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Cross references. — Ethics in Government, Ch. 5, T. 21. Conflict of interest in zoning actions, Ch. 67A, T. 36.

OPINIONS OF THE ATTORNEY GENERAL

General Assembly member may work for city as attorney or on contract. — There is no per se conflict of interest if a member of the General Assembly also serves as either a city or county attorney, or performs contract work for a city or county within that legislator's district. 1984 Op. Att'y Gen. No. U84-34.

ARTICLE 1

CODES OF ETHICS

45-10-1. Establishment and text of code of ethics for government service generally.

There is established for and within the state and for and in all governments therein a code of ethics for government service which shall read as follows:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in government service should:

I. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or government department.

II. Uphold the Constitution, laws, and legal regulations of the United States and the State of Georgia and of all governments therein and never be a party to their evasion.

III. Give a full day's labor for a full day's pay and give to the performance of his duties his earnest effort and best thought.

IV. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

V. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not, and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

VI. Make no private promises of any kind binding upon the duties of office, since a government employee has no private word which can be binding on public duty.

VII. Engage in no business with the government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

VIII. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

IX. Expose corruption wherever discovered.

X. Uphold these principles, ever conscious that public office is a public trust. (Ga. L. 1968, p. 1369.)

Law reviews. — For article "Conflicts of Interests of Public Officers and Employees," see 13 Ga. St. B.J. 64 (1976).

JUDICIAL DECISIONS

Cited in Pope v. Propst, 179 Ga. App. 211, 345 S.E.2d 880 (1986).

OPINIONS OF THE ATTORNEY GENERAL

Funeral service inspectors as trade association officers. — State Board of Funeral Service inspectors appointed pursuant to O.C.G.A. Title 43, Chapter 18 are not prohibited by state law from holding appointed or elected office in private associations of funeral service practitioners. However, serving as an officer in such private association

could create an appearance of impropriety by competing loyalties which may be owed to the association and to the board. 1990 Op. Att'y Gen. No. 90-25.

Dual employment. — A state employee may not contract with a county to perform services during the same 40-hour work week. 1998 Op. Att'y Gen. No. U98-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employes, § 247 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 197.

ALR. — Refusal of public officer to answer frankly questions asked him during an investigation as ground for removal or discipline, 77 ALR 616.

Liability of public officer for interest or other earnings received on public money in his possession, 5 ALR2d 257.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 ALR4th 702.

45-10-2. Secretary of State to print and distribute code of ethics.

(a) The Secretary of State is authorized and directed to have the code of ethics for government service established in Code Section 45-10-1 printed upon an appropriately designed card which would be suitable for framing and exhibiting to the public and employees of the state and all governments therein.

(b) The Secretary of State is authorized and directed to have such number of said code of ethics for government service printed as, in his discretion, will be sufficient for distribution to the various departments,

2/27/96

STANDARDS OF CONDUCT FOR STAFF ATTORNEYS
OF THE COURT OF APPEALS OF GEORGIA

Staff attorneys are employed at the pleasure of the employing judge. Nothing in these standards is intended to encroach upon this prerogative in any way. Rather, these standards represent general guidelines regarding staff attorneys' conduct while in the employ of the respective judges, and the Court of Appeals.

A staff attorney performs an essential role in the judicial process and shares a commensurate responsibility for maintaining the integrity of, and public confidence in, that system. A staff attorney holds a position of public trust, requiring at the very minimum, compliance with the following standards:

(1) A staff attorney must maintain undivided loyalty to the employing judge of the Court of Appeals.

(2) A staff attorney must preserve the confidentiality of the judicial process by not disclosing any information of the Court of Appeals. In this regard,

a. a staff attorney must not discuss the merits of pending proceedings outside the personnel of the court;

b. a staff attorney must not discuss the assignment of cases, tentative decisions, staff recommendations, intracourt memoranda, conversations and any other matter pertaining to the decision-making process of specific pending matters, outside the personnel of the court;

c. a staff attorney must never disclose any confidential information received during the clerkship nor use confidential information for personal gain;

d. a staff attorney should refer all inquiries and questions whether from friends, attorneys, news media or others to the Clerk of the Court of Appeals;

e. a staff attorney should not leave working papers, drafts, or memoranda unattended in any place, including a library;

(3) A staff attorney must maintain the integrity and dignity, and preserve the impartiality, of the employing judge and the court. In this regard,

a. a staff attorney must maintain the highest standards of personal and professional conduct;

b. a staff attorney must respect and comply with the law and conduct himself or herself at all times in a manner that promotes public confidence in the integrity, impartiality and independence of the judiciary;

c. a staff attorney must inform the employing judge of any matter in which the attorney's impartiality may be questioned, including but not limited to:

1. personal bias or prejudice concerning a party;
2. personal knowledge of disputed facts in a pending matter;
3. prior service as a lawyer handling a pending matter;
4. prior work for a lawyer handling a pending matter;
5. having been a witness in a pending matter;
6. has a financial interest, directly or through immediate family, in the subject of a pending matter or which may be affected by the outcome of a pending matter; and
7. where a family member is a party or a lawyer representing a party or a witness in a pending matter.

