

*Arizona Supreme Court
Judicial Ethics Advisory Committee*

ADVISORY OPINION 00-03
(May 3, 2000)

**Employment of Law Clerk by Law Firm
and Payment of Bar Dues**

Issues

1. May an appellate law clerk accept payment of bar dues as a gift by a law firm for which the law clerk will work when the clerkship is completed?

Answer: No.

2. May an appellate law clerk be employed by a law firm prior to the clerkship and accept payment of bar dues as part of that employment?

Answer: No.

3. Is the judge for whom the law clerk works required to direct the law clerk not to accept payment of bar dues by the law firm?

Answer: Yes.

4. May a former appellate law clerk accept reimbursement of bar dues for the period of the clerkship by a law firm that employs the former law clerk after the completion of the clerkship?

Answer: Yes, with qualifications.

Facts

A law school graduate was hired as an associate by a local law firm, with the understanding that she would complete a judicial clerkship before starting work at the law firm. When the law clerk was admitted to the State Bar during her clerkship, the law firm offered to pay her bar dues. The law clerk told the judge for whom she is clerking about the law firm's offer. The judge questioned whether the law clerk could accept the offer. The judge is informed that the firm that employs the law clerk and other firms have a long-standing practice of paying bar dues for all associates, including those who accepted judicial clerkships prior to working for the firm. This firm does business with the court in which the law clerk is employed.

Discussion

The judge questions whether payment of the law clerk's bar dues violates Canon 2B of the Code of Conduct for Judicial Employees that prohibits acceptance of a gift or favor from an attorney who does business with the court. The judge also questions whether the judge would violate Canon 3C(2) due to the Canon 4D(5) gift limitation on the judge by allowing

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the law clerk to accept payment of the bar dues by the law firm. As noted above, we identified and chose to address additional issues presented by this request in order to provide a complete response.

Issue 1

Canon 2B provides: “Judicial employees shall not solicit or accept gifts or favors from attorneys, litigants or other persons known to do business with the court and shall not request or accept any payment in addition to their regular compensation for assistance given as part of their official duties.” The comment indicates this provision is aimed particularly at gifts given in recognition of services provided as an employee of the court. However, Canon 2, in general, and Section B, in particular, address the appearance of impropriety in accepting any gift from an attorney who does business with the court in which the employee is employed whether or not it is related to judicial services provided to the attorney. Consequently, we conclude that it would be a violation of Canon 2B for a law clerk to accept a gift of payment of bar dues from a law firm.

Issue 2

The fact that the law clerk was employed by a law firm prior to her employment as a law clerk presents the issue of whether the offer to pay the bar dues is, in fact, an offer of a gift at all. Instead, payment of the bar dues appears to be a benefit provided to all associates and is evidence that the law clerk is employed by the firm. If so, this set of facts involves an ethical problem under Canon 4 of the Code of Conduct for Judicial Employees concerning outside employment. Canon 4B provides in relevant part:

Except as provided by law or court rule, judicial employees shall not engage in any business activity or secondary employment that:

(1) Involves an organization or a private employer that regularly conducts business with the court;

....

(3) Places the employee in conflict with his or her official role in the judicial department.

The law firm that offered to pay the law clerk’s bar dues is acknowledged to do business with the court in which the law clerk is employed. Law firms that do any type of litigation regularly conduct business with the court in which they practice. Employment by a law firm would cause a conflict of interest for the law clerk whenever the law firm appears in a case before the court that employs the law clerk. Therefore, we conclude that it would be a violation of Canon 4B for the law clerk to be employed by the law firm and to receive payment of bar dues as part of that employment.

The Arizona Supreme Court’s Law Clerk Code of Conduct is supportive of our conclusions based upon the above analysis of the Code of Conduct for Judicial Employees. Since this code appears to apply just to Supreme Court law clerks, we do not rely upon it as

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directive to all appellate law clerks. The preamble of the judicial employee code contemplates other codes of conduct, such as this one, that provide more rigorous standards of conduct for specific types of judicial employees.

Canon 3D(4) of the Supreme Court law clerk code in pertinent part provides:

It is recognized that, during his clerkship, a law clerk may apply for professional employment following the conclusion of his clerkship. To avoid embarrassment to interested parties, as well as potential conflicts of interest, the following guidelines apply:

. . . .

(c) The law clerk need not recuse himself from participation in a case involving a law firm to which an application for employment is pending. However, if serious or active negotiations are underway, the law clerk should inform the judge, and volunteer to withdraw from the case.

This provision indicates recognition that even a pre-employment relationship by a law clerk with a law firm is a potential conflict of interest. It is consistent with the employee code in addressing the practical reality that law clerks will need to seek employment with law firms during their clerkship and will need to deal with any consequent conflict of interest or appearance of impropriety that arises in a particular case. However, the law clerk code stops short of allowing employment to begin prior to or during the clerkship.

Issue 3

The Code of Judicial Conduct also supports our conclusions and requires action by the judge. The law clerk is a member of the personal staff of the judge as defined by the Code of Conduct for Judicial Employees. Due to the close association of personal staff with the judge, the Canon 3C(2) requirement that the judge “shall require staff . . . to observe the standards of fidelity and diligence that apply to the judge . . .” is most applicable. Canon 4D(5) would prohibit a judge from accepting a gift such as this from a law firm. Canon 4D(1)(b) would prohibit a judge from establishing a business relationship with a law firm in which the judge would receive a payment such as this. The judge is also required by Canon 3C(5) to require staff to comply with the Code of Conduct for Judicial Employees.

Issue 4

As concluded above, a law clerk may not accept payment of bar dues for the period of the clerkship as a gift or as compensation for employment during the clerkship. This limitation is intended to avoid any appearance that the payment is related to the service as a law clerk. Unless the payment is made for some other reason it is immaterial whether the payment is made during or after the clerkship. However, if a law firm has a policy of reimbursing all new law school graduates hired as associates for bar dues expenses incurred between the time the associate joins the bar and commences employment then the same

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benefit could be provided to a law clerk who joins the bar during the clerkship and commences employment after the clerkship. This would be a benefit of the subsequent employment rather than a gift or compensation for employment during the clerkship.

Applicable Code Sections

Arizona Code of Conduct for Judicial Employees, Canons 2B, 3C(2), 3C(5), 4B, 4D(1)(b) and 4D(5) (1997).

Arizona Code of Judicial Conduct, Canon 3C(2) (1993).

Other References

Arizona Supreme Court's Law Clerk Code of Conduct, Canon 3D(4).