

# Maintaining the Public Trust

## Ethics for Federal Judicial Law Clerks

2019 Revised Fourth Edition

Federal Judicial Center



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2019 Revised Fourth Edition

Prepared by the Judicial Conference Committee on Codes of Conduct  
in cooperation with the Federal Judicial Center



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# Introduction

New law clerks: welcome to the federal court system. Career clerks: thank you for your continued service.

During your clerkship, you will provide valuable assistance as your judge resolves disputes that are of great importance to the parties, and often to the public. The parties and the public accept judges' rulings because they trust the system to be fair and impartial. Maintaining this trust is crucial to the continued success of our courts. That's why, although you have many responsibilities that demand your attention, you must never lose sight of your ethical obligations.

You need to become familiar with the Code of Conduct for Judicial Employees, which has five canons. In brief, the canons provide that you should

- uphold the independence and integrity of the judiciary and of your office
- avoid impropriety and the appearance of impropriety in all activities
- adhere to appropriate standards in performing your duties;
- avoid conflict with official duties and the appearance of impropriety in all outside activities
- refrain from inappropriate political activities

Scrupulously follow these canons and the other rules that govern your conduct. Do not assume that good intentions are enough.

It is not enough to simply learn and follow the Code of Conduct and other related ethics rules, however. You also need to familiarize yourself with and follow your judge's ethical guidelines. These guidelines may differ from chambers to chambers. Your judge may impose restrictions that go beyond the Code.

Although many of your obligations are the same as those of other federal judicial employees, certain restrictions are more stringent because of your special position in relation to the judge. Some obligations continue after your service to the court concludes.

Sometimes new law clerks are surprised by some of the canons, although after they analyze those canons, the rationale becomes clear. The canons emphasize avoiding activity that raises the appearance of impropriety, as well as actual impropriety itself.

Many outside activities cannot be neatly separated from your official duties. You will need to maintain a heightened awareness of how others may perceive your actions—in and out of the court.

To help you get started, the federal judiciary’s ethics committee, known as the Judicial Conference Committee on Codes of Conduct (the Committee), prepared this pamphlet in cooperation with the Federal Judicial Center. This pamphlet provides an overview of your ethical obligations as well as resources you can consult for further information. These obligations apply to all law clerks, including career clerks, clerks who serve for a defined period of time, and clerks who work full-time or part-time, for pay or as a volunteer.

The next section discusses how to approach an ethics question. The following sections present the Five Cs as an easy way to remember the main categories of your ethical obligations. They are

- confidentiality
- conflicts of interest
- caution (political activities, online activities, and gifts)
- community and other outside professional and social activities
- career

Each C section includes examples that illustrate challenges you may face, as well as sources of guidance.

The Ethics Checklist for Federal Judicial Law Clerks, on pages 28–31, will help you identify ethics problems that may require you to isolate yourself from a case in your judge’s chambers or refrain from certain activities outside the office. You should complete the checklist and then review it with your judge.

## **How to Approach an Ethics Question**

The rule to always look both ways before crossing a street provides guidance in approaching an ethics question: move cautiously and carefully. You are responsible for conducting yourself according to the ethics guidelines. Train yourself to stop, think, and evaluate before you take an action—inside or outside of work—that may have ethical implications.

## What sources should you consult?

If you identify a potential ethics problem, you can take several steps to resolve it. First, review the sources of your ethical obligations and previous guidance from the Committee:

- The Code of Conduct for Judicial Employees. The code applies to almost all judicial employees, including judges' personal staff, such as law clerks, judicial assistants, secretaries, court law clerks, and staff attorneys. It also applies to interns, externs, and other volunteer employees.
- The Ethics Reform Act of 1989 and the Judicial Conference regulations promulgated under it. The provisions that apply to law clerks address receipt of gifts and honoraria.
- Advisory opinions that the Judicial Conference Committee on Codes of Conduct has issued on questions that arise frequently, including issues specific to law clerks and other judicial employees.
- The Compendium of Selected Opinions. The compendium contains summaries of confidential advice that the Committee has offered in response to individual inquiries from judges and judicial employees.

If you do not have these resources at hand, they are readily available to you. The appendix to this pamphlet explains how to obtain online ethics resources.

Second, remember to consult *all* the relevant code canons and Judicial Conference regulations. An activity that may seem permissible under a general section of a canon may not be permissible under a more specific provision.

Third, consult with your judge as soon as possible, even if your initial investigation suggests a clear-cut answer. Individual judges or courts may set standards that exceed the standards set by the code and related rules and opinions discussed above.

## If you have questions after consulting the sources, what should you do?

You or your judge may ask the Committee for advice. The Committee is composed of fifteen members: a judge from each circuit, a bankruptcy judge, and a magistrate judge.

Contact the Committee representative from your circuit or the Committee chair. You can also contact the Committee counsel at the Administrative Office of the U.S. Courts, who has a wealth of ethics information.

The Committee welcomes questions. In many instances, it will have already addressed a question similar to yours and established a precedent. If so, an informal phone call or email exchange may quickly resolve your dilemma. If the Committee has not established a precedent, you can seek a formal opinion. You can also ask for a formal opinion if, for some reason, you want to skip the informal step. Address your request to the Committee chair and submit it by email. An email meets the requirement that the request be in writing. The Committee will respond promptly.

### **Are there limits on the Committee's role?**

Yes. The Committee develops ethics policy for the federal courts and provides advice to federal judges, federal judicial employees, and federal defenders on specific ethics questions. It does not provide advice about conduct other than that of the person asking the question. It does not conduct investigations or mete out discipline. And it does not interpret statutes, rules, or regulations other than those

#### **How to Contact the Committee on Codes of Conduct**

A list of current Committee members is on the JNet, at <http://jnet.ao.dcn/judicial-conference/committee-members#e>.

Requests for opinions and other questions concerning the code and its applicability should be addressed to the chair and emailed to [ethics@ao.uscourts.gov](mailto:ethics@ao.uscourts.gov).

