

CLERK OF THE DISTRICT COURT MANUAL

30.0 PROFESSIONAL ETHICS

Revised October 2006

30.1 INTRODUCTION

Ethical issues for court staff often revolve around a few core concepts, which though not unique to courts, are of special concern because the court not only needs to be impartial and fair, it also needs to appear to be impartial and fair. The court therefore holds itself to the highest standards of conduct both out of respect for the Law and in order to justify the public's trust and confidence in our system of justice.

30.2 CORE ETHICAL CONCEPTS FOR COURT STAFF

Abuse of position occurs when a person uses their job to get something they want which they wouldn't get if they didn't have the job; or if they use their position to add a burden to someone else who wouldn't otherwise get that burden. For example, attempting to alter court records in a case which involved you would be an abuse of position.

Confidentiality refers to keeping a record or information away from everyone except those authorized to have that record or information. It sometimes means that even the existence of the record is a secret. (For example the existence of an arrest or search warrant before the arrest or the search has taken place is confidential.) The Supreme Court rule that governs confidentiality of court records (Idaho Court Administrative Rule 32) doesn't use the word 'confidential,' it talks about records that are "exempt from disclosure," but the idea is the same.

Conflict of interest occurs when a person has a personal stake and an official duty in regards the same thing. That's why judges can't judge their own cases, or why deputy clerks shouldn't be assigned to handle a file where they (or someone close to them) is involved in the case.

Impropriety may occur when a person who works for the court says or does something contrary to the values, principles or rules of the Court. For example, giving out confidential information to someone who isn't authorized to receive it is an impropriety. Wearing a political button or handing out political pamphlets while on duty would also be an impropriety. Expressing bias or prejudice about a person involved in a court case is an impropriety. In general, any unprofessional behavior at work may be an impropriety, although sometimes it's on the level of bad manners. Serious improprieties however may also be crimes, such as altering court records without authority, or embezzling. The **appearance of impropriety** may arise when a person says or does something that may be innocent, but which can be easily interpreted to reflect poorly on the court. For example, a deputy clerk whose parent's were being sued should not act as the in-court

clerk during their trial, even if the clerk were trustworthy in every way, even in fact if there were nothing the clerk could do that would effect the outcome of the case.

Stewardship and Good Faith refer to the highest levels of trustworthiness recognized in the law. A technical legal term which addresses this level of conduct is "fiduciary duty." People who work in the court have the ethical obligation to be scrupulously honest, diligent, and fair in the performance of their duties, and in their actions outside of the court, since they are stewards (that is caretakers) of a great public trust.

30.3 A MODEL CODE OF CONDUCT FOR COURT STAFF IN IDAHO

(Adopted from the Code of Conduct of the National Association of Court Managers, Revised: Oct. 17, 2002)

- A. Court staff should not use or attempt to use their official positions to obtain special benefits for themselves or others, or to impose special burdens on others.
- B. Court staff should not accept, ask for, or distribute gifts or favors which are intended to (or which may tend to) influence the performance of their duties, or the duties of others.
- C. Court staff should not be, or appear to be, unduly affected in the performance of their duties by any person's position, influence, or family relationship(s).
- D. Court staff should not accept any compensation or thing of value in return for their job related services except for what they receive from their employer for those duties.
- E. Court staff should use the court's property, supplies, funds, and other resources properly, and according to established procedures.
- F. Court staff should not allow, or appear to allow, their private interests or the private interests of others to interfere or conflict with the performance of their official duties.
- G. Court staff should not give legal advice, but may provide legal information about court processes and procedures when authorized to do so.
- H. Court staff should not disclose confidential information except as authorized by court rule, and should release information when authorized to do so.
- I. Court staff should restrict political activities to non-working hours and should not use or appear to use their position with the court in those activities.
- J. Court staff should perform their duties promptly, impartially, diligently, and courteously.

K. Court staff should not discriminate against, nor show bias or prejudice *towards any person while performing* their official duties.

L. Court staff should uphold the Constitution, laws and regulations of the United States and all other governments they serve.

