



CORE[®]

National Association
for Court Management

Curriculum Design
Ethics



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Use of Curriculum Design

Taken together, the curriculum designs in this series provide an overarching plan for educating court managers; this overarching plan constitutes a curriculum. Individually, each curriculum design and associated information provides faculty with resources and guidance for developing courses for court managers.

The designs are based on the NACM Core®. Each of the curriculum designs, organized by thirteen competencies, may be used either in its entirety or in segments to meet the needs of the individual circumstance or situation, the particular audience, and time constraints, among many other contextual factors.

Each curriculum design includes a series of learning objectives and educational content to support those objectives. Associated information for each curriculum design includes: (1) faculty resources, (2) participant activities, and (3) a bibliography. Each faculty resource and participant activity includes information explaining its use. Also included in each design is a section entitled “Special Notes to Faculty,” which provides important information to assist faculty in effectively preparing to design and deliver a course, and a section entitled “Target Audience,” which provides some guidance on which audiences are most appropriate for the curriculum design.

Participant Activities

Participant activities have been designed to measure whether the learning objectives have been achieved. Participant activities include many types of group and individual interaction. Information on participant activities includes how to use, direct, and manage each activity. Instructions may be modified for the audience and setting, but the highest goal is to integrate each activity into the learning process and the content of the course. Faculty should incorporate additional activities to ensure that participants remain actively engaged throughout the course. Additional activities may include asking participants questions about the content, engaging them in sharing their experiences with the content, encouraging them to ask questions, and more.

Faculty Resources

Faculty Resources provide written information and/or graphics that support certain content and may also be used as handouts for associated topics in the **Educational Content**. Faculty Resources are a combination of resources referenced within the Educational Content and recreations of those images embedded in the Educational Content as sample images that could be used in PowerPoint® slides or handouts. They may be used in any course, but their applicability and use need to be determined by faculty, based on the topics, length of the course, audience, and other factors. Faculty Resources often include examples of documentation and other data that are time-based. Faculty members are encouraged to update time-based material as well as use material that is specific to the presentation and/or audience. As with participant activities, faculty are encouraged to provide additional materials based on the needs of the participants.

Bibliography

While a bibliography may be viewed as optional by faculty, they are often important adult learning tools, foster reflection, and offer sources follow to up research and study.

Needs Assessment

A needs assessment gathers information about the participants’ proficiency on the topic of the session. Without a needs assessment, you may provide content participants cannot or will not use, or already know, or that fails to satisfy their expectations.

Assessing needs enables you to choose and deliver content with much greater accuracy. Conducting a needs assessment before your presentation may include a written survey or focus group discussion; and/or at the beginning of your presentation, you may conduct an informal question and answer exercise or a short pre-test.

Using surveys or focus groups in advance of a course is preferred as it provides you the opportunity to adapt and adjust your presentation to your audience in advance of the actual course. However, it is also advisable to use some time at the beginning of your presentation to seek information about your audience.

Whether you are able to conduct a needs assessment prior to the day of the session or not, the goal is to determine the essential knowledge, skills, and abilities the court managers who will be attending the session must have to perform their duties competently. Two key areas to explore are as follows:

- What level of knowledge, skills, and abilities do the participants currently have about the topic?
- What gaps in their knowledge would they like to close?

Questions enable the faculty member to make necessary adjustments to meet learning needs. If you find out that participants are much more knowledgeable about your topic than you had thought, you can adapt your presentation to a higher-level discussion. If you find that they are less knowledgeable, you can adapt your presentation to be more basic.

NACM Core Reference

Competency: Ethics

A career with the judicial branch is a public service and a public trust, which court professionals strive to sustain. Citizens determine the value of their courts, and it is up to court leaders to demonstrate that value to the citizens.

Ethics permeate all other components of The Core. Ethics is the bedrock that supports the fundamental purposes and responsibilities of courts as a co-equal branch of government. It is the framework within which court leaders demonstrate leadership, project plans, envision the future, make known the courts' message to the community, manage caseload and workflow, and hold each other and the courts accountable as part of the fabric of society. Court leaders must be ethical in order to preserve the public's trust and confidence in the judiciary and in the value of the rule of law.

¹ This design presumes that references to "court" also implies state administrative offices.

Learning Objectives

The following learning objectives are designed for a comprehensive session that will require a minimum of a two and one-half day workshop. Faculty that are developing a more basic or shorter course may simplify or reduce the number of learning objectives.

As a result of this education, participants will be able to:

1. Identify differences in ethics codes, their own court's code and other codes, model codes and some from specific states and courts;
2. Describe and assess the effectiveness of their own court's¹ ethics code;
3. Apply ethics codes to a variety of topical ethical situations and issues;
4. Evaluate the degree of knowledge and commitment staff and court officials have toward their court's ethics code;
5. Determine the organizational structure needed to develop and implement a code of conduct.