You can also contact the Committee at  
Chair, Committee on Codes of Conduct  
c/o General Counsel  
Administrative Office of the United States Courts  
Thurgood Marshall Federal Judiciary Building  
One Columbus Circle, NE  
Washington, DC 20544  
202-502-1100

All inquiries and responses are confidential.

related to the Codes of Conduct for judges, judicial employees, and federal defenders.

## Will your inquiry be kept confidential?

Yes. The Committee keeps all inquiries and responses confidential. If you contact the Committee directly, the Committee will maintain your confidentiality.

## Confidentiality

During your clerkship, you will learn a broad range of confidential information. Some of this information will pertain to individual cases; some will concern internal court workings; some will relate to the practices of your judge or other judges; and some will defy easy categorization.

Although the Code of Conduct does not define confidential information, the term generally includes information about case-related matters that you receive through your clerkship that is not part of the public record. This includes information about past cases and the decision-making process used by your judge, chambers, and/or court in a prior, pending, or impending case. You have a *strict obligation* to keep this information confidential, unless your judge specifically authorizes you to disclose it. This obligation *continues* after your court service concludes. **Note that this obligation does not apply to misconduct, including abusive conduct and sexual or other harassment, by your judge or any person.**

Canon 3D of the code states that employees should not

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

Your obligation not to disclose any confidential information applies to your communications with family, friends, and former colleagues, just as it does to your communications with strangers, parties to a case, and the general public. The prohibition against commenting publicly on the merits of a pending or impending action extends to anonymous disclosures, such as disclosures on blogs.

## Code of Conduct for Judicial Employees, Canon 3D

### D. Duty of Confidentiality

(1) 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.

(2) A judicial employee should not use for personal gain any confidential information received in the course of official duties.

(3) 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. A former judicial employee should observe the same restriction on disclosure of confidential information that applies to a current judicial employee, except as modified by the appointing authority. This general restriction on use or disclosure of confidential information does not prevent, nor should it discourage, an employee or former employee from reporting or disclosing misconduct, including sexual or other forms of harassment, by a judge, supervisor, or other person.

Find out if your judge has specific confidentiality rules you must follow.

The danger of unintentionally disclosing confidential information is especially high in certain situations, such as when talking to former law school classmates or professors or when engaging in online activities, such as social networking. (See pages 17–19 for a detailed discussion of online activities.) At first, you may struggle against a natural desire to share more than you should and to satisfy other people's curiosity about your work. But as your clerkship progresses you will find that by exercising caution and remaining vigilant, you can honor your confidentiality obligation while maintaining your relationships. You can give your family and friends a clear picture of your career as a law clerk without mentioning specific cases or legal issues.

In general, you should respect and protect the privacy of your judge and be careful about publicly discussing your judge and chambers-related activities beyond case-related matters (e.g., your judge’s personal views about political, social, or other matters; your judge’s travel plans). **However, nothing in this pamphlet, or in the Code of Conduct, prevents you or any judiciary employee from revealing misconduct, including abusive conduct and sexual or other forms of harassment, by your judge or any person. You are encouraged to bring such matters to the attention of an appropriate judge or other official.**

## Dealing with attorneys

Dealing with attorneys can pose challenges. Attorneys often want an insider’s view on how their cases are going and how they can

### Information That’s Confidential

- statements, or even hints, about a judge’s likely actions in a case
- the timing of a judge’s decision or order, or any other judicial action
- the content of case-related discussions with a judge, including past cases
- observations about a 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, information on how the court operates
- court records, including the case docket available from the clerk’s office
- information disclosed in public court proceedings
- **misconduct, including abusive conduct and sexual or other forms of harassment**

improve their clients' prospects. They may call and try to argue their points, and lead you into a discussion of a case. Do not participate in these conversations. Some judges do not permit law clerks to talk with counsel at all. But even if your judge allows you to talk with attorneys under certain circumstances, never discuss or divulge confidential information.

If an attorney tries to continue the conversation, say, "If you made those points in your filing, the judge will read it and consider them." If the attorney tries to discern the judge's thoughts, say, "I'm sorry, but you'll have to wait until the opinion issues." Making these statements can be more difficult if you know the attorney from law school or through your family, or if the attorney has appeared in multiple cases before your judge. But your obligation to the court remains the same: to protect confidential information and the integrity of the court.

## **Dealing with the press**

Journalists may press for information about a case or the court. Canon 3D provides firm guidance on this point: law clerks should not disclose any confidential information or comment publicly on the merits of any pending or impending actions. Many judges prohibit their clerks from talking to the media, so be sure to check your judge's guidelines on media inquiries. Never respond to substantive questions or reveal confidential information. With your judge's permission, you may be able to direct callers to information in the public record and comment on technical, administrative, or procedural matters.

Some courts designate specific employees to respond to media inquiries, and written guidelines for such inquiries may be available from your judge or the clerk of court.

## **Dealing with other judicial employees**

You also must not discuss any confidential case-related information with clerks or other judicial employees who do not work for your judge, unless your judge explicitly gives you permission to do so. This includes information about past cases or your judge's decision-making process in a particular case. This prohibition extends to appellate clerks who work for different judges on the same panel.



## Examples

- *A litigant calls Julia, a district court clerk, seeking information on when her judge will issue a summary judgment order. Should Julia respond?* No. The release date of specific orders is confidential.
- *Roberto's college friend now attends journalism school. For a class, his friend plans to write a feature about recidivism in the criminal justice system. May Roberto explain to his friend the basic steps in a criminal prosecution, trial, and sentencing?* Yes. Roberto may explain the basic steps in a criminal case, as long as he avoids revealing any confidential information.
- *Prior to a nonjury trial, one of the attorneys, from another city, calls Anthony, a clerk, to ask procedural questions about the judge's courtroom practices, such as whether she generally requests opening and closing statements and whether she prefers that attorneys stand to make objections. May Anthony answer these questions?* Perhaps. Canon 3D permits a court employee to explain general court procedures to attorneys and the public, but Anthony should find out if his judge has a more restrictive policy for her chambers. If his judge allows him to talk with the attorney, Anthony should be careful not to let the conversation move into substantive matters.
- *Lena clerks for a judge whose district borders Mexico. Her uncle asks her what she and her judge think about a new state immigration law that recently made headlines, especially whether that law could be challenged in the courts. How should Lena respond?* Lena may discuss her personal thoughts about the law, but she must not say anything that suggests she knows how challenges to the law would be decided. She should emphasize that she is speaking personally and not for the judge. She must not disclose anything that reveals her judge's thoughts about the law, especially since her judge could hear a case involving it.
- *Delia clerks for a judge who is presiding over a high-profile trial. Journalists ask Delia for the time and location of upcoming hearings and for access to the judge's rulings as soon as they are filed. May Delia respond as requested?* Yes, but only if her judge gives her permission. The time and location of hearings are (generally) public information, as are judicial opinions. Thus, they may be disclosed, so long as the clerk does so in accordance with the judge's rules for communicating with the media.

