

Committee on Codes of Conduct Advisory Opinion No. 111: Interns, Externs and Other Volunteer Employees

The Code of Conduct for Judicial Employees [*Guide to Judiciary Policy*, Vol. 2A, Ch. 3] (“the Employees’ Code”) was amended in 2013 to expressly cover interns, externs, and other volunteer court employees. [JCUS-MAR 13](#), p. 9. The amendment was an extension of the Committee on Codes of Conduct’s precedents that advised that these groups were subject to the Employees’ Code even though they were not expressly included. See [Advisory Opinion No. 83](#). The amendment was made to insure that all those who perform substantive work (as opposed to mere observation) for the courts, even on a voluntary basis, were aware that they were bound by the same ethical restraints and considerations as compensated employees. The Committee also wanted to insure that all judges, who are required by Canon 1 of the Code of Conduct for United States Judges [*Guide*, Vol. 2A, Ch. 2] to maintain and enforce high standards of conduct for themselves and members of their staffs, will take an active part in explaining and applying the parameters of the Employees’ Code to interns, externs, and other volunteer court employees.

This opinion addresses ethics issues that may arise concerning the employment of volunteers, either from the employees’ perspective under the Employees’ Code, or from the judges’ perspective under the Judges’ Code. It is important to note that although chambers’ staff members are subject to some of the more restrictive constraints of the Employees’ Code, the provisions of the Employees’ Code addressed here apply to all judicial employees.

Canon 4E of the Employees’ Code prohibits a judicial employee from receiving a salary, or any supplementation of salary, as compensation for official government services from any source other than the United States. See [Advisory Opinion No. 83](#) (advising that a volunteer employee such as an extern may not accept during the externship any payment or salary advance from a law firm, or any benefits such as health insurance paid for by a law firm). The Committee recognizes that various courts have historically used unpaid interns, externs, or other volunteer court employees who received educational stipends while they perform work for the courts. While such an arrangement would ostensibly be prohibited by Canon 4E, the Committee’s opinion is that this limited circumstance, as more fully delineated below, does not run afoul of the spirit or intent of the Code, and, therefore, is not prohibited by Canon 4E.

The spirit of the Employees’ Code is to preserve the integrity and independence of the judiciary and of the judicial employee’s office by requiring judicial employees to observe high standards of conduct (Canon 1), avoid conduct that might lead to an appearance of impropriety (Canon 2), avoid conflicts of interest and the disclosure of confidential or sensitive information (Canons 3D & 3F), and not engage in prohibited political activity (Canon 5), violations of which could diminish public confidence in the judiciary and possibly prevent the swift and unbiased administration of justice.

As a general proposition, an intern, extern, or other volunteer court employee may accept an educational stipend or similar payment after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees' Code or the Judges' Code. In making this evaluation, the judge should consider questions including the source of the funds (i.e., whether the funds are from a politically-based organization, a group that regularly appears before the federal courts, or attorneys who regularly appear before the federal court) and the nature of the payment arrangement (i.e., whether the funding is for a short-term, educationally-based position).

Examples of the Committee's advice on similar issues provide some guidance in addressing the various circumstances that may arise.

The Committee has found that there was no appearance of impropriety under Canon 2 of the Judges' Code in a judge's accepting the volunteer services of an intern who received a stipend from a foreign government, assuming the government was not a litigant in the judge's court. In that matter, the Committee viewed the intern, who was a foreign attorney seeking an internship with the court as part of her training to become a judge, to be in a situation similar to a law student extern or a "cooperative education" student performing services in the court in exchange for academic credit. See *Guide*, Vol. 12, § 550.80 et seq. ("Volunteers") and § 550.70 et seq. ("Cooperative Education and Fellowship Programs"). The Committee found no ethical impediment to the arrangement, and directed the judge to the applicable requirements for volunteer service programs so the judge could insure compliance with those rules and policies. See 28 U.S.C. § 604(a)(17)(A) (giving the Director of the Administrative Office of the United States Courts the authority to accept voluntary and uncompensated services to the court); *Guide*, Vol. 12, § 550.20(b) (indicating that the Director has delegated this authority to the heads of all units in the judiciary, including the Clerks of Court and Circuit Executives), § 550.70.20 ("Cooperative Education and Fellowship Program Roles and Responsibilities"), § 550.80.20 ("Roles and Responsibilities" governing court volunteers). Before commencement of such voluntary services to the court, the court unit executive must execute a Form AO 196A (Acknowledgment of Gratuitous Services), as provided in § 550.80.20(a)(1).

