

Participant Guide for Orientation Seminar for Federal Judicial Law Clerks

a Federal Judicial Center telecast on the FJTN

**Part One:
Welcome to the Federal Judicial System
Ethics for Law Clerks: An Introduction**

first broadcast Sept. 6, 2000



The Federal Judicial Television Network

*bringing you educational telecasts and information from the Administrative Office of the U.S. Courts,
the Federal Judicial Center, and the U.S. Sentencing Commission*

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Introduction

Welcome to the Federal Judicial Center's *Orientation Seminar for Federal Judicial Law Clerks*. The Center is broadcasting this two-part seminar over the Federal Judicial Television Network (FJTN). This participant guide contains materials to help supplement the broadcasts. Some of the materials also may serve as useful resources for your future reference.

Part One begins with *Welcome to the Federal Judicial System*, with Hon. Fern M. Smith, Director of the Federal Judicial Center. Part One continues with *Ethics for Law Clerks: An Introduction*. This segment, which the Center produced in consultation with the Judicial Conference Committee on Codes of Conduct, examines a number of ethical issues drawn from the experiences of former law clerks. Hon. Carol Bagley Amon, chair of the committee, introduces the program. For your reference, this guide contains (1) an outline of the areas in which ethical issues are most likely to arise for law clerks and the sources of authority governing those areas; (2) a collection of references to law clerks from the *Compendium of Selected Opinions from the Committee*; and (3) a copy of the *Code of Conduct for Judicial Employees*.

Part Two addresses legal writing and editing. The instructors, Stephen V. Armstrong, director of professional development at the law firm of Paul, Weiss, and Timothy P. Terrell, professor of law at Emory University School of Law, stress writing effective introductions, providing context before detail, and making the structure of a piece of writing explicit as a means of helping law clerks write and edit more efficiently, effectively, and clearly. The written materials for this program contain examples that Mr. Armstrong and Prof. Terrell will refer to throughout their presentation.

Finally, this participant guide contains an evaluation form for the broadcasts. Please complete the form and fax it back to us at the number shown on the form. We value your feedback, and we use your comments to ascertain how we can make our programs most effective for you.

Welcome to the Federal Judicial System

The following is an outline of the presentation *Welcome to the Federal Judicial System*, by Hon. Fern M. Smith, director of the Federal Judicial Center, which opens Part One of *Orientation Seminar for Federal Law Clerks*.

Federal Judicial Center Resources

- A. Center publications
 - 1. *Chambers Handbook for Judges Law Clerks and Secretaries*
 - a. An overview of chambers operations and the work of the federal courts
 - b. It also contains a basic description of the civil, criminal, bankruptcy, and appellate litigation processes
 - c. A helpful analysis of legal research and writing techniques
 - 2. *Judicial Writing Manual*
 - a. This concise manual encourages you to think critically about writing
 - 3. Other Center publications for district and magistrate judges
 - a. *Benchbook for U.S. District Court Judges*
 - b. *Manual on Recurring Problems in Criminal Trials*
 - c. *Manual for Complex Litigation, Third*
 - d. *Manual for Litigation Management and Cost and Delay Reduction*
 - e. *Reference Manual on Scientific Evidence*
 - f. *Guideline Sentencing: An Outline of Appellate Case Law on Selected Issues*, a cumulative outline of cases reported in the center's *Guideline Sentencing Update* periodical
 - 4. All of these publications should be in district and magistrate judges' chambers libraries; many will also be in chambers of appellate and bankruptcy judges. If not, call the Information Services Office,
(202) 502-4153
- B. Other publications
 - 1. Clerks to appellate judges should read *A Primer on the Jurisdiction of the U.S. Courts of Appeals*
 - 2. Bankruptcy judges' law clerks will find helpful the *Case Management Manual for U.S. Bankruptcy Judges*, which the Center and the AO prepared under the direction of the Subcommittee on Case Management of the Judicial Conference's Committee on the Administration of the Bankruptcy System
 - 3. Monographs on substantive and procedural topics
 - a. Attorneys' fee litigation
 - b. Summary judgment

Outline of *Welcome to the Federal Judicial System*

- c. Copyright law
 - d. Patent law and practice
 - e. Business bankruptcy
 - f. Securities litigation
 - g. Employment discrimination
 - h. Civil rights litigation
- C. Video programs
- 1. *Introducing The Federal Courts*
 - a. Five-part series helps new court employees better understand their jobs and the important role they play in the effective administration of justice
 - b. Program One provides an overview of the federal court system.
 - c. Remaining four programs dramatize hypothetical cases illustrating the steps in the criminal, civil, appellate, and bankruptcy processes
 - 2. Video orientation programs for new appellate, district, magistrate, and bankruptcy judges
 - a. Provide more advanced instruction
 - (i) Substantive and procedural topics
 - (ii) Chambers and case management
 - b. Designed for newly appointed judges to watch shortly after their appointment
- D. Catalogs of publications and audiovisual media programs contain current offerings
- E. FJC website on the DCN

Ethics for Law Clerks: An Introduction

Ethics for Law Clerks: An Introduction examines ethical issues that may arise in the seven areas shown below. This outline identifies the sources of authority for each ethical area. Law clerks should always consult with their judge about potential ethical issues.

