

**A NATIONAL INVENTORY AND REVIEW OF ETHICS CODES
FOR COURT MANAGERS AND STAFF**



**Institute for Court Management
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ABSTRACT

In the late 1980's following a national survey on staff ethics in the courts, the American Judicature Society (AJS) published a model code of conduct for court employees. The National Association for Court Management (NACM) and the Conference of State Court Administrators (COSCA) adopted model codes of conduct shortly thereafter, both based on the AJS model. Although the AJS, NACM, and COSCA codes were all titled as "model" codes, as this report shows, the structure, content, placement, format, and means of enforcement of ethics codes actually adopted for court employees on state and local levels now vary dramatically. While codes of judicial conduct are generally well-developed and relatively consistent throughout the United States, codes of conduct for court managers and staff have a much shorter history and are neither uniform in structure nor consistent in content.

While the NACM code has remained unchanged since its adoption, it may be updated soon. In the Fall of 2006 NACM's Board of Directors convened a group of trial court managers across various states to review the current model code and propose a revision. The working group is now also consulting informally with representatives of the Conference of State Court Administrators. Drawing on a wide array of codes already adopted and including some new sections on recently-emerging issues, the working draft continues to circulate.

To assist the Association's ethics working group in developing a broad national perspective on the current state of ethics codes for court employees, this project updates and broadens the national inventory of codes and related documents reviewed by AJS in 1987-1989. The collection and review of existing codes is the core of this project and report. Appendices 2 (Codes and References Collected, United States), 3 (Codes and References Collected, International) and 4 (Codes and References Collected, Court Interpreters) list these materials,

which make up a previously unavailable resource of now nearly 70 codes for court management professionals, national and state associations, and scholars. The collection was assembled through extensive personal research, solicitations to colleagues, and generous contributions from fellow court managers in the field.

As this Institute for Court Management Project drew to a close an additional survey was developed and distributed to 100 state and local jurisdiction recipients from all 50 states to make certain the collection is as complete as possible. Appendix 5 to the report includes a copy of the follow-up survey cover letter, the survey itself and a list of the survey recipients in addition to state court administrators nationwide.

This report reviews the structure, placement, topic areas, enforcement mechanisms, and newly emerging ethics and conduct issues across the United States as reflected in the collected codes and references for court managers, staff, court interpreters, court reporters and judges codes (as they apply to staff). The codes are reviewed in five sections:

- Structure and Placement of Ethics and Conduct Provisions;
- Summary of General Topics and Applications;
- Enforcement;
- Measuring Effectiveness; and,
- Conclusions and Recommendations.

In conclusion the author suggests that if indeed the nation's courts wish to move toward a relatively consistent national model code of conduct for court managers and staff, a great deal of work must be done to establish a consensus and clarity on content, structure and purpose of conduct codes, and to reconcile the dramatically different approaches adopted throughout the states since the late 1980's.

INTRODUCTION AND LITERATURE REVIEW

Initially one might think that simply cataloging ethics codes for court managers and staff² adopted across the United States circa 2007 is about as interesting as scanning the card index at a library or the bibliography in a dissertation. However, because of the complex issues of human behavior involved, the wide variety of code structures and placement, the array of enforcement mechanisms applied, and at least two relatively new topic areas now emerging (Internet searches on prospective employees, and the ethical issues involved in balancing public records access against a protection of privacy), this project has proven to be a much richer topic than one may initially expect, and is perhaps a long past-due contribution to the field of court management.

In the late 1980's the American Judicature Society (AJS) surveyed court systems in the 50 states on ethics codes for court managers and staff. This project updates and broadens that inventory of codes and other documents that Ozar, Kelly, and Begue discussed in their review for the AJS in 1988.³ Following that research, the AJS drafted and published a model code of conduct for court employees in 1989.⁴ Their work was later used to draft the Model Code of Conduct for the National Association for Court Management (NACM),⁵ and the Model Code of

² This report avoids describing court managers, administrative employees and court staff who are not judges as "non judicial." Although a number of the codes discussed in this report do use that term, that phrase strikes this author as awkward, essentially describing employees of the judiciary as "non-judicial." Moreover, these important court employees should not be labeled and designated as "non-something." Instead this report uses simply uses terms like court managers and court staff throughout to refer generally to court employees other than judges.

³ David T Ozar, Cynthia Kelly, Yvette Begue. *Ethical Conduct of State Court Employees and Administrators: The Search for Standards*. American Judicature Society: 71 **Judicature** 5 (1988), p 262-276.

⁴ David T Ozar, Cynthia Kelly, Yvette Begue. *Ethical Conduct of Nonjudicial Court Employees: a Proposed Model Code*. American Judicature Society: 73 **Judicature** 262 (1989), p 126-137. See Appendix 6 for a copy of the AJS Code.

⁵ *Model Code of Conduct*. National Association of Court Management, adopted 1990.
<http://www.nacmnet.org/codeofconduct.html>

Conduct adopted by the Conference of State Court Administrators shortly thereafter.⁶ Since its adoption, NACM's code has remained unchanged. In the Fall of 2006 the Board of Directors asked a group of court managers to review the Code and propose a revision. The group is chaired by Pam Harris, Maryland, and includes Peter Kiefer, Arizona; David Slayton, Texas; Kevin Bowling, Michigan; Paul Burke, Massachusetts; and Karl Thoennes, South Dakota. Most recently state court administrators Lee Suskin, Vermont, and David Boyd, Iowa; have also informally participated as representatives of the Conference of State Court Administrators.

Not surprisingly, the group has debated the content, format, topics, and organization of a new model code for some months. In many ways the discussion has reflected the difficulty in settling on a clear, standard, widely-adopted format – a *model* format – for ethics codes for court employees across the country. As reviewed in this report, just as states and local jurisdictions have adopted a wide variety of structures and placements for the ethics statements, no single code of conduct for court employees has emerged as the predominant model code.

By emphasizing the highly divergent codes of conduct adopted by various jurisdictions, this report does not mean to imply that codes have purposely been adopted haphazardly or without great deliberation. For example, in the introduction to the NACM Model Code of Conduct in 1990, the code committee at the time⁷ specifically explained the rationale for the departures from the AJS model:

In 1989 the committee began to study whether the model code proposed by [AJS] would best meet the needs of NACM. After considerable discussion, it was decided to develop a new code of conduct for NACM, based on the AJS model. It also determined that the NACM code should not be as detailed as the AJS model and that a document should be

⁶ *Model Code of Conduct for Nonjudicial Court Employees*. Adopted by the Conference of State Court Administrators. Adopted circa 1993. Reprinted in **The Ethics Fieldbook: Tools for Trainers**. Cynthia Kelly Conlon, Lisa Milord. American Judicature Society/State Justice Institute. Appendix D:3 (1996), p 155-168. <http://sio.midco.net/hthoennes/COSCA%20Code%20c%201993.pdf>

⁷ The 1990 NACM code committee included Cameron Burke, Norman Meyer, Kent Batty, John Clarke, Don Cullen, Charlie Gnadt, Randy Kitchen, Frederick Lear, Todd Nuccio, Pam Roberts, Sam Shelton, and Steve Steadman.

written that could easily be replicated in NACM materials. Further, the AJS model was written to encompass all court employees, but the committee felt that a code for NACM members would be most appropriate. One major difference between the two codes is the level of detail. While NACM's model is written in a general fashion, the AJS code lists specific prohibited activities. The diversity and composition of our membership compelled the committee to develop a code that could apply to all jurisdictions and court managers as represented by NACM's membership.⁸

Certainly the 2006/2007 NACM code committee is wrestling with many of the same issues as the original group, along with the addition of a few newly emerging topics that did not exist in 1990, such as the propriety of conducting Internet searches on prospective job applicants.

SECTION 1: Structure & Placement of Ethics & Conduct Provisions

Ethics or conduct codes and provisions take a wide variety of forms, formats, and placements. To be clear, for the purposes of this paper the phrase "ethics code" is intended to refer not only to formal statements of standards, principles and ideals of behavior, but to also include ethics statements in personnel rules, general administrative policies and court orders that establish standards of behavior for court managers and staff on single or multiple topics, or even management directives on conduct to a single classification of employees within a single court. In short, ethics codes are defined as any written directives in whatever form they may take to guide court managers and staff on ethical behavior and expectations. From the elaborate codes and commentaries by the Federal Courts⁹ to the refreshingly simple but no less idealistic

⁸ Introduction to the NACM Code, reprinted in **The Ethics Fieldbook: Tools for Trainers**, ibid. Appendix D2, 1996, p. 151-153.

⁹ For example, see "Code of Conduct for Judicial Employees," adopted by the Judicial Conference of the United States, 1996. <http://www.uscourts.gov/guide/vol2/ch2a.html>.

assertions of court employees' public duties and responsibilities,¹⁰ ethics codes or conduct provisions can take an almost endless variety of forms.

Most state or local jurisdictions, even those with separate, formally adopted ethics codes, still often address standards for employee conduct in their Personnel Rules. South Dakota for example (which has no formal ethics code for court employees) adopted personnel rules which include Chapter 9: Conduct.¹¹ That chapter addresses areas often found in separate ethics codes, including political activity for court employees, nepotism, and outside employment. Similarly, the Colorado judiciary adopted personnel rules for court employees that address outside employment and political activity.¹² Montana's Personnel Policies and Procedures include a separate and distinct section titled "Code of Employee Conduct."¹³

In a number of other jurisdictions, whether or not the courts have adopted a code, standards of conduct for administrative or clerical court employees may also be set by statute or local ordinance. In Maryland for example, the state ethics law specifically applies to administrative or managerial court employees, although it does exempt judicial officers.¹⁴ In a relatively rare requirement for administrative court employees in the United States, Maryland's government ethics statutes actually impose a personal financial disclosure requirement on court staff. Similarly in New York pursuant to 22 NYCRR Part 40, a total of 3,640 court employees

¹⁰ For example, see the Clerk of Court's statement of a clerk's job in the tribal court for the Nooksack Indian Tribe, Bellingham, Washington. http://www.nooksack-tribe.org/court_clerk.htm

¹¹ State of South Dakota, Unified Judicial System, Personnel Rules. 9.2-9.5. Revised July 1998. A revision is currently pending before the Supreme Court. www.sdjudicial.com/downloads/AppdxEPersonlRulesn.ujs.pdf

¹² Colorado Judicial System Personnel Rules, Adopted July 1, 2005. Sections on outside employment, 44-45. www.courts.state.co.us/chs/hr/employment/72005personnelrule.pdf

¹³ Montana Judicial Branch, Personnel Policies & Procedures, Section 210, Chapter 3-1-130 MCA, May 6, 2002. <http://sio.midco.net/hthoennes/Montana%202002.doc>

¹⁴ Md. Code Ann., State Gov't §§ 15-101 through 15-1001. <http://ethics.gov.state.md.us/bluepamphlet.htm>

other than judges were required to file personal financial disclosures with the New York State Ethics Commission for the Unified Court System in 2004, including “employees who were required to file by virtue of their rate of annual compensation or by virtue of the fact that they had been designated as policymakers.”¹⁵

Table 1 summarizes how conduct codes or ethics provisions are structured across an illustrative sample of courts across the country. It is immediately apparent that some states and jurisdictions appear in multiple places on the same table. This demonstrates how ethics and conduct provisions are frequently found in multiple documents within a single jurisdiction, and how court employees can simultaneously be subject to multiple and sometimes conflicting layers of conduct directives.

¹⁵ New York State Ethics Commission for the Unified Court System, Commission Annual Report, 2005, p. 8. www.courts.state.ny.us/ip/ethics/AnnualReport.pdf

Table 1: Sample Summary: Structure and Placement of Conduct Provisions;
 Where do we find ethics or conduct statements?
 (Illustrative sample of codes among those collected)

Structure/Placement	Examples, State or Jurisdiction
1. Ethics Code generally adopted for judicial officers, but directly or indirectly applicable to court staff	Alaska (Tribal Court/Tanana Valley Chiefs Conference); Minnesota, South Dakota, Nebraska (indirectly through a provision of the ABA Model Code of Judicial Conduct)
2. Ethics Code specifically adopted for court staff, separate from judicial conduct codes.	Arizona, California, Florida 17 th Circuit, Kansas (for probation officers), Maryland (1998; a new code is currently under consideration in some jurisdictions), Michigan, New Jersey, New York
3. Personnel Rules which include ethics or conduct provisions	South Dakota (Chapter 9), Colorado (Part 5). Montana
4. State law, local ordinances or regulations	Maryland (state ethics law applies to administrative court staff, specifically exempts judicial officers), New York.
5. Administrative or judicial orders or directives on ethics or conduct	Delaware, Kosrae (Pacific Islands)
6. Model Ethics Code specifically adopted by reference for court staff	Florida 15 th Circuit (court order adopting the AJS model code in its entirety)
7. No separate formal code; ethics and conduct issues addressed by court managers as situations arise.	South Dakota (discussions with a number of former colleagues indicate that the ABA Model Code provision is not well known or rarely if ever consciously applied to court staff.)

As just one example of the multiple layers of sometimes conflicting conduct directives under which some court employees operate, South Dakota's personnel rules generally prohibit nearly every form of partisan political activity by court employees.¹⁶ At the same time, South Dakota state statutes provide that "No state agency may pass a rule restricting or prohibiting the constitutionally guaranteed right of its employees and officers to express their opinions."¹⁷ South Dakota state law further provides:

¹⁶ South Dakota Unified Judicial System Personnel Rules, Rule 9.4 Political Activity, Appendix E-9.4, 97.

¹⁷ South Dakota Codified Laws (SDCL) 3-6-27.

Freedom of speech of officers and employees guaranteed. It is the policy of the State of South Dakota that citizens of this state and of the United States shall not be deprived of their freedom of speech guaranteed them by the constitutions of the United States of America and of the State of South Dakota, by reason of the fact that they are state officers and employees.¹⁸

Perhaps even more difficult to reconcile would be the potential conflict between the restrictions on political activity by court employees in Minnesota, and the two bills pending in Minnesota's State Legislature. One proposed law would prohibit any restrictions on political activities of unionized employees unless such restrictions were contained in union contracts.¹⁹ The second reads "Section 1. [480.1812] Employee Political Activities. The judicial branch may not impose restrictions on the political activities of its employees outside of the workplace."²⁰ At the time of this writing it is unknown whether either of those bills may ever actually pass.

The Court Employee Code of Ethics adopted by Minnesota in April 2006²¹ provides a good example of a variety of conduct references and placements that apply to court employees in a single jurisdiction. To Minnesota's credit, the Code cross-references all the sources of conduct provisions into the single ethics document. For example, the Code notes that employees should not to use their positions for personal gain – and provides a citation to the court's procurement code. It directs that employees may not to accept gifts, and cites the court's separate gift policy. It further directs that employees may not allow personal relationships to influence their work or decisions, and cites the separate nepotism, finance and procurement policies. The Code also addresses outside employment, and references the separate outside employment policy. In fact, a

¹⁸ SDCL 3-6-26.

¹⁹ House File 322, Minnesota Legislative Session 85. <http://www.leg.state.mn.us/leg/legis.asp>

²⁰ Senate File 233, Minnesota Legislative Session 85. <http://www.leg.state.mn.us/leg/legis.asp>

²¹ Minnesota Judicial Branch, Court Employee Code of Ethics, adopted April 2006. <http://sio.midco.net/hthoennes/MN%20code%20of%20ethics%202006.doc>

majority of sections in Minnesota's Code of Ethics for Court Employees incorporate by reference separate personnel, finance, procurement, or other policy statements, rather than simply assert provisions in the ethics code in isolation. This author is not aware of another state-level code that seeks to tie together such an array of separate policies within a single code as comprehensively as Minnesota's.

