

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS
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Report

TO: Members of the Judicial Council

FROM: Court Executives Advisory Committee
Mr. Michael D. Planet, Chair
Court Executives Advisory Committee Working Group on Court
Administration Ethics
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DATE: September 17, 2009

SUBJECT: Ethics: Amendments to the Code of Ethics for the Court Employees of
California (Action Required)

Issue Statement

Standard 10.16 (Model code of ethics for court employees) of the California Standards of Judicial Administration provides that “[e]ach trial and appellate court should adopt a code of ethical behavior for its support staff, and in doing so should consider rule 10.670(c)(12) of the California Rules of Court, and the model Code of Ethics for the Court Employees of California approved by the Judicial Council on May 17, 1994, and any subsequent revisions.” The Code of Ethics for the Court Employees of California (herein referred to as the Code of Ethics) has provided a comprehensive model code of ethical behavior for court employees at all levels in the California court system since its inception.

Since then, the Code of Ethics has been adopted by most of the trial courts, the Courts of Appeal, and the Supreme Court. It has not been updated since 1994 to reflect current ethical standards for court employees.

Recommendation

The Court Executives Advisory Committee (CEAC) recommends that the Judicial Council, effective October 23, 2009:

1. Approve the proposed nonsubstantive clarifying language amendments contained throughout the 12 tenets and guidelines of the Code of Ethics;
2. Amend Tenet Eight to combine the original Tenet Eight (Duty to serve) with the original Tenet Nine (Competency) to create a new Tenet Nine (Service and competency);
3. Approve a new Tenet Eight and guideline (Public resources) that address the importance of good stewardship of court public resources;
4. Amend Tenet Eleven (Harassment) to expand the guidance to avoiding all categories of harassment, including sexual harassment.
5. Direct the Administrative Office of the Courts (AOC) to start the proposal process to amend rule 10.473(c)(1) of the California Rules of Court to include a requirement of a minimum of 3 hours of ethics training as part of the 30 hours of continuing education that trial court executive officers must complete every 3 years.

Attachment A sets forth the proposed amendments to the Code of Ethics for the Court Employees of California.

Rationale for Recommendation

The Supreme Court, Courts of Appeal, and 52 of the 58 trial courts¹ are confirmed to have adopted the current Code of Ethics, approved by the Judicial Council in 1994. An amended version of the Code of Ethics will update expectations for ethical conduct by court employees and strengthen the public's trust and confidence in the justice system.

An amended Code of Ethics would also provide the guidance and basis for current and future statewide ethics education training programs for court staff, including programs provided by the AOC's Education Division/Center for Judicial Education and Research (CJER) and by local courts.

It is also recommended that rule 10.473(c)(1) of the California Rules of Court be amended in the near future to specify the minimum number of hours of ethics training to be included as a part of the continuing education requirements for executive officers. This recommendation is made to strengthen the current ethics training opportunities that exist for these trial court executive leadership positions.

In 2006, the Administrative Director of the Courts sent a memorandum to the CEAC chair and vice-chair requesting CEAC to establish a working group to consider the following:

¹ As reported on file with the AOC Human Resources Division, Labor and Employee Relations Unit, August 2009.

- Guidelines to assist the courts in (1) determining which nonjudicial court positions should be designated for inclusion in the courts' local conflict of interest codes and (2) assigning disclosure categories specifying the types of interests that are to be reported on the *Annual Statement of Economic Interests* (form 700) by employees in designated court positions;
- Branch ethics training standards for trial court executive officers and other trial court employees; and
- Guidelines for local ethics training beyond that currently provided for court employees who are appointed to nonjudicial positions designated in the courts' conflict of interest codes.

In response to this request, CEAC established the Working Group on Court Administration Ethics (herein referred to as the working group) in 2007. The working group consisted of 10 executive officers representing small, medium, and large trial courts from all three AOC regions in the state as well as AOC staff from the Bay Area/Northern Coastal Regional Office, the Education Division/ CJER, and the Executive Office Programs Division. This report contains the final working group recommendations approved by CEAC.