### ***Where to look for guidance on confidentiality***

- Canons 1, 2, and 3 of the Code of Conduct, particularly Canon 3D
- Compendium § 3.9-1[1]: Avoid Comment on Pending Matters [Judicial Employees]

## **Conflicts of Interest**

Canon 3F(1) of the Code of Conduct advises judicial employees, including law clerks, to avoid conflicts of interest. Conflicts arise when 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 impartiality. The considerations that apply to a spouse also apply to a person with whom the clerk lives in an intimate relationship.

As a law clerk, you are subject to additional restrictions, which the code sets out in Canon 3F(2). You may not work on any matter where the following apply.

- You have a personal bias or prejudice toward a party, or personal knowledge of disputed facts.
- You served as a lawyer in the matter, or a lawyer with whom you previously practiced law had served (during such association) as a lawyer concerning the matter (provided that the prohibition relating to the previous practice of law does not apply if he or she did not work on the matter, did not access confidential information relating to the matter, and did not practice in the same office as the lawyer), or you or the lawyer has been a material witness.
- You, your spouse, or minor child who lives in your household has a financial interest in the subject matter or in a party.
- You or your relatives within the third degree are a party, a lawyer, or likely to be a material witness, or have an interest that could be substantially affected by the matter's outcome.
- Through prior government employment, you participated as counsel, advisor, or witness concerning the proceeding or expressed an opinion about it.

A new clerk may bring conflicts to the clerkship, for example, from existing personal relationships or former employment. Other

conflicts may arise during the clerkship, for example, from contacts with a prospective employer (which will be discussed later, in the Career section) or from newly acquired financial interests.

Under Canon 3F(4), you have a duty to keep informed about your personal and financial interests, and to remain reasonably in-

### **Actual Conflicts**

- In a previous legal job, you worked on a lawsuit now assigned to your judge.
- A lawyer with whom you previously practiced law had served (during such association) as a lawyer concerning a matter now assigned to your judge, or you or the lawyer has been a material witness (but review Canon 3F(2) for exceptions to this rule).
- The firm where you plan to work after your clerkship serves as counsel in a matter before your judge.
- You witnessed a crime, and your judge will hear the case.
- You, your spouse, or minor child owns stock in a company that is a party in a case before your judge.
- Your spouse or your spouse's firm represents a party in a proceeding before your judge.
- Your relative is a plaintiff or defendant in a lawsuit assigned to your judge.

### **Potential Conflicts**

*Potential conflicts do not necessarily disqualify you from working on a case, but you should alert your judge to them.*

- A neighbor's name appears on a witness list in a case before your judge.
- An attorney you met and talked with at a social function appears to argue a motion before your judge.
- An environmental hazard in a case before your judge borders your parents' vacation property.
- As an editor of your school's law review, you expressed opinions on the merits of a case now on appeal before your judge.

formed about the financial interests of your spouse and minor children. If you, your spouse, or child owns *even one share* of stock in a party to a case, you have a financial interest in the party and cannot work on the case. However, owning government securities or mutual funds does not create a financial interest in the entities that issued the securities or the companies whose stock the mutual fund owns. If you own innovative investment vehicles that are not easily categorized as an equity stock or mutual fund, it may be difficult to decide whether you have a financial interest in a party. If so, err on the side of caution—consult with your judge.

As you can see from the examples presented below, you can predict some conflicts and some may recur. You must examine other situations on a case-by-case basis. Remember to inform your judge as soon as you become aware of a conflict or a potential conflict. Your judge will then determine how to proceed. Most judges have more than one law clerk and can assign another clerk to a case if necessary.

### **Examples**

- *Greta's husband inherited six shares of corporate stock when his grandmother passed away. The corporation just filed a lawsuit, and Greta's judge will preside over it. May Greta work on the case?* No. Greta will need to isolate herself from the case. Even a single share of stock held by her spouse creates a disqualifying interest.
- *For two years before his clerkship, David worked as a lawyer in a large international law firm's executive compensation group. Another of the firm's offices filed a successful forum non conveniens motion in an insurance dispute. David never worked on the insurance case, nor did he know about it. He just learned that his judge will preside over the case. May David assist his judge?* Probably. David should talk with his judge. The conflicts rules generally prohibit David from working on any matter that was pending with his former firm while he worked there. However, this prohibition does not apply if David did not work on the matter, did not access confidential information related to it, and did not practice in the same office as the lawyer.
- *Rachel's husband works as an estate planning associate in a firm that represents a party in a products liability case. Rachel's judge will preside*

*over the case. May Rachel work on it?* No. Even though her spouse is not involved in the litigation, she is prohibited from participating.

- *In 2009, Molly's former law firm represented an environmental advocacy group that sued an oil company after an oil spill. Now, another environmental advocacy group is suing the oil company in the court where Molly works. Molly's former firm does not represent the advocacy group involved in the current litigation. May Molly work on the case?* The conflicts rules do not bar Molly from working on the case, but she should tell her judge that her former firm represented a different client in a similar case.
- *Eliza owns an exchange-traded fund (ETF) composed mainly of telecommunications stocks. In a class action recently assigned to her judge, a group of plaintiffs allege a price-fixing conspiracy among three major telecommunications companies. May Eliza work on the case?* This question does not have a clear-cut answer. Eliza should proceed with caution and consult with her judge. The conflicts rules generally treat ETFs like mutual funds, but this may be a unique case because her ETF is composed of telecommunications stocks, and it seems likely that this class action could substantially affect all major telecommunications companies.

