

ARIZONA JUDICIAL COUNCIL

Request for Council Action

Date Action Requested:

June 23, 2020

Type of Action Requested:

Formal Action/Request
 Information Only
 Other

Subject:

Report on Code of Conduct for Clerks of Court & Proposed Rules Establishing a Clerks Ethics Board

FROM:

Mike Baumstark, Deputy Director, Administrative Office of the Courts

DISCUSSION:

In December 2019, the Arizona Judicial Council (AJC) unanimously voted to support proposals intended to establish and maintain high standards of performance and ethical conduct by elected clerks of superior court in administering justice and serving the public.

The proposals were submitted to the AJC with the full support of the Arizona Superior Court Clerks Association and included: 1) asking the Supreme Court to approve rules establishing an ethics board; 2) drafting a code of conduct for superior court clerks; and 3) developing a comprehensive education program for newly or recently elected clerks and senior staff.

Proposed rules establishing a clerk ethics board and a code of conduct for superior court clerks is attached and ready for AJC approval. The comprehensive education program is scheduled to be ready for the 2022 election cycle for all elected clerks.

Clerks of the Superior Court Conduct Board: Draft rules establishing the conduct board, in large part, are modeled after supreme court rules governing the Commission on Judicial Conduct. The rules petition and proposed rules are included as Attachment A.

The rules were circulated for comments before a petition was filed and clarifying comments gathered from presiding superior court judges, clerks of the superior court, and superior court administrators. A rules petition was filed with the Supreme Court on April 20, 2020, inviting public comments until June 8. As of June 8, no comments have been filed. The rules petition is scheduled to be considered by the Supreme Court during its August 25-26, Rules Agenda.

Code of Conduct for Superior Court Clerks: A clerk's code of conduct was drafted as a section of the Code of Judicial Administration. The code is included as Attachment B. That proposal is substantially similar to the judicial employee code of conduct (ACJA § 1-303) with modifications needed to make the code provisions more specifically applicable to the elected clerk of court. The proposal includes ethical requirements relating to political activities that are similar to those followed by judges. The clerk's code of ethics also was circulated to clerks of the superior court, presiding judges, and superior court administrators for comments.

RECOMMENDED COUNCIL ACTION:

It is recommended that the Council approve ACJA 1-308: Code of Conduct for Superior Court Clerks.

It is further recommended that the Council recommend to the Supreme Court that it adopt the proposed rules establishing a Clerk of the Superior Court Conduct Board.

ATTACHMENT A

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**IN THE SUPREME COURT
STATE OF ARIZONA**

In the matter of:)
)
PETITION TO AMEND RULE 94) Supreme Court No. R-20 - _____
OF THE SUPREME COURT) (Expedited Consideration
RULES) Requested)
_____)

Pursuant to Rule 28 of the Rules of the Supreme Court, David K. Byers, Administrative Director, Administrative Office of the Courts, respectfully petitions this Court to amend Supreme Court Rule 94 as proposed in the attached Appendix A.

I. Purpose of the Proposed Rule Amendments.

This rule petition is part of a package of proposals that the Arizona Judicial Council (AJC) unanimously voted to support in December 2019. The proposals are intended to establish and maintain high standards of performance and ethical

conduct by elected clerks of superior court in administering justice and serving the public. The proposals were submitted to the AJC with the full support of the Arizona Superior Court Clerks Association and included the supreme court rule amendments establishing a clerk ethics board, which are the subject of this petition; a code of conduct for superior court clerks; and a comprehensive education program for newly or recently elected clerks and senior staff.

The draft rules establishing the ethics board are, in large part, modeled after supreme court rules governing the Commission on Judicial Conduct. During the past several months, petitioner has gathered and incorporated comments from presiding superior court judges, clerks of the superior court, and superior court administrators.

Concurrent with this petition, petitioner will file a proposal for a clerk's code of ethics, to be adopted as a section of the Code of Judicial Administration. That proposal is substantially similar to the judicial employee code of conduct (ACJA § 1-303) with modifications needed to make the code provisions more specifically applicable to elected clerk of court. The proposal includes ethical requirements relating to political activities that are similar to those followed by judges. The proposed code of ethics is expected to be presented to the AJC for approval at its June 2020 meeting.

II. Request for Emergency Adoption.

Petitioner requests the Court order an abbreviated formal comment period and reply deadline and consider this petition at its 2020 annual rules agenda, as permitted by Supreme Court Rule 28(h). An abbreviated comment period is appropriate in this case, because the proposal has already been extensively discussed and reviewed by the primary stakeholders and approved by the AJC.

Respectfully submitted this 20th day of April, 2020.

By /S/_____
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APPENDIX A

Supreme Court Rule 94.1[new]

(a) Purpose. The purpose of the Clerks of the Superior Court Conduct Board (board) is to establish and maintain high standards of performance and ethical conduct by clerks of the superior court (clerks) in administering justice and serving the public. Any remedies imposed or recommended by the board shall be sufficient to protect the public and to restore and maintain public confidence that the clerk will faithfully perform the duties of the office in the future.

Only complaints alleging conduct occurring during the clerk's campaign for office or term in office that rises to the level of ethical violations, significant office mismanagement, or operational problems that have continued after the clerk had been given an opportunity to address them may be considered by the board.

(b) Scope of Authority. The board has authority over the elected clerk of court in each county established in Article 6, Section 23 of the Arizona Constitution and clerks appointed pursuant to ARS § 16-230(A).