Alternative Actions Considered

In keeping with the original 2006 charge from the Administrative Director, the working group considered other alternatives for modernizing the expectations of ethical employee conduct.

For disclosure categories, types of interest reported, and designated court positions, CEAC concluded that the California Fair Political Practices Commission guidelines for determining which designated trial court positions should file an *Annual Statement of Economic Interests* (form 700) are clear and do not require enhancement or any form of replacement. CEAC also concluded that the types of interests to be reported on by designated court employees are clear and that additional guidelines to assist the courts are not necessary.

Comments From Interested Parties

The working group provided two in-person update reports to CEAC and the Conference of Court Executives (COCE) at their statewide business meetings during fiscal year 2007–2008. The working group also consulted with CEAC and COCE numerous times to obtain their input on the various iterations of the amended tenets and guidelines proposed for the Code of Ethics.

In July and August 2008, the California Appellate Court Clerks Association and leadership of the Habeas Corpus Resource Center were invited to provide input on the tenet and guideline amendments proposed for the Code of Ethics. They responded with modifications that have been integrated into this proposal. In April 2009, as part of the final review process by interested parties, the California Appellate Court Clerks Association provided additional recommended changes that were incorporated into the proposed revision attached to this report.

Implementation Requirements and Costs

AOC staff will assist CEAC with the distribution of the amended Code of Ethics to the presiding judge and executive officer in each trial court, the clerk/administrator for each Court of Appeal district, and the clerk of the Supreme Court.

The recommended action is not expected to result in any significant fiscal impact to the courts as the amended Code of Ethics, if approved by the council, will be disseminated electronically. Any additional training needed for court employees to implement the updated Code of Ethics should have minimal impact on staff time and court resources as this could be integrated into a court's regular training calendar.

Implementation of the amended Code of Ethics by individual trial courts will depend on whether and how a trial court has adopted the current model Code of Ethics. Fifty two trial courts have adopted the 1994 code and have included it in their personnel policies. Local procedures for amending these personnel policies should be followed. Courts that did not adopt the 1994 code can follow their local procedures for considering adoption of the amended Code of Ethics, if approved by the council.



CODE OF ETHICS FOR THE COURT EMPLOYEES OF CALIFORNIA

A fair and independent court system is essential to the administration of justice in a democratic society. ~~Proper~~ Exemplary conduct by court employees inspires public confidence and trust in the courts, and conveys the values of impartiality, equity, and fairness that bring integrity to the court's work. Further, court employees are expected to adhere to a high standard of ethical behavior. To advance these values and to achieve justice we believe certain ~~moral~~ ethical principles should govern all that we do. We therefore commit ourselves to:

- Tenet One** Provide impartial and evenhanded treatment of all persons;
- Tenet Two** Demonstrate the highest standards of personal integrity, and honesty, ~~and~~ ~~truthfulness~~ in all our professional and personal dealings, avoiding the misuse of court time, equipment, supplies, or facilities for personal business;
- Tenet Three** Behave toward all persons with respect, courtesy, patience, and responsiveness, acting always to promote public esteem in the court system;
- Tenet Four** Safeguard confidential information, both written and oral, unless disclosure is authorized by the court, refusing ever to use such information for personal advantage, and abstain at all times from public comment about pending court proceedings, except for strictly procedural matters;
- Tenet Five** Refrain from any actual impropriety, such as:
- ~~breaking~~violating the law,
 - soliciting funds on the job,
 - receiving gifts or favors related to court employment,
 - accepting outside employment that conflicts with the ~~court's~~ employee's duties, ~~or~~
 - recommending private legal service providers; to the public on the job,
 - or
 - using position at court to benefit self, friends, or relatives;
- Tenet Six** Avoid any appearance of impropriety that might diminish the ~~honor~~ integrity and dignity of the court;