Because the American Bar Association's Model Code of Judicial Conduct is so widely and consistently adopted by state judiciaries, a more detailed discussion of the ABA's Code is appropriate here. For those states that have adopted the ABA Code, the application of a judicial conduct code to court staff as shown in Table 1, Item 1 above is based on three provisions in the American Bar Association's Model Code of Judicial Conduct. As a practical matter court staff may assume, and no doubt correctly so, that judicial supervisory authority is based on the inherent authority of the judges' positions rather than a provision in a judicial conduct code. Because those provisions are so seldom applied by judges it would not be surprising that the ABA provisions are seldom known to court staff.²² Canon 3 in particular includes the provisions that indirectly apply the ABA's Model Code of Judicial Conduct to support staff through the judges (emphasis added):

(B)(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, **and of staff, court officials and others subject to the judge's direction and control** (emphasis added).

(B)(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, **and shall not permit staff, court officials and others subject to the judge's direction and control to do so** (emphasis added).

²² American Bar Association, Model Code of Judicial Conduct, 2004. www.abanet.org/cpr/mcj/canon_3.html. A revision to the ABA's Model Code was adopted just a few weeks ago in early 2007, but has not yet been considered for adoption in the respective states: www.abanet.org/judicialeducation/ABA_MCJC_approved.pdf

(C)(2) A judge shall require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.

The ABA's latest revision to the Model Code was adopted so recently (February 2007) that states have not yet had time to consider modifying their respective judicial conduct codes accordingly; therefore, this paper cites the more commonly well-known and widely adopted 2004 version. However, the 2007 revision does reorganize some sections and includes a court staff supervisory section as follows:

Rule 2.12 Supervisory Duties. (A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

As Speers (2006) notes,²³ the formation, content, and development of an ethics codes is heavily influenced by those officials and employees subject to the code. Not surprisingly the application of various codes for court employees varies as widely as the codes' structure, placement, adoption authority, court organization structure, and respective legal environments.

Table 2: Application of Ethics Codes or Conduct Provisions:
To Whom Do They Apply?
(Illustrative Sample of Conduct Codes)

Application	State or Jurisdiction
Statewide application, all court employees other than judges.	South Dakota, Montana, Colorado, Michigan, Minnesota, Maryland's proposed/draft/2007 code of conduct, Maryland's state ethics law.
Statewide, but within a single level of trial or appellate courts	Ohio, Code of Conduct for Supreme Court Employees
Local application (by judicial district, by a single court, within a single office within a court, etc.)	Florida's 17 th Judicial Circuit, ethics section of Clerk of Court's procurement code; South Dakota, 2 nd Judicial Circuit's policy on court employees involved in pending court actions; Michigan, Bay Mills Indian Community Tribal Court.

²³ JoAnne Speers. *Chapter 3: To Whom Should the Code Apply? Developing a Local Agency Ethics Code: A Process Oriented Guide.* Institute for Local Self Government. 2003, p 13.

Individual application through membership in a professional association	Michigan, code adopted by the Michigan Court Administrators' Association; National Association of Court Management; American Society of Public Administration, etc.
Application to a single or limited classification(s) of court employee	Maryland's 1998 Code, applying to circuit clerks; the Federal code applying to "all court employees except Justices; judges; and employees of the United States Supreme Court, the Administrative Office of the United States Courts, the Federal Judicial Center, the Sentencing Commission, and Federal Public Defender offices." ²⁴

SECTION 2: Summary of General Topics, Practical Applications

As widely as the structures and placement of employee ethics and conduct provisions vary in the courts across the nation, so too does the organization of the topic areas in various codes. One of the initial intentions of this project was to assemble a national comparison table on topics found in codes of conduct that generally looked like this:

Table 3: A Theoretical Table to Show Corresponding Topic Areas in Ethics Codes for Court Employees								
	Gifts	Conflicts of Interest	Political Activity	Nepotism	Confidentiality	Duty to Report	Impropriety, Appearance of Impropriety	Outside Employment
Code A	✓		✓	✓		✓	✓	✓
Code B		✓	✓		✓		✓	
Code C	✓		✓		✓			✓

If the nation's codes were consistent enough to actually make such a table practical, it would no doubt be very helpful and worthwhile to identify common themes, topic areas, and whether a consensus had been developed on how codes are organized and topics are divided.

²⁴ Code of Conduct for [Federal] Judicial Employees, 1995, p. 1. www.uscourts.gov/guide/vol2/ch2a.html

However, the following alternative table demonstrates the dramatic variation in topics, titles, and organization in various codes throughout the country. Table 4 further demonstrates that because there is so much variation in the organization of content areas, a neat typology to classify ethics codes by common content areas seems impractical if not impossible. In other words, it is difficult to identify corresponding code provisions when relatively little content actually corresponds from one code to the next. In trying to identify corresponding content it seems much more practical to simply index the provisions as follows in Table 4:

Table 4: Topic Areas and Subject Organization in an Illustrative Sample of Various Codes for Court Staff	
Sample Code	Topic Divisions
American Judicature Society, Model Code of Conduct for Nonjudicial Court Employees (1989) Florida's 15 th Judicial Circuit	Abuse of Position Confidentiality Conflict of Interest Political Activity Performance of Duties Court Managers
Conference of State Court Administrators, Model Code of Conduct for Nonjudicial Court Employees (c. 1993)	Purpose Applicability Confidentiality Conflict of Interest Post-Employment Restrictions Impropriety; Performance of Duties Attorneys; Practice of Law; Recusal Political Activity Personal Activity Personal Financial Disclosure Sanctions; Duty to Report Definitions
National Association of Court Management, Model Code of Conduct, (1990)	Abuse of Position Confidentiality Political Activity Performance of Duties
National Association of Court Management, Model Code of Conduct, (2007 draft)	Citizenship Performance of Duties Conflicts of Interest Duty to Report

National Association of Court Management, Model Code of Conduct, (2007 draft), continued...	Outside Employment Political Activity Committing to the Intended Purpose of One's Position Gifts Confidentiality Legal Advice Technology Proper Use of Public Resources
Maryland (Circuit Court Clerks) (1998)	Impropriety & Appearance of Impropriety Diligent Performance of Duties Political Activity Office Equipment & Supplies Review Committee Compliance Board Confidentiality
Maryland (District Court Clerks) (1998)	Public Contact Substance Abuse Gifts & Benefits Confidentiality Outside Employment Attorney Referrals Solicitation Political Activity Employees Going to Court Use of Influence or Position Promptness and Dress
Maryland (draft code pending 2007), and California	Impartiality Integrity Professionalism Confidentiality Impropriety Legal Advice Duty to Serve Competency Discrimination Harassment Technology Political Activity
Iowa	Abuse of Position & Conflict of Interest Outside Employment Political Activity Release of News Information Gifts Honoraria Interests in Public Contracts Service Against the State

Minnesota	Abuse of Position & Conflict of Interest Confidentiality Political Activity Release of News Information Performance of Duties Implementation Authority
New Jersey	Performance of Duties Confidentiality Impropriety Conflicts of Interest Outside Activities Political Activities Nepotism
New Mexico (5 th District, Clerk's Office)	General Employee Conduct Sexual Harassment Dress & Grooming Illegal Drugs & Alcohol Conflicts of Interest Outside Activities & Employment Relationships with Clients & Suppliers Gifts, Entertainment & Favors Kickbacks and Secret Commissions Funds & Other Assets Records & Communications Dealing with Outside People & Organizations Privacy & Confidentiality Fraud & Theft

Table 4 demonstrates a number of interesting things. First, only two topics – confidentiality and political activity – are common to nearly all the codes. On those two topics at least, a near universal consensus seems to have developed among the sample courts that those two areas ought to be addressed in conduct codes. Second, model codes adopted nationally or earlier codes adopted even in the same jurisdictions seem to have very limited influence on subsequent versions. For example, NACM's Model Code, based on the AJS Model Code, deleted two sections of the original AJS Code and sharply trimmed the level of detail as discussed in this report's introduction. In an even clearer departure, the 2007 draft revision of the NACM Code sets aside both the AJS Model and NACM's previous version, and now looks a

little more like California's, although with a number of original provisions added. See Appendix 9 (NACM Model Code of Conduct with commentary, April 2007) for detailed notes on the proposed changes in the NACM Code. Similarly, the COSCA Model Code doubled the number of topic areas found in the AJS model on which it is based, adding sections that more clearly reflect the nature of state court administrators' positions. Likewise, Maryland's 2007 draft code is completely different than its 1998 version, although the 2007 draft now more closely matches California's on which the Maryland draft is based. Maryland's three code versions were purposely chosen for Table 4 to demonstrate that codes can and do vary significantly, even within single states and across different employee classifications.

In summary, states and jurisdictions often seem to rely very little on the templates provided in either the 1989 AJS Model Code, or the 1990 NACM Model Code (Appendix 6), and in fact often depart significantly from even their own codes previously adopted.

It should not necessarily be surprising that topics or classifications vary. Different writers in the field of ethics in general propose different topic divisions. Michael Josephson (2002)²⁵ for example proposes "six pillars of character" including trustworthiness, respect, responsibility, fairness, caring, and citizenship. As another example, the American Bar Association's Judicial Reform Index measures ethical progress in court systems in seven topical areas: independence, impartiality, integrity, propriety, equality, competence/diligence, and accountability. At the other end of the spectrum however, President Kennedy was apparently highly skeptical that structured ethics codes served much purpose:

The ultimate answer to ethical problems in government is honest people in a good ethical environment. No web of statute or regulation, however intricately conceived, can hope to

²⁵ Josephson, Michael. *The Six Pillars of Character, Making Ethical Decisions*. 2002. Reprinted in **The Ethics Edge**, Jonathan P. West, Ed., ICMA Press: 2006, p. 11-17.

deal with the myriad possible challenges to a man's integrity or his devotion to the public interest.²⁶ [Message to Congress, April 27, 1961]

In talking about the development, topic divisions and commonalities of codes of conduct for court employees, it is helpful to compare the related although distinct area of codes of conduct for court interpreters. Like the general codes of conduct for court employees, many of the interpreter codes developed over an almost identical period of time. Massachusetts' interpreter code was originally adopted in 1988; the general AJS model code was published in 1989; the NACM model code was adopted in 1990; and the National Center's model interpreter code was published in 1993. In dramatic contrast however, the interpreter codes and court employee codes developed in very different ways thereafter.

Court interpreters can be outside contractors or court employees across various jurisdictions, so one would expect some distinctions between interpreter codes and general employee codes. At the same time however, one might expect more similarities than differences since both provide support services to the courts and the judges. Some content areas do indeed appear in both types of codes (like confidentiality, duty to report). However, if we chart corresponding content or topic areas in ethics codes for court interpreters using the same sort of format as Table 3 above, the difference is immediately clear. Through either the influence of model interpreter codes, or the administrative authority of state supreme courts, or state court administrators and interpreter program managers agreeing upon a standard, or a consensus in the interpreter's profession, or some combination thereof – a remarkably consistent interpreter code has clearly prevailed.

²⁶ Kennedy, John F. Special Message to the Congress on Conflict-of-Interest Legislation and on Problems of Ethics in Government. April 27, 1961. www.jfklink.com/speeches/jfk/publicpapers/1961/jfk152_61.html

Table 5: Summary of Topic Areas in a Sample of Various Codes for Court Interpreters
 (Illustrative Sample of Codes Collected)

	Accuracy	Impartiality & Conflicts of Interest	Confidentiality / Public Comment Limitations ²⁷	Limitations of Practice	Protocol Demeanor Decorum	Maintaining Competence/ Professional Development	Accurate Representation of Credentials	Impediments to Compliance	Duty to Report Violations
Nat'l Assoc of Judiciary Interpreters & Translators (NAJIT)	✓	✓	✓	✓	✓	✓	✓	✓	
Arkansas	✓	✓	✓	✓	✓	✓	✓	✓	
California	✓	✓	✓	✓	✓	✓	✓	✓	✓
Colorado	✓	✓	✓	✓	✓	✓	✓	✓	✓
Idaho	✓	✓	✓	✓	✓	✓	✓	✓	✓
Iowa	✓	✓	✓	✓	✓	✓	✓	✓	✓
Maine	✓	✓	✓	✓	✓	✓	✓	✓	✓
Massachusetts ²⁸	✓	✓	✓	✓		✓		✓	
National Center for State Courts ²⁹	✓	✓	✓	✓	✓	✓	✓	✓	✓

²⁷ This table consolidates “Confidentiality” and “Limitations on Public Comment” into one topic area since those two seem nearly identical to this author, or at least only marginally different. However, some codes cited in the table do divide those topics into separate sections, canons, or topic areas.

²⁸ Massachusetts’ 1988 code was adopted much earlier than most of the others sampled here, and predates the National Center’s Model Code published in 1993. It includes a number of other topic areas not listed in the chart, including Case Preparation, Oath, Modes of Court Interpreting, Modes of Address, Errors, and Fatigue Factor. Still, it is remarkable that the Massachusetts Code aligns so closely with the others in nearly all other topic areas.

²⁹ Model Code of Professional Responsibility for Interpreter in the Judiciary. National Center for State Courts. 1993.
www.ncsconline.org/wc/publications/Res_CtInte_ModelGuideChapter9Pub.pdf

Table 5: Summary of Topic Areas in a Sample of Various Codes for Court Interpreters, *continued...*

	Accuracy	Impartiality & Conflicts of Interest	Confidentiality / Public Comment Limitations ³⁰	Limitations of Practice	Protocol Demeanor Decorum	Maintaining Competence/ Professional Development	Accurate Representation of Credentials	Impediments to Compliance	Duty to Report Violations
New Jersey ³¹	✓	✓	✓	✓	✓	✓	✓	✓	
New Mexico ³²	✓	✓	✓	✓	✓	✓		✓	✓

³⁰ This table consolidates “Confidentiality” and “Limitations on Public Comment” into one topic area since those two seem nearly identical to this author, or at least only marginally different. However, some codes cited in the table do divide those topics into separate sections, canons, or topic areas.

³¹ New Jersey’s “Code of Professional Conduct for Interpreters, Translators, and Translators” adopted in 1994 includes an additional section titled “High Standards of Conduct.” www.judiciary.state.nj.us/interpreters/codepub.htm

³² New Mexico’s “Code of Professional Responsibility – New Mexico Court Interpreters” is not drafted with topic headings, and so this report takes the liberty of placing the content of the 14 Canons into the topic areas in Table 5. New Mexico also includes general purpose Canon 3 which states, “Official court interpreters [shall] avoid professional or personal conduct which would discredit the court;” Canon 13 which establishes an obligation to professionally assist other interpreters; and Canon 14, on acceptance of the code and an agreement to sanctions for willful violation.
www.nmcourts.com/newface/court-interp/guidelinesandpolicies/codeofconduct.pdf

Rather than concentrate on the lack of consistency in structure, organization, and placement of conduct provision however, perhaps a more worthwhile approach would be to compare codes by the practical issues they seek to address. Table 6 attempts to map some of the relationships between topics, practical reality, the underlying questions that arise, and the various ways some of the codes respond to each issue.

