

# **MAGISTRATE’S COURT ORDINANCE**

## **JUSTICE OF THE PEACE (NO. 2) REGULATIONS 2023**

*(Legal Notice 25 of 2023)*

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# **MAGISTRATE’S COURT ORDINANCE**

## **JUSTICE OF THE PEACE (NO. 2) REGULATIONS 2023**

*(Legal Notice 25 of 2023)*

**MADE** by the Governor, in consultation with the Chief Justice, under section 19P of the Magistrate’s Court Ordinance.

### **Citation and commencement**

1. These Regulations may be cited as the Justice of the Peace (No. 2) Regulations 2023 and shall come into operation on 15 May 2023.

### **Interpretation**

2. In these Regulations “Ordinance” means the Magistrate’s Court Ordinance.

### **Application of appointment of Justice of the Peace**

3. (1) An application for appointment as a Justice of the Peace made in accordance with section 19A may be made in Form 1 set out in Schedule 1.

(2) An application shall be accompanied by—

- (a) proof of identity;
- (b) a sworn affidavit stating whether the person has been convicted of any offence that may form a disqualification for appointment as specified in the Ordinance;
- (c) proof of business address or residential address;
- (d) at least two references to show the applicant’s good character, reputation and standing in the community, from the island in which he resides, one of whom must be from a current or retired employee of the Turks and Caicos Islands Government;
- (e) any official document regarding the applicant’s qualifications and English language proficiency, as may be requested by the Registrar; and
- (f) any other information as may be requested by the Registrar.

(3) The Registrar shall forward the application to the Chief Justice who on satisfaction that the applicant qualifies to be appointed as a Justice of the Peace, may recommend an appointment to the Governor.

### **Appointment of Justice of the Peace**

4. An appointment of a Justice of the Peace made under the Ordinance shall be made by warrant as set out in Form 2 of Schedule 1.

### **Application for reappointment of Justice of the Peace**

5. (1) An application for reappointment as a Justice of the Peace under section 19H of the Ordinance shall be made in Form 1 set out in Schedule 1.

(2) An application made under subregulation (1) shall be submitted to the Registrar for an appointment which is not by virtue of office, and made three months before the expiration date of the appointment.

(3) Notwithstanding subregulation (2), the Registrar may for good reason communicated in writing to him, extend the application period to six months.

(4) An application for reappointment shall be made to the Registrar and shall be accompanied by—

- (a) information set out in regulation 3(2);
- (b) proof of continuing eligibility, including the physical and mental capacity of the applicant to perform functions of a Justice of the Peace, as may be required by the Registrar;
- (c) certificates of attendance at the Justice of the Peace training courses offered by the Judicial Education Institute;
- (e) information as to—
  - (i) whether there are any unresolved complaints against the Justice of the Peace regarding the performance of his duties or his general behaviour; or
  - (ii) whether the Justice of the Peace has been convicted of any offence, and has no outstanding charges in criminal proceedings.

(5) The Registrar may refer to the Panel for inquiry into physical or mental capacity, who may conduct an inquiry regarding the capacity of the applicant, including requiring such proof from a medical doctor in the Turks and Caicos Islands.

### **Duties and responsibilities of Justice of the Peace**

6. (1) A Justice of the Peace must be familiar with the provisions of PART IIA of the Magistrate's Court Ordinance and other provisions relevant to his functions.

(2) A Justice of the Peace shall not offer legal advice in his capacity as a Justice of the Peace.

(3) A Justice of the Peace shall—

- (a) record his name and address together with his full signature on any document he witnesses;
- (b) be physically present in the Islands to exercise his functions; and
- (c) only witness a declaration or affidavit when both he and the declarant or deponent are in the Islands and shall certify the identity of the declarant or deponent.

(4) A Justice of the Peace has a duty to disclose any conviction under section 19C(b), (c) and (d) of the Ordinance, to the Registrar.

(5) A Justice of the Peace shall not issue a warrant in terms of section 19I of the Ordinance, without satisfying himself as to the need for the issuance of the warrant.

### **Certification of documents**

7. (1) A Justice of the Peace shall certify the identity of a person where it is required, by satisfying himself of the identity of the person by—

- (a) personal knowledge; or
- (b) an approved government issued identification document or a certified copy of such document.

(2) To satisfy himself of the identity of a person through personal knowledge, a Justice of the Peace shall require a person wearing a face covering to remove as much of the face covering as will allow him to see the person's face, except where there exists a legitimate medical reason, but not for religious or other personal beliefs.

(3) A Justice of the Peace shall satisfy himself regarding any document, as to—

- (a) the authenticity of any source document, such as a birth, marriage, death or academic certificate, or transaction;
- (b) the nature of the document, in a language he understands and in which he is proficient; and
- (c) the content of the document as to its truth and accuracy.

