

Judicial Ethics and Conduct:
A Proposed Teacher's Manual for Algerian
Magistrates

Prepared by the Honorable Eugene E. Brott
Judge of the California Bar Court (Retired)
On behalf of the American Bar Association
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For

ECOLE SUPERIEURE DE LA MAGISTRATURE



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INTRODUCTION

1. What is Ethics?

Ethics is a major branch of philosophy. It is a theory or system of moral values that ultimately leads to “right” conduct. We study judicial ethics because we want to know what to do in challenging situations.

There are many codes of ethical conduct. Religions set out rules of behavior for believers, and laws impose standards of acceptable conduct on the general population. Various professions (accountants, journalists, doctors, lawyers, teachers, police, businessmen) have their own self-defined ethics codes.

Ultimately, the purpose of all *professional* codes is the enhancement of the public’s opinion of the concerned profession.

Western philosophy views ethics in a number of ways. For example: humans have a *duty* to respect other human beings; or, the guiding principle of behavior is creating the *greatest good* for the greatest number of people; or, virtues (such as justice and charity) are *dispositions* to act in ways that benefit the virtuous person and society.

The general Islamic view of ethics holds that every individual has been *given*, in his soul, a clear standard, a sort of wisdom, by which to distinguish good and evil (Surah Al-Shams 91:7-10). This wisdom includes such concepts as justice and charity. Qur’anic references to such concepts are *reminders* of what is already known.

Algeria’s Charter of Judicial Ethics, in its Preamble, applies the Islamic view by providing:

The statute concerning the magistracy envisages....the elaboration of a Code of Judicial ethics in order to *remind* the judge of his real commitment to respect the duties of independence, neutrality, integrity and legality....

....The Code *reminds* the judge of his humanity and invites him not to treat it with disdain.... (emphasis added).

In this training we will look at both Western and Islamic ideas about ethical conduct. We will examine the difficulties of translating abstract moral principles into proper judicial behavior -- of deciding what to do and how to do it.

And, as we work through the multitude of issues faced by judges, we will be mindful of the words of the Preamble:

The purpose of this Code is also to encourage magistrates to respect the laws, in particular those dealing with the protection of civil rights and society....and not harm the trust and respect due to the judiciary....

2. A Message for Trainers

As a judicial trainer, your purpose is to help judges learn what they need to know about ethical conduct.

To be effective, you don't need a professional teaching background, but you will benefit by using the guidelines in this syllabus.

As a judicial trainer, you will want to encourage the judges to participate, ask questions, argue, and express dissenting views. Challenge them to defend their opinions. This will enrich their learning, and you will also learn from them. Perhaps some problems you never thought about will come to light.

Share your own experiences. You have been in situations that raised ethics questions. You have heard about various problems encountered by colleagues. Tell about them. Everyone likes (and often remembers) a good story. Telling stories is one of the best ways to teach.

Teaching methods may vary but our purpose in studying professional ethics is constant. We strive to embody in our judicial work the following principle:

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 Principles of Judicial Conduct, 2001, Section 2.2*)

A. BEFORE THE TRAINING

1. Prepare yourself

Be flexible and patient. You can expect gaps between what you intend to teach and what participants actually learn. That's normal. It's also normal that unexpected questions or spirited discussions may require you to adjust your time frame. Welcome such changes because they add vitality to the training.

Carefully review the teaching curriculum and source materials before you start.

2. Keep in mind that adult learners:

- Want to know why they need to learn something and are motivated to learn when they see a need for it
- Learn faster and retain more when the topic is relevant to their personal or professional life and presented in an interactive manner
- Function well with small-group activities that provide opportunities to share, discuss, question, reflect, and practice what they are learning

3. Make a checklist for the training room

Environment

Microphone and speakers
Lighting
Chairs
Writing surfaces
Outside noise or distractions
Air temperature
Bathroom locations
Drinks and snacks

Teaching Equipment

Projectors
Flipcharts and stands
Markers

Teaching Materials

Training manual
Handouts
Paper for questions/activities
Nametags or cards
Evaluations

4. Here is the three-part Learning Objective. Post it on a wall so it will be visible throughout the training.

As a result of this training, Algerian judges will be able to

- Identify existing and potential problem areas
- Select sources for information and guidance
- Recommend possible solutions

B. DURING THE TRAINING

1. Introduction

- Greet participants and distribute nametags.
- Introduce yourself, telling a little about your background and your court.
- Ask participants to introduce themselves and tell about their courts.
- Tell the locations of bathrooms, smoking areas, etc.
- Mention the general schedule (breaks, lunchtime, closing).
- Request that everyone arrive promptly and remain for the entire sessions.

