**Model Code of Conduct for Court Professionals**

**August 24, 2018**

**Introduction**

Service to the judicial branch inherently involves a public trust.

The foundation of our society rests, in part, on the ability of its citizens to wisely judge the value of our courts and to appreciate the integrity of our judiciary as a fundamental, coequal branch of government. Court professionals who work for the judicial branch are faithful to its values and are accountable to this trust.

The National Association for Court Management (NACM) has therefore developed the Model Code of Conduct for Court Professionals to help lay the foundation for a personal and professional pledge to that trust and to those values.  This Code is intended to be aspirational and purposeful; to inspire court professionals to appreciate, accept, and commit to its Canons. It promotes positive behaviors essential for respecting the values inherent in an independent judiciary; it values court staff who consider themselves as professionals, and it describes conduct court professionals desire to emulate to commit to their chosen career.

**Key Ethical Challenges and Issues**

We court professionals face an array of ethical challenges. In addition, ongoing legal, technological, and cultural changes in our society present an unending stream of new ethical issues. The Model Code attempts to provide a measure of enduring guidance for court professionals dealing with these challenges and issues. The list below is just a sampling of the challenges and issues courts face:

* Courts must remain impartial and unswayed by passing popular sentiment. This can challenge a court professional by requiring him or her to perform functions that may make one appear to be unfeeling in the face of a public possibly swept up in the passions of the moment.
* Traditionally courts are reactive; they routinely avoid addressing an issue until an actual controversy has formed. This can occasionally frustrate a public clamoring for decisive action.
* In a departure from the traditional court environment, a wide range of courts operate today under a general umbrella term of “problem–solving” courts. These include drug courts, mental health courts, impaired driving courts, domestic violence courts, child support payment courts, re-entry courts, veterans’ courts, truancy courts, teen courts, and homeless courts, just to name a few. “Problem–solving” courts differ from traditional courts in that they are highly collaborative, participatory, and promotional; they rely on community, donor, vendor, and agency support. Court professionals can be challenged by having to work concurrently in both environments and reconciling the differences.
* Courts and judges must follow the law even if a specific law was poorly written or runs counter to current cultural sentiment.
* Technological advances are now occurring so rapidly that all of society, including the courts, finds it difficult to fully comprehend the ethical implications of new innovations. The pace of technology can irritate those wishing to press harder ahead; it can intimidate those feeling that technology is speeding ahead unchecked.

An extensive list of ethical challenges (enduring questions) and issues (immediate questions) is presented on a separate page available on the NACM website.

**History**

Beginning in 1988, NACM realized the need for an ethics code to guide association members in their professional activities. Responding to this need, NACM developed the Model Code of Conduct, extensively based on a code developed for the American Judicature Society by David T. Ozar, Cynthia Kelly, and Yvette Begue, and approved by the Society in 1989.[[1]](#footnote-1)

NACM adopted the Model Code in 1990 at its annual conference. In the Spring of 2006, the NACM Board of Directors suggested that the 1990 Code needed to be made more applicable to the ethical challenges of the day. The focus of the 1990 Code concentrated on NACM members, so some precepts applicable to the membership might not be pertinent to court professionals outside of the Association.[[2]](#footnote-2)

At the 2006 annual conference, the Board charged an ad hoc committee to study the need for revisions and provide recommendations. The committee was comprised of Pam Harris (chair), Karl Theonnes, David Slayton, Suzanne Stinson, Kevin Bowling, Peter Kiefer, Mike Bridenback, Lee Suskin, and David Boyd. (Lee and David represented the Conference of State Court Administrators.) The committee reviewed the 1990 Code, as well as other ethics codes from court systems around the country, and then began reconstructing a code to address the numerous ethical challenges and issues facing court professionals in the new millennium.

During the drafting process, the proposed Model Code was shown to numerous individuals and bodies for review and comment including the NACM membership, the Conference of State Court Administrators (COSCA), the American Judicature Society, and two classes of the ICM Court Executive Development Program. As a result, the draft code went through more than three dozen versions over more than a year. The NACM Board adopted the Model Code in 2007 and at its midyear meeting that same year, COSCA commended NACM for updating the Code and encouraged state court administrators to consider using it as a guide when revising and adopting their state codes.

