

National Association for Court Management's

Model Code of Conduct for Court Professionals

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Background

Beginning in 1988, the National Association for Court Management realized the need for an ethical code to guide association members in their daily activities. Because of this need, the membership adopted a code of conduct for NACM members at the 1990 annual conference. The NACM code was based on the code from the American Judicature Society, but more compact, less detailed, and more easily replicated in other NACM materials. The 1990 code has remained intact since that date.

During the summer of 2006, the NACM Board of Directors suggested that the 1990 code might need revisions to become more applicable to the ethical dilemmas of today. As an example, in 1990 the Internet was in its most nascent stage. Also, the 1990 code was intended for NACM members only; some precepts applicable for a membership-oriented code may not be pertinent in a code intended for all court professionals.¹ At the 2006 annual conference, the board charged an ad hoc committee to study the issue and provide recommendations to the board.

The Code of Conduct Committee originally consisted of Pam Harris (chair), Peter Kiefer, Karl Theonnes, and David Slayton. The committee added other NACM members – Suzanne Stinson, Kevin Bowling, and Mike Bridenback – during the process, as well as Lee Suskin and David Boyd, representatives from the Conference of State Court Administrators.

The committee began its mission by reviewing the 1990 code, as well as numerous ethical codes from court systems around the country. Based upon that review, the committee began reconstructing a code that would address the numerous ethical issues facing court professionals in the new millennium.

During the drafting process, the proposed model code was provided to numerous individuals and bodies for review and comment. Among those were the NACM membership at the 2007 midyear conference in New York City, the Conference of State Court Administrators (COSCA), the American Judicature Society, and two classes of the Court Executive Development Program. The review, comment, discussion, and edit process was long and grueling. Dozens of suggestions came in; each one was seriously discussed and digested. The draft code went through more than three dozen versions in the course of almost a year and a half.

At its October 26, 2007, meeting, the NACM Board adopted the new Model Code of Conduct for Court Professionals. At its midyear meeting on November 30, 2007, COSCA adopted a resolution commending NACM for its efforts in updating the code and

¹ As an example, Article IV G of the 1990 code states that members shall promote the growth and development of professional court management by improving their work skills and supporting research and development in the field. While an admirable goal, some might argue that supporting research does not rise to the level of an ethical precept.

encouraging state court administrators to consider the model code as a guide when revising and adopting state codes.

Key Issues of the New Model Code of Conduct for Court Professionals

One of the key issues of the newly adopted NACM Model Code of Conduct for Court Professionals is contained in the preamble. The committee drafted the new code as a personal pledge rather than as a set of rules with sanctions. The committee hoped the new code would inspire court professionals to accept, achieve, and adhere to the canons laid out in the code. As a consequence of this approach, many subjects, such as hearing protocols, standards of proof, and appeals procedures were intentionally omitted from the code to be included in personnel rules and regulations. In addition, if any sanctions would be imposed for violating the code, the committee felt that those were issues better left to a personnel policy.

A second key issue was who to include under the scope of the code. The committee felt that any employee who works for the courts should be included, including full-time, part-time, and temporary employees. However, it was not the intent of the committee to replace separate professional codes to which numerous court professionals already prescribe.

The code has been organized into four canons. Canon 1 (“Avoiding Impropriety and the Appearance of Impropriety in All Activities”) contains the subjects of performing court duties, avoiding impropriety, being fair, respecting others, being involved in actions before a court, avoiding privilege, and assisting litigants. Canon 2 (“Performing the Duties of Position Impartially and Diligently”) contains the subjects of independent judgment, personal relationships, misconduct reports, attempts at influence, proper record maintenance, legal requirements, discretion, and proper use of public resources. Canon 3 (“Conducting Outside Activities to Minimize the Risk of Conflict with Official Position”) contains the subjects of outside business, compensation and post-employment restrictions, gifts, and financial disclosure. Canon 4 (“Refraining from Inappropriate Political Activity”) discusses appropriate and inappropriate political activity of court professionals.