The Committee reached the same conclusion for a law school graduate who served as a volunteer law clerk and received a stipend through a law school fellowship program. The Committee found the fellowship program, being of limited duration (which to date has been found to include up to six months) and awarded through an academic institution, analogous to a cooperative educational program. The Committee opined that, assuming the law school was not a party to litigation in the judge's court or otherwise doing business with the court, there would be no appearance of impropriety in the intern accepting a modest stipend from the law school. Consequently, the Committee found that the arrangement was permissible under Canon 2A of the Judges' Code ("A judge ... should act at all times in a manner that promotes public confidence in

the integrity and impartiality of the judiciary.”) The Committee also found no violation of the Employees’ Code Canon 4B(3) (prohibiting the acceptance of funds from someone “likely to come before the judicial employee or the court”) or Canon 4C(2) (prohibiting the acceptance of funds from “anyone seeking official action from or doing business with the court” or “anyone whose interests may be substantially affected by the performance or nonperformance of official duties”) because the prospective intern’s nominal stipend was not being paid in anticipation of future employment by her law school, and did not give rise to concerns regarding undue influence or other impropriety. The Committee noted that nothing in the law school’s program indicated a special or exclusive relationship between the judge and the law school such as giving that law school’s graduates preferred access to the judge’s chambers or others on the judge’s court.

The Committee has advised, however, that a judge should not accept the services of a volunteer law clerk who would be privately compensated by the law school from which the clerk graduated, where the funds would be solicited from lawyers. The Committee noted that the circumstances differed from previous opinions because it did not involve a short-term, academically-based internship, but rather was for a full-time law clerk compensated by alternative means involving funds solicited by the law school from attorneys and law firms.

An intern’s funding provided by a pool of local law firms is also inadvisable. Thus, the Committee has advised against allowing payment of a law student intern stipend from a local bar association, even when the funding came from pooled contributions by law firms, because the funding sources were a group of specific local law firms that were likely to come before the court and whose interests may be substantially affected by the intern’s performance of official duties under Canons 4B(3) and 4C(2) of the Employees’ Code. The controlling factor was the source of funding, which was mostly specific local law firms. The Committee also found that the proposal raised concerns for the judge under Canon 2A of the Judges’ Code because the funding, being from lawyers, might raise an appearance of impropriety. The Committee also repeated that “judges are advised against appointing volunteer externs who are provided payments by law firms before, during or after the externship that are dependent on the individual serving as a judicial extern.” [Advisory Op. No. 83](#). On the other hand, where the funding for an intern’s stipend derives from a blind source, such as funding through a national bar association, educational institution, or charitable organization, comprised of sources that are not likely to have interests that may be substantially affected by the intern’s performance, such a funding arrangement would not violate Canons 4B(3), 4C(2), or 4E of the Employees’ Code. Remember that a judge should not personally participate in fund-raising activities or solicit funds for such an organization or institution consistent with Canon 4C of the Judges’ Code.

In light of the conclusions reached here and in the past, it is the Committee’s opinion that, as a general proposition, an intern, extern, or other volunteer court employee may accept a stipend or similar payment for a short-term, academically-

based (or other organizationally-sponsored) position after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees' Code or the Judges' Code. The evaluation should examine, among other issues, the source of the funds, the purpose of the funds, and the duration of the anticipated volunteer services.

