

THE REPUBLIC OF TRINIDAD AND TOBAGO



JUDICIARY

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**GUIDELINES
FOR
JUDICIAL RESEARCH
COUNSEL**

A publication of the Judicial Education Institute
of Trinidad and Tobago



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COUNSEL

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PREFACE

THE JUDICIAL RESEARCH COUNSEL PROGRAMME

The Formative Years

At its inception in 1997, the Judicial Research Counsel (JRC) Programme was called the Judges' Research Assistants Programme. It was designed with the aim of providing, first and foremost, high-quality research assistance to Judges and Judicial Officers for the timely and just disposition of court proceedings. The Programme only accommodated approximately six Attorneys-at-Law who were granted a one year contractual position. These Judicial Research Assistants were required to provide research to any Judge who requested such assistance.

By 2004, Cabinet, in recognition of the responsibilities placed upon the Judiciary by the imminent implementation of the Civil Proceedings Rules 1998, granted approval for the expansion of the Programme so that a Research Assistant would be included on the team of each Judge and Master. By

2014, there were JRAs working alongside Judges, Masters and Magistrates in the Judiciary. In its expanded form, the Programme is also intended to serve as a training and mentoring opportunity for attorneys-at-law.

The Current Programme

In August 2015, on the recommendation of the JRA Management Committee, Cabinet approved a restructuring of the Programme to change the name of the post to Judicial Research Counsel and most importantly to create two posts- Judicial Research Counsel I (JRC I) and Judicial Research Counsel II (JRC II). The post of JRC I is the entry level position and the post of JRC II was created for Attorneys-at-Law who had a minimum of three years' experience and who would be appointed to assist Judges of the Court of Appeal. These changes were made in recognition of the fact that the Programme had grown not only in numbers but also in stature, with some Attorneys-at-Law choosing to pursue their careers within the Judiciary, providing valuable research to their assigned Judicial Officers. A person appointed is required to perform responsible, detailed, focused and complex legal research and writing, including

critical analysis and feedback, for and under the direct supervision of Judges and judicial officers. His/her duties include preparing matters, reviewing legal opinions, preparing draft judgments, critically interrogating inferences, assumptions and opinions, and providing other professional and administrative support.

In 2014, with the approval of the Chief Justice and with the support of the Court Executive Administration and the JRA Management Committee, the JRCs were provided with professional and comfortable working accommodations in one central location. As a result, each JRC was provided with their own work station which permitted them to conduct their research in newly outfitted offices with all the modern amenities. As of February 2017, there are approximately 45 Attorneys-at-Law employed on three-year contracts as Judicial Research Counsel who provide research to Judges, Masters, Registrars and Magistrates attached to the Judiciary.

Role of Judicial Research Counsel

A JRC is required to identify, research and analyse legal issues during legal proceedings including trials and post-

trials, and during the Case Management, decision-making and judgment writing process including the research and preparation of extempore judgments). He or she may also assist in the preparation of draft judgments and drafts of legal documents, for and under the direct supervision of Judges/Judicial Officers, including legal opinions and briefs, notes on law, research papers, judgments, decisions and rulings.

In the performance of these duties, a JRC must analyse all legal authorities cited to the Court by Attorneys-at-Law in oral and/or written submissions for relevance, coherence, accuracy and comprehensiveness and conduct independent legal research and analysis of arguments presented. A JRC may also be called upon to edit and proofread the judgments, decisions, rulings, orders, opinions and notes of evidence of Judges/Judicial Officers. Quite regularly, a JRC attends Court proceedings over which the assigned Judge/Judicial Officer presides to assist with prompt research on points of law and procedure arising during Courtroom proceedings, including providing feedback on judicial pronouncements and parties' submissions. In the context of the voluminous dockets of Judicial Officers in the Civil, Criminal and Family jurisdictions, a JRC provides assistance to Judges/Judicial

Officers by way of reviewing the high volume of files and recommends, in accordance with the Criminal Procedure and Civil and Family Proceedings Rules and substantive law, the most efficient Case Management methods and directions to enable the Court to deal with cases justly, effectively and in a timely manner.

A JRC is required to keep Judges/Judicial Officers updated on recent legislation and notable decisions of the local courts and other jurisdictions, including but not limited to the Commonwealth Caribbean countries, England, Canada, India, Australia and the United States of America. Administratively, a JRC assists in the maintenance of up-to-date lists of outstanding judgments to ensure timely delivery of judgments and reviews the files for all upcoming matters and prepares Bench Memoranda for the Judge/Judicial Officer. A JRC is often required to provide assistance to Judges/Judicial Officers who serve on Judiciary-appointed Committees as mandated by the Chief Justice and the Judicial Education Institute of Trinidad and Tobago.

They are also expected to have a general knowledge of all areas of law including Criminal Law, Constitutional and Administrative Law, Civil Law, Family Law, Rules of evidence and Civil and Criminal Proceedings Rules. In the

discharge of their duties, a JRC must have a general knowledge of legal research methods, techniques and must possess the ability to use conventional methods and electronic research databases. General knowledge of the Courts and Courtroom protocol and procedure is also essential.