- Tenet Seven** Serve the public by providing accurate procedural information assistance about court processes that is as helpful as possible without taking one side over the other, or appearing to favor one side of a case, giving legal advice;
- Tenet Eight** ~~Furnish accurate information as requested in a competent, cooperative, and timely manner~~ Provide responsible and accountable stewardship of public resources;
- Tenet Nine** Provide accurate information as requested in a competent, courteous, and timely manner. Improve personal work skills and performance through continuing professional education and development;
- Tenet Ten** Guard against and, when necessary, repudiate any act of discrimination or bias based on race, ~~gender, age,~~ religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, ~~language, appearance, sex,~~ age, or sexual orientation;
- Tenet Eleven** Renounce any use of positional or personal power to harass another person sexually or in any other way based on that person's race, religious beliefs, political affiliation, age, national origin, language, appearance, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, sexual orientation, or other personal choices and characteristics; and
- Tenet Twelve** Protect the technological property of the court by preserving the confidentiality integrity of electronically stored information. ~~and abstain from personal use of court computer systems and hardware.~~

A code of ethics cannot possibly anticipate every moral dilemma and ethical choice that may arise in the execution of one's day-to-day professional responsibilities. Personal discretion in the interpretation of this Code of Ethics is both necessary and desirable. ~~We who believe in it will continue to try to cultivate within ourselves the moral sensibilities that will inform and enliven our consciences and make us true servants of justice.~~ Court employees should attempt to cultivate within themselves the ethical judgment that will foster the fair and impartial administration of justice.

GUIDELINES

The following guidelines are intended to clarify and embellish provide direction for the application of the tenets to which we subscribe:

Guideline for Tenet
One

IMPARTIALITY

All persons coming to the court for assistance are entitled to fair and equitable treatment, regardless of their personal behavior or legal situation. Court employees must remember that they are often dealing with people who may be having one of the worst experiences of their lives. They must offer to angry, confused, ~~uneducated~~, and sometimes deceitful ~~customers~~ court users the same level of competent and ~~policy-~~ neutral impartial help that they provide to those who are pleasant and appreciative. While every court employee has the right to freedom of association ~~or~~ and political expression, he or she does not have the right to take sides in a legal dispute, interject himself or herself into the legal decision-making process, second-guess a judge's ruling, or give the appearance of partiality on a ~~political~~ any issue that is likely to come before the court. The procedural integrity of the court must be protected at all times.

Guideline for Tenet
Two

PERSONAL INTEGRITY

The fundamental attitudes and work habits of individual court employees are of vital importance. Honesty ~~and truthfulness~~ are is paramount; ~~e~~ Employees should not, for example, knowingly make omissions on time cards or personnel records; backdate a court document for any reason unless ordered to do so by the court; falsely claim reimbursement for mileage or expenses; double dip from professional associations or other sources; lie about leaving work early for a doctor's appointment; set an example for others and must not misuse the court's resources, including, but not limited to, the telephone, facsimile machine, ~~or~~ copying machine, e-mail, or internet access. ; or take supplies home for private use. Each individual e-Employees should also must not abuse their privileges, and must contribute to the integrity of the entire court staff by striving to avoid factionalism and inspire mutual ~~loyalty~~ support and trust.

Guideline for Tenet
Three

PROFESSIONALISM

Employment in the court system is a public trust engendered by the citizens' confidence in the professional knowledge and competency and personal integrity of the officers and employees of the judicial branch. A professional knows every aspect of his or her job and can provide complete, understandable answers to the public's questions. A professional presents a businesslike image of methodical and systematic efficiency and does not abuse the position of power that special

knowledge affords. A professional never criticizes a co-worker in public nor denigrates a ~~customer~~ court user at the counter ~~any time~~. A professional raises conflict resolution to an art form, always seeking to preserve the dignity of the individuals involved in a dispute, thereby preserving the dignity of the court. The word “respect” is never far from the professional’s mind.

Guideline for Tenet
Four

CONFIDENTIALITY

Sensitive information acquired by court employees in the course of discharging their official duties ~~should~~ must never be revealed until it is made a matter of public record. Sometimes breaches of confidentiality do not involve intentional disclosure of official court records but are the result of innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, any of which could give attorneys, litigants, and reporters confidential information. Such remarks can seriously compromise a case or a person’s standing in the community. Court staff should discuss cases only for legitimate court reasons; and ~~should~~ must handle sensational or sensitive cases with great care.