I. Maintaining Confidentiality

Canon 3D, Code of Conduct for Judicial Employees (source of all canons cited in this outline)

local court or bar rules

II. Conflicts of Interest

Canon 3F

III. Outside Law-Related Activities

Canon 4D

IV. Outside Political Activities

Canon 5

Advisory Opinion 92

V. Outside Professional, Social, and Community Activities

Canon 4

VI. Gifts and Honoraria

Canon 4C

Ethics Reform Act regulations concerning gifts

Ethics Reform Act regulations concerning outside earned income, honoraria, and outside employment

VII. Future Employers

Committee on Codes of Conduct Advisory Opinions Nos. 74, 81, 83

Resources cited above in I. Maintaining Confidentiality, II. Conflicts of Interest, VI. Gifts

Code of Conduct for Judicial Employees

Introduction

This Code of Conduct applies to all employees of the Judicial Branch except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices.¹ As used in this code in canons 3F(2)(b), 3F(5), 4B(2), 4C(1), and 5A, a member of a judge's personal staff means a judge's secretary, a judge's law clerk, and a courtroom deputy clerk or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff.²

Contractors and other nonemployees who serve the Judiciary are not covered by this code, but appointing authorities may impose these or similar ethical standards on such nonemployees, as appropriate.

The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of this code. Employees should consult with their supervisor and/or appointing authority for guidance on questions concerning this code and its applicability before a request for an advisory opinion is made to the Committee on Codes of Conduct. In assessing the propriety of one's proposed conduct, a judicial employee should take care to consider all relevant canons in this code, the Ethics Reform Act, and other applicable statutes and regulations³ (e.g., receipt of a gift may implicate canon 2 as well as canon 4C(2) and the Ethics Reform Act gift regulations). Should a question remain after this consultation, the affected judicial employee, or the chief judge, supervisor, or appointing authority of such employee, may request an advisory opinion from the Committee. Requests for advisory opinions may be addressed to the Chairman of the Committee on Codes of Conduct in care of the General Counsel, Administrative Office of the United States Courts, One Columbus Circle, N.E., Washington, D.C. 20544.

*Adopted September 19, 1995 by the Judicial Conference of the United States
Effective January 1, 1996*

1. Justices and employees of the Supreme Court are subject to standards established by the Justices of that Court. Judges are subject to the Code of Conduct for United States Judges. Employees of the AO and the FJC are subject to their respective agency codes. Employees of the Sentencing Commission are subject to standards established by the Commission. Federal public defender employees are subject to the Code of Conduct for Federal Public Defender Employees. When Actually Employed (WAE) employees are subject to canons 1, 2, and 3 and such other provisions of this code as may be determined by the appointing authority.

2. Employees who occupy positions with functions and responsibilities similar to those for a particular position identified in this code should be guided by the standards applicable to that position, even if the position title differs. When in doubt, employees may seek an advisory opinion as to the applicability of specific code provisions.

3. *See Guide to Judiciary Policies and Procedures*, Volume II, Chapter VI, Statutory and Regulatory Provisions Relating to the Conduct of Judges and Judicial Employees.

Canon 1

A judicial employee should uphold the integrity and independence of the judiciary and of the judicial employee's office

An independent and honorable Judiciary is indispensable to justice in our society. A judicial employee should personally observe high standards of conduct so that the integrity and independence of the Judiciary are preserved and the judicial employee's office reflects a devotion to serving the public. Judicial employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this code shall not affect or preclude other more stringent standards required by law, by court order, or by the appointing authority.

Canon 2

A judicial employee should avoid impropriety and the appearance of impropriety in all activities

A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

Canon 3

A judicial employee should adhere to appropriate standards in performing the duties of the office

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the judicial employee's appointing authority, the following standards apply:

- A. A judicial employee should respect and comply with the law and these canons. A judicial employee should report to the appropriate supervising authority any attempt to induce the judicial employee to violate these canons.

Note: A number of criminal statutes of general applicability govern federal employees' performance of official duties. These include:

- 18 U.S.C. § 201 (bribery of public officials and witnesses);
- 18 U.S.C. § 211 (acceptance or solicitation to obtain appointive public office);
- 18 U.S.C. § 285 (taking or using papers relating to government claims);
- 18 U.S.C. § 287 (false, fictitious, or fraudulent claims against the government);
- 18 U.S.C. § 508 (counterfeiting or forging transportation requests);
- 18 U.S.C. § 641 (embezzlement or conversion of government money, property, or records);

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- 18 U.S.C. § 643 (failing to account for public money);
- 18 U.S.C. § 798 and 50 U.S.C. § 783 (disclosure of classified information);
- 18 U.S.C. § 1001 (fraud or false statements in a government matter);
- 18 U.S.C. § 1719 (misuse of franking privilege);
- 18 U.S.C. § 2071 (concealing, removing, or mutilating a public record);
- 31 U.S.C. § 1344 (misuse of government vehicle);
- 31 U.S.C. § 3729 (false claims against the government).

In addition, provisions of specific applicability to court officers include:

- 18 U.S.C. §§ 153, 154 (court officers embezzling or purchasing property from bankruptcy estate);
- 18 U.S.C. § 645 (embezzlement and theft by court officers);
- 18 U.S.C. § 646 (court officers failing to deposit registry moneys);
- 18 U.S.C. § 647 (receiving loans from registry moneys from court officer).

This is not a comprehensive listing but sets forth some of the more significant provisions with which judicial employees should be familiar.