In order to competently perform their responsibilities, a JRC must possess general proficiency in the use of Microsoft Office Suite as well as the use of computer software for research and presentations. They are also trained in the preparation and writing of Bench Memoranda and draft judgments, decisions and rulings. Under the guidance of the Judicial Officer to whom a JRC is assigned, he/she develops skills in case management and case flow management. A JRC is also required to observe and maintain the highest level of professionalism and confidentiality in an atmosphere that requires a character of impeccable integrity.

Context for the Creation of these Guidelines

In November 2011, the Judiciary of the Republic of Trinidad and Tobago published the *Statements of Principle and*

Guidelines for Judicial Conduct, and in March 2017 these guidelines were made available via the Judicial Education Institute of Trinidad and Tobago's (JEITT) E-book Store, freely accessible to the legal fraternity and public alike. As stated by The Honourable the Chief Justice Mr. Justice Ivor Archie ORTT in his Preface for that publication, "The Guidelines for Judicial Conduct are pivotal in the Judiciary's continuous efforts to strengthen public trust and confidence in our judicial system. They are essential to the facilitation of the integrity of our nation's judicial system, owing to their insistence on the highest standards of judicial virtue."

Consistent with the need to ensure that the highest standards of ethical conduct is maintained throughout the judicial system, the JRC Management Committee embarked on the preparation of Guidelines for Judicial Research Counsel, using the *Statements of Principle and Guidelines for Judicial Conduct* as a model. After an initial Draft was prepared, the Committee shared this Draft with the JRCs and met with three representatives of the JRCs to receive their feedback. After full discussion on the Guidelines, a revised Draft was prepared and submitted to the Honourable Chief Justice Ivor Archie for his review and approval.

These Guidelines, as approved by the Honourable Chief Justice, represent a continuation of the Judiciary's efforts to strengthen our judicial system by insisting on the highest standards of ethical conduct for Judicial Research Counsel. The JRC Management Committee hopes that the publication and implementation of these Guidelines will contribute to the achievement of the Judiciary's vision of providing a court system in which integrity, fairness and equality are achieved thereby instilling public trust and confidence in the judicial system in Trinidad and Tobago.

Justice Andre des Vignes JA
Chairperson, JRC Management Committee

GUIDELINES

In these Guidelines for Judicial Research Counsel (“these Guidelines”), a Judicial Research Counsel is referred to as a “**JRC**” and the Chief Justice, Judge, Master, Registrar, or Magistrate to whom the JRC is assigned is referred to as “**the Judicial Officer**”.

These Guidelines are intended to provide (to JRCs and Judicial Officers) a framework and standards for regulating the conduct of JRCs in the performance of their duties (as JRCs). These Guidelines should be construed in a manner which advances the Principles set out in the applicable **Statements of Principle and Guidelines for Judicial Conduct**.

- i. **A JRC should uphold the integrity and independence of the Judiciary and in particular the office of the Judicial Officer.**

A JRC should observe the highest standards of professional conduct so that the integrity and independence of the Judiciary may be preserved. The provisions of these Guidelines should be construed and

applied to promote that objective. These Guidelines shall not affect or preclude regulations prescribed by law including the Code of Ethics set out in the Legal Profession Act Chapter 90:03 or as may otherwise be provided by court order or as reasonably directed by the Judicial Officer.

2. A JRC should avoid impropriety and the appearance of impropriety in all activities.

- (a) A JRC should not engage in any activity that would put into question the propriety of the JRC's conduct in carrying out the duties of the office. A JRC should not allow family, social, or other relationships to influence official conduct or judgment. A JRC should not lend the prestige of the office to advance any private cause. A JRC should avoid any communication with Attorneys and/or any other persons involved in pending proceedings before the Judicial Officer regarding such proceedings and should immediately inform the Judicial Officer of any such communication. A JRC should never communicate to Attorneys or persons involved in proceedings pending before the Judicial Officer the JRC's or the Judicial

Officer's opinion or attitude toward the issues in the case. A JRC should not give legal advice to Attorneys or parties on matters of substantive or procedural law. A JRC should be particularly careful to treat all attorneys and parties equally.

- (b) A JRC should abstain from public comment about pending or impending proceedings before any court. A JRC should avoid the use of any and all social media and networking platforms and blogs in ways that could compromise his/her independence and integrity or that of any Judicial Officer or of the Judiciary.

3. A JRC should perform the duties of the office impartially and diligently.

The official duties and responsibilities of a JRC take reasonable precedence over other activities. Official duties and responsibilities include all the duties of the office as set out in the job description and contract of employment and as reasonably prescribed by the Judicial Officer.

In the performance of these duties:

- (a) A JRC should respect and comply with the law. A JRC's conduct should at all times promote public

confidence in the integrity and impartiality of the Judiciary and of the office of the Judicial Officer.

