

3. Conference of State Court Administrators Model Code of Conduct for Nonjudicial Court Employees

I. Purpose

Public office or employment is a public trust. A court employee must observe high standards of conduct to maintain and enhance public confidence in the judiciary and preserve the integrity and independence of the judicial system. A court employee must conduct himself or herself so as to engender public confidence that matters involving life, liberty, and property are decided by a fair and impartial judicial system; that court decisions, rules, and policies are made through established procedures; and that a court official or employee will not use his or her public office to obtain personal benefits. A court employee must avoid not only impropriety, but the appearance of impropriety.

The Code is intended to establish standards of conduct and provide guidance in maintaining the highest ethical standards. To achieve these purposes, the Code of Conduct is adopted. The provisions of this Code shall be construed and applied to further these purposes. The standards set forth in this Code shall not affect or preclude more stringent standards imposed by law or by court order.

II. Applicability

This Code of Conduct shall apply to each employee of the court.

III. Confidentiality

- A. A present or former court employee shall not disclose or use, without appropriate authorization, any information acquired in the course of official duties or through unauthorized disclosure by another that is confidential because of statutory provisions or court rules or that has been properly designated as confidential.
- B. A court employee shall not release to the public any work product that is not a matter of public record without prior written approval of the court. Work product includes, but is not limited to, notes, papers, opinions, discussions, preliminary dispositions, and memoranda by any judge, law clerk, staff attorney, or other court employee.

- C. A court employee shall not comment publicly on a legal matter before the court. Court employees shall not express to any person not an employee of the court a personal opinion about a pending case or matter. A court employee shall not disclose the extent of his or her involvement in the decision-making process.

IV. Conflict of Interest and Related Prohibitions

A. Use of Position for Personal Gain or Benefit; Exceptions

A court employee shall not solicit or accept anything of value for the personal or private benefit of the employee or his or her immediate family or an organization with which the employee is associated, unless:

- (1) the thing of value was conveyed for a reason unrelated to and not arising from the recipient's holding or having held a public office or public position; and
- (2) the thing of value was unrelated to matters before or affecting the court.

B. Restraints on Solicitation or Acceptance of Gifts or Gratuities

A court employee shall not solicit, accept, assign, or agree to receive anything of value from a party that is regulated by, doing or seeking to do business with, or interested in matters before the court or from any other person under circumstances that could improperly influence the employee with respect to his or her duties or create the appearance of impropriety.

C. Improper Use of Position

A court employee shall not use or attempt to use the authority or influence of his or her office or employment to secure anything of value or the promise or offer of anything of value [that is of such a character as to manifest a substantial or improper influence upon the employee with respect to his or her duties].

D. Additional Compensation

A court employee shall not solicit or accept any additional compensation or anything of value other than the employee's compensation from the court for performing the employee's official duties.

Appendix D: 3. COSCA Model Code of Conduct

E. Special Favors

A court employee shall not discriminate against or otherwise give special treatment or anything of value to any person, whether or not for compensation, or permit family, social, or other relationships to influence or appear to influence official conduct or judgment.

F. Misuse of Office

A court employee shall not use the resources, property, personnel facilities, equipment, time, or funds under the employee's official control improperly to benefit the employee or any other person.

G. Interest in a Court Contract

A court employee shall not: (1) authorize or use the authority or influence of his or her office to secure authorization of any contract in which the employee, a member of the employee's family, or a business, organization, or person with which the employee is associated has an interest; or (2) have an interest in the profits or benefits of a contract entered into by or for the use of the court.

H. Nepotism

A court employee shall not advocate, authorize, or otherwise cause the employment, appointment, promotion, transfer, or advancement of employment, or supervise or manage a member of the employee's family. A court employee shall not participate in any action relating to the employment or discipline of a member of the employee's family.

I. Votes, Deliberations, and Discussion

A court employee shall not participate in, vote on, influence, or attempt to influence an official decision if the employee, a family member, or a business or organization with which the employee is associated has a primary interest in or may derive a reasonably foreseeable benefit from the decision, unless the pecuniary interest or potential benefit is incidental to the employee's position or accrues to the employee as a member of a profession, occupation, or large class to no greater extent than could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

J. Negotiating for Employment

A court employee shall not improperly act or fail to take action affecting a person with whom the employee is negotiating for employment.

