

# Model Code of Conduct for Court Professionals With Commentary

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## ***Terminology***

### **The Model Code**

For brevity, the “Model Code of Conduct for Court Professionals” is referred to either as “this Code” or the “Model Code.”

### **Canons**

Different ethics codes contain varying descriptions of their subsections including terms such as, “tenets, articles, principles, or sections.” For brevity and continuity this commentary refers to all such subsections as “canons.”

### **Court**

For brevity in the commentary, the term “court” is used to refer to trial courts, appellate courts, state or local court systems as appropriate.

### **Appropriate Authority**

The Model Code intentionally leaves the definition of “appropriate authority” up to each local court or state court system, but the committee urges courts to define the term as a component to accepting this or any ethics code. Courts and court systems are complicated organizations with varying lines of authority. It is imperative that each court determine the organizational reporting structure and reporting circumstances necessary to achieve the Code’s underlying intent, that of full disclosure and appropriate notification.

### **Family**

The Model Code intentionally leaves the definition of “family,” and “family member” up to each local court or state court system. Likewise the Code does not use the term “immediate family” for fear that it will further complicate the term “family.” As community sensibilities may differ may, the committee urges courts to define the term as a component to accepting this or any ethics code.

## ***Preliminary Comments***

### **An Aspirational Code**

This Code is intended to be aspirational and prescriptive. It promotes positive behaviors essential to respecting the values inherent to an independent judiciary and values innate to court staff who consider themselves professionals. These are behaviors court professionals should aspire to emulate and to which they must be committed.

Ethics codes are used in a variety of ways in the schema of court organizations. Often they are incorporated into personnel rules or policies. Tactically the committee recommends courts *not* incorporate the Model Code into personnel rules; rather it should live outside the rules even if the substance of the Model Code is replicated as part of the rules. There are three reasons for this:

- Personnel rules span a variety of topics from profound principles to routine regulations. It would be inappropriate to persuade staff to uphold the independence of the judiciary immediately after letting them know what the normal per diem rate is on travel days.
- Personnel rules must state types of sanctions for various categories of violations. Discussing sanctions logically turns the motivation to adhere to the Code from a commitment to values to a strategy for avoiding punishment.
- Personnel rules must cover due process, opportunities to respond, and levels of proof necessary before sanctions can be imposed. What a travesty to have an ethical canon violated, yet because of a due process failure, the offending party can claim not to have violated the Code? Even more abhorrent would be if acknowledgement of a canon violation became a “negotiating chip” in a proposed settlement.

### **Ethics Review Boards**

Many courts have instituted boards that review ethical questions and issue opinions on their code. An ethics review board can be powerful tool to raise awareness of the need to adhere to ethical principles. Review boards can be particularly valuable in handing down advisory opinions on ethical situations and recommending needed revisions to the code. The committee recommends that courts avoid charging review board with acting as an appeals

body for ethics complaints as such a role transforms a board from an advisory group to a personnel rules component.

***Preamble***

**Service to the judicial branch is 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 acknowledge the integrity of the judiciary as a co-equal branch of our government.**

**Court professionals, who work for the judicial branch and are faithful to these values, must be accountable to that trust.**

**This code is therefore a personal and professional pledge to that trust and to those values.**

***Comment***

The Model Code assumes that our nation's citizens continuously assess our government including our court systems. Court professionals are accountable to that continual assessment.

***Scope***

**This code applies to all full-time, part-time and temporary court system employees, who are identified in this code as court professionals.**

**The code is intended to complement separate professional codes that bind court system professionals.**

***General Comments***

**Other Professional Codes**

This code is intended to complement codes maintained by other professional organizations, not to conflict with them. Employees, such as court interpreters, probation officers, or staff attorneys, bound by other codes, should still find this code instructive as an ethical guideline.

**The Struggle for Relevance**

As court professionals, we must continually evaluate this code to ensure it is meaningful. Frequently staff have commented on some canons that can prove difficult to follow. Rather than struggling to reconciling the canon to one's daily life, staff have recommended maintaining the code, and yet acknowledge that in certain cases they would not follow it. (There is a specific example where a staffer said "family comes first." We need to make this code relevant and practical to ensure professionals *can and do* follow it.

**Contract Employees**

More discussion needs to ensue regarding how the Model Code addresses the relationship of vendors and individuals under contract to the court. To what extent are these individuals obligated to follow the Model Code?

***Other Codes***

The Applicability section of the [New Jersey Code of Conduct for Judicial Employees](#) states that the code, "applies to all non-judge employees performing judicial branch functions, including temporary employees. It takes precedence, to the extent it is more restrictive, over any professional code of ethics to which the employee is subject. The Code does not apply to those employees of county sheriffs who provide only security services. 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."

