

Committee on Codes of Conduct Advisory Opinion No. 111: Interns, Externs and Other Volunteer Employees

The [Code of Conduct for Judicial Employees \[Guide to Judiciary Policy, Vol. 2A, Ch. 3\]](#) (“the Employees’ Code”) was amended in 2013 to expressly cover interns, externs, and other volunteer court employees. [JCUS-MAR 13](#), p. 9. The amendment was an extension of the Committee on Codes of Conduct’s precedents that advised that these groups were subject to the Employees’ Code even though they were not expressly included. See [Advisory Opinion No. 83](#). The amendment was made to insure that all those who perform substantive work (as opposed to mere observation) for the courts, even on a voluntary basis, were aware that they were bound by the same ethical restraints and considerations as compensated employees. The Committee also wanted to insure that all judges, who are required by Canon 1 of the [Code of Conduct for United States Judges \[Guide, Vol. 2A, Ch. 2\]](#) to maintain and enforce high standards of conduct for themselves and members of their staffs, will take an active part in explaining and applying the parameters of the Employees’ Code to interns, externs, and other volunteer court employees.

This opinion addresses ethics issues that may arise concerning the employment of volunteers, either from the employees’ perspective under the Employees’ Code, or from the judges’ perspective under the Judges’ Code. It is important to note that although chambers’ staff members are subject to some of the more restrictive constraints of the Employees’ Code, the provisions of the Employees’ Code addressed here apply to all judicial employees.

Canon 4E of the Employees’ Code prohibits a judicial employee from receiving a salary, or any supplementation of salary, as compensation for official government services from any source other than the United States. See [Advisory Opinion No. 83](#) (advising that a volunteer employee such as an extern may not accept during the externship any payment or salary advance from a law firm, or any benefits such as health insurance paid for by a law firm). The Committee recognizes that various courts have historically used unpaid interns, externs, or other volunteer court employees who received educational stipends while they perform work for the courts. While such an arrangement would ostensibly be prohibited by Canon 4E, the Committee’s opinion is that this limited circumstance, as more fully delineated below, does not run afoul of the spirit or intent of the Code, and, therefore, is not prohibited by Canon 4E.

The spirit of the Employees’ Code is to preserve the integrity and independence of the judiciary and of the judicial employee’s office by requiring judicial employees to observe high standards of conduct (Canon 1), avoid conduct that might lead to an appearance of impropriety (Canon 2), avoid conflicts of interest and the disclosure of confidential or sensitive information (Canons 3D & 3F), and not engage in prohibited political activity (Canon 5), violations of which could diminish public confidence in the judiciary and possibly prevent the swift and unbiased administration of justice.

As a general proposition, an intern, extern, or other volunteer court employee may accept an educational stipend or similar payment after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees' Code or the Judges' Code. In making this evaluation, the judge should consider questions including the source of the funds (i.e., whether the funds are from a politically-based organization, a group that regularly appears before the federal courts, or attorneys who regularly appear before the federal court) and the nature of the payment arrangement (i.e., whether the funding is for a short-term, educationally-based position).

Examples of the Committee's advice on similar issues provide some guidance in addressing the various circumstances that may arise.

The Committee has found that there was no appearance of impropriety under Canon 2 of the Judges' Code in a judge's accepting the volunteer services of an intern who received a stipend from a foreign government, assuming the government was not a litigant in the judge's court. In that matter, the Committee viewed the intern, who was a foreign attorney seeking an internship with the court as part of her training to become a judge, to be in a situation similar to a law student extern or a "cooperative education" student performing services in the court in exchange for academic credit. See [Guide, Vol. 12, § 550.80 et seq. \("Volunteers"\)](#) and [§ 550.70 et seq. \("Cooperative Education and Fellowship Programs"\)](#). The Committee found no ethical impediment to the arrangement, and directed the judge to the applicable requirements for volunteer service programs so the judge could insure compliance with those rules and policies. See 28 U.S.C. § 604(a)(17)(A) (giving the Director of the Administrative Office of the United States Courts the authority to accept voluntary and uncompensated services to the court); [Guide, Vol. 12, § 550.20\(b\)](#) (indicating that the Director has delegated this authority to the heads of all units in the judiciary, including the Clerks of Court and Circuit Executives), [§ 550.70.20 \("Cooperative Education and Fellowship Program Roles and Responsibilities"\)](#), [§ 550.80.20](#) ("Roles and Responsibilities" governing court volunteers). Before commencement of such voluntary services to the court, the court unit executive must execute a Form AO 196A (Acknowledgment of Gratuitous Services), as provided in [§ 550.80.20\(a\)\(1\)](#).

The Committee reached the same conclusion for a law school graduate who served as a volunteer law clerk and received a stipend through a law school fellowship program. The Committee found the fellowship program, being of limited duration (which to date has been found to include up to six months) and awarded through an academic institution, analogous to a cooperative educational program. The Committee opined that, assuming the law school was not a party to litigation in the judge's court or otherwise doing business with the court, there would be no appearance of impropriety in the intern accepting a modest stipend from the law school. Consequently, the Committee found that the arrangement was permissible under Canon 2A of the Judges' Code ("A judge ... should act at all times in a manner that promotes public confidence in

the integrity and impartiality of the judiciary.”) The Committee also found no violation of the Employees’ Code Canon 4B(3) (prohibiting the acceptance of funds from someone “likely to come before the judicial employee or the court”) or Canon 4C(2) (prohibiting the acceptance of funds from “anyone seeking official action from or doing business with the court” or “anyone whose interests may be substantially affected by the performance or nonperformance of official duties”) because the prospective intern’s nominal stipend was not being paid in anticipation of future employment by her law school, and did not give rise to concerns regarding undue influence or other impropriety. The Committee noted that nothing in the law school’s program indicated a special or exclusive relationship between the judge and the law school such as giving that law school’s graduates preferred access to the judge’s chambers or others on the judge’s court.