- B. A judicial employee should be faithful to professional standards and maintain competence in the judicial employee's profession.
- C. A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a manner that improperly favors any litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.
- D. A judicial employee should avoid making public comment on the merits of a pending or impending action and should require similar restraint by personnel subject to the judicial employee's direction and control. This proscription does not extend to public statements made in the course of official duties or to the explanation of court procedures. A judicial employee should never disclose any confidential information received in the course of official duties except as required in the performance of such duties, nor should a judicial employee employ such information for personal gain. A former judicial employee should observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

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E. A judicial employee should not engage in nepotism prohibited by law.

Note: See also 5 U.S.C. § 3110 (employment of relatives); 28 U.S.C. § 458 (employment of judges' relatives).

F. *Conflicts of Interest.*

(1) A judicial employee should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a judicial employee knows that he or she (or the spouse, minor child residing in the judicial employee's household, or other close relative of the judicial employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the judicial employee's ability properly to perform official duties in an impartial manner.

(2) Certain judicial employees, because of their relationship to a judge or the nature of their duties, are subject to the following additional restrictions:

(a) A staff attorney or law clerk should not perform any official duties in any matter with respect to which such staff attorney or law clerk knows that:

(i) he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(ii) he or she served as lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law had served (during such association) as a lawyer concerning the matter, or he, she, or such lawyer has been a material witness;

(iii) he or she, individually or as a fiduciary, or the spouse or minor child residing in his or her household, has a financial interest in the subject matter in controversy or in a party to the proceeding;

(iv) he or she, a spouse, or a person related to either within the third degree of relationship,⁴ or the spouse of such person (A) is a party to the proceeding, or an officer, director, or trustee of a party; (B) is acting as a lawyer in the proceeding; (C) has an interest that could be substantially affected by the outcome of the proceeding; or (D) is likely to be a material witness in the proceeding;

(v) he or she has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.

4. As used in this code, the third degree of relationship is calculated according to the civil law system to include the following relatives: parent, child, grandparent, grandchild, great grandparent, great grandchild, brother, sister, aunt, uncle, niece, and nephew.

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- (b) A secretary to a judge, or a courtroom deputy or court reporter whose assignment with a particular judge is reasonably perceived as being comparable to a member of the judge's personal staff, should not perform any official duties in any matter with respect to which such secretary, courtroom deputy, or court reporter knows that he or she, a spouse, or a person related to either within the third degree of relationship, or the spouse of such person (i) is a party to the proceeding, or an officer, director, or trustee of a party; (ii) is acting as a lawyer in the proceeding; (iii) has an interest that could be substantially affected by the outcome of the proceeding; or (iv) is likely to be a material witness in the proceeding; provided, however, that when the foregoing restriction presents undue hardship, the judge may authorize the secretary, courtroom deputy, or court reporter to participate in the matter if no reasonable alternative exists and adequate safeguards are in place to ensure that official duties are properly performed. In the event the secretary, courtroom deputy, or court reporter possesses any of the foregoing characteristics and so advises the judge, the judge should also consider whether the Code of Conduct for United States Judges may require the judge to recuse.
- (c) A probation or pretrial services officer should not perform any official duties in any matter with respect to which the probation or pretrial services officer knows that:
 - (i) he or she has a personal bias or prejudice concerning a party;
 - (ii) he or she is related within the third degree of relationship to a party to the proceeding, or to an officer, director, or trustee of a party, or to a lawyer in the proceeding;
 - (iii) he or she, or a relative within the third degree of relationship, has an interest that could be substantially affected by the outcome of the proceeding.
- (3) When a judicial employee knows that a conflict of interest may be presented, the judicial employee should promptly inform his or her appointing authority. The appointing authority, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the judicial employee's performance of official duties in such matter so as to avoid a conflict or the appearance of a conflict of interest. A judicial employee should observe any restrictions imposed by his or her appointing authority in this regard.
- (4) A judicial employee who is subject to canon 3F(2) should keep informed about his or her personal, financial and fiduciary interests and make a reasonable effort to keep informed about such interests of a spouse or minor child residing in the judicial employee's household.
- (5) A member of a judge's personal staff should inform the appointing judge of any circumstance or activity of the staff member that might serve as a

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basis for disqualification of either the staff member or the judge, in a matter pending before the judge.

Canon 4

In engaging in outside activities, a judicial employee should avoid the risk of conflict with official duties, should avoid the appearance of impropriety, and should comply with disclosure requirements

- A. *Outside Activities.* A judicial employee's activities outside of official duties should not detract from the dignity of the court, interfere with the performance of official duties, or adversely reflect on the operation and dignity of the court or office the judicial employee serves. Subject to the foregoing standards and the other provisions of this code, a judicial employee may engage in such activities as civic, charitable, religious, professional, educational, cultural, avocational, social, fraternal, and recreational activities, and may speak, write, lecture, and teach. If such outside activities concern the law, the legal system, or the administration of justice, 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.
- B. *Solicitation of Funds.* A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:
- (1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.
 - (2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.
 - (3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.
- C. *Financial Activities.*
- (1) A judicial employee should refrain from outside financial and business dealings that tend to detract from the dignity of the court, interfere with the proper performance of official duties, exploit the position, or associate the judicial employee in a substantial financial manner with lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, provided, however, that court reporters are not prohibited from providing reporting services for compensation to the extent permitted by statute and by the court. A member of a

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judge's personal staff should consult with the appointing judge concerning any financial and business activities that might reasonably be interpreted as violating this code and should refrain from any activities that fail to conform to the foregoing standards or that the judge concludes may otherwise give rise to an appearance of impropriety.