(c) Board Membership and Operations. The board shall be comprised of seven members appointed by the chief justice for three-year terms. Terms shall be staggered for initial appointments and members may be reappointed at the discretion of the chief justice. Membership shall include an incumbent superior court clerk; a retired superior court clerk; a retired, former, or current superior court presiding judge; the Administrative Director of the Courts (director) or designee; one public member nominated with majority approval of the fifteen elected clerks and appointed by the chief justice; one public member appointed by the chief justice; and an additional member selected at the discretion of the chief justice. The chief justice shall designate the board chair.

(1) Meetings. The chair shall establish meeting and board hearing times, as necessary, to perform the duties of the board.

(2) Quorum. Four members of the board shall constitute a quorum for the transaction of the board's duties.

(3) Expenses. Board members shall receive no compensation for their services but may be reimbursed for their travel and other expenses incidental to the performance of their duties.

(4) Disqualification. A member of the board shall disqualify himself or herself in any matter in which the member has a conflict of interest.

(d) Authorized Complainants. The director or designee, the superior court presiding judge, and the county human resource officer of the county in which the clerk serves are the only entities authorized to file complaints with the board.

(e) Prohibition Against Retaliation. A clerk against whom a complaint is filed shall not directly or indirectly engage in any act of retaliation against any person who files a complaint or cooperates with an investigation relevant to the complaint.

(f) Investigation of Allegations. The complainant shall have full responsibility for ensuring that the matters contained in a complaint are thoroughly investigated, accurate, and well documented before submitting a complaint to the board.

(g) Presentation of Information to the Board. The complainant or designee shall file written allegations and supporting documentation with the human resources officer of the Administrative Office of the Courts (AOC). The clerk shall have the opportunity to respond to the allegations, which may be in person, in writing, or both at the discretion of the board.

(h) Board Procedures.

(1) Initial Screening. The staff shall conduct an initial review of complaints received and shall reject the complaint if the complainant is not one of the entities authorized to file a complaint.

(2) Request for Response from Clerk. If on review of a complaint the staff determines further action is warranted, the complaint shall be forwarded to the clerk named in the complaint with a request to respond in writing. The clerk shall be allowed 10 workdays to file a response with the board. For good cause shown, the chair of the board may grant an extension of time to file a response to the complaint. The board may not initiate formal board proceedings without first having provided such notice and opportunity to the clerk.

(3) Board Interview. After reviewing the clerk's response, if the board determines an interview is required or requested, an interview shall be scheduled. The interview shall be closed to the public.

(4) Findings. The board shall issue findings and take such action as it deems appropriate and authorized by these rules.

(5) Burden of Proof. The complainant has the burden to prove by a preponderance of the evidence that the allegations of the complaint are true.

(6) Recordings of Proceedings. The proceedings of all meetings and interviews shall be recorded.

(i) Complaint Dispositions and Sanctions. The board may:

(1) Dismiss a complaint that fails to allege the failure to perform a duty or an act of misconduct of the clerk.

(2) Dismiss a complaint of which the evidence does not support the allegations.

(3) Dismiss a complaint with confidential counseling regarding ethical obligations and recommending changes to behavior or procedures.

(4) Recommend mediation.

(5) Issue a warning letter alerting a clerk to the potential consequences of conduct that creates an appearance of impropriety or ethical misconduct.

(6) Issue an informal letter of reprimand for conduct that is unacceptable, but that is not serious enough to warrant a more formal sanction.

(7) Instruct a clerk to take specific action, attend specific educational programs on court management or clerk office operations, or participate in a mentoring program.

(8) Issue a formal public letter of censure.

(9) Refer the clerk complaint and board findings to the chief justice with a recommendation to limit duties of the clerk.

(10) Refer the clerk to Speaker of the House of Representatives for impeachment.

(j) Notification of Board Action. The board shall provide written notification to the complainant, the clerk, and the superior court presiding judge of the county in which the clerk serves. The notice of board action must include findings regarding the allegations of the complaint and the disposition including all sanctions imposed.

(k) Review of Board Actions.

(1) Informal actions taken by the board are not reviewable.

(2) A letter of censure is reviewable by the director, or designee.

(3) A referral to the chief justice with recommendation to limit the clerk from performing duties of the office of the clerk is reviewable by the director, or designee.

(4) A referral to the Speaker of the House of Representatives for impeachment is reviewable by the director, or designee.

(l) Compliance with Directives of the Board or Orders of the Chief Justice. Under the direction of the director or designee, the AOC shall monitor compliance with directives of the board or orders of the chief justice.

(m) Administration. The human resources officer of the AOC shall provide staff support for the board including maintenance and preservation of the board's records.

(n) Public Access and Confidentiality.

(1) Generally, records of complaints against clerks of court shall be available to the public following, but not before, final disposition.

(A) Dismissed Cases. Only the complaint and the letter dismissing the complaint shall be public after all identifying information pertaining to the clerk, complainant, and court has been redacted.

(B) Other Informal or Formal Dispositions: The record of dispositions and sanctions described in subsections (i)(4) through (10) shall be public after the complainant, the clerk, and presiding judge of the county in which the clerk serves have been notified of the outcome.

(2) All board correspondence, draft documents, computer records, investigative reports and files, attorney work product, and board deliberations are confidential.

(o) Records and Files.

(1) Maintenance of Records. All records of the board shall be maintained, preserved, or purged by the AOC in accordance with standards established by the director.