The employing judge shall determine if, and the extent to which the staff attorney may work on any such matter.

d. A staff attorney may not accept gifts or favors from litigants, lawyers or others whose interests are likely to come before the court;

e. a staff attorney must refrain from financial and business dealings that tend to detract from the dignity of the position, interfere with the performance of the staff attorney's duties, exploit the staff attorney's position or involve the staff attorney in frequent transactions with lawyers or persons likely to come before the court;

f. a staff attorney should notify the employing judge of any unprofessional conduct on the part of attorneys or judges that come to the staff attorney's attention while in performance of the staff attorney's duties;

g. a staff attorney should not engage in any ex parte or private communications with litigants or attorneys appearing before the court. Any such communications should be forwarded to the employing judge or referred to the clerk of the court;

h. a staff attorney may not purport to speak for the court or any judge of the court, under any circumstances, unless specifically authorized by the employing judge;

i. a staff attorney may not claim any official opinions of the court as the staff attorney's own. Court work may be used as a writing sample only with the permission of the employing judge, which permission must be obtained in advance;

j. a staff attorney must inform the employing judge of all employment interviews in advance. A staff attorney must promptly tell the employing judge when a post-clerkship position has been accepted. The employing judge shall determine if the attorney should cease working on a case in which the future employer may have an interest;

k. a staff attorney must not disclose information to any applicant for a clerkship;

l. The Court of Appeals does not prohibit staff attorneys from practicing before the court after their

clerkship, except that a staff attorney may not participate in any case that was pending in the court during his or her employment with the court.

(4) A staff attorney may not practice law during the clerk's employment with the court. This prohibition, however, does not preclude performance of routine legal work necessary to the attorney's personal affairs providing the work is done without compensation, does not suggest that preferential treatment is sought by virtue of the clerkship, and does not have any actual conflict or the appearance of conflict with court duties.

(5) Upon prior disclosure to and approval by the employing judge, a staff attorney may:

a. engage in activities to promote the law, the legal system, court administration and the administration of justice including writing, teaching and participating in projects and committees;

b. engage in writing, lecturing, teaching and speaking and engage in the arts, sports and other social and recreational activities;

c. participate in civic and charitable activities. In this regard, the attorney may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization and may solicit funds providing the attorney does not use the prestige of the clerkship or the court or the affiliation with the employing judge in the solicitation or solicit from lawyers or persons likely to come before the court.

(6) Candidate for Partisan Elective Office.

An employee who declares an intention to run for elective office shall separate from employment with the Court System upon the filing of a verified registration statement required by applicable statutes or upon the filing of nomination papers, whichever occurs first.

(7) Other Political Activities.

No employee may, during normal working hours or while engaged in official duties as an employee, directly or indirectly solicit or receive subscriptions or contributions for any partisan political party or any political purpose or engage in any form of political activity calculated to favor or improve the chances of any political party or any person seeking or attempting to hold elective office. No employee may engage in any political activity when not on duty to such an extent that the employee's efficiency during working hours is impaired or that the employee is tardy or absent from work.

(8) A staff attorney should consult with the employing judge on any matter raising a question of propriety not covered by these standards. The employing judge's determination shall govern.

NONCOMPLIANCE WITH THESE STANDARDS IS GROUNDS FOR TERMINATION OF EMPLOYMENT, WHICH IS CUMULATIVE OF ANY AND ALL OTHER REASONS FOR TERMINATION. THIS IS IN ADDITION TO THE AT-WILL NATURE OF THE EMPLOYMENT, I.E., STAFF ATTORNEYS SERVE AT THE PLEASURE OF THE EMPLOYING JUDGE.

CANON 1

A STAFF ATTORNEY SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND OF HIS OFFICE

An independent and honorable judiciary is indispensable to justice in our society. A staff attorney should himself/herself observe, and should impart to anyone under their supervision, high standards of conduct so that the integrity and independence of the judiciary may be preserved and their office may reflect a devotion to serving the public. The provisions of this Code should be construed and applied to further that objective. The standards of this Code shall not affect or preclude other more stringent standards required by law or by court order.

Possible Supplement

Unless authorized by the court, a staff attorney should not:

(1) initiate, participate in, or consider any ex parte communication concerning a pending proceeding; 2) give advice to attorneys or parties on matters of law or procedure; or 3) otherwise show partiality to any attorney or party. A staff attorney may, in response to an inquiry, provide, information concerning matters of procedure or court practice, but may not render advice.

AMENDMENT I

Staff attorneys are professionals who will be treated as professionals. Accordingly, it is expected that each staff attorney will put in the requisite time to assist in getting cases out in a timely manner without diminishing the quality of the recommended product.

While a staff attorney is not an hourly employee, staff attorneys are expected, at a minimum, to work from 8:30 a.m. to 4:30 p.m. on each work day, unless excused by the employing judge.