Neatly charting the topics, issues, and various codes in Table 6 should not necessarily imply however that there is an underlying consistency in how the codes deal with certain ethical scenarios, regardless of perhaps superficial semantic differences in topic headings. For example, the Code for Federal Court employees sharply restricts the acceptance of gifts to those offered in the course of “ordinary social hospitality.”³³ In contrast – and perhaps more realistically reflecting common practice and social habits in many courts – Montana’s ethics code includes a provision that states, “In the event that declining to accept a gift would be insensitive or the gift is an award for public service, the gift may be accepted under the following conditions:...”³⁴ Similarly, while actually prohibiting court employees from being married to law enforcement officers in the same jurisdiction, New Jersey’s Canon 7(C) realistically acknowledges the practical reality that nepotism and personal relationship conflicts may be more difficult to avoid and resolve in smaller courts.³⁵

³³ Code of Conduct for Judicial Employees. Judicial Conference of the United States. 1995. www.uscourts.gov/guide/vol2/ch2a.html; see also *Maintaining the Public Trust: Ethics for Federal Judicial Law Clerks*. Federal Judicial Center, 2002, p 18. https://lawclerks.ao.uscourts.gov/ethics_for_lawclerks.pdf

³⁴ Employee Code of Conduct, Montana Judicial Branch, Section 210. <http://sio.midco.net/hthoennes/Montana%202002.doc>

³⁵ Code of Conduct for Judicial Employees. Canon 7. New Jersey. 1999. http://www.judiciary.state.nj.us/rules/appendices/code_emp.htm

Table 6: Practical Issues by Topic Area, Scenarios, & Code Examples for Each

General Topic	Practical Examples	Questions & Issues	Code Examples
Conflicts of Interest	Court manager owns a document storage facility, leases storage space to his own court.	Especially in smaller jurisdictions, how do we maintain conflict barriers in the midst of highly interconnected legal and court communities?	Ohio: "...nor perform any discretionary or ministerial function in a manner that improperly favors any person, group, litigant, or attorney."
Gifts	Attorney offers cookies or poinsettia plants to court offices around the holidays.	What's "nominal value?" Is accepting vendor trinkets okay?	Federal: no gifts, except refreshments of "insignificant value." Other courts: "reasonable limits, "nominal value"
Sanctions for breaking the code	New Jersey: court employees use new ethics code as a weapon against each other, reporting each other for going to lunch with a vendor, for example	Should an ethics code include sanctions for violations? Enforcement mechanisms?	Romania: court employees' salaries may be reduced for violations. ³⁶
Nepotism (Family & Personal Relationships)	Court administrators married to attorneys. Clerks married to police officers.	As a practical matter, can an ethics code really attempt to govern personal romantic relationships? What safeguards are necessary?	New Jersey, Canon 7D, court employees may not be married to law enforcement officers in the same jurisdiction.
Confidentiality	Minnesota: court employee warns domestic violence respondent of protection order filed but not yet served.	Confidential cases are confidential, not much debate there; gray area arises when case information is technically public but court employees need to exercise discretion and keep their mouths shut.	NACM 2007 draft code uses "golden rule" to address employee discretion with otherwise public information.

³⁶ To place reasonable limits on the scope of this paper, the project generally discusses codes in American courts only. The reference to Romania is the single exception. Romania's Code of Ethics for Court Clerks is one of only two codes collected in the course of this project that specifically provide for monetary sanctions on clerks who violate the Code of Conduct. http://www.abanet.org/ceeli/publications/rom_clerks_06.2005.pdf The only other Code that allows such a sanction has been adopted by the courts in the Philippines, Code of Conduct for Court Personnel, 2004. www.lawphil.net/judjuris/juri2004/apr2004/am_03-06-13-sc_2004.html

Public/Personal Moral Conflicts	Employee objects to processing death penalty files, or abortion parental bypass petitions.	Judges can recuse although they're sworn to uphold existing law; why can't employees? Do ministerial/discretionary distinctions apply here?	Michigan, tribal court. Clerks must not...“perform any discretionary or ministerial function...in a biased manner.”
Duty to Report (Whistleblowing)	Clerk observes judge attempting to influence the judge's own divorce case.	Should an ethics code include a duty to report? Protections?	Arizona, Canon 3(H), duty to report violations, no retaliation.
Outside employment	Court clerks moonlighting at Hooters	“Preserving the dignity and image of the court.” Is there a sliding scale of ethical considerations on outside employment depending on one's place in the org chart? (Clerk can work at Hooters, State Court Administrator shouldn't?)	Iowa – no prohibition or “dignity” language. New Jersey: no employment that “reflects adversely” on the court.
Political activity	Clerk of Court in Minnesota files to run for the legislature; court employees pressured to assist in judicial campaigns in Nevada.	Balancing employees' constitutional rights against court neutrality.	Montana: clerks may be politically active and may run for partisan office under certain limitations. Other courts ban employee activity in judicial elections (South Dakota) some statutes may conflict (Minnesota)
New Area: Technology/ Internet	Court manager “googles” job applicants.	If we are going to check the ‘Net on job applicants, should ethics codes establish verification or reliability duties?	NACM's 2007 draft code allows Internet searches with appropriate caution.
New Area: Data Access	Landlords want a list of defendants in eviction cases.	Should courts limit some forms of “data-mining” or other access to public information to avoid negative consequences for the public?	Minnesota, “Employees shall also protect the public’s interest and justice for all persons.” ³⁷
New Area: Data Privacy	Ohio's public records law mandates broad public access to court records (Ohio R.C. § 149.43(A)). Hamilton County Clerk of Court is then sued for facilitating identity theft after making records public.	How do we reconcile public access against protecting public privacy?	Michigan: “Even when the information becomes public, court employees should exercise a great deal of discretion.”

³⁷ Coincidentally a bill is now pending in the Minnesota State Legislature to require the expungement of court eviction records one year after the action is commenced. S.F. 2133, 85th Legislative Session. www.revisor.leg.state.mn.us/bin/bldbill.php?bill=S2133.0.html&session=ls85

SECTION 3: Enforcement

Coincidentally in 2006 the American Society for Public Administration (ASPA) also began an effort to review and revise its Code of Ethics. Professor Jack Kem asked:

Now that we've looked at the Code in detail, is the Code merely like a necktie that is just for appearance and rapidly falling out of fashion? Does having a code of ethics really matter? Should we have an "enforcement mechanism" for those who don't adhere to the Code?

Logically, the practitioners...are the ones who should be most concerned about how to apply the code on a daily basis. However, if they don't find the Code to be truly relevant in any real sense, then they aren't going to be apt to ask about how to apply it.³⁸

As widely as the code topics and organization vary, the application and enforcement mechanisms vary just as widely. For those states and jurisdictions whose ethics or conduct requirements are embedded in personnel rules or human resource policies for example, enforcement mechanisms or sanctions are usually similar or identical to the disciplinary provisions imposed for more typical infractions under personnel rules.

In a number of states however, the same judicial conduct commissions that oversee the enforcement of codes of judicial conduct also exert or assume real or at least advisory jurisdiction over court managers and staff. For example, the Arizona Supreme Court's Judicial Ethics Advisory Committee issued an opinion on the charitable activities of court employees in 2004.³⁹ Similarly, the Indiana Commission on Judicial Qualifications issued an advisory opinion on whether judges should prohibit court employees from holding office within the employees' political parties.⁴⁰

³⁸ Kem, Jack D. Enforcing a Code of Ethics. 29 **PA Times 11**, American Society for Public Administration, p 27.

³⁹ Arizona Supreme Court, Judicial Ethics Advisory Committee, Advisory Opinion 04-01, March 19, 2004. [http://sio.midco.net/hthoennes/Arizona%2004-01-A\[1\].pdf](http://sio.midco.net/hthoennes/Arizona%2004-01-A[1].pdf)

⁴⁰ Indiana Commission on Judicial Qualifications, Advisory Opinion #5-90, regarding Indiana Code of Judicial Conduct Canon 7. www.in.gov/judiciary/jud-qual/docs/adops/5-90.pdf

The New York Ethics Commission for the Unified Court System exercises significant enforcement or compliance powers over court staff, noting in its annual report discussed above that it had occasion to threaten disciplinary action, issue reprimands, and notices of misconduct to 28 court employees who did not file the required financial disclosures.⁴¹

**Table 7: How Ethics Codes or Conduct Provisions Are Enforced
(Illustrative Sample of Various Codes)**

Enforced or Investigated By	State or Jurisdiction
Judicial Conduct Commission, Judicial Ethics Advisory Commission, or local equivalent judicial commission	Arizona, West Virginia, and a number of others through supervision provisions in the codes of judicial conduct
Supreme Court	Ohio, Code of Conduct for Supreme Court Employees
Court Administration/Management	South Dakota, Colorado, Florida's 17 th Circuit Clerk of Court; usually where conduct provisions appear in personnel rules.
By individual judges through provisions or duties found in a code of judicial conduct	States that adopt the ABA Model Code of Judicial Conduct, Canon 3. May be seldom applied in practice.
State ethics commission or some other general oversight commission not limited to the judges	Maryland; Texas Ethics Commission ⁴² ; New York Ethics Commission for the Unified Court System

Regarding enforcement or application of ethics codes by professional associations, the drafters of the 1990 NACM code assumed that they could not or should not assume agreement or enforce compliance with NACM's model code given the association's highly diverse membership. Unlike NACM however, the American Society for Public Administration does take one affirmative step toward applying its ethics code by requiring membership applicants to

⁴¹ Commission Annual Report, Ibid. 2005, p 20. www.courts.state.ny.us/ip/ethics/AnnualReport.pdf

⁴² Texas Ethics Commissioner, Advisory Opinion No. 441, December 14, 2001, on whether non-judicial court employees may interview with private law firms. www.ethics.state.tx.us/opinions/441.html

sign an agreement that they agree to and will abide by its code of ethics.⁴³ However, as Kem points out above, there is actually no real oversight of compliance after a membership application is approved.

Coincidentally, at the same time the ABA's 2007 revision to the Model Code of Judicial Conduct retained a staff supervision section through which judicial conduct codes could be indirectly applied to staff, the ABA deleted an earlier provision that required judges to "implement and enforce codes of judicial conduct" because reviewers thought the provision may be unnecessary and unclear on how such a provision could be applied.⁴⁴

Beyond issues concerning who enforces the codes, few codes collected in the course of this report actually contain enforcement provisions of any kind. New Mexico's interpreter code is one of the very few American court codes of any kind to include a compliance agreement and a specific sanctions provision for violations of the code:

Official court interpreters of the New Mexico state courts willingly accept and agree to this code, and understand that appropriate sanctions may be imposed by the court for willful violations.⁴⁵

Codes adopted by overseas courts seem somewhat more likely to contain specific sanction or penalty provisions. In addition to the Romanian courts mentioned in Table 6 above which can reduce employees' pay for code of conduct violations, the Supreme Court of the Philippines can also impose severe sanctions on court employees for code violations. For example, in 2003 in response to a citizen's complaint, the Supreme Court in Manila suspended a

⁴³ American Society for Public Administration. Membership Application, 2007, p 1.
www.aspanet.org/scriptcontent/pdfs/2006MembershipAPP706.pdf

⁴⁴ For a summary of what became the final changes to the ABA Model Code of Judicial Conduct, see the Report with Recommendations filed with the ABA House of Delegates for the February 2007 meeting.
http://www.abanet.org/judicialedics/summary_changes.pdf

⁴⁵ New Mexico Code of Professional Responsibility – New Mexico Court Interpreters. Canon 14.
www.nmcourts.com/newface/court-interp/guidelinesandpolicies/codeofconduct.pdf

court employee without pay for six months for pursuing an adulterous relationship with a married woman and fathering an illegitimate child.⁴⁶

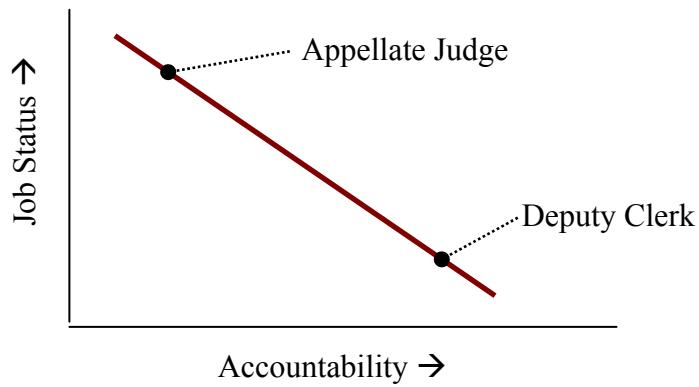
As a side note on the topic of accountability, monitoring, and enforcement, Rick S. Rager (2007)⁴⁷ recently suggested an interesting relationship between accountability and status. Contrary to what one might think, in many ways a court employee's professional accountability can be inversely proportional to his job status. For example, an entry level file clerk is typically subject to multiple layers of personnel rules, employee ethics and conduct codes, outside employment restrictions, close performance and productivity monitoring, clock-punching, vacation limitations, etc. In contrast, appellate and general jurisdiction judges in particular often enjoy great flexibility and discretion in working hours and court calendar settings, and except for perhaps some general case flow monitoring, their daily performance is monitored much less closely than the deputy clerk's. Certainly flexibility and discretion necessarily increases with the complexity and responsibility of a job and so this analysis should be qualified accordingly. Still, in a number of practical ways in a daily routine, Rager's inverse relationship may indeed apply.

Figure 1 presents a possible visualization of Rager's inverse relationship of job status to accountability:

⁴⁶ Supreme Court of Manila, Third Division. A.M. No. P-94-1054, Acebedo vs. Arquero. www.lawphil.net/judjuris/juri2003/mar2003/am_p-94-1054_2003.html

⁴⁷ Rick S. Rager is an ICM Fellow and Deputy Court Manager in Tempe Municipal Court, Arizona. Rager's theory on the inverse relationship between job status and accountability presented here was discussed with him in person at an Institute for Court Management session on Trial Court Governance in Phoenix, Arizona in March, 2007.

Figure 1: Rager's Inverse Relationship of Job Status to Accountability



SECTION 4: Measuring Effectiveness

In order to measure the effectiveness of codes of conduct for court employees, we first have to know what codes are actually intended to do and what purpose they serve. How can we know if a code is functioning effectively unless we know what a code is supposed to do? Conlon and Milord (1996) noted:

When we asked court employees why it was important to understand what ethical standards apply at work, they gave many different reasons. Some of their reasons included the following:

- to do my best work
- to get a good performance evaluation
- to avoid discipline
- to protect myself
- to do the right thing
- to be fair to all using the courts.⁴⁸

Foster (2003) proposes an alternative outline:

⁴⁸ See Cynthia Kelly Conlon, Cynthia Kelly, and Lisa L. Milord in **The Ethics Fieldbook: Tools for Trainers**, see note 6 **supra**, p 3.

So for starters, what is ethics actually about? Ethics is about right and wrong...