(2) Closed Files. A closed file is one involving any prior complaint, inquiry, investigation, report, informal disposition, or formal proceeding received or initiated by the board that the board had officially closed.

(3) Closed files may be referred to and used by the board or the clerk in connection with any subsequent proceeding for the purpose of determining the severity of the sanction, a pattern of misconduct, or exoneration of the clerk.

ATTACHMENT B

ARIZONA CODE OF JUDICIAL ADMINISTRATION Part 1: Judicial Branch Administration Chapter 3: Judicial Officers and Employees Section 1-308: Code of Conduct for Clerks of Superior Court

A. Contents

- A. Contents
- B. Purpose and Intent
- C. Terminology
- D. Conduct Rules and Comments

Canon 1. A clerk of superior court shall uphold and promote the independence, integrity, and impartiality of the office and the judiciary and shall avoid impropriety and the appearance of impropriety.

- Rule 1.1 Compliance with the Law
- Rule 1.2 Promoting Confidence in the Judiciary
- Rule 1.3 Abuse of Position

Canon 2. A clerk of superior court shall perform the duties of the office impartially, competently, and diligently.

- Rule 2.1 Giving Priority to Ethical Duties
- Rule 2.2 Impartiality and Fairness
- Rule 2.3 Bias, Prejudice, and Harassment
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- Rule 3.1 Outside Activities in General
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Canon 4. A clerk of superior court or candidate for the office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the office or the judiciary.

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B. Purpose and Intent.

An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of persons of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the rules contained in this code are the precepts that clerks of superior court, individually and collectively, must respect and honor judicial employment as a public trust and strive to maintain and enhance confidence in the legal system.

Clerks of superior court must maintain the dignity of the judiciary and avoid both impropriety and the appearance of impropriety. They must aspire to maintain standards of conduct that ensure the greatest possible public confidence in their independence, impartiality, integrity, and competence.

This code establishes uniform standards for the ethical conduct of clerks of superior court. It is intended to complement the Code of Judicial Conduct that governs the conduct of judges and the Code of Conduct for Judicial Employees and should be interpreted in a manner that is consistent with these codes. The minimum standards contained in this code do not preclude the adoption of more rigorous standards by law, court order or court rule. Violations of this code will be enforced by the Chief Justice of the Supreme Court of Arizona and on recommendation of the Clerk of Superior Court Conduct Board provided by court rule.

C. Terminology

“Canon” means a fundamental principle governing the conduct of clerks of superior court. The broad statement of principle appearing before each major section of the code is the canon. There are four canons in this code.

“Clerk of superior court” or “clerk” means a person elected to the office provided by Article 6, Section 23 of the Arizona Constitution.

“Clerk candidate” means any person, including a sitting or incumbent clerk, who is seeking clerk of superior court office by election or appointment. A person becomes a candidate for clerk of superior court as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election or appointment to office.

“Contribution” means both financial and in-kind contributions, such as goods, professional or volunteer services, advertising, and other types of assistance, which, if obtained by the recipient otherwise, would require a financial expenditure.

“Domestic partner” means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married.

“Economic interest” means ownership of more than a de minimis or insignificant legal or equitable interest and is further defined, for purposes of compliance with state law, in A.R.S. § 38-502(11). Except for situations in which the clerk of superior court participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding in which the clerk participates, it does not include:

- (1) an interest in the individual holdings within a mutual or common investment fund;
- (2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the clerk of superior court or the clerk’s spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;
- (3) a deposit in a financial institution or deposits or proprietary interests the clerk of superior court may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or
- (4) an interest in the issuer of government securities held by the clerk of superior court.

“Fiduciary” includes relationships such as executor, administrator, trustee, or guardian.

“Impartial,” “impartiality,” and “impartially” mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, in communication or conduct as well as maintenance of neutrality concerning issues that may come before a judge.

“Impending matter” is a matter that is imminent or expected to occur in the near future.

“Incumbent” means the person who currently holds an elected office by election or appointment to that office.

“Impropriety” includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a clerk of superior court’s independence, integrity, or impartiality.

“Independence” means a clerk of superior court’s freedom from influence or controls other than those established by law.

“Integrity” means probity, fairness, honesty, uprightness, and soundness of character.

“Judge” means any person who is authorized to perform judicial functions within the Arizona judiciary, including a justice or judge of a court of record, a justice of the peace, magistrate, court commissioner, special master, hearing officer, referee or pro tempore judge.

“Law” encompasses court rules as well as ordinances, regulations, statutes, constitutional provisions, and decisional law.

“Member of the clerk’s family” means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the clerk maintains a close familial relationship.

“Nonpublic information” means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in dependency cases or psychiatric reports and any information contained in records that are closed or confidential under Arizona Supreme Court Rule 123 or law.

“Pending matter” is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition.

“Political organization” means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this code, the term does not include a judicial candidate’s campaign committee created as authorized by Rule 4.3 of the Code of Judicial Conduct.

“Public election” includes primary and general elections, partisan elections, nonpartisan elections, recall elections, and retention elections.

“Relative” means “a member of the clerk’s family.”

D. Conduct Rules and Comments.

CANON 1

A CLERK OF SUPERIOR COURT SHALL UPHOLD AND PROMOTE THE INDEPENDENCE, INTEGRITY, AND IMPARTIALITY OF THE OFFICE AND THE JUDICIARY AND SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY.

