Pillars of Judicial Ethics

- Reflections on the Ethics of Judicial Conduct -

Schleswig Ethics Roundtable
Why do judges need rules of ethics? And if they do, why must these be laid down in writing? We, the members of the „Schleswig Ethics Roundtable,“ have been asking ourselves these questions throughout many meetings. The Schleswig Ethics Roundtable is an alliance of judges from Schleswig-Holstein who have been reflecting on this topic since May 2006.

Judicial rules of ethics, which already exist in many other countries, are no more and no less than a code of conduct. References to how judges are to conduct themselves ethically are to be found in the Basic Law (Articles 92, 97 GG), in the German Judiciary Act (sections 38-43 DRiG) and in the respective judiciary acts of the German Länder.

But are these legislative norms sufficient to help us deal with ethical questions in our everyday professional lives? In drafting judicial rules of ethics, the „Schleswig Ethics Roundtable“ in no way wanted to formulate requirements and prohibitions. Likewise, no „additional professional duties“ were to be introduced. The fear – whether justified or not – of being disciplined by superiors, in whatever form, for failure to comply with specific rules is too great.

And this is how the idea arose not to set up rules, but rather to formulate questions without providing answers to them. Our goal in this is to raise the awareness of judges for ethical issues and encourage them to find answers for themselves. They will not agree with all of the questions. But this is precisely what can lead to a „provoked discourse,“ and that is what we want.
Preamble

The public imposes high standards on the conduct of judges, and judges hold themselves to a high standard as well.

The following questions are designed to encourage judges to reflect on problems which may arise in their professional and extraprofessional lives. There are no generally valid answers to these questions. Those who would demand answers deny the central goal of the series of questions.

Judges have the duty to decide cases pursuant to the values of our society as expressed in the Constitution and laws, and are to apply the law to the best of their ability and their conscience. This freedom is not a privilege of judges; rather, every individual has the right to an independent, impartial justice system that guarantees equality before the courts and a fair trial.
I. Citizens and I

How do I conduct myself opposite those seeking justice?

1. General questions

How would I want to be treated by the judge in a courtroom?

Does my conduct do justice to the person standing before me with his/her problem?

How do I exhibit my respect to the participants in the proceedings?

As of what degree and in what phase of the proceedings do I disclose the personal relationship to representatives of the parties or expert witnesses to the opposing party and/or the parties (transparency/credibility)?

What interests play a role in my decision? Do I assess and reflect on any possible interests of my own?

How do the participants perceive the method I have chosen to effect a friendly resolution of the dispute and/or to discontinue the proceedings?

2. During the proceedings

Do I live up to the judge’s duty of impartiality in dealing with the participants in the proceedings – especially with those I know personally?

Do I impart to the parties a feeling of security within the scope of the proceedings, for example by pointing out the seating order, by making personal introductions, and by providing explanations if the beginning of the proceedings is delayed?

Do I have the patience and the capacity to listen to the parties and to formulate and explain the factual and legal situation to those I am addressing in a manner they can understand?

Do I encourage this of other participants in the proceedings as well?

Do I lead settlement negotiations without improper pressure and threats?

Do I mention the risks as well as the advantages of a settlement offer?

Do I responsibly and individually prepare the witnesses for their examination?
Do I provide the necessary protection to witnesses?

Is the parity of all participants in the proceedings ensured?

When the participants in the proceedings appear at a court date for issuance of the judgment, do I briefly and comprehensibly explain the decision rather than merely reading out the tenor of it?

Do I in turn demand the requisite respect for the court and/or the justice system from the citizens (particularly in criminal-law matters)?

3. Outside of the courtroom

Am I accessible for the citizens?

Do I take the time to answer the citizens’ questions?

Do I have respect for the participants and their concerns?

Do I deal with them objectively and without any prejudice?

Do I reject inappropriate and discriminatory statements with sufficient clarity?

Do the participants receive sufficient and comprehensible information about the ongoing proceeding in a manner understandable to lay people, so that they are able to react appropriately?

Do I work to ensure that my decisions are able to be carried out?

Do the participants in the proceedings have equal opportunity, or is – impartial – support necessary to balance out deficits during the proceedings, in formulating motions, and/or following the judicial decision?

