

Guideline in relation to part-time Judges and participation in political activities

After consultation with the Chief Judge of the High Court, the Chief District Judge and the Chief Magistrate, the Chief Justice has issued the following guideline in relation to part-time Judges¹ and participation in political activities.

1. It is of fundamental importance that judicial independence and impartiality be maintained and be seen to be maintained. This is vital to ensuring public confidence in the Judiciary and the administration of justice.
2. The appropriate standard is whether a reasonable, fair-minded and well-informed member of the community would consider that participation in the political activities in question would be likely to undermine judicial independence or impartiality ("the appropriate standard"). This standard must be applied in the context of the prevailing circumstances of Hong Kong.
3. The following considerations should be borne in mind:
 - (a) Judges, both full-time and part-time, as citizens, enjoy rights and freedoms, including the freedom of association. However, it must be recognised that certain restrictions on those freedoms are required to ensure that judicial independence and impartiality are maintained and seen to be maintained. The extent of such restrictions should be guided by the principle of proportionality.
 - (b) The common law principles as to when a Judge should disqualify himself or herself from sitting in a particular case of course apply to both full-time and part-time Judges. The circumstances include those giving rise to apparent bias. The test is whether the circumstances are such as would lead a reasonable, fair-minded and well-informed observer to conclude that there is a real possibility that the Judge would be biased.
 - (c) Judicial review cases are not listed before part-time Judges.

¹ The reference to "Judges" includes Judicial Officers.

- (d) Part-time Judges sit for only limited periods and are in full-time practice in the legal profession.
4. The Guide to Judicial Conduct in providing that Judges should refrain from membership in or association with political organizations or activities applies to full-time Judges. However, applying the appropriate standard, it is not considered objectionable for a part-time Judge simply to be a member of a political party. But different considerations apply to more active participation by a part-time Judge in political activities. Applying the appropriate standard, such active participation beyond mere membership, depending on its nature and extent, may well not be acceptable.
5. In particular, the following political activities are considered to be unacceptable for a part-time Judge:
- (a) Active participation in the activities of a political party. Examples include holding office in the party, membership of its committees, acting as spokesman, participating in fund raising and recruitment of members for the party.
 - (b) Standing as a candidate or nominating or campaigning for candidates (in either case whether the candidature is sponsored by a political party or otherwise) for elections to the District Council, the Legislative Council, the Election Committee constituted under the Chief Executive Election Ordinance and the office of Chief Executive. In this connection, it must be noted that:
 - (i) Voters in the legal functional constituency for the Legislative Council and for the Election Committee include barristers and solicitors who may have appeared and who may appear before part-time Judges.
 - (ii) Part-time Judges may of course exercise such rights as they may have to vote in the elections referred to above.
6. Part-time Judges as practising barristers and solicitors may of course hold office in and actively participate in the affairs of their professional bodies. They are also entitled to express views and participate in public debate and activities focusing on legal issues, including those relating to the rule of law and the administration of justice.

7. This Guideline is not intended to be comprehensive. It is not practically possible to draw up a comprehensive list of political activities considered acceptable or unacceptable. There are likely to be grey areas which call for the exercise of commonsense judgment having regard to the appropriate standard. Where a part-time Judge or a practitioner considering part-time judicial office wishes to seek guidance as to whether a form of participation in a political activity is considered to be inconsistent with part-time judicial office, he or she should discuss the matter with the relevant Court Leader who will consult the Chief Justice as appropriate.

8. The Judiciary greatly values the contribution of part-time Judges rendered as an important public service. It is also recognized that a part-time Judge or a practitioner considering part-time judicial office may choose to pursue public service in the form of active participation in political activities rather than holding part-time judicial office.

Andrew Li
Chief Justice
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