

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 02-01
(July 15, 2002)

Judicial Employee Participation in Civic Life

Issues

1. On issues affecting the local community, may judicial employees:

- a. Circulate or sign election or other petitions?

Answer: Yes.

- b. Send letters to the editor?

Answer: Yes, except as noted in answer to Issue 3.

- c. Send letters or e-mails to members of the town council?

Answer: Yes.

- d. Speak to the public on the issues?

Answer: Yes, except as noted in answer to Issue 3.

2. Would the answers be the same if the issues relate only to the judiciary?

Answer: No. If the issues relate solely to the law, the legal system or the administration of justice, the restrictions on speech or political activity would be removed.

3. Does the distinction between general judicial employees and personal staff, courtroom clerks and managers apply to the foregoing issues?

Answer: Yes.

4. If so, how does this distinction affect employees in small courts who wear many different hats?

Answer: Persons who at least periodically qualify as personal staff, courtroom clerks and managers should be treated as such for all purposes.

Facts

The clerk of a small municipal court asks for guidance about whether and to what extent judicial employees may participate in the civic life of their town. Some of the issues important to the city and to the court employees pertain to the administration of justice; other issues relate more broadly to political concerns and electoral matters.

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Discussion

Judicial employees are entitled to participate in public life and to contribute to the well-being of the communities in which they live. People do not forfeit their rights to speak freely and to petition their governments simply because they work for the courts. Any limitations on court employees' rights to participate in public debate, to be valid, must be clearly expressed in and intended by the applicable code of conduct.

Issue 1

Canon 5A of the Code of Conduct for Judicial Employees ("employee code") generally permits court employees to "participate in any political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes, except when assigned to do so regarding measures to improve the law, the legal system, or the administration of justice." Canon 5B imposes upon "a judge's personal staff, courtroom clerks, and court managers" the additional requirement of compliance with Canon 5 of the Code of Judicial Conduct ("judicial code") and forbids them from holding elective office.

In addition Canon 5A allows most judicial employees to participate in *any* political activity, so long as the employees do not give the impression they are acting on behalf of the courts they serve. Even so, if (a) the political activity involves a measure to improve the law, the legal system, or the administration of justice, *and* (b) an employee is assigned to participate in the political activity, then the employee may properly represent the court's endorsement of the measure the employee advocates.

In addition, Canon 5A of the employee code allows judicial employees (that is, those who are not subject to the further restriction of Canon 5B) to do everything listed in the question: they may circulate and sign petitions, whether election petitions or otherwise; they may send letters to the editor; they may send letters or electronic messages to members of the town council; they may speak to anyone they wish to speak to, including the public, about issues that concern them. The only limitation is that the employees may not state or suggest that they speak for the court, *unless* it is true that they are speaking for the court, *and* that they are speaking about measures to improve the law, the legal system, or the administration of justice. A clear disclaimer, e.g., "I'm speaking as a citizen and taxpayer and not as an employee of the city court," might be helpful, but even that is not required.

Issue 2

The answer given above is only slightly different if the issues relate solely to the operation and administration of the court. As noted, under Canon 5A judicial employees may in general speak, publish and petition the government on any topic. When the topic pertains to the law, the legal system, or the administration of justice, *and* when a judicial employee is assigned to speak for the court on that topic, an employee may *also* truthfully claim to serve as the court's spokesperson.

All judicial employees should feel free to speak, write, publish, and petition their government on matters relating to the law, the legal system, and the administration of justice. Court employees have the experience and training to make intelligent and well-informed

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observations and comments about the judicial branch of government. Neither policymakers nor the public should be denied the benefit of judicial employees' participation in civic debate about the legal system.

Issue 3

The distinctions between general employees under Canon 5A and personal staff, courtroom clerks and managers under Canon 5B are applicable to the questions presented to the committee. The definitions of the key terms are set forth in the employee code:

“Court managers” are high-level administrative staff who work in such close proximity to judges that their actions might be viewed as the official acts or positions of the judiciary. . . . [A presiding judge of a county, chief judge of a court of appeals, or chief justice of the supreme court may designate certain positions to be court manager positions].