For future reference, the NACM Model Code of Conduct for Court Professionals can be found on NACM website at <http://www.nacmnet.org/codeofconduct.html>.

Canon 1: Avoiding Impropriety and the Appearance of Impropriety in All Activities

Canon 1.1: Performing Court Duties

A court professional shall faithfully carry out all appropriately assigned duties striving at all times to perform the work diligently, efficiently, equitably, thoroughly, courteously, honestly, truthfully, and with transparency.

A court professional shall carry out properly issued court orders and rules, not exceeding the court professional's authority.

Comments

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.

Appropriately Assigned Duties

This phrase encourages court professionals to dedicate themselves to official duties, avoiding the temptation to assist in personal tasks not related to the functions of a court. Likewise this canon, along with canon 1.6, discourages superiors from imposing upon subordinates to fulfill personal tasks.

Honesty

There has been considerable discussion over the inclusion of the words "honesty" and "truthfully." Some see honesty as including the concept of being completely forthcoming, not holding facts back. Others see the necessity of "protecting the truth" to protect judicial officers, court officials, and courts as an institution. Certainly we, as court professionals, must be as honest and forthcoming as possible short of putting another person in jeopardy or impugning the reputation of the courts.

As a hypothetical situation, a very opinionated citizen concerned over an emotional court case comes to you as a court professional demanding to see the judge who decided the matter. Do you tell that person that the judge is "in a meeting" even when that is not the case? What if you think this person might possibly be dangerous?

Transparency

The public should always be able to clearly see how we as professionals arrive at decisions, regardless of whether or not they agree with that decision.

Canon 1.2: Avoiding Impropriety

A court professional shall avoid both impropriety and the appearance of impropriety.

A court professional shall avoid improper influences from business, family, position, party, or person.

A court professional shall avoid activities that would impugn the dignity of the court.

Comments

Avoiding impropriety and the appearance of it promotes the professional values of fairness, impartiality, a reliance on process, and making decisions based on the merits rather than favoritism. This canon also promotes the institution of courts as above reproach and therefore worthy of the public's trust and confidence.

Impropriety and the Appearance of Impropriety.

Impropriety is a higher standard than simply "obeying the law"; the phrase "appearance of impropriety" is an even higher standard than that. The Model Code of Conduct is silent on who defines impropriety or who determines the appearance of it.

Examples of impropriety: Having a personal relationship with a process server or serving alcohol at a social event to already inebriated individuals.

Avoiding Improper Influence: Business

Examples: Quietly referring parties in cases to a specific local attorney; choosing one vendor over other more qualified vendors bidding on a court contract.

Avoiding Improper Influence: Family or Person

Example: Hiring a family or a friend over other, more qualified candidates.

Avoid Improper Influence: Position

This could include resisting inappropriate pressure, even by a judge, to perform an inappropriate act such as hiring a friend.

Impugning the Dignity of the Court

The code is vague on what constitutes the dignity of the court or impugning that dignity. Are there situations where the appearance of impropriety is unavoidable? For example, could a court professional's family member become deeply involved in a court case or be arrested for a heinous crime? Could the professional showing up in a courtroom every day impugn the court's dignity when others know the professional's usual role in operations? Do family obligations and the need to show support overshadow one's professional role?

Canon 1.3: Fairness

A court professional shall conduct his or her work without bias or prejudice including, but not limited to, bias or prejudice based upon race, gender, skin color, religion, age, sexual orientation, national origin, language, marital status, socioeconomic status, or physical or mental challenge.

Comments

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. This is more expansive than canon 1.1 calling us to perform our work courteously and canon 1.2 urging us to avoid improper influences.

Canon 1.4: Respect of Others

A court professional shall treat litigants, coworkers, and all others interacting with the court with dignity, respect, and courtesy.