Guideline for Tenet
Five

IMPROPRIETY

Improprieties can take many forms. A court employee who uses his or her title, badge, court affiliation, or other special access to the judicial system for personal gain or to avoid personal legal consequences is engaged in improper conduct. Examples of improper behaviors include seeking any favor, soliciting any gift, or actually receiving, directly or indirectly, any gift or the promise of one, whether it be money, services, travel, food, entertainment, or hospitality that could be construed as intending to influence the employee in performing his or her duties or as a reward for past or future services; improperly intervening to expedite administrative processes; or accepting private outside employment in that interferes with the employee’s effectiveness or conflicts with the proper discharge of official court duties. A court employee must not, for example, seek special consideration for his or her traffic citations, jury duty, or parking violations. In addition, any ~~mode of~~ conduct that casts doubt upon the integrity and impartiality of the legal system is forbidden. For example, a court employee must not improperly intervene in expediting administrative processes, facilitate a favorable disposition to a case, or provide access to confidential case information to benefit self, friends, or family members. Moreover, while on the job an employee must not recommend private legal counsel to a member of the public. While court employees cannot regulate the conduct of others, they can conduct themselves in a manner that inspires public confidence in the role they play in the pursuit of justice. Proper conduct involves daily and scrupulous affirmation of moral principles and observance of all laws, rules, policies, and procedures.

Guideline for Tenet Six
**APPEARANCE OF
 IMPROPRIETY**

Court employees are expected to refrain from engaging not only in improper behavior, but also in behavior that others might perceive to be improper. Any activity that gives the impression that court employees can be improperly influenced in the performance of their official duties is prohibited. A court employee ~~should~~ must not, for example, ~~seek or provide special consideration regarding traffic citations or parking violations;~~ openly discuss the merits of cases pending before the court; or be overly solicitous to litigants or counsel, which could give the appearance of preferential treatment. Moreover, a court employee must not be involved in the hiring decision of a relative or close friend, as such involvement may give the appearance of an unfair advantage in the hiring process. To gauge the propriety of an action, consider how it would be reported in tomorrow's newspaper viewed by the community if the action were made public. ~~Bear in mind that court employees are required to live up to a higher standard of ethical behavior than the general public.~~

Guideline for Tenet Seven
**PROHIBITION
 AGAINST GIVING
 LEGAL ADVICE**

Given the experience and visibility of court employees, it is natural for those who deal with the court, including attorneys and litigants as well as the general public, to ask questions such as: "Should I fight this?" "How do I fight this?" "To whom should I go for legal assistance?" "What does the law say?" Court employees can and ~~should~~ should provide information that is within their own level of professional training and experience, so long as the information does not compromise the neutrality of the court or the court's appearance of neutrality. For example, court employees can and should patiently explain how to file forms and pay fines, and should clarify legal language and the court's policies attendant to procedural due process and assist self-represented litigants in court self-help centers. They should provide litigants with information about non-profit legal services agencies, certified lawyer referral service programs and court-based self-help assistance. They must not, however, cross the line separating a court employees, whether licensed attorneys or not, from [suggest delete: that of] attorneys practicing law in the community. Court employees must not give any legal or procedural information that tends to favor one side of a case, from a licensed legal practitioner by giving their opinion on the law or, worse, giving by stating their opinion as the law. Court employees should cite this tenet when pressed by those seeking ~~gratuitous~~ legal advice.

Guideline for Tenet Eight
**DUTY TO SERVE
 PUBLIC
 RESOURCES**

~~A major goal of all court employees is to provide accurate and timely information. When giving information to customers, whether orally or in writing, present it in as easily understandable a format as the inquiry allows, and avoid legal jargon whenever possible. Court personnel are employed to serve and should strive to do everything possible to make~~

~~things easier for customers rather than for themselves or the court organization. The category of customer should extend not only to the general public but also to attorneys, process servers, staff members of other justice agencies, and especially to fellow court employees. Colleagues are internal customers and should have their information service needs met with the same level of dispatch and consideration as external customers.~~

Court resources must be used for the benefit of the citizens of our state. These resources include staff time, equipment, facilities, information systems, and the money allocated to the court. Court employees must ensure proper accountability of the court's resources. Use of these resources must be transparent to the public and beyond reproach. Resources must not be expended simply for the direct benefit of individual employees or judicial officers. Physical resources must be safeguarded to avoid unnecessary damage or wear. Equipment must be properly maintained and replaced when appropriate. All court employees should constantly look for improved efficiency in job processes. Deficiencies and safety hazards must be reported and addressed in a timely manner. Sound business practices must be employed in managing contracts to avoid waste of court resources.