***Citizenship***

**It is fundamental to this code and a prerequisite to its other canons that a court professional 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 legal regulations.**

**Court professionals shall comply with our legal duties, placing loyalty to the principles of this code before loyalty to persons or other affiliations.**

*Comments*

**Incorporating Laws into the Code**

Many ethics codes incorporate statutes and laws or reference them in detail.<sup>1</sup> The Model Code takes the direction that obedience to the law is an underlying prerequisite for commitment to the canons.

**Civil Disobedience**

The question of civil disobedience, particularly as it applies to religious beliefs, has been subject to debate. An assumption incumbent in urging court professionals to obey all laws is that all laws have been arrived at in a legitimate manner regardless of whether or not one agrees with them.

What are the responsibilities of a court professional who strongly opposes abortion if, for example, minors have the right to petition a court to obtain an abortion without parental consent? Can the professional, in good conscience, handle the minor's paperwork? Has the professional contributed to an abortion if the minor prevails? On the other hand, the minor is exercising her rights under the law, which the professional has an obligation to uphold. Most who have considered this question conclude that the professional should resign from the post if he or she feels strongly on the topic.

*Other Codes*

The Introduction of the [American Judicature Society's 1989 Model Code of Conduct for Non-Judicial Court Employees](#) and Article IV of the [1990 National Association for Court Management Code of Conduct](#) call on court employees to uphold the Constitution, laws and legal regulations of the United States, the State of and all governments therein, and never be a party to their evasion.

Canon 1 of the [New Jersey Code of Conduct for Judicial Employees](#) says, "A court employee shall uphold the Constitutions and laws of the United States and the State of New Jersey, and shall faithfully carry out all duties assigned to the employee's judicial function." As a comments the code includes that, "Judiciary employees shall put loyalty to the principles embodied in this Code above loyalty to persons or parties."

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

*Canon 1.1*

**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.**

*Performing Court Duties*

**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.

<sup>1</sup> One example is Section III (B) of the "[Rules of Conduct, Code of Ethics for Circuit Court Employees](#)", [Employee Guide for the District Court of Maryland](#). This section states that substance abuse is not to be tolerated.

### **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 “honestly” 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, 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.

### ***Other Codes***

Section V (A) and (B) of the [American Judicature Society's 1989 Model Code of Conduct for Non-Judicial Court Employees](#) [paraphrased] calls on court employees to perform official duties properly, to perform with diligence, to apply full-time energy to the business and responsibilities of the office during working hours, and to be courteous.

Article IV (A) of the [1990 National Association for Court Management Code of Conduct](#) says that, “Members should carry out their responsibilities to the public in a timely, impartial, diligent, and courteous manner, strictly adhering to the principles embodied in this code.”

Tenet Two of the [California Administrative Office of the Courts Ethics Code Guidelines](#) call upon staff to, “Demonstrate the highest standards of personal integrity, honesty, and truthfulness in all our professional and personal dealings, avoiding the misuse of court time, equipment, supplies, or facilities for personal business.”

Canon 1 (G) of the [New Jersey Code of Conduct for Judicial Employees](#) says, “No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority.”

### ***Canon 1.2***

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

### ***Avoiding 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.

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<sup>2</sup>Example: Section Five (E) [American Judicature Society's 1989 Model Code of Conduct for Non-Judicial Court Employees](#)

### **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 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 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?

### ***Other Codes***

Article IV (H) of the [1990 National Association for Court Management Code of Conduct](#) states that, “Members shall avoid any activity that would reflect adversely on their position or court.”

Tenet Five of the [California Administrative Office of the Courts Ethics Code Guidelines](#) requires staff to refrain from improprieties, such as breaking the law, soliciting funds on the job, receiving gifts or favors related to court employment, accepting outside employment that conflicts with the court’s duties, or recommending private legal service providers.

Tenet Six urges staff to, “Avoid any appearance of impropriety that might diminish the honor or integrity of the court.”

Canon 3 of the [New Jersey Code of Conduct for Judicial Employees](#) says, “A court employee shall observe high standards of conduct so that the integrity and independence of the courts may be preserved, and shall avoid impropriety or the appearance of impropriety. Guideline: In light of the injunction to “avoid impropriety or the appearance of impropriety” judiciary employees must not risk: (1) subjecting themselves to improper influences; (2) participating in activities or allowing themselves to be used in such manner as to impair the dignity and esteem in which the court should be held.”

### ***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.<sup>2</sup> 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.

### ***Other Codes***

Section V (E) of the [American Judicature Society’s 1989 Model Code of Conduct for Non-Judicial Court Employees](#) states, “No court employee shall discriminate on the basis of nor

manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.”

Article IV (B) of the [1990 National Association for Court Management Code of Conduct](#) Advises that, “Members shall not discriminate on the basis of, nor manifest by words or conduct, a bias or prejudice based upon race, color, religion, national origin, gender, or other groups protected by law, in the conduct of service to the court and public.”