The lunch hour shall be observed between the hours of 12 noon and 2:00 p.m., with one hour constituting the lunch hour. The lunch hour cannot be shifted or substituted without prior permission from the employing judge.

(Amendment of April 21, 2000)

Maintaining the Public Trust

Ethics for Federal Judicial Law Clerks

FEDERAL JUDICIAL CENTER 2002

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Welcome to the federal judicial system.

As a new law clerk, you have a lot to learn in a very short time. With many new issues competing for your attention, it's important that you not lose sight of your ethical obligations.

Many ethics questions can be answered with common sense, but there are some areas where you need to be aware of specific rules imposing restrictions that are not intuitively obvious. What do you need to know to prepare yourself? The Judicial Conference Committee on the Codes of Conduct has identified several areas in which ethical issues most often arise for law clerks. They are:

- confidentiality
- conflicts of interest
- outside legal activities
- dealings with prospective employers
- outside professional, social, and community activities
- receipt of gifts and honoraria
- political activity

To avoid embarrassment to yourself and potentially to your judge, it is important that you understand your obligations in these and all other ethical areas. The Federal Judicial Center, in cooperation with the Codes of Conduct Committee and the Administrative Office of the U.S. Courts, has prepared this pamphlet to help you get started.

This pamphlet cannot cover every situation that may arise. You should familiarize yourself with the Code of Conduct for Judicial Employees and the other references cited in this pamphlet. You will also need to familiarize yourself with your judge's ethical guidelines. These may differ from chambers to chambers, and your judge may not permit conduct or activities acceptable under the Code of Conduct. If you have a question that is not clearly answered by the Code of Conduct and this pamphlet, you should discuss the matter with your judge. Guidance is also available from other sources, as discussed below.

The "Ethics checklist for federal judicial law clerks," which

is at page 21, will help you identify ethics problems that may require you to isolate yourself from a case in your judges' chambers or refrain from certain activities outside the office. You should fill it out upon starting work as a law clerk, then review it with your judge.

Getting Started

You just started your federal judicial clerkship. Your new office is stacked with case files, law books, and your court's rules. You want to be sure that you familiarize yourself with important ethical guidelines before your clerkship shifts into high gear. How should you get started?

You can start by reading this pamphlet and any guidelines provided by your judge or court.

Then, you should review a copy of Volume II of the *Guide to Judiciary Policies and Procedures*. Many judges have this volume in chambers, and it is available in court libraries, on the Administrative Office's site on the federal court's intranet (<http://jnet.ao.dcn>), and on WESTLAW in a database called "Conduct," accessible by judicial employees only. The *Guide* contains information used by the judiciary in its day-to-day operations. Volume II focuses on ethics and includes the following:

- The Code of Conduct for Judicial Employees, which took effect in 1996. The Code covers all judicial employees, except for a few discrete groups, and extends to members of the judge's personal staff, including law clerks, judicial assistants, and secretaries.
- The Ethics Reform Act of 1989 and Judicial Conference regulations promulgated under it. The provisions applicable to law clerks deal with receipt of gifts and honoraria.
- Published advisory opinions of the Codes of Conduct Committee. These advisory opinions address issues frequently raised or issues of broad application. Advisory Opinion Nos. 51, 64, 73, 74, 81, 83, and 92 are of special interest to law clerks.

- The Compendium of Selected Opinions of the Codes of Conduct Committee and a new Compendium of Selected Employee Opinions. The Compendium contains summaries of advice given in response to confidential fact-specific inquiries. The Employee Compendium compiles only those summaries pertaining to judicial employees. Committee members can answer questions about a particular opinion without disclosing the identity of the person who solicited the advice.

How can you determine whether something you want to do is permissible?

When you are evaluating a particular course of conduct, remember to look at *all* the relevant canons and statutes. An activity that may be permissible under a general section of a canon may not be permissible under one of the more specific provisions. For example, law-related activities are generally permitted under Canon 4, but there are strict limitations on the practice of law in Canon 4D. Also, note that the Code does not contain all applicable ethical restrictions. The Code incorporates some statutes, such as 18 U.S.C. § 641 which prohibits embezzling or converting government money property or records, but not all. The honoraria restrictions, for example, appear in the Ethics Reform Act regulations.

Some rules are more restrictive for law clerks than for other court employees. These restrictions are due to the special relationship between a judge and a law clerk. As the Codes of Conduct Committee stated in Advisory Opinion No. 51:

Among judicial employees, law clerks are in a unique position since their work may have direct input into a judicial decision. Even if this is not true in all judicial chambers, the legal community perceives that this is the case based upon the confidential and close nature of the relationship between clerk and judge.

If you have questions after reviewing the information outlined above, what should you do?

If you still have questions, you should ask your judge for guidance. You may also contact the General Counsel's Office, at the Administrative Office of the U.S. Courts, for additional information. If you or your judge believe it would be useful, you may seek a formal advisory opinion from the Committee on Codes of Conduct.