(4) Where a Justice of the Peace certifies a copy of an original document, he shall satisfy himself that it is a true and accurate copy of the original.

(5) Where the document to be certified is not in English, the person using the service of the Justice of the Peace shall produce an accurate translation of that document.

(6) A Justice of the Peace shall not certify his personal documents or documents for his spouse or children.

### **Witness of documents**

8. (1) A Justice of the Peace shall not—

- (a) witness a document unless he has seen the person sign the document;
  - (b) witness a document that emanates from a country other than the Turks and Caicos Islands;
  - (c) witness a document for use in a country other than the Turks and Caicos Islands; and
  - (d) provide service to a person who cannot communicate in English or a language the Justice of the Peace understands, unless the Justice of the Peace can appreciate the nature of the service requested, or he uses an interpreter.
- (2) A Justice of the Peace shall not—
- (a) administer an oath or affirmation to a person; or
  - (b) take the declaration or affidavit of a person; or
  - (c) witness the signing or execution of an instrument,

if he reasonably doubts that the person is legally or mentally competent to make the oath, affirmation, declaration or affidavit or to execute the document.

(3) A Justice of the Peace shall follow the provisions of an Ordinance which provides that an instrument or declaration must be attested by a Justice of the Peace by taking the declaration, or witnessing or attesting to the instrument, in accordance with any directions provided under that Ordinance.

(4) A Justice of the Peace shall not witness documents for his spouse or children.

### **Seeking assistance**

**9.** (1) A Justice of the Peace shall take any additional steps which are reasonable in the circumstances, such as, seeking advice in any matter in which he is unsure of his functions.

(2) Where the person for whom the Justice of the Peace offers services does not speak English or a language the Justice of the Peace understands, the Justice of the Peace may use the services of a court-appointed interpreter either in person or by electronic means, who will sign the jurat set out in Form 3 of Schedule 1.

### **Keeping of Ledger**

**10.** (1) A Justice of the Peace shall keep a written record of every service he provides, which record shall be called a Ledger.

(2) The Ledger shall specify the following information and be signed by the Justice of the Peace—

- (a) the name of the client and the type of identity submitted for proof of identity;
- (b) the type of service offered;
- (c) the date, time and location the service is offered; and

- (d) any general comment or observation to assist the Justice of the Peace with his memory.
- (3) A Justice of the Peace shall not include in his Ledger—
- (a) personal information other than the name of the client (or if it differs, the name of the person on the document itself);
  - (b) personal information such as address, contact details, date of birth;
  - (c) information or opinion about the person; or
  - (d) details about the identification document, such as a unique identifier.

(4) A Justice of the Peace may record in the Ledger any occasion on which there is a refusal to provide his services and the reasons for refusing.

### **Vetting Panel**

**11.** (1) There is established a Vetting Panel which shall be appointed by the Chief Justice and consist of—

- (a) the Registrar who shall be the chairperson; and
- (b) two other persons, who shall be public officers possessing Turks and Caicos Islands Status.

(2) The Vetting Panel may conduct an inquiry—

- (a) into a report by any person that an existing Justice of the Peace, or a person applying to be appointed as a Justice of the Peace—
  - (i) is incapable, physically or mentally to perform the functions of a Justice of the Peace;
  - (ii) has been convicted of an offence specified in section 19C(b), (c) and (d) of the Ordinance, and the Justice of the Peace has failed to disclose his conviction to the Registrar;
- (b) to determine the good character of a person applying to be appointed as a Justice of the Peace as required under section 19B(b) of the Ordinance, to determine the eligibility of an applicant for appointment or reappointment as a Justice of the Peace.

(3) The Vetting Panel, on its own volition, may conduct an inquiry to determine whether a person has the capacity to perform the functions of the office of a Justice of the Peace for reasons of physical or mental incapacity or upon the attainment of the age of seventy years.

(4) The Vetting Panel shall, in order to determine whether a person is physically or mentally incapacitated to perform the functions of a Justice of the Peace, require proof of the physical or mental incapacity from a medical doctor in the Islands.

### **Vetting procedure**

12. (1) A person may make a report in terms of regulation 11 to the Registrar in writing, and shall set out the reasons of the report.

(2) Where the Vetting Panel has completed an inquiry in terms of regulation 11, the Registrar shall report the findings of the Vetting Panel to the Chief Justice in writing.

(3) The Chief Justice shall inform the applicant or Justice of the Peace of the finding of the Vetting Panel, and require the applicant or Justice of the Peace to provide a written response to any adverse finding by the Vetting Panel.

(4) The Chief Justice may conduct any further inquiry as may be necessary to satisfy himself as to the truth of the adverse finding.

(5) Where the Chief Justice after due inquiry is satisfied that the adverse finding regarding the applicant or Justice of the Peace is supported by facts, he may decide not to recommend the appointment of the applicant.