Ethics is about good and bad, or good and evil...
Ethics is about virtue and vice...
Ethics is about benefit and harm...
Ethics is about propriety and impropriety...⁴⁹

If there is any consensus on what codes are for and what they're supposed to do, a review of the ethics literature seems to yield relatively little work done on measuring the effectiveness of codes of conduct for non-judicial court employees. Much of the work that has been done is often based in courts overseas in still-developing or recovering judicial systems through USAID or ABA assistance projects. For example, Judge Timothy Baland, now an international judge serving in Kosovo, reviewed some of the work done by the American Bar Association's Central European Eurasian Law Initiative (ABA/CEELI) in measuring the effectiveness of conduct codes. The ABA uses a 30-point set of criteria, or "factors" to evaluate the progress made by an emerging court system in fulfilling its optimum public role, using positive, neutral, and negative ratings and narrative comments. Whether ethical progress or "success" can really be measured in such a way may be debatable. As Baland (2006) observed,

The adoption of Codes of Judicial Conduct and the establishment of Judicial Councils, although critically important, are just the first steps in the creation of an accountable, independent, impartial judiciary that can effectively function as a co-equal branch of government. Once Codes are passed and Councils created, the really hard work of Judicial Reform begins.⁵⁰

For the purposes of this project however, even if an evaluation system like the Judicial Reform Index could be developed to study whether court employee ethics codes positively

⁴⁹ Gregory D Foster. *Ethics: Time to Revisit the Basics.* 63 **The Humanist** 2. (March/April 2003, p 30-37.)

⁵⁰ Timothy Baland. *Measuring Judicial Ethics: ABA-CEELI'S Judicial Reform Index: A Practical Tool that Can Help Measure the State of Judicial Ethics.* Delivered at the World Ethics Forum, International Institute for Public Ethics, Oxford, England. 2006, p 3.

influence behavior, the limitation and difficulty of using the ABA's Judicial Reform Index is that the ABA's evaluation template in court ethics reform concentrates almost exclusively on judicial ethics, rather than on non-judicial administrative staff. Additional study clearly needs to be done to address whether codes for court employees do indeed influence their behavior in constructive, positive, helpful ways – that is, whether the codes *work*.

Finally, in measuring whether codes accomplish their purpose, Mackenzie and Hafken (2002) suggest that ethics laws and codes actually have little or no effect on increasing the public's trust or confidence in government agencies.⁵¹ If those authors are correct, then the courts must evaluate the success of ethics codes without relying on external public perceptions.

SECTION 5: CONCLUSIONS AND RECOMMENDATIONS

This project sought to collect, present, and review a broad library of ethics and conduct codes adopted across the United States following the publication of the AJS and NACM Model Codes in 1989 and 1990 respectively. With the exception of confidentiality and political activity, in the years since the publication of the 1989 and 1990 model codes, very little consistency has emerged in the organization, structure, topics, and application of conduct codes for court employees. One may be inclined to think that given the complexity of human behavior, the very different local political and organizational cultures of individual courts across the country, and the disparate ethical climates that may arise (for example between elected and appointed clerks), a national consensus on a model ethics codes for court employees is unlikely if not impossible. One may be inclined to think that real life in the clerk's office is just too rich, complex, messy, and shaded in tones of gray to make a code consensus possible.

⁵¹ Calvin G Mackenzie and Michael Hafken. **Scandal Proof: Do Ethics Laws Make Government Ethical?**, Brookings Institution Press: 2002, p 149-159.

In contrast however, the ethical environment for judges is arguably even more complex than for court managers and staff, when considering that judges bear all the public duties and responsibilities carried by court staff while at the same time exercising the broad discretionary authority inherent in their judicial positions. That greater complexity notwithstanding, the broad adoption of the ABA's Model Code of Judicial Conduct would seem to indicate that there can indeed be a national consensus on ethical standards in the courts. Likewise, the remarkably clear consensus and consistency of court interpreter codes adopted across the country would seem to indicate that a model template can prevail in a complex court environment. Why then have conduct codes for court employees developed so differently, and what can be done to move toward the adoption and acceptance of a model code that will actually function as a model?

First, a model code of conduct must remain current and be in nearly continuous review. For example, the ABA's Model Code of Judicial Conduct has been formally adopted and reviewed in August 1990, August 1997, August 1999, August 2003, and most recently February 2007.⁵² NAJIT's interpreter code has been revised a number of times since its initial publication. As Kem observed,⁵³ a model code must not become stale or it ceases to have much use or influence as a model. To the credit of the National Association for Court Management, such a process was initiated in 2006.

Second, it may indeed be very helpful to continue to pursue the recent informal consultation with the Conference of State Court Administrators (COSCA) in updating NACM's Model Code of Conduct in order to give the new version some level of endorsement and administrative weight.

⁵² American Bar Association, Model Code of Judicial Conduct. Page 1, title page summary of adoption and amendments. www.abanet.org/judicialeducation/2004_CodeofJudicial_Conduct.pdf

⁵³ See note 31, **supra**.

Finally, although it was beyond the scope of this project to broadly survey court staff on ethics codes, further work in conducting such a survey or encouraging some means of participation and review by court managers, staff, and judges is almost certainly necessary in order for a new code to respond to the needs of court employees and reflect the practical realities in which they operate. As Speers wrote, “Bottom-line: it is critical to the success of an ethics code that it responds to real-life situations. The code-adoption process should involve people in a meaningful way in a discussion of those situations.”⁵⁴ Beyond simple development and drafting however, Speers also observed:

Make no mistake about it: achieving these benefits [in developing a code] requires a commitment of both time and energy by the agency. The task is not simply to adopt a code. The task is to build an organizational culture from the top down that demonstrates ethics are important. Building an organizational culture is an arduous task.⁵⁵

In conclusion this project asserts a recommendation typically found in nearly every research project – the need for more work and study. As a follow up to this project an additional survey was developed and distributed to 100 state and local jurisdiction recipients from all 50 states to make certain the collection is as complete as possible. See Appendix 4 for a copy of the cover letter, the survey and the survey recipients.

Facilitating a broad discussion on a national level in the highly complex and often subjective area of ethical conduct, forging a consensus on ethical standards for court employees, and development of a model code of conduct that would truly function as a model would almost certainly be an extraordinary undertaking. The recent controversy over revisions to the ABA’s Model Code of Judicial Conduct confirms that future work in this area would likely involve a vigorous (but ultimately worthwhile) national debate. The National Association for Court

⁵⁴ See note 20 **supra**, 3.

⁵⁵ **Ibid.**, 2.

Management in cooperation with the Conference of State Court Administrators may have already begun that process, and could in a unique position to lead the field to a new consensus on ethical standards for court managers and staff, and complete the development of a new Model Code that in fact has influence as a national model.

“To embarrass justice by a multiplicity of laws, or to hazard it by confidence in judges, are the opposite rocks on which all civil institutions have been wrecked...”

-- *Samuel Johnson; inscribed near the Supreme Court in the Minnesota State Capitol Building*

Appendix 1: Explanation of the Format of this Phase III Report

This Institute for Court Management Phase III project originally had two primary intentions. First, because no national collection of codes for court staff had been assembled or reviewed since the late 1980's, the author expected to catalog every code adopted in United States' courts, then index the codes to identify common themes, trends, and topics. Not surprisingly, the cataloging phase of the work was far more extensive than originally expected. Contrary to initial expectations, the catalog of codes for court staff, for judicial officers with extensions to court staff, for court interpreters, court reporters, and now even overseas courts totals nearly 70 codes as listed in this report, and continues to grow daily.

Second, following the more traditional research requirements of Phase III, the author intended to survey staff in the courts which had adopted codes and those which had not, to measure the effectiveness of codes and study whether ethics codes actually influence behavior. However, from the broad, idealistic statements of California's 12 tenets, to the dress and grooming provisions in New Mexico's 5th District, it immediately became apparent that an in-depth survey on effectiveness was highly premature. Without a consensus on what codes were supposed to say and what they were supposed to do, the value of such a survey seemed limited at the very least. How can we ask a court clerk whether his code accomplishes its purpose, when we are not even sure what that purpose might be?

Therefore, this report departs from the more traditional format by concentrating on the collection, review, comparison, and discussion of the collected codes, while still fulfilling the data survey requirements through the distribution of a follow-up survey as described in Appendix 5 to make certain the catalog is complete. The collection and publication of additional codes has and will continue long after the conclusion of this report.

Appendix 2: List of Codes & References Collected, United States⁵⁶

Alaska (Tribal Court). Tanana Valley Chiefs Conference, Chapter Seven, Judicial Ethics. Compiled by the Chiefs Conference and Lisa Jaeger, Fairbanks, Alaska 2002.

http://thorpe.ou.edu/AKtribalct/chapter_seven.html

Arizona. Arizona's Code of Conduct for Court Employees (1997).

[http://sio.midco.net/hthoennes/AZ%20Employee_Code_of_Conduct\[1997\].pdf](http://sio.midco.net/hthoennes/AZ%20Employee_Code_of_Conduct[1997].pdf)

California. Code of Ethics for the Court Employees of California. Adopted 1994.

<http://sio.midco.net/hthoennes/Ethics%20for%20Court%20Employees%20CA.pdf>

Colorado. Colorado Judicial System Personnel Rules. Part 5 addresses outside employment and political activity. <https://www.courts.state.co.us/chs/hr/employment/72005personnelrule.pdf>

Delaware. Delaware Code of Conduct for Court Employees. Adopted January 1998, Supreme Court Directive No. 115.

<http://sio.midco.net/hthoennes/Delaware%20Code%20of%20Conduct%201998.pdf>

Florida. Fifteenth Judicial Circuit, Palm Beach. American Judicature Society's Model Code for Nonjudicial Court Employees adopted 1992.

<http://sio.midco.net/hthoennes/Florida%20AJS%20order%201992.pdf>

Florida. Seventeenth Judicial Circuit, Broward County. Adopted March 10, 2004. This ethics code appears as Section 17 (PUR 17) of the Clerk of Court's Procurement Code.

<http://sio.midco.net/hthoennes/Florida%20Broward%20County%202004.doc>

Guam. Code of Conduct for Non-Judicial Court Employees. Adopted 1996 by the Guam Judicial Council. <http://sio.midco.net/hthoennes/Guam%20Code%201996.pdf>

Illinois (Cook County/Chicago). Code of Ethical Conduct for Employees of the Clerk of the Circuit Court of Cook County. Proposed revision pending in 1996.

<http://sio.midco.net/hthoennes/Cook%20County%20Illinois%20c%201995.pdf>

⁵⁶ Note on code citations and references: This paper, like most contemporary scholarship, contains a large number of Internet references. All links cited in this report have been confirmed as of April 11, 2007. However, to ensure a stable library of ethics codes long-term, copies of all the codes cited have been saved to a permanent electronic library rather than depend on the future stability of scattered, obsolete or shifting Internet sites. If in the future the reader finds that any cited Internet links no longer work, back-up copies of the original codes will continue to be available from the author.

Iowa. Court Employee Code of Ethics. Adopted or revised February 2006.
http://sio.midco.net/hthoennes/Iowa%20Employee_Code_of_Ethics.pdf

Kansas. Code of Ethics for Court Services (Probation) Officers. 1998.
http://www.kscourts.org/cso/cso_code.htm

Maryland. Code of Ethics for Circuit Court Clerks, and Rules of Conduct for District Court Clerks. [No date indicated on the Code of Ethics; the Rules of Conduct are dated 1998.]
<http://sio.midco.net/hthoennes/MarylandCodeofConduct%201%20.pdf>

Maryland. Code of Ethics for Employees of the Maryland Courts. Draft only, not yet finalized or adopted as of February 2007.
<http://sio.midco.net/hthoennes/MD%20Draft%20Code%20of%20Ethics%20020706.doc>

Michigan. (State) Model Code of Conduct for Court Employees. Adopted 2000, published by the Michigan Judicial Institute. <http://sio.midco.net/hthoennes/MI%20code-conduct.pdf>

Michigan. (Professional Association) Michigan Uniform Code of Conduct for Court Managers and Administrators. Adopted by the Michigan Court Administrators' Association.
<http://www.micourtadmin.org/MICHIGAN%20UNIFORM%20CODE%20OF%20CONDUCT%20FOR%20COURT%20MANAGERS.htm>

Michigan. (Tribal Court) Code of Ethical Conduct for Judges, Court Personnel, Lawyers, and Lay Advocates. Adopted by the Bay Mills Indian Community Tribal Court, Brimley, Chippewa County. Tribal Court Rule 105.2. Court employee conduct provisions contained in Sections 2.201 through 2.206. www.narf.org/nill/Codes/baymillscode/rule1052.htm

Minnesota. Court Employee Code of Ethics. Adopted April 21, 2006. Judicial Council, Minnesota Judicial Branch.
<http://sio.midco.net/hthoennes/MN%20code%20of%20ethics%202006.doc>

Montana. Employee Code of Conduct. Adopted 2002, as a section within the Montana Judicial Branch/Personnel Policies and Procedures. http://sio.midco.net/hthoennes/Montana_2002.doc

Nebraska. Nebraska's Code of Judicial Conduct. Adopted 1992, based on the American Bar Association's (ABA's) Model Code. Included here because like Washington, Minnesota and a number of other states, Nebraska's code applies by extension to court employees "subject to the judge's direction and control." <http://www.supremecourt.ne.gov/rules/pdf/judcon-30.pdf>

New Jersey. Code of Conduct for Judiciary Employees. Adopted December 1993, amended March 1999. http://www.judiciary.state.nj.us/rules/appendices/code_emp.htm

New Mexico. Employee Policy & Code of Conduct. Adopted by the Fifth Judicial District Court, Roswell, New Mexico, January 2005. <http://www.fifthdistrictcourt.com/conduct.htm>

New York. Rules Governing Conduct of Non-Judicial Court Employees. Updated or dated November 2005, cited as 22 NYCRR § 50.01 (New York Codes, Rules & Regulations).
<http://sio.midco.net/hthoennes/New%20York%202005.pdf>

Nevada. Model Code of Conduct for Judicial Employees. Adopted or last revised March 2004, Judicial Council of the State of Nevada. May or may not be approved for use in all jurisdictions. <http://sio.midco.net/hthoennes/Nevada%20Model%20Code%20of%20Conduct.pdf>

Ohio (Supreme Court). Employee Code of Ethics. Adopted 2003, Supreme Court of Ohio; applies to Supreme Court employees only.
<http://sio.midco.net/hthoennes/Policy%2017%20Employee%20Code%20of%20Ethics%20Ohio%20SC.doc>

South Dakota. Unified Judicial System Personnel Rules. Adopted 1998. Chapter 9, "Conduct," sections on nepotism, political activity, outside employment.
<http://www.sdjudicial.com/downloads/AppdxEPersonlRulesn.ujs.pdf>

United States (American Judicature Society). Model Code of Conduct for Nonjudicial Court Employees. Published 1989. www.ajs.org/ethics/eth_non-judic-employ.asp

United States (Conference of State Court Administrators). Adopted c. 1993.
<http://sio.midco.net/hthoennes/COSCA%20Code%20c%201993.pdf>

United States (Court Reporters). Code of Professional Ethics. Adopted by the National Court Reporter's Association. www.ncraonline.org/AboutNCRA/cope/

United States (Federal Court). Code of Conduct for Judicial Employees, adopted by the (Federal) Judicial Conference 1995, effective 1996.
<http://www.uscourts.gov/guide/vol2/ch2a.html>

United States (National Association for Court Management). Model Code of Conduct. Adopted 1990. www.nacmnet.org/codeofconduct.html

Washington (State). Court Rules, Code of Judicial Conduct. Based on the ABA's Model Code of Judicial Conduct; Canon 3 refers to court employees.
www.courts.wa.gov/court_rules/?fa=court_rules.list&group=ga&set=CJC

Washington. (Tribal Court) Nooksak Indian Tribe (near Bellingham, Washington). Statement on the duties of a court clerk, including a clerk's ethical duties. Date of adoption not given.
http://www.nooksack-tribe.org/court_clerk.htm

Appendix 3: List of Codes & References Collected, International

Belize. Code of Conduct & Etiquette. Adopted March 31, 2003.