How to Contact the General Counsel's Office

By telephone: 202-502-1100 from 8:30 a.m. to 5:00 p.m., eastern time; ask for the ethics officer.

By mail:

Office of the General Counsel
Attention: Ethics Officer
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

By fax: 202-502-1033

To obtain a formal advisory opinion from the Committee on Codes of Conduct, first consult with your judge, then put your question in writing and send it to:

Committee on Codes of Conduct
c/o Office of the General Counsel
Administrative Office of the U.S. Courts
Thurgood Marshall Federal Judiciary Building
One Columbus Circle, NE
Washington, DC 20544

All inquiries — whether by phone, mail, or fax — are confidential.

Confidentiality

The basic rule

Chris, a law clerk, has been working on a high profile criminal case recently assigned to her judge. Some friends who are law students are interested in learning about the case, and particularly about a likely ruling on a suppression motion that is expected shortly. What can Chris discuss?

Consistent with her obligation to maintain confidentiality, Chris cannot say anything about the case that is not a matter of public record. Canon 3D of the Code of Conduct for Judicial Employees states that employees should not:

- disclose confidential information received in the course of official duties, except as required in the performance of such duties;
- employ such information for personal gain; and
- comment on the merits of a pending or impending action.

Advisory Opinions of Special Interest to Law Clerks

- Number 51: Propriety of a Law Clerk to a Judge Working on a Case in Which a Party is Represented by the Spouse's Law Firm.
- Number 64: Employing a Judge's Child as Law Clerk.
- Number 73: Requests for Letters of Recommendation and Similar Endorsements.
- Number 74: Law Clerk's Future Employer.
- Number 81: When Law Clerk's Future Employer Is the United States Attorney.
- Number 83: Law Clerks' Bonuses and Reimbursement for Relocation and Bar-Related Expenses.
- Number 92: Political Activities for Judicial Employees.

Talking to friends about a pending case could fall within these prohibitions. Although the Code does not define confidential information, the term likely includes any information you receive in chambers that is not filed in the public docket. Instructions you receive from your judge, and discussions about his or her legal assessment of a case, should also be treated as confidential. This means that Chris should not discuss with her friends when or how her judge may rule on the pending suppression motion.

A continuing obligation

Confidentiality restrictions do not end when your clerkship is over. Former law clerks are expected to observe the same re-

Information That's Confidential

- Statements, or even hints, about the judge's likely actions in a case
- Disclosure of the timing of a judge's decision or order, or any other judicial action, without the judge's authorization
- The content of case-related discussions with a judge
- Observations about the judge's decision-making process in specific cases
- Documents or other information related to a sealed case
- Information obtained in the course of a law clerk's work that is not available to the general public

Information That's Not Confidential

- Court rules
- Court procedures
- In general, how the court operates
- Court records, including the case docket available from the clerk's office
- Information disclosed in public court proceedings

strictions on disclosure of confidential information that apply to current employees. Of course, both during and after your clerkship you may divulge information to the extent your judge authorizes you to do so. If you are uncertain what information is confidential or what limitations you should observe in your discussions outside the office, you should check with your judge. Many courts also have local rules on confidentiality.

Dealing with attorneys

Attorneys often want to know how their cases are going, and they want an insider's view of how they can improve their clients' prospects. They may call and give their arguments to you, to try to lead you into a discussion of the merits. You should not engage in substantive discussions with counsel; indeed, your judge may not permit any discourse at all. Regardless of the exchanges permitted, you should never discuss or divulge confidential information.

If the lawyer attempts further advocacy, one possible response is, "If all those points are in your pleading, the judge will read it and consider them." If the lawyer attempts to find out what the judge is thinking, you can say "I'm sorry, but you'll have to wait until the opinion issues." This can be more difficult if the lawyer is someone you know, such as a law school acquaintance or a family friend. But your obligation to the court remains the same: to protect the judge's confidences and the integrity of the court.

Dealing with the press

The judge for whom Graham clerks was assigned a high profile case. Reporters have been calling seeking information to make their stories more detailed, accurate and compelling. Can Graham respond to these requests?

Canon 3D provides firm guidance on this point: law clerks should not disclose any confidential information or comment publicly on the merits of pending (or impending) actions. This means that Graham should not respond to questions of sub-

stance or reveal judicial confidences. But Graham may be able to direct callers to information that is in the public record, and to provide comments on technical and administrative matters, if his judge agrees. With his judges' permission, he could also discuss in general how the district court works, rules and procedures, and the handling of complex cases.

Some courts have designated employees to handle media inquiries, and written guidelines for press inquiries may be available from your judge or clerk. Remember, even when a reporter requests information "just for background," confidentiality should be maintained and public comment avoided. Doing otherwise may reflect unfavorably on the chambers, even if what you say is entirely accurate. For this reason, many judges are strongly opposed to having their law clerks discuss anything at all with the media.

Family and friends

Your family and friends want to know what you do all day. Usually, you can give them a pretty clear picture of your career as a law clerk without talking about specifics. Sometimes it can be tempting to say more, when you happen to know the latest about a case that is in the newspapers.