In 2016 the NACM Ethics Subcommittee determined that the Model Code could benefit from another review. A workgroup was organized consisting of Peter Kiefer (chair), Joe Tommasino, T.J. BeMent, Will Simmons, Norman Meyer, Amy McDowell, Dawn Palermo, and Renee Danser. Thanks to that workgroup, the Ethics Subcommittee, and the NACM Board, the Model Code is displayed here today.

**Organization of the Model Code**

The Code is organized into four canons.

**Canon One** (“Avoiding Impropriety and the Appearance of Impropriety in All Activities”) addresses performing court duties, avoiding impropriety, being fair, respecting others, being involved in actions before a court, avoiding privilege, and assisting litigants.

**Canon Two** (“Performing the Duties of Position Impartially and Diligently”) addresses independent judgment, personal relationships, misconduct reports, attempts at influence, proper record maintenance, legal requirements, discretion, and proper use of public resources.

**Canon Three** (“Conducting Outside Activities to Minimize the Risk of Conflict with Official Position”) addresses outside business, compensation and post-employment restrictions, gifts, and financial disclosure.

**Canon Four** (“Refraining from Inappropriate Political Activity”) discusses appropriate political activity of court professionals.

**Glossary of Terms**

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| **Appropriate Authority** | The definition of this term is intentionally left up to the Federal courts, each state court system, and each local court. The committee urges courts to define the term as a part of adopting this or any ethics code. Courts and court systems are complicated organizations with different lines of authority. Each court needs to determine the organizational reporting structure and reporting circumstances necessary to achieve the Model Code’s underlying intent: full disclosure and appropriate notification. |
| **Canons** | Different ethics codes contain numerous terms describing their subsections. These terms include “tenets,” “articles,” “principles,” or “sections.” For continuity, the discussion of the Model Code refers to all subsections as Canons. |
| **Court** | The umbrella term “court” refers to trial courts, appellate courts, and Federal, State, and local court systems as appropriate. |
| **Family, Family Members, and Immediate Family** | The definition of these terms is intentionally left up to the Federal courts, each state court system, and each local court. Community sensibilities may differ, and each court needs to define these terms as a part of accepting this or any ethics code.[[3]](#footnote-3) |
| **Model Code** | As already described, the Model Code of Conduct for Court Professionals is referred to as either the Code or the Model Code. |

**Scope**

The Model Code is intended to apply to all court professionals who work for the courts. It includes full–time, part–time, and temporary employees; interns; externs; and individuals performing essential court functions but who are either paid by, or under contract to, an outside agency or entity.[[4]](#footnote-4)

The Model Code is not intended to replace other professional codes to which some court professionals already adhere, such as codes applicable to court reporters, court interpreters, probation officers, and staff attorneys. Additionally, some court organizations are bound by employee agreements and union contracts.[[5]](#footnote-5) This Code should be looked at as a supplement to these other codes and agreements.

**Court Policies, Procedures, and the Model Code**

Another consequence of the Model Code being aspirational is that many topics, such as personnel hearing protocols, standards of proof for misconduct, grievance and appeals procedures, and types of sanctions for misconduct are not addressed. Court organizations use ethics codes in a variety of ways; often, they are incorporated into court policies and human–resource rules. The Model Code is not intended for incorporation into a court’s policies and rules; rather, the better practice is to have the Code live outside the rules even if the Code’s substance is replicated in policy and rule. There are several reasons for this approach:

* Personnel rules state the types of sanctions for various categories of violations, which naturally implies that a motivation for adhering to the Code is to escape punishment. Court professionals can easily turn from being inspired to commit to the Code’s underlying values, to strategizing ways to find loopholes so as to avoid discipline.
* Personnel rules span a variety of topics from profound principles to routine regulations. It can be awkward to intersperse dictates to uphold the independence of the judiciary with descriptions of the summer dress code for example.
* Personnel rules must cover due process, opportunities to respond, and levels of proof necessary for sanctions to be imposed. What a travesty to have an ethical Canon violated, yet because of a due process failure, the offending party claims not to have violated the Code. Even more reprehensible would be a situation where acknowledging a violation of a Canon becomes a negotiating point in a proposed settlement.

