge (or of those close to the judge) conflicts with the judge's duty to adjudicate impartially. Judicial

義務間之實際衝突，以及理性知情之人員將如何合理理解該衝突情況。

5.C.3 利害衝突可能源於對結果之金錢或非金錢利益；與訴訟當事人、律師或證人有密切之家庭、個人或職業關係；或法官表達之觀點經證明對訴訟當事人或法庭審理之議題存在偏見。

5.C.4 法官一經任命應立即停止執業，並應放棄其於商業及商業活動之利益。並應盡快、立即，徹底切斷與其法律執業之所有聯絡關係。

5.C.5 一般而言，法官有權管理不構成「經營業務」之「被動」投資，但該投資應確實為被動且幾乎不需主動管理者。但若法官之財務、財產或其他利益可能受到案件結果之影響，或其利益可能導致理性知情人員認有缺乏公正性之虞，則法官不應參與此類案件。不論利益本身為爭訟標的或案件結果可能對法官、法官家屬或親密夥伴有任何利益或財產價值之重大影響皆然。若法官之經濟或財產利益僅限於一般公民共有之利益，則不存在衝突。在正常情況下，擁有保單、銀行帳戶、使用信用卡或股東眾多之企業之有價證券並不構成利害衝突，除非法官審理之訴訟結果可能對此類持股權生重大影響。

擔任執行人

5.C.6 除涉及親友並且不太可能引起爭議者外，法官通常不應擔任遺囑執行人或受託人。即使如此，法官亦不應因其角色而獲得報酬，且若執行人之身分可能干擾司法職責之履行，則不應採取擔任。

impartial-ity is concerned with impartiality in fact and in the perception of a reasonable and informed person. As a result, judges should be attentive to both actual conflicts between their self-interest and their duty of impartial adjudication, and to circumstances in which a reasonable and informed person would reasonably apprehend a conflict.

5.C.3 Conflicts of interest may arise from: a pecuniary or non-pecuniary interest in the outcome; a close family, personal or professional relationship with a litigant, counsel or witness; or the judge having expressed views eviden-cing bias regarding a litigant or an issue that is before the court.

5.C.4 Upon appointment, judges must immediately cease practicing law, and should divest themselves and remain divested of their interests in commer-cial and business activities. Severance of all association with the judge's legal practice should be done as quickly as possible, ideally in an immediate and final way.

5.C.5 Generally speaking, judges are entitled to manage 'passive' investments that do not constitute 'carrying on business', provided that the investment is truly passive with little active manage-ment required. Nevertheless, judges should not participate in a case in which they have a financial, property or other interest that could be affected by its outcome or in which their interest would give rise to a potential apprehension of lack of impartiality by a reasonable and informed person. This is true whether the interest is itself the subject matter of the controversy or where the outcome of the case could materially affect the value of any interest or property owned by the judge, the judge's family or close associates. There is no conflict where the judge's financial or property inter-est is limited to one shared by citizens generally. Owning an insurance policy, having a bank account, using a credit card or owning securities in a widely held enterprise would not, in normal circumstances, constitute a conflict of interest, unless the outcome of the proceedings before the judge could substantially affect such holdings.

Acting as Executors

5.C.6 Judges should not normally act as an executor or fiduciary, unless it concerns the affairs of a close friend or relative and is unlikely to become contentious. Even in that case, judges should not be remunerated for that role and should not act if the executorship may interfere with the performance of judicial duties.

法官以往之法律執業

5.C.7 法官應對理性知情之人員將有缺乏公正性之合理擔憂之任何關係之保持敏銳。尤其是當法官處理涉及前委託人、擔任法官前律師事務所成員或擔任法官前曾執業之政府部門或法律扶助辦公室律師等案件之時。每一案件都是獨一無二的的，因此應根據實際情況評估是否有所偏見。以下通則標準可提供判斷依據：(i) 參與私人執業之法官不應審理該法官或據其所知該法官先前任職之律師事務所直接參與之任何案件；(ii) 曾於政府部門或法律扶助辦公室從事法務工作之法官不得審理其任命前參與經手之案件；(iii) 於當地法律或傳統規定習慣規定之兩至五年「冷卻期」內，法官不應審理涉及其前任職律師事務所之案件；且 (iv) 至少於法官仍與其前任律師事務所間仍持續存在財務關係下，法官即不得審理涉及其前任律師事務所之案件。

個人關係

5.C.8 法官時常會面臨如下情況：出庭律師來自律師事務所，而該律師事務所之合夥人、合夥律師或員工為法官之好友或直系親屬。法官不合適審理涉及好友或家屬之案件。一般而言，法官審理涉及好友或家屬為律師事務所律師之案件並不會構成問題，只要該友人或家屬並非案件當事人即可。然而在某些情況下，法官可能不適合審理此類案件。例如，律師事務所規模很小（因此被視為缺乏公正性之風險更大），或律師事務所因結果而明顯獲利或損失重大，且將因此使法官之判決導致家屬、朋友或前同仁之金錢或聲譽收益或損失。

財務困難之法官

5.C.9 陷入財務困難之法官應特別警惕實際及可以預見的利害衝突。當法官於財務困難之情況下主持涉及債權人之事務時就會出現問題。若法官的財務困難引起爭議，且法官有可能作為當事人或證人於司法

Judges' Former Legal Practice

5.C.7 Judges should be sensitive to the existence of relationships which, to a reasonable and informed person, would give rise to reasonable apprehen-sion of lack of impartiality. In particular, judges will face this issue in relation to cases involving former clients, members of the judge's former law firm or lawyers from the government department or legal aid office in which the judge prac-ticed before appointment. Each case is unique and the apprehension of bias should be assessed in light of all the circumstances. The following general guidelines may be helpful: (i) judges who were involved in private practice should not sit on any case in which the judge or, to their knowledge, the judge's former firm was directly involved in any capacity before the judge was appointed to office; (ii) judges who practised law in government service or legal aid should not sit on cases in which they had any involvement prior to their appointment; (iii) judges should not sit on a matter in which the judge's former law firm is involved until after a 'cooling off period', often established by local law or tradition, of between two and five years; and, (iv) judges should not sit on a mat-ter in which the judge's former law firm is involved for at least as long as there continues to be a financial relationship between the judge and the law firm.

Personal Relationships

5.C.8 Frequently judges are faced with situations where the lawyer appearing before the judge is from a law firm where a close friend or member of the judge's immediate family is a part-ner, associate or employee. It would be inappropriate for a judge to hear a case involving a close friend or family mem-ber. Generally speaking, it would not be problematic for a judge to sit on a case involving a lawyer from a firm in which the close friend or family member is a member or employee, provided that the friend or family member has not been involved in the matter. However, there may be circumstances where it would be inappropriate for a judge to hear such a case. For example, where the law firm is very small (such that there is a greater risk of the perception of lack of impartiality) or where the law firm stands to gain or lose significantly by the outcome, such that the judge's decision would result in a monetary or reputa-tional gain or loss to the close family member or friend or former colleague.

Judges in Financial Difficulty

5.C.9 Judges who are in financial difficulty should be particularly vigilant for conflicts of interest, both actual and perceived. Problems arise where judges in these circumstances preside over matters involving their creditors. Serious questions arise if any aspect of the judge's financial difficulties becomes contentious and the possibility of the judge

同仁面前出庭時，就會出現嚴重問題。財務困難對法官履行工作之能力的影響會根據具體情況而有極大差異。

揭露及同意

5.C.10 於特定情況下，法官揭露潛在衝突並邀集各方提出意見可視為合適。但法官（而非當事人或其律師）應承擔確保尊重司法公正原則之責任。利害衝突之揭露及當事人之同意不必然能證明法官有理由忽略合理質疑其審理案件及公正裁決之情況。

特殊情況：正義利益

5.C.11 特殊或緊急情況可能需由法官權衡司法公平正義及和不正義之風險。

5.C.12 對大型法院僅造成輕微不便之情況可能對小型法院產生重大實際影響。法官應妥善安排自身的私人事務，以盡量減少發生此類衝突之機率。

大眾教育活動

5.D.1 法官擁有豐富之法律及法律制度知識。因此應該做出合理努力，向民眾宣傳並教導法治、法官和法院於司法之作用。首席法官於此類大眾參與方面負有特殊的責任和機會，包括代表法院進行社會群眾溝通。

5.D.2 根據《法官法》第 55 條和本倫理守則之限制，允許司法界人士參與法律改革或其他學術或教育活動，但此類參與不包括參與支持或倡導司法改革舉措之運動。

後司法職涯[9]

5.E.1 法官辭去法官職務後可選擇轉行。但這會引發一些道德倫理方面之考量。其中一項問題涉及法官離職前之狀況。於某些情況下，對法

[9] 加拿大司法委員會針對前任法官重新執業之說明（2017 年）

appearing before a judicial colleague as a party or a witness could arise. The actual day-to-day impact of the financial difficulties on the judge's ability to perform the job will obviously vary considerably depending on the circumstances.

Disclosure and Consent

5.C.10 In certain situations, it may be appropriate for a judge to make disclo-sure of a potential conflict and invite submissions from the parties. However, judges, not the parties or their counsel, bear the burden of ensuring respect for the principle of judicial impartiality. Neither disclosure of a conflict of interest nor the consent of the parties necessarily justifies judges ignoring circumstances which reasonably call into question their ability to hear a case and decide impartially.

Extraordinary Circumstances: Interests of Justice

5.C.11 Extraordinary or urgent circumstances may require judges to weigh the requirements of judicial impartiality against the risk of injustice.

5.C.12 Circumstances which might cause only minor inconvenience to a large court might nonetheless have a significant practical impact on a smaller court. Judges should organize their private affairs to minimize the potential for such conflicts.

Public Education Activities

5.D.1 Judges possess significant knowledge of the law and the legal sys-tem. For this reason, they should make reasonable efforts to become engaged in informing and educating the public regarding the rule of law and the role of judges and courts in the administration of justice. Chief Justices have particu-lar responsibilities and opportunities in relation to such public engagement, including public communications on behalf of their courts.