- (2) A judicial employee should not solicit or accept a gift from anyone seeking official action from or doing business with the court or other entity served by the judicial employee, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judicial employee may accept a gift as permitted by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder. A judicial employee should endeavor to prevent a member of a judicial employee's family residing in the household from soliciting or accepting any such gift except to the extent that a judicial employee would be permitted to do so by the Ethics Reform Act of 1989 and the Judicial Conference regulations thereunder.

Note: See 5 U.S.C. § 7353 (gifts to federal employees). See also 5 U.S.C. § 7342 (foreign gifts); 5 U.S.C. § 7351 (gifts to superiors).

- (3) A judicial employee should report the value of gifts to the extent a report is required by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

Note: See 5 U.S.C. app. 6, §§ 101 to 111 (Ethics Reform Act financial disclosure provisions).

- (4) During judicial employment, a law clerk or staff attorney may seek and obtain employment to commence after the completion of the judicial employment. However, the law clerk or staff attorney should first consult with the appointing authority and observe any restrictions imposed by the appointing authority. If any law firm, lawyer, or entity with whom a law clerk or staff attorney has been employed or is seeking or has obtained future employment appears in any matter pending before the appointing authority, the law clerk or staff attorney should promptly bring this fact to the attention of the appointing authority.

- D. *Practice of Law.* A judicial employee should not engage in the practice of law except that a judicial employee may act pro se, may perform routine legal work incident to the management of the personal affairs of the judicial employee or a member of the judicial employee's family, and may provide pro bono legal services in civil matters, so long as such pro se, family, or pro bono legal work does not present an appearance of impropriety, does not take place while on duty or in the judicial employee's workplace, and does not interfere with the judicial employee's primary responsibility to the office in which the judicial employee serves, and further provided that:

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- (1) in the case of pro se legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings);
- (2) in the case of family legal work, such work is done without compensation (other than such compensation as may be allowed by statute or court rule in probate proceedings) and does not involve the entry of an appearance in a federal court;
- (3) in the case of pro bono legal services, such work (a) is done without compensation; (b) does not involve the entry of an appearance in any federal, state, or local court or administrative agency; (c) does not involve a matter of public controversy, an issue likely to come before the judicial employee's court, or litigation against federal, state or local government; and (d) is reviewed in advance with the appointing authority to determine whether the proposed services are consistent with the foregoing standards and the other provisions of this code.

Judicial employees may also serve as uncompensated mediators or arbitrators for nonprofit organizations, subject to the standards applicable to pro bono practice of law, as set forth above, and the other provisions of this code.

A judicial employee should ascertain any limitations imposed by the appointing judge or the court on which the appointing judge serves concerning the practice of law by a former judicial employee before the judge or the court and should observe such limitations after leaving such employment.

Note: See also 18 U.S.C. § 203 (representation in matters involving the United States); 18 U.S.C. § 205 (claims against the United States); 28 U.S.C. § 955 (restriction on clerks of court practicing law).

- E. *Compensation and Reimbursement.* A judicial employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation and reimbursement is not prohibited or restricted by this code, the Ethics Reform Act, and other applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the judicial employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a judicial employee and, where appropriate to the occasion, by the judicial employee's spouse or relative. Any payment in excess of such an amount is compensation.

A judicial employee should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the Ethics Reform Act, other applicable law, or the Judicial Conference of the United States.

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Notwithstanding the above, a judicial employee should not receive any salary, or any supplementation of salary, as compensation for official government services from any source other than the United States, provided, however, that court reporters are not prohibited from receiving compensation for reporting services to the extent permitted by statute and by the court.

Note: See 5 U.S.C. app. 6, §§ 101 to 111 (Ethics Reform Act financial disclosure provisions); 28 U.S.C. § 753 (court reporter compensation). See also 5 U.S.C. app. 7, §§ 501 to 505 (outside earned income and employment).

Canon 5

A judicial employee should refrain from inappropriate political activity

- A. *Partisan Political Activity.* A judicial employee should refrain from partisan political activity; should not act as a leader or hold any office in a partisan political organization; should not make speeches for or publicly endorse or oppose a partisan political organization or candidate; should not solicit funds for or contribute to a partisan political organization, candidate, or event; should not become a candidate for partisan political office; and should not otherwise actively engage in partisan political activities.
- B. *Nonpartisan Political Activity.* A member of a judge's personal staff, clerk of court, chief probation officer, chief pretrial services officer, circuit executive, and district court executive should refrain from nonpartisan political activity such as campaigning for or publicly endorsing or opposing a nonpartisan political candidate; soliciting funds for or contributing to a nonpartisan political candidate or event; and becoming a candidate for nonpartisan political office. Other judicial employees may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court or office and does not interfere with the proper performance of official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace and may not utilize any federal resources in connection with any such activity.

Note: See also 18 U.S.C. chapter 29 (elections and political activities).

Advice Applicable to Law Clerks from the *Compendium*

The *Compendium of Selected Opinions* from the Judicial Conference Committee on Codes of Conduct includes these references to law clerks. The selections were excerpted by the Hon. David M. Ebel (10th Cir.), who is a member of the committee. The full compendium is at the *Guide to Judicial Policies and Procedures*, Volume II, Chapter 5.

PART ONE

CANON 1

§ 1. Preserving the Integrity and Independence of the Judiciary

§ 1.2 Integrity and Independence of Judiciary

(b-3) A judge may hire as a part-time law clerk a person who has taken a leave of absence from previous work on a contract, hourly paid basis serving as a state hearing officer for unemployment benefits.