RULE 1.1

Compliance with the Law

(A) A clerk of superior court shall comply with the law and the Code of Conduct for Clerks of Superior Court.

(B) A clerk of superior court shall not use public funds, property or resources wastefully or for any private purpose not authorized by judicial or administrative authorities.

(C) A clerk of superior court shall comply with applicable local and state procurement and conflict of interest laws, including A.R.S. § 38-504.

Comment

1. As public servants, clerks of superior court must not act in any way that would violate specific laws or the provisions of this code. Public confidence in the judiciary is maintained by the willingness of each employee to live up to this standard. When faced with conflicting loyalties, clerks of superior court should seek first to maintain public trust. Clerks of superior court should not, for example, knowingly make false entries on time cards or personnel records; backdate a court document, falsely claim reimbursement for mileage or expenses; misuse the telephone, facsimile machine, or copying machine or other office resources; or take supplies from the office for private use. This conduct may be theft, a class 1 misdemeanor ranging to a class 3 felony under A.R.S. § 13-1802 or fraud, a class 2 felony under A.R.S. § 13-2310.

2. A clerk of superior court who knows a person who seeks to do business with the court is a former employee must determine whether the former employee is disqualified under paragraph (C). Abuse of former employment by a former employee may be a class 6 felony under A.R.S. § 38-510.

RULE 1.2

Promoting Confidence in the Judiciary

A clerk of superior court shall act in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary, and shall avoid impropriety and the appearance of impropriety.

Comment

1. The fundamental attitudes and work habits of clerks of superior court reflect on the integrity and independence of the judiciary and are of vital importance in maintaining the confidence of the public in the judiciary. Honesty and truthfulness are paramount.

2. Public confidence in the judiciary and office of clerk of superior court is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both professional conduct and personal conduct that affects the public perception of the judiciary and the office of clerk of superior court.

3. A clerk of superior court should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the code.

4. Conduct that compromises or appears to compromise the independence, integrity, and impartiality of the judiciary or of a clerk of superior court undermines public confidence in the judiciary and the office of clerk of superior court. Because it is not practicable to list all such conduct, this rule is necessarily cast in general terms.

5. Clerks should participate in activities that promote ethical conduct among clerks, judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

6. Actual improprieties include violations of law, court rules or provisions of this code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the clerk of superior court violated this code or engaged in other conduct that reflects adversely on the clerk's honesty, impartiality, temperament, or fitness. A clerk of superior court's personal and family circumstances are generally not appropriate considerations on which to presume an appearance of impropriety.

RULE 1.3 Abuse of Position

Clerks of superior court shall not use or attempt to use their office for personal gain or to secure special privileges or exemptions for themselves or any other person.

Comment

1. It is improper for a clerk of superior court to use or attempt to use their office to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a clerk to seek or provide special consideration regarding the filing of pleadings or payment of fees or to provide special treatment to particular parties or matters for personal reasons. Similarly, a clerk must not use clerk letterhead to gain an advantage in conducting his or her personal business.

2. A clerk of superior court may provide a reference or recommendation for an individual based upon personal knowledge. The clerk may use clerk letterhead if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure due to the office held.

3. Accepting, agreeing to accept, giving or requesting a gift or favor with an understanding that any clerk or court business or court proceeding would be influenced may be bribery, a class 4 felony under A.R.S. §§ 13-2602(A) (2) and 13-2606.

4. It is improper to use or disclose to others sealed or confidential information or records for personal purposes. Knowing disclosure or use of confidential information by a current or former clerk of superior court may be a class 6 felony under A.R.S. § 38-504(B).

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CANON 2

A CLERK OF SUPERIOR COURT SHALL PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY, COMPETENTLY, AND DILIGENTLY.

RULE 2.1

Giving Priority to Ethical Duties

A clerk of superior court shall regard the ethical duties provided in this code of conduct as having the highest priority.

Comment

To ensure that clerks of superior court are able to fulfill their duties, clerks must conduct their personal and professional activities in a manner which minimizes the risk of conflict with the performance of their duties.

RULE 2.2

Impartiality and Fairness

A clerk of superior court shall perform the duties of the office fairly and impartially.

Comment

Clerks of superior court may appear to be providing preferential treatment to litigants, counsel or other persons with whom they discuss the merits of a case pending before the court or behave in a particularly friendly manner. To gauge the propriety of any behavior, clerks of superior court should consider how opposing parties and counsel who are involved in the proceeding and members of the public are likely to view the situation.

RULE 2.3

Bias, Prejudice, and Harassment

A clerk of superior court shall perform the duties of the office without bias or prejudice and shall not manifest bias or prejudice by words or conduct or engage in harassment in the performance of the duties of the office. This includes, but is not limited to, bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

Comment

1. A clerk of superior court who manifests bias or prejudice in the conduct of the office or of court business impairs the fairness of the judicial process and brings the judiciary and the office of the clerk into disrepute.

2. Examples of manifestations of bias or prejudice include, but are not limited to, epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Facial expressions and body language and other forms of nonverbal communication may convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A clerk of superior court must avoid conduct that may reasonably be perceived as prejudiced or biased.

3. Harassment is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socio-economic status, or political affiliation.

4. Sexual harassment includes, but is not limited to, sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome. See Arizona Supreme Court, ACJA §1-304, for the judicial department's discrimination and harassment policy.