**Ethics Review Boards**

Some state courts and the Federal Courts have instituted boards to review ethical questions and issue opinions. Ethics review boards can be a powerful tool to raise awareness of ethical principles. Review boards can be particularly valuable in handing down advisory opinions on ethical situations and recommending needed code revisions. On the other hand, saddling an ethics review board with reviewing individual employee ethics complaints transforms the board from an ethics advisory body into a personnel rules appeal board. The better practice is to limit the work of an ethics review board to defining future behaviors, rather than attaching culpability to past actions.

**Citizenship**

It is fundamental to this Code and a prerequisite to its Canons that court professionals commit to fulfilling the duties of citizenship in a self–governing democratic society. This includes upholding the United States Constitution and the appropriate state constitution, as well as Federal and state laws, and local regulations. Court professionals comply with their legal duties, placing loyalty to the principles of this code before loyalty to persons or other affiliations.

**Incorporating Laws into the Model Code**

Many ethics codes incorporate statutes and rules or reference them in detail. To the extent possible, the Model Code assumes that obedience to the law is an underlying prerequisite for commitment to the Canons. It, therefore, does not normally incorporate obeying the law or court rule into the Code.

**Civil Disobedience**

The question of civil disobedience, particularly as it applies to religious beliefs, has been subject to considerable debate. An assumption inherent in urging court professionals to obey all laws is that the laws have been legitimately arrived at, regardless of whether or not one agrees with them. Therefore, the Code does not specifically address circumstances where a court professional might disobey a law as a matter of conscience.

**Ongoing Review of the Model Code**

As court professionals, we must continually evaluate the Model Code to ensure it remains relevant and meaningful.  NACM is committed to a process of ongoing review to keep the Code a relevant and practical source of inspiration. Members with comments about the Code are invited to submit them via email to: [nacm@ncsc.org/ethics](mailto:nacm@ncsc.org/ethics).

**Educational Modules (For Members Only)**

The NACM Ethics Subcommittee has developed a series of educational modules related to Court Ethics for use by NACM members in their courts.  Each module introduces an ethics–related scenario and is designed to be used on an individual basis or in a group–training environment and includes 1) PowerPoint slides; 2) Video; and 3) Facilitator notes.

