

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-02  
(February 17, 1994)

**Superior Court Employee Serving as Pro  
Tempore Justice of the Peace**

**Issue**

Is it ethical for a superior court employee to serve as a volunteer pro tempore justice of the peace?

**Answer:** Yes

**Facts**

The requester is a judicial analyst for the superior court who works in programs concerning indigent defendants and the enforcement of court ordered fees and fines. He has been appointed as a volunteer pro tempore justice of the peace with responsibilities limited to conducting initial appearances of criminal defendants. He is not involved in sentencing and is not in a position to order reimbursement of attorney fees by indigent defendants who appear before him. His inquiry regards the propriety of his maintaining both positions and whether any ethical conflicts exist in doing so.

**Discussion**

The answer to this request is confined to the specific facts given. As a justice of the peace pro tempore, the requester is limited in responsibility to conducting initial appearances pursuant to Rule 4 of the Arizona Rules of Criminal Procedure. The purposes of the initial appearance are to verify the defendant's name and address and to inform the defendant of his or her right to counsel and of the right to remain silent. Other purposes for the initial appearance are to appoint counsel if the defendant is eligible under Rule 6 of the Arizona Rules of Criminal Procedure and to determine the conditions of release under Rule 7 of the Arizona Rules of Criminal Procedure and to set the time for a preliminary hearing. Only in cases where the initial appearance is combined with an arraignment would a plea be taken. The requester indicates that as a matter of course he would only conduct initial appearances and no arraignments, and, therefore, would never have the opportunity to accept a plea or sentence a defendant.

In his capacity as a judicial analyst for the superior court, the requester is a salaried employee and would not receive any additional compensation or benefit personally because of his judicial service. The county, on the other hand, may gain an advantage by placing him in both capacities since he may have additional background information about some of the defendants from previous contacts in either position. As a justice of the peace conducting the

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initial appearance, previous knowledge of the defendant's history may help in setting appropriate bond amounts or release conditions. As a court fee or fine enforcer, previous knowledge of the defendant's background and ties to the community may assist in setting up a possible schedule of payments.

It is worthwhile to note that in certain smaller and rural jurisdictions, the judge will often perform the task of setting up the pay schedule for the collection of fees and fines, thus performing both functions referenced here.

It is conceivable that a defendant may come before this same individual in both capacities at different times in the process, which may cause some confusion as to the role assumed at that particular time. This does not appear, however, to rise to a level of ethical impropriety and should be handled accordingly. Should this become an issue of concern, the individual may choose to relinquish his "other hat" or function to other qualified personnel in order to preserve the dignity of the judiciary.

### **References**

Arizona Rules of Criminal Procedure, Rules 4, 6 and 7.