<http://sio.midco.net/hthoennes/Belize%20Code%20of%20Conduct%20&%20Etiquette.pdf>

Canada. Canadian Ethical Principles for Judges. Published 1998. Canadian Judicial Council.

<http://sio.midco.net/hthoennes/Canadian%20Ethical%20Principles%20for%20Judges.pdf>

China. Code of Judicial Ethics for Judges of the People's Republic of China. 2001.

<http://www.accci.com.au/code.htm>

Kosovo, Code of Ethics and Professional Conduct for Judges. Adopted 2001.

<http://sio.midco.net/hthoennes/Kosovo.pdf>

Palau. Code of Conduct for Employees of the Palau National Judiciary. Adopted by the Supreme Court, no date shown. <http://sio.midco.net/hthoennes/Palau%20Ethics%20Code.pdf>

Philippines. Code of Conduct for Court Personnel. Adopted by the Supreme Court of the Republic of the Philippines, April 23, 2004. www.lawphil.net/judjuris/juri2004/apr2004/am_03-06-13-sc_2004.html

Russian Federation. Rules of Conduct for Court Employees. Adopted January 2006, Russian general jurisdiction courts. English version. Drafted with assistance by USAID.

<http://sio.midco.net/hthoennes/Russian Fed Rules of Conduct0106Eng.doc>

Tasmania. Code of Ethics for Non-Judicial Officers of the Magistrates Court of Tasmania.

http://www.magistratescourt.tas.gov.au/about_us/ethics

United Nations/Multiple Countries. Bangalore Principles of Judicial Conduct. Revised and published in 2002. Sections 5.4 and 6.6 refer to court staff.

http://sio.midco.net/hthoennes/Bangalore_principles%5b1%5d.pdf

Appendix 4: List of Codes & References Collected, Court Interpreters

United States. National Association of Judiciary Interpreters and Translators (NAJIT). Eight canons. <http://www.najit.org/ethics.html>

Arkansas. Code of Professional Responsibility for Interpreters in the Judiciary. Supreme Court Administrative Order 11. <http://courts.state.ar.us/rules/admord11.html>

California. Code of Professional Responsibility for Interpreters in the Judiciary. Initially drafted 1993. <http://sio.midco.net/hthoennes/CA%20Interp%20Ethics%20Code.pdf>

Colorado. Judicial Department Code of Professional Responsibility for Court Interpreters. http://www.courts.state.co.us/chs/hr/interpreters/interpret_code.pdf

Idaho. Code of Professional Responsibility for Interpreters in the Judiciary. Adopted September 1998. <http://www.isc.idaho.gov/intercod.htm>

Iowa. Code of Professional Conduct for Judicial Branch Interpreters. Adopted November 1, 2004. http://www.judicial.state.ia.us/District_Courts/Court_Interpreters/Code/

Maine. Policy Concerning Standards of Professional Conduct for Interpreters Providing Services in Judicial Proceedings. Effective January 1, 2005.
http://www.courts.state.me.us/courtservices/interpreters/interpreter_policy.html

Massachusetts. Massachusetts Code of Professional Conduct for Court Interpreters of the Trial Court. Adopted 1988. <http://www.mass.gov/courts/admin/planning/codeofconduct.html>

Minnesota. Code of Professional Responsibility for Interpreters in the Minnesota State Court System. Adopted 1995.
<http://sio.midco.net/hthoennes/MN%20Code%20of%20Professional%20Responsibility%20Interp.doc>

New Jersey. Code of Professional Conduct for Interpreters, Transliterations, and Translators. Effective December 1, 1994. <http://www.judiciary.state.nj.us/interpreters/codepub.htm>

New Mexico. Code of Professional Responsibility New Mexico Court Interpreters. <http://www.nmcourts.com/newface/court-interp/guidelinesandpolicies/codeofconduct.pdf>

New York. Court Interpreter Manual. Manual adopted December 2005, code adopted 2003. <http://sio.midco.net/hthoennes/NY%20CourtInterpreterManual.pdf>

New York (Federal Court). Code of Professional Responsibility. Adopted by the Southern District of New York. <http://sdnyinterpreters.org/pub/index.php?page=SDNYethics.html>

New York (Federal Court). Standards for Performance and Professional Responsibility for Contract Court Interpreters in the Federal Courts. Updated May 12, 2006.

<http://sdnyinterpreters.org/index.php?page=ethics.html>

North Carolina. Code of Ethical Conduct for Interpreters. Chapter 4. September 25, 2000.
<http://www.nccourts.org/Citizens/CPrograms/Foreign/documents/guidelines.html>

Oregon. [Code of Professional Responsibility for Interpreters in the Oregon Courts.](#)
www.ojd.state.or.us/osca/cpsd/interpreter/documents/ethicscode.pdf

Sierra Leone. Code of Ethics for Interpreters and Translators Employed by the Special Court for Sierra Leone. Adopted May 25, 2004. <http://www.sc-sl.org/interpreters-codeofethics.html>

South Carolina. Rules of Professional Conduct for Court Interpreters. Rule 511. South Carolina Judicial Department. <http://www.judicial.state.sc.us/courtReg/listAPPRules.cfm>

Tennessee. [Code of Ethics for Court Interpreters](#), adopted April 25, 2002.
http://www.tsc.state.tn.us/OPINIONS/TSC/RULES/2002/Rule41_42.htm

Texas. Code of Ethics and Professional Responsibility of Certified Court Interpreters. Published by the Department of Assistive and Rehabilitative Services. Footnote date shows June 2006. <http://sio.midco.net/hthoennes/Texas Interpreter Code.dot>

Utah. Code of Professional Responsibility for Court Interpreters. Adopted 1995 or later.
http://www.utcourts.gov/resources/rules/ucja/append/h_intprt/apph.htm

Virginia. Code of Professional Responsibility for Interpreters. Last modified June 2002.
<http://www.courts.state.va.us/interpreters/code.html>

Wisconsin. Code of Ethics for Court Interpreters. Adopted July 1, 2002.
<http://www.wicourts.gov/services/interpreter/ethics.htm>

Appendix 5: Follow-Up Survey Cover Letter, Survey and List of Survey Recipients



**CIRCUIT COURT OF SOUTH DAKOTA
SECOND JUDICIAL CIRCUIT
LINCOLN & MINNEHAHA COUNTIES**
425 North Dakota Avenue
Sioux Falls, SD 57104-2471

CIRCUIT JUDGES

Glen A. Severson, Presiding Judge
Patricia C. Riepel
William J. Srstka, Jr.
Kathleen K. Caldwell
Peter H. Lieberman
C. Joseph Neiles
Stuart L. Tiede
Bradley G. Zell

COURT ADMINISTRATOR

Karl E. Thoennes III

STAFF ATTORNEY

Jill Moraine

Telephone: 605-367-5920

Fax: 605-367-5979

www.SDJudicial.com/SecondCircuit

March 30, 2007

TO: The Administrative Office of the Courts in each state;
A local court in each state

Good morning,

Ugh, another survey. I understand, but this one will be very quick. Really. Two pages, simple questions with check boxes.

In the late 1980's three writers with the American Judicature Society (AJS) surveyed all 50 state court administrators on ethics codes for non-judicial court employees. Over the next two years following that survey, AJS drafted and published the *Model Code of Conduct for Nonjudicial Court Employees*. The Model Code of Conduct for the National Association for Court Management soon followed, based largely on the work done by AJS. That code has not been revised or updated since its adoption. Last fall NACM's Board of Directors assembled a working group of court managers from around the country to review and propose an update to NACM's ethics code. This survey is part of that work.

As a final project for a fellowship with the Institute for Court Management (ICM), and out of a keen general interest in the topic, and to help inform that NACM ethics code revision project, I've been assembling a national collection of ethics codes for non-judicial court employees. The collection now contains dozens of ethics codes, codes of conduct, court interpreter codes, and other ethics-related materials and references from state courts, local jurisdictions, professional associations, tribal courts, and jurisdictions overseas.

When this project started I assumed that only a few states and jurisdictions had adopted their own ethics codes for administrative court staff, but in fact we've now cataloged at least 25 codes from over 20 states. To make sure that the collection is as complete as possible, however, I am sending out this follow-up survey. Because some codes are adopted statewide while others are local, the survey is being sent to both the statewide administrative offices of the courts and a local jurisdiction chosen at random in each of the 50 states, to a total of 100 recipients.

The attached survey is just two pages. It can also be filled out online at www.CourtEthics.org. More importantly however, if we don't already have your court's code, personnel rules, administrative orders, or statute references or any other documents that address ethical conduct – whatever form your ethics documents might take – we hope that you would take a moment and send them to the address on the enclosed envelope, or e-mail the files, links, or statute citations to karl.thoennes@ujs.state.sd.us.

Thanks very, very much for your help and your time. I certainly hope this project has a lasting value in assembling a comprehensive ethics library for court employees. I certainly appreciate whatever help you may be able to offer.

Sincerely,



Karl E. Thoennes III
Administrator, 2nd Judicial Circuit
State of South Dakota

ICM/CEDP Follow-Up Survey on Court Ethics Codes
Spring 2007

To fill out this survey on-line, go to www.CourtEthics.org and look for the survey link.

State or Jurisdiction: _____

1. National Inventory of Ethics Codes & Provisions. How does your court provide guidance in ethics for administrative (non-judicial) court employees? (Please check all that apply)

- An ethics code specifically adopted for employees (non-judicial officers).
 - Personnel or human resource policies, rules, or manuals that address standards of behavior, conduct, and/or ethics.
 - Ethics code(s) adopted by your local, state, or regional court management association (this would not include the code for the National Association for Court Management, AJS, or other national model codes, unless your jurisdiction has actually adopted them for local use, like Florida's 15th Circuit for example.)
 - Administrative orders from the Supreme Court or court of highest jurisdiction in your state, the presiding judge(s), or the bench as a whole, that govern the conduct of court employees.
 - State or local statutes, ordinances, or regulations that govern court employee conduct.
 - Provisions in your code of judicial conduct that at least indirectly apply to court staff.
 - Counseling, advice, and guidance on an ongoing basis from supervisors or management in situations as they arise.
 - Other _____
-
-

2. Financial Disclosure Requirements for Administrative Employees. Over the course of this study, to my surprise I've discovered that at least a couple states require some form of personal financial disclosure by at least some administrative employees or court managers (California and Maryland; the State Court Administrator in Iowa also files a financial disclosure, although no other staff is required to do so.) Does your state or jurisdiction require any personal financial disclosures by court employees?

- No.
- Yes. _____

3. Newly Emerging Ethics/Conduct Area: Internet Searches. Many or most courts now have acceptable-use policies on staff computers and the Internet, but does your court have any policies that specifically address Internet searches or “Googling” prospective job applicants?

No. Yes. _____

4. On-Line Library of Codes/Ethics Documents. If a formal code of conduct, rules, orders, policies, or any other written guidance on ethics does apply to non-judicial court employees in your jurisdiction but is not included on the following list, could you please send the reference or document to the address shown on the enclosed envelope, or e-mail the file or a link to:
karl.thoennes@ujs.state.sd.us.

At the moment we have copies of the ethics codes or other ethics- and conduct-related documents or references for the following states, territories, or jurisdictions:

Alaska (tribal court/Tanana Valley Chiefs)
Arizona
California
Colorado (personnel rules)
Delaware
Florida (15th and 17th Circuits)
Guam
Iowa
Kansas (probation officers)
Maryland (Circuit and District Court Clerks)
Michigan (state, professional association, and tribal court)
Minnesota
Montana
Nebraska
New Jersey
New Mexico (5th District)
Nevada
Nooksak Indian Tribe (Washington State)
Ohio (Supreme Court employees)
South Dakota (court system personnel rules, Section 9)
Washington (references to employees in the Code of Judicial Conduct, and tribal court)

We've also collected 17 codes of ethics or professional responsibility for court interpreters and ethics codes for court employees in at least 13 countries outside the United States. Eventually this ICM project may be accessible through the National Center for State Courts, but for now if you're interested in particular codes and references assembled so far, the collection is posted at www.CourtEthics.org. Thanks very much for your help on this project.

PLEASE REPLY BY APRIL 30, 2007. THANK YOU.

Supplemental Survey Recipients

Alabama Administrative Office of the Courts
300 Dexter Avenue
Montgomery, AL 36104

Donald R. Gibson, Circuit Clerk
Choctaw County Courthouse
117 S. Mulberry St.
Butler, AL 36904

Office of the Administrative Director
820 West 4th Avenue
Anchorage, AK 99501-2005

Sandy Yehle, Clerk
Barrow Superior Court
1250 Agvik St.
P.O. Box 270
Barrow, AK 99723-0270

Administrative Office of the Courts
Arizona State Court Bldg.
1501 W. Washington
Phoenix, AZ 85007-3327

Deborah Young, Clerk
County Courthouse
200 N. San Francisco
Flagstaff, AZ 86001

Administrative Office of the Courts
Justice Building
625 Marshall Street
Suite 1100
Little Rock, AR 72201

Janet Luff, Circuit Clerk
Clay County Courthouse
800 W. Second St
Corning, AR 72422

Administrative Office of the Court
455 Golden Gate Ave
San Francisco, CA 94102-3688

Michael J. Yerly, Court Administrator
333 W. Santa Clara Suite 1060
San Jose, CA 95113

Administrative Office of the Courts
Office of The State Court Administrator
1301 Pennsylvania, Suite 300
Denver, CO 80203

Deborah George, Clerk
Gilpin Combined Court
2960 Dory Hill Rd., Suite 200
Golden, CO 80403-8780

Administrative Office of the Courts
Office of the Chief Court Administrator
Supreme Court Bldg, 231 Capitol Ave.
Hartford, CT 06106

William Sadek, Chief Clerk
235 Church St.
New Haven, CT 06501

Administrative Office of the Courts
New Castle County Courthouse
500 N. King St. Suite 11600
Wilmington, DE 19801-3734

Joyce Collins, Prothonotary
Sussex County Courthouse
The Circle
Georgetown, DE 19947

Executive Office of the District of Columbia Courts
500 Indiana Ave. N.W. Room 1500
Washington, D.C. 20001

Duane B. Delaney, Clerk
500 Indiana Ave., NW Room 2500
Washington, D.C. 20001

Office of the State Courts Administrator
Supreme Court Bldg., 500 S. Duval ST.
Tallahassee, FL 32399-1900

W. Greg Godwin, Clerk
Hamilton County
207 N.E. First St., Room 106
Jasper, FL 32052

Administrative Office of the Courts
244 Washington St. S.W., Suite 300
Atlanta, GA 303344-5900

Patricia Baker, Clerk
Cherokee County
90 North St., Suite G-170
Canton, GA 30114

Administrative Director of the Courts
Aliiolani hale, Room 206A
417 S. King St.
Honolulu, HI 96813

Lester D. Oshiro, Chief Court Administrator
State Bldg.
75 Aupuni St.
Hilo, HI 96720-4253

Administrative Office of the Courts
Idaho Supreme Court
451 W. State St.
P.O. Box 83720
Boise, ID 83720-0101

Steven Caylor, Trial Court Administrator
Nez Perce Courthouse
P.O. Box 896
Lewiston ID 83501

Administrative Office of the Courts
222 N. LaSalle St. 13th floor
Chicago, IL 60601