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| **Canon 1:** | **Avoiding Impropriety and the Appearance of Impropriety in All Activities** |
| ***1.1***  ***Performing Court Duties*** | **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.** |
| ***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*  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.  *Honesty*  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.  *Openness*  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. |
| ***1.2***  ***Avoiding Impropriety*** | **A court professional avoids both impropriety and the appearance of impropriety. This includes avoiding improper influences from business, family, position, party, or person, as well as avoiding activities that would impugn the dignity of the court.**  **Though some court calendars may be inherently non–adversarial, the court professional keeps in mind that individual, community, and business partners (both non–profit and for–profit) could become litigants in traditional court actions at some time in the future. Therefore, in the management of finances, contracts, court activity, and access to judges and the courts, the court professional avoids the appearance that support from partners might provide an advantage or favor were those partners ever to become litigants.**  **Unless it is logistically infeasible, the court professional guards against forming an exclusive reliance on a single donor, vendor, or treatment provider, so that the absence of that donor, vendor or treatment provider does not compromise the court’s core functions.** |
| ***Comments*** | Avoiding impropriety and the appearance of it promotes the professional values of fairness, impartiality, reliance on process, and decision–making based on merit 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*  “Avoiding impropriety” is a standard higher than simply “obeying the law”; the statement “avoiding the appearance of impropriety” is a standard even higher than that.    *Avoiding Improper Influence: Family or Person*  A court professional strives at all times to prevent being placed in situations where friends or family members could improperly influence them. When assisting a friend or family member with court business is unavoidable, the court professional seeks additional guidance in order to properly navigate the situation.  In some non–adversarial courts that often consist of entire teams dedicated to treatment, rehabilitation, and reintegration, participant compliance can strain a court professional’s responsibility to remain neutral. There might be pressure to share private information about participants that would be inappropriate to share in a traditional court environment.    *Avoid Improper Influence: Position*  This could include resisting improper pressure, even by a judge, to perform an inappropriate act such as hiring a friend.  *Impugning the Dignity of the Court*  Unlike traditional courts, a basic tenet of some non–adversarial courts is forging and maintaining community partnerships and ongoing social support. Court professionals, therefore, need to balance this outreach with the need to maintain an impartial distance from some community partners. |
| ***1.3 Fairness*** | **The court professional makes the court accessible and conducts his or her work without bias or prejudice.** |
| ***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 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***  ***Respect for Others*** | **A court professional treats litigants, co-workers, and all others interacting with the court with dignity, respect, and courtesy.** |
| ***Comments*** | 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. |
| ***1.5***  ***Involvement in Actions Before a Court*** | **(a) A court professional notifies the appropriate authority whenever he or she is arrested, named as a party, or is otherwise formally involved in any action pending in any court.**  **(b) A court professional notifies the appropriate authority whenever the following people are named as a party or otherwise involved in any action pending in the court in which the court professional is employed:**  **(1) A member of the court professional’s immediate family; or**  **(2) An individual who has a relationship with the court professional, such that disclosure would be deemed warranted by a reasonable, prudent court professional.** |
| ***Comments*** | Again, readers are encouraged to refer to their local jurisdiction’s definitions. Inherent in this Canon is an assumption that court professionals lose a degree of privacy afforded to others who do not work for the judiciary. We cannot let people affect the outcome of a case. Court professionals should err on the side of disclosure if uncertain as to whether or not to notify the authority. |
| ***1.6***  ***Avoiding Privilege*** | A court professional uses his or her official position solely for its intended purpose.A court professional does not use his or her position to secure unwarranted privileges or exemptions for oneself or others. **A court professional does** **not dispense special favors to anyone, whether or not he or she was offered remuneration.** |
| ***Comments*** | A court employee has a duty to remain impartial.  Using the power of one’s position for personal gain or for the advancement of others has the potential to bring the court into disrepute while undermining public trust and confidence. |
| ***1.7***  ***Assisting Litigants*** | **A court professional is responsive to inquiries regarding standard court procedures but does not give legal advice unless required as part of one’s official position.** |
| ***Comments*** | Court professionals who are not supervised by a licensed attorney are authorized to do the following:   * Encourage persons to obtain legal advice from a licensed attorney outside of the qualifying public entity; * Provide information about available pro bono, free or low-cost civil legal services, legal aid programs and lawyer referral services; * Provide information about available forms, pleadings and instructions without providing advice or recommendations as to any specific course of action; * Engage in oral communications to assist persons in the completion of blanks on forms; * Provide orally or in writing definitions of legal terminology from widely accepted legal dictionaries or other dictionaries without advising whether a particular definition is applicable to the requesting person’s situation; * Provide orally or in writing citations, constitutions, statutes, administrative or court rules and case law without providing legal research as defined below or advising whether a particular provision is applicable to the requesting person’s situation; * Provide information on docketed cases; * Provide general information about court process, procedure and practice; * Provide information about mediation, parenting courses and courses for children of divorcing parents; * Provide orally or in writing information on local court rules and administrative orders; and * Provide general information about community resources.   No court professional who is not licensed to practice law, or supervised by a licensed attorney may do any of the following:   * Provide orally or in writing any interpretation by application of the following to specific facts: legal terminology, constitutional provisions, statutory provisions, administrative or court rules, and case law; * Provide orally or in writing information that must be kept confidential by statute, administrative or court rule, or case law; * Create content on documents not provided by self-represented litigants; * Perform direct legal research for any litigant by applying the law to specific facts, expressing an opinion regarding the applicability of any constitutional provisions, statutes, administrative or court rules, or case law to the requesting person’s particular circumstances; and * Lead persons to believe that they are the legal representatives of anyone in any capacity or induce the public to rely on them for legal advice. |
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| **Canon 2:** | **Performing the Duties of Position Impartially and Diligently** |
| ***2.1***  ***Independent Judgment*** | **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.** |
| ***Comments*** | 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***  ***Personal Relationships*** | **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.** |
| ***Comments*** | 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*** | Court professionals expect their fellow professionals to abide by the Canons set out in this code.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. |
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| ***Comments*** | 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.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. |