Comments

Both this canon and canon 1.3 on fairness uphold the courts as fundamentally fair and impartial. This canon expands a topic introduced in canon 1.1. It calls for us as court professionals to show dignity, respect, and courtesy to everyone interacting with the court, even when the occasion does not specifically involve assigned duties. For example, professionals will assist members of the public even on break or at lunch.

Canon 1.5: Involvement in Actions Before a Court

A court professional shall notify the appropriate authority whenever he or she, anyone in his or her family, or anyone with whom he or she has a close personal relationship has been arrested, named as a party, or is otherwise formally involved in any action pending in any court.

Comments

Inherent in this canon is an assumption that court professionals lose a degree of privacy afforded others who do not work for the judiciary. We cannot let people affect the outcome of a case.

Canon 1.6: Avoiding Privilege

A court professional shall use his or her official position solely for its intended purpose.

A court professional shall not use his or her position (intentionally or unintentionally) to secure unwarranted privileges or exemptions for oneself or others.

A court professional shall not dispense special favors to anyone, whether or not he or she was offered remuneration.

Comments

Two examples of how this canon would be violated include using one's position to secure a job for a friend or writing a complaint letter concerning a nonbusiness matter using court letterhead.

Canon 1.7: Assisting Litigants

A court professional shall be responsive to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of one's official position.

Canon 2: Performing the Duties of Position Impartially and Diligently

Canon 2.1: Independent Judgment

A court professional shall avoid relationships that would impair one's impartiality and independent judgment.

A court professional shall be vigilant of conflicts of interest and ensure that outside interests are never so extensive or of such nature as to impair one's ability to perform court duties.

Comments

Canons 1.1 (faithfully carrying out appropriate duties), 1.2 (avoiding impropriety), 1.3 (conducting unbiased business), 1.6 (using one's position for its intended purpose), as well as this canon (using impartial judgment) are all principles that enlarge a central theme of professional, appropriate, and impartial judgment.

Court professionals must be constantly on guard against finding themselves slipping into inappropriate relationships. They need to seek advice from the appropriate authority early to fend off later controversies.

More work needs to be done on defining a more objective rule to measure when an outside interest has become so extensive that it impairs one's abilities to perform one's duties.

Canon 2.2: Personal Relationships

A court professional shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism.

A court professional shall avoid 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 shall report the circumstance to an appropriate authority, regularly assess the situation, and take remedial action at the earliest time practicable.

Comments

In the preamble, the committee urged that courts define the term “family” before adopting this code. This canon provides added detail to canon 1.3, which calls on professionals to conduct business in an unbiased manner. This 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.

Canon 2.3: Misconduct of Others

A court professional should expect fellow professionals to abide by the canons set out in this code.

A court professional shall report 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.

Comments

Employees are often fearful of the ramifications of exposing their friends, but that does not diminish the importance 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.

This canon requires the professional, possibly with incomplete information, to determine whether another individual has violated this code. This situation can prove problematic, or even dangerous.

Canon 2.4: Attempts at Influence

A court professional shall immediately report to the appropriate authority any attempt to compel one to violate these canons.

Comments

This canon is distinguished from canon 2.3 in that it is externally focused (outsiders attempting to influence court professionals rather than within an organization). 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 in agency bids, where court professionals may be tempted to violate their independent judgment.

Canon 2.5: Properly Maintain Records

A court professional shall not inappropriately destroy, alter, falsify, mutilate, backdate, or fail to make required entries on any records within the court's control.

Comments

This canon does not prohibit alteration or expungement of records or documents pursuant to court order or an authorized records retention schedule. A criticism of this canon could be that it mirrors existing statutes and rules already in place.

One concern is the retention and disposal of court reporter notes. It is unclear what obligation court reporters have to retain notes of past trials after separation or retirement from a court. It might be a concern if a reporter writes in a phonetic code difficult or impossible for a transcriber to later reduce to writing.

Canon 2.6: Legal Requirements

A court professional shall maintain the legally required confidentialities of the court, not disclosing confidential information to any unauthorized person, for any purpose.

