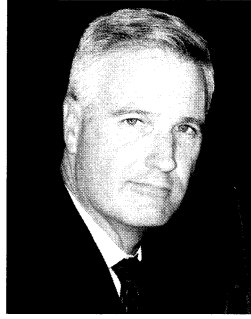




FRANK MAIOCCO



PETER KIEFER

A Question of Ethics

FRANK MAIOCCO AND PETER KIEFER

Outside Employment

Over the years, Karl Thoennes and Peter Kiefer have discussed various scenarios involving outside employment in search of that “line” that demarks ethically serving the court from engaging in inappropriate outside employment. Over time, possibly because of the economy, they have sensed that court staffs throughout the country have subtly shifted their view on this theme. People appear to have broadened their view on what is acceptable outside employment.

We are experimenting with this column. (Please welcome Frank Maiocco to this, his inaugural column.) Rather than delving into a single scenario, we think it may be instructive to look at a series of short “vignettes” containing variations on a single theme. We then ask respondents to react to the ethical implications of each variation. Our underlying question is straightforward — Do any or all of these vignettes describe inappropriate outside employment as defined in Canon 3.1 of the Code?¹

A court professional shall:

- avoid outside activities, including outside employment, business activities, even subsequent employment and business activities after leaving judicial service, that reflect negatively upon the judicial branch and on one’s own professionalism.
- notify the appropriate authority prior to accepting work or engaging in business outside of one’s court duties.
- not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment.

A court professional may:

- engage in outside employment that does not conflict with the performance of their official responsibilities or violate this code.

Respondents

We are pleased to have Theresa Ewing, court administrator for the Bremerton Municipal Court, Bremerton, Washington; James Murchison, trial court administrator for the Marion County Trial Courts, Salem, Oregon; Mark Hinnen, manager of the Eugene Office of the United States Bankruptcy Court, District of Oregon; and David Lauver, supervising probation officer, Juvenile Probation and Parole for the Lancaster County Court of Common Pleas, Lancaster, Pennsylvania, available to respond to the vignettes.

The Vignettes

1. Outside Contractor

Court Administrator Shirley contracts with CourtTrim, a nationally known court consulting firm, to travel to a court in a neighboring state and to work weekends and nights consulting on a new case management system. Occasionally Shirley works on weekdays but then takes vacation leave. CourtTrim pays Shirley for her night and weekend (and occasional weekday) work.

Is Shirley’s consulting work ethical or unethical?

Mark Hinnen, Jim Murchison, and Theresa Ewing all said Shirley’s consulting work was ethical. Mark said it was okay as long as she was keeping her consulting activities separate from her work and the work was appropriate to her position.

Theresa and Jim thought that as long as Shirley notified her employer that she was engaging in outside employment and she used vacation time to cover her weekday work, she was not violating the ethics code.

David Lauver said Shirley's consulting was unethical. He said that Shirley needs to decide who she really works for and stop splitting her time. "I believe it is a violation of the canon because she is being paid for her vacation time as a court employee to do work for and receive compensation from CourtTrim."

2. Unpaid Leave

Shirley's vacation time on her regular court job runs out about three quarters of the way through the fiscal year, so her presiding judge allows her to use unpaid leave.

Is Shirley's use of unpaid leave ethical or unethical?

David saw Shirley's use of unpaid leave as unethical and a violation of the canon. It is her responsibility to plan her time so she has sufficient vacation time. "I question how effective she is in performing her job duties in either job."

Theresa, Mark, and Jim's view was that Shirley's use of unpaid leave was ethical. Theresa and Mark thought that as long as the court (her judge) was aware and supportive of her employment, she was not in violation. Jim thought, "It should not matter whether she is using vacation time, other forms of paid leave, or unpaid leave. She needs to make sure that she is not 'on duty,' but she can still work outside her court employment as a consultant for other court-related projects."

3. Adjusting the Workday

The project's demands increase, and Shirley gets permission to start coming to work early in order to make up for being available for CourtTrim conference calls that take place late in the afternoon.

Is Shirley's adjustment of her work day ethical or unethical?

Mark, Theresa, and Jim believe it was ethical. Mark said that, assuming the court uses flex time, and as long as her judge knows what she is doing and is supportive, it is well within the court's prerogative to allow her to adjust her hours. Jim thought it was close to crossing the line and that Shirley needed to take care to account for her schedule. Theresa thought Shirley should not be at her place of employment to take the conference calls.