But the same restrictions apply: you should neither divulge any confidences, nor engage in discussions of cases pending in your court. Your judge needs to trust that whatever he or she tells you is confidential and will not leave the chambers.

Other law clerks

You can ordinarily discuss legal issues with your co-clerks who are clerking for the same judge, but how freely can you discuss case-related matters with law clerks from other chambers? Your judge may have specific instructions that you should follow. Sharing confidential information with anyone outside of your immediate chambers is inappropriate without your judge's permission. You also should refrain from divulging comments your judge makes to you.

As an appellate law clerk, you have an additional consideration. What about law clerks who are working for other judges assigned to the same appeal? As always, if you have specific questions about what's permissible, check with your judge.

Conflicts of Interest

The basic rule

Laura's grandmother gives her stock every year for her birthday. Laura knows that her judge does not handle cases in which the judge owns stock in a party. Should Laura also avoid working on cases if she owns stock in a party?

Yes, as this presents a financial conflict of interest.

Canon 3F(1) advises judicial employees, including law clerks, to avoid conflicts of interest. Conflicts arise when you know that you—or your spouse or other close relative—might be so personally or financially affected by a matter that a reasonable person would question your ability to perform official duties impartially. This includes owning even one share of stock in a party. Members of your household in a similarly close relationship may also give rise to conflicts concerns.

Canon 3F(2) contains specific restrictions applicable to law clerks. You should not perform official duties where:

- you have any financial interest in the subject matter or in a party to the case;
- your spouse or minor child residing in your household has a financial interest in the subject matter or in a party to the case;
- you, or a lawyer with whom you practiced, serves(d) as a lawyer in the matter;
- you have a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts;
- you or a close relative is a party, lawyer, or material witness, or has an interest that could be affected substantially by the outcome.

As you can see in the accompanying sidebars, some conflicts are predictable and recurring. Other situations must be examined to see if there is a conflict. In either case, keeping the judge informed—as soon as you become aware of the conflict or potential conflict—is crucial.

Actual Conflicts

- In a previous legal job, you worked on a lawsuit that is now assigned to your judge
- A firm at which you plan to work after your clerkship serves as counsel in a matter before your judge
- You witnessed a crime and the alleged perpetrator's case is now before your judge
- You or your spouse or minor resident child own stock in a company that is a party before your judge
- Your spouse represents a party in a proceeding before your judge
- Your sister or brother is a plaintiff in a class action lawsuit pending before your judge

Potential Conflicts

Situations such as these do not necessarily disqualify you from working on a case, but you should always alert your judge to them.

- A neighbor's name appears on a witness list in a case your judge is handling
- An attorney you meet at a social function, and with whom you engage in a long discussion, appears the next day to argue a motion before your judge
- An environmental hazard in a case before your judge borders your parents' vacation property
- As the editor of your school's law review, you expressed opinions on the merits of a case now on appeal before your judge

Financial conflicts

Like the judges they serve, law clerks should not perform official duties in matters in which they have a financial interest. Laura's work on cases in which she has a financial interest would be inconsistent with Canon 3F(2). Her judge can assign another law clerk to the matter. Laura should keep informed about her stockholdings and other financial interests so that she can avoid working on matters that pose a financial conflict. Financial interests include stocks and other ownership interests, however small, but generally do not include bonds and mutual funds. A definition of financial interest is in Canon 3F(4).

Other conflicts

Clay is in the second year of his clerkship. His wife is an associate at a firm that is handling a case assigned to Clay's judge, but she is not working on the case. What should Clay do?

Clay should bring the conflict of interest to his judge's attention immediately. He cannot participate in the case, and his judge will probably want to inform the parties of the relationship between the clerk and the lawyer.

As stated in Advisory Opinion No. 51, law clerks are in a unique position among judicial employees, in light of their close association with the judges they serve. If a law clerk's spouse is working on the case, the law clerk should not participate. The same advice applies even if the spouse has no involvement in the case but is a partner or associate at the firm handling the matter.

Outside Legal Activities

Law-related employment

Miranda hopes to earn some extra income while clerking. She is considering working on a textbook for a legal publisher or installing computers part-time at her cousin's law firm. Are there any problems with these activities?

It depends. Under Canon 4, law clerks are permitted to engage in a wide range of outside activities, including activities relating to the law, the legal system, and the administration of justice. Law-related writing and teaching are specifically mentioned in this respect. But outside legal activities must be consistent with the standards set forth in Canon 4, which are intended to ensure that an employee's activities do not interfere with official duties or reflect poorly on the court.

An outside activity consisting of paid employment raises special concerns that are addressed in Canon 4C(1). This Canon advises employees to avoid activities that exploit their judicial position or associate them in a substantial financial manner with attorneys likely to appear in their court. Consistent with these standards, Miranda will not be able to work part-time for a law firm while clerking, even doing non-legal work, but she may be able to help draft a legal textbook, as long as her role does not exploit her judicial position.