### **Disciplinary Panel**

13. (1) There is established a Disciplinary Panel which shall be appointed by the Chief Justice and consist of—

- (a) a Magistrate who shall be the chairperson;
- (b) the Registrar; and
- (c) one person who shall be a public officer.

(2) The Disciplinary Panel may conduct an inquiry into a complaint—

- (a) made by any person who is aggrieved by the conduct of a Justice of the Peace in relation to services offered by the Justice of the Peace;
- (b) that a Justice of the Peace has fallen short of, or has acted in contravention of his functions, regulations 6, 7, 8 or the Code of Conduct set out in Schedule 2; or
- (c) that the Justice of the Peace is charging fees in contravention of regulation 20.

### **Disciplinary procedure**

14. (1) A person may make a complaint in writing to the Disciplinary Panel.

(2) A complaint must be filed with the Registrar and shall set out—

- (a) the conduct complained of;
- (b) the ground to show that the Justice of the Peace has fallen short of, or acted in contravention of his functions, regulations 6, 7, 8 or the Code of Conduct set out in Schedule 2; or

(c) that the Justice of the Peace is charging fees in contravention of regulation 20.

(3) The Registrar shall within five days of the receipt of the complaint, notify the Justice of the Peace and request a response within seven days of notification of the complaint.

(4) Upon receipt of the Justice of the Peace's response or following the expiration of ten working days after notification of the complaint or report, the Registrar shall refer the complaint to the Disciplinary Panel.

(5) The Panel shall within ten working days of receipt of the complaint, make an inquiry into the complaint.

(6) An inquiry into a complaint must be done in accordance with the rules of natural justice.

### **Decision of complaint**

**15.** (1) Where the Disciplinary Panel has completed the inquiry to a complaint, the Disciplinary Panel may make a report in writing to the Chief Magistrate, whether or not the Justice of the Peace is found to be at fault.

(2) The report made under subregulation (1) shall set out—

(a) the complaint and grounds of complaint; and

(b) the finding of the Disciplinary Panel.

(3) Where the Justice of the Peace is at fault, the report shall include recommendations on the action to be taken against the Justice of the Peace.

(4) The Chief Magistrate may after assessment of the report—

(a) issue a warning or require the Justice of the Peace to perform or cease to perform an act;

(b) after one warning, and the Justice of the Peace continues to be at fault, issue another warning, or recommend the suspension of the Justice of the Peace to the Chief Justice; or

(c) after two warnings, and the Justice of the Peace continues to be at fault, recommend the revocation of the appointment of the Justice of the Peace to the Chief Justice.

### **Review of complaint**

**16.** (1) A Justice of the Peace who is subjected to discipline by the Chief Magistrate may apply to the Chief Justice for a review within twenty-one days of the Chief Magistrate's decision.

(2) The Chief Justice may, upon receipt of a recommendation for suspension or revocation by the Chief Magistrate or after hearing and determining the review sought under subregulation (1), recommend the suspension or revocation of the appointment of the Justice of the Peace, to the Governor.



### **Place and time of work**

17. (1) A Justice of the Peace may provide his services at his workplace or other appropriate public place, at a time convenient to him.

(2) A Justice of the Peace is not expected to give clients his home address or to invite them into his home unless that address is also his office address.

### **Professional Development**

18. (1) A Justice of the Peace is required to participate in training for professional development.

(2) There shall be two training sessions for Justices of the Peace each year, one in the first half of the year, the other in the second half of the year.

(3) The training shall be conducted by the Judicial Education Institute.

(4) The training may be offered in person, or virtually, as the Registrar may determine, taking into consideration the convenience of the mode of training for the participants.

(5) The Registrar may communicate the mode of training whether virtual or in person, to the Secretary of the Judicial Education Institute.

(6) A participant shall receive a certificate of attendance which shall be prima facie proof of attendance.

(7) Proof of attendance of at least one training course a year, will be sufficient to continue in the office of a Justice of the Peace.

(8) Where a Justice of the Peace fails to attend the required training, he shall be subject to disciplinary procedure.

### **Stamp**

19. (1) The Registrar shall provide every Justice of the Peace with a stamp for the execution of his functions.

(2) The stamp provided by the Registrar shall be the authorised stamp for the performance of the functions of a Justice of the Peace.

(3) A Justice of the Peace's signature shall be handwritten with a blue or black ink pen on the document, above the stamp, unless the document specifies another colour.

(4) The ink must be permanent and an erasable pen shall not be used.

(5) A Justice of the Peace shall not use an adhesive label when performing his functions.

### **Prohibition on fees**

20. (1) A Justice of the Peace shall not charge fees for his services.

(2) Where a Justice of the Peace charges fees in contravention of his services, he shall be subject to disciplinary procedure.