Target Audience

This curriculum design is suitable for a broad range of audience segments including elected and appointed court managers and staff with court wide and departmental responsibilities, staff from state administrative offices, Federal courts, as well as leadership judges from every jurisdiction and type of court. The best class composition is a mix of court managers, judges, and line staff from different court jurisdictions including the Federal system, and state administrative office staff.

Special Notes to Faculty

In each section there are references to a number of ethics codes, some model codes – others from specific states that can serve as a bibliography on ethics codes. In addition, The Ethics Handbook: Tools for Trainers, by Cynthia Kelly Conlon and Lisa L. Milord, with the assistance of Jeffrey M. Shaman is an excellent resource. Published in 1996 by the

American Judicature Society and the State Justice Institute, it is another good tool for teaching ethics issues and discussing different teaching approaches.

Needs Assessment

Included in the curriculum design under Faculty Resources is a short question and answer document you can use to conduct a needs assessment at the beginning of your course.

By the end of the class participants will be familiar with a number of different ethics codes, both model codes and codes from specific states; see some of the difference between the various codes; they should be more familiar with their own court's ethics code or at least the status of ethics within their court; see how ethics codes relate to various topical ethical situations; start thinking about how to improve the awareness of ethics within their own court; and start thinking about what may be needed regarding ethics in the future.

Descriptive Labels

Ethics codes go by a number of different names in different courts and state systems. Some are called "Codes of Conduct", others "Guidelines", still others "Judicial Branch Policy." Likewise, these codes are often divided and labeled in different ways. Some use the term "canons," others use "sections," still others use "rules" or simply number the topics. For simplicity this design uses the umbrella term "ethics code" to designate all such codes.

Participant Activities

Participant Activities include small group discussions and individual reflections that lead to full class discussion. These general instructions may be modified for the audience and setting depending upon the facilitator's assessment of the class. The highest goal is to

integrate each exercise into the learning process and course content.

Multiple Character Scenarios

Several of the exercises call for several participants reciting sections as different characters in a scenario. This method can add excitement to the scenario as participants can inject their personal perspectives to their character. It also allows the class to quiz the characters as to their thinking.

Recite to Class or Silent Read

Some exercises call for just a single recitation of the scenario. This can be an efficient method if time is short. Recite the scenario yourself to the class, select an attendee to recite it, or even have the class read it silently to themselves.

Small Group Discussion Exercises

Divide the class into small groups of between five to seven participants. The class works best if participants sit at table rounds allowing them to face each other in discussion. Have each small group choose a discussion leader and spokesperson (can be the same person). If the class goes for more than one day, consider changing the discussion leader and spokesperson. Include markers, a table top flip chart or several sheets of easel paper for each group. If no tabletop flipcharts are available, ensure there is tape or some method of affixing the easel chart pages to the walls.

Individual Reflection Followed by Full Class Discussions

Some sections lend themselves more effectively to discussions by the entire class. Have participants write down their responses to the exercise questions. Select a number to call on for them to give responses to the questions. Record the most salient comments on flipchart pages. Save both the small group and full class discussion flipchart comments in order to share with subsequent classes.

Educational Content

Section 1 – The Ethics Code and the Personnel Rules

Learning Objective

As a result of this section, participants will be able to:

1. Identify different ethics codes, both model codes and some from specific states and courts; and
2. Describe and assess their own court's ethics code.

1.1 Class Overview and Needs Assessment

Introduce yourself and lay out an overview of the class including how long the session will last. By the end of the class attendees will be familiar with a number of different ethics codes, both model codes and codes from specific states; see some of the difference between the various codes; they should be more familiar with their own court's ethics code or at least the status of ethics within their court; see how ethics codes relate to various topical ethical situations; start thinking about how to improve the awareness of ethics within their own court; and start thinking about what may be needed regarding ethics in the future.

Activity One – Ethics Code -- Assessment is designed to help explore with the class what the participants' ethics code is in their jurisdiction and how those ethics codes may vary in structure, location, and coverage between the various jurisdictions.

1.2 The Ethics Code and the Personnel Rules

Many courts embed their ethics codes within their personnel codes; other courts maintain their ethics code separately. Embedding the code within the rules adds the weight of sanctions to violations of the canons. Keeping the code separate (even if duplicated within the rules) can fashion the code as more aspirational, inspiring staff to emulate the ethical precepts rather than avoiding violations. The code as part of the rules can occasionally lead to acknowledgment of violations being negotiated. For example, a supervisor might accept an employee's resignation in return for not including an ethics violation in the employee's official personnel record.

Some courts do not maintain an ethics code or they rely on the state's judicial code of conduct and include a directive that "applicable portions of the judicial code also apply to court staff." Although this approach can work it may be difficult for staff to discern which canons are applicable to them. There may also be administrative functions that are not addressed in the judicial code of conduct.

