

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 88-05
(May 11, 1988)

**Extent to Which Judges or Clerks May Provide Assistance
In the Preparation of Forms and Pleadings**

Issues

1. To what extent may a magistrate aid in the preparation of a criminal complaint presented by a law enforcement officer which is to be signed by the officer?

Answer: See discussion.

2. To what extent may deputy superior court clerks assist in the completion and filling out of forms and pleadings to be filed with the clerks?

Answer: See discussion.

Discussion

Issue 1

A criminal complaint is a written statement of the essential facts constituting a public offense, made upon oath before a magistrate, Ariz. R. Crim. P., 2.3, 17 A.R.S.

If a magistrate determines from the complaint, any affidavits filed, or testimony taken, that there is reasonable cause to believe an offense has been committed and that the defendant committed it, the magistrate shall issue a warrant or summons to be served along with the complaint upon the defendant. Ariz. R. Crim. P., 2.4 and 3.1, 17 A.R.S.

In the typical presentation of a complaint to a magistrate by a law enforcement officer, it is the officer who presents the charges to the magistrate. However, a magistrate must decide which charges presented are supported by reasonable cause. In so doing, it is appropriate for the magistrate to discuss with the officer which charges contain sufficient reasonable cause for their issuance.

In *State v. Laguna*, 124 Ariz. 179, 602 P. 2d 847 (App. 1979), the court found that where a Justice of the Peace merely typed a complaint for the town marshal, who decided what charges to file, the complaint was valid. The mere use of the court's secretarial services does not invalidate a complaint brought to a magistrate by a law enforcement officer, nor do we see an ethical violation. Indeed, as a result of the rural nature of many Arizona counties, to hold otherwise might present severe difficulties for prosecutorial agencies in those jurisdictions.

Accordingly, this committee finds no ethical impropriety where a justice of the peace supplies secretarial services to law enforcement officials for preparation of a criminal complaint. A magistrate does not commit an ethical impropriety where, pursuant to Rule 2.3, he determines what the facts presented to him constitute a specific public offense which is incorporated into the complaint.

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Issue 2

Clerks of the court who are involved in assisting the public with forms and pleadings must be careful not to advise the public as to its legal rights and responsibilities. Careful attention must be given to avoid the unauthorized practice of law. However, this does not mean that clerks of the court may not assist the public in the routine filling out of forms. There are no specific prohibitions in the Code of Judicial Conduct relating to the issue before this committee. However, Canon 2 of the Code of Judicial Conduct indicates that a judge should promote public confidence in the integrity and impartiality of the judiciary. A clerk in assisting the public with the filling out of forms must be careful to not lend any assistance to one party that would allow such party to gain an unfair advantage over another.

If clerks of the court were prohibited from lending assistance to the public, the result would be a judiciary that is only accessible to those individuals able to afford counsel. Clearly, such an effect would not be desirable nor constitutional. Furthermore, assistance in filling out forms is desirable by allowing for an efficient flow of an individual's case through the system. However, judges must caution their clerks not to give substantive advice above that which constitutes clerical assistance.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 2 (1985).

Other References

Arizona Rules of Criminal Procedure, 2.3, 2.4 and 3.1, 17 A.R.S.

State v. Laguna, 124 Ariz. 179, 602 P. 2d 847 (App.1979).