RULE 2.4

External Influences on Duties of the Office

(A) A clerk of superior court shall not be influenced in the performance of the duties of the office by partisan interests, public clamor or fear of criticism or reprisal.

(B) A clerk of superior court shall not permit family, social, political, financial, or other interests or relationships to influence the performance of the duties of the office.

(C) A clerk of superior court shall not convey or permit others to convey the impression that any person or organization is in a position to influence the outcome of a case.

Comment

1. An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's or clerk of superior court's friends or family. Confidence in the judiciary is eroded if judicial process or decision making is perceived to be subject to inappropriate outside influences.

2. A clerk of superior court who thinks performance of the duties of the office may be influenced in a particular matter shall bring the situation to the attention of the presiding judge to determine the appropriate course of action.

RULE 2.5

Competence, Diligence, and Cooperation

(A) A clerk of superior court shall perform the duties of the office competently, diligently, and promptly.

(B) A clerk of superior court shall promote cooperation among the staff of the clerk's office the superior court, and the appellate courts, with judges, with other clerks of superior court, and with other public officials in conducting business.

(C) A clerk of superior court shall participate actively in clerk education programs and shall comply with judicial and administrative education requirements for the clerk's position.

(D) A clerk of superior court shall furnish accurate, timely information and shall provide access to public court proceedings and records in accordance with state law, court rules, and established procedures.

Comment

1. Competence in the performance of clerk duties requires the knowledge, skill, thoroughness, and preparation reasonably necessary to perform the duties of the office of the clerk of superior court.

2. The clerk of superior court should seek the necessary expertise, training, and resources to enable the clerk and clerk's office employees to perform their statutory and legal duties and responsibilities.

3. The statutory and legal duties of the office of clerk of superior court requires clerks to be punctual in attending to their duties and cooperative with clerk's office staff, judges, lawyers, and the general public. Article 2, § 11 of the Arizona Constitution requires that "Justice in all cases shall be administered openly, and without unnecessary delay." Rule 123(f)(2) of the Rules of the Supreme Court require the custodian to "promptly respond orally or in writing concerning the availability of the records, and provide the records in a reasonable time..."

RULE 2.6 Assistance to Litigants

A clerk of superior court shall assist litigants to access the courts by providing prompt and courteous customer service and accurate information consistent with the responsibilities and knowledge of the clerk of superior court and the employees of that office and with the court's resources and procedures, while remaining neutral and impartial and avoiding the unauthorized practice of law. The clerk and the employees of that office are authorized to provide the following assistance:

(A) Explain how to accomplish various actions within the court system and provide information about court procedures and standardized court forms, without recommending a particular course of action;

(B) Answer questions about court policies and procedures, without disclosing confidential or restricted information as provided in Rule 3.2;

(C) Explain legal terms, without providing legal interpretations by applying legal terms and concepts to specific facts;

(D) Provide standardized court forms and answer procedural questions about how to complete court papers and forms with factual information by the court customer, without recommending what words to put on the forms;

(E) Provide public case information, without providing confidential case information as provided in Rule 2.5; and provide case information to judges and judicial staff so that they may be able to fulfill their judicial responsibilities;

(F) Provide information on various procedural options, without giving an opinion about what remedies to seek or which option is best;

(G) Cite statutes, court rules or ordinances a clerk of superior court or its employees know in order to perform clerk functions, without performing legal research for court customers;

(H) When asked to recommend a legal professional such as an attorney, a legal document preparer, or process server, refer the customer to resources like a directory or referral service, without recommending a specific legal professional; and

(I) Provide scheduling and other information about a case, without prejudicing another party in the case or providing information to or from a judge that is impermissible ex parte (one party) communication about a case.

Comment

For fuller explanation see the [Guide to Court Customer Assistance: Legal Advice - Legal Information Guidelines for Arizona Court Personnel, Administrative Office of the Courts, Court Services Division, 2007](#) upon which this rule is based.

RULE 2.7

Reserved

RULE 2.8

Professionalism

Clerks of superior court shall be patient, respectful, and courteous with litigants, jurors, witnesses, lawyers, court employees, and others who work in the office of the clerk, and require

the same level of professionalism and conduct of employees subject to the clerk's direction and control.

Comment

The duty to interact and behave with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to handle matters diligently and promptly. Clerks of superior court can be efficient and businesslike, while also being patient and courteous.

RULE 2.9

Communication with Judges.

(A) A clerk of superior court shall not communicate personal knowledge about the facts of a pending case to the judge assigned to the case.

(B) A clerk of superior court may communicate information from a party to a judge for scheduling, administrative, or emergency purposes, which does not address substantive matters.

Comment

To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge. A judge may also direct judicial staff, without invoking the notice and disclosure provisions of Rule 2.9 of the Code of Judicial Conduct, to screen written ex parte communications and to take appropriate action consistent with Rule 2.9 of the Code of Judicial Conduct.

RULE 2.10

Statements on Pending and Impending Cases

(A) A clerk of superior court shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) Notwithstanding the restrictions in this rule, a clerk of superior court may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the clerk is a litigant in a personal capacity.

Comment

1. This rule's restrictions on speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

2. This rule does not prohibit a clerk of superior court from commenting on proceedings in which the clerk is a litigant in a personal capacity. In cases in which the clerk is a litigant in an official capacity, the clerk may comment publicly on the merits of the case. However, the clerk should consider whether any comment is advisable and consistent with the clerk's responsibilities.

RULE 2.11
Personal Interests.