Ethics Codes

- The Colorado Judicial System Personnel Rules contain aspects of what other states label as an ethics code in Part 5: Employee Relations of their rules.²
- The Arkansas Code of Judicial Conduct is an instance of a code designed for judicial officers, but adapted to be applicable to courts staff. Rule 2.12 (A) Supervisor's Duties specifically exemplifies this when it states, "A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code."³

² Colorado Judicial System Personnel Rules, available at: <https://www.courts.state.co.us/userfiles/file/Administration/HR/Policies/PersonnelRules2012.pdf>.

³ Arkansas Code of Judicial Conduct, available at: <https://courts.arkansas.gov/rules-and-administrative-orders/arkansas-code-of-judicial-conduct>.

- State of Maryland Administrative Office of the Courts Human Resources Policy Manual envisions application of appropriate disciplinary action for code violations. It also establishes a Review Board for reviewing and ultimately resolving complaints.

Activity Two – *Ethics Code and Personnel Rules* is designed to explore the advantages and disadvantages to having ethics code within or referenced in personnel rules.

1.3 Ethics Code Topics

Different courts' ethics codes include a variety of topics, so it leads to the theoretical question of what should be in and what should be left out of a code. For example, some believe that a court's ethics code need not include an admonishment to "obey all laws" since that is a fundamental obligation of citizenship. Likewise, codes should not include operational, procedural, or administrative policies such as "don't share your password, train your court staff, keep up your continuing educational requirements, show up for work on time, don't discriminate against legally protected groups," state a specific duty yet include a prohibition against taking sanction if an employee fails to perform that duty. Rather, an ethics code should contain "timeless" canons.

Ethics Codes

- Arizona Code of Judicial Conduct, Rule 2.5 Competence, Diligence, and Cooperation calls for judicial employees to comply with judicial education requirements.⁴
- American Judicature Society Model Code of Conduct for Nonjudicial Court Employees (AJS Model Code), Section Two: Confidentiality (E) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.⁵
- Florida Seventh Circuit Code VI. Rule 1.500 Performance of Duties (E) No employee shall discriminate on the basis of, nor manifest by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.
- State of Delaware Merit Rules 15.0 on Employee Responsibilities includes a section on attendance. 15.1 Appointing authorities shall be responsible for the attendance of all employees in their agency.
- North Dakota Code of Conduct for Judicial Employees: III. A Judicial Employee Shall Perform Duties Impartially and Diligently (G) Duty to Report. A judicial employee shall report to a supervisor, administrator, or judicial officer any violation of the law or this code by another judicial employee. An employee shall not be subject to retaliation for reporting or failing to report violations if such report or failure to report is made in good faith.⁶

Activity Three – *What Topics Are Contained in your Ethics Code?* During this activity participants will explore what is contained in their ethics code as well as learning what is in others' codes.

⁴ Arizona Code of Judicial Conduct, available at: [http://www.azcourts.gov/portals/137/rules/Arizona Code of Judicial Conduct.pdf](http://www.azcourts.gov/portals/137/rules/Arizona_Code_of_Judicial_Conduct.pdf).

⁵ American Judicature Society, Model Code of Conduct for Nonjudicial Court Employees, available at: <https://www.ajs.org/judicial-ethics/nonjudicial-court-employees/>.

⁶ North Dakota Code of Conduct for Judicial Employees, available at: [http://www.courtethics.org/North Dakota Code of Conduct for Judicial Employees.pdf](http://www.courtethics.org/North_Dakota_Code_of_Conduct_for_Judicial_Employees.pdf).

Section 2 – Issues in Court Ethics

Learning Objective

As a result of this section, participants will be able to:

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Activities Four to Seventeen – This group of activities (14 in total) will help the class explore the primary issues and topics that arise in ethics and our outlined in this section. Each of these activities is identified with the issue or topic that it explores by its name. These activities can be used to introduce each of the topics or used after the topic has been covered as a debrief of the topic.

2.1 Assisting Litigants and Giving Legal Advice

Court staff giving out legal advice is a risk. If the information is incorrect it can cause irreparable harm to parties and puts staff in a potential legally liable situation. On the other hand, as court professionals we have considerable knowledge and background on court procedures, rules, and statutes. Assisting litigants is one of the key components to building public trust and confidence in the judicial system. If we were in another profession (e.g., economists, chiropractors, social workers, and website designers) we'd be expected to share our expertise and advice with customers. The courts are unusual in that it prohibits us from using the very knowledge we have accumulated over the years to give legal advice and help the very taxpayers we serve.