A court professional shall properly provide confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule, or administrative policy.

Comments

This canon promotes confidentiality where statutes and rules dictate it, but also in situations where confidentiality is court ordered even though the rules may not specifically address the circumstance. It also precludes a professional from disclosing confidential information to an unauthorized individual, even if directed to do so by a superior; authority can only be by statute, rule, or policy. A clear example of confidential information would be knowledge of a judge's ruling prior to the rendered decision.

Canon 2.7: Discretion

A court professional shall be respectful of litigants, the public, applicants, and employees' personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities.

A court professional shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.

Comments

Discretion is a fundamental value of professionalism.

Use of the Internet

Use of the Internet is still something of an emerging issue and using it to research applicants, employees, and vendors generates significant debate. This canon takes into account the following considerations.

1. The credibility of information published on the Internet can vary from highly reliable to complete nonsense, so managers must be appropriately skeptical of search engine results.
2. 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 published on the Internet; therefore, assertions about the privacy of such information are misplaced, even though such information can be intensely personal.
3. 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.

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.

Disclosing Sensitive Information

While prohibitions against the release of confidential or legally sealed data are clear-cut, an ethical prohibition on the release or casual discussion of highly personal information found in files that is otherwise public is 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.

Examples

A reasonable court employee would not want his or her messy divorce casually discussed at a party, so court professionals should not discuss a citizen's divorce at a party either.

A reasonable court employee would find it hurtful to have the gory details of his sister's assault discussed at the local bar, so employees ought to extend that same discretion to members of the public and refrain from such discussions in social settings, whether or not those same gory details were published on the front page of the local newspaper.

Canon 2.8: Proper Use of Public Resources

A court professional shall use the resources, property, and funds under one's official control judiciously and solely in accordance with prescribed procedures.

Comments

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.

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 making off with 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. More discussion is needed to define new issues.

- When it is 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?

Most courts declare that email is inherently in the public domain, yet this admonishment seems to be routinely ignored by staff, often to the court professional's peril. Could this situation be, sometime in the future, where ethics bow to custom and emails even from an office system will be deemed private? Certainly a weak argument can be made that phone calls remain private more by virtue of the mode of transmission than anything else. (One can scarcely think of a court recording all telephone calls as a matter of policy.) Why then should emails be public just because they are easier to retrieve?

Canon 3: Conducting Outside Activities to Minimize the Risk of Conflict with Official Position

Canon 3.1: Outside Business

The court is a court professional's primary employment. A court professional shall avoid outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, that reflect negatively upon the judicial branch and on one's own professionalism.

A court professional shall notify the appropriate authority prior to accepting work or engaging in business outside of one's court duties.

A court professional shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment.

However, court professionals may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code.

Comments

General Comments

Outside employment is a potentially complex area. At least two ethical principles should be considered in relation to outside employment or consulting work. First, the work should not create a real or perceived conflict of interest between one's court work and the outside activity. For example, it would not be appropriate to do outside consulting work for a law firm operating in the court's jurisdiction, even if the court employee takes leave from a court job to do so. Similarly it would not be appropriate to do consulting work for a vendor who also supplies services or products to the court. In both examples, such work may erode the steadfast impartiality that court professionals must maintain in their work for the court.

The second principle is frequently discussed when considering these topics, but generates far more debate. In many jurisdictions, court employees are prohibited

or discouraged from outside employment that may “impugn the dignity of the court.” Examples of such activities may include working in an adult entertainment venue, or at certain bars, taverns, or pawn shops. Some may feel strongly that as long as there is no material, practical, specific conflict between outside employment and court work, it is not the court’s business to dictate outside activities. On the other hand, many others feel just as strongly that court employees ought to avoid outside activities that may erode the general sense of dignity and respect the court must maintain with the public.

