



0 2 MAR 2012

Draft of 14/02/2012



No. of 2012.

***Judicial Conduct Bill 2012.***

**ARRANGEMENT OF CLAUSES.**

1. Compliance with Constitutional Requirements.
2. Interpretation.
  - “third degree of relationship”
  - “Judge”.
3. Judges to uphold the integrity and independence of the judiciary.
4. Judges to avoid impropriety and the appearance of impropriety in all of the Judge’s activities.
5. A Judge to perform the duties of judicial office impartially and diligently.



A Bill  
for  
AN ACT  
Entitled

***Judicial Conduct Bill 2012.***

Being an Act to implement Section 157 of the *Constitution*, to safeguard, protect or promote the integrity of our legal system based on the principle that an independent, fair, and competent judiciary shall interpret and apply the laws that govern us and that judges, individually and collectively, must respect and honour the judicial office as a public trust and strive to enhance and maintain confidence in our legal system, and for related purposes,

MADE by the National Parliament to be deemed to have come into operation on 1 November, 2011.

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*Qualified Rights*) of the *Constitution*, namely the right to privacy conferred by Section 49 of the *Constitution* is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

**2. INTERPRETATION.**

In this Act :-

“third degree of relationship” means the following persons as relatives within the third degree of relationship being great-grandparent, grandparent, parent, uncle, aunt, brother,, sister, child, grandchild, great-grandchild, nephew, or niece; and  
“Judge” means a Judge of the Supreme Court or of the National Court.

**3. JUDGES TO UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY.**

(1) A Judge shall uphold the integrity and independence of the judiciary.

(2) A Judge shall –

- (a) participate in establishing, maintaining, and enforcing high standards of conduct; and
- (b) personally observe those standards so that the integrity and independence of the Judiciary shall be preserved.

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### **4. JUDGES TO AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL OF THE JUDGE'S ACTIVITIES.**

A Judge shall-

- (a) respect and comply with the law; and
- (b) avoid impropriety and the appearance of impropriety in all of the Judge's activities; and
- (c) act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

### **5. JUDGE TO PERFORM DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY.**

(1) A Judge shall disqualify himself in a proceeding or shall not influence a proceeding in which the Judge's impartiality might reasonably be questioned, including but not limited to instances where -

- (a) the Judge is related to a party, attorney, or spouse of either party (usually) within the third degree of relationship; or
- (b) the Judge is a party; or
- (c) the Judge is a material witness; or
- (d) the Judge has previously acted in the case in question as a Lawyer for a party, or participated in some other capacity; or
- (e) the Judge prepared any legal instrument whose validity or construction is at issue; and
- (f) the Appellate Judge previously handled case as a trial Judge; or
- (g) the Judge has a personal, financial or any interest in the outcome; or
- (h) the Judge determines he or she cannot act impartially; or
- (i) the Judge has made statements orally or in writing which indicate he has pre-determined any or all of the issues of fact or of law in a proceeding.

(2) If it appears to Parliament that a Judge has failed to disqualify himself pursuant to Subsection (1) or has influenced a proceeding contrary to Subsection (1), Parliament by way of a motion may refer the Judge concerned to the Head of State to appoint a Tribunal to investigate the breach of Subsection (1) and provide a report to Parliament or may refer the matter to another authority for an appropriate course of action.

(3) In the event that the Parliament has referred to Head of State a breach of Subsection (1), the Head of State shall on receipt of the notification from the Speaker of the referral from Parliament, appoint a tribunal consisting of a Chairman and two members, each of whom must be -

- (a) a Judge or former Judge of the Supreme or of the National Court; or
- (b) a Judge or former Judge of a court of unlimited jurisdiction of a country with a legal system similar to that of Papua New Guinea.

(4) The Tribunal shall make due enquiry into any matter referred to it without regard to legal formalities or the rules of evidence and shall inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.

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(5) If the Tribunal reports to Parliament that Subsection (1) has been breached, then Parliament shall take whatever action necessary including a referral to the National Executive Council or the Judicial and Legal Services Commission for their consideration of the commencement of a process to remove the Judge in accordance with Section 197, 180 and 182 of the *Constitution*.

(6) In the case of a Parliamentary referral of a Chief Justice, in the event that the National Executive Council has advised the Head of State to set up a Tribunal to investigate the question of the removal from Office of the Chief Justice, such reference by Parliament may be added to those proceedings or kept separate.

(7) Where Parliament has made a referral of a Judge to the Head of State pursuant to Subsection (3) such Judge shall not hear or continue to hear legal proceedings or exercise his powers as a Judge pending the provision of the report from the Tribunal to Parliament and in the case of the Chief Justice, the Deputy Chief Justice shall act as Chief Justice.

(8) Where Parliament has made a referral of a Judge to the Head of State pursuant to subsection (3) any Order or Judgment in that proceeding made by that Judge shall be stayed pending the provision of the report from the Tribunal to Parliament.



## **C E R T I F I C A T E**

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I hereby certify that the *Judicial Conduct Bill 2012* (Draft of 13/3/2012) is in accordance with the National Executive Council Decision No. /2012 and with the drafting instructions.

A handwritten signature in black ink, appearing to read "Vela Konivaro".

**VELA KONIVARO**  
**SECOND LEGISLATIVE COUNSEL.**

13th March, 2012.