M. Court staff should avoid activities that reflect poorly on the Court, or their positions.

N. Court staff should promote ethical conduct and should report improper conduct to the appropriate authorities, including any attempt to induce the violation of this ethical code.

30.4 CODE OF CONDUCT, RULE OF LAW

To Work for the Court

It was once said that service is the rent we pay for our place here on Earth.ⁱ It has also been said that the question of how we perform that service is one that each of us will answer with our lives.ⁱⁱ For example, there is a story toldⁱⁱⁱ of a young woman who, after graduating from school, went to work as a secretary for a company that made chewing gum. After a year or so she left the company - not because they weren't treating her well, or because there was no room for advancement, but because, after all, it was just chewing gum. Of course there's nothing wrong with paying the rent by honest work for a lawful business, but for her that wasn't enough. Perhaps she didn't want to look back at the end of her days and regret that the time and energy she'd spent contributing to chewing gum profits could have been spent as productively working as a secretary for an elementary school or a university, for a hospital or a nursing home, or for some charitable, religious or social service organization – that she could have made her living not just by working, but by working on tasks that led to a higher goal, towards a greater purpose.

That, at least, is not an issue for those of us who work in the court. We serve in an institution uniquely dedicated to higher goals and greater purposes and since this is so, our job performance should reflect and support that mission and vision. After all, the tax dollars that pay us could just as easily be spent vaccinating children, relieving disaster victims, providing college scholarships for the poor and gifted, cleaning fouled waters, researching crop pests, repairing roadways and bridges, or a host of other necessary or desirable governmental services. That means it matters what we do at work and how we do it, whatever our jobs may be. How then should we act when we're at work?

Many years ago in China, there lived an old man with a reputation for enlightened wisdom. One day, the new governor of the province came to test the old master's wisdom, asking him to state the fundamental moral principle of human life.^{iv} The master replied simply 'Always do good, never do evil.' The governor retorted that even a three year old would know enough to say that, and the old master replied that, even though a three year old might say it, an eighty year old had difficulty doing it.

The accompanying poem was written to help guide the actions and attitudes of the support staff who work for the Court - a place where it can also be difficult to always do good and never do evil; sometimes even in simple things, sometimes even for the most experienced.

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I work for the Court. Maybe I file the papers;
Maybe I mail the notices; maybe I schedule
The courtrooms or answer the phones; maybe
I print reports about fines, fees and costs;
Maybe I work the front counter, or in a back office.
Wherever I work, I work for the Court.

I know my job well. I do it as well as I know how to do
Every day, all day long, whether or not I feel like working.
And I think about how to work faster and smarter and
About how things work best when we all work together,
Because I'm also a citizen—a waste hating taxpayer-
And it's one of my duties to make the Court better.

I treat everyone equally, whether I know them
And trust them and like them, or not. I give them
Good service, courtesy, and respect, but no special
Treatment and no special favors; and I understand
That if I can't help them (or if they won't let me),
I should send them on quickly to someone who can.

I give prompt access to the Court's public records
(I'll show anyone what can rightly be shown), but
Some things are sealed and exempt from disclosure,
Confidential or closed by Court rule or order and
Maybe none of your business, or even my own.
I don't go looking where I've no right to go and
You won't hear from me what's not yours to know.

No politics here, no tricks, no deception,
No bias, no prejudice, no misrepresentation,
No abuse of position, no conflicts of interest,
No bribes, no corruption, no covered-up faults,
No plots or conspiracies behind my Court's doors;
There's no place for these skeletons down in our vaults.

We serve one of the greatest of human endeavors,
To bring fair and impartial justice to all—young and old;
Strong or weak; families, strangers and neighbors-

So that all live together in peace and good order;
Protected from violence, force, fear, and fraud;
By compassionate, clear-sighted rules of law.

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- i Attributed to Shirley Chisholm, U.S. Congresswoman (1968-1982) and first African-American woman to run for president (1972).
 - ii Attributed to Victor Frankl, concentration camp survivor, neurologist, psychiatrist.
 - iii Attributed to Abraham Maslow, psychologist, author, teacher.
 - iv The Roaring Stream, Foster and Shoemaker, Editors; Ecco Press, Hopewell NJ, 1996; pp 84-85.