



A Question of Ethics

BY PETER KIEFER

The Evening Shift Yet Again

In 2006, Karl Thoennes and I put on an ethics seminar where many court employees held down second jobs. The most controversial scenario raised at the seminar involved an employee working a second job that potentially cast the court in a negative light. Emotions, which ran high at the seminar, have only increased over the years with regard to this subject. With the economy in tatters, who can hold a second job and what kind of job is appropriate has become a prickly topic.

I want to revisit both the topic and the divide that seems to have emerged over perceptions of outside employment. Rather than using the 2006 scenario, I will lay out three short scenarios.

The Scenarios

Scenario One: The Charity Event

Patty is a deputy probation officer clerk at a metropolitan superior court. For several years she has volunteered to work a large charity fundraising event for the city's homeless shelter. A bevy of notables, including attorneys and even a few judges, attend the event. It pulls in hundreds of thousands of dollars for the shelter — a worthy cause. Patty helps organize the event, including serving food, beer, and wine. She makes no secret that she is a probation officer at the court, but she is volunteering, so thinks nothing of it. Bob, Patty's supervisor, tells her that she cannot serve beer or wine while at the event. Patty complains, saying it is none of the court's or probation department's business what she volunteers to do. Bob is unmoved, responding that it is unseemly for a probation officer to serve alcohol at any venue, even a charity event. Patty reluctantly moves to the clean-up crew.

Scenario Two: The Lounge

Laura is a clerk at a metropolitan municipal court. The meager court salary barely allows her to support her daughter in middle school. To make ends meet, she bartends in the evenings at a swanky lounge in a downtown hotel about five blocks from the courthouse. Local attorneys and even a few judges come to the lounge in the evenings to relax and conduct some business. Some of the patrons recognize her as a court employee by day, but think nothing of it as they know of the court's notoriously poor pay. Laura's supervisor, Bob, tells her that she must quit the lounge or quit the court. Laura complains that she wouldn't have to work there if the court paid a decent wage. Bob is unmoved, responding that it is unseemly for a court employee to moonlight at an establishment that serves alcohol. Laura reluctantly quits the lounge.

Scenario Three: The Sports Bar

Larry is a clerk at a metropolitan court. The pay barely allows him to support his wife and small daughter. To make ends meet, Larry takes an evening job bartending in a suburban sports bar. The bar is far from downtown, so the courthouse crowd will not cross paths with Bartender Larry. The bar has a somewhat rowdy reputation. Last February, when the Arizona Cardinals lost the Super Bowl in the last few seconds of the game, a fight broke out, the police were called, and two patrons were arrested. Bob, Larry's supervisor, tells him to quit the sports bar or quit the court. Larry complains. Bob thinks the bar is unseemly. Larry quits the sports bar.

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Respondents

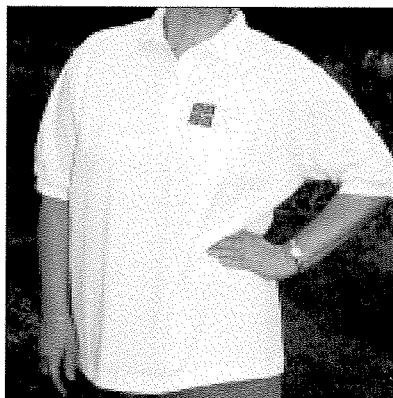
To explore the split in perspectives on this topic, I have invited three managers and four line staffers, to give their opinions. Gwendolyn Lyford, area court administrator in Anchorage, Alaska; David Slayton, director of court administration for the Lubbock County District Courts and County Courts at Law in Lubbock, Texas; and Brad Green, analyst and ADA coordinator for the Multnomah Trial Courts in Portland, Oregon responded from a manager's view point. Clara

Barnes, assignment clerk for the Montgomery County Circuit Court in Rockville, Maryland; Juan Delgado, court services representative at the Scottsdale Municipal Court in Scottsdale, Arizona; Jessica Nicolette from the Bremerton Municipal Court in Bremerton, Washington; and Alexis Zelaya, family case manager at the Montgomery County Circuit Court in Rockville, Maryland, responded from a line staffer's point of view.

