



National Association for Court Management
Strengthening Court Professionals

Conference Call of the Ethics Subcommittee

Thursday, June 23, 2022

2:00 p.m. (EDT)

Zoom Meeting ID: 710 387 5466 Passcode: 021675

1. Welcome and Introductions of any new participants
2. Approval of the Minutes from April 28, 2022- No minutes reported.
3. Governance Committee Call Report
4. Education Committee Call Report
5. Any other Committee Call Report
6. Any conference discussion needed
7. A Question of Ethics- Court Rule and Procedures vs Technological Innovation
(Attachments A & B)
NOTE This portion of the meeting will be recorded and shared with the membership.
8. Next Meeting August 25th, 2022.



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Attachment A

A Question of Ethics- Court Rules and Procedures vs Technological Innovation

The COVID pandemic brought the court's usage of available technology to the forefront of courthouse conversations worldwide and forced the reliance on technology to continue the work of the court. As courts evolve in practices and procedures, are courts advancing faster than the procedural rules that govern such courts?

Using Canons 1 & 2, please be prepared to discuss the following questions.

Q1. Does technological innovation often expose existing law as inadequate to manage changes such innovation creates? Should the court's rules change to accommodate technological innovations?

Q2. Should courts proceed in making advancements in the use of technology?



Attachment B

Canon 1: Avoiding Impropriety and the Appearance of Impropriety in All Activities	
1.1 <i>Performing Court Duties</i>	A court professional faithfully carries out all appropriately assigned duties, striving at all times to perform the work diligently, efficiently, equitably, thoroughly, courteously, honestly, openly, and within the scope of the court professional’s authority.
<i>Comments</i>	<p>This Canon promotes the professional values of diligence, trustworthiness, courtesy, respect, and accountability. It also upholds the institution of courts as independent, fair, and responsive to the public.</p> <p><i>Appropriately Assigned Duties</i> Court professionals dedicate themselves to their official duties, avoiding the temptation to undertake personal tasks unrelated to the functions of a court. Likewise, this Canon, along with Canon 1.6 (Avoiding Privilege), discourages superiors from pressuring subordinates to perform personal tasks.</p> <p><i>Honesty</i> There has been considerable discussion over the inclusion of the word “honesty.” Some see honesty as including the concept of being completely forthcoming and not holding facts back. Others see the necessity of “protecting the truth” to include protecting judicial officers, court officials, and courts as an institution. We court professionals must be as honest and forthcoming as possible without putting another person in jeopardy or impugning the reputation of the courts.</p> <p><i>Openness</i> The public should always be able to clearly understand how we as professionals arrive at the determinations we make, regardless of whether or not they agree with those determinations.</p>
1.3 Fairness	The court professional makes the court accessible and conducts his or her work without bias or prejudice.
<i>Comments</i>	While many codes simply reiterate the established legal prohibitions against legally protected groups, this Canon calls us to focus our decisions (e.g., hiring or contracting decisions) solely on merit, avoiding extraneous influences. It calls for completely unbiased work including, but not limited to, eliminating bias

	and prejudice based upon race, gender, gender identity or expression, skin color, religion, age, sexual orientation, national origin, language, marital status, socioeconomic status, or limited physical or cognitive abilities. This is more expansive than Canon 1.1 (Performing Court Duties), calling us to perform our work courteously, and Canon 1.2 (Avoiding Impropriety), urging us to avoid improper influences.
1.4 <i>Respect for Others</i>	A court professional treats litigants, co-workers, and all others interacting with the court with dignity, respect, and courtesy.
<i>Comments</i>	Both this Canon and Canon 1.3 (Fairness) uphold the courts as fundamentally fair. This Canon expands a topic introduced in Canon 1.1 (Performing Court Duties). It calls for us as court professionals to show dignity, respect, and courtesy to everyone interacting with the court, and even when the occasion does not specifically involve assigned duties.

Canon 2: Performing the Duties of Position Impartially and Diligently	
2.1 <i>Independent Judgment</i>	A court professional avoids relationships that would impair one’s impartiality and independent judgment. A court professional is vigilant concerning conflicts of interest and ensures that outside interests are never so extensive or of such a nature as to impair one’s ability to perform court duties.
<i>Comments</i>	Canons 1.1 (Performing Court Duties), 1.2 (Avoiding Impropriety), 1.3 (Fairness), 1.6 (Avoiding Privilege), as well as this Canon (Independent Judgment) are all principles which enlarge a central theme of professional, appropriate, and independent judgment. Court professionals constantly guard against finding themselves slipping into inappropriate relationships. They seek advice from the appropriate authority early to fend off later controversies.
2.2 <i>Personal Relationships</i>	A court professional recruits, selects, and advances personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism. A court professional avoids appointing, assigning, or directly supervising, a family member, or attempting to influence the employment or advancement of a family member.

