

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 92-13
(Reissued September 1, 1993)

**Status of Court Employees Who Run for or
Are Elected to Public Office**

Issues

1. May court employees run for public office?

Answer: Yes, if they resign their positions.

2. Must prospective court employees resign from an elected public office if they wish to accept employment with the court?

Answer: Yes.

Facts

This opinion originated from two different requests. One was submitted by a presiding superior court judge who wanted to know whether or not a chief probation officer could run for a seat on the town council. The second was submitted by another presiding judge who wanted to know if a person hired to fill a court-related position is required to resign from an elected public office, in this case, the local school board. Since both requests involved similar issues, they were combined in this opinion.

Discussion

Whether Arizona statutes prohibit a chief probation officer (CPO) from seeking elected office, or whether they require a school board member to resign that post before accepting employment with the court, are questions of law and therefore, outside the purview of the Judicial Ethics Advisory Committee. This opinion, therefore, will deal solely with the ethical aspects of these questions.

Canon 7A(3) of the Code of Judicial Conduct requires a judge to resign his or her office upon becoming a candidate for non-judicial office. Canon 7 also limits a judge's political activities in other respects. Under Canon 3B(2), judges must require their staffs and court officials "to observe the standards of fidelity and diligence" that apply to judges. The ethical issue, then, is whether Canon 3 extends to court staff Canon 7's prohibitions on political activity.

As a threshold matter, it is noted that Canon 3's requirement of staff fidelity and diligence does not extend every aspect of the Code of Judicial Conduct to every court employee. Indeed, there are many provisions of the code which obviously apply only to judges. On the other hand, there are provisions of the code which clearly *do* apply to court staff, such as the requirement that litigants and counsel be treated courteously and without favoritism. Whether

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a certain aspect of the code applies to staff—and if so, which staff—depends on the provision itself, the harm sought to be prevented, the amount of discretion the staff member has and possibly other factors.

When judges run for office or engage in other political activity, there is the risk that some individuals may be tempted to curry favor with the judge by backing the judge's bid for political office or supporting the judge's political cause. It is out of similar concern that judges may not solicit charitable contributions. The public must have confidence that disputes will be decided solely on the merits and that the merits cannot be enhanced by supporting a judge's political candidacy or favorite charity.

In our opinion, Canons 3 and 7 of the Code of Judicial Conduct require CPOs to resign their positions before running for public office. Likewise, a public office holder should resign an elected position before accepting employment with the court as the chief probation officer. Probation officers work closely with the judge. They have the judge's ear and exercise quasi-judicial discretion. They make critical sentencing recommendations to the judge. They decide whether to petition for revocation of probation or to overlook a probation violation. They decide whether to request an early termination from probation and whether to recommend that a probationer's rights be restored. The chief probation officers hire and fire probation department staff. The principles of the Code of Judicial Conduct designed to guard against courthouse favoritism and influence-peddling, such as the prohibition against political activity, should apply to probation officers.

The same goes for a judge's secretary, bailiff, law clerk, calendar clerk, court reporter and court administrator. These employees have tremendous influence and discretion within the sphere of their duties. In our opinion, the provisions of the code designed to ensure the integrity and independence of judges should extend to these staff members as well. Indeed, it was for the same reasons that we previously opined that lawyers' Christmas gifts to judicial staffers are just as prohibited as such gifts to judges themselves. *See* Ariz. Op. 90-05 (March 27, 1990).

Most agree that the CPOs and the judges' personal staffs are covered by the Canon 7 prohibition. Are other court employees within Canon 7's coverage?

Some of us favor a bright line interpretation of the code: All employees of the judicial branch of government should be prohibited from holding any political office.

Others of us favor an interpretation of the code calling for a case-by-case analysis, *viz.*, the greater the discretion the employee has, the more likely it is that he or she comes under Canon 7. Under this view, the court administrator and a judge's personal staff would be covered, but not the courthouse janitor. Probation officers would be covered, but not file clerks.

The Code of Judicial Conduct does not provide a definitive answer. We offer these views for guidance.

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Applicable Code Sections

Arizona Code of Judicial Conduct, Canons 3, 3B(2), 7 and 7A(3) (1985).

Other References

Arizona Judicial Ethics Advisory Committee, Opinion [90-05](#) (March 27, 1990).

Revision History

Originally issued on September 11, 1992.

Revised and reissued on September 1, 1993.

Notice

This opinion was reissued on the effective date of a new version of the Arizona Code of Judicial Conduct. To avoid confusion, the revised opinion is based on the same version of the code that was in effect when the opinion was first issued in 1992. The opinion would be the same under either version of the code, except that Canons 3B(2) and 7A(3) of the 1985 Code appear as Canons 3C(2) and 5A(4), respectively, of the 1993 Code.