It is also important to stress that the application of the Employees' Code to interns, externs, or other volunteer court employees affects other aspects of their conduct, and affects the conduct of the judges who use their services. In particular, volunteer employees are subject to the ethical rules on conflicts of interest set forth at Canon 3F of the Employees' Code. Under those rules, for instance, these volunteers, like law clerks, may not work on cases involving future employers ([Advisory Opinion No. 74](#)), may not work on cases in which a party is represented by a volunteer court employee's spouse's law firm ([Advisory Opinion No. 51](#)), are bound by the prohibition against engaging in certain political activities ([Advisory Opinion No. 92](#)), and are limited in their conduct and representations on social media outlets ([Advisory Opinion No. 112](#)). Likewise, because interns, externs, or other volunteer court employees are now expressly treated the same as compensated employees, they are implicated in provisions of the Judges' Code that address staff employment matters. For example, these volunteer employees are covered by the judges' restraints against employing the child of another federal judge. See [Advisory Opinion No. 64](#). This is not an exhaustive list of the application of the Employees' Code or the Judges' Code to interns, externs, or other volunteer court employees, but merely an illustration of the reach of those Codes to provide some guidance for the future.

The Judicial Conference has also issued policy guidance concerning the acceptance of volunteer services in the courts. See *Guide to Judiciary Policy*, Vol. 12, § 550.35 (Policy Requirements Regarding Volunteer Services in Courts). The Judicial Conference policy emphasizes that conflict of interest rules and other related ethics guidance applies to volunteer court employees, and to courts when accepting services from volunteer employees. The policy also cautions against engaging in nepotism or favoritism in the hiring of volunteer employees, stating that courts may not accept volunteer services from individuals related to judges or a public official of the court, consistent with the limitation on the employment of certain relatives of a judge in 28 U.S.C. § 458(a)(1) and the limitation on the employment of certain relatives of a public official in 5 U.S.C. § 3110(a)-(c).

A judicial intern, extern, or other volunteer should not accept a simultaneous governmental appointment that has the potential for dual service with other branches of government or of the state government, in accordance with Canon 4A of the Employees' Code. For example, the Committee has advised that a judge should not appoint an intern who is paid by the Department of Justice. Similarly, a concurrent internship with a state attorney general's office or with an executive agency of the federal government would place the intern under the supervision of a federal judge and

of a state attorney general or federal agency head, contrary to the required separation from other governmental units or court systems.

An intern may not engage in the practice of law under Canon 4D. Thus, the Committee has advised that a judicial intern should not be permitted to perform legal or paralegal work at a law firm, as the performance of legal tasks for lawyers is treated as practicing law, in violation of Canon 4D. Also, an internship that is concurrent with providing assistance to a pro bono legal non-profit organization is permissible under Canon 4D(3) if it does not present an appearance of impropriety, does not take place while on duty or in chambers, does not interfere with the intern's service to the court, is uncompensated, does not involve appearing in any court or administrative agency, does not involve a matter of public controversy, does not involve an issue likely to come before the court, and does not involve litigation against the federal, state, or local government. See Employee's Code, Canon 4D.

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Committee on Codes of Conduct Advisory Opinion No. 112: Use of Electronic Social Media by Judges and Judicial Employees

This opinion provides the Committee's guidance on an array of ethical issues that may arise from the use of social media by judges and judicial employees, particularly members of a judge's personal staff. This guidance is intended to supplement information the Committee developed in 2011 to assist courts with the development of guidelines on the use of social media by judicial employees. See [Resource Packet for Developing Guidelines on Use of Social Media for Judicial Employees](#). The Committee noted in the Resource Packet that "[t]he Code of Conduct for Judicial Employees applies to all online activities, including social media. The advent of social media does not broaden ethical restrictions; rather, the existing Code extends to the use of social media." The Committee also recognizes that electronic social media may provide valuable new tools for the courts, and that some courts have begun to use social media for official court purposes. This opinion is not intended to discourage the official use of social media by the courts in a manner that does not otherwise raise ethics concerns. Nor is this opinion intended to supplant any social media policy enacted within each judge's chambers which may govern that specific judge's internal chambers' operation. If an individual judge's personal chambers' policy is stricter than that set forth below, the individual judge's policy should prevail.