(A) A clerk of superior court shall manage personal and business matters so as to avoid situations that may lead to conflict, or the appearance of conflict, in the performance of the clerk's duties.

(B) A clerk of superior court shall inform the presiding judge of any potential conflict between the clerk's performance of court duties and an economic interest of the clerk individually or as a fiduciary or a member of the clerk's family or any member of the clerk's family residing in the clerk's household. This includes a case in which the clerk of superior court, a member of the clerk's family or a member of the clerk's family residing in a clerk's household is:

- (1) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
- (2) acting as a lawyer in the proceeding;
- (3) a person who has more than a de minimis (insignificant) interest that could be substantially affected by the proceeding; or
- (4) likely to be a material witness in the proceeding.

(C) A clerk of superior court shall withdraw from participation in a court proceeding or court business in which the clerk or a member of the clerk's family has a substantial personal, economic, or family interest that may actually or appear to influence the outcome of the court proceeding or business.

(D) A clerk of superior court shall withdraw from any proceeding in which the clerk's impartiality might reasonably be questioned due to a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(E) A clerk of superior court who is required to withdraw from participation in a judicial proceeding under this rule, other than for bias or prejudice under paragraph (D), may continue to perform duties related to the proceeding if, following disclosure to the parties and their lawyers, the parties and lawyers agree, without participation by the judge or court personnel in this decision, that the clerk of superior court need not withdraw. The agreement shall be incorporated into the record of the proceeding.

Comment

1. Every clerk of superior court has a legal obligation under A.R.S. § 38-501 et. seq. to diligently identify, disclose and avoid conflicts of interest. A potential personal interest or conflict of interest exists when an official action or decision in which a clerk of superior court participates may specially benefit or harm a personal, business or employment interest of the clerk, the clerk's relative or the clerk's close friends. In a judicial proceeding, a potential conflict of interest arises if a clerk's business associate, relative or close friend is an interested party. Even if no impropriety actually occurs, a conflict of interest creates an appearance of impropriety that can seriously undermine the public's confidence and trust in the court system.

2. If withdrawal from a matter would cause unnecessary hardship, the presiding judge may authorize the clerk of superior court to participate in the matter if such participation is permitted by the Code of Judicial Conduct, no reasonable alternative exists, and safeguards, including full disclosure to the parties involved, ensure official duties are properly performed.

3. "Economic interest," is defined in the Terminology section.

RULE 2.12 **Supervisory Duties**

A clerk of superior court shall supervise performance of the duties of the office and require employees to act in a manner consistent with the clerk's obligations under this code and to comply with applicable provisions of the Code of Judicial Conduct and the Code of Conduct for Judicial Employees.

Comment

Generally, a clerk of superior court should be at the clerk's office during office hours to ensure the supervision and performance of the duties of the office.

RULE 2.13 **Employment of Relatives**

A clerk of superior court shall not appoint or directly supervise a relative or supervise a supervisor of a relative. A clerk of superior court shall not attempt to influence the employment or advancement of a relative by a court except by letters of reference or in response to a person verifying references.

Comment

Employment of a relative may be a class 2 misdemeanor under A.R.S. § 38-481.

RULE 2.14 **Disability and Impairment**

A clerk of superior court who has a reasonable belief that the performance of an employee or a judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall immediately report the observed behavior to the appropriate Human Resources Office, the presiding judge, or the Commission on Judicial Conduct. A clerk of superior court who receives a report of impairment shall take appropriate action, which may include a confidential referral when the judge or employee agrees to seek assistance from an appropriate assistance program.

Comment

1. “Appropriate action” means action intended and reasonably likely to help the impaired person address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

2. Taking or initiating corrective action by way of referral of a cooperative judge or clerk of superior court to an assistance program may satisfy the responsibility of the clerk of superior court who receives a report under this rule. Assistance programs have many approaches for offering help to impaired clerks of superior court and judges, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has been reported, however, the clerk who receives a report may be required to take other action, such as reporting the impaired person to the appropriate supervisory or disciplinary authority or the Commission on Judicial Conduct. See Rule 2.15.

RULE 2.15

Duty to Report and Take Appropriate Action

A clerk of superior court shall take appropriate action concerning an office employee’s violation of the Code of Conduct for Judicial Employees. A clerk of superior court is also obligated to report to the appropriate supervisor or other authority any violation of the applicable code of conduct or significant impairment by a judge or a court employee. A clerk of superior court shall not be subject to retaliation if such a report is made in good faith, and shall cooperate and be candid and honest in any investigation and disciplinary proceeding.

Comment

1. This obligation does not prohibit reporting illegal conduct to a law enforcement agency or other appropriate authority.

2. Clerks of superior court should cooperate with the Commission on Judicial Conduct and the Clerk of Superior Court Conduct Board and may communicate with the Commission and the Board at any time, without fear of reprisal, for the purpose of discussing potential or actual perceived judicial misconduct. Cooperation with investigations and discipline proceedings instills confidence in the commitment of clerks of superior court to the integrity of the judicial system and the protection of the public.

DRAFT

CANON 3

A CLERK OF SUPERIOR COURT SHALL CONDUCT ACTIVITIES OUTSIDE OF THE OFFICE TO MINIMIZE THE RISK OF CONFLICT WITH THE OBLIGATIONS OF THE OFFICE.

RULE 3.1

Outside Activities in General.

