

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 97-08  
(June 17, 1997)

## **Using Court Staff for Personal Errands**

### **Issue**

May a judge use members of his or her staff to perform personal errands?

**Answer:** No, with qualifications.

### **Facts**

The request for an advisory opinion on this subject includes a number of hypothetical fact situations. One judge may use staff to pick up or drop off clothing at a laundry. Another may ask employees to solicit orders for cookies for a child's scouting organization and to deliver the cookies to the purchasers. Another may ask an employee to distribute youth athletic uniforms. Yet another judge asks an employee to pick up a child from day care because the judge is busy with a trial. The issue is the same whether the staff member involved is a secretary, bailiff, law clerk or other employee.

### **Discussion**

The answer to the question presented is that a judge generally may not use staff members for personal errands. This issue is governed by Canon 2A, which states: "A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and the impartiality of the judiciary."

The commentary to this provision states:

A judge must avoid *all* impropriety and appearance of impropriety . . .

The prohibition against behaving with impropriety . . . applies to both the professional and personal conduct of a judge. Because it is not practicable to list all prohibited acts, the proscription is necessarily cast in general terms that extend to conduct by judges that is harmful although not specifically mentioned in the code . . . . The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired. (Emphasis added.)

A judge who repeatedly uses staff for personal errands creates a reasonable question of the judge's integrity. A judge abuses power by using court employees as personal servants. Such behavior demeans the employees and detracts from the professionalism of the court. Such conduct clearly violates Canon 2A.

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If a substantial amount of employee time is involved, the judge's action may also violate Canon 3 by undermining the employee's ability to conduct court business. Canon 3B(8) requires that judges "dispose of all judicial matters promptly, efficiently and fairly." Moreover, a judge cannot employ staff as surrogates in fund-raising activities—such as selling scout cookies—which are forbidden to the judge. See Canon 4C(4)(b).

It does not necessarily negate the ethical problem that the judge asks the employee if he or she wishes to perform the task, and the employee answers "yes." It is generally impossible to ensure that the employee's compliance is truly voluntary when the judge requests or suggests that the employee perform the work. The judge directly controls or indirectly influences the continuation of the employment and other matters of importance to employees such as working conditions and references for future employment. We agree with the dissenting opinion of Judge Workman in *Matter of Neely*, 364 S.E.2d 250, 256 (W.Va. 1987): "[T]he very nature of the employer/employee relationship is such that requests by the employer of the employee to perform tasks implicitly lack . . . voluntariness . . ." Because the test under Canon 2 is for "appearance of impropriety," it is equally problematic that outside observers cannot be certain that the employee's help is freely given and not coerced.

Under limited circumstances, a staff member may volunteer to work for a charity that the judge is involved in or render some form of personal assistance to the judge. However, to ensure that this work is truly voluntary, the judge should not request or suggest the employee's action. Moreover, even when the employee initiates an offer of assistance, the appearance of abuse is not overcome if the task is one that friends ordinarily do not perform for one another, such as picking up laundry. In such cases, a judge must not permit the employee to perform such tasks, even if the employee acts voluntarily and on his or her own initiative.

On the other hand, we cannot say that a judge commits an ethical violation every time his or her secretary performs a task that someone might say is personal rather than judicial. Some matters, such as the writing of a letter of reference, are not clearly one or the other. Other tasks are related to the judge's personal life, but necessarily are handled in the office. For example, a secretary can be expected to answer the telephone and relay messages whether a call is about judicial or personal matters.

Still, other tasks might be regarded by reasonable people as properly performed by staff. In general, we would characterize these as items that would go unremarked in other employer-employee situations and that would be regarded as an insubstantial and reasonable part of the employee's duties. Thus, an occasional request for office work involving an insubstantial amount of time and not demeaning to the employee might be permissible. For example, a secretary may photocopy a reasonable number of personal documents. On the other hand, the judge may not allow staff to prepare his or her tax return. But see *Matter of Neely*, 364 S.E. 2d at 252 (secretary can prepare judge's tax forms).

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Context is also important. For example, a judge cannot be faulted for occasionally asking a staff member who is already going out to lunch at a sandwich shop to bring back a sack lunch for the judge, if the arrangement is clearly voluntary and mutual, that is, the judge does the same or offers to do the same for the employee. On the other hand, a judge's secretary is not a food delivery service and cannot be expected to fetch lunch regularly for the judge. Judge Workman's opinion mentioned standards of social courtesy as part of the context:

Probably every judge and justice has on occasion asked one of the public employees under his discretion to pick up his lunch or a cup of coffee, or to do some other simple task that hopefully all we human beings do for one another as an everyday human courtesy. Likewise, most judges and justices hopefully have extended to public employees under their direction similar human courtesies. *Id.* at 256.

We think it immaterial that delegating a personal errand to a staff member frees the judge to work on court business. The assignment of too many personal matters to staff could be rationalized on the basis that it saves the judge's time. While judges are expected to give precedence to judicial duties, see Canon 3A, they should not routinely delegate personal matters to staff in order to maximize their own productivity. Like everyone else in a busy world, judges must meet their own commitments and set their own priorities. "No matter how arduous the duties of a justice or judge may be, . . . tasks of a personal nature remain personal responsibilities." *Id.* at 254. The Code of Judicial Conduct does not demand that when judges take the oath of office, they cease to be people, spouses, or parents. A judge does not violate Canon 3A when delayed for work because she stopped at an automobile accident scene to render aid, or when stepping down from the bench to address a family emergency.

It may be permissible for a staff member to help the judge in a personal emergency. However, we think that the permissible situations are limited to: (1) true emergencies, which are rare; (2) truly voluntary action by the employee; (3) employee involvement that is not demeaning; and (4) a time commitment that does not meaningfully detract from the employee's court work.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 2, 2A, 3A, 3B, 3B(8) and 4C(4)(b) (1993).

### **Other References**

*Matter of Neely*, 364 S.E.2d 250 (W.Va. 1987).