V. Post-Employment Restrictions

- A. A present or former court employee shall not represent a person on a matter before the court or another government entity in which the employee participated personally and substantially while an employee.
- B. A present or former court employee shall not represent a person on a matter which was pending under the former employee's official responsibility within one year before termination of that responsibility, for a period of two years after the employee's service or the public position has ceased.
- C. A present or former court employee shall not represent a person in a matter before the court with which the employee served for a period of one year after employment has ceased.
- D. Nothing contained in this section shall prohibit a former employee from being retained to represent the court with which the employee served.
- E. The work product of a present or former court employee shall remain confidential. A law clerk or staff attorney who leaves the employment of the court may be permitted to take legal memoranda as part of a personal file, but shall not release the memoranda, draft opinion, or any other court document to any other person without the written consent of the court.

VI. Impropriety; Appearance of Impropriety; Performance of Duties

- A. A court employee shall not engage in activity that gives the appearance of impropriety. A court employee shall not allow family, social, or other relationships to influence official conduct or judgment.
- B. A court employee shall not perform any discretionary or ministerial function, including the assignment of cases, in a manner that improperly favors any person or imply that the employee is in a position to do so.
- C. A court employee shall not lend the prestige of the court to advance the private interests of others or convey or permit others to convey the impression that he or she is in a position of influence.
- D. A court employee shall respect and comply with the law and conduct himself or herself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

Appendix D: 3. COSCA Model Code of Conduct

VII. Attorneys; Practice of Law; Recusal

A. A court employee who is an attorney shall not practice law in any federal state, or local court, except in an official capacity, or perform legal services for private clients. This prohibition does not preclude the performance of legal work necessary to the management of personal affairs to the extent that the work:

- (1) is done without compensation;
- (2) does not require any act, including an appearance in any court, that would suggest that the position of a court-employed attorney is being misused, that preferential treatment is being sought, or that would otherwise be inconsistent with that attorney's official duties or primary responsibility to the court;
- (3) does not conflict or appear to be in conflict with court duties; and
- (4) does not reflect adversely on the court or create the appearance of impropriety.

A court employee who is an attorney may provide occasional uncompensated legal advice or document drafting for relatives or friends.

B. A court employee shall not participate in a matter in which the employee's impartiality might reasonably be questioned, including but not limited to instances in which the employee:

- (1) has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts;
- (2) has served as a lawyer in the matter in controversy;
- (3) has previously practiced law or been associated with a lawyer involved with the matter in controversy;
- (4) has been a material witness concerning the matter in controversy;
- (5) knows that he or she, individually or as a fiduciary, or his or her spouse or child: (a) has a financial interest in the subject matter in controversy, (b) is party to the proceeding, or (c) has any interest that could be substantially affected by the outcome of the matter in controversy;
- (6) has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy.

A court employee shall not participate in a matter in which a spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

- (1) is a party to the proceeding, or an officer, director, or trustee of a party;
- (2) is acting as a lawyer in the proceeding;
- (3) is known by the court employee to have an interest that could be substantially affected by the outcome of this proceeding;
- (4) is to the staff attorney's knowledge likely to be a material witness in the proceeding.

A court employee should be aware of all personal and fiduciary financial interests and make a reasonable effort to be informed about the personal interests of the spouse and minor children residing in the employee's household.

VIII. Political Activity

ALTERNATIVE 1.

- A. A court employee retains the right to vote. 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. A court employee shall not act as a leader in or hold office in any political organization, make speeches for any political organization, or publicly endorse a candidate for political office. A court employee shall not contribute to or participate in any judicial campaign.

ALTERNATIVE 2.

- A. A court employee may participate 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.

ALTERNATIVE 3.

- A. A court employee retains the right to vote, but shall not otherwise participate in political activity.

Appendix D: 3. COSCA Model Code of Conduct

- B. No court employee shall be a candidate for or hold elective office. An employee who declares an intention to run for elective office shall resign or may, with the court's permission, take an unpaid leave of absence upon the filing of nomination papers. If elected, the employee shall resign. [A court employee may be a candidate for elective office or may be appointed to office without separating from employment, provided that the employee complies with the requirements in this Code concerning performance of duties, conflicts of interest, and related matters.]
- C. A court employee shall not engage in political activity during work hours, or use public or court funds, personnel, facilities, equipment, or time. 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 of 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 a political candidacy;
 - (4) Soliciting or receiving funds for political purposes.
- D. A court employee shall not discriminate in favor of or against any employee or applicant for employment because of political party affiliation, political contributions, or permitted political activities.

