

S.I. 66 of 2025

Constitution of the Republic of Seychelles

Articles 46 (10), 129, 130 and 136 (2)

CONSTITUTIONAL COURT (RECUSAL OF JUDGES) RULES 2025

Rules

1. Citation
2. Recusal Practice and Procedure
3. Definition
4. Authority to determine recusal on own accord
5. Recusal request by the parties
6. Duty of Counsel
7. Establishing the reasonable apprehension of bias
8. Informal application
9. Formal application
10. The Rule of Necessity
11. The Procedure and Hearing

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CONSTITUTIONAL COURT (RECUSAL OF JUDGES) RULES 2025

In exercise of the powers conferred by Articles 46 (10), 129, 130 and 136 (2) of the Constitution of the Republic of Seychelles, the Chief Justice hereby makes the following Rules:

1. Citation

These Rules may be cited as the Constitutional Court (Recusal of Judges) Rules.

2. Recusal Practice and Procedure

These Rules provide for the practice and procedure of the Constitutional Court in respect of matters relating to applications for recusal of Judges.

3. Definition

(a) “Judge” shall include the Chief Justice.

4. Authority to determine recusal on own accord

(a) Each Judge on a panel has the jurisdiction and authority to determine whether or not they should recuse themselves from a case.

(b) A Judge shall recuse themselves on his or her own motion where:

(i) there exists a direct interest in the matter; or

(ii) although there is no actual bias, there are reasonable grounds for a litigant to apprehend that the Judge may not be impartial, creating a perception of bias.

(c) A Judge is not obliged to recuse themselves merely because a request has been made; the application must disclose reasonable grounds, which shall be objectively assessed by the Judge concerned.

(d) No Judge shall adjudicate on the propriety of another Judge's participation when a recusal application is made against that Judge.

(e) Where a recusal results in less than the required amount of judges to constitute a bench under Article 129 (2) of the Constitution, the Chief Justice shall one or more Judges in order to maintain full panel.

5. Recusal request by the parties

(a) Where a party to a case has reasonable grounds to believe that a particular Judge should be spared the embarrassment of sitting in the case on account of a bias, he or she should inform his or her Counsel and instruct them to consider making a recusal request to the Judge in question.

- (b) Any request for recusal must be made in good faith and based on a genuine belief, supported by clear and objective facts. It shall not rest on mere suspicion, unfounded allegations, or dissatisfaction with prior rulings.

6. Duty of Counsel

- (a) Upon receiving instructions from a client to seek a Judge's recusal, Counsel must satisfy themselves that the facts provided are not frivolous and are sufficiently cogent to warrant consideration.
- (b) Counsel must act as an independent officer of the court with a duty to interrogate the sufficiency of the facts, reflect on the applicable legal thresholds before making an informed decision whether in favour of or against making a recusal request.
- (c) Before proceeding, Counsel shall make an informed decision, being a decision reached after a full and careful consideration of all relevant facts, the potential legal and practical consequences, and the risks and benefits of bringing the application.
- (d) Where the grounds for recusal are legally insufficient, Counsel must advise the client accordingly and decline to proceed with the application.

7. Establishing the reasonable apprehension of bias

- (a) The determination of bias shall be based on an objective test: whether a fair-minded and informed member of the public would reasonably apprehend that the Judge will not be impartial.
- (b) The onus of establishing a reasonable apprehension of bias rests with the applicant.
- (c) Where Counsel is satisfied that sufficient grounds exist, he or she should indicate this position to opposing Counsel and may seek their views on the matter.

8. Informal application

- (a) Where Counsel has decided to proceed with a recusal request, he or she shall seek an appointment with the Judge concerned.
- (b) The meeting with the Judge shall take place in the presence of opposing Counsel to ensure transparency and fairness.
- (c) During the meeting, Counsel shall present the facts and grounds relied upon by the client in support of the recusal request.
- (d) Upon being apprised of the facts, the Judge shall decide whether or not to recuse themselves, as the decision rests solely with the Judge concerned.

9. Formal application

- (a) Where the Judge declines to recuse themselves and Counsel is not satisfied with that decision, Counsel shall file a formal recusal motion

supported by an affidavit. The motion shall be made in open court with notice to the other party.

- (b) The Judge shall determine the formal recusal motion by applying an objective, context-specific test for bias. The reasonableness of the apprehension must be assessed in light of:
 - (i) the judicial oath to administer justice without fear or favour; and
 - (ii) the Judge's training, experience, and capacity to carry out that oath.
- (c) The Judge shall be satisfied that any application for recusal is not brought for an improper purpose or to secure a more favourable bench. Mere dissatisfaction with prior rulings, prior involvement with the parties or the matter, or adverse findings or comments concerning a party or witness, without additional cogent grounds, shall not, in themselves, establish bias or justify recusal.
- (d) A Judge shall not recuse themselves solely for reasons of convenience or personal comfort.

10. The Rule of Necessity

- (a) In determining whether to recuse, a Judge shall have regard to the efficient functioning of the court, giving due consideration to the complexities of a jurisdiction with limited judicial resources, while upholding the principle of judicial independence as guaranteed under Article 119(2) of the Constitution.
- (b) Where other Judges are disqualified or unavailable, the necessity to maintain a properly constituted court may oblige the Judge to proceed with the hearing, provided fairness and justice are not compromised.

11. The Procedure and Hearing

- (a) The procedure and hearing of a recusal application shall be summary in nature and conducted in the same manner as a civil suit based on affidavit evidence.
- (b) The affidavit in support of a recusal application shall clearly state the grounds for recusal and confirm that the client has discussed with Counsel the facts relied upon.
- (c) Where the Judge decides to sit or to recuse themselves, whether following an informal meeting or a formal motion, the Judge shall state the reasons for the decision and disclose all relevant circumstances.
- (d) Where the Judge decides to recuse themselves, the case shall be allocated to another Judge for determination.

Explanatory Note: These rules are designed to uphold judicial integrity, fairness, and public confidence, aligning with international standards and the Judiciary's constitutional duties. They are made following the decision of: *Parekh v Attorney General* ((SCA CL 01/2025) [2025] (Arising in CP 07/2023)(18 August 2025)) [2025] SCCA 13 (18 August 2025).

The Court of Appeal has now clarified that it is improper for a Judge to determine the propriety of a colleague sitting on a matter when a recusal application is directed at that Judge. Such a process, the Court held, effectively puts a judicial colleague on trial and undermines both the Judicial Oath and the constitutional guarantee of judicial independence under Article 119 (2) of the Constitution.

This position represents a departure from the earlier approach in *Michel & Others v Dhanjee & Others* (SCA 5 of 2012) [2012] SCCA 23 (31 August 2012), where recusal applications in the Supreme Court were referred to the Chief Justice to decide whether a judge should step aside. The more recent *Parekh* decision, by implication, supersedes and overrules *Dhanjee* and establishes that the authority to decide on recusal is vested in the judicial officer to whom the application relates.

The guidelines and rules set out herein are therefore based on, and aligned with, the principles affirmed in the case of *Parekh v Attorney General* ((SCA CL 01/2025) [2025] (Arising in CP 07/2023)(18 August 2025)) [2025] SCCA 13 (18 August 2025).

Made this 27th day of August, 2025.

Rony J. Govinden
Chief Justice