Miranda should confer with her judge before undertaking any outside legal activity, whether or not for compensation. Canon 4A states that if outside activities are law-related, "the judicial employee should first consult with the appointing authority to determine whether the proposed activities are consistent with the foregoing standards and the other provisions of this Code."

Practice of law

Alex volunteered as a lawyer at a legal clinic after completing law school. Can he continue this volunteer activity during his clerkship?

Alex may be able to continue this activity if his judge ap-

proves. Canon 4D generally prohibits law clerks from practicing law. One exception to the general prohibition permits law clerks to provide legal services in civil matters on a pro bono basis. Canon 4D lists several limitations applicable to pro bono practice, which may not:

- take place on duty or in the workplace or interfere with judicial responsibilities
- result in compensation

Outside Legal Activities—A Checklist

1. Does the activity interfere with your performance of official duties?
2. Will the activity exploit your government position?
3. Does the activity present an appearance of impropriety or reflect adversely on the court?
4. Will the activity associate you in a substantial financial manner with attorneys appearing in your court?
5. If the activity involves routine family legal work, does it –
Involve any appearance in federal court?
Occur while on duty or in the workplace?
Result in compensation (other than in probate proceedings)?
6. If the activity involves pro bono practice of law, does it –
Involve any appearance in a federal, state, or local court or administrative agency?
Occur while on duty or in the workplace?
Involve a matter of public controversy or an issue likely to come before your court?
Result in compensation?
7. Is the activity inconsistent with any additional condition or limitation your judge imposes on law clerks' law-related activities?

If you answer yes to any of these questions, you should not engage in the activity.

- involve an appearance in any court or agency
- involve matters of public controversy or issues likely to be before the court
- include litigation against, federal, state, or local government

Pro bono work also must be reviewed in advance with the judge. In accordance with these standards, Alex could not enter an appearance in court or litigate against the government, even on a pro bono basis.

Other exceptions to the prohibition on the practice of law include pro se appearances and providing limited assistance to family members if the assistance does not involve a federal court appearance. Law clerks may engage in these limited forms of law practice subject to the restrictions set forth in Canon 4D. If Alex is interested in pursuing this further, he should consult with his judge. Some judges may not permit their law clerks to practice law even on the limited bases described in the Code.

Dealings with Prospective Employers

The basic rule

Joanna is midway through a clerkship and is starting to focus on career plans. Can she begin her job search?

Yes, assuming her judge does not object. Canon 4C(4) permits a law clerk to seek and obtain employment commencing upon completion of a clerkship after consulting with the judge and observing any restrictions imposed by the judge. Some judges may not permit law clerks to interview or accept employment during the clerkship, so it is important for Joanna to review her plans with her judge.

Applying for employment, interviewing, and negotiating for a position can each present ethical issues. These include:

- confidentiality concerns;
- benefits that may be offered;

- conflicts when prospective employers appear in your court; and
- post-clerkship considerations.

Confidentiality

Maintaining confidentiality may be a particular challenge during job interviews. Prospective employers may probe for insights into your judge's deliberations and your contributions to judicial opinions. Joanna should remember that confidentiality restrictions are not relaxed during job interviews. With her judge's approval, she may want to prepare an expurgated bench memo to give to prospective employers as an example of her legal work.

Benefits

Benefits may be offered during the interview process: transportation and lodging, meals out, and local entertainment. The Judicial Conference Gift Regulations § 5(i) provides useful guidance. Generally, Joanna may accept benefits that are customarily provided by prospective employers in connection with bona fide employment discussions.

Employers may offer additional benefits once a law clerk has accepted an offer. Some firms pay for bar-related expenses, while others offer signing and clerkship bonuses. Advisory Opinion No. 83 spells out what law clerks can and cannot accept in these circumstances. Unless her judge objects, Joanna may accept reimbursement of bar expenses, but she should not accept a bonus while she is still employed as a law clerk.

Conflicts

Conflicts of interest considerations also can arise during employment discussions. If a law firm is handling a case before her judge, may Joanna apply for a job there? May she accept a job with the U.S. Attorney's office, which appears in numerous cases? Generally speaking, once Joanna accepts an offer—or is likely to do so—she should not work on any case involving her

future employer. More detailed guidance on these questions appears in Advisory Opinion Nos. 74 and 81. Be sure to read them and talk to your judge before applying for jobs in this situation.

Post-clerkship considerations

Finally, Joanna should remember that certain restrictions will follow her into her new job. She should not handle any matter pending before her judge while she was clerking there. Also, many judges have policies about how much time must pass before a former law clerk can appear before the judge. Be sure to ask about your court's policy on this. And remember: even after your clerkship ends, you cannot divulge confidential information that you learned during your clerkship. Former law clerks are expected to observe the same restrictions on disclosure of confidential information that apply to current employees.

Outside Professional, Social & Community Activities

The basic rule

Milton was active in drama and musical groups during law school and would like to continue participating in them during his clerkship. Is this permitted?