| ***2.4***  ***Attempts at Influence*** | **A court professional immediately reports to the appropriate authority any attempt to compel one to violate these Canons.** |
| ***Comments*** | 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. |
| ***2.5***  ***Properly Maintain Records*** | **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.** |
| ***Comments*** | This Canon does not prohibit alteration or expungement of records or documents pursuant to court order or an authorized records retention schedule. |
| ***2.6***  ***Legal Requirements*** | **A court professional maintains the legally required confidentialities of the court, not disclosing confidential information to any unauthorized person, for any purpose.** 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. |
| ***Comments*** | 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. |
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| ***2.7***  ***Discretion*** | **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.** |
| ***Comments*** | Discretion is a fundamental value of professionalism.  *Use of the Internet*  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.   * 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 *privacy* of such information are misplaced, even though such information can be intensely *personal*. * 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 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. |
| ***2.8***  ***Proper Use of Public Resources*** | **A court professional uses the resources, property, and funds under his or her 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 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.   * 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?   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? |
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| **Canon 3** | Conducting Outside Activities to Minimize the Risk of Conflict with Official Position |
| ***3.1***  ***Outside Business*** | The court is a court professional’s primary employment. A court professional avoids outside activities, including outside employment, concurrent business activities, and business activities after leaving judicial service that reflect negatively on the judicial branch and on one’s own professionalism.A court professional notifies the appropriate authority prior to accepting work or engaging in business outside of his or her court duties.A court professional does not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment.Following notification and approval, if required by the appropriate authority, court professionals may engage in outside employment as long as it does not conflict with the performance of their official responsibilities, the administration of the court, or reflect adversely on the court or the judicial branch. |
| ***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.  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.”   *Compensation Beyond that Received in the Course of Employment* Many courts permit employees to engage in limited consulting work while employed. Court professionals who are paid by a separate entity as consultants would be expected to take a leave of absence. |
| ***3.2***  ***Compensation*** | **During one’s employment with a court, a court professional does not represent a commercial interest of, 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*** | There may be differences in local interpretations regarding post–employment prohibitions. Some jurisdictions impose requirements, for different periods of time, in order to prohibit court professionals from departing the court and then working with a company which conducts business directly with the court. |
| ***3.3***  ***Gifts, Donations, and Grants*** | **A court professional does not solicit, accept, agree to accept, or dispense any gift, favor, or loan either for oneself or on behalf of another, when such an act is based upon any understanding, either explicit or implicit, that would influence an official action of the court.**  **When engaged in or assisting with fundraising, advocating for community or private–sector support, or serving on the board of a third–party fiscal agent or committee, a court professional avoids any implication that contributions to the court would enhance a contributor’s standing or influence with the court or its judges.** |
| ***Comments*** | Some codes state specific amounts under which employees can accept a gift.[[6]](#footnote-6) The intent of this canon is to deter court professionals from accepting any gift that could be construed as affecting an official action by the court.  The ever–expanding scope of community collaborations, combined with the chronic funding needs all courts share, can create a seductive potential for funding opportunities. These opportunities could foster the potential for substantial conflicts of interest in court operations. |
| ***3.4***  ***Financial Disclosure*** | **Aside from complying with all requirements by law, rule, or regulation, a court professional discloses all financial interests and dealings that might create the appearance of impropriety.** |
| ***Comments*** | A number of courts throughout the country require that court professionals reveal aspects of their financial situation in order to determine and avoid potential conflicts of interest in advance. Although this Canon may reflect a statute or rule already in effect within a court, the ability to conceal (or at least be less than completely forthcoming) in this type of situation is great, and the chances of being detected are small. An individual ethical commitment is therefore necessary. |
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| **Canon 4** | **Refraining from Inappropriate Political Activity** |
| ***4.1***  ***Refraining from Inappropriate Political Activity*** | **A court professional retains his or her right to vote and exercises that right as a part of citizenship.**  **A court professional engages in political activity strictly as a private citizen and only in accordance with Federal law, state law, local court rule, and policy of the appropriate local governing authority.**  **A court professional participates in political activity only during non–court hours, using only non–court resources.**  **A court professional does not use his or her position or title within the court system to influence others.**  **A court professional does not coerce or encourage other court staff to perform activities that a candidate is prevented from performing.**  **Unless one is elected to their court position, a court professional takes an unpaid leave of absence upon declaring one’s intent to run for office.**  **If elected to an office, a court professional resigns his or her position with the court prior to assuming the elected office, unless holding that elected office clearly neither poses a conflict of interest nor interferes with one’s ability to perform their 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 professionals regularly observe and celebrate our fundamental 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 participating citizen and the role of court professional. This distinction supports a fundamental value of the court professional as being fair and impartial.  *Do Not Use Title to Influence Others*  One should never use one’s title (e.g., judge 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 or perform campaign–related services (e.g., knocking on doors or organizing fundraising activities). This is a logical extension of Canon 1.6 (Avoiding Privilege), particularly focusing on politics. This also extends to using one’s position to encourage, require, or coerce a colleague or subordinate to participate in campaign–related activities such as mailing flyers, attending campaign events, etc.  *Campaign During Non–Work Hours*  The Code assumes that even if one is standing for re–election, a court professional campaigns during off hours, or else he or she takes a leave of absence. Again, this clearly distinguishes between a court professional’s public and private roles. A court professional refrains from any campaign–related activity, whether campaigning for themselves or others, during working hours.  *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 directly oversees aspects of court operations (e.g., county Board of Supervisors or state legislature) the court professional should resign one of the positions. A court professional who is also a newly elected official considers whether the elected position has influence, direct or indirect, over the Court in any of the following areas.   * Funding * Resources * Rule–Making * Operations * Staffing   As the court has a right and responsibility to respond to initiatives that affect the administration of justice, it is unclear what a court professional’s role is regarding ballot initiatives. |