IX. Personal Activities

- A. A court employee may write, lecture, teach, and speak on legal or nonlegal subjects, and engage in the arts, sports, and other social and recreational activities, as long as the activities do not detract from the dignity of the office or the court, or interfere with the performance of the employee's official duties.
- B. A court employee may participate in civic and charitable activities that do not detract from the dignity of the court or interfere with the performance of his or her official duties. A court employee may serve as an officer, director, trustee, or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization and solicit funds for any such organization, subject to the following limitations:

- (1) The name and prestige of the court shall not be used in the solicitation of funds;
 - (2) Funds shall not be solicited, individually or on behalf of an organization, from persons likely to come before or do business with the court.
- C. A court employee shall not engage in financial and business dealings that detract from the dignity of office, interfere with the performance of official duties, or exploit the employee's official position.

X. Personal Financial Disclosure

- A. A court employee who exercises supervisory authority or administrative discretion shall file a financial disclosure statement on a form provided by the court [or the appropriate ethics commission], and shall file the financial disclosure statement with the court [or the appropriate ethics commission] during each year of service with the court and the year following separation from court service.
- B. The financial disclosure statement shall include:
- (1) The name of the person filing the statement and each member of his or her immediate family, and all names under which the person or members of the immediate family does business.
 - (2) Identification of every source of income over \$500, including honorariums, in the employee's name or by any other person for the employee's use or benefit, by the person filing the statement, and a brief description of the nature of services for which the income was received.
 - (3) The name of every corporation [on file with the Secretary of State] that is incorporated in the state or holds a certificate of compliance authorizing it to do business in the state, trust, business trust, partnership, or association that transacts business in the state in which the person filing the statement or any other person for the employee's use and benefit had during the preceding calendar year an investment of more than \$1,000 at fair market value as of the thirty-first day of December of the preceding calendar year, or the date of disposition, whichever is earlier, or in which the person holds any office or has a fiduciary relationship, and a description of the nature of the investment, office, or relationship. This division does not require disclosure of the name of any financial insti-

Appendix D: 3. COSCA Model Code of Conduct

tution with which the person filing a statement has a demand deposit or a withdrawable share account.

- (4) All fee simple and leasehold interests to which the person filing the statement holds legal title to or a beneficial interest in real property located within the state, excluding the person's residence and property used primarily for personal recreation.
 - (5) The names of all persons residing or transacting business in the state to whom the person filing the statement owes, in the employee's own name or in the name of any other person, more than \$1,000, except debts on the person's residence or real property used primarily for recreation, debts resulting from the ordinary conduct of a business or profession, credit card accounts, and auto loans.
 - (6) The names of all persons transacting business in the state who owe more than \$1,000 to the person filing the statement either in the employee's own name or to any other person for the employee's use and benefit.
 - (7) The source of each gift of over \$500 received by the person in the employee's own name or by any other person for the use and benefit of the employee during the preceding calendar year, except gifts received by will or related testamentary transactions, from parents or grandparents, or by way of distribution from any intervivos or testamentary trust established by a spouse or an ancestor.
- C. A court employee who is required to file financial disclosure statement shall file the statement on or before the 15th day of April each year.

A statement filed under this provision is subject to public inspection at locations designated by the court [or the state ethics commission].

XI. Sanctions; Duty to Report Violations or Attempts to Induce Violations

- A. A court employee shall immediately report violations of this Code to the appropriate designated authority.
- B. A court employee who knowingly violates the Code of Conduct or fails to report violations of the Code of Conduct shall be subject to discipline pursuant to the court disciplinary procedures.

- C. A former court employee who is a lawyer shall be subject to discipline under the Code of Professional Conduct for violations of Division V and X of this Code.

XII. Definitions

- A. "Anything of value" includes the following:
- (1) A pecuniary item, including money, or a bank bill or note.
 - (2) A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money.
 - (3) A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money.
 - (4) A stock, bond, note, or other investment interest in an entity.
 - (5) A receipt given for the payment of money or other property.
 - (6) A right in action.
 - (7) A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel.
 - (8) A loan or forgiveness of indebtedness.
 - (9) A work of art, antique, or collectible.
 - (10) An automobile or other means of personal transportation.
 - (11) Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty.
 - (12) An honorarium or compensation for services.
 - (13) A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as a public official or public employee, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public.
 - (14) A promise or offer of employment.
 - (15) Any other thing of value that is pecuniary or compensatory in value to a person.

Appendix D: 3. COSCA Model Code of Conduct

“Anything of value” does not include:

- (1) a public award presented in recognition of public service with a value of less than \$50 [that is related to the court employee’s duties].
- (2) informational, promotional, or educational material of nominal value.
- (3) a commercially reasonable loan made as part of the ordinary transaction of the lender’s business.
- (4) a gift of historical or other significant value that is given for the benefit of the court, provided that the gift is received on behalf of the court by the appropriate authority and that no benefit derives to any court employee as an individual.
- (5) a gift that, not later than thirty days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes.
- (6) a gift, devise, or inheritance from a family member if the donor is not acting as the agent or intermediary for someone other than a person covered by this Code.
- (7) food and beverage with a value of less than \$50 consumed on the occasion when the court employee is participating in a charitable, civic, or community event which bears a relationship to the court employee’s office and the employee is attending in an official capacity.