I. Ethical Implications of Social Media

The use of social media by judges and judicial employees raises several ethical considerations, including: (1) confidentiality; (2) avoiding impropriety in all conduct; (3) not lending the prestige of the office; (4) not detracting from the dignity of the court or reflecting adversely on the court; (5) not demonstrating special access to the court or favoritism; (6) not commenting on pending matters; (7) remaining within restrictions on fundraising; (8) not engaging in prohibited political activity; and (9) avoiding association with certain social issues that may be litigated or with organizations that frequently litigate. These considerations implicate Canons 2, 3D, 4A, and 5 of the Code of Conduct for Judicial Employees, and Canons 2, 3A(6), 4, and 5 of the Code of Conduct for United States Judges. The Committee recognizes that due to the ever-broadening variety of social media forums and technologies available, different types of social media will implicate different Canons and to varying degrees. For that reason, many of the proscriptions set forth in this opinion, like those set forth in the Employees' and Judges' Code, are cast in general terms. The Committee's advice is to be construed to further the objective of "[a]n independent and honorable judiciary." Canon 1.

Social media include an array of different communication tools that can mimic interpersonal communication on the one hand, and act as a news broadcast to a larger audience on the other. For example, some social media sites can serve primarily as communication tools to connect families, friends, and colleagues and provide for sharing private and direct messages, posting of photos, comments, and articles in a tight-knit community limited by the user's security preferences. The same media,

however, can serve to broadcast to a broader audience with fewer restrictions. Similarly, some social media sites can serve as semi-private communication media depending on how they are used, or can instantly serve as a connection to a large audience. Aside from social communication sites, users also have access to others' sites where they may comment on everything from the posting of a photograph, to a legal or political argument, or to the quality of a meal at a restaurant. This type of media can implicate other concerns since the user is now validating or endorsing the image, person, product, or service. Finally, there are media where the user is personally publishing commentary in the form of blogs. The Committee recognizes that the Canons cover all aspects of communication, whatever form they may take, and therefore offers general advice that can be applied to the specific mode. In short, although the format may change, the considerations regarding impropriety, confidentiality, appearance of impropriety and security remain the same.

II. Appearance of Impropriety

Canon 2 of the Employees' Code provides: "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." Similarly, Canon 2 of the Judges' Code states that "a judge should avoid impropriety and the appearance of impropriety in all activities." The Codes forbid judges and judicial employees from using, or appearing to use, the prestige of the office to advance the private interests of others. Canon 2 therefore is implicated when an employee or judge engages in the use of social media while also listing his or her affiliation with the court. For example, the Committee has advised that a law clerk who chooses to maintain a blog should remove all references to the clerk's employment. The Committee concluded that such reference would implicate Canon 2 concerning the use of the prestige of the office and the appearance of impropriety. The same can be true for a judge if she is using the prestige of the office in some manner in social media that could be viewed as advancing the private interest of another. For example, if the judge is using the media to support a particular establishment known to be frequented by lawyers near the courthouse, and the judge identifies herself as the supporter, the judge has used her office to aid that establishment's success. Similarly, if a judge comments on a blog that supports a particular cause or individual, the judge may be deemed as endorsing that position or individual. The Committee therefore cautions judges to analyze the post, comment, or blog in order to take into account the Canons that prohibit the judge from endorsing political views, engaging in dialogue that demeans the prestige of the office, commenting on issues that may arise before the court, or sending the impression that another has unique access to the Court.

III. Improper Communications with Lawyers or Others

Another example of social media activity that raises concerns under Canon 2 is the exchange of frequent messages, "wall posts," or "tweets" between a judge or judicial employee and a "friend" on a social network who is also counsel in a case pending

before the court. In the Committee's view, social media exchanges need not directly concern litigation to raise an appearance of impropriety issue; rather, any frequent interaction between a judge or judicial employee and a lawyer who appears before the court may "put into question the propriety of the judicial employee's conduct in carrying out the duties of the office." Employees' Code, Canon 2. With respect to judges, communication of this nature may "convey or permit others to convey the impression that they are in a special position to influence the judge." Judges' Code, Canon 2B. A similar concern arises where a judge or judicial employee uses social media to comment—favorably or unfavorably—about the competence of a particular law firm or attorney. Of course, any comment or exchange between an attorney and the judge must also be scrutinized so as not to constitute an *ex parte* communication. At all times, the Court must be screening for potential conflicts with those she communicates with on social media, and the Canon 3C provisions which govern recusal situations may be implicated and may require analysis.