1. Our thanks to David T. Ozar, Cynthia Kelly, and Yvette Begue for their dedication and tireless efforts. [↑](#footnote-ref-1)
2. For 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 admirable, some have argued that supporting research does not rise to the level of an Ethical Canon. [↑](#footnote-ref-2)
3. The U.S. Code of Conduct for Judicial Employees §310.30(b) is held out as a well–thought–out illustration of the term family. It describes third–degree relationships as follows: “the third–degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece and nephew.” [↑](#footnote-ref-3)
4. As an example, the Model Code is also intended to apply to students in some courts funded by AmeriCorps. [↑](#footnote-ref-4)
5. An example of a state court ethics code that must accommodate specific circumstances (e.g., union activity) is the [New Jersey Code of Conduct for Judicial Employees](http://www.courtethics.org/New%20Jersey%20Code%20of%20Conduct%20with%20Opinions%202008.pdf) which states, “This Code shall not limit union activities by members of labor organizations that are matters of right under the Constitution of the United States, the Constitution of New Jersey, or statutes applicable to and accepted by the judiciary, or that have been approved by the Supreme Court of New Jersey.” [↑](#footnote-ref-5)
6. On November 18, 2016, the Federal Office of Government Ethics updated its policy on accepting gifts stating that Federal employees may generally accept unsolicited gifts worth $20 or less from an outside source in most situations, but they consider whether accepting the gift would cause the public to question their integrity or impartiality. Questions to ask prior to accepting a gift include:

   * Does the gift have a high market value?
   * Does the timing of the gift give the appearance that the donor wants to influence a specific government action?
   * Could the donor be affected by the employee performing or not performing an official duty?
   * Would accepting the gift give the donor “disproportionate access?”

   [↑](#footnote-ref-6)