Yes. Canon 4A permits law clerks to undertake outside professional, social, and community activities, so long as they do not interfere with the performance of official duties or adversely reflect on the operation and dignity of the court. Subject to those standards and other provisions of the Code, judicial employees may engage in a wide range of activities—charitable, religious, cultural, avocational, recreational, and so forth—and may speak, write, lecture, and teach.

While the Code does not require law clerks to seek their judge's approval before pursuing non-law-related activities, your

judge may ask you to do so, and you may want to do so anyway to resolve any questions.

Some important restrictions

Sara has been asked to serve on the board and raise funds for a neighborhood organization that provides housing for the homeless. She knows that her judge is not permitted to solicit funds but she is uncertain whether any restriction applies to her?

Sara may engage in many outside activities, and solicit funds for them, but these activities are subject to some important restrictions. The restrictions on fund-raising are contained in Canon 4B and include restrictions on:

- using the prestige of office to solicit funds
- soliciting funds from subordinates and other court personnel
- soliciting funds from attorneys and others who appear in the court.

Participation in organizations that engage in litigation or take controversial stands on matters of public policy are also restricted. An outside pursuit may reflect adversely on your impartiality or that of your judge or court. For example, law clerks should not serve on the board of organizations that litigate frequently in federal court, or that lobby government officials on controversial public policy issues that are matters of contentious debate in the political arena. Sara cannot just rely on the label an organization gives itself; she has to look at what it does and what her individual role would be.

Use of office equipment and services

What about using office equipment and services, such as copiers, fax machines, telephones, and Internet access? May employees conduct their outside activities using these resources? Canon 4 advises that a judicial employee's outside activities should not "interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court." Judicial employees have a responsibility to protect and conserve

government property and should not use government property for other than authorized purposes.

If your proposed use of office resources will impose costs on the court, or interfere with court operations, you should determine whether it is authorized. Your court may have a policy permitting de minimis use of resources, such as occasional copying of short documents. Use that does not impose any cost on the government should also be acceptable, such as use of the court's library in the evening. Note, however, that any practice of law, as permitted under Canon 4D, should not take place in the employee's workplace. And in no event is it permissible for a law clerk to use office equipment and services for outside activities in a manner that imposes substantial costs on the government.

Receipt of Gifts and Honoraria

The basic rule—gifts

Marsha and Jean met when they started their clerkships together. Marsha's uncle, a prominent federal litigator in town, stopped by chambers on their first day at work and gave them both expensive pens. May they accept these gifts?

Marsha may, but Jean, who just met Marsha's uncle, should not. The Judicial Conference Gift Regulations, § 5, says that judicial employees should not accept gifts from anyone seeking to do business with the court or from a party or other person with an interest in the performance of the employee's official duties. There are several exceptions, described below. In addition, gifts may never be accepted in return for being influenced in the performance of an official act or on a basis so frequent that it appears public office is being used for private gain.

There are exceptions to the general prohibition on receipt of gifts. These include:

- ordinary social hospitality

- gifts from relatives and friends on special occasions, such as an anniversary or birthday
- gifts arising out of a spouse's separate business or professional activity
- invitations to bar-related functions
- scholarships or fellowships on standard terms

The gift to Marsha falls into the exception for gifts from relatives on special occasions, so that she may accept the pen. The regulations also contain an exception for "de minimis" gifts (valued at \$50 or less), but it does not apply to law clerks. Because no exception covers the gift to Jean, it should be declined.

What should you do if you are offered a gift that you may not accept? The item can be returned to the donor. If it is perishable, it may be given to charity, shared within the office, or destroyed.

The basic rule—honoraria

Stuart's high school English teacher invited him to make a speech on "career day." The school offered a \$50 stipend, plus taxi fare. Can he accept?

The Judicial Conference Regulations on Outside Earned Income, Honoraria, and Employment, § 4, prohibits judicial employees from accepting honoraria. Honoraria are defined as payments for a single appearance, speech or article, or for a series of appearances, speeches or articles related to official duties. There are several exceptions (e.g., for a series of speeches or articles *unrelated* to official duties), which are worth examining if you are offered a fee for speaking and writing activities. Under these regulations, Stuart may not accept the \$50 stipend but may accept reimbursement for his taxi fare.

Political Activity

The basic rule

Ann, a law clerk, wants to assist a candidate in an election for the county court. The election is nonpartisan; that is, candidates do not align themselves with any political party. Her husband is the campaign manager. May Ann participate in the campaign?

No. Canon 5 bars a law clerk from participating in both partisan and non-partisan political activity. Prohibited activities include running as a candidate for office, campaigning for others, publicly endorsing – or opposing – candidates, and contributing funds to political organizations, candidates, and events. Ann should not participate in political campaigns for the duration of her clerkship, nor should she wear political buttons or display political signs or bumper stickers.