Ethics Codes

- NACM Model Code of Conduct for Court Professionals (NACM Model Code), Canon 1.7: Assisting Litigants
A court professional shall be responsive to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of one's official position.⁷
- AJS Model Code, Section Two: Confidentiality
(F) Court employees are not precluded from responding to inquiries concerning court procedures, but a court employee shall not give legal advice. Standard court procedures, such as the method for filing an appeal or starting a small claims action, should be summarized in writing and made available to litigants. All media requests for information should be referred to the court employee designated for that purpose.
- Arizona Code of Judicial Conduct, Rule 2.6 Assistance to Litigants
(A) Explain how to accomplish various actions within the court system and provide information about court procedures, without recommending a particular course of action;
(B) Answer questions about court policies and procedures, without disclosing confidential or restricted information as provided in Rule 3.2;
(C) Explain legal terms, without providing legal interpretations by applying legal terms and concepts to specific facts;
(D) Provide forms and answer procedural questions about how to complete court papers and forms with factual information by the court customer, without recommending what words to put on the forms;
(E) Provide public case information, without providing confidential case information as provided in Rule 2.5;
(F) Provide information on various procedural options, without giving an opinion about what remedies to seek or which option is best;
(G) Cite statutes, court rules or ordinances a judicial employee knows in order to perform the employee's job, without performing legal research for court customers;

⁷ NACM Model Code of Conduct for Court Professionals available at: <https://nacmnet.org/ethics/index.html>.

- (H) When asked to recommend a legal professional such as an attorney, a legal document preparer, or process server, refer the customer to a resource like a directory or referral service, without recommending a specific legal professional; and
- (I) Provide scheduling and other information about a case, without prejudicing another party in the case or providing information to or from a judge that is impermissible ex parte (one party) communication about a case.

2.2 Maintaining Records

In the age of paper, records management ethics canons address prohibitions against inappropriately backdating or falsifying documents; or destroying records in a manner at variance with established records retention policies. Currently, most courts store their documents in file folders in file rooms. Many courts are now moving toward electronic document management, and in the near future we have the new possibilities of managing information through electronic content management (ECM) eliminating the need for even electronic document images. This changing medium will require our policies and our ethical requirements to also change.

As an example ECM can mean some essential content pertinent to a case is available only within the case management system database (e.g., a jury trial request could soon be directly entered). Although not contemplated when the canons were originally drafted, does a sense of fundamental fairness (NACM Code Canon 1.3) and respect of litigants (NACM Code Canon 1.4) require for us to look at how ECM might inhibit access to vital court information to the “technophobes” among us? Something to watch in the future to be sure.

Ethics Codes

- NACM Model Code, Canon 2.5: Properly Maintain Records
A court professional shall not inappropriately destroy, alter, falsify, mutilate, backdate or fail to make required entries on any records within the court’s control.
- AJS Model Code, Section Five: Performance of Duties
(D) No court employee shall alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee's control. This provision does not prohibit alteration or expungement of records or documents pursuant to a court order.
- Minnesota Court Employee Code of Ethics, Article V. Performance of Duties
(E) Employees shall not intentionally alter, falsify, destroy, mutilate, backdate or fail to make required entries on any records within the employee’s control, or give false information. This provision does not prohibit alteration or expungement of records or documents pursuant to law, court rule or court order.⁸

2.3 Confidentiality and Ex Parte Communications

- A. Confidentiality:
Confidentiality in the context of court administration refers to the sensitive nature of the information about people and their cases. Court personnel interact daily with this information, by necessity, and therefore should have a healthy appreciation of their obligation to shield and protect the sharing of that information.

In general, court records may be available to the public. Exceptions include cases related to juvenile dependency, adoption and severance matters, which are usually sealed from the public. Additionally, sensitive personal information related to finances, such as social security numbers and the numbers of credit or debit accounts are highly sensitive, and should be redacted or sealed from the public.

⁸ Minnesota Court Employee Code of Ethics available at:
www.courtethics.org/MN%20code%20of%20ethics%202006.doc.

However, the NACM code and many judicial standards and codes highlight the importance of court staff guarding their knowledge of all court issues. Employees of the court should never share information about parties involved in court cases. This may include information gained from review of court documents, information learned while attending court, or information heard or learned from parties themselves or from other court staff. Some court environments use protective screens to prevent others from viewing sensitive information and most courts restrict removal of court cases from the workplace.

An example of a violation of confidentiality might include:

A court employee discovers through a case filing that a party, her neighbor, has been charged with a crime. After telling all of her co-workers, the employee goes home and tells her family and the rest of the neighbors.

B. Ex parte communication:

The due process protections providing the opportunity to be heard requires that information provided to the judge also be provided to the other party to the case. Ex parte communication is defined as one party discussing the case or otherwise communicating to the judge without the other parties' knowledge, and is considered a violation of due process rights.