5.D.2 Subject to the limitations imposed by s. 55 of the *Judges Act* and these *Ethical Principles*, judicial partici-pation in law reform or other scholarly or educational activities are not discour-aged, provided that such involvement does not include participation in cam-paigns in support of, or the championing of, law reform initiatives.

Post-Judicial Careers[9]

5.E.1 Judges may choose to move on to another career after leaving the bench. This raises several ethical considerations. One issue relates to the situation of judges prior to departure from judicial office. There may well be circumstances in which planning for one's post-judicial career undermines the perception of impartiality a judge should maintain. Discussions,

[9] Canadian Judicial Council Position on Former Judges Returning to Practice (2017)

官卸任後職涯之規劃可能破壞法官應保持之公正性。此外，與律師事務所、曾作為訴訟當事人之可能雇主或法官已作出判決之案件之當事人進行討論、談判或提出應徵建議，皆可能會造成利害衝突之觀感。當法官尋求此類職涯機會時亦存在同樣之隱憂。不論應徵係由法官或可能雇主提出，於理性知情之人員看來，法官的自身利益和職責均存在衝突風險。因此，法官於任期結束前應避免進行此類接洽談話。

5.E.2 法官離職後也會引起道德倫理方面之隱憂。如果前法官於職業上相當活躍，其行為可能會影響大眾對整體司法部門之觀感。因此，前法官應注意其後司法為人處事或活動是否損害大眾對司法機構之信心。前法官可重返法律職業，但可從事之活動類型應受限制以符合公正原則。前法官可擔任仲裁員、調解員或專員。然而，前法官不應作為律師於加拿大法院或法庭出庭。律師身分比形式上作為律師的外貌更為廣泛。雖然前法官可審查或草擬法律主張和訴狀並向律師和當事人提供建議，但不應於法庭上以律師身分出庭或發言，或簽署相關法庭訴訟標的之法律文件。若法官於極短時間過後即離開司法機構，則該限制可能有例外情況之適用。

5.E.3 若委託人利用法官以前之身份促進自身利益，則法官於接受聘任以及受矚目或具政治上爭議之案件中提供法律建議時，應保持適當之謹言慎行。

5.E.4 前法官不可揭露法官間之機密討論—例如上訴法院之審議情況—或任何看似依據機密資訊或司法機密之內容。

nego-tiations or proposals of employment with a law firm, a prospective employer who is a litigant before the judge or a party in a case where the judge has delivered a judgment, may create the impression of a conflict of interest. The same concern exists where a judge is soliciting such opportunities. Whether the overture comes from the judge or the prospective employer, there is a risk that the judge's self-interest and duty would appear to conflict in the eyes of a reasonable and informed person. Accordingly, judges should refrain from engaging in such conversations before their judicial term has come to an end.

5.E.2 The situation of the judge upon leaving judicial office also introduces ethical considerations. Where former judges are professionally active, their conduct can have an impact on the public's perception of the judiciary as a whole. Accordingly, former judges should be attentive to the ways in which their post-judicial actions or activities could undermine public confidence in the judiciary. Former judges are able to return to the legal profession, but there are limits to the types of activities in which they can engage, consistent with the preservation of the principle of impartiality. A former judge could act as an arbitrator, mediator or commis-sioner. However, former judges should not appear as counsel before a court or tribunal in Canada. Appearance as counsel is broader than physical appearance. While it is appropriate for former judges to review or draft legal arguments and pleadings, to provide advice to counsel and parties, a former judge should not stand, speak or appear as counsel in court or before a tribunal or sign legal documents that are or may be the subject of proceedings before a court or tribunal. This constraint may be subject to exceptions where a judge has left the judiciary after a very short time.

5.E.3 Former judges should exercise appropriate caution in accepting retain-ers and providing legal advice in high profile or politically contentious matters where it can be anticipated that a client may make use of the judge's former status to advance the client's interests.

5.E.4 Former judges should not disclose the confidential discussions among judges – for example, the delib-erations of an appellate court – or discuss anything that gives the appearance of relying on confidential information or judicial confidences.

四 德國法官行為守則

四、德國法官行為守則

德國法官法（1961 年 9 月 8 日發布）

第三十九條　（獨立性之保障 Wahrung der Unabhängigkeit）

法官於其職務內及職務外之行為暨政治活動中，應保持人民對其獨立性之信任不受損害之態度。

第四十條　（仲裁法官及調解人 Schiedsrichter und Schlichter）

1. (1) 法官經仲裁契約當事人共同選任或經無利害關係者選任者，始得經核准兼任仲裁法官或仲裁鑑定人（Schiedsrichter oder Schiedsgutachter）。(2) 決定給與核准其兼任時，如仲裁之案件正由該法官承辦或依事務分配將由其承辦者，應拒絕核准。

2. 兼任社團間或社團與第三人間之調解人者，準用前項規定。

第四十一條　（法律上之鑑定 Rechtsgutachten）

1. 法官不得於其職務外為法律上之鑑定或受報酬而解答關於法律事件之諮詢。

2. (1) 有公務員地位之法學或政治學教授同時擔任法官職務者，得經司法行政最高機關之許可，為法律上之鑑定及為關於法律事件諮詢之解答。(2) 此項許可得為一般性或個別為之，但以該教授之法官職務不超過兼職範圍且公務利益不致受損為限。

第四十二條　（司法上之兼職 Nebentätigkeit in der Rechtspflege）

法官僅就司法上或法院行政上之工作有兼任義務。

第四十三條　（評議之秘密 Beratungsgeheimnis）法官對於評議及表決之過程，於其離職後仍須嚴守秘密。

摘錄自德意志聯邦共和國法官法院組織法
（民國 71 年 11 月，司法院）一書

Deutsches Richtergesetz (Ausfertigungsdatum: 08.09.1961)

§39 Wahrung der Unabhängigkeit

Der Richter hat sich innerhalb und auBerhalb seines Amtes, auch bei politischer Betätigung, so zu verhalten, daB das Vertrauen in seine Unabhängigkeit nicht gefährdet wird.

§40 Schiedsrichter und Schlichter

(1) Eine Nebentätigkeit als Schiedsrichter oder Schiedsgutachter darf dem Richter nur genehmigt werden, wenn die Parteien des Schiedsvertrags ihn gemeinsam beauftragen oder wenn er von einer unbeteiligten Stelle benannt ist. Die Genehmigung ist zu versagen, wenn der Richter zur Zeit der Entscheidung über die Erteilung der Genehmigung mit der Sache befaBt ist oder nach der Geschäfts-verteilung befaBt werden kann.

(2) Auf eine Nebentätigkeit als Schlichter in Streitigkeiten zwischen Vereinigungen oder zwischen diesen und Dritten ist Absatz 1 entsprechend anzuwenden.

§41 Rechtsgutachten

(1) Ein Richter darf weder auBerdienstlich Rechtsgutachten erstatten, noch entgeltlich Rechtsauskünfte erteilen.

(2) Ein beamteter Professor der Rechte oder der politischen Wissenschaften, der gleichzeitig Richter ist, darf mit Genehmigung der obersten Dienstbehorde der Gerichtsverwaltung Rechtsgutachten erstatten und Rechtsauskiinfte erteilen. Die Genehmigung darf allgemein oder für den Einzelfall nur erteilt werden, wenn die richterliche Tätigkeit des Professors nicht über den Umfang einer Nebentätigkeit hinausgeht und nicht zu besorgen ist, daB dienstliche Interessen beeintrachtigt werden.

§42 Nebentätigkeit in der Rechtspflege

Ein Richter ist zu einer Nebentätigkeit (Nebenamt, Nebenbesc-häftigung) nur in der Rechtspflege und in der Gerichtsverwaltung verpflichtet.

§43 Beratungsgeheimnis

Der Richter hat iiber den Hergang bei der Beratung und Abst immung auch nach Beendigung seines Dienstverhaltnisses zu schweigen.

五 日本法官行為守則

五、日本法官行為守則

日本裁判官彈劾法第二條（依彈劾而罷免之事由）

依彈劾而罷免法官，依左列規定。

1. 顯然違反職務上之義務，或廢弛職務太甚者。

2. 其他不問職務之內外，有顯失法官威信之不當行為者。

裁判官彈劾法（令和 5 年 10 月 20 日 施行）

第二條（彈劾による罷免の事由）彈劾により裁判官を罷免するのは、左の場合とする。

1. 職務上の義務に著しく違反し、又は職務を甚だしく怠つたとき。

2. その他職務の内外を問わず、裁判官としての威信を著しく失らべき非行があつたとき。

而依日本學者見解，法官的「職務上之義務」，嚴格來說，乃指法官於具體的職務行使時應遵守的個別的義務。至於法官的義務，日本學者通說認有下列：

(1) 一般性的義務

甲 . 身為公務員的法官，有尊重並擁護日本國憲法之義務。

乙 . 法官身為全體國民之公僕，應時常以公共利益為指標而行動，不得為私的利益利用其地位。

丙 . 法官於行使職務時，應盡全力並專心為之。

丁 . 法官應保守其職務上之秘密。

(2) 審判事務行使的義務

甲 . 日本憲法第 76 條第 3 項規定：「全體法官，應從其良心並獨立行使其職權，僅受本憲法及法律之拘束」。

乙 . 法官於評議時，應陳述其意見。

丙 . 法官就評議之經過及各法官之意見及其多少之數，原則上應保守秘密。

(3) 司法行政事務行使上的義務，乃指法官於執行司法行政事務時，負有服從司法行政上監督者所發命令之義務。

故在彈劾時，僅以法官表現於外，從而於客觀上可得認識的身體的動靜為考量，至於法官的思想、信念等內心的事件本身，並不予考量。因此，法官有違反「職務上之義務」之作為，或有廢弛「職務」之不作為時，大約可認為存在彈劾基礎之事實。但此種事實並不必然立即構成彈劾事由，惟有被客觀地評價為「顯然違反」職務上之義務，或「廢弛」職務「太甚」之情形下，才構成「彈劾事由」。而此種「顯然」、「太甚」等評價的實質內容，並非單單意味著不當行為程度之輕重，而應解為「對國民信託之違背」。然而，法官的何種不當行為是否皆該當於「對國民信託之違背」之評價，應考慮憲法的諸原則（特別是關於司法權的諸原則或關於基本人權的規定等等）、法院或法官制度的理念及其現狀、國民的價值觀或意識的動向、政治經濟社會的現勢等等有關「司法」的各種要件。又彈劾法所謂「不當行為」，學者指「一般而言雖有不正的行為或不好的行為等意思，但作為法律用語，則係指不適合該人社會的、法律的地位，而於社會通念上值得被非難的行為或不行為，並不以違法行為為必要。於具體的場合，某特定行為是否該當於非行，須依該人的地位、導致該行為之過程、該行為對社會造成的影響等諸般情事予以考慮，並應基於健全的常識為慎重地判斷，不得抽象地予以概括」。審判，是以對等的私人間的社會關係上的紛爭的解決（民事審判）或擁有公權力的國家（或公共團體）與人民間公私益衝突的調整（刑事及行政審判）為目的的國家機能。確保一般國民對審判的信賴，對於運作審判制度的國家而言極為重要。因此，被委任行使審判權的法官，並非單有事實認定或法律判斷等高度的素養即足，在人格上，也應兼備足以凝聚一般國民的尊敬或信賴的品格。擁有如此品格的法