Compensation Beyond that Received in the Course of Employment

Many courts permit employees to engage in limited consulting work while employed. If employees are paid from a separate entity as consultants, they would be expected to take leave from the court.

Outside Employment Not in Conflict with Official Responsibilities

An example would be teaching night classes at a community college or university.

Canon 3.2: Compensation and Post-Employment Restrictions

During or following employment with a court, a court professional shall not represent a commercial interest to, or do business with, that same court unless both the employment and commercial interest are fully disclosed to and approved by the court’s appropriate management authority.

Comments

Many codes contain a specific time line (e.g., one year) before an employee can be allowed to join a company that is doing business with the court.

Canon 3.3: Avoiding Gifts

A court professional shall not solicit, accept, agree to accept, or dispense any gift, favor, or loan either for oneself or on behalf of another based upon any understanding, either explicit or implicit, that would influence an official action of the court.

Comments

Some codes state specific amounts under which employees can accept a gift. This code avoids accepting gifts in any amount.

Canon 3.4: Financial Disclosure

A court professional shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

Comments

A number of courts throughout the country have requirements that court professionals reveal aspects of their financial situation in order to determine and avoid any potential conflicts of interest in advance. The ability to conceal (or at least be less than forthcoming) is great, and the chances of detection are small. Whether or not there is an outside requirement, an individual ethical commitment is necessary.

Canon 4: Refraining from Inappropriate Political Activity

Canon 4.1: Refraining from Inappropriate Political Activity

A court professional retains one's right to vote and is encouraged to exercise it as a part of citizenship.

Engaging in any political activity is done strictly as a private citizen and only in accordance with state law or court rules.

A court professional shall participate only during non-court hours, using only non-court resources.

A court professional shall not use one's position or title within the court system to influence others.

Unless a court professional is elected to one's court position, one shall campaign during non-work hours or take an unpaid leave of absence upon declaring one's intent to run for office.

If elected, a court professional shall resign one's post with the court unless one is holding a political office that clearly does not hold a conflict of interest, nor does it interfere with one's ability to perform one's court duties.

Comments

The Right to Vote

Politics in the court realm is particularly sensitive. Although the judicial branch should be above partisanship, it is frequently subject to the influences of community criticism, funding shortfalls, and political favoritism. It is important with all the prohibitions against political activities that court staff observe and celebrate our fundamental right, the right to vote.

Political Activity Done as a Private Citizen

The right to vote aside, it is important to maintain the clear distinction between the role of citizen participation and the role of court professional. This distinction supports a fundamental value of the court professional being fair and impartial.

Do Not Use Title to Influence Others

One should never use one's title (e.g., judge, court administrator, or county clerk) to encourage or coerce staff to vote or contribute money to a campaign for a candidate or a ballot measure. In addition one should never award favors or sanctions to staff dependent upon whether a staff member did or did not vote or contribute to a campaign.

This is a logical extension of Canon 1.6 on "Avoiding Privilege," particularly focusing on politics.

Campaign During Non-Work Hours

The code assumes that even if one is standing for reelection, campaigning should be during off hours or else take leave. Again, this clearly distinguishes between the private and public roles.

Resigning One's Previous Position

Situations have arisen where court staff have been elected to offices in different branches and at different levels of government. Staff must be vigilant if a conflict of interest arises. If an elected position has direct oversight on aspects of court operations (e.g., county board of supervisors or state legislature) the court professional should resign one of the positions. The court professional who is also a newly elected officer should ask if the new position has influence, direct or indirect, over the following:

- Funding to the court
- Court resources
- Rule making for the court
- Court operations
- Court staffing

Ballots and Measures

As the court has a right and responsibility to respond to initiatives that affect the administration of justice, it is unclear as to a court professional's role regarding ballot initiatives.

For example, several years ago ballot initiatives passed in several states that required treatment and prohibited incarceration for first-time drug defendants. Can a court professional lobby other court staff regarding a ballot initiative? Can a court professional captain a ballot initiative drive?