Permissible activities

Guidelines on political activities are set forth in Advisory Opinion No. 92. The opinion provides examples of activities that are clearly permissible and clearly impermissible. The permissible activities are relatively few and narrow:

- Registering and voting in a primary or general election
- Registering as a member of a political party
- Expressing a personal opinion privately—for example, to a family member or friend—as an individual citizen regarding a political candidate or party
- Participating in the nonpolitical activities of a civic, charitable, and similar organization, described in Canon 4

Spousal activities

What about Ann's husband? The Code of Conduct governs law clerks, but not their spouses. In a situation like this, Ann should, to the extent possible, disassociate herself from her husband's political involvement. For example, Ann should not accompany her husband to political meetings, and if he makes campaign contributions, they should come from a separate bank account.

Ethics Checklist for Federal Judicial Law Clerks

The checklist below will help you identify potential conflicts of interest and other possible ethics concerns that may arise during the course of your clerkship. You should review the checklist, note applicable points, and discuss them with your judge. Your judge may have stricter standards than required by the Code or statute. If so, you must follow the policies of your chambers.

Potential conflicts

Do you have any of the following potential conflicts—

- personally own one or more shares of stock or some other financial interest in a company?
- have an equitable interest (e.g., as a vested beneficiary) in an estate or trust that has a financial interest in a company?
- serve as an officer, director, advisor, trustee, or active participant in the affairs of a company?
- serve as a fiduciary of an estate or trust that has a financial interest in a company?
- have a power of attorney that conveys an ownership interest in stock or other property?

Does your spouse, minor resident child, or other close relative have any of the foregoing potential conflicts?

Actual conflicts

With regard to your potential involvement in a case before your judge—

- do you have personal knowledge of disputed evidentiary facts?
- have you previously served as counsel in the matter?
- has your previous or future law firm served as counsel in the matter?
- are you a party?

- do you have an interest that could be substantially affected by the outcome?
- are you likely to be a material witness?
- have you previously served in government employment as counsel, advisor, or material witness in the matter, or expressed an opinion concerning the merits?

With regard to the potential involvement in a case before your judge of your spouse or any third degree relative of you or your spouse, to your knowledge –

- is your spouse or relative a party or counsel in the matter?
- is your spouse's law firm counsel in the matter?
- does your spouse or relative have an interest that could be substantially affected by the outcome?
- is your spouse or relative likely to be a material witness?

Potentially inappropriate outside activities

Do you engage in any of the following activities—

- serve as a member or on the board of a professional or law-related organization?
- serve as a member or on the board of a civic, charitable, or social club?
- belong to an organization that litigates frequently in federal court?
- belong to an organization engaged in lobbying or political activities?
- raise funds for your outside activities?
- engage in partisan political activities, either as a candidate or on behalf of others?
- engage in nonpartisan political activities, either as a candidate or on behalf of others?

With respect to law-related or other professional activities, do you—

- speak, write, or teach on law-related subjects?
- speak, write, or teach on other subjects?
- practice law on a pro bono basis or otherwise?
- engage in any other law-related pursuits?

With respect to outside employment, are you—

- engaging in paid outside employment for attorneys, law firms, or others with an interest in your performance of official duties?
- engaging in any other outside employment?
- applying to or interviewing with prospective employers for a legal position?
- receiving offers of gifts or benefits from attorneys, law firms, or others with an interest in your performance of official duties?

Observing your judge's requirements

Discuss with your judge any specific requirements he or she may have as to the following:

dealing with the press, including—

- restrictions on any communications with the press
- procedures to follow when contacted by the press
- the availability of written guidelines for press inquiries

dealing with counsel, including—

- restrictions on any communications with counsel
- procedures to follow when contacted by counsel

case-related discussions with anyone outside chambers, including other law clerks

when seeking future employment—

- applying to or interviewing with prospective employers before your clerkship ends
- using writing samples from your clerkship
- discussing your contributions to your judge's work
- discussing your judge's office procedures and proclivities
- accepting meals and other benefits given to candidates during the interview process
- formally accepting a job offer before your clerkship ends
- accepting bonuses from a future employer before your clerkship ends

- working on matters handled by law firms with whom you are seeking employment

engaging in outside employment during your clerkship for attorneys, law firms, or others with an interest in your performance of official duties

engaging in other forms of outside employment during your clerkship

practicing law on a pro bono basis or otherwise

speaking, writing, or teaching on law-related subjects

engaging in professional, charitable, and other activities during your clerkship, including—

- using office equipment and services
- engaging in such activities while on duty or in your workplace

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Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks

Number of copies needed ____

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Please fax this form to 202-502-4077.

No cover sheet is necessary. Thank you.

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To: <ncacc@lists.washlaw.edu>
Date: 3/9/2009 12:34 AM
Subject: [Ncacc] [SPAM] use of opinions as writing samples
Attachments: Part.002

Hi, all.

I was wondering if your courts allow research attorneys or appellate law clerks to use official court Opinions (already published), which they worked on during their employment with the court, as their writing samples when seeking other employment.

If any of you have a policy or preferred practice regarding this, please share.

Thanks,

Hannah

Hannah M. Gutierrez-Arroyo

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