- (b) A JRC should maintain professional competence at all times. A JRC should be dignified, courteous, and fair to all persons with whom the JRC interacts in the JRC's official capacity.
- (c) A JRC should diligently discharge the responsibilities of his/her office.
- (d) A JRC should treat the general public and the legal profession fairly and courteously, and respect and cooperate with all members of the Judicial Officer's team and all members of staff of the Judiciary.
- (e) A JRC enjoys a unique relationship with the Judicial Officer. While a JRC must be aware of the proper respect due to the Judicial Officer, a JRC should not be reluctant to express an independent professional or personal opinion. A JRC assists the Judicial Officer, who has the ultimate authority and responsibility in deciding a case.
- (f) A JRC should promptly inform the Judicial Officer of any circumstance that might serve as a basis for disqualification of the JRC or of the Judicial Officer from dealing with any case, including, but

not limited to, any relationship or association of the JRC with any person or entity interested in the case in any way.

4. A JRC should maintain the highest level of confidentiality.

The relationship between the Judicial Officer and JRC is a confidential one. A JRC should never disclose to any person any confidential information received in the course of the JRC's duties, nor should the JRC use such information for personal gain. A JRC should avoid comment on the process of decision-making including the extent of the JRC's involvement. The Judicial Officer and JRC should always use a secure work/private network connection for conducting Judiciary business, save as may be accepted and approved by the Judicial Officer. This duty of confidentiality extends beyond the term of the JRC's contract.

5. A JRC may engage in activities to improve the law, the legal system and the administration of justice.

A JRC, subject to the proper performance of official duties and responsibilities, may engage in the following law-related activities (provided the Judicial Officer and the JRC Management Committee are first informed):

- (a) A JRC may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice.
- (b) A JRC may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. A JRC may assist such an organization in raising funds and may participate in their management and investment but should not personally participate in public fund-raising activities. A JRC may make recommendations to public and private fund-granting agencies on projects and programmes concerning the law, the legal profession, and the administration of justice.
- (c) A JRC may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. A JRC may be available to the public at large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the court system.

- (d) The activities in which the JRC is engaged should not be in conflict with the JRC's official duties and responsibilities.
6. **A JRC should regulate extra-official activities to minimize the risk of detracting from the dignity of the offices of the Judicial Officer and the JRC and to avoid conflicts with official duties.**
- (a) *A vocational activity.* A JRC may write, lecture, teach and speak on non-legal subjects and engage in the arts, sports and other social and recreational activities, if such vocational activities do not detract from the dignity of the office of the Judicial Officer and that of the JRC and do not interfere with the performance of official duties and responsibilities.
 - (b) *Electronic activities.* A JRC should refrain from engaging in any electronic communication that is likely to bring disrepute to the office of the Judicial Officer and that of the JRC, and should ensure that his/her participation in electronic communication will not adversely affect the dignity of the office of the Judicial Officer and that of the JRC.

- (c) *Civic and charitable activities*: A JRC may participate in civic and charitable activities that do not detract from the dignity of the office of the Judicial Officer and that of the JRC or interfere with the performance of official duties and responsibilities. A JRC may serve as an officer, director, trustee or advisor of an educational, religious, charitable, fraternal or civic organization and solicit funds for any such organization subject to the following limitations:
- (i) A JRC should not use or permit the use of the prestige of the office in the solicitation of funds.
 - (ii) A JRC should not solicit funds from attorneys or persons likely to come before the Judicial Officer.
 - (iii) A JRC shall not act as the Attorney-at-Law for such organisations, whether or not for remuneration.
- (d) *Acceptance of gifts, loans etc.*: Neither a JRC nor a member of the JRC's family or household should solicit or accept a gift, bequest, favour or loan from any attorney or litigant before the Judicial Officer

or persons likely to come before the Judicial Officer or from any other person except for:

- (i) A gift from a relative or friend, for a special occasion such as a wedding, anniversary or birthday, if the gift is reasonably commensurate with the occasion and the relationship.
 - (ii) A loan from a lending institution in its regular course of business on the same terms generally available to a person who is not a JRC.
 - (iii) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.
- (e) *Practice of law.* A JRC shall not practise law in any court in Trinidad and Tobago, or undertake to perform any legal services, whether or not for remuneration.
- (f) *Future employment.* During the tenure of a JRC, the JRC may seek and obtain employment to commence after the completion of the JRC's tenure. If any attorney, law firm or entity with whom the JRC is seeking or has obtained future employment appears in any matter pending before

the Judicial Officer, the JRC should promptly bring this fact to the attention of the Judicial Officer and the extent of the JRC's performance of duties in connection with such matter will be determined by the Judicial Officer.

7. A JRC should refrain from political activity.

A JRC should refrain from and should not engage in political activity. A JRC should not act as a leader or hold office in a political organization. A JRC should not make speeches for or publicly endorse a political organization or candidate. A JRC should not solicit funds for or contribute to a political organization, candidate or event. A JRC should not become a candidate for political or public office.

8. Grievances

Subject to any applicable Judiciary Policies, the Judicial Officer and the JRC shall bring all grievances to the attention of the JRC Management Committee which shall be responsible for the timely and fair resolution of all matters referred to it.

9. Discipline

A JRC may be disciplined for any breach of the terms of his/her contract of employment or of the standards prescribed in these Guidelines.

10. Policies

The Judicial Officers and JRCs must inform themselves of existing Judiciary Policies and conduct themselves in accordance with them.