(h-1) Canon 4D of the Code of Conduct for Judicial Employees prevents a law clerk from serving as a state court-appointed arbitrator or mediator.

CANON 2

§ 2. Avoiding Impropriety and the Appearance of Impropriety

§ 2.2 Additional Compensation for Performing Judicial Duties

(b) A prospective law clerk may accept, prior to commencement of the clerkship, a signing and graduation bonus from a future employer when it is clear that the bonus is not paid because of service as clerk. A clerkship bonus may be accepted only after termination of the clerkship, and no bonus of any kind may be accepted during the clerkship. See Advisory Opinion No. 83.

(b-1) A law clerk may accept from future employer reimbursement of the costs of a bar review course and related fees, as well as a stipend to permit a period of study for the bar examination prior to commencement of the clerkship.

§ 2.5 Judges and Judicial Employees; Negotiating for Future Employment

(c) A law clerk planning self employment after a clerkship ends may, while still clerking (and with judge's approval), form a professional corporation and announce plans to friends and family, but should not undertake overt activities to procure clients and establish a practice and should not: (1) distribute business cards; (2) make public announcements; (3) meet with or provide materials to attorneys; (4) enter into contracts to provide services after clerkship ends.

§ 2.7 Withdrawing from Law Practice To Become a Judge or Judicial Employee

(h) Before starting a clerkship, a law clerk should end a relationship as a named partner in a professional limited liability company providing legal services, remove his or her name from the company's name, and arrange to receive any compensation owed by the company.

§ 2.9 Benefits Received from Entities Doing Business with the Courts

(d) Professional association of law clerks should not accept free use of legal publisher's staff or other gratuitous administrative services. 5 U.S.C. § 7353(a)(2).

§ 2.10 Relationships with Entities Likely To Appear Before Courts

(e) A law clerk who is serving a temporary clerkship on leave of absence from a law firm should not during the term of his or her clerkship work on cases handled by or receive any compensation from the law firm.

(f) No appearance of impropriety arises when a judge's former law clerks solicit law firms and lawyers to contribute to a scholarship bearing the judge's name. Judge should make reasonable efforts to remain unaware of the identities of contributors and those who declined to contribute, and neither the judge nor current law clerks or staff should participate in or encourage the solicitations.

§ 2.12 Lending Prestige of Office

(e) Professional association of law clerks lends prestige of office by giving special privileges to and by adopting the official publications of a legal publisher.

(i) It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses.

§ 2.Z Miscellaneous

(d) Where law clerk has significant interest in company seeking to do business with the court, clerk of court should ensure that any agreement between the court and the company satisfies applicable contracting requirements and does not present an appearance of impropriety; clerk should consider public bidding process and other procedures to minimize any appearance that an agreement resulted from clerk's relationship with law clerk.

(f) Law clerk who will work for a law firm before and after clerkship should not be permitted to work during the clerkship on a massive lawsuit that could have a substantial effect on the law firm's major client; insulating law clerk from working for that client while at the law firm may not adequately avoid appearance of impropriety.

CANON 3

§ 3. Impartial and Diligent Performance of Judicial Duties; Recusal and Disqualification

§ 3.1-6[5] Bankruptcy Proceedings

(e) A bankruptcy law clerk should not work on an adversary proceeding on which the law clerk worked while at a law firm, nor should the law clerk work on other matters initiated by the law firm during the law clerk's tenure there, but the law clerk may work on other adversary proceedings in that bankruptcy proceeding, so long as he or she does not possess disqualifying knowledge or information. See Code of Conduct for Judicial Employees, Canon 3F(2)(a)(i), (ii).

§ 3.3-1 Withdrawal from Firm

(i) A bankruptcy law clerk should not work on an adversary proceeding on which the law clerk worked while at a law firm, nor should the law clerk work on other matters initiated by the law firm during the law clerk's tenure there, but the law clerk may work on other adversary proceedings in that bankruptcy proceeding, so long as he or she does not possess disqualifying knowledge or information. See Code of Conduct for Judicial Employees, Canon 3F(2)(a)(i), (ii).

§ 3.4-9 Negotiating for Future Employment

> Advisory Opinion No. 83 (law clerks' bonuses and reimbursement for relocation and bar-related expenses).

> Advisory Opinion No. 81 (when law clerk's future employer is U.S. Attorney).

> Advisory Opinion No. 74 (law clerk's future employer).

§ 3.5 Recusal: Members of the Judge's Staff; Former Staff and Their Relatives

(c-1) Where a judge's law clerk has accepted employment with Civil Rights Division of Justice Department, the law clerk should be isolated from any case involving the Civil Rights Division, but may work on other Department of Justice cases. Same where law clerk works for INS.

(c-2) Where judge's law clerk has merely submitted application for employment, the clerk need not necessarily be isolated from cases where potential employer appears, but the judge may feel it is desirable in some circumstances, e.g.,

likely that clerk will eventually be employed. See Advisory Opinion Nos. 74 and 81.

(d) A judge need not recuse where the spouse of the judge's law clerk or the spouse of a deputy clerk of court appears as counsel, but must ensure that neither the law clerk nor the deputy clerk does any work on the case; the same ruling applies where the law clerk's spouse is also a former law clerk of the judge. It is advisable not only to isolate the current law clerk from that case, but also to inform the parties that this is being done.