### ***Where to look for guidance on conflicts of interest***

- Advisory Opinion No. 51: Law Clerk Working on Case in Which a Party Is Represented by Spouse's Law Firm
- Advisory Opinion No. 74: Pending Cases Involving Law Clerk's Future Employer
- Compendium § 2.7-1: Withdrawing from Law Practice to Become a Judge or Judicial Employee [Judicial Employees]
- Compendium § 2.11-1: Doing Business with Parties Before the Court [Judicial Employees]
- Compendium § 3.1-8: Financial Conflicts [Judicial Employees]
- Compendium § 3.1-9[1]: Duty to Keep Informed of Financial Interests [Judicial Employees]
- Compendium § 3.2-2[1]: Recusal: Spousal Relationships [Judicial Employees]
- Compendium § 3.3-1[1]: Recusal: Withdrawal from Firm; Former Firm Appearing in Case [Judicial Employees]
- Compendium § 3.4-6[1]: Recusal: Charitable and Religious Organizations [Judicial Employees]

- Compendium § 3.4-7[1]: Recusal: Future Employment [Judicial Employees]
- Compendium § 3.5-1: Isolating Judge’s Staff When Relatives or Relatives’ Interests are Involved in Litigation [Judicial Employees]

## Workplace Conduct

The judiciary strives to ensure an exemplary workplace for all law clerks, judicial employees, and judges. You should consider how you conduct yourself in dealing with all persons you encounter in your role as a law clerk. Canon 3C of the Code of Conduct outlines your ethical obligations regarding workplace conduct. It provides the standard for your conduct as a law clerk—that you should be “patient, dignified, respectful, and courteous”—and explains that sexual or other forms of harassment and retaliation against those who report misconduct are prohibited. It also requires you to take “appropriate action” to report conduct contravening the code.

### *Where to look for guidance on workplace conduct*

- Code of Conduct for U.S. Judges, Commentary to Canon 3B(4) and Canon 3B(6)

#### **Canon 3C**

A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including other employees and the general public. A judicial employee should not engage in sexual or other forms of harassment of court employees or retaliate against those who report misconduct. A judicial employee should hold court personnel under the judicial employee’s direction to similar standards. A judicial employee should take appropriate action upon receipt of reliable information indicating a likelihood of conduct contravening this Code. Appropriate action depends on the circumstances and may include for example, reporting such conduct to a supervisor, court executive, or chief judge. For relevant elaboration, see Code of Conduct for United States Judges, Commentary to Canons 3B(4) and 3B(6).

- [Office of Judicial Integrity](#). The Administrative Office’s Office of Judicial Integrity is available to all employees, managers, and judges for advice and guidance about workplace conduct. As of fall 2019, most circuits have established similar offices or are in the process of establishing them.

### **How to Contact the Office of Judicial Integrity**

202-502-1603

AO\_Report\_Workplace\_Harassment@ao.uscourts.gov

<http://jnet.ao.dcn/policy-guidance/office-judicial-integrity-workplace-conduct>

## **Caution**

Caution is a theme that unites all of your ethical obligations, but you need to exercise special caution in three areas: political activities, online activities, and gifts. It is easy for clerks who are engaged in their communities and lead busy lives outside the court to stumble in these areas.

### **Political activities**

Canon 5 of the Code of Conduct prohibits law clerks from engaging in both partisan and nonpartisan political activity. You may not run for office; campaign for others; publicly endorse or oppose candidates; or contribute funds to political organizations, candidates, or events. You should not even take passive actions that might link you with a political issue, such as displaying a political sign or bumper sticker.

Exercise considerable caution before engaging in activities with obvious political overtones, even if they don’t meet the Code of Conduct’s definition of political activity. These might include, for example, activities related to a hotly debated political issue.

Your spouse and children may engage in political activities; however, if they do, you have an obligation to disassociate yourself from their involvement. For example, if your spouse makes political contributions, he or she should do so from a bank account without your name on it.

## ***What political activities may you participate in?***

You may register with a political party and vote in partisan and non-partisan primary and general elections. You may express a personal opinion privately, for example, to a family member or friend. But be careful not to express your political opinions to broader audiences. The Online Activities section, on pages 17–19, discusses how far your circle of friends extends.

Advisory Opinion No. 92 discusses permissible and impermissible political activities for judicial employees. The key is to prevent any association of particular political opinions with the court, thus protecting the independence and impartiality of the judiciary. Ask your judge if you have *any question* about whether it is appropriate to participate in a particular activity.

### ***Examples***

- *Jesse's domestic partner runs the election campaign for a local city council person and plans to host a strategy meeting at their house. What, if anything, should Jesse do?* Jesse should take reasonable steps to disassociate himself from the campaign. For example, he should ask his partner not to post a campaign sign in their front yard and not to make campaign contributions from their joint checking account. Jesse should not be at the house during the strategy meeting.
- *In law school, Kathy devoted her free time to environmental advocacy. Just after she began her clerkship, her state passed a controversial ballot measure that some regard as bad for the environment and in violation of federal environmental laws. May Kathy volunteer for a local organization that plans to document and raise awareness about what it views as the measure's ill effects?* No. Kathy should not volunteer for the local organization while serving as a clerk. The activity has significant political overtones and involves a controversial issue that may ultimately be litigated in federal court.
- *Prakash lives in a state that holds caucuses for presidential primaries. Prakash would like to attend a caucus so that he can cast a vote. Is this permissible?* No. As a member of his judge's personal staff, Prakash should refrain from all political activities, including participation in a caucus.
- *A hotly contested senatorial race just began in Natasha's state. She would like to attend an information meeting that one of the candidates is host-*



ing, so that she can learn more about his views on the important issues at stake. May she do so? No. Natasha may not attend the meeting. Her presence might be viewed as an endorsement. She may, however, attend a nonpartisan event to which all candidates are invited, such as a debate sponsored by the League of Women Voters.