David Lauver reiterated that Shirley's actions were unethical since the lines had been blurred from the beginning as to when Shirley was working for the court and when she was working for CourtTrim.

4. Negligible Outside Work

Shirley finds herself responding to CourtTrim email during work hours, but the time she uses to respond seems negligible.

Is Shirley's response to CourtTrim emails during work hours ethical or unethical?

David, Mark, and Theresa all determined that it was unethical. Shirley was using public work time to conduct private outside business for profit. David depicted Shirley as "stealing" from the court. Mark wondered whether she was using court or private email. Theresa reminded us that most jurisdictions have strict prohibitions against using court equipment for private use.

Jim said that it depended on how “negligible” the CourtTrim work was. “However, she needs to see what the employer’s policies on her personal computer usage are.”

5. The Nearby Court

CourtTrim contracts with a court in a county adjacent to Shirley’s and assigns her to also consult on this project. This new assignment, again, requires working nights and weekends. Shirley has worked professionally with the court administrator at this other court.

Is Shirley’s consulting working at a court in an adjacent county ethical or unethical?

Mark and David said it was unethical. Mark felt this was a matter of professionalism. “She should not be receiving outside money for work that affects courts within her own state regardless of where her salary comes from while employed by the court.” David said that Shirley is overextended. “The more work that she does for CourtTrim, the more the lines are blurred as to whom she is working for — the court or CourtTrim.”

Theresa thought it was ethical based on the same reasoning used in response to the first vignette. Theresa did think, however, that Shirley should ask CourtTrim if she could be excused from working on projects within her own state to avoid the appearance of impropriety.

Jim thought that, in theory, it should not matter where the contract customer is located, however, he did think in this situation it was too difficult to separate Shirley the administrator from Shirley the consultant.

6. Work on the Jury System for a Local Attorney Firm

CourtTrim gets a third contract with the private law firm of Williams & Bradshaw to analyze and better understand the functionality of the jury system in Shirley’s state. CourtTrim has Shirley working nights and weekends detailing how the statewide jury system operates. Although Shirley begins to wonder what Williams & Bradshaw is doing with her analysis, CourtTrim does not delve into the law firm’s motives; it simply turns Shirley’s analysis over to them.

Is Shirley’s analysis of the jury system for a local law firm ethical or unethical?

Mark and David saw it as totally unethical. Shirley should not have been receiving outside money for work affecting her own court. “Any work she is doing that ultimately affects her own court should only be on the court’s time; plus, the lawyers may appear in her court, giving the appearance of impropriety or favoritism and possibly providing them inside information the law firm can use to their advantage.” David pointed out that Shirley was now in a position of being paid (through CourtTrim) from a law firm that does business with the court.

Theresa thought it was ethical as long as Shirley was conducting her research legitimately on her off hours. “. . . the fact that this information is for a private firm should have no bearing.”

Overall, Jim’s opinion was that it was unethical. He said that such research would be permissible only as long as the information Shirley was providing was public record. “However, the risk is too great here that Williams & Bradshaw would turn her analysis around and use it in her own court to their advantage (and therefore to the disadvantage of others.) Since providing such information would be expected within her own position, it is not ethical to accept outside compensation for doing so.”

We want to again thank Jim Murchison, David Lauver, Theresa Ewing, and Mark Hinnen for their perspectives on the theme of outside employment. The variety of opinions offered demonstrates that ongoing discussion on this theme is still needed. If you would like to suggest an ethical issue for future discussion, or if you would like to be contacted to respond to a future scenario, please contact either Peter at pkiefer@superiorcourt.maricopa.gov or Frank at FMaiocco@co.kitsap.wa.us. We also invite you to visit the National Association for Court Management's ethics Web page to review a variety of ethical codes.

On a personal note, I want to express my heart felt appreciation to Jim Murchison, who will be retiring at the end of June. Jim has been a good friend and a wise mentor to me for many years. Jim, the profession of court administration will be the lesser for your departure to new adventures.

— Peter

ABOUT THE AUTHORS

Peter Kiefer is the southeast regional court administrator for Maricopa Superior Court in Phoenix, Arizona. He has been questioning ethics for Court Manager since 1994. Frank Maiocco is court administrator for the Kitsap County Superior Court, Port Orchard, Washington.

NOTES

1. The NACM Code for Court Professionals adopted 2007.