Many court personnel work closely with judges or have regular access to judges as they conduct their work. Unwittingly or intentionally, court staff can infringe on the parties due process rights if they communicate information about parties or cases with the judge or his staff. Communicating with judges about cases or parties can place both judges and personnel in a sensitive and ethical quandary. When a judge receives what is considered to be ex parte communication, he or she has an obligation to put that information on record and share it with all parties.

Some examples of ex parte communication violations might include:

A courtroom clerk recognizes a party involved in a personal injury matter and informs the judge that the same party had several unsuccessful personal injury cases in another county where the clerk was previously employed. The clerk also informs the judge the party's attorney was sanctioned for filing frivolous lawsuits.

Ethics Codes

- NACM Model Code, Canon 2.6: Legal Requirements
A court professional shall maintain the legally required confidentiality of the court, not disclosing confidential information to any unauthorized person, for any purpose.
- A court professional shall properly provide confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule or administrative policy.
- AJS Model Code, Section Two: Confidentiality
(G) No court employee shall either initiate or repeat ex parte communications from litigants, witnesses or attorneys to judges, jury members or any other person.
- Ohio Code: (A) Confidentiality of Court Business
(1) Confidential information Employees regularly produce and have access to confidential information. Information regarding legal and administrative matters that are pending before the Court and that are not a matter of public record is confidential. An employee shall not release any confidential information until it is publicly announced in the normal course of the Court's business or its release is otherwise approved by the Court. An employee shall not share confidential information with anyone, including another

employee, unless that employee is permitted to have access to the confidential information. An employee who obtains unauthorized access to confidential information shall keep it confidential pursuant to this policy.

- Florida Seventh Circuit Code: Rule 1.200: Confidentiality
(A) No employee shall disclose to any unauthorized person, for any purpose, any confidential information acquired in the course of employment, or acquired through unauthorized disclosure by another. (B) Confidential information includes, but is not limited to, information on pending cases that is not already a matter of public record and information concerning the work product of any judge, staff attorney, or other employee including, but not limited to, notes, papers, memoranda, or verbal discussions.

2.4 Fairness and Respect for Others

Court professionals develop a loyalty to the judicial branch, to our profession, but also to each other. Court professionals have a duty to interact with patience, respect, courtesy, dignity, and a businesslike demeanor toward others. As an example, court professionals are obligated to recruit, select, and advance employees based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not based on favoritism. Court professionals have to treat personal or sensitive information with discretion. Court professionals also have a loyalty to the institution of the courts and, on occasion, must draw the limits of respect to others versus loyalty to the institution.

Ethics Codes

- NACM Model Code, Canon 1.3: Fairness
A court professional shall conduct his or her work without bias or prejudice including, but not limited to, bias or prejudice based upon race, gender, skin color, religion, age, sexual orientation, national origin, language, marital status, socioeconomic status, or physical or mental challenge.
- NACM Model Code, Canon 1.4: Respect for Others
A court professional shall treat litigants, co-workers and all others interacting with the court with dignity, respect and courtesy.
- NACM Model Code, Canon 2.2: Personal Relationships
A court professional shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism.
- NACM Model Code, Canon 2.7: Discretion
A court professional shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.
- AJS Model Code Section Three: Conflict of Interest
(6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.
- Florida Seventh Circuit Code: Rule 1.200: Confidentiality
No employee shall discriminate on the basis of, nor manifest by words or conduct, bias or prejudice based on race, religion, national origin, gender, sexual orientation or political affiliation in the conduct of service to the court.
- U.S. Code of Conduct for Judicial Employees, Canon 2: A Judicial Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities
A judicial employee should not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out the duties of the office. A judicial employee should not allow family, social, or other relationships to influence

official conduct or judgment. A judicial employee should not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee should not use public office for private gain.

2.5 Gifts

The prohibition against accepting gifts and outside compensation would appear to be one of the most straight forward canons; yet, the specter of gifts just never seems to go away. Whenever court professionals accept anything of value without paying the fair market value, there is a risk that the benefit might be viewed as an attempt to influence a judicial officer's decision or a judicial employee's action in a case. Gifts can exist in a variety of forms (e.g., presents, tickets, meals, loans) and don't have to be offered specifically with the expectation of a reciprocal favor. A distinction worth noting is the difference between a gift given with the direct expectation of a favor in return and a gift given as a "thank you" in appreciation for a service or accommodation.

While the issue and a potential conflict may present itself in a subtle manner, the need for court officers and employees to be alert to these situations is critical. For example, gestures of thanks made to court representatives, while they may be entirely well-meaning, may be, or may be perceived to be, given for the purpose of soliciting (additional) preferential treatment. Even if they are not, it may be hard for a third party to know. Whether such treatment is provided or not, transactions such as these may raise suspicions about the impartiality and credibility of judges and/or court staff.

Such transactions may not always occur during the normal course or scope of business, and court employees and judicial officers must be vigilant in all settings and in all circumstances to uphold the high standard of behavior that is placed upon them as public servants.

