

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-01  
(February 16, 1994)

**Status of Court Employees Who  
Hold Political Office**

**Issue**

1. Is it unethical for the clerk of a justice court to hold an elected position on the town council?

**Answer:** yes.

2. Would it make a difference if the justice of the peace is also the town magistrate?

**Answer:** no.

3. If it is unethical, can the judge allow the clerk a grace period in which to finish her current term of office?

**Answer:** yes.

**Facts**

The justice of the peace in a rural area also serves as the town magistrate. The chief clerk of the justice court is an elected member of the town council, an after-hours position that involves mostly volunteer work. The clerk routinely disqualifies herself whenever the town council considers matters involving the municipal court.

**Discussion**

**Issue 1**

Canon 5 of the 1993 Code of Judicial Conduct prohibits judges from engaging in certain political activities. In Opinion 92-13, we expressed the view that the code imposes on judges the duty to assure that certain members of their staffs also observe these prohibitions. There are sound reasons for the code's attempt to insulate the judicial branch of government from involvement in partisan political activity. As we pointed out in 92-13, the code's prohibitions are designed to prevent the corruption, favoritism and influence peddling that can infect a court system when its sitting judges and employees are also candidates for unrelated elected office. After we issued our opinion, the Arizona Court of Appeals had occasion to discuss a related issue in *Patterson v. Maricopa County Sheriff's Office*, 1CA-CV 91-0136 (App. 1993), in which it noted that "the avoidance of public employee entanglement in partisan political activities" is a strong policy in Arizona, and indeed in federal civil service and in many states across the country." *Id.* at 9 (slip opinion). We maintain that the same policy applies to court employees.

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We continue to believe that the rule prohibiting judges and their staff from running for and holding other elected office is important to preserving the independence and integrity of the judicial branch of government. These goals frankly outweigh the inconvenience the rule occasionally may cause in small and rural communities.

### **Issue 2**

The present inquiry illustrates the point. The clerk of the justice court was elected to the town council in the same community where the justice court is located. As a member of the council, she participates in the appointment of the town magistrate. The justice of the peace for whom she clerked was appointed as the town magistrate. In other words, in the justice court, he hires her; in the town magistrate court, she hires him. This interlocking employment relationship creates an appearance of cronyism and of one hand washing the other.

We do not suggest, of course, that any actual wrongdoing occurred. We do suggest that the appearance is an unwholesome one. We further suggest that a judge's independence and neutrality are unavoidably compromised when a key member of his or her staff holds or runs for elected political office in addition to a court job. In our opinion, the code requires the inquiring judge to see that the clerk refrains from prohibited political activity defined by Canon 5, or that she resigns from the court before running for office again.

### **Issue 3**

The inquiring judge asks whether the clerk may be allowed a "grace period" to finish out her elected term if the code is interpreted to prohibit political activity by a court employee. We believe that the clerk may keep her court job while she finishes out her current term on the town council. We acknowledge, as we did in 92-13, that the code is less than crystal clear on these points. Our mission is to offer prospective ethical guidance when asked, not cause mindless hardship by an *ex post facto* application of our advice, which, in the final analysis, is only advice. We also note that 92-13 caused considerable controversy around the state. Indeed, our committee debated and redebated these knotty questions more than any other ethical dilemma sent our way recently. We acknowledge that reasonable people could reach very different conclusions on this issue and that some court employees may have relied on those conclusions in good faith.

Finally, we observe that other tricky questions remain: Which judicial employees are covered by the prohibition against political activity? Should the rules exempt "non-partisan" elections such as school board contests? The judiciary would be well served if these and the underlying policy questions were addressed by the Supreme Court in specific rules similar to its Code of Conduct for employees of the Administrative Office of the Courts. This code specifically prohibits AOC employees from holding or running for partisan elective office because "The judiciary seeks to maintain neutrality concerning political matters to the extent humanly possible" (AOC Policies and Procedures Manual, § 6.21 at 5).

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**Applicable Code Sections**

Arizona Code of Judicial Conduct, Canon 5 (1993).

**Other References**

Arizona Judicial Ethics Advisory Committee, Opinion [92-13](#) (reissued Sept. 1, 1993).

Arizona Supreme Court, Administrative Office of the Courts, Policies and Procedures Manual, § 6.21 (March 15, 1991).

*Patterson v. Maricopa County Sheriff's Office*, 1CA-CV 91-0136 (App. 1993).

**Notice**

**In May 1994, the Arizona Supreme Court stayed the effect of Opinions 92-13 and 94-01 and ordered the Administrative Office of the Courts to prepare and circulate a proposed Code of Conduct for Non-Judicial Staff. The court subsequently adopted a Code of Conduct for Judicial Employees in July 1996.**