Steven M. Ravid, Clerk
160 N. LaSalle St., Suite 1400
Chicago, IL 60601

Administrative Office of the Courts
Division of the State Court Administration
15 W. Washington St., Suite 1080
Indianapolis, IN 46204

Mary C. Brown, Clerk
609 E. National Ave., Room 213
Brazil, IN 47834

Administrative Office of the Courts
Judicial Branch Bldg.
1111 E. Court
Des Moines, IA 50319

Karen Kahl, Clerk
Crawford County Courthouse
1202 Broadway
Denison, IA 51442

Administrative Office of the Courts
Judicial Center, Room 337
301 S.W. Tenth Avenue
Topeka, KS 66612-1507

Lea D. Welch, Clerk
Cloud County Courthouse
811 Washington St.
Concordia, KS 66901

Administrative Office of the Courts
100 Millcreek Park
Frankfort, KY 40601

Jo Ann Newsom, Circuit Clerk
Caldwell County
105 W. Court Square
Princeton, KY 42445

Office of Judicial Administrator
400 Royal Street, Suite 1190
New Orleans, LA 70112

Christine L. Crow, Clerk
1600 N. Third St.
P.O. Box 4408
Baton Rouge, LA 708021-4408

Administrative Office of the Courts
62 Elm St.
P.O. Box 4820
Portland, ME 04112

Sally Bourget, Clerk
Cumberland County Courthouse
142 Federal St.
P.O. Box 287
Portland, ME 04112-0287

Administrative Office of the Courts
Maryland Judicial Center
580 Taylor Ave.
Annapolis, MD 21401

Robert P. Duckworth, Clerk
Anne Arundel County
7 Church Circle
P.O. Box 71
Annapolis, MD 21404-0071

Administrative Office of the Trial Court
Two Center Plaza, Suite 540
Boston, MA 02108-1905

Thomas H. Driscoll Jr., Clerk
Essex County Court House
34 Federal St.
Salem, MA 01970

State Court Administrative Office
Michigan Hall of Justice
925 W. Ottawa
P.O. Box 30048
Lansing, MI 48915

Connie M. Branam, Clerk
Marquette County Courthouse
234 W. Baraga Ave.
Marquette, MI 49855

State Court Administrator's Office
25 Rev. Dr. Martin Luther King, Jr. Blvd.
St. Paul, MN 55155-1500

Cindy Stratioti, Court Administrator
St. Louis County Courthouse
100 N. Fifth Ave., West
Duluth, MN 55802-1285

Administrative Office of the Courts
656 N. State
P.O. Box 117
Jackson, MS 39205

Sandy Parker, Deputy Court Administrator
P.O. Drawer 1100
Tupelo, MS 38802-1100

Office of State Courts Administrator
2112 Industrial Dr.
P.O. Box 103380
Jefferson City, MO 65110-4480

Cheryl Whitmarsh, Clerk
Boone County Courthouse
705 E. Walnut St.
Columbia, MO 65201

Administrative Office of the Courts
Justice Bldg., Room 315
215 N. Sanders
P.O. Box 203002
Helena, MT 59620-3002

Nancy Morton, Clerk
415 Second Ave., North, Room 200a
Great Falls, MT 59401

Administrative Office of the Courts
1220 State Capital
P.O. Box 98910
Lincoln, NE 68509

Jackie King-Coughlin, Clerk
Dixon County
P.O. Box 395
Ponca, NE 68770-0395

Administrative Office of the Courts
Supreme Court Bldg.
Capital Complex Suite 250
201 S. Carson, St.
Carson City, NV 89701-4702

Francis Gale, Clerk
Eureka County Courthouse
P.O. Box 100
Eureka, NV 89316-0100

Administrative Office of the Courts
Two Noble Drive
Concord, NH 03301

John M. Safford, Clerk
Hillsborough County Northern District
300 Chestnut St.
Manchester, NH 03101-2490

Administrative office of the Courts
Richard J. Hughes Justice Complex
7th Floor
25 W. Market Street
P.O. Box 037
Trenton, NJ 08625

Administrative Office of the Courts
Supreme Court Bldg., Room 25
237 Don Gaspar St.
Santa Fe, NM 87504-2178

Office of Court Administration
25 Beaver St.
New York, NY 10004

Office of State Court Administrator
State Capitol, Judicial Wing
600 E. Boulevard Ave., Dept. 180
Bismarck, ND 58505-0530

Administrative Office of the Courts
P.O. Box 2448
Raleigh, NC 27602-2448

Administrative Office of the Courts
Administrative Director's Office
Supreme Court of Ohio
65 S. Front Street
Columbus, OH 43215-3431

Joseph F. Davis, Trial Court Administrator
595 Newark Ave
Jersey City, NJ 07306

Jean Willis, Court Administrator
400 N. Virginia
P.O. Bo 1776
Roswell, NM 88202-1776

Aprilanne Agostino, Acting Chief Clerk
141 Livingston St. 15th Floor
Brooklyn, NY 11201-5078

Donna Adams, Clerk
Billings County Courthouse
495 Fourth St.
P.O. Box 138
Medora, ND 58645-0138

Brenda A. Tucker, Clerk
New Hanover County Judicial Bldg.
316 Princess St.
P.O. Box 2023
Wilmington, NC 28402-2023

Gregory Miller Court Administrator
204 N. Main St.
Lima, OH 45801

Administrative Office of the Courts
1915 N. Stiles, Suite 305
Oklahoma City, OK 73105

Vicki Justus, Clerk
McCurtain County Courthouse
108 N. Central Ave.
P.O. Box 1378
Idabel, OK 74745-1378

Office of the State Court Administrator
Supreme Court Bldg.
1163 State St.
Salem, OR 97301-2563

Candia L. Friesen, Trial Court Administrator
850 Main St., Room 301
Dallas, OR 97338

Administrative Office of Pennsylvania Courts
1515 Market St., Suite 1414
Philadelphia, PA 19102

George F. Matta II, Clerk
Allegheny County Courthouse
436 Grant St., Room 115
Pittsburgh, PA 15219-2495

Administrative Office of the Courts
250 Benefit St., Room 705
Providence, RI 02903

Jane Anthony, Clerk
Newport County
45 Washington Square
Newport, RI 02840

Administrative Office of the Courts
Court Administration
1015 Sumter St., Suite 200
Columbia, SC 29201

Marcus W. Kitchens, Clerk
Spartanburg County Courthouse
180 Magnolia St.
P.O. Box 3483
Spartanburg, SC 29304-3483

Administrative Office of the Courts
State Capitol
500 E. Capital
Pierre, SD 57501-5070

Linda Shepherd, Court Administrator
P.O. Box 1238
Pierre, SD 57501-1238

Administrative Office of the Courts
511 Union St., Suite 600
Nashville, TN 37219

Barry E. Pelizzari, Circuit Clerk
Anderson County Courthouse
100 N. Main St.
Clinton, TN 37716

Office of Court Administration
P.O. Box 12066
Austin, TX 78711-2066

Charles Bacarisse, District Clerk
Harris County Courthouse
301 Fannin St., Room 400
Houston, TX 77002

Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, UT 84114-0241

Valeen Brown, Clerk
Plute County Courthouse
550 N. Main St.
Junction, UT 84740

Office of the Court Administrator
109 State St.
Montpelier, VT 05609-0701

Christine Brock, Court Manager
Chittenden County
32 Cherry St., Suite 300
Burlington, VT 05401

Administrative Office of the Courts
Supreme Court of Virginia, 3rd Fl
100 N. 9th St.
Richmond, VA 23219

George E. Schaefer, Clerk
100 St. Paul's Blvd.
Norfolk, VA 23510

Office of the Administrator for the Courts
Temple of Justice
415 12th Avenue, S.W.
P.O. Box 41174
Olympia, WA 98504-1174

Thomas R. Fallquist, Clerk
1116 W. Broadway, Room 300
Spokane, WA 99260-0350

Administrative Office of the Courts
Supreme Court of Appeals of West Virginia
E-100 State Capitol
Charleston, WV 25305

Vonda M. Reneman, Clerk
Taylor County Courthouse
214 W. Main St., Room 104
Grafton, WV 26354

Administrative Office of the Courts
16 E. State Capital
Madison, WI 53702

Carolyn Olson, Clerk
Iowa County Courthouse
222 N. Iowa St.
Dodgeville, WI 53533

Administrative Office of the Courts
233 Supreme Court Bldg.
2301 Capitol Ave.
Cheyenne, WY 82002

Linda Harris, Clerk
Hot Springs County Courthouse
Thermopolis, WY 82443

APPENDIX 6: MODEL CODE OF CONDUCT FOR NONJUDICIAL COURT EMPLOYEES, AMERICAN JUDICATURE SOCIETY

American Judicature Society

Model Code of Conduct for Nonjudicial Court Employees. Adopted 1989.

Introduction

The holding of public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. A court employee, faithful to that trust, therefore shall observe high standards of conduct so that the integrity and independence of the courts may be preserved. Court employees shall carry out all duties assigned by law and shall put loyalty to the principles embodied in this Code above loyalty to persons or parties. A court employee shall uphold the Constitution, laws and legal regulations of the United States, the State of __ and all governments therein, and never be a party to their evasion. A court employee shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code wherever they may appear to exist.

Scope

- 1) Each jurisdiction must determine exactly which employees shall be covered by this Code. The Code should apply to all employees who directly or indirectly affect the court's operation. A suggested listing of such employees would include: court clerks, docket clerks, data processing personnel, bailiffs and judicial secretaries, as well as court managers and their staffs. This list is intended to be illustrative and does not imply that other employees should be omitted. For example, if janitors in the court building have contact with the public or have the authority to purchase supplies for the court, then the Code should apply to these employees as well.
- 2) This Code is not intended to apply to law clerks, who should be held to a higher standard of conduct, nor to court reporters, who are bound by the *Code of Professional Conduct of the National Shorthand Reporters Association*.
- 3) The term, "court employee," includes within its scope those court employees who are also court managers.
- 4) The term, "court manager," includes within its scope all court employees who have important supervisory responsibilities. Each jurisdiction must identify the particular court employees who function as managers within that court system.

Section One: Abuse of Position

- A) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.

B) No employee shall accept, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any employee would be influenced thereby. Gifts that do not violate this prohibition against abuse of position are further regulated in Section Three, Subsection B.6.

C) No employee shall discriminate by dispensing special favors to anyone, whether or not for remuneration, nor shall any employee so act that the employee is unduly affected or appears to be affected by kinship, rank, position or influence of any party or person.

D) No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advice or assistance given in the course of his or her public employment.

E) Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.

F) Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.

Section Two: Confidentiality

A) No court employee shall disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another.

B) Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any judge, law clerk, staff attorney or other employee including, but not limited to, notes, papers, discussions and memoranda.

C) Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.

D) Every court employee shall report confidential information to the appropriate authority when the employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be disciplined for disclosing such confidential information to an appropriate authority.

E) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.

F) Court employees are not precluded from responding to inquiries concerning court procedures, but a court employee shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court employee designated for that purpose.

G) No court employee shall either initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.

H) A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

Section Three: Conflict of Interest

A) Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine the community's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.

1) A conflict of interest exists when the court employee's objective ability or independence of judgment in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.

2) No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.

3) For the purposes of this Code, "immediate family" shall include the following, whether related by marriage, blood or adoption: spouse; dependent children; brother; sister; parent; grandparent; grandchildren; father-in-law, mother-in-law; sister-in-law, brother-in-law; son-in-law, daughter-in-law; stepfather, stepmother; stepson, stepdaughter; stepbrother, stepsister; half-brother, half-sister.

B) Prohibited Activities:

1) No court employee shall enter into any contract with the court system for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the court system in a manner not available to any other interested party.

2) No court employee shall receive tips or other compensation for representing, assisting or consulting with parties engaged in transactions or involved in proceedings with the court system.

3) No court employee shall participate in any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.

4) No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was substantially involved or in any dealings with offices or positions that the former employee once held.

5) No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.

6) No court employee shall solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.

a) Nothing in this section shall prohibit an employee from accepting a public award presented in recognition of public service.

b) Nothing in this section shall prohibit an employee from receiving a commercially reasonable loan made as part of the ordinary transaction of the lender's business.

c) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly report the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are prohibited as abuse of office in Section One, Subsection B.

d) Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such a gift is received on behalf of the court system by the appropriate designated authority.

C) To secure conformity to the above standards, every court employee who has authority to enter into or to approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.

D) Each full-time court employee's position with the court system must be the employee's primary employment. Outside employment is permissible only if it complies with all the following criteria:

- 1) The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and
- 2) The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities; and
- 3) The outside employment does not require the practice of law; and
- 4) The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and
- 5) The outside employment shall not be within the judicial, executive or legislative branch of government without written consent of both employers; and 6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.

Section Four: Political Activity

- A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during non-working hours. Such activity includes, but is not limited to, membership and holding office in a political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who chooses to participate in political activity during off-duty hours shall not use his or her position or title within the court system in connection with such political activities.
- B) With the exception of officers of the court who obtain their position by means of election, no employee shall be a candidate for or hold partisan elective office. With the same exception, an employee who declares an intention to run for partisan elective office shall take an unpaid leave of absence upon the filing of nomination papers. If elected, he or she shall resign. An employee may be a candidate for non-partisan office without separating from employment, provided that the employee complies with the requirements in this Code concerning performance of duties, conflicts of interest, etc.
- C) No employee shall engage in any political activity during scheduled work hours, or when using government vehicles or equipment, or on court property. Political activity includes, but is not limited to:
 - 1) Displaying campaign literature, badges, stickers, signs or other items of political advertising on behalf of any party, committee, agency or candidate for political office;
 - 2) Using official authority or position, directly or indirectly, to influence or attempt to influence any other employee in the court system to become a member of any political organization or to take part in any political activity;

- 3) Soliciting signatures for political candidacy;
 - 4) Soliciting or receiving funds for political purposes.
- D) No employee shall discriminate in favor of or against any employee or applicant for employment on account of political contributions or permitted political activities.

Section Five: Performance of Duties

- A) Every court employee shall endeavor at all times to perform official duties properly and with diligence. Every court employee shall apply full-time energy to the business and responsibilities of the employee's office during working hours.
- B) Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.
- C) Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.
- D) No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee's control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.
- E) No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.
- F) No court employee shall give legal advice or recommend the names of private attorneys.
- G) No court employee shall refuse to enforce or otherwise carry out any properly issued rule or order of court, nor shall court employees exceed that authority. No court employee shall be required to perform any duties outside the scope of the assigned job description.
- H) Every court employee shall immediately report violations of this Code to the appropriate designated authority.
- I) Court employees who are law students, attorneys or members of other professional groups are also bound by the appropriate professional duties of those roles.

Section Six: Court Managers

- A) Court managers regularly shall update their education.
- B) Court managers shall require employees subject to their direction and control to observe the ethical standards set out in this Code.

C) Court managers shall diligently discharge their administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of other court employees.

D) Court managers shall take action regarding any unethical conduct of which they may become aware, initiating appropriate disciplinary measures against an employee for any such conduct and reporting to appropriate authorities evidence of any unethical conduct by judges or lawyers.

E) Court managers shall not act as leaders in or hold office in any political organization, make speeches for any political organization or publicly endorse a candidate for political office.

