

*Arizona Supreme Court  
Judicial Ethics Advisory Committee*

ADVISORY OPINION 05-04  
(October 27, 2005)

**Limitation on Court Employee Serving  
as Volunteer Crisis Worker**

**Issue**

May a deputy court clerk volunteer to serve as a crisis worker in the county attorney's victim-witness program?

**Answer:** No.

**Facts**

A clerk in a rural municipal court has been invited to become a volunteer crisis worker in the victim-witness program at the county attorney's office. The victim-witness program provides on-scene crisis intervention services 24 hours a day. The program is staffed by advocates trained in crisis intervention techniques who respond to the scenes of sexual assault, domestic violence, suicide, homicide, and other major felonies, as well as natural deaths, at the request of law enforcement. This allows law enforcement agencies to more efficiently use their time and efforts for the investigation of crimes. Crisis advocates also accompany victims to the hospital, support family members of victims, provide clothing for sexual assault victims and may assist with temporary shelter, food, and transportation. Advocates explain the process of investigation, court proceedings, and any necessary hospital exams to help ameliorate traumatic situations. They may also accompany victims and witnesses to court proceedings.

The clerk occupies an entry-level position at the municipal court. She provides customer service and performs diversified clerical work for the court as assigned. The local magistrate wants to know if there are any ethical constraints that would prevent the clerk from participating in the victim-witness program.

**Discussion**

Canon 4 of the Code of Conduct for Judicial Employees ("employee code") states that "[j]udicial employees shall so conduct their outside activities as to minimize conflicts with their employment responsibilities." Section A of the canon reinforces this general principle by expressly prohibiting any outside activity that might bring a "negative effect" on the court. While the canon does not specifically refer to volunteer activities, these introductory standards are broad enough to encompass all types of outside activities and services, whether they are performed for compensation or done voluntarily.

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Although it relates primarily to financial activities, Section B provides a useful starting point for analyzing limitations on volunteer activities. This section applies to all judicial employees, except duly-appointed court reporters while preparing transcripts, and contains several provisions that restrict regular and “secondary employment,” a term that is analogous to volunteer work in the sense that it describes activities that are outside the employee’s primary occupation.

Section B(3) precludes any employment that “[p]laces the employee in a position of conflict with his or her official role in the judicial department[.]” By extending the analogy, it is easy to see that court employees who are working outside the court, whether in a paid position or as a volunteer, must “perform their [court] duties impartially,” as required by Canon 3B. Ordinarily, a clerk who volunteers to work for a blood bank or an emergency response agency or a local food bank would not encounter any conflicts with his or her official role because these types of organizations rarely appear in court and their core functions are not law-related. On the other hand, a clerk who volunteers to work as an aide or counselor in a victim-witness program would be expected to advocate for victims—conceivably in opposition to the interests of others involved in the criminal justice system. Thus, a clerk’s volunteer work could potentially conflict with his or her official and primary job within the court.

Furthermore, Section B(4) forbids employment that “[r]equires the employee to appear regularly in judicial . . . proceedings [.]” We do not know how frequently the clerk might actually appear in judicial proceedings—whether in the municipal court for which she works or in another court—but we cannot assume that such appearances would never happen. It is foreseeable that a crisis worker may be called upon to accompany victims or witnesses to court hearings on occasion or even regularly.

Canon 4B(1) prohibits employment that “[i]nvolves an organization . . . that regularly conducts business with the court[.]” We recognize that the county attorney’s office, which administers the victim-witness program, might not appear in a municipal court, at least not frequently. In most municipal courts the city attorney represents the interests of the State of Arizona. However, some municipal courts in smaller cities in the state share judicial officers and facilities with local justice courts. One judge may thus serve as a justice of the peace, before whom the county attorney regularly appears, and also as a municipal judge, before whom the city attorney regularly appears. As to these combined courts, 4B(1) would apply.

Finally, we are concerned that the clerk’s volunteer work might violate Canon 4B(5) by “giv[ing] the impression the employment or activity is on behalf of the judicial department[.]” Crisis workers deal with victims of varying levels of sophistication and experience. It is conceivable that some victims—even in the face of advice to the contrary—may form the impression that their crisis worker’s status as a deputy court clerk will give them an advantage in cases in which they are involved. Similarly, defendants who learn that their accusers have been counseled and assisted by a court clerk may question the fairness of the proceedings against them.

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The committee is cognizant of Opinion 94-10, which found no ethical impropriety in court staff workers' participation in a volunteer police assistance program. That opinion was, however, rendered in 1994, three years before the adoption of the employee code. Those portions of Section 4B discussed above appear to reject, albeit inferentially, this committee's earlier opinion, and the commentary to Section 4B states, in relevant part, "In order to avoid any employment that is in conflict with a judicial employee's official role within the judiciary, a judicial employee should not, for example, work for a police department, public defender, or prosecutor."

Consequently, Opinion 94-10 may not retain much validity in view of the subsequent adoption of the employee code. We note, however, that its final paragraph, consistent with the above analysis, cautions against volunteer services such as those under discussion.

In summary, the committee advises looking to the type of volunteer service proposed. If it involves working on actual cases that may come to court, or in a regular police staff role, including telephone receptionist and office clerical work, it should be avoided. If it involves general community service and is unrelated to actual prosecution, it should be permitted.

Serving as a crisis worker will inevitably put the volunteer in contact with police, prosecutors, and victims who may appear in the courts—quite possibly including the court in which the clerk is employed.

The committee has high regard for crisis workers, who perform a valuable public service. The issue, however, is not the importance of the volunteer activity, but whether it is compatible with the clerk's role as an employee of the judicial branch. We believe it is not, and that the clerk should therefore decline to participate in the victim-witness program.

### **Applicable Code Sections**

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

### **Other References**

Arizona Judicial Ethics Advisory Committee, Opinion 94-10 (Aug. 3, 1994).