Ethics Codes

- **NACM Model Code, Canon 3.3: Avoiding Gifts**
A court professional shall not solicit, accept, agree to accept, or dispense any gift, favor, or loan either for oneself or on behalf of another based upon any understanding, either explicit or implicit, that would influence an official action of the court.
- **AJS Model Code Section One (b): Abuse of Position**
No employee shall accept, solicit, or agree to accept any gift, favor or anything of value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgment of any employee would be influenced thereby.
- **Delaware Code of Conduct III. Abuse of Position and Conflict of Interest (B) Gifts** Judicial Branch employees may not solicit or accept any gift, loan, favor or other compensation under circumstances from which it could reasonably be inferred that a significant purpose of the donor was to influence the employee in the performance of his or her official duties. This provision does not prohibit
 - 1) Acceptance by Judicial Branch employee of food and refreshments of insignificant value on infrequent occasions.
 - 2) Solicitation or acceptance by a Judicial Branch employee of loans from banks or other financial institutions on customary commercial terms.
 - 3) Acceptance of unsolicited advertising or promotional material such as mugs, pens, pencils, calendars, and other items of insignificant value.
 - 4) Acceptance of benefits as a member of a profession, business, or group when that benefit is extended to all members of the profession, business, or group regardless of employment affiliation.

5) Acceptance of a public award related to public service or of a gift on behalf of the Judicial Branch. The receipt of such a gift shall promptly be reported to the appointing authority.

6) Acceptance of scholarships for work-related seminars and conferences when such scholarships have the approval of the appointing authority.

2.6 Loyalty and Personal Relationships

Court professionals are required to dedicate themselves to the judicial branch before other obligations. It is easy to say; it may be more difficult to actually carry out. We court professionals are expected to place allegiance to the courts before family and before other interests such as future business prospects.

We've already discussed (Section 2.1) temptations to provide personal help to friends and family (e.g., suggesting just the right words to ensure an order of protection moves quickly through the court). Courts also face a challenge with the changing workforce. As more knowledge professionals (e.g., mediators, information technology specialists, counselors, statisticians, etc.) join the court; professionals who have skill sets that allow them to move easily from the courts to other government agencies, or from government to the private sector. Despite the code calling for employees to avoid representing interests that could benefit from private information (e.g., working for a private attorney's office), if loyalties begin to shift from the court as an institution to one's own skill set, will instilling a sense of loyalty be that much harder to achieve?

Ethics Codes

- NACM Model Code, Canon 1.2: Avoiding Impropriety
A court professional shall avoid improper influences from business, family, position, party, or person.
- NACM Model Code, Canon 3.2: Compensation and Post-Employment Restrictions
During or following one's employment with a court, a court professional shall not represent a commercial interest to, or do business with, that same court unless both the employment and commercial interest are fully disclosed to and approved by the court's appropriate management authority.
- AJS Model Code Section Three: (A) Conflict of Interest
. . . every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the designated authority and ending them when they arise.
- AJS Model Code Section Two: (H) Confidentiality
A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

Minnesota Code Article I. Abuse of Position and Conflict of Interest
Employees shall act so that they are not unduly affected or appear to be affected by kinship, position, or influence of any party or person.
- U.S. Code of Conduct for Judicial Employees, Canon 3:
A Judicial Employee Should Adhere to Appropriate Standards in Performance of Duties of the Office

(C) A judicial employee should be patient, dignified, respectful, and courteous to all persons with whom the judicial employee deals in an official capacity, including the general public, and should require similar conduct of personnel subject to the judicial employee's direction and control. A judicial employee should diligently discharge the responsibilities of the office in a prompt, efficient, nondiscriminatory, fair, and professional manner. A judicial employee should never influence or attempt to influence the assignment of cases, or perform any discretionary or ministerial function of the court in a

manner that improperly favors any litigant or attorney, nor should a judicial employee imply that he or she is in a position to do so.

2.7 Privilege

NACM cites examples of how this canon would be violated including using one's position to secure a job for a friend, or writing a complaint letter concerning a non-business matter using court letterhead. At one time, a court in a state conferred court clerks with badges that appeared similar to law enforcement badges. Some clerks displayed their badges in the hopes of avoiding traffic tickets. Some establishments offer "government discounts" to employees who display their identification. There is a temptation to enjoy those discounts while on business trips.

Ethics Codes

- NACM Model Code, Canon 1.6: Avoiding Privilege
A court professional shall not use his or her position (intentionally or unintentionally), to secure unwarranted privileges or exemptions for oneself or others;

A court professional shall not dispense special favors to anyone, whether or not he or she was offered remuneration.
- Washington Code: 7. Abuse of Position and Conflict of Interest
(A) Court employees should not use or attempt to use their official positions to secure unwarranted privileges or exemptions for themselves or any other person. Court employees should not abuse the power that special knowledge affords.