官的裁判，才能贏得一般國民對審判的心悅誠服，不辱法官被期望的應有的品格這種倫理規範，本應存在於法官這樣的地位之內。而若有表現出違反這種內在規範的外部行為，就可認為是「法官的不當行為」。這種事理可共通於凡是身為國民全體公僕的所有公務員，例如日本國家公務員法第99條，規定：「公職人員不得為有傷害其官職的信用，或造成官職全體之不名譽之行為」，官吏服務紀律第3條，也規定：「〇1官吏不問職務之內外，應重廉恥，不得為貪污的行為，〇2官吏不問職務之內外，不得濫用權威，務應謹慎懇切」，皆是將內在於右述公務員地位之倫理規範表現於實體法上的規定。然而法官在其職務的性質上，較一般公務員被要求更高的品格，故縱使就一般公務員而言還稱不上是「非行」的輕微事由，就法官而言卻有可能會被評價為「不當行為」，此點應予注意。實例上對訴訟關係人有惡質且執拗的粗暴、侮辱的言語，與當事人一同飲宴等，均可被評定為顯著的不當行為。

摘譯自日本學者上村千一郎著裁判官彈劾法精義
（1982年1月25日新訂版，東京敬文堂）一書

六 韓國司法人員倫理規範

六、韓國司法人員倫理規範

（一）法官倫理規範（2006 年 5 月 25 日生效）

第　一　條　（保護司法獨立）

法官應捍衛司法獨立，不受任何外來影響。

第　二　條　（維護尊嚴）

法官應重視名譽並維護尊嚴

第　三　條　（公正與正直）

法官應公正並保持正直，不得從事使公正或正直被質疑之行為。法官執行職務時，不得因血統、地域或教育背景、性別、宗教、社會經濟地位，表現偏見或歧視。

第　四　條　（執行司法職務）

法官應忠誠執行受分派之司法職務，並隨時注意保持和充實執行職務所需之法律專業能力。

法官應妥速並有效率地指揮程序，仔細並謹慎聽審以保障公平審判。

法官應對當事人、律師或其他法官執行職務相關之人溫和有禮。

法官除執行職務有必要外，應避免與當事人、法官執行職務相關之人聯繫或會面。

법관윤리강령 (시행 2006. 5. 25)

제1조(사법권 독립의 수호)

법관은 모든 외부의 영향으로부터 사법권의 독립을 지켜 나간다.

제2조(품위 유지) 법관은 명예를 존중하고 품위를 유지한다.

제3조(공정성 및 청렴성)

① 법관은 공평무사하고 청렴하여야 하며, 공정성과 청렴성을 의심받을 행동을 하지 아니한다.

② 법관은 혈연.지연.학연.성별.종교.경제적 능력 또는 사회적 지위 등을 이유로 편견을 가지거나 차별을 하지 아니한다.

제4조(직무의 성실한 수행)

① 법관은 맡은 바 직무를 성실하게 수행하며, 직무수행 능력을 향상시키기 위하여 꾸준히 노력한다.

② 법관은 신속하고 능률적으로 재판을 진행하며, 신중하고 충실하게 심리하여 재판의 적정성이 보장되도록 한다.

③ 법관은 당사자와 대리인 등 소송 관계인을 친절하고 정중하게 대한다.

④ 법관은 재판업무상 필요한 경우를 제외하고는 당사자와 대리인 등 소송 관게인을 법정 이외의 장소에서 면담하거나 접촉하지 아니한다.

法官除為教育、學術研究和端正媒體報導外，應避免對進行中之訴訟公開發表評論或意見。

第　五　條　（法官職務外活動）

只要不與司法職責和維護尊嚴之義務相衝突，法官得參與職務外活動，如參與學術團體、宗教會員、或文化組織。

法官不得涉入他人之司法紛爭，不得為影響法官同仁案件之行為。

於程序會被影響或法官公正可能受質疑之情形，法官不得向司法相關人士，包括律師，提供法律意見或資訊。

第　六　條　（財務活動之限制）

於法官公正可能受質疑、或司法職責會被擾亂之情形，法官不得參與財務交易，如金錢借貸；亦不得接受經濟利益，包括捐款在內。

第　七　條　（政治中立）

法官執行職務時，應保持政治中立。法官不得擔任政治活動組織之會員或委員。應避免損害法官政治中立的活動，包括政治選舉活動。

⑤ 법관은 교육이나 학술 또는 정확한 보도를 위한 경우를 제외하고는 구체적 사건에 관하여 공개적으로 논평하거나 의견을 표명하지 아니한다.

제5조(법관의 직무 외 활동)

① 법관은 품위 유지와 직무 수행에 지장이 없는 경우에 한하여, 학술 활동에 참여하거나 종교.문화단체에 가입하는 등 직무 외 활동을 할 수 있다.

② 법관은 타인의 법적 분쟁에 관여하지 아니하며, 다른 법관의 재판에 영향을 미치는 행동을 하지 아니한다.

③ 법관은 재판에 영향을 미치거나 공정성을 의심받을 염려가 있는 경우에는 법률적 조언을 하거나 변호사 등 법조인에 대한 정보를 제공하지 아니한다.

제6조(경제적 행위의 제한)

법관은 재판의 공정성에 관한 의심을 초래하거나 직무수행에 지장을 줄 염려가 있는 경우에는, 금전대차 등 경제적 거래행위를 하지 아니하며 증여 기타 경제적 이익을 받지 아니한다.

제7조(정치적 중립)

① 법관은 직무를 수행함에 있어 정치적 중립을 지킨다.

② 법관은 정치활동을 목적으로 하는 단체의 임원이나 구성원이 되지 아니하며, 선거운동 등 정치적 중립성을 해치는 활동을 하지 아니한다.

（二）檢察官倫理規範（2021 年 1 月 1 日生效）

第　一　條　　（期望）

檢察官應確立法治、保障人權，並為實現正義之公共利益代表人。

第　二　條　　（服務人民）

檢察官應忠誠並謙遜服務人民，謹記檢察職權來自人民授權。

第　三　條　　（政治中立與公正）

檢察官執行職務應保持政治中立，遠離政治選舉活動。

檢察官不得歧視犯罪嫌疑人、被害人、或其他案件關係人。並不得因任何壓力、誘惑和利益受影響；檢察官應依據法律，本於良心正直，公正地執行職務。

第　四　條　　（尊嚴與名譽）

檢察官應保有高尚尊嚴與道德，並重視公共生活和私人生活之名譽。

검사윤리강령 (시행 2021. 1. 1.)

제1조(사명)

검사는 공익의 대표자로서 국법질서를 확립하고 국민의 인권을 보호하며 정의를 실현함을 그 사명으로 한다.

제2조(국민에 대한 봉사)

검사는 직무상의 권한이 국민으로부터 위임된 것임을 명심하여 성실하고 겸손한 자세로 국민에게 봉사한다.

제3조(정치적 중립과 공정)

① 검사는 정치운동에 관여하지 아니하며, 직무수행을 할 때 정치적 중립을 지킨다.

② 검사는 피의자나 피해자, 기타 사건 관계인에 대하여 정당한 이유 없이 차별 대우를 하지 아니하며 어떠한 압력이나 유혹, 정실에도 영향을 받지 아니하고 오로지 법과 양심에 따라 엄정하고 공평하게 직무를 수행한다.

제4조(청렴과 명예)

검사는 공.사생활에서 높은 도덕성과 청렴성을 유지하고, 명예롭고 품위 있게 행동한다.

第　五　條　　（自我充實）

檢察官應隨時允實能力，以通達社會現象和培養社會要求之洞察力與智慧。

第　六　條　　（重視人權和正當法律程序）

檢察官應重視犯罪嫌疑人、被告和其他案件關係人之人權，並注意憲法和法律之程序。

第　七　條　　（適當執行檢察事務）

檢察官應依法律程序蒐集證據，適當適用法律，不得濫用檢察職權。

第　八　條　　（妥速執行檢察事務）

檢察官應忠誠謹勉執行職務，妥速實現國家刑罰權。

第　九　條　　（自行迴避）

檢察官為犯罪嫌疑人、被害人或其他案件關係人（若涉及案件之人為法人的情形，指總裁，或控制股東）、民法第 777 條之親屬或律師、或就訴訟結果有個人利益，應自行迴避，不得參與程序。

제5조(자기계발)

검사는 변화하는 사회현상을 직시하고 높은 식견과 시대가 요구하는 새로운 지식을 쌓아 직무를 수행함에 부족함이 없도록 하기 위하여 끊임없이 자기계발에 노력한다.

제6조(인권보장과 적법절차의 준수)

검사는 피의자.피고인, 피해자 기타 사건 관계인의 인권을 보장하고, 헌법과 법령에 규정된 절차를 준수한다.