**Publication**

21. The Chief Justice shall cause to be published a list of existing Justices of the Peace in the *Gazette* every twelve months.

**Code of Conduct**

22. A Code of Conduct for the Justices of the Peace is set out in Schedule 2.

**Repeal and savings**

23. (1) The Justice of the Peace Regulations 2023 is repealed.

(2) Any application made and received under the Regulations repealed in subregulation (1) shall continue to be processed under these Regulations, and where there is any variance, the provisions of the repealed Regulations shall apply.

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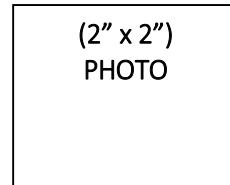
SCHEDULE 1

FORMS

**FORM 1**

*(Regulations 3(1)& 5(1))*

APPLICATION FOR APPOINTMENT OR REAPPOINTMENT OF JUSTICE OF THE PEACE



Ordinary application  By virtue of office

Name of the applicant: .....

Gender: Male  Female

Date of Birth (*D.O.B*): .....

Place of Birth(*P.O.B*): .....

Nationality: .....

Address of Business: .....

.....

Residential Address.....

.....

Contact Information:

Tel: ..... Mobile: .....

Work: .....

Fax:..... Email: .....

Employment Status: Employed  Unemployed

If employed, state your profession or occupation:

.....

Professional or other Qualifications:

.....

.....

Work Experience: .....

Has your application to become a Justice of the Peace ever been denied

YES  NO

If your answer to question 10 is yes, please give reason for this below:

.....  
.....  
.....  
.....

Reason for requesting to become a Justice of the Peace:

.....  
.....  
.....  
.....

I, \_\_\_\_\_ of \_\_\_\_\_ apply, in accordance with the Magistrate's Court Ordinance, to be appointed as Justice of the Peace. I certify that the information set out in this application concerning myself is true and that I have not been convicted of any offence disqualified under the Magistrate's Court Ordinance for appointment.

Dated this .....day of ..... , 20 .....

Signed: .....

(Applicant

**FORM 2**

*(Regulation 4)*

WARRANT OF APPOINTMENT AS A JUSTICE OF THE PEACE

By this warrant under my hand I, \_\_\_\_\_, Governor of the Turks and Caicos Islands, in exercise of the powers conferred on me by section [.....] of the Magistrate’s Court Ordinance, appoint ..... as a Justice of the Peace for the Turks and Caicos Islands, [insert if by virtue of office], for a period ....., with effect from .....

GIVEN under my hand and the public seal this ..... day of .....20.....

GOVERNOR

**FORM 3**

*(Regulation 9(2))*

JURAT

I .....of .....make oath and state that I have truthfully and accurately interpreted the words of ..... to the Justice of the Peace in English and the words of the Justice of the Peace to -....., in the.....language which he seemed to understand.

Dated this ..... day of ..... 20.....

At.....or by electronic means (MS Teams, Zoom, etc)

Signature: .....

Interpreter

Before me: .....

Justice of the Peace

## SCHEDULE 2

(Regulation 22)

### CODE OF CONDUCT

1. A Justice of the Peace shall—
  - (a) abide by his oath of office as the Justice of the Peace;
  - (b) conduct his business with professionalism, due diligence and shall be impartial and objective in the discharge of his duties.
2. A Justice of the Peace may be involved in community activities provided such involvement is not incompatible with the office of Justice of the peace.
3. A Justice of the Peace shall not—
  - (a) charge a fee for his services, or directly or indirectly, solicit or accept any reward from any person in connection with the office of Justice of the Peace;
  - (b) use his position to advance his personal business, commercial or other interests, but he may use the title after his name on a letterhead, or business card;
  - (c) unreasonably refuse to offer his services, and must provide such services in a timely manner, with courtesy and respect to all persons;
  - (d) not use the office of Justice of the Peace to further political activities; and
  - (e) perform any functions for a matter in which there may be an actual or perceived conflict of interest.
4. A Justice of the Peace has a duty of care in the performance of his functions as a Justice of the Peace, for every service he conducts.
5. The duty of care under paragraph 4 places upon a Justice of the Peace, a legal obligation to—
  - (a) take reasonable care to avoid causing harm to another person through his actions or omissions.
  - (b) undertake his duties as required by law, honestly and carefully; and
  - (c) follow any instructions in the document he certifies and, certify that he has confirmed the person's identity for affidavits and statutory declarations.

**MADE** this 12<sup>th</sup> day of May 2023.

**RHONDALEE BRAITHWAITE-KNOWLES**  
**ACTING GOVERNOR**

**EXPLANATORY NOTE**

*(This Note is not part of the Regulations)*

These Regulations are made to make provisions for the work and service of the Justice of the Peace.