2.8 Conflicts of Interest and the Dignity of the Court

A conflict of interest can exist when a court professional, the professional's family, or friends may benefit from an official action. Even if there isn't any actual impropriety, it creates an appearance of impropriety, which can undermine the public's trust and confidence. The term "the dignity of the court" is not fully defined and yet court professionals have an ingrained sense of when we are in danger of placing the role of the judiciary in a poor light. The specter of "impugning the dignity of the court" contains aspects that have been present for years; others facets are new. The following scenario describes a court employee struggling to support herself and her family through a questionable evening job, and a court administrator who sees the second job as unseemly and potentially impugning the dignity of the court.

Ethics Codes

- NACM Model Code, Canon 3.1: Outside Business
The court is a court professional's primary employment. A court professional shall avoid outside activities, including outside employment, . . . that reflect negatively upon the judicial branch and on one's own professionalism.
- AJS Model Code Section Three: (D) Conflict of Interest
(6) Where a conflict of interest exists or may reasonably appear to exist or where the outside employment reflects adversely on the integrity of the court, the employee shall inform the appropriate designated authority prior to accepting the other employment.
- Delaware Code: (D) (2) Outside Employment
Each full-time Judicial Branch employee's position with the Judicial Branch must be the employee's primary employment. Judicial Branch employees may engage in outside employment or volunteer services as long as such employment or services are completed outside of the employee's normal working hours, do not conflict with the performance of the employee's official responsibilities, and do not involve potential conflicts of interests or the appearance of a conflict of interest.

2.9 The Misconduct of Others

Most ethics codes contain a canon calling for court professionals to report code violations by themselves or by any other court employee. On the other hand, employees are often fearful of the ramifications of exposing their friends as well as going to a higher authority with incomplete information. At best the implications can be problematic; at worse they can be dangerous.

Ethics Codes

- **NACM Model Code, Canon 2.3: Misconduct of Others**
A court professional should expect fellow professionals to abide by the canons set out in this code.

A court professional shall report to the appropriate authority the behavior of any court professional who violates this code including, but not limited to, potential conflicts of interest involving one's duties and attempts to inappropriately influence one in performing one's duties.
- **Minnesota Code: Article V. Performance of Duties**
(D) Employees shall promote ethical conduct as prescribed by this code and report any improper conduct by any persons to appropriate authorities.

2.10 Involvement in Matters before the Court

Court staff can often have business involving themselves, their family, or their close friends before the court. A drunk driving arrest; the passing of a parent or relative requiring probate work; dissolution of a marriage; a child incarcerated for possession of narcotics are just a few examples of how staff might have a matter before the court.

Inherent in this section is an assumption that the general public enjoys a degree of privacy not afforded to court professionals who work for the judicial branch. Court professionals can't be in a position (or allow staff to be in a position) where they or their subordinates could be seen as able to affect the outcome of a case. This can be particularly challenging for line staff whose court case might involve traumatic family issues on display within the very organization where the staffer works such as a divorce or arrest.

Involvement in court matters goes beyond cases simply in a staffer's own court; they must report if they or family members have a case pending in *any* court. Awkward as this might be, a court professional must adhere to the precepts of performing their duties with honesty and transparency. In order to maintain their own credibility, they must be forthcoming so as to avoid impugning the integrity of the court.

Ethics Codes

- **NACM Model Code Canon 1.5 Involvement in Actions Before a Court**
A court professional shall notify the appropriate authority whenever he or she, anyone in his or her family, or anyone with whom he or she has a close personal relationship has been arrested, named as a party, or is otherwise formally involved in any action pending in any court.
- **Arizona Code: Rule 2.11 Personal Interests.**
(C) A member of a judge's personal staff and a courtroom clerk shall inform the judge of any potential conflict of interest, involvement, or activity of the staff member or courtroom clerk in a case pending before the judge. This includes a case in which the judicial employee, the judicial employee's spouse or domestic partner, a great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew or niece of the judicial employee or the judicial employee's spouse or domestic partner, or the spouse or domestic partner of any of these relatives is:

- (1) a party to the proceeding, or an officer, director, general partner, managing member, or trustee of a party;
- (2) acting as a lawyer in the proceeding;
- (3) a person who has more than a *de minimis* (insignificant) interest that could be substantially affected by the proceeding; or
- (4) likely to be a material witness in the proceeding.

2.11 Public Resources

Management of public resources has traditionally meant avoiding misuse of supplies and equipment. (e.g., don't make copies of your great American novel on the office court photocopier). Concepts of public resources have changed over time. In the technological age, court professionals have access to information technology and computer applications. When written, most codes did not envision potentially using the court's PowerPoint application to help create a presentation for a child's school assignment. Unlike the toner in a photocopier, the computer isn't really diminished with extra use.

