

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-03  
(February 18, 1994)

**Justice of the Peace Serving as a  
Member of a Sheriff's Posse**

**Issue**

Can a justice of the peace or a candidate for the office of justice of the peace in the State of Arizona serve as a member of a sheriff's posse?

**Answer:** No.

**Discussion**

Canon 1 places a responsibility on all judges to establish and maintain the "independence of the judiciary." Canon 2 states that judges should avoid the appearance of impropriety and promote public confidence in the impartiality of the judiciary.

A justice of the peace hears a substantial number of criminal cases. These cases normally involve an arrest and investigation by the sheriff's office. At trial the state's witnesses normally will include sheriff's officers.

If a justice of the peace becomes a member of a sheriff's posse, his or her impartiality in criminal cases will be compromised. As a member of the posse, the justice of the peace would be under the direction and control of the sheriff of the county. In some cases, the judge will be the actual arresting officer or witness. Even in cases where he or she is not personally present at the arrest, the judge will be seen as a member of the "law enforcement team" and part of the prosecution. However, the role of a justice of the peace demands that the judge be and be seen as entirely neutral in dealing with law enforcement, prosecutors and defendants. (*See* Opinion 92-17 for an additional comment on the relationship of justices of the peace and law enforcement officers.)

Canon 4 prohibits a judge from accepting appointment to a governmental position unless for the improvement of the law, the legal system, or the administration of justice. Acting as a member of a sheriff's posse is outside the exceptions which allow a judge to work on system-wide changes. As stated in the Commentary: "Judges should not accept government appointments that are likely to interfere with the effectiveness and independence of the judiciary."

Canon 5B(1)(a) requires that a candidate for judicial office act in a manner consistent with the independence of the judiciary. Therefore, a candidate for justice of the peace also should not serve as a member of the sheriff's posse.

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**Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 1, 2, 4 and 5B(1)(a) (1993).

**Other References**

Arizona Judicial Ethics Advisory Committee, Opinion [92-17](#) (Dec. 29, 1992).