The connection with a litigant need not be so direct and obvious to raise ethics concerns. The same Canon 2 concern arises, for example, when a judge or judicial employee demonstrates on a social media site a comparatively weak but obvious affiliation with an organization that frequently litigates before the court (i.e., identifying oneself as a "fan" of an organization), or where a judge or judicial employee circulates a fundraising appeal to a large group of social network site "friends" that includes individuals who practice before the court.

IV. Extrajudicial Activities

Circumstances such as those described above also implicate Canon 4 of both the Employees' and Judges' Codes, which govern participation in outside activities. Canon 4 of the Employees' Code provides that "[i]n 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." Canon 4 of the Judges' Code states that a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, or lead to frequent disqualification. Invoking Canon 4 of the Employees' Code, the Committee has advised that maintaining a blog that expresses opinions on topics that are both politically sensitive and currently active, and which could potentially come before the employee's own court, conflicts with Canon 4. Such opinions have the potential to reflect poorly upon the judiciary by suggesting that cases may not be impartially considered or decided. This advice would also apply to judges' use of social media. A judge would be permitted to discuss and exchange ideas about outside activities that would not pose any conflict with official duties, (e.g., gardening, sports, cooking), yet the judge must always consider whether those outside activities invoke a potentially debatable issue that might present itself to the court, or an issue that involves a political position.

V. Identification of the Judge or Judicial Employee

Canons 2 and 4 are also implicated when a judge or judicial employee identifies himself as such on a social networking site. Through self-description or the use of a court email address, for example, the judge or employee highlights his affiliation with the federal judiciary in a manner that may lend the court's prestige. This issue has previously been presented to the Committee, and it is the Committee's view that judicial employees should, at the very least, be restricted from identifying themselves with a specific judge. See Resource Packet, at 23 (describing a policy allowing judicial employees to identify themselves as an employee of the federal courts generally, without specifying which court or judge, as the "least restrictive" of several suggested recommendations). The Committee also advises against any use of a judge's or judicial employee's court email address to engage in social media or professional social networking. The court employee or judge should consult the court's policies on permitted and prohibited use of court email, and the court's guidance on the employee's conduct while using a court email server and court email address. Similarly, the court email address should not be used for forwarding "chain letter type" correspondences, the solicitation of donations, the posting of property for sale or rent, or the operation of a business enterprise. See *Guide to Judiciary Policy*, Vol. 15, § 525.50 ("Inappropriate personal use of government-owned equipment includes ... using equipment for commercial activities or in support of commercial activities or in support of outside employment or business activity...." This policy also prohibits use of the email system for "fund-raising activity, endorsing any product or service, participating in any lobbying activity, or engaging in any partisan political activity.")

VI. Dignity of the Court

Furthermore, Canon 4A of the Employees' Code provides that "[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." Certain uses of social media raise concerns under Canon 4A that are not within the ambit of Canon 2. For example, a judge or judicial employee may detract from the dignity of the court by posting inappropriate photos, videos, or comments on a social networking site. The Committee advises that all judges and judicial employees behave in a manner that avoids bringing embarrassment upon the court. Due to the ubiquitous nature of information transmitted through the use of social media, judges and employees should assume that virtually all communication through social media can be saved, electronically re-transmitted to others without the judge's or employee's knowledge or permission, or made available later for public consumption.

