

Rules on Declaration of Conflict of Interest by Drangpon 2022

In exercise power under sections 30 and 30.1 of the Civil and Criminal Procedure Code 2001 and section 231 of the Judicial Service Act 2007, and in order to achieve the aims of justice and to protect the integrity of the Judiciary, the Judiciary of Bhutan hereby adopt the Rules on Declaration of Conflict of Interest by Drangpon 2022.

1. Title and Commencement

This Rule shall:

- a) Be called the Rules on Declaration of Conflict of Interest by Drangpons, 2022;
- b) Come into force on the day notified by the Chief Justice of Bhutan; and
- c) Apply to all Drangpons of the Supreme Court, High Court, District Courts and the Dungkhag Courts.

2. Definition

For the purpose of this Rule:

- a) “Conflict of Interest” is a situation, which could corrupt the motivation of the Drangpon or where a Drangpon is involved in financial, emotional or any other interests.
- b) “Direct Pecuniary Interest” or “Financial Interest” means ownership or investment or interest which is more than de minimis legal or equitable interest.
- c) “Drangpons” refers to Drangpons of the Dungkhag Court, Dzongkhag Court, High Court and the Supreme Court.
- d) “Recusal” refers to an act of abstaining from participation in a proceeding due to a conflict of interest.
- e) “Reasonable Observer” means a person who is well informed of all surrounding facts and circumstances.
- f) “Three degrees of kinship” includes
 - i. First degree – parent, child, sibling and spouse;
 - ii. Second degree – grandparent, grandchild, and parents of the spouse.
 - iii. Third-degree – Siblings of the parents, cousin, nephew or niece.

3. Broad Principles

1. A Drangpon shall perform his or her judicial duties without fear, favour, or bias and shall perform in accordance with the rule of law.
2. A Drangpon shall maintain proper conduct, in and out of the court, to inspire the trust and confidence of the public in the Judiciary.

4. Grounds for Recusal

As per Section 6.1 of the Civil and Criminal Procedure Code of Bhutan 2001, as amended in 2021, a Drangpon shall disqualify himself or herself from adjudicating a case if:

- a. One of the litigants is a cognate, agnate or related to the Drangpon by matrimonial relations.
Provided that cognate, agnate and matrimonial relations should fall in one of the degrees of kinship as defined under Section 2(f) of the Rule.
- b. The Drangpon has an investment or pecuniary interest in the matters related to the case.
- c. The Drangpon's act of adjudicating the case contravenes the applicable code of conduct.

5. Voluntary Recusal

A Drangpon who believes in the existence of any ground for recusal before being motioned by the parties shall:

- a. Submit the duly filled form declaring Conflict of Interest to the Chief Drangpon in courts with benches, who may, after examination of the merit, consider the recusal and then, assign the case to the other Drangpon.
- b. An application for conflict must be substantiated and supported by evidence.
- c. A single bench Drangpon shall apply with the duly filed recusal form declaring a conflict of interest to the Chief Justice of Bhutan, who may, after examination of merit, designate a Drangpon of equal or parallel jurisdiction to adjudicate the case.
Provided that the assigned Drangpon of equal or parallel jurisdiction shall sit on the court where the case has been originally registered.
- d. A Drangpon of the High Court shall apply with duly filed recusal form to the senior Drangpon of the Bench or the Chief Justice of the High Court.

- e. The Chief Justice of the High Court and Justice of the Supreme Court shall apply for recusal along with the duly filled recusal form to the Chief Justice of Bhutan.

6. Motion for Recusal

- a. In accordance with Section 6.2 of the Civil and Criminal Procedure Code 2001 as amended in 2021, a party to a case may, in any stage of hearing or trial, file with the Registry of the Court a motion stating grounds for the recusal of the Drangpon.
- b. A motion for the recusal of a Drangpon must state the alleged grounds for recusal of the Drangpon based on personal knowledge that is supported by admissible evidence.
- c. The Registry shall forward the motion to the Chief Judge of the Court with benches and the Chief Justice of Bhutan in case of a single Drangpon in the Court;
- d. The Registry shall forward the motion to the Chief Justice of the High Court in case of the Drangpon of the High Court; and
- e. The Registry shall forward the motion to the Chief Justice of Bhutan in the case of the Chief Justice of the High Court and Drangpons of the Supreme Court.

7. Answer to the Motion

- a. A Justice/Judge against whom a recusal motion has been filed may file with the Registry of the Court a statement opposing or concurring with a motion for recusal at any time before the motion is heard.
- b. A statement opposing the motion for recusal shall contain the reasons why such a motion is not sustainable and should not be admitted by the court.

8. Recusal upon Motion

- a. A single Bench Drangpon, having heard both the parties and is of the opinion that there is a reason for recusal, shall submit a duly filled recusal form to the Chief Justice of Bhutan, who may designate a particular Drangpon for the adjudication.
- b. If the Chief Judge reasonably believes that there is a reason for recusal after having heard from both the parties, he/she shall assign the case to another Drangpon.

- c. If the Chief Justice of the High Court or the Senior-most Drangpon of the Bench reasonably believes that there is a reason for recusal after having heard from both the parties, he/she shall assign the case to another Drangpon.
- d. If the Chief Justice of Bhutan reasonably believes that there is a reason for recusal after having heard from both the parties, he/shall assign the case to another Drangpon.

9. Contempt

If the Drangpon hearing a motion determines that a party has filed a motion to recuse under this Rule with the sole of causing delay without sufficient cause, the Drangpon may in the interest of justice find the party filing the motion in contempt under Section 102 of the Civil and Criminal Procedure Code, 2001.

10. Non-Declaration of Conflict of Interest

- a. If a Drangpon is found to have knowingly and willingly omitted to declare a conflict of interest, he/she may be subject to disciplinary action by the Royal Judicial Service Council pursuant to Section 130 of the Judicial Service Act 2007.
- b. If a Drangpon of the Supreme Court or the High Court is found to have knowingly and willingly omitted to declare a conflict of interest, such omission may be ground for censorship or suspension under Article 21(15) of the Constitution of the Kingdom of Bhutan.

11. Amendment

No part of this Rule shall be amended except by the order of the Chief Justice of Bhutan.

Voluntary Recusal Form

Before the Honble Chief Justice/ Presiding Justice
Supreme Court/High Court/Chief Judge

Date: ___/___/_____

In re. Case No...

Mr/Ms.....(plaintiff)

Vs

Mr/Ms..... (defendant)

In a matter concerning.....

This case having been assigned to me/registered before my court, justice/judge of..... After consideration and having been determined, it is necessary to recuse myself for the following reasons:

- 1.
- 2.

I hereby move to recuse myself from presiding over this matter pursuant to Section 6.1 of the Civil and Criminal Procedure Code of Bhutan 2001 and Rules on Declaration of Conflict of Interest by Drangpon 2022.

Sign and Signature

Name of the Court