(e) A judge's law clerk who is married to FBI agent is only disqualified from working on those cases in which spouse actually had some participation.

(f) A law clerk whose spouse is an associate in a firm should be isolated from any case handled by that firm, whether the spouse actually participates in the representation or not. Parties should be informed of the relationship and the insulation of the clerk. See Advisory Opinion No. 51.

(g) A law clerk who previously worked for a firm may not participate in chamber's handling of any case the law clerk worked on while employed by the firm. Facts should be placed on record and the law clerk should be isolated from the case. Law clerk can work on other cases from the firm unless particular facts would render impartiality reasonably subject to question.

(g-1) A law clerk who is serving a temporary clerkship on leave of absence from a law firm should not during the term of his or her clerkship work on cases handled by or receive any compensation from the law firm.

(g-2) Law clerk who will work for a law firm before and after clerkship should not be permitted to work during the clerkship on a massive lawsuit that could have a substantial effect on the law firm's major client.

(i) A law clerk who, after doing substantial work on a complex bankruptcy case, comes into a conflict of interest (by virtue of a spouse's employment) on a confirmation matter, may not work on any part of the bankruptcy; confirmation issues can always reasonably be perceived as inseparable from other aspects of the case.

(j) A law clerk has the same duty as a judge to disqualify from cases involving corporations in which the law clerk (or law clerk's spouse) owns stock and to keep informed about the personal financial interests of a spouse. The judge need not recuse, but the law clerk should be isolated from the case.

(m) Law clerk whose first cousin is U. S. Attorney need not automatically be isolated from cases from that office, because the first cousin relationship is not within the third degree; but appearance of impartiality concerns might be implicated if the relationship between the two first cousins is particularly close, and also in high profile cases and in cases in which the first cousin/U. S. Attorney personally appears or plays a significant role.

§ 3.9-1 Avoid Comment on Pending Matters

(a) A law clerk must receive authorization from his or her judge before providing information to legal publisher regarding pending matters or matters already decided.

(c) A law clerk may establish an online discussion forum on legal issues, for compensation and outside of working hours, but should not be identified as a law clerk and should not provide information about cases pending or likely to arise before the court.

CANON 4

§ 4. Extrajudicial Activities Related to the Law or the Administration of Justice

§ 4.1 Part-Time Teaching

(i) A law clerk should not use as teaching materials cases the judge or the law clerk worked on during the clerkship; the law clerk may use other cases from the same court but should avoid disclosing confidential information.

§ 4.2 Writing and Editing

(a) It is permissible for a judge to write books and to permit law clerks to do so provided the prestige of the office is neither exploited nor used to advance the interests of the publisher.

(j) The writing of book of fiction by law clerk based on public records of the court does not implicate Canon 4 of the Code of Conduct for United States Judges, but might implicate Canons 3C and 5D of the Code of Conduct for Law Clerks.

§ 4.3 Miscellaneous Education-Related or Informative Activities

(h) A law clerk may establish an online discussion forum on legal issues, for compensation and outside of working hours, but should not be identified as a law clerk and should not provide information about cases pending or likely to arise before the court.

§ 4.5 Participation in Bar Association Activities

(j) Law clerk may serve as a member, officer or director of professional association of law clerks.

CANON 5

§ 5. Extrajudicial Activities Not Related to Improving the Law or the Administration of Justice

§ 5.2-5 Business Activities of Judicial Employees

(c) A law clerk is not prohibited from part-time work as an anonymous typist in free time, where work will be done at home and work will be limited to transcripts of state proceedings which are not likely to ever get to federal court.

(g) Where law clerk has significant interest in company seeking to do business with the court, clerk of court should ensure that any agreement between the court and the company satisfies applicable contracting requirements and does not present an appearance of impropriety; clerk should consider public bidding process and other procedures to minimize any appearance that an agreement resulted from clerk's relationship with law clerk.

(h) Where law clerk has significant interest in company seeking to do business with the court, law clerk should refrain from any involvement in company's dealings with the court.

§ 5.3-2 Organizations Devoted To Espousing Positions on Public Issues, or on Issues Likely To Be the Subject of Litigation

(h) It is inappropriate for a law clerk to serve on the governing board of an advocacy organization that actively lobbies state officials on issues that are subject to debate in the political arena. Such service would be likely to lend the prestige of the law clerk's office to the organization and the positions it espouses.

§ 5.3-4 Organizations and Events Involved in Fund-Raising

(r) Use of law clerk's name and title in biographical profile contained in college's annual fund-raising brochure does not constitute "use . . . of the prestige of the office in the solicitation of funds," where judge is not named and law clerk does not personally participate in fund-raising.

§ 5.3-7 Governmental Agencies and Entities

(i-1) Law clerk may properly serve on committee to review city tax expenditures where the position is unpaid and has no governmental power but is advisory only; law clerk should ensure that any publicity about committee's recommendations refrains from identifying the clerk as a law clerk or court employee.

(o-1) Although Canon 5G excepts matters relating to the improvement of the legal system, the concerns expressed in Canon 1 relating to an independent federal judiciary indicate that a judge should not serve as a member of a state Board of Law Examiners. In habeas matters a federal judge is required to review indirectly decisions of the state's highest court, and it would be inappropriate for the judge to be appointed or sit on a committee subject to the direction of that court. See *Compendium* §§ 1.2(a) and 4.6(j-1). However, law clerk may serve on state board of law examiners if judge approves and law clerk is isolated from all habeas cases.