This Model Code was drafted by David T. Ozar, Cynthia Kelly and Yvette Begue and approved for promulgation by the AJS Executive Committee

Appendix 7: Current NACM Model Code of Conduct, 1990

Model Code of Conduct

National Association for Court Management

Introduction

The National Association for Court Management (NACM) recognizes the importance of ethical conduct by its members in the administration of justice. NACM members hold positions of public trust and are committed to the highest standards of conduct. NACM members observe these standards of conduct to preserve the integrity and independence of the judiciary. The NACM Code embodies our dedication to upholding and increasing the public's confidence in the judicial branch of government, and also reflects our commitment to promoting integrity within our association and profession. NACM's members subscribe to the following Code of Conduct.

Article I. Abuse of Position and Conflict of Interest

- A. Members shall not use or attempt to use their official positions to secure unwarranted privileges or exemptions for that member or any other person.
- B. Members shall not accept, agree to accept, dispense, or solicit any gift or favor based upon an understanding that the official actions of the member would be influenced thereby.
- C. Members shall act so that they are not unduly affected or appear to be affected by kinship, position, or influence of any party or person.
- D. Members shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment. However, members may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code.
- E. Members shall use the resources, property, and funds under their control judiciously and solely in accordance with prescribed legal procedures.
- F. Members shall avoid conflicts of interest, or the appearance of conflicts, in the performance of their official duties.

Article II. Confidentiality

- A. Members shall not disclose to any unauthorized person confidential information.
- B. Members shall not give legal advice unless specifically required to do so as part of their official position.

Article III. Political Activity

- A. Members are free to participate in political campaigns/organizations during nonworking hours if such activity does not use, or appear to use, the member's official position or court in connection with such activities.
- B. Members who obtain their official positions by means of election are exempted from the provisions above to the extent that the member is known as the incumbent while seeking reelection and may cite appropriate judicial branch experience while campaigning.

Article IV. Performance of Duties

- A. Members should carry out their responsibilities to the public in a timely, impartial, diligent, and courteous manner, strictly adhering to the principles embodied in this code.
- B. Members shall not discriminate on the basis of, nor manifest by words or conduct, a bias or prejudice based upon race, color, religion, national origin, gender, or other groups protected by law, in the conduct of service to the court and public.
- C. Members shall enforce or otherwise carry out any properly issued rule or order of court and shall not exceed that authority except to perform other duties of their positions.
- D. Members shall promote ethical conduct as prescribed by this code and report any improper conduct by any persons to appropriate authorities.
- E. Members shall support and protect the independence of the judicial branch of government. Members shall also protect the public's interest and justice for all persons.
- F. Members shall uphold the Constitution, laws, and legal regulations of the United States and all other governments they serve and never be a party to their evasion.
- G. Members shall promote the growth and development of professional court management by improving their work skills and supporting research and development in the field.
- H. Members shall avoid any activity that would reflect adversely on their position or court.
- I. Members shall immediately report to appropriate authorities any attempt to induce them to violate these standards.

Acknowledgments: The National Association for Court Management extends its sincere appreciation to David T. Ozar, Cynthia Kelly, Yvette Begue, and the American Judicature Society for their work in developing a model code of conduct for court employees. NACM's Code of Conduct is based primarily on their work.

APPENDIX 8: DRAFT REVISED NACM MODEL CODE OF CONDUCT, APRIL 2007

**** DRAFT ** Model Code of Conduct For Court Employees
National Association for Court Management
April 2, 2007**

Preamble

Public service to the judicial branch is a public trust. The triumph of our society rests, in part, on the confidence of the citizens in the integrity of the judicial branch as a co-equal branch of our government. We must be faithful to that trust. We must observe the conspicuously high standards of conduct required to preserve the court system's integrity and independence.

Scope

A. Intended Audience

This code speaks to all full-time, part-time and temporary court system employees who directly or indirectly assist the courts in their operation, including employees of court administration, clerk's offices, and probation departments.

B. Not to Supersede Other Codes

The code is not intended to supersede separate professional codes that bind court system employees.

Tenet One: Citizenship

A. Obeying the Law

It is fundamental to this code and a prerequisite to its other tenets that we commit to fulfilling the duties of citizenship in a self-governing democratic society. This includes upholding the United States Constitution and the appropriate state constitution, as well as Federal and state laws and legal regulations.

B. Principle Over Person

We shall comply with our legal duties, placing loyalty to the principles of this code before loyalty to persons or other affiliations.

Tenet Two: Performance of Duties

A. Court Duties

We shall faithfully carry out all our appropriately assigned duties striving at all times to perform our work, diligently, efficiently, equitably, thoroughly, and courteously; observing the high standards of conduct. We shall carry out properly issued court orders and rules, not exceeding our authority.

B. Accountability

We shall conduct court business to further the public interest, so that same public can make informed judgments and hold us accountable. We shall constantly look for better ways to perform our work and the Court's work in the pursuit of excellence.

C. Avoiding Impropriety

We shall avoid both impropriety and the appearance of impropriety. We shall avoid subjecting ourselves to improper influences from business, family, position, party, or person. We shall avoid activities that would impugn the dignity of the court.

D. Fairness

We shall conduct our work without bias or prejudice against any legally protected group based on race, skin color, religion, age, sexual orientation, national origin, language, marital status, socio-economic status, physical or mental challenge.

E. Honesty and Truthfulness

We shall express the truth as best we know it sincerely, without trickery or duplicity, and not conveying in a way likely to mislead or deceive.

Tenet Three: Avoiding Conflicts of Interest

A. Independent Judgment

We shall avoid relationships that would impair our impartiality and independent judgment. We shall be vigilant of conflicts of interest and ensure that outside interests are never so extensive or of such nature as to impair the ability to perform court duties.

B. Personal Relationships

We shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism. Where circumstances dictate that we must work directly with a relative, we will regularly assess the situation and take corrective action at the earliest time practicable. Wherever possible we shall avoid appointing, assigning, or directly supervising, a relative, or attempting to influence the employment or advancement of a relative.

Tenet Four: Duty to Report

A. Involvement in Actions Before the Court

We shall notify the appropriate authority whenever we or anyone in our immediate family are named in any action pending before our court.

B. Misconduct of Others

We expect our fellow employees to abide by the standards set out in this code. We shall expose violations wherever they may appear to exist. We shall report to the appropriate

authority, the behavior of any court employee who violates this code including but not limited to; potential conflicts of interest involving our duties; and attempts to inappropriately influence us in performing our duties.

C. Attempts at Influence

We shall immediately report to the appropriate authority any attempt to compel us to violate these tenets.

D. Financial Disclosure

We shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

Tenet Five: Engaging in Appropriate Employment

A. Outside Business

The court is our primary employment. We shall conduct our outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, so it reflects positively on the judicial branch and on our own professionalism.

B. Subsequent Business

We shall not assist or represent anyone other than the court for compensation in a matter involving the court if we significantly participated in that matter as an employee.

C. Avoiding Court Time and Resources

We shall obtain permission from the appropriate authority prior to accepting work or engaging in business outside of our court duties, and conduct this work only during non-court hours, using non-court resources, even to the point of taking unpaid leave if necessary.

D. Outside Compensation for Court Work

We shall accept only our compensation as court employees when giving advice or assistance as part of our official capacity.

E. Acquiring Information as Part of Work

If Internet search engines are used in conducting candidate research, we shall be respectful of applicants and employees' personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities.

Tenet Six: Political Activity

A. Right As Private Citizens

We retain our right to vote and are compelled to exercise it as a part of citizenship. We

are free to participate in political activity. If we choose to engage in partisan political activity, we do so strictly as private citizens. We shall participate only during non-court hours, using only non-court resources. We shall not influence or attempt to influence other employees in the court system. We shall not use our position or title within the court system to influence others.

B. Avoid Conflict with Our Court Work

Unless we are elected to our court position, we shall campaign during non-work hours or take an unpaid leave of absence upon declaring our intent to run for office. If elected, we shall resign our post with the court unless holding a political office that clearly does not hold a conflict of interest, nor does it interfere with our ability to perform our court duties.

Tenet Seven: Committing to the Intended Purpose of One's Position

A. Avoiding Privilege

We shall use our official position solely for its intended purpose. We shall not use our position (intentionally or unintentionally), to secure unwarranted privileges or exemptions for ourselves or others; we shall not dispense special favors to anyone, whether or not we were offered remuneration.

B. Avoid Ex-Parte Access

We shall not attempt to take advantages of our enhanced access to judges and court files to further any personal interest we might have in a case or engage in non-court related ex parte discussions with judges.

C. Properly Maintain Records

We shall not inappropriately destroy, alter, falsify, mutilate, backdate or fail to make required entries on any records within the court's control.

Tenet Eight: Avoiding Gifts

We shall not solicit, accept, or agree to accept, dispense, any gift, favor, or loan either for myself or on behalf of another, based upon any understanding, either explicit or implicit, that would influence an official action.

Tenet Nine: Upholding Confidentiality

A. Legal Requirements

We shall maintain the legally required confidentialities of the court, not disclosing confidential information to any unauthorized person, for any purpose. We shall properly provide confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule or administrative policy.

B. Discretion

We shall respect litigants and the public. We shall treat personal or sensitive information with the same discretion that we ourselves would wish others to have if we were involved in a similar case.

Tenet Ten: Not Giving Legal Advice

We shall respond to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of our official position. We shall not recommend specific private attorneys to members of the public.

Tenet Eleven: Technology

A. Access to Email

While working in the court, we shall access the Internet and electronic messages (email) as court representatives, acknowledging that communications will be for professional reasons. Notwithstanding the court's right to retrieve email, we shall treat it as confidential to be accessed only by the intended recipient. We shall not use a password, access a file, or retrieve stored information, unless authorized to do so. We shall not access a co-worker's computer or e-mail without permission. We shall use the Internet and e-mail for personal use only when it does not interfere with our job responsibilities.

B. Access to the Internet

We shall access the Internet for only ethical purposes, avoiding pornography, violence, gambling, racism, harassment, or any illegal activity. We shall not use the Internet and e-mail for offensive or disruptive messages including those containing sexual implications, racial slurs, gender-specific comments, or comments that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, disability, profanity, or vulgarity.

C. Copyrights

We shall not use the Internet and e-mail to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.

Tenet Twelve: Proper Use of Public Resources

We shall use the resources, property and funds under our official control judiciously and solely in accordance with prescribed procedures.

APPENDIX 9: DRAFT REVISED NACM MODEL CODE OF CONDUCT WITH COMMENTARY, APRIL 2007

Discussion and Commentary on the 2007 DRAFT NACM Model Code

Preamble

Public service to the judicial branch is a public trust. The triumph of our society rests, in part, on the confidence of the citizens in the integrity of the judicial branch as a co-equal branch of our government. We must be faithful to that trust. We must observe the conspicuously high standards of conduct required to preserve the court system's integrity and independence.

Commentary and Discussion

Do We Need a Model Code?

The presentation of a model code leads one to ask, "is a model code of conduct really necessary any more?" State codes, judicial branch codes, County codes, etc. abound. There appears to be little difference between the various codes regardless of who developed them. Does a model code, and does this specific code bring a needed new perspective to the field of court administration?

Each reader must make his or her own assessment as to the usefulness of this particular model code of conduct. This code features three perspectives, which may not be prevalent in other codes throughout the nation.

1. This code is specifically tailored to trial courts; many other codes are adapted from general county codes. Although laudable, general county codes may not address the specific needs of trial court staff.
2. Some codes are adapted from codes of judicial conduct. These codes are aimed at judicial officers and employees and are expected to comply with applicable tenets. Again, these codes may not always address the specific needs of trial court staff.
3. This code is aspirational (as will be discussed in the next section). Many codes are subsets of court or county personnel policies, which carry implications, not always best suited for a code of conduct.

Scope

This code speaks to all full-time, part-time and temporary court system employees who directly or indirectly assist the courts in their operation, including employees of court administration, clerk's offices, and probation departments.

The code is not intended to supersede separate professional codes that bind court system employees.

Commentary and Discussion:

Other Codes	This code is intended to complement codes maintained by other professional organizations; not to conflict with them. Employees, such as court interpreters, court reporters, probation officers, or staff attorneys, bound by other codes, may still find this code helpful as an ethical guideline.
Are there professional codes whose tenets conflict with this one?	
Should there be a national body to review ethics incidents and render opinions?	Aside from the differences already mentioned in the Preamble's Commentary and Discussion, this code does not contain a structural feature found in some other codes. The New Jersey Code of Conduct for Judicial Employees, for example, invites, ". . . the supervisor or the employee may make written application to the Advisory Committee on Outside Activities of Judiciary Employees for an opinion on matters that do not appear to be resolved readily by the Canons." ⁵⁷ This code is not supported by any sort of on-going body to render opinions on employee behavior.
This Code's Suggested Use	Debate exists as to the use of codes of conduct and their place in the schema of a court organization. We, on the committee, have written the model code to answer the question, "how should I act?" rather than (rather crudely put) "what can I get away with?" We recommend <i>not</i> embedding the code in a court's normal personnel rules; rather have the code live outside the personnel rules even if a mirror image of the code exists within the rules. We encourage this for two reasons. <ul style="list-style-type: none"> 1. Personnel rules cover a wide variety of topics from major principles to mundane processes. It is inappropriate to direct staff to uphold the independence of the judiciary immediately after telling them to expect \$24.95 as the normal per diem rate on travel days. 2. Personnel rules must cover due process, opportunity to respond, and levels of proof necessary before sanctions can be imposed. It would be tragic to have a tenet of the code violated, yet since due process was not followed in a specific instance, the offending party could claim not to have violated the ethics code.
Common Terms	A number of terms are used throughout this code: <p>The term <i>immediate family</i> can be defined differently from one jurisdiction to another. We encourage each court to define and document the term in their court.</p> <p>The term <i>appropriate authority</i> can vary depending on the organizational structure of the court. We encourage each court to define and document the term in their court.</p>
Other Codes: American Judicature Society	The section on Scope: paragraphs 1) and 2) state, "The Code should apply to all employees who directly or indirectly affect the court's operation. A suggested listing of such employees would include: court clerks, docket clerks, data processing personnel, bailiffs and judicial secretaries, as well as court managers and their staffs. This list is intended to be illustrative and does not imply that other employees should be omitted.
	This Code is not intended to apply to law clerks, who should be held to a

⁵⁷ Scope Section of New Jersey Code of Conduct for Judicial Employees, Adopted Effective December 7, 1993, Including Amendments Effective March 1, 1999

higher standard of conduct, nor to court reporters, who are bound by the Code of Professional Conduct of the National Shorthand Reporters Association.”

**American Bar
Association Model
Code of Judicial
Conduct**

Citizenship

It is fundamental to this code and a prerequisite to its other tenets that we commit to fulfilling the duties of citizenship in a self-governing democratic society. This includes upholding the United States Constitution and the appropriate state constitution, as well as Federal and state laws and legal regulations. We shall comply with our legal duties, placing loyalty to the principles of this code before loyalty to persons or other affiliations.

Commentary and Discussion

**American
Judicature Society** In the Introduction to the AJS Model Code it states, “A court employee shall uphold the Constitution, laws and legal regulations of the United States, the State of and all governments therein, and never be a party to their evasion.”

**National
Association for
Court Management** Article IV. Performance of Duties F) “Members shall uphold the Constitution, laws, and legal regulations of the United States and all other governments they serve and never be a party to their evasion.”