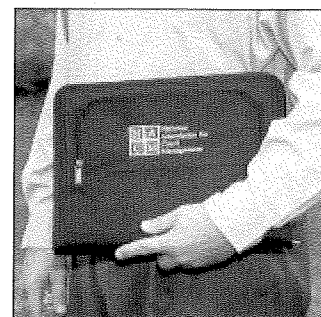
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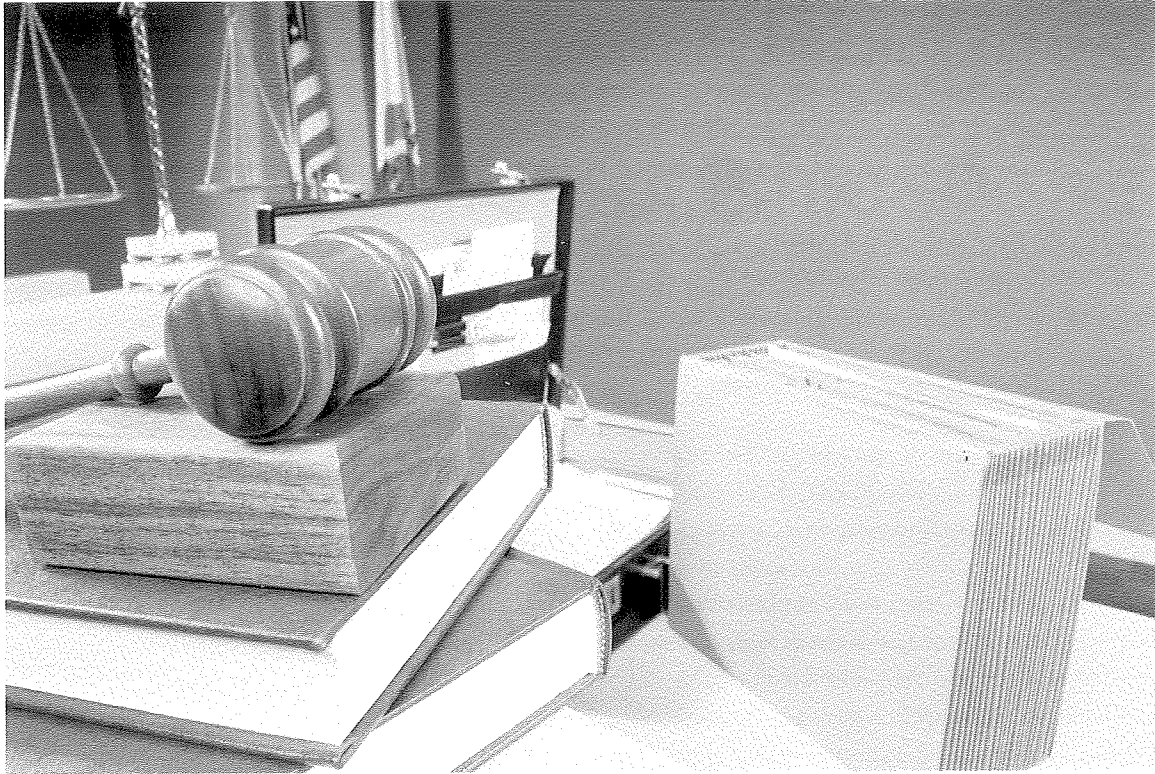


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Questions

Scenario One: Do you agree with Bob that a court professional should not serve alcohol, even at a charity event?

Managers

David Slayton agreed with Bob, noting that the NACM Code of Conduct for Court Professionals Canon 3.1 calls for court professionals to avoid outside activity that reflects negatively on the judicial branch. The commentary states that it should not create a real or perceived conflict of interest between one's court work and the outside activity. "In her work as a deputy probation officer, Patty is potentially responsible for supervising offenders who are on probation for DWI. Because Patty could potentially serve alcohol to guests at the charity event who may get arrested for DWI after leaving the event, she could become a witness in the case." David concluded that the situation appears to present a definite conflict of interest with her employment that could reflect negatively on the judicial branch.

Brad Green and Wendy Lyford disagreed with Bob and thought Patty serving alcohol at the charity event was acceptable. Brad noted that all three scenarios dealt with alcohol being served by an employee while on their own time. "Alcohol is a legal substance in every state and in most counties in the U.S. In none of the scenarios does any of the court staff cross a legal or ethical boundary. Alcohol is a legal drink as long as local laws are followed. Bob is clearly wrong and is pretty clearly looking at the world through his own biases." Brad noted that we should want employees to volunteer in their local communities at events just like the one described.

Likewise, Wendy observed that alcohol consumption is a legal activity. "Like any server, I think Patty can assume that anyone she serves is drinking in moderation and/or has a designated driver in his or her party. Like professional servers, she also should be trained to recognize and respond to a patron who has over-consumed. I would not have required Patty to change jobs for the event."

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Line Staff

Juan Delgado agreed with Bob that court professionals serving alcohol at a charity event for a city program (the homeless shelter) could be misinterpreted. It could be looked at as Patty promoting business for the court, especially if someone at the event got a DUI. "It is always better to avoid any possibility of misinterpretation. Since in this case it is voluntary work and there are other options, Patty should not volunteer to serve alcohol at this city event."