제7조(검찰권의 적정한 행사)

검사는 적법한 절차에 의하여 증거를 수집하고 법령의 정당한 적용을 통하여 공소권이 남용되지 않도록 한다.

제8조(검찰권의 신속한 행사)

검사는 직무를 성실하고 신속하게 수행함으로써 국가형벌권의 실현이 부당하게 지연되지 않도록 한다.

제9조(사건의 회피)

① 검사는 취급 중인 사건의 피의자, 피해자 기타 사건 관계인(당사자가 법인인 경우 대표이사 또는 지배주주)과 민법 제777조의 친족관계에 있거나 그들의 변호인으로 활동한 전력이 있을 때 또는 당해 사건과 자신의 이해가 관련되었을 때에는 그 사건을 회피한다.

檢察官有前項規定以外之特殊關係，可能影響公正性之情形，得自行迴避。

第　十　條　（對案件關係人之態度）

檢察官調查時應遵守人權保障規則，仔細聆聽案件關係人，包括犯罪嫌疑人和被害人，並應盡力中立公正地對待關係人。

第 十一 條　（對律師之態度）

檢察官，於肯認並保障訴訟代理人的防禦權，不得無正當理由而私自與案件相關者之訴訟代理人或其員工溝通。

第 十二 條　（對前輩之態度）

檢察官應尊重前輩、恪守禮節、態度有禮，並遵守前輩於職行職務有關之命令與監督：對於前輩命令與監督的合法性有異議之情形，檢察官得循適當程序提起異議。

第 十三 條　（管理司法警察之態度）

① 檢察官就偵查相關事宜，應與司法警察官合作。

② 檢察官就特別司法警察之相關偵查作為，應嚴格且合理之指揮與監督。

② 검사는 취급 중인 사건의 사건 관계인과 제1항 이외의 친분 관계 기타 특별한 관계가 있는 경우에도 수사의 공정성을 의심받을 우려가 있다고 판단했을 때에는 그 사건을 회피할 수 있다.

제10조(사건 관계인에 대한 자세)

검사는 인권보호수사준칙을 준수하고, 피의자, 피해자 등 사건 관계인의 주장을 진지하게 경청하며 객관적이고 중립적인 입장에서 사건 관계인을 친절하게 대하도록 노력한다.

제11조(변호인에 대한 자세)

검사는 변호인의 변호권행사를 보장하되 취급 중인 사건의 변호인 또는 그 직원과 정당한 이유 없이 사적으로 접촉하지 아니한다.

제12조(상급자에 대한 자세)

검사는 상급자에게 예의를 갖추어 정중하게 대하며, 직무에 관한 상급자의 지휘.감독에 따라야 한다. 다만, 구체적 사건과 관련된 상급자의 지휘. 감독의 적법성이나 정당성에 이견이 있을 때에는 절차에 따라서 이의를 제기할 수 있다.

제13조(사법경찰관리에 대한 자세)

① 검사는 수사와 관련하여 사법경찰관과 협력해야 한다 .

② 검사는 특별사법경찰관리의 수사와 관련하여 엄정하고 합리적으로 특별사법경찰관리를 지휘하고 감독한다 .

第 十四 條　（檢察職務外之人際關係）

檢察官不得接觸可能對檢察官執行職務之公正有影響之人，檢察官應對自己行為謹慎為之。

第 十五 條　（與當事人聯繫之限制）

檢察官無正當理由不得與處理中案件之關係人，如犯罪嫌疑人、被害人，或其他關係人（下稱「關係人等」）私下聯繫。

第 十六 條　（禁止濫用職權）

檢察官應嚴分公務與私人事務，並不得濫用公務或職權圖利自己或他人。

檢察官不得利用於職務上所知之事實和資訊。

第 十七 條　（禁止參與財務活動）

檢察官不得參與商業活動謀取金錢利益；未得法務部長同意，不得從事其他有薪之職務。除非法律允許，檢察官亦不得兼任其他職務。

第 十八 條　（禁止關說與行賄）

檢察官不得對其他檢察官或機關所主管之案件為關說或行賄。

제14조(외부 인사와의 교류)

검사는 직무 수행의 공정성을 의심받을 우려가 있는 자와 교류하지 아니하며 그 처신에 유의한다.

제15조(사건 관계인 등과의 사적 접촉 제한)

검사는 자신이 취급하는 사건의 피의자, 피해자 등 사건 관계인 기타 직무와 이해관계가 있는 자(이하 '사건 관계인 등'이라 한다)와 정당한 이유 없이 사적으로 접촉하지 아니한다.

제16조(직무 등의 부당 이용 금지)

① 검사는 항상 공.사를 분명히 하고 자기 또는 타인의 부당한 이익을 위하여 그 직무나 직위를 이용하지 아니한다.

② 검사는 직무와 관련하여 알게 된 사실이나 취득한 자료를 부당한 목적으로 이용하지 아니한다.

제17조(영리행위 등 금지)

검사는 금전상의 이익을 목적으로 하는 업무에 종사하거나 법무부장관의 허가 없이 보수 있는 직무에 종사하는 일을 하지 못하며, 법령에 의하여 허용된 경우를 제외하고는 다른 직무를 겸하지 아니한다.

제18조(알선.청탁 등 금지)

① 검사는 다른 검사나 다른 기관에서 취급하는 사건 또는 사무에 관하여

檢察官不得參與他人的法律紛爭謀取不正利益。

第 十九 條　（禁止收受金錢）

檢察官不得無理由接受第 14 條規定會擾亂職務之人，或第 15 條規定之關係人所給予之金錢、金錢利益、招待、或經濟利益。

第 二十 條　（禁止介紹或推薦律師）

檢察官不得對自己主管案件，或其他同區辦公室之檢察官同仁主管案件之犯罪嫌疑人、被訴人、或其他關係人介紹或推薦律師。

第二十一條　（公開發表言論或投稿之規範）

檢察官欲以職稱投稿或公開發表關於其職務或調查之意見或內容，應取得所屬檢察署首長之許可。

第二十二條　（保守公務秘密）

檢察官就調查事項、相關人士個人資料、職務上得知之事實，應保守秘密。此外，檢察官使用電話、傳真、電子郵件或其他通訊裝置，應注意不使秘密外洩。

공정한 직무를 저해할 수 있는 알선.청탁이나 부당한 영향력을 미치는 행동을 하지 아니한다.

② 검사는 부당한 이익을 목적으로 타인의 법적 분쟁에 관여하지 아니한다.

제19조(금품수수금지)

검사는 제14조에서 규정한 직무 수행의 공정성을 의심받을 우려가 있는 자나 제15조에서 규정한 사건관계인 등으로부터 정당한 이유 없이 금품, 금전상 이익, 향응이나 기타 경제적 편의를 제공받지 아니한다.

제20조(특정 변호사 선임 알선 금지)

검사는 직무상 관련이 있는 사건이나 자신이 근무하는 기관에서 취급 중인 사건에 관하여, 피의자, 피고인 기타 사건 관계인에게 특정 변호사의 선임을 알선하거나 권유하지 아니한다.

제21조(외부 기고 및 발표에 관한 원칙)

검사는 수사 등 직무와 관련된 사항에 관하여 검사의 직함을 사용하여 대외적으로 그 내용이나 의견을 기고.발표하는 등 공표할 때에는 소속 기관장의 승인을 받는다.

제22조(직무상 비밀유지)

검사는 수사사항, 사건 관계인의 개인 정보 기타 직무상 파악한 사실에 대하여 비밀을 유지하여야 하며, 전화, 팩스 또는 전자우편 그리고 기타

第二十三條　（指導與監督公務人員）

檢察官應尊重公務人員、學習司法官、其他與檢察官職務相關之公務員。檢察官應指導與監督公務人員不得從事不法或不正行為，並不得揭露或濫用公務秘密。

통신수단을 이용할 때에는 직무상 비밀이 누설되지 않도록 유의한다.

제23조(검사실 직원 등의 지도.감독)

검사는 그 사무실의 검찰공무원, 사법연수생, 기타 자신의 직무에 관여된 공무원을 인격적으로 존중하며, 그들이 직무에 관하여 위법 또는 부당한 행위를 하거나 업무상 지득한 비밀을 누설하거나 부당하게 이용하지 못하도록 지도.감독한다.

七 立陶宛共和國檢察官行為準則

七、立陶宛共和國檢察官行為準則

經立陶宛共和國檢察總長於西元 2004 年 4 月 30 日以 I-68 號政令核可

I. 總則

1. 立陶宛檢察官行為準則（下稱「本準則」）係為制訂檢察官於任職檢察機關時所應遵守之行為準則與專業倫理（活動）規範。
2. 為規範檢察官間於執行職務時與公餘之關係，以及檢察官與法律程序參與者、立陶宛公民與他人間之關係，特制訂本準則。
3. 任何人於決定成為一名檢察官時，均應獨立且有意識地立志為人民及司法服務，並認知其有遵守本準則所制訂之行為準則及倫理規範之義務。
4. 本準則係依據立陶宛共和國憲法所建立之制度而制訂，並依據檢察機關法、檢察實務指導準則、聯合國大會所批准之文件，以及由國際檢察官協會批准認可之「檢察官之專業責任與主要義務及權利設計」文件，且採用 REC（2000）19 歐盟理事會之部長委員會所起草「檢察機關在刑事司法系統中的角色」，亦採用 REC 1604（2003）議會所議決「檢察機關在民主法治社會的角色」。

Translation from Lithuanian

APPROVED by the Order No I-68

of April month 30 day, 2004

by the Prosecutor General of the Republic of

Lithuania

THE CODE OF CONDUCT OF THE PROSECUTORS OF LITHUANIA

I. GENERAL PROVISIONS

1. The Code of Conduct of the Prosecutors of Lithuania (hereafter the Code) shall set the rules of conduct and the principles of professional ethics (activities) to be followed by the Prosecutors when holding office in the Prosecutor's Office.
2. The Code is aimed at the regulation of relations among the Prosecutors during the office hours and after them as well as the regulation of relations with the participants of the legal process, the citizens of Lithuania, and other people.
3. Having decided to work as a Prosecutor, the person shall resolve - independently and consciously - to serve people and justice and shall acknowledge the Rules of Conduct as well as the obligatory Principles of Ethics.
4. The present Code was prepared under the Regulations provided by the Constitution of the Republic of Lithuania, the Law On The Prosecutor's Office, 'Guidelines of The Prosecutorial Practice', a document approved by the Congress of the United Nations, and `Standards of Professional Responsibility and The Layout of Major Obligations and Rights of The Prosecutors', a document approved by the International Association of Prosecutors, also further to the recommendation REC (2000)19 "Role of Prosecution Service in the System of Criminal Justice" prepared by the Minister Committee of the European Council, and recommendations REC 1604(2003) "Role of Prosecution Service in the Democratic Society of the Rule of Law" of the Parliamentary Assembly.