2. Emphasize the purpose of the training

- Point out the posted Learning Objectives (see A-4 above).
- Explain that the whole training focuses on those goals.

3. Choose pre-training exercises

Before launching directly into the training materials, consider using either Interactive Exercises G-1 or G-2 or both.

- G-1 gives participants a chance to compare their pre- and post-training answers.
- G-2 is an informal warm-up activity.

C. BASIC TEACHING TIPS FOR TRAINERS

1. Information: “need to know” vs. “nice to know”

You can’t possibly teach every aspect about Judicial Ethics and Conduct, and the trainees can’t possibly remember everything.

- Focus on what the participants *need to know*. (Refer often to the posted Learning Objectives.)

- Ask participants often, “*Why are we teaching this?*”
- Use *nice to know* information as a change of pace; such topics can include humor, historical notes, unusual situations, judicial anecdotes.

2. Presentation tips for facilitators

- Maintain eye contact with participants
- Do not speak in a monotone; vary your speed and inflection
- Be sure you can be heard by everyone in the room
- Try to restrict comments and discussion to the point you are addressing
- When using a flipchart or blackboard, write large enough for everyone to see
- Sit or stand where you can be seen and from where you can see everyone

3. Keep participants alert

To help the judges stay engaged, you should:

- Allow enough breaks. (Sometimes a 2-minute stretch can revive lagging attention)
- Change the pace frequently (Try overheads, role-plays, case studies, brainstorming, group discussions, and stories)
- Encourage judges to share their personal stories about points you are discussing. Such examples are powerful learning tools that are more easily remembered than hypothetical situations.

4. Questions vs. answers

When people are asked questions, they learn better because they have a chance to think about the points raised before they respond.

- Avoid asking closed-end questions, which can be answered either *yes* or *no* (without much thought)
- Prefer open-ended questions (starting with *Why*, *What*, *When*, *Where* or *How*) that require real thinking, prompt deeper understanding, and enhance memory

Example:

Do we need an ethics code? Yes or No. (closed-end question)

Why do we need an ethics code? Because... (open-end question)

5. Encourage anonymous questions

Some judges may not want to ask a question that might embarrass them, their colleagues, or their court. Provide question forms, which they can fill out and transmit to you without disclosing their identity.

6. Learning and forgetting

You may have noticed from your own experience that:

- Long lectures can cause information overload
- ‘Just listening’ is passive and requires little brain effort
- Without reviewing, people forget much of what they hear within hours
- People remember most the first and last parts of what they hear
- The middle sections are most easily forgotten

7. Learning and memory

The key to learning is memory, and the key to memory is repetition. That’s why you should:

- Try to divide your lecture into 10 to 12-minute segments
- Begin each segment with the main points
- Conclude each segment by summarizing the main points
- Incorporate frequent reviews of the training materials
- Urge trainees to take notes and later review them

D. SMALL-GROUP LEARNING

1. Small groups are effective because they:

- Stimulate real-life discussions of complex ethics problems
- Provide a welcome break from a lecture
- Prompt questioning and clarifying of ethical issues
- Encourage critical thinking and retention of new information
- Are especially useful during lower-energy afternoon sessions

2. Small groups are flexible

- All groups can examine the same topic (and report)

- Each group can examine a different topic (and report)
- Every group should select a member to record and summarize
- You should circulate among the groups, listen in, and ask questions
- Groups need signals (five minutes left?) so they can finish up on time
- Ten groups of five are better than five groups of ten

E. AFTER THE TRAINING

You want to conclude the training on a positive note and send the judges home feeling they have had a worthwhile experience. After they complete evaluations, but while they are still in the room, you could:

- Summarize the learning objectives
- Tell a story or anecdote that relates to ethics
- Read any previously submitted anonymous questions
- Thank participants for their participation and good humor
- Present certificates of completion if applicable

F. POST-TRAINING EVALUATIONS

1. Evaluations are an important part of the training, so be sure to:

- Schedule sufficient time so people can complete them
- Prepare the forms before the training
- Decide how specific the evaluations should be
- Explain that the information collected is of value for future trainings

G. INTERACTIVE EXERCISES

You can copy and hand out the suggested exercises and evaluations provided here. Of course you may choose to substitute, supplement, or adapt the exercises.