Clara Barnes thought that Patty, being a probation officer, created a conflict of interest by choosing to serve alcohol. "Patty needs to set a good example on her own accord for those around her due to her area of work at the metropolitan superior court. She could very well be serving alcohol to those who have to report to her as a probation officer." Clara did not believe Bob should have demanded Patty change her volunteer job; Patty should have realized on her own that it was best to volunteer for another function.

Alexis Zelaya did not agree with Bob and thought that a court professional should be allowed to serve alcohol, even at a charity event. "I believe that a person should be able to volunteer for any cause that they feel passionate about. The person serving the alcohol is a responsible adult and will only serve to adult patrons."

Jessica Nicolette disagreed with Bob and went so far as to conclude that Bob acted unethically by forbidding Patty from serving alcohol at the event. "Many court personnel drink alcohol on a regular basis and at a variety of public events. This should be no different for Patty's volunteer work, which in fact is commendable behavior. . . Unless there is a strict HR policy in place that reaches beyond requiring an employee to maintain good character in and outside of work, Bob has no basis to comment, let alone advise Patty to move to the clean up crew at this event as she is not acting in the capacity of a court employee. Patty is not only out of her court employee

capacity at this event, she is acting as a volunteer, and if any representation is made, it is favorable on her court." Jessica thought Bob acted poorly regarding a worthy charitable event.

Scenario Two: Do you agree that it is unseemly to serve alcohol even at a clearly respectable establishment?

Managers

Last summer Wendy dealt with a request similar to the one in the scenario. A part-time court employee in an Alaskan resort community had spent her summers bartending for several years. Most of the establishment's patrons where she wanted to work were 'out-of-staters' and unaware of her day job. "However, my response wouldn't have differed if she had worked in a 'local' joint. Our personnel rules require employees to obtain permission to hold a second job. I don't feel that it is appropriate for the court system to restrict an employee's other employment unless it could negatively impact her day job with us. I explained that if an incident involving a bar patron would require her to be a witness in a case, we would have to impose our usual restrictions — she wouldn't be able to handle the file or serve as courtroom clerk."

Brad agreed with Wendy that it was all right for Laura to serve alcohol at a legal establishment; it made no difference that other justice system professionals patronized the establishment. ". . . alcohol is legal. In looking for reasons why it might not be an appropriate job, my mind goes to what she might overhear or the behavior she might observe from the people who are drinking. But she has certainly not crossed an ethical line by working there, even if the patrons become intoxicated."

David Slayton responded that he sees a court employee serving alcohol even at a respectable establishment as unseemly. Laura

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could serve alcohol to patrons who might become involved in the criminal justice system if they are irresponsible. “This could present a conflict of interest with her court position. In addition, I could see this situation having the potential to reflect negatively on Laura’s own professionalism. If the lawyers or judges interact with Laura the next day at the court, the relationship would seem to be different than if she did not have that interaction at the bar. Stories of the previous night’s bar activities would seem to change the level of professionalism Laura would have from that point forward.”

Line Staff

Alexis, Clara, and Jessica saw no problem with serving alcohol at a respectable establishment. To Alexis, Laura was trying to provide for her family as best she could. “I do not think it makes a difference that other justice system professionals frequent the establishment. In this hard economy, I am sure that other justice system professionals would not be surprised to see Laura working there.”

Jessica echoed Alexis’ response, saying, “If judges and attorneys are able to frequent such an establishment outside of work, then so too should a court clerk, especially since

she uses it as a second job and not a leisurely hang out.” She did not think Bob was acting ethically, adding that strict HR policies were needed to govern the exact criteria for a court employee’s second job before Bob should comment. “If no such policy is in place, Bob has no basis to require Laura to quit her second job as a bartender.”

Clara did not believe Bob had the right to force Laura to choose between being a clerk and a bartender. “Were Bob to have taken into consideration that the courthouse does not pay well enough for Laura to make ends meet, maybe his decision would not have been so harsh. I do not believe that a position such as this causes any conflict with her day-time job, regardless that court professionals visit the establishment.”

Juan disagreed, seeing that even in a respectable establishment there is a possibility of someone getting a DUI, and the case could be filed in the court where Laura works. “It makes a difference that other justice system professionals frequent the establishment, especially for business. An attorney might be with a client that has a case in your courtroom, and you might be exposed to any information on the case.”



Scenario Three: Is it inappropriate to bartend at a sports bar? Does it make a difference if the bar has a bad reputation regarding patron behavior?