Guideline for Tenet
Nine
**SERVICE AND
COMPETENCY**

A major responsibility of all court employees is to provide accurate and timely information. When providing information, whether orally or in writing, present it in as easily understandable a format as the inquiry allows, and avoid legal jargon whenever possible. The laws and rules under which the courts operate are continually changing as a result of legislative actions, higher court decisions, and evolving values and technologies. Court employees are encouraged to participate in professional activities and associations, and especially to take advantage of internal and external Court employees must participate in educational programs to stay abreast of changes and to improve their personal and professional skills. The laws and rules under which the courts operate are continually changing as a result of legislative actions, higher court decisions, and evolving values and technologies. Courts and their employees must perform efficiently despite this constant state of flux. Professional development may include attending classes, doing outside reading, participating in professional organizations, and soliciting ideas and information from others both during and after the work day. Court managers at all levels of the California court system should initiate and oversee ongoing professional growth programs for all court employees, that include the including study of this Code ethics-related issues.

Guideline for Tenet
Ten
DISCRIMINATION

Each day court employees assist users of court services of many races, religions, national origins, languages, sexual orientations, and varieties of personal abilities and appearance. They may deal with accused felons, child abusers, participants in painful dissolutions, those grieving from an injury or loss of a loved one, or people experiencing any one of numerous kinds of human pain or dysfunction. Court employees are expected to treat each other and each user of court services equally and with compassion. Equal access to the court system and equal treatment for all ~~is~~ are the cornerstones of the administration of justice. Court employees must expose and discourage discrimination wherever it exists.

Guideline for Tenet
Eleven
HARASSMENT

~~Court employees are to refrain from making sexual advances and insinuations that are inappropriate and offensive, or that could be perceived as such. Harassment may also take nonsexual forms such as verbal, physical, and psychological. The investigation of a harassment complaint is difficult because a determination will often be based on the credibility of the parties. A supervisor is obligated, however, to conduct a prompt and thorough investigation of any allegation of harassment. If the investigation reveals that harassment has occurred, corrective action should be taken immediately. The supervisor should then conduct further inquiry to ensure that the action was effective and that the harasser has not retaliated against the complainant.~~

All court employees must conduct themselves in a professional manner at all times. Court employees must not engage in inappropriate, offensive, or unwelcome conduct of a sexual nature, or inappropriate or offensive conduct based upon a person's race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, sex, age, sexual orientation, or other personal characteristic, regardless whether it rises to the level of harassment. Court employees are expected to treat all persons with dignity and respect and, by doing so, will foster a work environment that is free from harassment. Court employees should follow their appropriate local reporting procedures in reporting their concerns about inappropriate behavior so that their issues can be addressed.

Guideline for Tenet
Twelve
TECHNOLOGY

Information retained in electronic files ~~should~~ must be treated safeguarded like any other official court document. Its confidentiality should be assumed unless otherwise specified. To preserve the integrity of electronic systems, court employees shall ~~correct any errors or omissions, guard against sabotage in any form, scan and repair viruses when possible, and avoid using court equipment for purposes other than court business.~~ must monitor court electronic information and take appropriate steps to ensure that the information is accurate. Great care should be taken in the transmission of electronic data and

communications so ~~that it would~~ as not to embarrass the court or the sender if read by an unintended recipient. Court employees may not install personal software or equipment without prior approval ~~of the court executive officer~~, nor ~~shall~~ may they take copyrighted software outside the court for personal use. ~~Questions about the ownership of intellectual property should be directed to an administrator.~~