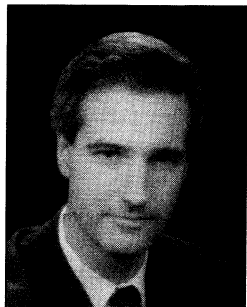


A Question of Ethics

Peter C. Kiefer



You Can Negotiate Anything?

I became intrigued by a question Jim Murchison, of Salem, Oregon, recently posed to me. "Is it ethical to negotiate ethics, or should maintaining a code of ethics be elevated to a higher plane?" Although I am unaware that the following scenario ever took place, it gives life to this perplexing point.

It has been nearly a year now since court administrator Bob introduced a code of ethics (based on the NACM code) into his court's personnel rules. Besides the clerk's office and court operations, Bob supervises the court's five juvenile probation officers who are part of a statewide union.

The union contract is due for renegotiation; Andy is the union's business agent. Andy and Bob have never gotten along. Andy opens negotiations by demanding that Bob dramatically change the code's conflict of interest wording. Presently, the two pertinent sections read, "Employees shall avoid conflicts of interest, or the appearance of conflicts, in the performance of their official duties," and "Employees may engage in outside employment as long as it does not conflict with the performance of their official responsibilities."

Andy reminds Bob that two of Bob's probation officers have

had to quit their moonlighting jobs in the last year because the jobs were (or appeared to be) in conflict with the officer's court duties. One officer worked evenings as a process server; the other repossessed cars.

Andy demands that Bob change the code to read that employees may engage in any outside employment as long as it does not physically prohibit them from performing their official responsibilities or is against the law. Andy also wants the words, "or the appearance of conflicts" dropped entirely.

Bob refuses to even discuss the code, but Andy is adamant. The union sets up informational pickets outside the courthouse claiming Bob is unethically infringing on employees' personal rights by restricting outside employment.

The judges do not want a politically unpopular strike on their hands. They tell Bob to agree to the wording changes for the probation officers only. Bob reluctantly acquiesces.

I called upon Kent Batty, executive court administrator of the circuit court in Detroit, Michigan, Matthew McConville, clerk of the county court in Denver, Colorado, and Alan Carlson, chief executive officer of the San Fran-

cisco Superior and Municipal Courts for their view on Bob, Andy, and the union.

Can a court ethically regulate outside employment beyond what is proscribed by law?

Kent Batty and Matt McConville both replied, yes, an organization can have a code of ethics over and above the law. Matt pointed out that a court has a higher public responsibility than some private firms. Kent said a court needs to ensure that job performance will not be affected by outside employment. Alan Carlson said, in the scenario depicted, it may be more appropriate to specify types of activities that could pose a conflict (such as not using confidential information) rather than employment. Alan also related that the standard for the appearance of conflict may be greater in a small town where probation officers are more visible than in a large city.

Besides judges and attorneys who work for the court having private practices, what types of outside employment could you see as potentially conflicting with court work?

Kent thought that court child support advisors having parties they counsel in court as private clients was a conflict. Alan

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viewed courtroom clerks working as process servers as a potential conflict. Matt mentioned marshals working as security guards at firms that may have business with the court as an example.

Is it appropriate for judges to decide ethical issues such as the one in this scenario?

Alan and Matt said judges should decide what constitutes conflict of interest. Kent agreed, although he thought it was a tough question, since judges have a different code of ethics from employees, and judges may be more influenced by political pressures. Matt added that judges should decide the situation based upon the code, but not be able simply to change the code based upon a given situation.

Is it ethical for Bob to negotiate ethics?

Kent thought Bob could negotiate the code; employees may bring up a new perspective Bob had not previously contemplated. Matt, however, thought it was unethical. Alan thought Bob should not negotiate in the context of the scenario presented, but Bob could negotiate to clarify terms and issues.

Does the fact that Bob negotiated away part of the code of ethics detract from the rest of the code?

Alan and Matt thought that Bob had compromised the rest of the code. Other employees with problems might see compromising the code as an option. The code would no longer be worth anything.

What could Bob have done differently?

Kent thought Bob should have sent the union a copy of the code and tried to obtain an agreement before installing the code in the personnel rules. Matt proposed the option of having Bob refuse to change the code, and having the judges overrule him. Alan recommended Bob could have tried to insulate his judges more through the use of the code. Bob could also have been more proactive by trying to get his side of the story out to the press. Alan admitted that this would be tricky.

I want to thank my three contributors for their thoughts on this issue. They uncovered new perspectives on this ethical question. If you have ideas or issues for the ethics column, mail them to *The Court Manager* in care of Anne Kelly at the National Center for State Courts. **CM**