The Committee has advised, however, that a judge should not accept the services of a volunteer law clerk who would be privately compensated by the law school from which the clerk graduated, where the funds would be solicited from lawyers. The Committee noted that the circumstances differed from previous opinions because it did not involve a short-term, academically-based internship, but rather was for a full-time law clerk compensated by alternative means involving funds solicited by the law school from attorneys and law firms.

An intern’s funding provided by a pool of local law firms is also inadvisable. Thus, the Committee has advised against allowing payment of a law student intern stipend from a local bar association, even when the funding came from pooled contributions by law firms, because the funding sources were a group of specific local law firms that were likely to come before the court and whose interests may be substantially affected by the intern’s performance of official duties under Canons 4B(3) and 4C(2) of the Employees’ Code. The controlling factor was the source of funding, which was mostly specific local law firms. The Committee also found that the proposal raised concerns for the judge under Canon 2A of the Judges’ Code because the funding, being from lawyers, might raise an appearance of impropriety. The Committee also repeated that “judges are advised against appointing volunteer externs who are provided payments by law firms before, during or after the externship that are dependent on the individual serving as a judicial extern.” [Advisory Op. No. 83](#). On the other hand, where the funding for an intern’s stipend derives from a blind source, such as funding through a national bar association, educational institution, or charitable organization, comprised of sources that are not likely to have interests that may be substantially affected by the intern’s performance, such a funding arrangement would not violate Canons 4B(3), 4C(2), or 4E of the Employees’ Code. Remember that a judge should not personally participate in fund-raising activities or solicit funds for such an organization or institution consistent with Canon 4C of the Judges’ Code.

In light of the conclusions reached here and in the past, it is the Committee’s opinion that, as a general proposition, an intern, extern, or other volunteer court employee may accept a stipend or similar payment for a short-term, academically-

based (or other organizationally-sponsored) position after checking with the court or the judge to ensure that certain conditions are met. This would involve an evaluation by the judge to determine whether the funding arrangement would raise ethical concerns under either the Employees' Code or the Judges' Code. The evaluation should examine, among other issues, the source of the funds, the purpose of the funds, and the duration of the anticipated volunteer services.

It is also important to stress that the application of the Employees' Code to interns, externs, or other volunteer court employees affects other aspects of their conduct, and affects the conduct of the judges who use their services. In particular, volunteer employees are subject to the ethical rules on conflicts of interest set forth at Canon 3F of the Employees' Code. Under those rules, for instance, these volunteers, like law clerks, may not work on cases involving future employers ([Advisory Opinion No. 74](#)), may not work on cases in which a party is represented by a volunteer court employee's spouse's law firm ([Advisory Opinion No. 51](#)), are bound by the prohibition against engaging in certain political activities ([Advisory Opinion No. 92](#)), and are limited in their conduct and representations on social media outlets ([Advisory Opinion No. 112](#)). Likewise, because interns, externs, or other volunteer court employees are now expressly treated the same as compensated employees, they are implicated in provisions of the Judges' Code that address staff employment matters. For example, these volunteer employees are covered by the judges' restraints against employing the child of another federal judge. See [Advisory Opinion No. 64](#). This is not an exhaustive list of the application of the Employees' Code or the Judges' Code to interns, externs, or other volunteer court employees, but merely an illustration of the reach of those Codes to provide some guidance for the future.

The Judicial Conference has also issued policy guidance concerning the acceptance of volunteer services in the courts. See [Guide to Judiciary Policy, Vol. 12, § 550.30.30 \(Requirements for Gratuitous/Volunteer Services\)](#). The Judicial Conference policy emphasizes that conflict of interest rules and other related ethics guidance applies to volunteer court employees, and to courts when accepting services from volunteer employees. The policy also cautions against engaging in nepotism or favoritism in the hiring of volunteer employees, stating that courts may not accept volunteer services from individuals related to judges or a public official of the court, consistent with the limitation on the employment of certain relatives of a judge in [28 U.S.C. § 458\(a\)\(1\)](#) and the limitation on the employment of certain relatives of a public official in [5 U.S.C. § 3110\(a\)-\(c\)](#).

A judicial intern, extern, or other volunteer should not accept a simultaneous governmental appointment that has the potential for dual service with other branches of government or of the state government, in accordance with Canon 4A of the Employees' Code. For example, the Committee has advised that a judge should not appoint an intern who is paid by the Department of Justice. Similarly, a concurrent internship with a state attorney general's office or with an executive agency of the federal government would place the intern under the supervision of a federal judge and

of a state attorney general or federal agency head, contrary to the required separation from other governmental units or court systems.

An intern may not engage in the practice of law under Canon 4D. Thus, the Committee has advised that a judicial intern should not be permitted to perform legal or paralegal work at a law firm, as the performance of legal tasks for lawyers is treated as practicing law, in violation of Canon 4D. Also, an internship that is concurrent with providing assistance to a pro bono legal non-profit organization is permissible under Canon 4D(3) if it does not present an appearance of impropriety, does not take place while on duty or in chambers, does not interfere with the intern's service to the court, is uncompensated, does not involve appearing in any court or administrative agency, does not involve a matter of public controversy, does not involve an issue likely to come before the court, and does not involve litigation against the federal, state, or local government. See Employee's Code, Canon 4D.

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