VII. Confidentiality

Canon 3D of the Employees' Code provides in relevant part that a "judicial employee should avoid making public comment on the merits of a pending or impending

action ...” Canon 3D further states that a judicial employee “should never disclose any confidential information received in the course of official duties except as required in performance of such duties, nor should a judicial employee employ such information for personal gain.” Canon 3A(6) of the Judges’ Code provides that “[a] judge should not make public comment on the merits of a matter pending or impending in any court.” Canon 4D(5) of the Judges’ Code provides that “a judge should not disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge’s official duties.” Most social media forums provide at least one—and often several—tools to communicate instantaneously with anywhere from a few to thousands of individuals. Any posting on a social networking site that, for example, broadly hints at the likely outcome in a pending case, divulges confidential case processing procedures, or reveals non-public information about the status of jury deliberations violates Canon 3D. Such communications need not be case-specific to implicate Canon 3; even commenting vaguely on a legal issue without directly mentioning a particular case may raise confidentiality concerns and impropriety concerns. Thus the Committee advises that in all online activities involving social media, the employee may not reveal any confidential, sensitive, or non-public information obtained through the court. The Committee further advises that judicial employees who are on the judge’s personal staff refrain from participating in any social media that relate to a matter likely to result in litigation or to any organization that frequently litigates in court. Lastly, the Committee reminds that former judicial employees should also observe the same restrictions on disclosure of confidential information that apply to a current judicial employee, except as modified by the appointing authority.

VIII. Political Activity

Canon 5 of the Employees’ Code specifically addresses political activity: “A judicial employee should refrain from inappropriate political activity.” Similarly, Canon 5 of the Judges’ Code states that a “judge should not ... publicly endorse or oppose a candidate for public office” or “engage in any other political activity.” Judges’ Code, Canon 5A(2), 5(C). In the social media context, judges and judicial employees should avoid any activity that affiliates the judge or employee to any degree with political activity. This includes but is not limited to posting materials in support of or endorsing a candidate or issue, “liking” or becoming a “fan” of a political candidate or movement, circulating an online invitation for a partisan political event (regardless of whether the judge/employee plans to attend him/herself), and posting pictures on a social networking profile that affiliates the employee or judge with a political party or partisan political candidate. Furthermore, the Committee advises that while there is not an obligation for a judicial employee to search out and modify or delete endorsements or statements of political views that predate the judicial employment, the Committee recommends that if such endorsements or statements appear to be current, they be modified to clarify that they predate the judicial employment. To the extent that it is impractical or impossible to modify such previous endorsements or statements, the Committee suggests posting the following statement on the applicable website: “I have taken a position that precludes me from making further public political comments or

endorsements and this site will no longer be updated concerning these issues.” For example, on some social media it may be possible to remove one’s political affiliation, and replace it with the above statement, when it is impractical or impossible to remove all posts or likes that appear to be current political endorsements or statements. The Committee reminds that while Canon 5B of the Employees’ Code permits certain nonpartisan political activity for some judicial employees, the Codes specify that all judges, members of judges’ personal staffs, and high-level court officers must refrain from all political activity.

IX. Conclusion

In light of the reality that users of social media can control what they post but often lack control over what others post, judges and judicial employees should regularly screen the social media websites they participate in to ensure nothing is posted that may raise questions about the propriety of the employee’s conduct, suggest the presence of a conflict of interest, detract from the dignity of the court, or, depending upon the status of the judicial employee, suggest an improper political affiliation. We also note that the use of social media also raises significant security and privacy concerns for courts and court employees that must be considered by judges and judicial employees to ensure the safety and privacy of the court.

While the purpose of this opinion is to provide guidance with respect to ethical issues arising from the use of social media by judges and judicial employees, the Committee also notes that social media technology is subject to rapid change, which may lead to new or different ethics concerns. Each form of media and each factual situation involved may implicate numerous ethical Canons and may vary significantly depending on the unique factual scenario presented in this rapidly changing area of communication. There is no “one size fits all” approach to the ethical issues that may be presented. Judges and judicial employees who have questions related to the ethical use of social media may request informal advice from a Committee member or a confidential advisory opinion from the Committee.

Notes for Advisory Opinion No. 112

¹ The Code of Conduct for Judicial Employees (“the Employees’ Code”) defines a member of a judge’s personal staff as “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.” The term judicial employee also covers interns, externs, and other court volunteers.

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