Am I aware of the consequences of my decision for the participants?
II. The Public and I

How does my conduct influence the image of the judiciary?

1. Press

Is the case significant for persons not participating in the proceedings as well?

What interests of theirs might be affected? Are these interests worthy of protection?

Which interests relevant for assessment speak against publication?

Would publication be discriminatory or derogatory for one of the participants?

In which setting should the information be provided? Should I engage in active or passive public relations activities?

Is it possible and feasible to make the factual situation abstract and/or anonymous?

2. Professional public

Is there a professional interest in the case with regard to the development of the law?

Should the decision - with the appropriate anonymity – be published following conclusion of the proceedings? Control question: Am I conscious of the significance and the consequences of publicity on a smaller or larger scale, or for a specialist public? Are personal interests of the judge (i.e., in an „inconspicuous“ – or „conspicuous“ – proceeding) relevant for consideration although they are not connected to the facts of the case?

Am I conscious of the authority of the judge and the consequences of the publicity on the respective scale?

3. Conduct in public

Invitation to dinner or similar event by potential participants in proceedings (attorneys, parties, politicians, expert witnesses)

- Might the invitation be motivated by professional interests?
- Why have I received this offer?

- Could there potentially be certain expectations associated with it in terms of my judicial conduct?

- Might acceptance of the invitation create the impression for a non-participating third party that I favour that participant in the proceedings?

- What impression does it create if I, for example, accept the invitation of an attorney for a fireside evening which is directed to all civil court judges of the district - but not to the attorneys active in that area?

Might a (semi-) public expression of opinion on my part, during an ongoing or impending proceeding, regarding legal or legal policy questions at issue, reasonably influence the outcome of the proceedings or their fairness?

To what extent does the use of my professional title in the private sphere create the impression that I am taking advantage of my office for public purposes not connected with my office?

What impression is created for the addressees of a letter written about a personal matter if I use my professional title on the letterhead? For what purpose do I do this?

What impression is created among the public if I take part in a demonstration – for example, against reducing judges’ salaries – in my judicial robes?

Do I ask myself how the citizens perceive me? What conclusions do I draw from this? What image of the judiciary am I imparting?
III. Legal Rulings and I

How do I do justice to my judicial duties?

1. „Vested“ within the meaning of Article 92 of the Basic Law (Grundgesetz)

Article 92 of the Basic Law

The judicial power shall be vested in the judges; it shall be exercised by the Federal Constitutional Court, by the federal courts provided for in this Basic Law and by the courts of the Länder.

How do I understand the meaning of „vested“ in Article 92 Basic Law (GG)?

What appeals for conduct do I derive from Article 92 GG for my everyday professional life?

Does „vested“ mean that I have a responsibility for legal rulings in the area of internal court organisation and, in the broader sense, for the atmosphere in a courtroom as well? If so: Does my conduct do justice to this responsibility?

Article 97 para 1 of the Basic Law

Judges shall be independent and subject only to the law.

Am I guided by the law (Article 97 para. 1 GG), or by my subjective idea of justice and rules?

How do I deal with „gaps“ in the law?

Do I stand by my actual reasons in the rationale for judgment, or do I disguise a preconceived result with legal arguments?

How do I deal with it if the „correct“ decision according to legal analysis is incompatible with my conscience?

What significance do I accord to both specialist and general advanced training?
How do I organise my department and the advanced training method to be employed so that I live up to my standards for advanced training?

Am I always available to answer questions for colleagues? Do I take time for my colleagues?

In specific situations, am I prepared to take over tasks from colleagues above and beyond my obligations (e.g., taking over another department or a portion thereof for a certain period of time to enable a colleague’s secondment)?

Am I willing to ease the burden on overwhelmed colleagues or those just starting out in the profession even if this means an increased workload for myself?

If I change departments, in what condition do I leave behind my former department?

- Do I meanwhile complete only the simple and uncomplicated proceedings?
- Do I prepare uncompleted proceedings for my successor (e.g. with pointers)?
- Do I fix court dates keeping the schedule of my successor in mind?

Do I chastise colleagues in public, particularly in the presence of the press?

Do I have enough courage to seek direct discussions with colleagues whose working style or work product I do not approve of?