Tenet Five of the [California Administrative Office of the Courts Ethics Code Guidelines](#) requires staff to, “Guard against and, when necessary, repudiate any act of discrimination or bias based on race, gender, age, religion, national origin, language, appearance, or sexual orientation;”

Canon 1 (E) of the [New Jersey Code of Conduct for Judicial Employees](#) says, “No court employee shall in the conduct of official duties discriminate on the basis of, or manifest by words or conduct, bias or prejudice based on race, color, religion, age, sex, sexual orientation, national origin, language, marital status, socioeconomic status, or handicap.”

***Canon 1.4***      **A court professional shall treat litigants, co-workers and all others interacting with the court with dignity, respect and courtesy.**

***Respect of Others***

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

***Other Codes***      Section V (B) of the [American Judicature Society’s 1989 Model Code of Conduct for Non-Judicial Court Employees](#) states, “Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.”

Tenet Three of the [California Administrative Office of the Courts Ethics Code Guidelines](#) requires staff to, “Behave toward all persons with respect, courtesy, and responsiveness, acting always to promote public esteem in the court system.”

Canon 1 (B) of the [New Jersey Code of Conduct for Judicial Employees](#) says, “Every court employee shall endeavor at all times to perform official duties properly, courteously, and with diligence.”

***Canon 1.5***      **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.**

***Involvement in Actions Before a Court***

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

***Questions***      The Model Code does not set any limits on this duty. Are court professionals obligated to tell the appropriate authority when a friend of theirs has filed a civil suit in another state?

***Other Codes***      Section III (A) of the [American Judicature Society’s 1989 Model Code of Conduct for Non-Judicial Court Employees](#) states, “Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. . . .Therefore, every court employee

is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.”

Article I (C) of the [1990 National Association for Court Management Code of Conduct](#) provides that, “Members shall act so that they are not unduly affected or appear to be affected by kinship, position, or influence of any party or person.”

***Canon 1.6***            **A court professional shall use his or her official position solely for its intended purpose.**

***Avoiding Privilege***

**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 non-business matter using court letterhead.

***Other Codes***

Section I (A) of the [American Judicature Society’s 1989 Model Code of Conduct for Non-Judicial Court Employees](#) states, “No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.”

Canon 3 Guideline (a) of the [New Jersey Code of Conduct for Judicial Employees](#) calls on judicial employees not to, “Use or attempt to use the official position or the prestige of judicial affiliation to secure special privileges or exemptions for the employee or for others. For example, an employee shall not use official letterhead for private business correspondence, write letters of recommendation on official letterhead (other than when requested to give a reference on current or former co-workers or subordinates seeking new employment), nor carry a judiciary business card unless authorized by the appointing authority.”

***Canon 2.1***            **A court professional shall avoid relationships that would impair one’s impartiality and independent judgment.**

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

***Personal Relationships***

**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.**

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

*Misconduct of Others*

**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 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 differently 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 to determine either another individual has violated this code, possibly with incomplete information. This situation can prove problematic, or even dangerous.

**Canon 2.4 A court professional shall immediately report to the appropriate authority any attempt to compel one to violate these canons.**

*Attempts at Influence*

*Comments* This canon is distinguished from canon 2.3 in that is it externally focus (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 a court professional may be tempted to violate their independent judgment.

**Canon 2.5 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.**

*Properly Maintain Records*

*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 trial 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*

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

*Legal*

*Requirements*

**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 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*

**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.**

*Discretion*

**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 Web; 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 is 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.**

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 other professionals on business issue? 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 as 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 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 which 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 separately 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 one’s 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.**

**Comment**

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.<sup>3</sup>

**Canon 3.3**

**A court professional shall not solicit, accept, agree to accept, or dispense any**

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<sup>3</sup> Example: Section Three (B) (4) [American Judicature Society’s 1989 Model Code of Conduct for Non-Judicial Court Employees](#)  
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***Avoiding Gifts*** 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.<sup>4</sup> This code avoids accepting gifts in any amount.

***Canon 3.4*** A court professional shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

***Financial Disclosure***

***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. Many courts throughout the country have existing rules or laws that court professionals reveal aspects of their financial situation in order to determine and avoid 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 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.

***Political Activity*** 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.

***Comment*** **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,

<sup>4</sup> Federal Standards of Ethical Conduct based on Executive Order 12674, amended by Executive Order 12731, states that an employee can accept a gift of less than \$20 value, less than \$50 in value for an entire year.

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 dependant 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 re-election, 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. Criteria the court professional who is also a newly elected officer should ask includes, does the new position have 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 a court professional's role is regarding ballot initiatives.

For example several years ago ballot initiative 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?