Managers

Consistent with his previous responses, Brad did not see it as inappropriate for Larry to bartend at a sports bar. "While I personally have a problem with bars that have a reputation for fights or drunken behavior that could lead to injury, those regulatory decisions will be made by the state or municipality; in the scenario there is no hint that he was involved either directly or by serving already intoxicated patrons."

David Slayton thought the activity could be an issue with the Code, and therefore, did not think it appropriate. "In addition, trying to distinguish an ethical line between different types of establishments, even though the activity being conducted by the court employee is the same, could be a slippery slope for court managers. It is one in which I do not believe court managers should engage."

Wendy mentioned that she had only rejected one 'second job' request, and it was from an employee who wanted to work as an independent paralegal. "I told her I wouldn't approve the

outside employment because of concerns that potential clients would perceive that she had 'special' access to the court. In addition, we've had situations where the outside employment required regular interaction with the court (e.g., background checks or paralegal jobs) and found that the temptation to 'work the second job' on court time was just too great to resist."

Line Staff

Juan concluded that it was inappropriate because of the potential for someone to get a DUI, even if not filed in Larry's court. "It does make a difference that the bar has a rowdy reputation. Even though it is after working hours, in some ways court employees represent the court at all times. Knowing that this bar requires police intervention should be a red flag that it might not be a good idea to work there."

Alexis, Jessica, and Clara all agreed that Larry should be allowed to bartend. Alexis didn't see that it made a difference that the bar had a bad reputation. "In this scenario, the bottom line is that Larry needs more money to support his family, and he has to find a second job."

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Although Jessica did not believe it inappropriate to bartend, she did think Larry should consider working at an establishment that does not frequently require law enforcement visits. “Even though this establishment is not within his court’s jurisdiction, Larry could potentially be implicated in a criminal matter as a result of law enforcement intervention, which could then possibly effect his court employment.”

Clara thought Bob was acting outside of his authority. “Similar to Laura’s story, Larry isn’t supported enough financially by the court. The bar’s reputation is not a direct reflection on Larry or his decision making at his daytime job. I believe Bob does not have the right to demand he quit.”

Does a court ever have an obligation to intervene and terminate an employee’s outside work? Give me an idea of where that line is.

Managers

David responded that Canon 3.1 states that “a court professional shall notify the appropriate authority prior to accepting work or engaging in business outside one’s court duties.” Before a court professional makes a job request, he or she should consider whether that proposed position will violate the Code, specifically Canon 3.1. “If the position is found to violate the Code, I believe that the manager has a

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duty to stop the employee from accepting the position (per Canon 2.3 — Misconduct of Others). If, on the other hand, the court professional is already employed in a position that violates the Code, the court manager should express his or her concerns with the position and request the employee to cease work at the outside employment. If the court professional refuses, I believe the court manager has an obligation to enforce the Code.”

Brad believed a court had an obligation to intervene, and suggested some examples, including a clerk selling medical marijuana, a judge’s secretary working part time for a law firm, an indigent verification clerk working for a public defender firm, or judge’s staff working for the judge on an outside business. “Generally I am drawing the line at the appearance of impropriety, where the second job is close enough to the primary job that a reasonably unbiased observer could conclude that the employee might be able to knowingly or unknowingly cross the line in the decisions they make in their primary jobs for the court.”

Line Staff

Juan, Clara, Jessica, and Alexis all agreed that a court has an obligation to intervene if a second job crossed the line. The difference of opinion was where that line was.

Juan thought the court could intervene if the second job affected the court. “I think the court is obligated to intervene when it actually knows for a fact the outside employment affects the court. If the outside employment may or may not affect the court, then probably just a warning of consequences or other actions should take place.”

Clara said the second job had to allow a court employee to use his or her court knowledge to their advantage. “For example, the court employee having access to looking up

personal information about an individual from their day–time job with the court and using it for their other job such as a private process server.”

Jessica believed the second job had to present a conflict of interest. “If no conflict exists and the employee’s performance is not compromised, I do not believe the court should intervene. Additionally, I believe it necessary for court employees to be prudent in selecting a second job and to represent the court in the best manner possible in all interactions, situations, and events, both in and outside of the court employment.”

Alexis thought the second job had to interfere or conflict with court work and work hours. “I believe what an employee does on their own time is their own business.”

Clearly this topic has generated significant differences of opinion. If we are looking for consensus regarding our ethical commitments, much more discussion has to take place.

I want to thank Brad, Wendy, David, Alexis, Clara, Jessica, and Juan for their comments. If you have an ethical issue you would like to have discussed, or you would like to comment on this scenario, please contact me at pkiefer@superiorcourt.maricopa.gov. I would also invite you to visit the National Association for Court Management’s website — www.nacmnet.org/ethics — to view past articles and email issues to the ethics hotline.

ABOUT THE AUTHOR

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.