	Where circumstances dictate that one must work directly with a family member, a court professional reports the circumstances to an appropriate authority, regularly assesses the situation, and takes remedial action at the earliest time practicable.
<i>Comments</i>	This Canon provides added detail to Canon 1.3 (Fairness) which calls professionals to conduct business in an unbiased manner. The Canon specifically points to relying only on knowledge, skills, and abilities in the personnel process. The third section of this Canon specifically addresses circumstances in small courts where working with a family member may be unavoidable.
2.3 Misconduct of Others	<p>Court professionals expect their fellow professionals to abide by the Canons set out in this code.</p> <p>A court professional reports to the appropriate authority the behavior of any court professional who violates this Code including, but not limited to, potential conflicts of interest involving one’s duties and attempts to inappropriately influence one in performing one’s duties.</p>

<i>Comments</i>	<p>Employees are often fearful of the ramifications of exposing their friends, but that does not diminish the import of this Canon. We are all aware of numerous public agency and private corporate examples demonstrating the effects of not reporting. Minor violations can most certainly be resolved with lower level counseling. It is important that each court designate “appropriate authorities” as mentioned in the commentary on common terms. Possibly different authorities can be designated for different classes of situations. Some situations might be appropriately dealt with by a supervisor; others might require the intervention of the presiding judge.</p> <p>This Canon requires a court professional to determine if he or she reasonably believes that another individual has violated this code, possibly working with incomplete information. This situation can prove problematic or even dangerous.</p>
2.4 Attempts at Influence	A court professional immediately reports to the appropriate authority any attempt to compel one to violate these Canons.
<i>Comments</i>	This Canon is distinguished from Canon 2.3 (Misconduct of Others) in that it is externally focused (those from outside the organization attempting to influence court professionals rather than those from within). There are many examples of outside groups, ranging from parties attempting to influence the outcome of a case to vendors attempting to secure a more favored position on agency bids, where court professionals may be tempted to violate their independent judgment.

<p>2.5 <i>Properly Maintain Records</i></p>	<p>A court professional does not inappropriately destroy, alter, falsify, mutilate, backdate, or fail to make required entries on any records within the court’s control.</p>
<p><i>Comments</i></p>	<p>This Canon does not prohibit alteration or expungement of records or documents pursuant to court order or an authorized records retention schedule.</p>
<p>2.6 <i>Legal Requirements</i></p>	<p>A court professional maintains the legally required confidentiality of the court, not disclosing confidential information to any unauthorized person, for any purpose.</p> <p>A court professional properly provides confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule or administrative policy.</p>
<p><i>Comments</i></p>	<p>This Canon promotes confidentiality where statutes and rules dictate it, but also situations where confidentiality is court–ordered even though the rules may not specifically address the circumstance. A court professional does not disclose confidential information to unauthorized individuals, even if directed to do so by a superior; authority can only be by statute, rule, or policy.</p>

<p>2.7 <i>Discretion</i></p>	<p>A court professional respects the personal lives of litigants, the public, applicants, and employees; disregards information that legally cannot or should not otherwise be considered; uses good judgment in weighing the credibility of Internet information; is cautious about verifying identities; and uses the Internet wisely.</p>
<p><i>Comments</i></p>	<p>Discretion is a fundamental value of professionalism.</p> <p><i>Use of the Internet</i> Using the Internet to research applicants, employees, and vendors is still an emerging issue and generates significant debate. This Canon takes into account the following considerations.</p> <ul style="list-style-type: none"> • The credibility of information published on the Internet can vary from highly reliable to highly unreliable, so court professionals must be appropriately skeptical of search–engine results. • Although the boundary between the public and private activities of court employees can be a complex area, there can be no expectation of privacy for information on the Internet; therefore, assertions about the <i>privacy</i> of such information are misplaced, even though such information can be intensely <i>personal</i>. • Just like jurors are asked to disregard inadmissible revelations at trial, court managers may sometimes be compelled by law and/or public policy to disregard what they discover through Internet searches, as difficult as that may be depending on the nature of the revelation.

	<p>Internet inquiries must be conducted very cautiously for all the reasons described. The Internet is now such a comprehensive information resource that such inquiries on prospective applicants or service providers can be entirely appropriate and may even be necessary and well-justified in some circumstances.</p> <p><i>Disclosing Sensitive Information</i> While prohibitions against releasing confidential or legally sealed information are clear-cut, ethical prohibitions concerning casually divulging personal, yet otherwise public information are less clear. Court employees ought to treat personal, private, or sensitive information with the same care and discretion that they would wish others to have for their own personal business – sort of a golden rule of discretion.</p>
<p>2.8 <i>Proper Use of Public Resources</i></p>	<p>A court professional uses the resources, property, and funds under his or her official control judiciously and solely in accordance with prescribed procedures.</p>
<p><i>Comments</i></p>	<p>Although this Canon calls out for an enhanced definition of “prescribed procedures,” it may be better to concentrate on how professionals use court resources judiciously. Asking a professional if they are using resources judiciously allows the individual to manage his or her own behavior.</p> <p>The evolution of the electronic age and the increased demand for immediate response has expanded the focus of this Canon. Twenty years ago, ethics codes warned against pilfering office supplies or excessively using the office telephone to chat with friends. With the advent of desktop computers and personal digital assistants, this Canon now focuses on blending work and personal time.</p> <ul style="list-style-type: none"> • Is it appropriate to email friends using one’s personal account which is on one’s desktop computer simultaneously with the office communications software? • Is it appropriate to use one’s private email account to communicate with other professionals on business issues? What if one does this specifically so one can “speak one’s mind,” uttering ideas not fit for a public forum? Should the private emails be considered public and how would anyone ever find out, short of an investigator committing an illegal act to obtain them? <p>Most courts assume emails are inherently in the public domain, yet this seems often to be ignored by staff. In the future, could ethics bow to custom, and even office emails be considered private? A weak argument can still be made that phone calls are private, more due to the mode of transmission than anything else. Why should emails be public just because they are easier to retrieve?</p>