§ 5.3-7[1] Military and National Guard Service

(b) A bankruptcy judge should not serve as staff judge advocate in the state's national guard, nor serve as a hearing officer in disciplinary proceedings in the national guard—this constitutes either the practice of law or involves the receipt of additional compensation for performing judicial services. Same for law clerk participating as a lawyer in a court-martial or engaging in duties in the military reserves that call for providing legal advice.

§ 5.4-5 Hospitality

(d) A law clerk may occasionally go to lunch or dinner with law firms that are considering extending employment offers, and it is not inappropriate for the law firms to pay for the law clerk's meal.

§ 5.4-6 Attendance at Seminars

(e) Law clerks and staff attorneys may accept waiver of tuition for attending a law-related seminar, although the sponsor of the seminar is a profit-making educational institution, when the sponsor is not likely to come before nor seeking to do business with the court and its interests would not be substantially affected by the performance or nonperformance of the judicial employees' official duties.

(f) Law clerk may accept reimbursement of costs of attending a legal education conference from prospective employer that does not practice before law clerk's court.

§ 5.4-8 Gifts from Persons Likely To Appear Before Judge

>Advisory Opinion No. 83 (law clerks' bonuses and reimbursement for relocation and bar-related expenses).

§ 5.5 Serving as Arbitrator or Mediator

(d) Canon 5E prohibits judges from serving as arbitrators. This prohibition does not appear in the Code of Conduct for Law Clerks. Therefore, a career law clerk can serve as trial board chairperson and/or hearing examiner on the American Kennel Club in relation to alleged violations of its Rules and Regulations. Activities do not come within definition of "honorarium," so compensation for services and actual expenses for travel can be accepted.

§ 5.6 Practice of Law

(a-2) Career law clerk may not serve as arbitrator or mediator under state court program of binding arbitration. Service as a mediator or arbitrator, though not expressly prohibited by the Code of Conduct for Law Clerks, would be perceived as the practice of law and in violation of Canon 5D of the Code of Conduct for Law Clerks. Such service would also raise problems of independence under Canons 1 and 2. Similarly, canon 4D of the Code of Conduct for Judicial Employees prevents a law clerk from serving as a state court-appointed arbitrator or mediator.

(a-4) It would be considered the practice of law for a law clerk's name to be used by a professional limited liability company providing legal services and for the

law clerk to have a continued fiduciary duty to company clients and a continued right to share in profits.

(b-1) The phrase "in a court of the United States" in Canon 5D(2) of the Code of Conduct for Law Clerks means a court of the federal government, and not more broadly any court within the United States. Thus, a law clerk performing necessary legal work for a member of the law clerk's family may appear before state or local courts so long as the other requirements of Canon 5D are met. Similarly, canon 4D of the Code of Conduct for Judicial Employees permits a law clerk to file documents and provide legal advice on behalf of a sibling named in a civil action in state court.

(c) Even though part-time magistrate judges are permitted to practice law under limited and specific circumstances, Canon 5D of the Code of Conduct for Law Clerks provides for no similar exception from its ban on the practice of law.

(c-1) The Code of Conduct for Judicial Employees does not exempt part-time law clerks from canon 4D, prohibiting the practice of law.

(f) Law clerk's service on state board of law examiners does not constitute the practice of law. See also Compendium § 5.3-7(o-1).

(j) A law clerk planning self employment after a clerkship ends may, while still clerking (and with judge's approval), form a professional corporation and announce plans to friends and family, but should not undertake overt activities to procure clients and establish a practice and should not: (1) distribute business cards; (2) make public announcements; (3) meet with or provide materials to attorneys; (4) enter into contracts to provide services after clerkship ends.

§ 5.6-1 Post-Employment Restrictions on Practice Before Former Court

> Advisory Opinion No. 81 (former law clerk should not work on cases for U.S. attorney that were pending in court during law clerk's judicial employment).

CANON 6

§ 6. Extrajudicial Compensation

CANON 7

§ 7. Political Activities

§ 7.3 Spouse's Political Activities

(c) A law clerk may not attend political meetings or accompany a spouse campaigning for political office door-to-door; a family picture may be used in campaign material if the spouse's judicial employment is not identified in any way; the marital home may be used for political meetings if the law clerk does not appear at such meetings; bumper stickers are also permissible if the car is used by the spouse and not the law clerk.

§ 7.5 Judicial Employees' Partisan Political Activities

(a) A law clerk may be a member of a political party, but it is impermissible for the law clerk to attend political functions as a member of a local partisan political group.

(b) Law clerk should not contribute to political action committee whose purpose is to fund state and local political candidates in partisan elections.

§ 7.6 Judicial Employees' Nonpartisan Political Activities

(e) Under canon 5B of the Code of Conduct for Judicial Employees, a law clerk should not make monetary contributions to a nonpartisan campaign, even in a city distant from the clerk's judicial district.

§ 7.Z Miscellaneous Rulings

(a) A judge should not permit his or her law clerks to distribute political leaflets.

(e) Interpreting Canon 7A of the Code of Conduct for Law Clerks, judge's career law clerk should not run for election to a local state judicial seat while serving as a law clerk even though the election is nonpartisan.

PART TWO

ETHICS REFORM ACT CONCERNING GIFTS

§ 24 Solicitation of Gifts

(a) Former law clerks are not subject to prohibition on solicitation of gifts and may raise money for scholarship fund to honor judge; judge may play no role in solicitation and should remain unaware of contributors.