Do I fulfil my obligations completely when I am on call in the district, even shortly before the end of my on-call service, or do I leave processing to the respective department in regular service?
2. “Independent“ within the meaning of Article 97 of the Basic Law

Am I conscious of the meaning, the scope and the limits of judicial independence pursuant to Article 97 GG?

Am I subjected to influence by the judicial administration which might have an effect on judicial independence?

What effect does the hierarchical system of the judiciary have on me as an individual and on my work? What importance do I accord to my career?

A. PERSONAL INDEPENDENCE

Which measures should I undertake if the framework conditions of my workplace no longer allow the administration of justice in an appropriate period of time (for example, advanced training for myself in time and stress management, quality improvement by optimising work procedures with service units; requesting the court president to reduce the workload; requesting additional personnel from the ministry (judges, non-judicial services, public demonstrations, etc.)?

Does my diligence in handling a case suffer from the pressure to complete it? Do I change my standard of working based upon the aspect of cost avoidance?

Do I take on administrative tasks in order to boost my career prospects?

Do the expectations of the court president influence my decision-making? Is my independence affected by the situation with regard to the evaluation of my own work by superiors and/or an attitude of expectation?

Do I allow myself to be substantively influenced in my decisions by statements by the press or by the political sphere, by the administration or by colleagues in order to comply with an expressed expectation?
B. INSTITUTIONAL INDEPENDENCE OF THE JUDICIARY

What measures should I undertake as a member of the judiciary if the justice system as a whole, rather than a specific judgment, is attacked by politicians or the press?

Should I undertake measures if my workplace might be influenced or controlled by third parties outside of the judiciary (e.g., in establishing and maintaining Intranet access or data usage and access to databases in connection with budgeting)?
IV. The Judicial Apparatus and I

How do I deal with the judicial administration, and how does it deal with me?

1. Judges in the professional hierarchy

Who and/or what determines my working style in the courtroom?

Do the working conditions in the judiciary allow me to work consistent with my standards of quality?

If necessary, do I attempt to influence my working conditions with a view to improving them?

Am I willing to take on tasks in the judicial administration? What influence could this have on my judicial duties?

2. Judges in a Team

Am I actively aware of the needs and concerns of my – judicial and non-judicial – colleagues, even though they may not be expressed openly?

Am I prepared to take action for the concerns of others which do not directly affect me or from which I draw no advantage?

Do I attempt to give honest feedback? Do I accept criticism? Do I deal properly with the things that bother me in my everyday professional life? Do I exercise criticism appropriately and constructively?

Do I deal properly with successes and failures?

How do I shape my dealings with the court employees? What expectations do the employees have of me?

In drafting my orders, do I take into account the work this causes for the non-judicial service?

Do I determine court dates with adequate advance time so that summonses may be served upon those participating the proceedings without problems?

Do I avoid motions to postpone court dates, especially in proceedings with many witnesses, by coordinating the dates in advance with other participants in the proceedings?
In making court dates, do I take into account the working hours of the employees of the non-judicial service (court reporters, guards)?

Do I allow sufficient breaks for the court reporters?

Am I willing to optimise work procedures in cooperation with the employees of the non-judicial service?

Am I approachable and accessible for the employees of the non-judicial service? Do the employees of the non-judicial service always know where to find me?
V. Judicial Robes and I

How do my office and my person influence one another?

Taking on a directorship position in a local charitable association

- Would membership on the executive board of an association have a negative effect on my impartiality?
- Would these activities contravene the exercise of judicial duties?
- Have I been asked to lend the prestige of my office to this association in order to garner donations?
- Is it possible that the association will be a participant in judicial proceedings?
- Is it intended that I provide legal counsel to the organisation?
- Do the statutes, the conduct, etc. of the association violate the principle of equality?

Where do I draw the boundaries of my socio-political activities? How closely connected is the intended socio-political activism to my professional activities? Do I avoid socio-political activism that I consider to be necessary only because I would have to disclose this to the parties and wish to avoid potential trouble?

With what preconceptions do I approach my judicial duties and the participants? What influences my preconceptions? Am I aware of such influences?

What influences govern decisions where I exercise judicial discretion? What aspects are in the forefront in this regard?

What expectations do I have in my work? What factors influence these expectations? Are there circumstances that stop me from taking care of my work consistent with those standards?