“Anything of value” does not mean a campaign contribution properly received and reported, if reported, if reportable, as required under [the Campaign Finance Act].

B. “Business associate” includes the following:

- (1) An employer.
- (2) A general or limited partnership or a general or limited partner within the partnership.
- (3) A corporation:
 - (a) that is family-owned; or
 - (b) in which all shares of stock are closely-held; or the shareholders, owners, or officers of the corporation.
- (4) A corporation in which the court employee:

- (a) has an investment interest;
- (b) owns; or
- (c) has a beneficial interest in shares of stock that constitutes more than:
 - (i) five percent of the value of the corporation, or
 - (ii) \$1,000

- (5) A corporation, business association, or other business entity in which the employee serves as an agent or a compensated representative.
- (6) An association not otherwise covered by this definition between the employee and another person, that involves the conduct of a common enterprise.

C. "Compensation" means:

- (1) an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value.
- (2) a contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be rendered.

The term does not include reimbursement of expenses if the reimbursement:

- (1) does not exceed the amount actually expended for the expenses;
- (2) is substantiated by an itemization of expenses; and
- (3) meets the requirements of Section IV (A) and (B) of the Code.

D. "Court contract" means a contract for the purchase or acquisition of goods, services, or construction by or for the use of the court.

E. "Court employee" means any person who is elected or appointed to an office or is an employee of the court [whether compensated or not], including a clerk of court and a quasi-judicial officer such as a referee, magistrate, commissioner, or master. [Judges are subject to the Code of Judicial Conduct.]

F. "Economic interest" means an interest distinct from that of the general public in a [state] [public] purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in

Appendix D: 3. COSCA Model Code of Conduct

which a public official or public employee may gain an economic benefit of fifty dollars or more.

- G. “Family member” means an individual:
- (1) who is the spouse, child, parent, grandparent, sibling, parent-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandchild, nephew, niece, aunt, or uncle; or
 - (2) is a member of the individual’s household.
- H. “Gift” means anything of value other than a contribution to [a committee as defined under the Campaign Finance Act] to the extent that consideration of equal or greater value is not received. The term includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person’s status as a candidate.
- [I. “Immediate family” means an unemancipated child residing in the household, a spouse, or an individual claimed by the public official or public employee or the court employee’s spouse as a dependent for tax purposes.]
- I. “Informal representation” means a contact, including a request for information, whether in person, by mail, or by telephone, made with a state or local agency official or employee on behalf of a client or constituent.
- J. “Matter” means any case, proceeding, application, determination, issue, or question.
- K. “Negotiating” or “negotiate for employment” means a communication, directly or indirectly, with a prospective employer to discuss rendering services for compensation to that prospective employer, during the period that begins with a communication to a prospective employer to discuss rendering services for compensation to the prospective employer.
- L. “Nominal” means a monetary value of fifty dollars or less.
- M. “Official responsibility” means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or with others, and either personally or through subordinates, to approve, disapprove, or otherwise direct government action.
- N. “Participation” includes decision, approval, disapproval, recommendation, the rendering of advice, investigation, vote, or other substantial exercise of administrative discretion.

- O. "Particular matter" includes a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, rulemaking, or legislation.
- P. "Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.
- Q. "Public employee" means an individual appointed to a position, including a person appointed to a position created by statute, whether compensated or not, in state government, including a quasi-judicial officer such as a referee, magistrate, commissioner, or master.
- R. "Representation" means any formal or informal appearance before, or any written or oral communication with any public agency on behalf of any person, whether gratuitous or for compensation.

XII. Sources

- A. American Bar Association 1990 Model Code of Judicial Conduct
- B. American Judicature Society Code of Conduct for Nonjudicial Court Employees
- C. Arizona Administrative Office of the Courts Code of Conduct
- D. Council on Governmental Ethics Laws Model Code: Ethics, Conflict of Interest; Personal Financial Disclosure
- E. Michigan Association of Circuit Court Administrators Code of Conduct for Court Managers and Administrators
- F. National Association for Court Management Code of Conduct
- G. Ohio Ethics Law
- H. Supreme Court of Ohio Employee Code of Conduct
- I. Supreme Court of Pennsylvania Prohibited Political Activity By Court Appointed Employee