II. 檢察官之倫理規範與要求

5. 身為國家官員，檢察官必須聲譽卓著且公正執行司法，如同法院般的保衛個人、社會和政府的權利及合法利益，並應遵守以下規則及職業倫理，亦即：公平、廉正、中立、謹慎、獨立、守密、團隊精神、尊法、職責。

5.1. 公平原則

檢察官在此原則下應遵守下列義務：

5.1.1. 始終以明智及誠信的方式行事；為判斷及決定時須深思熟慮且合於法律規定；如有必要，應表明其所為判斷及決定之動機及論據；

5.1.2. 在依據證據及法律定罪之前，應遵守無罪推定原則；

5.1.3. 所為應無偏見，且應以法律為依歸，為判斷及決定時必須兼顧嫌疑人、被告及被害人之法律上權益。

5.2. 廉正原則

檢察官在此原則下應遵守下列義務：

5.2.1. 不得事先預作承諾；行為應正直、正派；以個人為模範，建立無懈可擊的檢察官聲譽；對於自己的錯誤能馬上承認並更正之；

5.2.2. 避免對同事流言蜚語及做出未經證實的評論；內部溝通應秉持禮貌與寬容之態度；

5.2.3. 不得縱容部屬；避免對部屬傲慢與輕蔑；周延評判執法官員所為違反法律及專業倫理規範之行為；機智得體地對反駁意見作出回應。

II. ETHICAL PRINCIPLES AND REQUIREMENTS DUE TO PROSECUTORS

5. As a state official, the Prosecutor shall hold an impeccable reputation and, contributing to the execution of justice, originally performed by the court, defending the rights and lawful interests of a person, society and the government, shall comply with the following Rules and Principles of Professional Ethics: Justice, Integrity, Impartiality, Discretion, Independence, Confidentiality, Solidarity, Respect for the Law, Responsibility.

5.1. The Principle of JUSTICE.

Under this Principle, the Prosecutor shall be obliged to:

5.1.1. always act in a wise and truthful way; pass well-considered and lawful decisions; if necessary, declare the motives and arguments of the decisions to be passed;

5.1.2. follow that the person who is suspected of a misdemeanour or a criminal act is considered not guilty as long as he or she is found guilty under the law;

5.1.3. without prejudice and following exclusively the rules of legal acts, pass decisions that influence the rights and lawful interests of suspects, the accused, and the aggrieved.

5.2. The Principle of INTEGRITY.

Under this Principle, the Prosecutor shall be obliged to:

5.2.1. give no promise of any decisions in advance; behave in an honest and decent way; by personal example, create an impeccable reputation of the Prosecutor; immediately acknowledge and correct the mistakes made;

5.2.2. avoid gossip and unsubstantiated criticism by colleagues; provide the inter-communication with politeness and tolerance;

5.2.3. allow no indulgences for subordinates; avoid arrogance and disrespect towards them; attentively evaluate the breaches of the law and professional ethics committed by the law-enforcement officials; tactfully react to contradictions.

5.3. 中立原則

檢察官在此原則下應遵守下列義務：

5.3.1. 檢察官對待所有人民應一律平等，不得因國籍、出身背景、社會地位、性別、種族、語言、年紀、宗教、政治傾向、性傾向或其他立場態度而有差別待遇；

5.3.2. 檢察官應以拘謹及客觀的方式對待訴訟程序中的參與者，應避免親暱或憎惡之態度；

5.3.3. 當執行職務或所為決定牽涉檢察官本身、家族成員或其他相關者之利益時，檢察官即應迴避。

5.4. 謹慎原則

檢察官在此原則下應遵守下列義務：

5.4.1. 不得濫用其法定職務或為獲取不當利益而以私人行為或活動發表意見；

5.4.2. 不得利用其法定職務影響其他人做出可能導致私益或公益衝突之決定；

5.4.3. 不得出於公務或非公務之目的，違法使用國家及其機構、機關、人民或法人之財產。

5.5. 獨立原則

檢察官在此原則下應遵守下列義務：

5.5.1. 落實憲法與檢察官職務規定，主要藉由獨立性及豁免身分，在立陶宛共和國獨立執行職務；

5.5.2. 重視政治中立的地位，不得屬於任何政治組織，亦不得與任何政治組織或其成員有職務活動，並不得公開表達政治觀點；

5.5.3. 應違抗來自從政者、政府官員、執法官員所為形式及內容牴觸法律、本準則之規範及其他法律規定之命令或要求。

5.3. The Principle of IMPARTIALITY.

Under this Principle, the Prosecutor shall be obliged to:

5.3.1. treat all people equally regardless their nationality, social roots and status, sex, racial and ethnical origin, language, age, religion, political views, sexual or other attitudes;

5.3.2. treat the participants of the process in a reserved and objective way; avoid familiarity and animosity;

5.3.3. stand down when it concerns the execution of the duty or the decisionmaking due to the interests of himself or herself, members of the family, or other related people.

5.4. The Principle of DISCRETION.

Under this Principle, the Prosecutor shall be obliged to:

5.4.1. by personal conduct and activities allow no occurance of the opinion that he or she abuses their official position or has corrupt interests;

5.4.2. use not his or her official position to influence the decisions of other people when those decisions can cause the conflict of private and public interests;

5.4.3. use not, by breaching the statutory rules, the property of the state, its institutions and establishments, its residents or legal entities for the official and nonofficial purposes;

5.5. The Principle of INDEPENDENCE.

Under this Principle, the Prosecutor shall be obliged to:

5.5.1. implement the Provision under the Constitution and the Law On The Prosecutor's Office, mainly to be independent and, by holding the status of immunity, to act independently on the entire territory of the Republic of Lithuania;

5.5.2. regard the principal of political neutrality - belong to no political organisation and relate no office activities to it or to its members, express no personal political views in public;

5.5.3. disobey orders and requests by state politicians, state officials and lawenforcement officials if their form and content contradict the laws, norms of this Code, other acts of law.

5.6. 守密原則

檢察官在此原則下應遵守下列義務：

5.6.1. 不得對檢察機關所保管持有之應保密或不公開之資料發表意見；在其他檢察官對其職務上持有的資訊表達意見前，應自我約束不予公開或散布該等資訊；

5.6.2. 不得對公眾或有利害關係之人發布任何進行中、偵查中或已起訴案件之資訊，蓋此等舉措無任何法律或道德之基礎；

5.6.3. 不得提供任何其執行法定職務期間所獲得之資料，即使上開資料涉及他人不法利益的賠償。

5.7. 團隊精神原則

檢察官在此原則下應遵守下列義務：

5.7.1. 應與同事交換執行職務所應知之訊息；應發展專業技能和知識，並與經驗不足之檢察官分享之。

5.7.2. 應避免對其他檢察官之工作做出未經證實且公開之評論；應保護同僚免於遭受詆毀、不當之批評或職業歧視；

5.7.3. 不得容忍檢察官同僚違反檢察機關法及本準則之規定；應及時提醒即將違法之同事；如有必要，應將之通知資深檢察官。

5.8. 尊法原則

檢察官在此原則下應遵守下列義務：

5.8.1. 在民間及專業上對國際法及內國法均應同等尊重；應認知並促進法律優先適用原則；

5.8.2. 應參與造法過程、犯罪預防活動，以及法治國家原則的建立，藉此保障人權，使人民受法律保障之自由與尊嚴免於受到侵害；

5.8.3. 撰寫司法程序文件、其他文章以及發表公開演講時，應依循專業倫理規範、法律行為規範以及國家官方語言之要求。

5.6. The Principle of CONFIDENTIALITY.

Under this Principle, the Prosecutor shall be obliged to:

5.6.1. make no comments on the confidential information or off-the-record data held by the Prosecutor's Office; restrain himself or herself from announcing or distributing information held by other Prosecutors without their prior advice on that;

5.6.2. having no legal or moral basis, announce to the public or interested people no data of the proceedings, the pre-trial investigation or the prosecutorial examination;

5.6.3. provide no data received during the execution of official duties if this concerns the satisfaction of illegal interests of other people.

5.7. The Principle of SOLIDARITY.

Under this Principle, the Prosecutor shall be obliged to:

5.7.1. exchange information with the colleagues that should be known to them for proper execution of their duties; develop professional skills and knowledge and share them with the Prosecutors who have less professional experience;

5.7.2. restrain himself or herself from unsubstantiated and public comments on the work of other Prosecutors; protect the colleagues from slander, inadequate criticism or professional discrimination;

5.7.3. tolerate no breaches of the Law On The Prosecutor's Office or The Code of Conduct committed by the Prosecutors; warn the colleague who is to commit a breach on time; if necessary, advise a senior Prosecutor on that.

5.8. The Principle of RESPECT FOR THE LAW.

Under this Principle, the Prosecutor shall be obliged to:

5.8.1. show equal civil and professional respect for international and national statutory rules; acknowledge and promote the precedence of the application of the law;

5.8.2. participate in the lawmaking process, activities of crime prevention and the establishment of the principles of the law-abiding country, thus guaranteeing the protection of human rights, the immunity of their liberties and dignity under the law;

5.8.3. while filling in the documents of the process and other papers as well as producing public speeches, follow the Ethical Principles, standard legal acts and the Requirements under the Law of The State Language.