(A) A clerk of superior court shall conduct outside activities so as to avoid a negative effect on its office or the ability to perform clerk duties.

(B) Except as provided by law or court rule, clerks of superior court shall not engage in any business, secondary employment or volunteer activity that:

- (1) Involves an organization or a private employer whose officers, employees or agents are regularly involved as a litigant, an attorney, or a witness in cases filed with the court in the county in which the clerk of superior court is elected or appointed;
- (2) Is conducted during the regular operating hours of its office;
- (3) Places the clerk of superior court in a position of conflict with the clerk's official role in the judicial department;
- (4) Requires the clerk of superior court to appear regularly in judicial or administrative agency proceedings;
- (5) Identifies the clerk of superior court with the judicial department or gives an impression the employment or activity is on behalf of the judicial department; or
- (6) Requires use of clerk or court equipment, materials, supplies, telephone services, office space, computer time, or facilities.

Comment

1. In order to avoid any employment or volunteer activity that is in conflict with a clerk of superior court's official role within the judiciary, a clerk of superior court should not, for example, work for a police department, probation department, public defender, prosecutor or law firm.

2. A clerk of superior court may become a foster parent and may teach, lecture, or write on any subject, so long as any payment is at the prevailing rate, any presentation or document clarifies that the clerk is not representing its office, the judicial department, and confidential documents and information are not disclosed.

RULE 3.2
Use of Nonpublic Information

A clerk of superior court shall not intentionally disclose or use nonpublic information acquired in an official capacity for any purpose unrelated to the clerk's duties.

Comment

1. In performing court duties, a clerk of superior court may acquire information of commercial or other value that is unavailable to the public. The clerk must not reveal or use such information for personal gain or advantage or for any purpose unrelated to court duties.

2. This rule is not intended to affect a clerk of superior court's ability to act on information as necessary to protect the health or safety of any individual if consistent with other provisions of this code.

3. Some information received by clerks of superior court while performing their duties is confidential and should not be revealed. Sometimes confidential matters are revealed through innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, any of which could give attorneys, litigants and reporters an unfair advantage. Such remarks can seriously prejudice a case or harm a person's standing in the community.

RULE 3.3
Solicitation for Outside Activities

(A) A clerk of superior court shall not use that office to solicit funds.

Comment

A clerk of superior court must not personally request or, by action or inference, solicit a subordinate to contribute funds to any organization or activity, but may provide information to subordinates about a general fund-raising campaign. A clerk of the superior court must not request or, by action or inference, solicit any litigant, attorney or employee to contribute funds under circumstances where their elected position at the court could reasonably be viewed to give weight or improper influence to the request.

RULE 3.4
Gifts and Extra Compensation

(A) A clerk of superior court shall not solicit gifts or favors nor accept gifts, favors, other than those listed in paragraph B, from attorneys, litigants, or other persons known to do business with the office or the court and shall not request or accept any payment in addition to the clerk's regular compensation for assistance given as part of official duties.

(B) A clerk of superior court may accept the following:

- (1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;
- (2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending would in any event require withdrawal from participation by the clerk of superior court under Rule 2.11;
- (3) ordinary social hospitality;
- (4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not clerks of superior court;
- (5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not clerks of superior court;
- (6) scholarships, fellowships, and similar benefits or awards granted on the same terms and based on the same criteria applied to other applicants;
- (7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use;
- (8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, a domestic partner, or other family member of a clerk of superior court residing in the clerk's household, but that incidentally benefit the clerk;
- (9) gifts incident to a public testimonial or other event honoring the recipient; or
- (10) invitations to the clerk of superior court and the clerk's spouse, domestic partner, or guest to attend without charge:
 - (a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or
 - (b) an event associated with a clerk of superior court's educational, religious, charitable, fraternal or civic activities, if the same invitation is offered to persons who are not clerks of superior court and who are engaged in similar ways in the activity as is the clerk.

Comment

1. Whenever a clerk of superior court accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision or a clerk's action in a case. This rule prohibits the acceptance of such benefits

except in circumstances where the risk of improper influence is low. Examples of improper conduct include seeking a favor or receiving a gift, or the promise of one, whether it be money, services, travel, food, entertainment, or hospitality, that could be viewed as a reward for past or future services. Receiving fees or compensation not provided by law in return for public services may be a class 6 felony or a class 1 misdemeanor under A.R.S. § 38-504 subject to the penalties in A.R.S. § 38-510.

2. Gift-giving between friends and relatives is a common occurrence, and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that a clerk of superior court's or judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the clerk of superior court's withdrawal under Rule 2.11, there would be no opportunity for a gift to influence the performance of court duties.

3. The receipt of ordinary social hospitality, commensurate with the occasion, is not likely to undermine the integrity of the judiciary. If an event is a traditional occasion for social hospitality such as a holiday party or the opening of an office and is not inappropriately lavish or expensive, it may qualify as "ordinary social hospitality." However, the receipt of other gifts and things of value from an attorney or party who has or is likely to do business with the office of the clerk of superior court or the court will be appropriate only in the rarest of circumstances.

4. Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A clerk of superior court may freely accept such benefits if they are available to the general public, or if the clerk qualifies for the special price or discount according to the same criteria as are applied to a person who is not the clerk of the superior court. As an example, loans provided at generally prevailing interest rates are not gifts, but a clerk of superior court could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the clerk also possesses.