Performance of Duties

Performing Court Duties

We shall faithfully carry out all our appropriately assigned duties striving at all times to perform our work diligently, efficiently, equitably, thoroughly, and courteously; observing the high standards of conduct. We shall carry out properly issued court orders and rules, not exceeding our authority.

Accountability

We shall conduct court business to further of the public interest, so that same public can make informed judgments and hold us accountable. We shall constantly look for better ways to perform our work and the Court’s work in the pursuit of excellence.

Avoiding Impropriety

We shall avoid both impropriety and the appearance of impropriety. We shall avoid subjecting ourselves to improper influences from business, family, position, party, or person. We shall avoid activities that would impugn the dignity of the court.

Fairness

We shall conduct our work without bias or prejudice against any legally protected group based on race, skin color, religion, age, sexual orientation, national origin, language, marital status, socio-economic status, physical or mental challenge.

Honesty and Truthfulness

We shall express the truth as best we know it sincerely, without trickery or duplicity, and not conveying in a way likely to mislead or deceive.

Commentary and Discussion

Specific Examples	Specific examples of actions that might give the appearance of impropriety include having a personal relationship with a process server, or serving alcohol at a social event to individuals already inebriated. <u>This commentary is still the subject of considerable committee discussion; it should not be considered final.</u>
Other Codes	Commentary from Canon Two: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in All of the Judge's Activities Section A). "The prohibition against behaving with impropriety or the appearance of 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. Actual improprieties under this standard include violations of law, court rules or other specific provisions of this 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."
American Bar Association	Article IV. Performance of Duties A) "Members should carry out their responsibilities to the public in a timely, impartial, diligent, and courteous manner, strictly adhering to the principles embodied in this code."
National Association for Court Management	Tenet Two Personal Integrity, "The fundamental attitudes and work habits of individual court employees are of vital importance. Honesty and truthfulness are paramount: employees should not, for example, knowingly make omissions on time cards of personnel records; backdate a court document for any reason unless ordered to do so by a court; falsely claim reimbursement for mileage or expenses; double dip from professional associations or other sources; lie about leaving work early for a doctor's appointment; misuse the telephone, facsimile machine, or copying machine; or take supplies home for private use."
California Code of Ethics Guidelines	Tenet Two Personal Integrity, "The fundamental attitudes and work habits of individual court employees are of vital importance. Honesty and truthfulness are paramount: employees should not, for example, knowingly make omissions on time cards of personnel records; backdate a court document for any reason unless ordered to do so by a court; falsely claim reimbursement for mileage or expenses; double dip from professional associations or other sources; lie about leaving work early for a doctor's appointment; misuse the telephone, facsimile machine, or copying machine; or take supplies home for private use."
American Judicature Society (AJS)	The AJS Code mentions this tenet under section 5 (E), "No court employee shall discriminate on the basis of nor manifest, by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court." This code adds age, skin color, socio-economic status, in addition to physical and mental challenges.
The ABA code prohibits judges from belonging to organizations that discriminate, should this mode code do the same?	Canon Two C. "A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin."
Avoiding Conflicts of Interest	

Independent Judgment

We shall avoid relationships that would impair our impartiality and independent judgment. We shall be vigilant of conflicts of interest and shall ensure that outside interests are never so extensive or of such nature as to impair the ability to perform court duties.

Personal Relationships

We shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism. Where circumstances dictate that we must work directly with an immediate family member, we shall regularly assess the situation, and take corrective action at the earliest time practicable. Wherever possible we shall avoid appointing, assigning, directly supervising, or attempting to influence the employment or advancement of a member of our immediate family.

National Association for Court Management	Article I. Abuse of Position and Conflict of Interest C) "Members shall act so that they are not unduly affected or appear to be affected by kinship, position, or influence of any party or person. F) Members shall avoid conflicts of interest, or the appearance of conflicts, in the performance of their official duties."
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Commentary and Discussion

We understand that in many jurisdictions (often due to the size of the court) working with a relative is unavoidable. If circumstances ever change, as employees of the court, we are obligated to change the working situation at the earliest time practicable.

Duty to Report

Involvement in Actions Before the Court

We shall notify the appropriate authority whenever we or anyone in our immediate family are named in any action pending before our court.

Misconduct of Others

We expect our fellow employees to abide by the standards set out in this code. We shall report violations wherever they may appear to exist. We shall report to the appropriate authority, the behavior of any court employee who violates this code including but not limited to; potential conflicts of interest involving our duties; and attempts to inappropriately influence us in performing our duties.

Attempts at Influence

We shall immediately report to the appropriate authority any attempt to compel us to violate these tenets.

Financial Disclosure

We shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

Commentary and Discussion

The Misconduct of Others	Employees are afraid of ramifications of exposing their friends, but this is important. Enron is an example of not reporting. We are sensitive to situations such as minor ethical violations that can be resolved with lower level counseling. It is important that each court designate "appropriate authorities" as mentioned in the commentary on common terms. Possibly different authorities can be designated for differently classes of situations. Some situations might be appropriately dealt with by a supervisor; others might require the intervention of the presiding judge.
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Discussion Question:

Is it reasonable to expect court staff to report on fellow employees who violate the code?

Discussion Question: How much “proof” should an employee have before reporting a situation to a superior?	The American Judicature Society, in the Introduction to their Model Code of Conduct for Nonjudicial Court Employees shares the position presented in this code. “A court employee shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code wherever they may appear to exist.” ⁵⁸
American Judicature Society	Section One: Abuse of Position F), “Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.”
National Association for Court Management	Article IV. Performance of Duties I) “Members shall immediately report to appropriate authorities any attempt to induce them to violate these standards.”

Engaging in Appropriate Employment

Outside Business

The court is our primary employment. We shall conduct our outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, so it reflects positively on the judicial branch and on our own professionalism.

Subsequent Business

We shall not assist or represent anyone other than the court for compensation in a matter involving the court if we significantly participated in that matter as an employee.

We shall obtain permission from the appropriate authority prior to accepting work or engaging in business outside of our court duties, and conduct this work only during non-court hours, using non-court resources, even to the point of taking unpaid leave if necessary.

Outside Compensation for Court Work

We shall accept only our compensation as court employees when giving advice or assistance as part of our official capacity.

Acquiring Information as Part of Work

If Internet search engines are used in conducting candidate research, we shall be respectful of applicants and employees’ personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities.

Commentary and Discussion

Outside Compensation Many courts permit employees to engage in limited consulting work while employed. If employees are paid from a separately entity as consultants, we would expect them to take leaves of absence.

American Judicature Society Section One: Abuse of Position D), “No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advice or assistance given in the course of his or her public employment.”

⁵⁸Introduction to the Model Code of Conduct for Nonjudicial Court Employees, October–November 1989

**National Association
for Court Management** Article I. Abuse of Position and Conflict of Interest D) "Members shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment. However, members may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code."

Acquiring Information We, on the committee, recognize that this emerging issue of Internet research on applicants, employees, and vendors is a complex area that still generates significant debate. The paragraph above was drafted in light of the following considerations.

1. The credibility of information published on the internet can vary from highly reliable to complete nonsense, and so managers should be appropriately skeptical of search engine results.
2. Although the boundary between the public and private activities of court employees can be a complex area, there can be no expectation of privacy for information published on the Web; therefore, assertions about the *privacy* of such information are misplaced, even though such information can be intensely *personal*.
3. Just like jurors are asked to disregard inadmissible revelations at trial, court managers may sometimes be compelled by law and/or public policy to disregard what they discover through Internet searches, as difficult as that may be depending on the nature of the revelation.

We conclude that although Internet inquiries must be conducted very cautiously for all the reasons described here, the Internet is now such a comprehensive information resource that such inquiries on prospective applicants or service providers can be entirely appropriate and may even be necessary and well-justified in some circumstances

Political Activity

We retain our right to vote and are compelled to exercise it as a part of citizenship. We are free to participate in political activity. If we choose to engage in partisan political activity, we do so strictly as private citizens. We shall participate only during non-court hours, using only non-Court resources. We shall not influence or attempt to influence other employees in the court system. We shall not use our position or title within the court system to influence others.

Unless we are elected to our court position, we shall campaign during non-work hours or take an unpaid leave of absence upon declaring our intent to run for office. If elected, we shall resign our post with the court unless holding a political office that clearly does not hold a conflict of interest, nor does it interfere with our ability to perform our court duties.

Commentary and Discussion

This section does not restrict ancillary political activity such as putting up yard signs, or allowing one's spouse to put up yard signs. We encourage jurisdictions to develop a mechanism to objectively determine if running for a specific political office does or does not interfere with Court duties. Also new is the question of whether we are allowed to campaign against ballot measures that directly affect the judiciary. What happens when there is a direct attack on the judiciary? Would have to get appropriate authority.

National Association for Court Management Article III. Political Activity A) “Members are free to participate in political campaigns/organizations during nonworking hours if such activity does not use, or appear to use, the member’s official position or court in connection with such activities.

B) Members who obtain their official positions by means of election are exempted from the provisions above to the extent that the member is known as the incumbent while seeking reelection and may cite appropriate judicial branch experience while campaigning.”

Committing to the Intended Purpose of One’s Position

Avoid Privilege

We shall use our official position solely for its intended purpose. We shall not use our position (intentionally or unintentionally), to secure unwarranted privileges or exemptions for ourselves or others; we shall not dispense special favors to anyone, whether or not we were offered remuneration.

We shall not attempt to take advantages of our enhanced access to judges and court files to further any personal interest we might have in a case or engage in non—court related ex–parte discussions with judges.

Properly Maintain Records

We shall not inappropriately destroy, alter, falsify, mutilate, backdate or fail to make required entries on any records within the court’s control.

Commentary and Discussion

American Judicature Society Section One: Abuse of Position A) “No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.”

National Association for Court Management Article I. Abuse of Position and Conflict of Interest A) “Members shall not use or attempt to use their official positions to secure unwarranted privileges or exemptions for that member or any other person.”

Comment on Public Records This tenet is not intended to prohibit alteration or expungement of records or documents pursuant to court order or authorized records retention schedule.

Avoiding Gifts

We shall not solicit, accept, or agree to accept, dispense, any gift, favor, or loan either for myself or on behalf of another, based upon any understanding, either explicit or implicit, that would influence an official action.

National Association for Court Management Article I. Abuse of Position and Conflict of Interest B) “Members shall not accept, agree to accept, dispense, or solicit any gift or favor based upon an understanding that the official actions of the member would be influenced thereby.”

Upholding Confidentiality

Legal Requirements

We shall maintain the legally required confidentialities of the court, not disclosing confidential information to any unauthorized person, for any purpose.

We shall properly provide confidential information that is available to specific individuals

authorized to receive such by reason of statute, court rule or administrative policy.

Discretion

We shall respect litigants and the public. We shall treat personal or sensitive information with the same discretion that we ourselves would wish others to have if we were involved in a similar case.

Commentary and Discussion

California Code of Ethics

Guidelines for Tenet Four: Confidentiality. "Sensitive information acquired by court employees in the course of discharging their official duties should never be revealed until it is made a matter of public record. Sometimes breaches of confidentiality do not involve intentional disclosure of official court records but are the result of innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, any of which could give attorneys, litigants, and reporters confidential information. Such remarks can seriously compromise a case or a person's standing in the community. Court staff should discuss cases only for legitimate reasons, and should handle sensational or sensitive cases with great care."

The Ohio Supreme Court Code of Ethics

The Ethics Code for the Ohio Supreme Court states, "Employees regularly produce and have access to confidential information. Information regarding legal and administrative matters that are pending before the Court and that are not a matter of public record is confidential. An employee shall not release any confidential information until it is publicly announced in the normal course of the Court's business or its release is otherwise approved by the Court. An employee shall not share confidential information with anyone, including another employee, unless that employee is permitted to have access to the confidential information. An employee who obtains unauthorized access to confidential information shall keep it confidential pursuant to this policy.⁵⁹

American Judicature Society

Section Two: Confidentiality A), "No court employee shall disclose to any unauthorized person for any purpose any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another."

National Association for Court Management

Article II. Confidentiality A) "Members shall not disclose to any unauthorized person confidential information."

The committee recognizes that while prohibitions on the release of confidential or legally sealed data is clear-cut, a ethical prohibition on the release or casual discussion of highly personal information found in files that are otherwise open to the public is less clear. However, we maintain that court employees ought to treat personal, private, or sensitive information with the same care and discretion that they'd wish others to have for their own personal business – sort of a golden rule of discretion. For example, if a reasonable court employee wouldn't want his messy divorce casually discussed at a party, then the court employee ought not to discuss a citizen's divorce at a party either. If a reasonable court employee would find it hurtful to have the gory details of his sister's assault discussed at the local bar, then the employee ought to extend a similar discretion to members of the public and refrain from such discussions in social settings,

⁵⁹ Code of Ethics for Employees of the Ohio Supreme Court

whether or not those same gory details were published on the front page of the New York Times. The public has the right to expect that we shall be careful, discreet, and sensitive with their personal information, and not use their personal lives as material for amusing discussions at cocktail parties.

Legal Advice

We shall respond to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of our official position. We shall not recommend specific private attorneys to members of the public.

Commentary and Discussion

Definition of Legal Advice

We, on the committee, recognize there is still much debate over the extent to which court staff can provide legal advice, and even the definition of legal advice. Many definitions exist; we have chosen to rely on the 1995 definition provided by John Greacen, which lays out five principles (summarized below). Court employees:

1. must explain court processes and procedures
2. must explain how to bring litigants' problems to the court
3. can not advise whether litigants should bring their problems to court or what remedy to seek.
4. must be impartial and not allow parties to discuss a case with a judge ex-parte

Recommending Specific Attorneys

We see recommending specific private attorneys to the public gives the appearance of directing business to specific attorneys.

National Association for Court Management

Article II. Confidentiality B) "Members shall not give legal advice unless specifically required to do so as part of their official position."

Discussion Question: The AJS Model Code includes a reference to the confidentiality of work products, should this model code include such a reference?

The AJS Model Code includes a reference to court managers needing to educate court employees about what information is confidential, should this model code include such a reference?

Technology

Access to Email

While working for the court, we shall access the Internet and electronic messages (email) as court representatives, acknowledging that communications shall be for professional reasons. Notwithstanding the court's right to retrieve email, we shall treat it as confidential to be accessed only by the intended recipient. We shall not use a password, access a file, or retrieve stored information, unless authorized to do so. We shall not access a co-worker's computer or e-mail without permission. We shall use the Internet and e-mail for personal use only when it does not interfere with our job responsibilities.

Access to the Internet

We shall access the Internet for only ethical purposes, avoiding pornography, violence, gambling, racism, harassment, or any illegal activity. We shall not use the Internet and e-mail for offensive or disruptive messages including those containing sexual implications, racial slurs, gender-specific comments, or comments that offensively addresses someone's age, sexual orientation, religious or political beliefs, national origin, disability, profanity, or vulgarity.

Copyrights

We shall not use the Internet and e-mail to send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.

Commentary and Discussion

Internet access and electronic messages (e-mail) is provided to us as court professionals to acquire information related, or designed, to facilitate the performance of regular assigned duties, and to facilitate performance of tasks and projects.

Use of Public Resources

We shall use the resources, property and funds under our official control judiciously and solely in accordance with prescribed procedures.

Commentary and Discussion

American Judicature Society Section One: Abuse of Position E), "Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures."

National Association for Court Management Article I. Abuse of Position and Conflict of Interest E) "Members shall use the resources, property, and funds under their control judiciously and solely in accordance with prescribed legal procedures."

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