5.9. 職責原則

檢察官在此原則下應遵守下列義務：

5.9.1. 在執行公務及公餘時間，應避免言語或個人舉止有藐視或侮辱檢察官職稱及檢察官署之虞；

5.9.2. 不得接受以檢察官職務或以違反法律要求為對價之招待、縱放、餽贈或其他利益；

5.9.3. 永不得利用或操縱法律所賦予之行動自主性或同僚之信任；永不得逃避犯錯或違法決定之責任。

III. 與檢察官倫理相互衝突之行為

6. 為促進實現正義及懲罰措施之效率，檢察官應忠實執行法律之程序、檢察總長之命令以及本準則之規範；檢察官應與國際執法機構以及審前專家共同合作，以協助確保正義實現與刑罰確實執行。

7. 檢察官：

7.1. 身為主導或發動調查犯罪行為之人，永不得容任在證據蒐集以及提出過程之中，無視於行為準則及專業倫理規範，亦不得允許在缺乏相當法律基礎的情況下公布對犯罪嫌疑之指控；

7.2. 應避免放肆的言行或類似情況，而對於檢察官及其屬員所為審前調查及司法程序判斷之公正性造成負面之影響；

7.3. 為保護合法權益，應熟諳案件的各種情況條件及所應適用法律；為代表國家以及人民，應積極參與刑事案件及其他違法行為之調查及訴訟程序。

7.4. 應盡可能支持法院的權威及訴訟程序的尊嚴；應避免可能冒犯法院及訴訟程序參與者之言論或暗示。

7.5. 不得顯露與檢察機關或法院承審人員之私人情誼；對於上級檢察官之實體決定或法院尚未執行之決定，不得忽視，亦不得正式評論；若不同意上開決定，應依據已制定之規範提起上訴；

5.9. The Principle of RESPONSIBILITY.

Under this Principle, the Prosecutor shall be obliged to:

5.9.1. during the office hours and after them, by words or personal conduct, avoid scorning or humiliating the name of the Prosecutor as a state official and that of the Prosecutor's Office as a state institution;

5.9.2. accept no services, indulgencies, presents or other amiabilities if this is done to take advantage of the position of the Prosecutor or by breaching the requirements under the Code and other legal acts;

5.9.3. take no advantage and never manipulate either the freedom of action provided by the law or the trust of the colleagues; never avoid responsibility for the work done in a wrong way or the decision adopted illegally.

III. DEEDS INCOMPATIBLE WITH PROSECUTORIAL ETHICS

6. Aiming at efficiency of justice and punitive measures, the Prosecutor shall honestly execute the laws of the process, the Orders by the Prosecutor General, the Regulations of this Code; he shall collaborate with international law- enforcement institutions and pre-trial specialists, shall help to ensure justice and execution of the inevitability of the punishment.

7. The Prosecutor:

7.1. being the Head of the investigation into the criminal act or the initiator of it, shall never tolerate cases of ignorance of the Rules of Conduct and Principles of Professional Ethics during the collection and presentation of evidence, nor shall allow the declaration of suspicions without a considerable legal basis;

7.2. shall avoid familiarity and such situations which could influence - in a negative way - the impartiality of both him or her and the Prosecutors under his or her rule as well as the officials of the pre-trial investigation; also the justice of their procedural decisions;

7.3. by protecting the lawful interests, shall always be well-acquainted with conditions and the laws of the case; by representing the country and the citizens, shall actively participate in the investigation and the proceedings of the criminal acts and other breaches of law;

7.4. in every possible way shall support the authority of the courts and the dignity of and the process of the courts; shall avoid phrases and hints that could offend the Court or the participants of the process;

7.5. shall demonstrate no personal relations with the staff of the Prosecutor's Office nor the Court; shall not ignore nor officially comment on the substantiated decisions of the superior Prosecutor or the uninforced decisions of the Court; when disagreeing with them, shall appeal according to the established order;

8. 應本於耐心、客觀及機智調查請求及請願；應考量情勢、教育、年紀、物質上或精神上等因素，以受決定人可理解之方法解釋說明其決定。
9. 檢察官應避免任何可能損及其本人或檢察機關聲譽的交往關係。若近親或家庭成員恰為所承辦案件之參與者，即有公共利益與私人利益衝突之虞，檢察官應將上開情事呈報其上級檢察官。
10. 違反檢察官宣示條款之行為，縱因其公務職權之屬性而不構成行政或刑事責任，該等行為仍應視為侮辱檢察官名聲和違反本準則之適例。
11. 於辦公期間故意為不實陳述或類此之欺騙行為、使用無禮的文字或舉止、衣著凌亂或起訴不當，皆為違反本準則規定及立法精神之行為。
12. 於辦公期間沉迷於酒精、藥物、致精神異常或有毒物質者，偽造病假單或基於其他目的所製作之失業文件者，以及擅自將工作時間、設備或公務財產用於其他目的者，縱因其公務職權之屬性而不構成行政或刑事責任，仍應視為違反本準則之行為。
13. 若無使用槍枝的意圖，僅意圖恐嚇家庭成員或其他社會大眾而在公眾面前展示槍械，縱不構成刑事犯罪，仍應視為違反本準則規定及立法精神之行為。
14. 疏於依法申報財產或金錢來源，縱不構成行政或刑事責任，仍應視為違反本準則規定及立法精神之行為。

8. While examining Claims and Petitions, shall be patient, objective, and tactful; shall explain all his or her decisions to the bearer in an understandable way, considering the situation, education and age of the person, other physical and psychical features.
9. Prosecutor shall avoid relations that could make harm to the reputation of him or her or that of the Prosecutor's Office. If a close relative or a member of the family happens to be a participant of the process, which could cause the conflict of public and private interests, the Prosecutor shall advise a senior Prosecutor on that.
10. Actions that breach the Provisions of the Prosecutor's Oath, if they do not provide for administrative and criminal responsibility as well as that due to official duties, shall be considered as an example of conduct that humiliates the name of the Prosecutor and the breach of the Rules and Principles of the present Code.
11. Intentional failure to tell the truth or other kind of fraudulence, use of offensive words or gestures, wearing of untidy garments or inappropriately set prosecutorial attributes during the office hours shall be considered as the breach of the Rules and Principles of the present Code.
12. Being intoxicated with alcohol, drugs, psychotropic or toxic materials during the office hours, false sick-list or other unemployment motivating paper, exploitation of working hours, work measures, and the inventory for other than the set purposes, if this does not provide for administrative and criminal responsibility as well as that due to official duties, shall be considered as the breach of the Rules of the present Code.
13. Demonstration of the service gun in public, its use according to the purpose without purpose, terrifying of the family members and other persons by it, if this is not a criminal act, shall be considered as the breach of the Rules and Principles of the present Code.
14. Any case of ignoring to declare property or pecuniary funds, when provided with a legal request, if this does not provide for administrative or criminal liability, shall be considered as the breach of the Rules and Principles of the present Code.

IV. 罰則

15. 檢察官之行為、行動或決定（其作為與實踐）違反本準則之規定及立法精神，並減損檢察機關或檢察官自身之名譽者，為法所不許，且應依本準則第 16 條規定究責。

16. 違反本準則之情事須經檢察官倫理委員會（下稱委員會）依所受賦予之權限予以審查之。

17. 若察覺檢察官執行職務時無視倫理規範及違反本準則之規定，委員會有施以下列處置之權限：查證確認違反法規之行為、制止違反倫理道德之行為、履行抗辯、執行警告、公示宣告決定（資訊）以及提出補償道德損害之建議。

18. 若察覺檢察官之行為不僅違反本準則之規定及立法精神，亦屬違反法律、瀆職行為或侮辱檢察官之名聲者，委員會應將上開事證呈報檢察總長，據以對該行為展開官方調查及評鑑；上開調查及評鑑應依照檢察機關法第 38 條之規定辦理。

19. 違反本準則之規定及立法精神之罰則，必須受檢察機關法、本準則、檢察官倫理委員會處理人民請求及請願程序法、審計法及公務人員懲戒法之規範限制。

V. 附則

20. 檢察官應以根據事實、就事論事、中庸節制之表達方式為公眾演講、撰寫文章及接觸媒體；亦應在全盤考量後表達意見，且認知其意見可能被解讀為代表整體檢察機關之意見。

21. 檢察官遴選評鑑及倫理委員會應致力於使全體檢察官及檢察官候選人充分知悉由本準則、檢察機關法、國際法等所規定之道德及倫理規範。

22. 若有根據可資認定檢察官所為違反倫理規範之行為或決定，可歸因於其健康狀況，委員會須向檢察總長提出「命令該檢察官進行健康檢查」之決議。

IV. SANCTIONS

15. The deeds, actions, and decisions of the Prosecutor (his conduct and practices) that breach the Rules and Principles of ethics the present Code and that discredit the name of the Prosecutor's Office or the Prosecutor himself or herself, shall not be allowed and shall result in liability pursuant to the article 16 of this Code.

16. The breaches of the Code shall be examined by The Commission of Prosecutorial Ethics (hereafter the Commission) according to the competence provided.

17. Having detected that the Prosecutor ignores the Principles of Ethics and breaches the Rules of the Code, while executing his or her official duties, the Commission shall have the authority to apply the following sanctions: the acknowledgement of the breach, the obligation to terminate the non-ethical conduct, the obligation to perform an excuse, the warning, a public declaration of the decision (information), the proposal to reimburse the moral injury.

18. Having detected in the activities of the Prosecutor not only the breaches of the Rules and Principles of the Code, but also the evidence of the breaches of law, malfeasances, or cases of conduct that humiliate the name of the Prosecutor, the Commission shall transfer the material to the Prosecutor General for the execution of the official examination and the evaluation of the Prosecutor's activities; this shall be done under the Law On The Prosecutor's Office, Article 38.

19. Sanctions applied for the breaches of the Rules and Principles of ethics of the present Code shall be regulated by the Law On The Prosecutor's Office, this Code, the Procedures of Activity of The Commission of Ethics and Examination of the Requests and Complaints of Persons, provisions of Implementation of Official Audit and Application of Service Punishments.