### ***Where to look for guidance on political activities***

- Advisory Opinion No. 92: Political Activities Guidelines for Judicial Employees
- Compendium § 5.3-1: Spouse's and Other Relatives' Political Activities [Judicial Employees]
- Compendium § 5.4-1: Public Support Causes [Judicial Employees]
- Compendium § 5.5: Other Partisan Political Activities [Judicial Employees]
- Compendium § 5.6: Other Nonpartisan Political Activities [Judicial Employees]

### **Online activities**

Many law clerks spend a significant amount of time online. Using the internet and other social media can facilitate appropriate research, lead to exchanges with other professionals, and help you maintain contact with family and friends. But your online activities can also pose a threat to multiple ethical obligations, including your responsibilities to maintain confidentiality, to preserve the appearance of impartiality and the independence of the judiciary, and to uphold the dignity of the court.

Before participating in any online activity, answer the following six questions:

1. Does the activity readily identify you with the court system?
2. Does the activity reveal case information or other confidential court information?
3. Does the activity reflect poorly on the court or express an opinion about a controversial topic that may come before the court?
4. If you post pictures or comments on a blog or social media site, will they detract, even indirectly, from the dignity of the court or the judicial process?

5. If your research is related to a case, would it be appropriate for your judge to take judicial notice of the sources you are using?
6. The ultimate question: Are you comfortable with your post becoming front-page news on a popular blog or lawyer news site?

Be sure to find out whether your court, your judge, or both have policies that govern online activities during your clerkship, and obtain your judge's permission before participating in such activities. Also ask for your court's policies regarding use of government computers and computer services. You cannot exercise too much caution with online activities.

### **Examples**

- *Malia just started a clerkship. Malia's judge told her that she may continue to participate in online social networking, as long as she abides by her ethical obligations. May Malia include in her social networking profile that she works as a federal law clerk? Malia should avoid identifying the federal judiciary, her particular court, or her judge as her employer. Such identification increases the likelihood that anything Malia posts will be associated with the courts. However, if Malia has an important reason for identifying her employer on a particular site—if, for example, she wants to participate in a job-search or a professional-networking site—she should consult with her judge.*
- *In the most recent presidential election, Garrett campaigned strongly for the successful candidate. Garrett knows he may not participate in political activities during his clerkship, and he removed his party affiliation from his social networking profile. His profile picture, however, prominently displays him wearing a campaign T-shirt for the president. Is this permissible? No. The T-shirt clearly affiliates Garrett with a political party and a politician. He should remove the photo from his networking profile.*
- *Fred loves food. He especially loves pastries, and has, for several years, maintained a modest blog cataloging his endeavors to make French pastries. May Fred continue this blog while clerking? Yes. He may continue the blog, provided his judge consents and his blog sticks to culinary commentary.*
- *Minerva uses a social networking site to tell her friends and family about her adventures clerking in a new city. Usually, her messages are not work-related, but the court just issued an important civil rights opinion, and Minerva wants to send a link so that people can read the opinion as soon*

*as it becomes available. Should she do this?* Minerva should check with her judge. Although the opinion would be public by the time she sent the link, Minerva may unintentionally give impressions regarding the opinion that would be improper, such as a predisposition about the legal issues at stake.

- *Chase worked on an opinion that struck down a state law as unconstitutional under the First Amendment. This morning the court published it. May Chase update his online status with any of the following comments: (a) “Just scored a major win for free speech!” (b) “Check out Freespeaker v. New York, published today. Interesting opinion.” (c) “Dear New York: please stop infringing free speech.” (d) “I ♥ the First Amendment.”?* No. None of these comments is appropriate. Chase should not post online any comments about cases or legal issues that have come, or could come, before his court.

## Gifts

The ethics rules place restrictions on the kinds of gifts you may receive during your clerkship and from whom you may receive them. Under the rules, “gifts” are not just presents wrapped up with nice bows. The Judicial Conference Gift Regulations, § 620.25, define gifts as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other similar item having monetary value.”

You may not solicit or accept gifts from anyone “who is seeking official action from or doing business with the court” or anyone “whose interests may be substantially affected by the performance of” your official duties. Gift Regulations § 620.30; Code of Conduct Canon 4C(2). You also may not accept any gift in return for being influenced in the performance of an official act, or accept gifts on a basis so frequent that it appears you are using your law clerk position for private gain. Gift Regulations § 620.45.

The Code of Conduct imposes the additional duty that a judicial employee should endeavor to prevent any household family members from soliciting or accepting any gift that the judicial employee may not accept. Canon 4C(2).

There are exceptions to the general prohibition on receipt of gifts. You may accept gifts from relatives and friends on special oc-

casions, such as an anniversary or birthday. You may also accept invitations to bar-related functions. Gift Regulations § 620.35.

You may also accept ordinary social hospitality; scholarships or fellowships available on standard terms; and opportunities and benefits, including commercial discounts that are offered on the basis of factors other than your status as a judicial employee. You may also accept rewards and contest prizes, and anything for which market value is paid. Gift Regulations § 620.25(a)–(h).

### **Examples**

- *The local Inn of Court invited Warren to attend an introductory reception at which there will be modest free food and drinks. May Warren attend?* Yes. Warren may attend this event, sponsored by a law-related organization, at which regular social hospitality will be offered.
- *Nanette’s judge is celebrating twenty years on the bench this year, and she is helping organize a party in his honor. May Nanette approach the judge’s former firm to help sponsor the event? The judge always recuses himself from matters involving the firm.* No. Nanette may not solicit the gift of sponsorship from the firm, which does business before the court. In addition, her solicitation of funds could at least create the appearance that her judge is asking for money from his former colleagues, which would also be inappropriate.
- *A CLE seminar group invited Seamus to a national intellectual-property law conference. The group asked him to participate in a panel on clerkship application strategies for summer interns. In return, Seamus can attend the conference for free. The group offered Seamus’ coclerk, Jean, an admissions discount. May Seamus and Jean accept the invitations?* Yes. In general, a judge or judicial employee may accept gifts of an invitation and travel expenses to attend bar-related functions, educational activities, or activities dedicated to improvement of the legal system.
- *As part of its interview process, a firm takes Yasmin to dinner at a fancy local restaurant. A few days later, the firm offers Yasmin a position after her clerkship ends, which she accepts. The firm then invites her to attend its annual retreat, at a nearby fancy mountain resort. May Yasmin accept the dinner and the invitation to the retreat?* Yasmin may accept the dinner. Taking applicants to dinner is a standard part of the firm’s interview process, and thus unlikely to raise an appearance of impropriety. Yasmin may not attend the retreat. The retreat is an expensive

gift that suggests Yasmin is closely affiliated with the firm. This raises the appearance of impropriety. The gift regulations permit a judicial employee to accept benefits—such as an interview-related meal—that are provided in connection with bona fide employment discussions.