5. If a gift or other benefit is given to the clerk of superior court's spouse, domestic partner, or member of the clerk's family residing in the clerk's household, it may be viewed as an attempt to influence the clerk indirectly.

RULE 3.5

Reimbursement of Expenses and Waivers of Fees or Charges

(A) Unless otherwise prohibited by Rules 3.1 or other law, a clerk of superior court may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the county that employs the clerk, if the expenses or charges are associated with the clerk's participation in outside activities permitted by this code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the clerk of superior court and, when appropriate to the occasion, by the clerk's spouse, domestic partner, or guest.

Comment

Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Clerks of superior court are encouraged to attend educational programs, as both teachers and participants in furtherance of their duty to remain competent. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this code.

**RULE 3.6.
Financial Reporting Requirements**

(A) A clerk of superior court shall file annually the financial disclosure statement required by A.R.S. § 38-542 or other applicable law. The completion and filing of the annual financial disclosure statement fulfills the reporting requirements set forth in this code.

(B) Reports made in compliance with this rule shall be filed as public documents in the office designated by law.

CANON 4

A CLERK OF SUPERIOR COURT SHALL NOT ENGAGE IN POLITICAL OR CAMPAIGN ACTIVITY THAT IS INCONSISTENT WITH THE INDEPENDENCE, INTEGRITY, OR IMPARTIALITY OF THE OFFICE OR THE JUDICIARY.

RULE 4.1

General Activities

(A) In general, a clerk of superior court may participate in political activities that do not give the impression the judiciary itself endorses political candidates or supports political causes. This includes purchasing tickets for political dinners or other similar functions, but attendance at any such functions shall be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules. However, a clerk candidate shall not do any of the following:

- (1) act as a leader in, or hold an office in, a political organization;
- (2) make speeches on behalf of a political organization or another candidate for public office;
- (3) publicly endorse or oppose another candidate for any public office;
- (4) solicit funds for or pay an assessment to a political organization or candidate, make contributions to any candidate or political organization in excess of the amounts permitted by law;
- (5) actively take part in any political campaign other than his or her own campaign for election or reelection to office;
- (6) personally solicit or accept campaign contributions other than through a campaign committee authorized by Rule 4.4;
- (7) use or permit the use of campaign contributions for the private benefit of the clerk or others, except as provided by law;

(B) A clerk of superior court shall take reasonable measures to ensure that other persons do not undertake, on behalf of the clerk of superior court, any activities prohibited under paragraph (A).

Comment

1. The judiciary seeks to maintain neutrality in political matters. While clerks of superior court may express and act on personal opinions about political candidates and issues as other citizens, they should maintain neutrality in action and appearance when performing their duties on behalf of the office of the clerk of superior court and the judicial department, except to the extent that their duties include political advocacy on

the behalf of the judicial department. To this end, clerks of superior court should separate their political activities from supervision of clerk operations and performance of legal duties. These political activities must be conducted outside of the workplace and away from the court.

2. Public confidence in the independence and impartiality of the judiciary is eroded if clerks of superior court are perceived to be subject to political influence. Although clerks may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations. Examples of such leadership roles include precinct committeemen and delegates or alternates to political conventions. Such positions would be inconsistent with an independent and impartial judiciary.
3. Paragraphs (A)(2) and (A)(3) prohibit clerks of superior court from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of their judicial department office to advance the interests of others. These rules do not prohibit clerks from campaigning on their own behalf or opposing candidates for their office.
4. Paragraph (A)(3) does not prohibit a clerk of superior court from privately expressing his or her views on other candidates for public office. A clerk candidate may purchase tickets for political dinners or other similar functions, but attendance at any such functions should be restricted so as not to constitute a public endorsement of a candidate or cause otherwise prohibited by these rules.
5. Although members of the families of clerks of superior court are free to engage in their own political activity, including running for public office, there is no “family exception” to the prohibition in paragraph (A)(3) against a clerk of superior court publicly endorsing candidates for public office. A clerk must not become involved in, or publicly associated with, a family member’s political activity or campaign for public office. To avoid public misunderstanding, clerks should take and should urge members of their families to take reasonable steps to avoid any implication that the clerk endorses any family member’s candidacy or other political activity.
6. Paragraphs (A)(8) and (9) apply the Rule 2.10 limitations on public statements to both incumbent clerks of superior court and candidates in an election campaign.
7. A clerk candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system or advocating for more funds to improve the physical plant and amenities of the courthouse.

RULE 4.2

Workplace Activity

At the workplace, clerks of superior court shall not engage in political campaign activities and shall not display literature, badges, stickers, signs, or other political advertisements on behalf of any party, political committee, agency, candidate for political office or ballot measure.

Comment

A personal vehicle parked in a space or a parking lot reserved and identified for court employees is covered by these work place limitations. Where such reserved parking exists, displaying political materials on vehicles brings political advocacy to the workplace because the parking lot is part of the workplace.

RULE 4.3

Political Pressure

Clerks of superior court shall not use their official authority or position, directly or indirectly, to influence or attempt to influence any court employee or court customer to become a member of any political organization or to take part in any political activity. Clerks shall not require subordinates to participate in political activities or personally receive funds from subordinates for any political purpose. Clerks may offer subordinates the opportunity to become campaign volunteers and contributors through a clerk's campaign committee in the same manner as these opportunities are offered to the general public.

RULE 4.4

Political Discrimination

Clerks of superior court shall not discriminate in favor of or against any subordinate or any applicant for judicial employment on account of permitted political activities.