V. CONCLUDING PROVISIONS

20. While producing public speeches, writing articles, contacting the media, the Prosecutor shall preserve his or her matter-of-fact and moderate way of expression; shall express well-considered ideas, realising that they can be perceived as the opinion of the entire Prosecutor's Office.

21. The Commissions of Selection, Assessment, and Ethics shall undertake measures to ensure that the principles of morality and ethics provided by the present Code, the Law On The Prosecutor's Office, and the international legal acts were known to all Prosecutors as well as the candidates to the post of the Prosecutor.

22. In case of the presence of grounds to assume that the Prosecutor has breached the Principles of Ethics by his or her deeds, actions, or decisions; and this was done due to his or her state

23. 若有必要，檢察官有權利自行向委員會申請並取得關於「其行為是否符合本準則之規定與原則」之評鑑決定。
24. 檢察官有權利對於倫理委員會之決定向立陶宛共和國檢察總長提起上訴。

of health, the Commission shall provide the Prosecutor General with the Conclusion Due to Proposal to Order The Prosecutor to Examine His or Her Health.

23. If needed, the Prosecutor shall have the right to approach the Commission by himself or herself, providing it with an Application and receiving the Evaluation Conclusion On Whether His Or Her Activities Comply With The Requirements Of The Rules and Principles of The Code.

24. The Prosecutor shall have the right to appeal the decisions of the Commission of Ethics to the Prosecutor General of the Republic of Lithuania.

八 歐盟司法倫理規範

八、歐盟司法倫理規範

（一）歐洲人權法院司法倫理之決定

歐洲人權法院
司法倫理之決議
2021 年 6 月 21 日由全體出席法庭所採納

歐洲人權法院
考量歐洲人權公約第 21 條所規範之司法部門標準；
考量法庭規則第 3、4、28 條就上開標準之延伸；
慮及明確及透明性之利益，清楚闡釋上開標準，使其無翻譯或適用偏見，應屬適當；
慮及遵守上開條文中原則將維繫及增進公眾對於法院之信任；
經重新審視 2008 年 6 月 23 日全體出席法庭所採納之司法倫理原則，歐洲人權法院通過決議如下：

I. 廉正

法官行止應符合司法部門之高道德標準。無論於歐洲人權法院與否，應隨時注意其行為應具備源於歐洲人權法院權力及名譽所不可或缺之廉正、忠誠、莊重、審慎。法官應特別注意與尚未終結案件當事人或關係人之接觸。

II. 獨立

於執行職務時，法官應獨立於任何公開之國內或國際組織、實體、或官方、私人主體。法官應免於任何內部或外部、直接或間接之不當影響。

倘可能被認為妨礙其職務及不利影響公眾對於法官獨立信任，法官應節制參與該等活動、言論、團體、拒絕遵循指示，及避免類此狀況。

EUROPEAN COURT OF HUMAN RIGHTS

Resolution on Judicial Ethics

Adopted by the Plenary Court on 21 June 2021

The European Court of Human Rights,

Having regard to Article 21 of the European Convention on Human Rights, which sets forth the criteria for judicial office;

Having regard to Rules 3, 4 and 28 of the Rules of Court, which develop these criteria;

Considering that it is appropriate, in the interests of clarity and transparency, to articulate the principles underlying these criteria, without prejudice to the interpretation or application of the provisions referred to above;

Considering that the adherence to the principles set forth in this text sustains and enhances public confidence in the Court;

Having reviewed the principles on judicial ethics adopted by the Plenary Court on 23 June 2008,
Adopts the present resolution:

I. Integrity

Judges' conduct must be consistent with the high moral character that is a criterion for judicial office. They should be mindful at all times of their duty to act, in and outside the Court, with the requisite integrity, as well as loyalty, dignity and discretion inherent in the authority and reputation of the Court. Judges shall exercise particular caution in all contact with parties and other persons associated with pending cases.

II. Independence

In the exercise of their judicial functions, judges shall be independent of any public national or international institution, body or authority or any private entity. They shall keep themselves free from undue influence of any kind, whether external or internal, direct or indirect. They shall refrain from any activity, expression and association, refuse to follow any instruction, and avoid any situation that may be considered to interfere with their judicial function and to affect adversely public confidence in their independence.

III. 公正

法官應公正執行職務並確保公正之外觀。應注意避免利益衝突，及無論於歐洲人權法院內外可能被合理認為具有利益衝突之情形。法官不應承審其具有私人利益之案件。法官應避免參與可能被認為不利影響公眾對於法官獨立信任之任何活動、言論或團體。

IV. 勤勉有能

法官應勤勉且尊敬之執行其部門職務。司法職務優先於其他活動，除極為重大及例外原因外，法官應履行其職務且應出席所有會議。為維持高度能力，法官應極力增進其專業智識及能力。

V. 審慎及守密

法官執行職務時應審慎為之。法官應尊重評議之秘密性。法官就承審案件所涉秘密或機密資訊，應高度審慎對待。

VI. 言論及接觸

法官行使言論自由，應與其職務尊嚴及對於歐洲人權法院制度之忠誠相符合。無論以何種形式或媒介，法官應節制表述可能削弱歐洲人權法院權威及名譽，或可能引起對於自身獨立及公正性合理質疑之言論。此一體適用於法官執行職務、代表歐洲人權法院，及學術活動或其他於歐洲人權法院以外之公開或私人活動之際。法官倘繼續使用社群媒體，應特別注意。

VII. 職務外活動

除與獨立、公正及全職工作性質相容者外，法官不得參與職務外活動。法官應依法庭規則第 4 條規定，向歐洲人權法院院長報告任何職務外活動。僅有教學、研究或出版書籍得領取報酬。倘有缺席職務或其他任務時，應呈請歐洲人權法院院長核可。

III. Impartiality

Judges shall exercise their function impartially and ensure the appearance of impartiality. They shall take care to avoid conflicts of interest as well as situations in and outside of the Court that may be reasonably perceived as giving rise to a conflict of interest. Judges shall not be involved in dealing with a case in which they have a personal interest. They shall refrain from any activity, expression and association that may be considered to affect adversely public confidence in their impartiality.

IV. Diligence and competence

Judges shall perform the duties of their office diligently and in a respectful manner. Judicial duties take precedence over all other activities and judges shall be available to discharge their judicial function and attend all meetings save for very weighty and exceptional reasons. In order to maintain a high level of competence, judges should strive to enhance their professional knowledge and skills.

V. Discretion and confidentiality

Judges shall exercise discretion in dealing with their judicial functions. They shall respect the secrecy of deliberations. Judges shall exercise the utmost discretion in relation to secret or confidential information relating to proceedings before the Court.

VI. Expression and contacts

Judges shall exercise their freedom of expression in a manner compatible with the dignity of their office and their loyalty to the institution of the Court. They shall refrain from expressing themselves, in whatever form and medium, in a manner which may undermine the authority and reputation of the Court or give rise to reasonable doubt as to their independence or impartiality. This applies equally to the exercise of judicial function, representation of the Court, and to academic or other public or private activities outside of the Court. They shall proceed with the utmost care if using social media.

VII. Additional activity

Judges may not engage in any additional activity except insofar as this is compatible with independence, impartiality and the demands of their full-time office. They shall declare any additional activity to the President of the Court, as provided for in Rule 4 of the Rules of Court. Only teaching, research and publishing activities may give rise to remuneration. Requests for leave for judicial or other missions should be submitted to the President of the Court.

VIII. 優惠與優勢

法官絕不可以其職務上威望為私人增益。法官不應接受對其自身或家族成員與職務內容相關聯之任何餽贈、優惠或優勢。此一體適用但不限於超過公允價值之表達謝意、善意餽贈。

IX. 勳章與獎賞

法官於其任命於歐洲人權法院擔任法官期間，不得接受任何勳章及獎賞。

X. 特別任命法官

本決定現行規定應於相關範圍內適用於特別任命法官。

XI. 卸任法官

本規則第 5 條相關規定及第 6 條規定，應適用於卸任法官。卸任法官不應於其卸任前繫屬於歐洲人權法院之案件中代表任何當事人，至於後續繫屬案件，則依法庭規則第 4 條規定，於卸任後 2 年內不得代表，

XII. 適用

倘於特定情況中適用本決定有所疑義，法院得尋求歐洲人權法院院長之建議。歐洲人權法院院長得於必要時諮詢部門首長會議。歐洲人權法院院長應每年向全體出席法庭報告上開原則適用情形。

XIII. 施行日期

本決定於 2021 年 9 月 1 日施行。

VIII. Favours and advantages

Judges must not use the prestige of their judicial office for any personal gain. Judges shall not accept any gift, favour or advantage, for themselves or any family member, in relation to their duties or functions. This equally applies but is not limited to tokens of appreciation and hospitality of more than modest value.

IX. Decorations and honours

Judges may not accept any decorations or honours during their mandate as a Judge of the Court.

X. Ad hoc Judges

Articles of the present Resolution, insofar as relevant, shall apply to ad hoc judges.

XI. Former Judges

Article V and, insofar as relevant, Article VI shall apply to former Judges. Former Judges shall not represent any party before the Court relating to an application lodged before the date on which they ceased to hold office or, as regards applications lodged subsequently, for a period of two years after they ceased to hold office, in accordance with Rule 4 of the Rules of Court.

XII. Application

In case of doubt as to application of these principles in a given situation, a judge may seek the advice of the President of the Court. The President may consult the Bureau if necessary. The President shall report annually to the Plenary Court on the application of these principles.

XIII. Entry into force

This Resolution enters into force on 1 September 2021.