### ***Where to look for guidance on gifts***

- Advisory Opinion No. 83: Payments to Law Clerks from Future Law Firm Employers
- Compendium § 2.5-1: Future Employment [Judicial Employees]
- Compendium § 2.9-1: Benefits Received from Entities Doing Business with the Courts [Judicial Employees]
- Compendium § 4.8-5[1]: Discounts [Judicial Employees]
- Compendium §§ 21–29: Section on the Ethics Reform Act and Judicial Conference regulations concerning gifts

## **Community and Other Outside Professional and Social Activities**

Like judges, many law clerks participate actively in community organizations and other outside professional and social activities. This involvement is laudable, and the ethics rules permit you to continue participating in these activities, with certain limitations. Be sure to consult with your judge; many judges have specific policies about outside activities.

Canon 4A of the Code of Conduct sets the basic threshold for involvement by law clerks in *any outside activities*, including business, financial, and fiduciary activities. It permits you to undertake these activities as long as they do not interfere with the performance of your official duties or adversely reflect on the operation and dignity of the court. You may participate in charitable, religious, cultural, avocational, and recreational activities. If you write, lecture, or teach, you must have your judge's permission, especially if the topic is controversial, law-related, or likely to be the subject of litigation.

You may engage in fundraising; however, you may not use, or permit anyone else to use, the prestige of your position with the court in a fundraising effort. You may not solicit funds from lawyers or persons likely to come before the court, nor may you solicit funds from subordinates or other court personnel.

Do not raise funds for organizations that litigate regularly in any court or for organizations that take controversial stands on issues that may find their way to federal court. Do not solicit funds for or contribute to a partisan political organization, candidate, or political event.

### **Outside Legal Activities—A Checklist**

*You should consult with your judge before engaging in any outside activity that might be construed as legal. If you answer yes to any of the questions below, you should not engage in the activity.*

- Does the activity interfere with your performance of your official duties?
- Will the activity exploit your government position?
- Does the activity present an appearance of impropriety or reflect adversely on the court?
- Will the activity associate you in a substantial financial manner with attorneys appearing in your court?
- If the activity involves routine family legal work, does it
  - involve any appearance in federal court?
  - occur while you are on duty or in the workplace?
  - result in compensation (other than in probate proceedings)?
- If the activity involves the pro bono practice of law, does it
  - involve any appearance in a federal, state, or local court or administrative agency?
  - occur while you are on duty or in the workplace?
  - involve a matter of public controversy or an issue likely to come before your court?
  - result in compensation?
- Is the activity inconsistent with any additional condition or limitation your judge imposes on law clerks' law-related activities?
- Does the activity have the potential for dual service to and/or supervision by independent branches of government (including state courts) or different governments?

If an outside activity relates in any way to the law or the legal system, *consult with your judge before* engaging in that activity. During your clerkship, you *may not* practice law. The rules permit only a few narrow exceptions: you may appear pro se; you may perform routine legal work concerning the management of your own affairs or those of a family member (although you may not enter an appearance in federal court); and you may act pro bono in certain civil cases (although you may not enter an appearance in any state or federal court or administrative agency).

You should not accept a governmental appointment that has the potential for dual service to and/or supervision by independent branches of government (including state courts) or different governments during judicial employment.

### **Compensation for outside activities**

You may earn compensation from certain outside activities or receive reimbursement for expenses related to those activities, but there are limits. *See* Canon 4E. You may receive compensation for a *series* of speeches or articles, as long as they are unrelated to your official duties. You may not, however, accept honoraria, which are defined as payments for a single appearance, speech, or article. You may not receive compensation for the limited practice of law that is authorized by Canon 4D.

You may need to file reports regarding compensation or reimbursement for outside activities. Check with your court regarding such requirements.

### **Use of office equipment**

You may be tempted to use office equipment and courthouse services for tasks associated with your outside activities. Be careful. Judicial employees have a responsibility to protect and conserve government property and should not use government property for other than authorized purposes.

Never use office equipment and services for outside activities in a manner that imposes substantial costs on the government. Your court may have a policy permitting the de minimis use of resources, such as occasionally copying short documents. Use that does not

impose any cost on the government, such as use of the court's library in the evening, should also be acceptable. However, any practice of law that is permitted under Canon 4D should not take place in the workplace.

### **Examples**

- *Nelson's church invited him to assume an important position as lay leader. This position requires extensive community outreach. May he accept?* Yes. Nelson may accept the position, so long as it does not include activities that would jeopardize his ethical obligations as a clerk. He may not, for example, speak about a controversial social topic that might be litigated in court.
- *During law school, Vasily worked as a guardian ad litem representing children in abuse and neglect proceedings. Vasily would like to continue representing one of the children, in a case with heartbreaking facts. A state judge will preside over the proceeding. May Vasily continue the representation?* No. Vasily may perform certain pro bono legal work in noncriminal cases, but he may not represent a client in any state or federal court or before an administrative agency.
- *Donna, a career law clerk, would like to join the newly formed local chapter of a national organization devoted to promoting conservative legal views. May Donna join the group?* Yes. Donna may join the group, as long as the group does not participate in or sponsor political activities and as long as Donna's involvement does not raise an appearance of impropriety based on certain considerations. For example, Donna should avoid involvement with the advocacy group if it suggests a predisposition as to legal issues or an influence due to the relationship. Concerns would also increase with Donna's level of involvement (i.e., attendee, contributor, member, or officer); the group's degree of advocacy; and any overlap between the group's activities and her official duties. Similar considerations govern involvement in public protests.
- *Before her clerkship, Tammy participated actively in a local legal aid organization. The organization asked her to serve on its board of directors. May she?* No. Assuming that the organization regularly represents clients who appear before Tammy's judge, acceptance of the position would require her to withdraw from participation in such cases. Clerks should not engage in activities that would often make them ineligible to work on cases assigned to their judges.