“Courtroom clerks” are staff of the elected Clerk of the Court who are assigned to work in the courtroom with the judge.

. . .

“Personal staff” means assistants, secretaries, law clerks, bailiffs, and court reporters employed by, assigned regularly to, or reporting directly to a judge.

Canon 5B employees are limited by restrictions on their political activities which do not apply to Canon 5A employees. For example, Canon 5B employees may not hold elective office. Further, Canon 5B applies Canon 5 of the judicial code to judges' personal staffs, courtroom clerks, and managers. In other words, Canon 5B employees may not engage in political conduct if a judge would be prohibited from engaging in the same conduct. Thus, Canon 5B employees must resign to run for elective office. *See* Judicial Canon 5A(4) and Opinion 92-13. Therefore, any nominating petitions they sign, of course, may not be their own.

Accordingly, Canon 5B employees may not *actively* take part in any electoral campaign other than the reelection or retention campaign of the judges for whom they work. Judicial Canon 5A(1)(d). Further, they may not *publicly* endorse a candidate for elective office other than the judges for whom they work. Judicial Canon 5A(1)(b). Even so, Canon 5B employees are not completely prohibited from participation in civic affairs and may participate in any of the following activities, subject to the restrictions noted below.

a. Canon 5B employees may sign petitions but should not circulate them.

A Canon 5B employee may sign petitions for candidates or causes. A judge is generally free to sign a petition to place a candidate on the primary election ballot (although in a sparsely populated county, where few signatures are needed and a judge's name might be more readily noticed, a judge might appear to endorse a candidate by signing a petition and for that reason could decline). *See* Opinion 96-07. In circumstances in which a judge may sign a petition, then so may a Canon 5B employee. It is also less likely, in sparsely populated counties, that the signature of a Canon 5B employee would be as noticeable as that

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of a judge. Although Canon 5B employees may *sign* nominating petitions, they should not *circulate* them unless the petitions involve the nomination of the judges for whom they work. *See* Judicial Canon 5A(1)(d). Circulation of petitions amounts to active participation in a political campaign.

b. Canon 5B employees are restricted in their ability to send letters to the editor.

Canon 5B employees may send letters to anyone, including letters to a newspaper for publication, on matters relating to the law, the legal system, or the administration of justice. However, they may not send letters to the editor in support of or opposition to candidates for elective office, or letters soliciting funds for political organizations or campaigns. Judicial Canon 5A(1). The prohibition against stating views on disputed political or legal issues, set forth in Canon 5B(1)(d) of the judicial code and applicable to Canon 5B employees, is probably invalid under *Republican Party of Minnesota v. White*, 536 U.S. 765 (2002), and even by its terms the prohibition exists *only* during a judicial campaign. The questions presented here, however, do not involve a judicial campaign.

c. Canon 5B employees are not prohibited from communicating with members of the town council.

Nothing in Canon 5A of the judicial code, which is applicable to Canon 5B employees, prevents court employees from communicating with their elected representatives on the town council.

d. Canon 5B employees are limited in their ability to speak publicly.

The same restrictions on the ability of Canon 5B employees to send letters to the editor apply to their ability to speak publicly. *See* the discussion of Issue 3(b) above.

Issue 4

If an employee has different job responsibilities within the court, and is on occasion a general employee and on other occasions a personal assistant, courtroom clerk, or manager, then the employee should be treated as a Canon 5B employee for all purposes. Canon 5B employees have restrictions on their conduct that general employees do not because of their proximity to and relationships with the judges they serve. *See* Opinion 92-13. The relationship between a judge and an employee will be the same whether the employee is serving as a judicial assistant one moment or as a docket clerk the next.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 5A(1) and 5B(1)(d) (1993).

Arizona Code of Conduct for Judicial Employees, Definitions and Canons 5A and 5B (1997).

Other References

Arizona Judicial Ethics Advisory Committee, Opinions [92-13](#) (Sept. 1, 1993); [96-07](#) (June 19, 1996).

Republican Party of Minnesota v. White, 536 U.S. 765 (2002).