（二）司法倫理相關規範

1. 歐洲人權公約（1950 年 4 月 11 日訂於羅馬）
修正歐洲人權公約關於人權及基本自由保障之第 15 號協定（2013 年 6 月 24 日訂於史特拉斯堡）

第 21 條 – 職位標準[1]

1. 法官應具有高道德品格，且應具備高等司法辦公室之任命，或為經認可能力之法學家。
2. 於歐洲議會小組要求提出三人候選名單日前，候選人年齡應小於 65 歲。請參看第 22 條。
3. 法官承審案件應依其自身能力。
4. 法官於任期中，不應參與任何與其獨立、公正、或全職工作不符之活動，本項適用之問題應由法院決定。

第 22 條 – 法官選任

法官應由歐洲議會小組，以簽約國多數決方式，自會員國提名之三人候選名單中遴選而出。

第 23 條 – 法官職務任期與解任[2]

1. 法官任期為 9 年。不得連任。
2. 法官應任職至結束。然其應繼續承辦已審議之案件。
3. 法官不應經任意解職，除經其他法官多數決以 3 分之 2 表決認定該法官符合特定條件外。

2. 歐洲人權法院法庭規則
2024 年 3 月 24 日
法庭書記處
史特拉斯堡

[1] 本條內容應隨第 15 號協定條款（CETS No. 213）於 2021 年 8 月 1 日生效時修正。
[2] 本條內容應隨第 15 號協定條款（CETS No. 213）於 2021 年 8 月 1 日生效時修正。

European Convention on Human Rights (Rome 04/11/1950)

Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms (Strasbourg, 24.VI.2013)

Article 21 – Criteria for office[1]

1. The judges shall be of high moral character and must either possess the qualifications required for appointment to high judicial office or be jurisconsults of recognised competence.
2. Candidates shall be less than 65 years of age at the date by which the list of three candidates has been requested by the Parliamentary Assembly, further to Article 22.
3. The judges shall sit on the Court in their individual capacity.
4. During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office; all questions arising from the application of this paragraph shall be decided by the Court.

Article 22 – Election of judges

The judges shall be elected by the Parliamentary Assembly with respect to each High Contracting Party by a majority of votes cast from a list of three candidates nominated by the High Contracting Party.

Article 23 – Terms of office and dismissal[2]

1. The judges shall be elected for a period of nine years. They may not be re-elected.
2. The judges shall hold office until replaced. They shall, however, continue to deal with such cases as they already have under consideration.
3. No judge may be dismissed from office unless the other judges decide by a majority of two-thirds that that judge has ceased to fulfil the required conditions.

Rules of Court

28 March 2024
Registry of the Court
Strasbourg

[1] Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021.
[2] Text amended in accordance with the provisions of Protocol No. 15 (CETS No. 213) as from its entry into force on 1 August 2021

第 3 條 – 宣示或鄭重聲明

1. 於開始職務前，每一位經遴選法官應於初次參與全體出席法庭之現任法官前，或有必要時於法院院長前，為以下宣示或為以下鄭重聲明：

“余誓以至誠”– 或“余鄭重聲明”–“我將受尊敬地、獨立地及公正地執行法官職務，並保守評議之秘密”

2. 此行為應記錄於法庭議事錄內。

第 4 條[3] – 不適宜舉止

1. 依歐洲人權公約第 21 條第 4 項規定，法官於任期中不應參與任何政治、行政活動或任何與其獨立、公正、或全職工作不符之職業活動。 每位法官均應向法院院長報告職務外活動。於法院院長及關涉法官意見不同時，所生問題應由全體出席法庭決定。

2. 卸任法官不應於其卸任法官職務前已繫屬於歐洲人權法院案件程序中，代表任何當事人或第三人。至於後續繫屬案件，卸任法官不得於卸任後 2 年內代表任何當事人或第三人。

第 28 條[4] – 無承審能力及迴避

1. 除有第 2 項列舉之情形法官基於案件考量不得參與外，法官負有承審經指派予其之所有案件之義務。

2. 如有下列情事，法官基於案件考量不得參與

(a) 該案件涉及法官私人利益，包括與任何當事人具有配偶、父母子女或親近家庭成員、個人或職業關係或從屬關係；

(b) 法官曾於該案件中執行業務，無論作為一方當事人或案件利害關係人之代理人、辯護人或顧問，抑或曾擔任他方國內或國際法庭成員、諮詢委員會或任何職務；

[3] 2015 年 6 月 1 日及 2010 年 3 月 29 日經歐洲人權法院修正。

[4] 2023 年 12 月 15 日、2013 年 5 月 6 日、2010 年 3 月 29 日、2006 年 11 月 13 日、2004 年 12 月 13 日、2002 年 7 月 8 日、6 月 17 日經歐洲人權法院修正。

Rule 3 – Oath or solemn declaration

1. Before taking up office, each elected judge shall, at the first sitting of the plenary Court at which the judge is present or, in case of need, before the President of the Court, take the following oath or make the following solemn declaration:

   "I swear" – or "I solemnly declare" – "that I will exercise my functions as a judge honourably, independently and impartially and that I will keep secret all deliberations."

2. This act shall be recorded in minutes.

Rule 4[3] – Incompatible activities

1 In accordance with Article 21 § 4 of the Convention, the judges shall not during their term of office engage in any political or administrative activity or any professional activity which is incompatible with their independence or impartiality or with the demands of a full-time office. Each judge shall declare to the President of the Court any additional activity. In the event of a disagreement between the President and the judge concerned, any question arising shall be decided by the plenary Court.

2. A former judge shall not represent a party or third party in any capacity in proceedings before the Court relating to an application lodged before the date on which he or she ceased to hold office. As regards applications lodged subsequently, a former judge may not represent a party or third party in any capacity in proceedings before the Court until a period of two years from the date on which he or she ceased to hold office has elapsed.

Rule 28[4]– Inability to sit and recusal

1. A judge has the duty to sit in all cases assigned to him or her, unless, for the reasons set out in paragraph 2, he or she may not take part in the consideration of the case.

2. A judge may not take part in the consideration of any case if

   (a) he or she has a personal interest in the case, including a spousal, parental or other close family, personal or professional relationship, or a subordinate relationship, with any of the parties;

   (b) he or she has previously acted in the case, whether as the Agent, advocate or adviser of a party or of a person having an interest in the case, or as a member of another national or international tribunal or commission of inquiry, or in any other capacity;

[3] As amended by the Court on 29 March 2010 and 1 June 2015.
[4] As amended by the Court on 17 June and 8 July 2002, 13 December 2004, 13 November 2006, 6 May 2013 and 15 December 2023.

(c) 曾擔任特別指定法官，或於卸任後依本規則第 26 條第 3 項規定繼續承審之前法官，參與任何政治、行政活動或任何與其獨立、公正之職業活動；

(d) 無論係公開活動與否，法官曾以社群媒體、文書，公開發表客觀上足認對其公正有不利影響之意見。

(e) 基於任何其他原因，合法地對於法官之獨立、公正性有所懷疑。

3. 法官倘認其因第 2 項列舉之各款事由無法承審指派予其之案件時，應於該案件分配至審查庭或各分庭時，立即通知該庭庭長，由其決定承審法官是否應迴避。承審法官與該庭庭長就涉及第 2 項事由之事實是否存在有疑問時，應由各分庭決定之。於聽取承審法官陳述後，各分庭應評議，並於承審法官迴避之狀況投票決定。為求各分庭就爭議之評議及投票，承審法官應替換為各分庭第一順序代理人。此規定亦適用於法官依本規則第 29 條或第 30 條規定承審簽約國相關事件之情形。

4. 僅有案件當事人得依第 2 項規定聲請承審法官迴避。聲請應具有適當原因且應於知悉特定原因時立即提出。聲請應由各分庭依第 3 項規定現行規定決定。當事人應經通知其聲請是否經准許。

5. 本條得類推適用於大法庭承審案件中，或基於歐洲人權法院院長授權，亦得類推適用於依歐洲人權公約第 27 條規定擔任獨任法官，及依本規則第 39 條擔任負責法官之情形。

(c) he or she, being an ad hoc judge or a former elected judge continuing to sit by virtue of Rule 26 § 3, engages in any political or administrative activity or any professional activity which is incompatible with his or her independence or impartiality;

(d) he or she has expressed opinions publicly, through the communications media, in writing, through his or her public actions or otherwise, that are objectively capable of adversely affecting his or her impartiality;

(e) for any other reason, his or her independence or impartiality may legitimately be called into doubt.

3. Any judge who considers himself or herself to be unable to sit in a case to which he or she has been assigned, for one of the reasons listed in paragraph 2 shall, as soon as possible, in cases allocated to a Committee or Chamber formation, give notice to the President of the Section, who will decide whether the judge concerned should be exempt from sitting. In the event of any doubt on the part of the judge concerned or the President as to the existence of one of the grounds referred to in paragraph 2 of this Rule, that issue shall be decided by the Chamber. After hearing the views of the judge concerned, the Chamber shall deliberate and vote, without that judge being present. For the purposes of the Chamber's deliberations and vote on this issue, he or she shall be replaced by the first substitute judge in the Chamber. The same shall apply if the judge sits in respect of any Contracting Party concerned in accordance with Rules 29 and 30.

4. Only parties to the proceedings may request recusal of a judge assigned to sit in their case for the reasons listed in paragraph 2 of this Rule. Any such request must be duly reasoned and lodged as soon as possible after the party concerned learns about the existence of such reasons. It shall be decided by the Chamber in accordance with the procedure described in paragraph 3 of the present Rule. The parties shall be informed whether or not their request has been accepted.

5. The provisions above shall apply, mutatis mutandis, in cases before the Grand Chamber, and – under the authority of the President of the Court – to judges acting as a single judge under Article 27 of the Convention and as duty judge in accordance with Rule 39 of the Rules of Court.

國家圖書館出版品預行編目 (CIP) 資料

司法倫理 . 外國篇 / 法務部司法官學院
編輯 . -- 五版 . -- 臺北市 : 法務
部司法官學院 , 民 113.12
576 面 ; 19 x 26 公分
ISBN 978-626-7220-66-5 （平裝）

1. CST: 法人員 2. CST: 業倫理

198.589 113019819

司法倫理（外國篇）

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出版機關：法務部司法官學院
地 址：106 臺北市大安區辛亥路 3 段 81 號
電 話：（02）2733-1047
網 址：https://www.tpi.moj.gov.tw
出版日期：中華民國 113 年 12 月出版
版 次：五版
承 印 者：大光華印務部
地 址：10851 臺北市萬華區廣州街 32 號 6 樓
電 話：（02）2302-3939
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內容同時登載於法務部司法官學院網站
網址為 https://www.tpi.moj.gov.tw