- *A few months into his clerkship, a local law school invites Guillermo to teach a seminar on international tax law as a visiting professor. Guillermo would like to accept the invitation, as he hopes to become a law professor after his clerkship. May he teach the seminar?* Yes. Subject to his judge's prior approval, Guillermo may teach the class. He must make sure to adhere to his ethical obligations while teaching. He must not, for example, discuss any of his judge's pending cases.

### ***Where to look for guidance on participation in community and other outside activities***

- Compendium § 1.3-1: Service in State Government Positions [Judicial Employees]
- Compendium § 2.11-1: Doing Business with Parties Before the Court [Judicial Employees]
- Compendium § 4.1-3[4]: Participation in Bar Association Activities, and Service on Boards and Committees [Judicial Employees]
- Compendium § 4.1-4[1]: Arbitration and Mediation [Judicial Employees]
- Compendium § 4.1-5[1]: Practice of Law [Judicial Employees]
- Compendium § 4.2-7: Nonprofit Civic, Charitable, Educational, Religious, or Social Organizations [Judicial Employees]
- Compendium § 4.4-6: Business Activities [Judicial Employees]
- Compendium § 4.6-6: Governmental Appointments [Judicial Employees]
- Compendium § 4.8-7[1]: Attendance at Seminars and Reimbursement of Expenses [Judicial Employees]

## **Career**

Many law clerks serve the court for a year or two, and need to start thinking about future employment shortly after their clerkships begin. Other clerks serve for a longer period of time, but may also decide to pursue other professional opportunities. The ethics rules place limits on how you engage in activities related to future (or past) employment. Be mindful of three issues in particular.

First, a job search may create new conflicts of interest. Ask your judge if you may apply for a job with a firm that represents a party currently before the court. If you interviewed with a firm but have not accepted an offer, your judge has discretion about whether you

may work on matters involving the firm. Once you have accepted an offer, however, the ethics rules take the decision out of your judge's hands. You may not work on any pending or future cases involving your future employer.

Second, do not let down your guard regarding confidentiality during your job search. Exercise care when preparing applications. Ask your judge whether you may submit written work from your clerkship as part of your application. While some judges may permit you to use a redacted bench memorandum, draft opinion, or order as a writing sample, others may not.

Maintaining confidentiality can be particularly challenging during job interviews. Prospective employers may probe for insight into your judge's deliberative process and your contributions to judicial opinions, but your confidentiality obligations remain firmly in place. Check with your judge *before* you interview. You should be able to speak generally about your role as a law clerk without divulging specific cases or legal issues.

Third, prospective employers may offer gifts or benefits that raise ethical issues. Generally, you may accept benefits that employers customarily provide in connection with bona fide employment discussions, such as meals or hospitality during the application process.

Once you accept a position, an employer may offer additional benefits, such as a clerkship bonus, compensation for bar-related expenses, or an invitation to a firm retreat. During your clerkship, you may *only* accept bar expenses and relocation expenses. You may not accept clerkship bonuses or other financial incentives (such as interest-free loans or salary advances). You should generally decline invitations to major firm events, such as retreats, although you may want to check with your judge regarding invitations to other firm events, as circumstances vary.

Finally, your ethical obligations impose certain ongoing restrictions that follow you to the next step in your career. You may not participate in any matter that was pending before your judge during your clerkship. Your judge may have a policy about whether you may appear before the judge and, if so, how much time must first elapse. The court for which you clerked may also place restrictions

on your participation and appearance in matters. It may be helpful to check on these restrictions before your clerkship ends. And, of course, your confidentiality obligations continue. Former law clerks must observe the same restrictions on disclosing confidential information as current clerks do.

### **Examples**

- *After Clementine accepted an offer to work for a local law firm after her clerkship, the firm invited her to a day-long training session on how to take a deposition. May Clementine attend?* No. Clementine should not attend the training, which would be a benefit from an organization that does business with the court. Clementine may not attend even if she has already isolated herself from the firm's cases.
- *Daniel has been offered a position in a U.S. Attorney's Office in another part of the state. Must he isolate himself from any matter involving a U.S. Attorney's Office?* No. He is only restricted from working on matters handled by the specific U.S. Attorney's Office he is joining.
- *Joshua accepted a job with a large law firm. Before his clerkship ends, the law firm asks for a list of all matters he has worked on. It wants to run a conflicts check. May Joshua comply?* No. The matters that Joshua worked on are confidential and may not be disclosed—before or after Joshua starts work at the firm. When he arrives at the firm, Joshua may identify which of the firm's current matters he cannot work on, so that he can continue to comply with his obligations to the court.
- *Sam accepted an offer with a firm, which offers (a) a salary advance of up to \$7,000; (b) a clerkship bonus of \$50,000; (c) reimbursement for a bar-review course and bar-exam fees; and (d) reimbursement for relocation costs. Which, if any, of these may Sam accept?* During his clerkship, Sam may accept reimbursement for bar-related expenses and relocation costs. But he may not accept the salary advance or bonus until his clerkship concludes. A salary advance is impermissible because it is considered an interest-free loan.

### **Where to look for guidance on career**

- Advisory Opinion No. 74: Pending Cases Involving Law Clerk's Future Employer
- Advisory Opinion No. 81: United States Attorney as Law Clerk's Future Employer

- Advisory Opinion No. 83: Payments to Law Clerks from Future Law Firm Employers
- Compendium § 2.5-1: Future Employment [Judicial Employees]

## Ethics Checklist for Federal Judicial Law Clerks

This section presents a checklist of actions and circumstances that could raise an ethical issue. When these actions or circumstances occur, or seem likely to occur, you should be aware of potential ethical issues and discuss the appropriate course of action with your judge. Your judge may have stricter standards than those of the Code of Conduct or statutes. If so, you must follow the policies of your judge.