§ 25.1-2 Gifts Incident to Bar-Related Function or Similar Activity To Improve Legal System

(c) Law clerk may accept reimbursement of costs of attending a legal education conference from prospective employer that does not practice before law clerk's court. See also *Compendium* § 5.4-6.

(c-1) Law clerks and staff attorneys may accept waiver of tuition for attending a law-related seminar, although the sponsor of the seminar is a profit-making educational institution, when the sponsor is not likely to come before nor seeking to do business with the court and its interests would not be substantially affected by the performance or nonperformance of the judicial employees' official duties.

§ 25.3 Exception: Ordinary Social Hospitality

(c) A law clerk may occasionally go to lunch or dinner with law firms that are considering extending employment offers, and it is not inappropriate for the law firms to pay for the law clerk's meal.

PART THREE

***ETHICS REFORM ACT CONCERNING OUTSIDE EARNED
INCOME, HONORARIA, AND OUTSIDE EMPLOYMENT***

§ 32.2 Definition of "Covered Senior Employee"

(a) A probation officer is not a "covered senior employee" as defined in section 2(b) of the outside employment regulations, and therefore is not subject to the outside earned income limitation in section 4 or the limitations on outside employment in section 5. Same for law clerk. Same for judge's secretary.

§ 34 Prohibition on Receipt of Honoraria

(a) It would violate the statute and outside employment regulations for a law clerk to write an article for compensation during clerkship even though publication of the article and receipt of the honorarium would occur after the clerkship ends.

**§ 34.1 Definition of Honorarium Per Outside Employment Regulation § 4(b):
Money or Anything of Value (Excluding Travel Expenses per 5 U.S.C.
app. 7, §§ 505(3) and (4)) Paid for Appearance, Speech or Article;
Subject to the Following Exceptions**

(c) Compensation received by a career law clerk for service as dog show arbitrator (unlike Code of Conduct for United States Judges, Code of Conduct for Law Clerks does not prohibit service as arbitrator) does not constitute honorarium.

**§ 34.1-1 Exception: Series of Related Appearances, Speeches or Articles if
Subject Matter Is Not Directly Related to Official Duties and Payment
Is Not Made Because of Status with Government**

(b) Payments for music album reviews for a newspaper fall within the exception from the definition of honorarium, because they are payments for a series of related articles not directly related to the law clerk's duties or status. Same for series of articles about architecture.

§ 34.1-3 Exception: Writing More Extensive Than an Article

(c) Compensation to law clerk for authoring or editing legal treatises or manuals, or updating same, does not constitute honorarium.

Program Evaluation for *Orientation Seminar for Federal Judicial Law Clerks*

Please indicate your position in the court:

- | | | |
|---|--|---|
| <input type="checkbox"/> Appellate judge | <input type="checkbox"/> Law clerk to appellate judge | <input type="checkbox"/> Staff attorney |
| <input type="checkbox"/> District judge | <input type="checkbox"/> Law clerk to district judge | <input type="checkbox"/> Other _____ |
| <input type="checkbox"/> Bankruptcy judge | <input type="checkbox"/> Law clerk to bankruptcy judge | |
| <input type="checkbox"/> Magistrate judge | <input type="checkbox"/> Law clerk to magistrate judge | |

1. How would you describe the length of each program segment? (please circle one)

- | | | | | | |
|--|----------------|---|---|---|---------------|
| (a) Welcome to the Federal Judicial System | 1
Too short | 2 | 3 | 4 | 5
Too long |
| (b) Ethics for Law Clerks | 1
Too short | 2 | 3 | 4 | 5
Too long |
| (c) Writing and Editing | 1
Too short | 2 | 3 | 4 | 5
Too long |

2. Did the program segment provide information that will help law clerks do their job?

- | | | | | | |
|--|---------|---|---|---|-----------------|
| (a) Welcome to the Federal Judicial System | 1
No | 2 | 3 | 4 | 5
Definitely |
| (b) Ethics for Law Clerks | 1
No | 2 | 3 | 4 | 5
Definitely |
| (c) Writing and Editing | 1
No | 2 | 3 | 4 | 5
Definitely |

3. How would you describe each program segment's level of difficulty and its assumptions about a law clerk's prior knowledge of the topic?

- | | | | | | |
|--|----------------|---|---|---|-------------------|
| (a) Welcome to the Federal Judicial System | 1
Too basic | 2 | 3 | 4 | 5
Too advanced |
| (b) Ethics for Law Clerks | 1
Too basic | 2 | 3 | 4 | 5
Too advanced |
| (c) Writing and Editing | 1
Too basic | 2 | 3 | 4 | 5
Too advanced |

4. What is your overall evaluation of each program segment?

- | | | | | | |
|--|-----------|---|---|---|----------------|
| (a) Welcome to the Federal Judicial System | 1
Poor | 2 | 3 | 4 | 5
Excellent |
| (b) Ethics for Law Clerks | 1
Poor | 2 | 3 | 4 | 5
Excellent |
| (c) Writing and Editing | 1
Poor | 2 | 3 | 4 | 5
Excellent |

5. Did your court conduct an orientation program along with the broadcast? yes no

6. If you have suggestions for improving the orientation program or suggestions of topics for future programs for law clerks, please list them here (additional comments on a separate sheet are welcomed).

Please fax completed form to the Federal Judicial Center at 202-502-4299. No cover sheet is necessary. Thank you.