

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 94-11
(August 5, 1994)

**Court Employees Serving as Pro Tempore
Judges in Justice or Municipal Courts**

Issue

Is it ethically proper for court employees to serve as pro tempore judges in justice or municipal courts?

Answer: Yes.

Facts

Court employees are sometimes asked to assume judicial duties as pro tempore judges, and questions may arise about their ability to act independently and impartially. In many courts, justices of the peace and magistrates directly supervise court staff who are asked to assume limited judicial duties. There is considerable potential for a judge to influence a pro tempore judge by bringing pressure to bear on the employee. Moreover, a pro tempore judge might be reluctant to make a decision that his or her judge would not like. In any event, such an arrangement could affect public perceptions about the pro tempore judge's impartiality.

In addition, court employees serving as pro tempore judges could issue orders and enter judgments on cases that are filed at the intake counter where the employee undoubtedly works from time to time. One day the clerk is at the counter receiving complaints; the next day the clerk is on the bench hearing cases. There are also questions about the compensation of employee-judges, the impact of the appointment on office productivity and morale, and other possible conflicts of interest. All of these factors may affect how the public perceives the judiciary.

Discussion

Although the practice varies considerably across the state, most of the justice and municipal courts in Arizona routinely use pro tempore judges. Some of these courts appoint court employees, such as clerks and administrators, to serve in these positions when duly elected or appointed judges are not available. This usually occurs in courts of limited jurisdiction where judges are not required to be attorneys.

The qualifications of pro tempore judges vary from jurisdiction to jurisdiction. In the justice courts, judges are not required to be lawyers. *See Arizona Constitution, Art. 6, §§ 22, 32; A.R.S. § 11-402; A.R.S. § 22-102; Crouch v. The Justice of the Peace Court of the Sixth Precinct, 7 Ariz. App. 460, 440 P.2d 1000 (1968).* The qualifications of pro tempore justices

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of the peace are specified in A.R.S. § 22-122 which states that a pro tempore justice of the peace must be of good moral character and a qualified elector and resident of Arizona for not less than one year next preceding his or her appointment.

Similarly, the qualifications of city magistrates and related pro tempore judges are defined by city charter and ordinance. Magistrates may or may not be required to be lawyers, depending upon the local charter and ordinance of the municipality, and must be appointed for a term of not less than two years. *See* Arizona Constitution, Article 3; Article 6, § 6; A.R.S. § 22-102; *Winter v. Coor*, 144 Ariz. 56, 695 P.2d 1094 (1985); *State v. Holland*, 153 Ariz. 536, 738 P.2d 1143 (App. 1987).

Another concern that arises when court staff are asked to assume judicial duties involves the pro tempore judge's ability to act independently. Full-time justices of the peace and magistrates typically supervise court staff in their non-judicial duties, and there is a possibility that judges could influence employees acting as pro tempore judges to decide cases in a particular way. An employee-judge might feel pressured or compelled to decide the case as instructed in order to gain favor from or avoid offending the supervising judge.

Since all pro tempore judges serve at the pleasure of the appointing judge, the potential for undue influence exists for court employees as well as for non-court employees serving as pro tempore judges since all serve at the pleasure of the appointing judge, magistrate or justice of the peace. Because of this, it should be remembered that all judges and pro tempore judges are required to abide by the Code of Judicial Conduct as set out in the application section of the code. Therefore, this issue has its resolve in the affirmative duty of each pro tempore judge to act accordingly. If the appointing or supervising judge attempts to unduly influence the pro tempore judge, then the pro tempore judge must report such conduct pursuant to Canon 3D(1). (The failure of a judge to report misconduct may in fact be the subject of disciplinary action). Any other person privy to such misconduct can likewise report the conduct in question to the proper authority or agency, including the Commission on Judicial Conduct.

The issue regarding clerks acting as pro tempore judges when issuing orders and entering judgments on pleadings that may have been filed and processed by the same personnel acting in the capacity of clerk at other stages of the proceedings does not appear to be an ethical problem. The identical issue was addressed in Opinion 94-02 in which we noted that in smaller or rural jurisdictions, the judge will often perform many of the ministerial or clerical tasks for lack of other personnel to do so. We opined that should this cause confusion or detract from the dignity of the judiciary, that other qualified personnel could be utilized.

Finally, questions regarding other possible conflicts of interests in the intra-office court setting should be resolved as personnel matters. The questions of compensation for pro tempore judges appears to be a local matter unless otherwise specified by statute or ordinance. Therefore, these issues must be dealt with contractually. For example, many pro tempore judges serve gratuitously and as long as there is a meeting of the minds to that extent, personnel conflicts and morale problems should not arise. Full disclosure of job

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responsibilities and compensation therefore coupled with properly qualified personnel in those positions should alleviate any such problems. As provided in A.R.S. § 22-122(c):

A justice of the peace pro tempore is entitled to receive compensation as determined for an elected justice of the peace for the precinct where the justice of the peace pro tempore is assigned to serve. *A justice of the peace pro tempore may agree in advance to donate any or all of his (her) services* (emphasis and parentheses added).

When considering the qualifications of judges, it should be remembered that there are basic training and education programs or new judge orientation programs that are required of all newly appointed or elected full-time judges as provided by the Arizona Supreme Court. Additionally, mandatory annual continuing judicial education and training is required under the auspices of the Committee on Judicial Education and Training of the Arizona Supreme Court. This training and education is directed to the lawful administration of justice in our courts and is designed to enhance the public perception of judges. Pro tempore judges ought to receive the same training and education insofar as it relates to their duties. The quality, consistency, and continuation of that training and education is left to the local courts and their presiding judges. (These provisions are set out in the *1994 Administrative Guidelines for Judicial Education in Arizona*, Section J - Individual Certification (2) Exemptions, page 11.) Therefore, any concerns relevant to the qualifications of pro tempore judges beyond the local ordinances or statutory requirements, must be addressed at the local jurisdictional level.

In conclusion, there is no ethical prohibition for court employees to serve as pro tempore judges as long as they meet the requirements of the law and the local authorities.

Applicable Code Sections

Arizona Code of Judicial Conduct, Canon 3D(1) (1993).

Other References

Arizona Constitution, Article 3; Article 6, §§ 22, 31, and 32.

Arizona Revised Statutes, §§ 11-402, 22-102, and 22-122.

Crouch v. The Justice of the Peace Court of the Sixth Precinct, 7 Ariz. App. 460, 440 P.2d 1000 (1968).

State v. Holland, 153 Ariz. 536, 738 P.2d 1143 (App. 1987).

Winter v. Coor, 144 Ariz. 56, 695 P.2d 1094 (1985).

Arizona Judicial Ethics Advisory Committee, Opinion [94-02](#) (Feb. 17, 1994).

Arizona Supreme Court, Committee on Judicial Education and Training, *1994 Administrative Guidelines for Judicial Education in Arizona*.

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Historical Note

In 2002, the Arizona Supreme Court modified Part 1, Chapter 3, Section 305(C) of the Arizona Code of Judicial Administration to require that pro tem judges be admitted to the practice of law. Administrative Order No. 2002-66 (June 21, 2002). The court's order was effectively nullified by the passage of Proposition 103 in the 2004 general election. The proposition amended the constitution so that pro tem justices of the peace cannot be required to have higher qualifications than the judges for whom they are substituting.