### Confidentiality

It is always important to observe your judge's specific requirements about the confidentiality of your court work and chambers discussions. You should find out exactly how your judge wants you to

- deal with the press, including
  - restrictions on communications with the press
  - procedures to follow when contacted by the press
  - the availability of written guidelines for press inquiries
- deal with counsel, including
  - restrictions on communications with counsel
  - procedures to follow when contacted by counsel
- handle case-related discussions with court staff who do not work in your judge's chambers, including other law clerks.

**Remember that your ethical obligations about confidentiality do not apply to misconduct, including abusive conduct and sexual or other harassment, by your judge or any person.**

### Conflicts

Your judge maintains a list of people, companies, and cases that would generally preclude his or her participation in related cases that come before the court. Most courts use this list to make sure such cases are not assigned to your judge. As a law clerk, you should maintain a similar list to check for possible conflicts whenever you may be assigned to work on a case.

You should include on this list

- any company in which you
  - personally own one or more shares of stock or some other financial interest
  - have an equitable interest (e.g., as a vested beneficiary) in an estate or trust that has a financial interest in the company
  - serve as an officer, director, advisor, trustee, or active participant in the affairs of the company
  - serve as a fiduciary of an estate or trust that has a financial interest in the company
- any company in which your spouse or minor child has a financial interest
- any agency, company, or law firm with which you are discussing future employment.

You should inform your judge that you have an actual conflict if, in a case assigned to your judge,

- you have personal knowledge of disputed evidentiary facts
- you previously served as counsel in the matter (but review Canon 3F(2) for exceptions to this rule)
- your previous law firm served as counsel in the matter during your association with the firm
- your future law firm serves as counsel in the matter
- you are a party
- you are likely to be a material witness
- you have previously served in government employment as counsel, advisor, or material witness in the matter, or expressed an opinion concerning the merits
- your spouse or a close relative is a party or counsel in the matter
- your spouse or a close relative is an officer, director, or trustee of a party
- your spouse works for a law firm that represents a party in the matter
- your spouse or a close relative is likely to be a material witness
- you, your spouse, or a close relative has an interest that could be substantially affected by the outcome of the case.

## Caution

Clerks must exercise special caution in political activities, online activities, and accepting gifts. You may not

- engage in partisan political activities, either as a candidate or on behalf of others
- engage in nonpartisan political activities.

Clerks must ensure that their online activities do not conflict with their ethical obligations or undermine the impartiality and independence of the court. Ask your judge about his or her policies, or the court's policies, if you

- contribute to a blog
- maintain a profile on a social or professional networking site.

## Community activities

Clerks are not expected to give up their lives outside the courthouse, but working for the judiciary does impose constraints that may not be obvious. Some activities you take for granted may be inappropriate while you are employed as a clerk; for example, do you

- 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?
- have a governmental appointment with the potential for dual service to and/or supervision by independent branches of government or different governments?

If your answer to any of these questions is *yes*, consult with your judge.

You should also find out exactly how your judge wants you to deal with opportunities to write, speak, or publish, including

- restrictions on writing and publishing during your clerkship
- procedures to be followed before agreeing to speak, write, or teach
- restrictions on law-related subjects
- restrictions on other subjects.

## Career

Because most clerkships are short-term, clerks are often in the process of securing future employment. Some may work at other jobs. In addition to being familiar with ethical restrictions, be sure you understand exactly how your judge wants you to

- deal with law practice or other outside employment, including
  - restrictions on the practice of law (pro bono or otherwise)
  - restrictions on other law-related pursuits
- deal with efforts to seek future employment, including
  - applying to or interviewing with prospective employers before your clerkship ends
  - using writing samples produced during your clerkship
  - discussing your contributions to your judge's work
  - discussing your judge's office procedures and proclivities
  - working on matters handled by law firms with whom you are seeking employment
  - accepting a job offer before your clerkship ends.

## Appendix: How to Obtain Online Ethics Resources

The Administrative Office of the U.S. Courts (AO) and the Federal Judicial Center (FJC) maintain extensive ethics information online.

The AO information includes the Code of Conduct for Judicial Employees, Advisory Opinions, the Compendium of Selected Opinions of the Codes of Conduct Committee, and regulations and statutes related to gifts and outside income and employment. To access any of this information (and more)

1. Go to <http://jnet.ao.dcn/policy-guidance/ethics-and-financial-disclosure>.
2. Select the resource you need.

The FJC's website includes numerous education and training programs for law clerks, judicial employees, and judges. To access these programs

1. Go to [fjc.dcn](http://fjc.dcn).
2. Browse by the topic "Ethics & Codes of Conduct."
3. Select the resource you need.



# The Federal Judicial Center

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## About the Federal Judicial Center

The Federal Judicial Center is the research and education agency of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620–629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States chairs the Center’s Board, which also includes the director of the Administrative Office of the U.S. Courts and seven judges elected by the Judicial Conference.

The organization of the Center reflects its primary statutory mandates. The Education Division plans and produces education and training for judges and court staff, including in-person programs, video programs, publications, curriculum packages for in-district training, and Web-based programs and resources. The Research Division examines and evaluates current and alternative federal court practices and policies. This research assists Judicial Conference committees, who request most Center research, in developing policy recommendations. The Center’s research also contributes substantially to its educational programs. The Federal Judicial History Office helps courts and others study and preserve federal judicial history. The International Judicial Relations Office provides information to judicial and legal officials from foreign countries and informs federal judicial personnel of developments in international law and other court systems that may affect their work. Two units of the Director’s Office—the Information Technology Office and the Editorial & Information Services Office—support Center missions through technology, editorial and design assistance, and organization and dissemination of Center resources.

This pamphlet provides an overview of law clerks' ethical obligations as well as resources they can consult for further information. It covers topics such as confidentiality, conflicts of interest, political activities, online activities, and gifts, and includes examples that illustrate challenges law clerks may face. It also has an Ethics Checklist for Federal Judicial Law Clerks, which helps law clerks identify ethics problems that may arise.

The 2019 revised fourth edition includes the new provisions in the Code of Conduct for Judicial Employees that were approved by the Judicial Conference of the United States on March 12, 2019.

