

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 02-08  
(December 2, 2002)

**Judicial Participation in Selection Process  
For City Prosecutor and Chief of Police**

**Issue**

Is it ethically proper for a municipal court judge or clerk of the court to participate in the interview and hiring process for the position of the city prosecutor, chief of police, or other executive department officials of the same jurisdiction in which the judge and clerk serve?

**Answer:** No.

**Facts**

A municipal court judge in a small community is viewed by the city manager as the “head of the judicial department” within the city, equal in status and function to other department heads who participate on interview panels for other executive positions, such as the city prosecutor and chief of police. Since the judge is unable to attend most meetings due to his courtroom responsibilities, the chief clerk attends, participates, and later briefs the judge on the points relevant to the court. The judge is concerned that the court’s participation in these and other hiring-related decisions for executive positions may affect the separation of powers and independence of the judiciary.

**Discussion**

The analysis of this issue begins with Canon 4C(1), which mandates that “[a] judge shall not appear at a public hearing before, or otherwise consult with, an executive or legislative body or official except on matters concerning the law, the legal system or the administration of justice . . . .” Participation in the interview and selection process for appointees in the executive department not only involves judges in consultation with executive officials but also in joint decision-making. Selection of a particular person to serve as an executive official does not involve consultation concerning the law, the legal system or the administration of justice even though the person is being selected for a position involved in the administration of justice, such as prosecutor or chief of police.

Limitations on judicial involvement in executive department functions are also mandated by Canons 1 and 2, which incorporate the constitutional doctrine of separation of powers. Canon 1 requires a judge to establish, maintain, enforce, and personally observe “high standards of conduct . . . so that the integrity and independence of the judiciary will be preserved.” Canon 2 requires a judge to avoid even the appearance of impropriety and to “comply with the law and . . . act at all times in a manner that promotes public confidence

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in the integrity and impartiality of the judiciary.” Judges have a continuing duty to protect the integrity of the decision-making process of the court and ensure that it is not compromised by any improper outside influences. Involvement in extra-judicial duties necessarily subjects a judge to pressures, distractions, concerns, and demands that are likely to divert the judge from the primary judicial functions of case management and independent decision-making. The extent of a judge’s involvement in extra-judicial activities must be balanced against the demands of the judicial office. In Opinion 88-03 (limitation on judicial officers holding other public positions), the committee cited *Matter of Walker*, 153 Ariz. 307, 736 P.2d 790 (1987), and concluded that a judge must remain untainted by the administrative responsibilities of budgets and finances that would be imposed upon a judge who simultaneously held another governmental office. The supreme court stated in *Walker*:

The separation of powers doctrine is a fundamental principle on which federal, state, and local governments are based. The doctrine protects the common interest of the public by requiring that those who make the law be different from those who execute and apply it. Thus, the doctrine decreases the potential for a government to be controlled by one faction. To protect against unchecked power, it is necessary not only to have separate branches of government but also to have separate personnel in each branch. When a judge participates in enacting the law that he later is called on to interpret in deciding cases before him, the separation of powers doctrine has been violated. *Id.* at 310, 736 P.2d at 793 (citations omitted).

These principles also support our disposition of the issues presented here. To properly maintain the separation of powers, a judge should not participate in executive department personnel matters. A judge should avoid involvement in the hiring, promotion, and termination of executive department employees except when such issues are presented in the context of litigation in the judge’s court. In the instant case the presiding judge in a small city was asked by the city manager to participate, like other department heads, on interview panels that would interview candidates for various executive department positions, such as the city prosecutor, chief of police, or other top level management positions. It would be an untenable conflict of interest for a judge to make hiring recommendations on the selection of a prosecutor and police chief, who would subsequently work for the same employer as the judge, heading criminal justice and law enforcement activities that directly affect operations in the judge’s court. Participation in these hiring decisions would generate endless speculation about the judge’s reasons and motives that would seriously compromise the judge’s integrity, and thereby undermine public respect for the court.

We believe that the clerk of court is subject to the same restrictions as the judge. Although not explicitly stated, it appears from the facts presented that the clerk is a direct employee of the presiding judge and not independently elected or appointed. Thus, the clerk is a direct judicial employee and subject to the Code of Conduct for Judicial Employees. Canon 1 of that code mandates that employees shall uphold the independence and integrity of the judiciary by “maintain[ing] high standards of conduct so the independence of the

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judiciary is preserved,” and by “maintain[ing] and observ[ing] the highest standards of integrity, honesty, and truthfulness in their professional and personal dealings.”

This language is very similar to the language in Canon 1 of the judicial code and imposes the same high standards of behavior on judicial employees as is required of judges. Direct employees of the presiding judge are the judge’s representatives when engaging in official duties of the judicial department. Thus, when the clerk attends municipal planning, budget, policy, and other administrative meetings, the clerk is acting in an official capacity for and on behalf of the presiding judge and must adhere to the same strict standards of conduct. In this instance, the clerk, like the judge, should refrain from participating on any hiring panels involving executive department administrators, managers, or other personnel. *See* Op. 96-08, Issue 7 (August 15, 1996) (a judge’s personal staff and court managers are subject to the same limitations as the judge).

This opinion, however, should not be construed to prohibit all formal contact between job applicants and judicial office employees. It is entirely appropriate for the judge, clerk, or other judicial employees to meet with potential executive administrators and managers and brief them on court operations, procedures, and personnel. Such briefings will give the applicants a more complete picture of the working environment in which they seek employment without compromising the independence of the judicial department. Nor should this opinion be construed to preclude legitimate interaction between judicial, executive, and legislative officials on matters affecting the legal system or administration of justice, such as meetings to address criminal justice operational matters or to review the court’s budget. Finally, in connection with the city’s screening of applicants for the position of city prosecutor, the judge may provide an evaluation of any applicant who has appeared before the judge as an attorney, in accordance with Op. 00-04. *See also* Op. 02-04.

### **Applicable Code Sections**

Arizona Code of Judicial Conduct, Canons 1, 2 and 4C(1) (1993).

Arizona Code of Conduct for Judicial Employees, Canon 1.

### **Other References**

Arizona Judicial Ethics Advisory Committee, Opinions [88-03](#) (May 11, 1988); [96-08](#), Issue 7 (Aug. 15, 1996); [00-04](#) (Aug. 24, 2000); [02-04](#) (Aug. 12, 2002).

*Matter of Walker*, 153 Ariz. 307, 310, 736 P.2d 790, 793 (1987).