Interactive Exercise G-1

Purpose: Assign **G -1** at the beginning of the training. (See note below)

Instructions: Distribute the following exercise to participants. Ask them to briefly answer some or all of the questions. Tell them to keep this exercise because they'll be using it again when the training concludes. Here are the questions.

1. What would you like to learn about judicial ethics?
2. What should a judge do to avoid ethics problems?
3. What sources do you rely on for your judicial ethics knowledge?
4. How is judicial transparency related to ethics?
5. Why is judicial ethics concerned with public opinion?
6. Why should we care about an 'appearance' of impropriety if there is no impropriety?

Note about Interactive Exercise G-1: At the conclusion of the training, you will give judges Interactive Exercise G-6, which is almost identical to G-1. By comparing responses to both exercises, the judges will get a sense of how much they learned during the training.

Interactive Exercise G-2

Purpose: This exercise should be done early because it helps participants transition into the training by allowing them to ask a question or state an expectation. You'll need question cards, some blank paper, tape, and flipchart sheets.

Instructions: Distribute question cards and ask judges to write down either a question they would like answered or a criticism of the present disciplinary system. Ask them to turn in the cards, unsigned. Read several cards immediately, encourage comments, and save some for later use as a 'change of pace.'

Interactive Exercise G-3

Purpose: This exercise is for the trainer. It provides feedback about how participants are responding to the training. This, plus class participation, will help you know how you are doing.

Instructions: Distribute blank question cards. Announce that you will ask three questions and they should write a one-minute answer to each.

1. In the materials covered so far, which topic was not covered sufficiently? What was missing?
2. In the materials covered so far, which topic would you want to spend more time on? Why?
3. In the materials covered so far, which topic would you want to spend less time on? Why?

Collect the cards and review them as quickly as you can. If there are good suggestions and you can implement them now, do so. If not, incorporate them into future trainings.

Interactive Exercise G-4

Purpose: This activity can offer a useful ‘change of pace’ anytime during the training.

Instructions: Have one or more of the following questions already written on an overhead transparency or on a flip chart (large enough for everyone to read). Feel free to supplement these questions with some of your own.

1. What is the most significant influence on your ethical behavior?
2. What do you consider the most important provisions of the various ethics codes? Why?
3. What would you like to change in the Algerian Ethics Charter? Why?
4. What would you change about relations between the judiciary and the press?
5. How could disciplinary procedures be made more fair?

Interactive Exercise G-5

Purpose: You can use this ‘change of pace’ exercise anytime during the training. It will work especially well for small groups.

Instructions: At an appropriate time, ask some of the following questions to the entire group, and try to stimulate a discussion.

1. How would you warn a colleague whose behavior suggests impropriety?
2. If a law student asked you to define “ethical dilemma,” what would you say?
3. What ‘outside interference’ with the judiciary have you experienced or heard about?
4. What or who are potential sources of influence or pressure on judges?
5. What situations or feelings might affect a judge’s impartiality?
6. What situations are most likely to tempt a judge into questionable behaviors?
7. How or why is ethical conduct more relevant for some judges than others?
8. What are the most important judicial improprieties?

Interactive Exercise G-6

Purpose: This exercise, together with G-1, enables participants to observe the differences in their “before”-and-“after” responses. The comparisons will give them some indication of what they learned. Ask for their comments about this exercise.

Instructions: Use a separate sheet here. Distribute the following exercise to participants. Ask them to briefly answer some or all of these questions.

1. What have you learned about judicial ethics?
2. What will you do to avoid ethical problems?
3. What new sources for judicial ethics knowledge have you learned?
4. How is judicial transparency related to ethics?
5. Why is judicial ethics concerned with public opinion?
6. What is the significance of an ‘appearance’ of impropriety if there is no impropriety?