Less often we consider time as a public resource. In particular, court professionals experience a natural tension that arises from competition between increased personal and professional responsibilities. In addition, some professional obligations may involve activities that fall outside of direct court operations, but are still related to core court functions. Just as equipment and supplies are resources over which court employees must be effective stewards, court employees must also be conscientious stewards of their time in the workplace.

Ethics Codes

- NACM Model Code, Canon 2.8: Proper Use of Public Resources
A court professional shall use the resources, property, and funds under one's official control judiciously and solely in accordance with prescribed procedures.
- NACM Model Code, Canon 3.1: Outside Business
The court is a court professional's primary employment. 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.
- Washington Code: 7. Abuse of Position and Conflict of Interest
(C) Court employees should use the resources, property, and funds under their control appropriately and solely in accordance with the law. Court time, equipment, supplies, and facilities shall not be used for personal business.
- Arizona Code: Rule 3.3 Solicitation for Outside Activities
(A) A judicial employee shall not use the employee's position or office to solicit funds, but a judicial employee, other than a member of a judge's personal staff, a courtroom clerk, or a court manager, may solicit funds in connection with outside activities.

2.12 Financial Disclosure

The NACM Model Code states that a number of courts throughout the country have requirements that court professionals reveal aspects of their financial situation in order to identify and avoid any potential conflicts of interest in advance. The ability to conceal (or at least be less than forthcoming) is great, and the chances of detection are small. Whether or not there is an outside requirement, an individual ethical commitment is necessary.

Ethics Codes

- NACM Model Code, Canon 3.4: Financial Disclosure
A court professional shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.
- AJS Model Code Section Three: Conflict of Interest
(B) Prohibited Activities. To secure conformity to the above standards, every court employee who has authority to enter into or to approve contracts in the name of the court system shall file a financial disclosure statement with the appropriate designated authority upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of and contractual arrangements for personal income, including investments and real property, business entity income and business position income held or received by themselves, their spouses or their dependent children, and shall follow the guidelines established by the appropriate designated authority.

2.13 Political Activity

The NACM Model Code emphasizes that aside from the right to vote, court professionals must maintain the clear distinction between their role as citizen and their role as court professional. The codes call for court professionals to remain fair and impartial. This includes never using one's title (e.g., court administrator or county clerk) to encourage or coerce staff to vote or contribute money to a campaign for a candidate or a ballot measure. Never dispense favors or sanctions to staff based on whether a staff member did or did not vote or contribute to a campaign. Admittedly this is still an uneasy accommodation between freedom of choice and expression, and the duty to be unbiased.

Political activity is restricted to non–work hours, yet there is still the possibility of a court professional inadvertently lending the court's imperator to a position or candidate simply because of who the professional is. If an employee chooses to participate in political campaigns during non–working hours, such activity including membership and holding office in a political party, campaigning for a candidate in a partisan election by making contributions of time and money to an individual candidate or political party. An employee who chooses to participate in this type of political activity during off–duty hours should not use his or her position or title within the court system in connection with such political activities. The Courts' rules should clearly outline political activity restrictions and emphasize to the employee the freedom to exercise his or her right as a private citizen. As a court professional, fairness and impartiality should be at the forefront.

Ethics Codes

- NACM Model Code, Canon 4.1: Refraining from Inappropriate Political Activity
Engaging in any political activity is done strictly as a private citizen and only in accordance with state law or court rules. A court professional shall participate only during non-court hours, using only non-court resources. A court professional shall not use one's position or title within the court system to influence others.
- AJS Model Code, Section Four: Ethical Activity
(A) Each employee retains the right to vote as the employee chooses and is free to participate actively in political campaigns during non-working hours. Such activity includes, but is not limited to, membership and holding office in a political party, campaigning for a candidate in a partisan election by making speeches and making contributions of time or money to individual candidates, political parties or other groups engaged in political activity. An employee who chooses to participate in political activity during off–duty hours shall not use his or her position or title within the court system in connection with such political activities.

- Washington State Code: (5) Political Activities
(A) Court employees are free to participate in political campaigns/organizations during non-working hours if such activity does not use, or appear to use, the employees' official position or court in connection with those activities.

2.14 Social Media

The NACM Model Code describes the Internet as an emerging issue that must be considered by every court manager. In particular, the Internet and social networking are now integral parts of our societal and judicial landscape. "The decentralized and multidirectional nature of social media opens up a wide range of opportunities for employees to violate ethical standards."⁹ For instance, inappropriate tweets, posts, photographs, videos, and other content can easily raise serious issues involving impropriety, impartiality, confidentiality, conflict of interest, and political activity. The ease and prevalence of social media use creates an environment that has already led to ethical problems for many courts.

Court use of social media also extends to itself as an institution. Examples include: using Twitter for enhanced communication with the news media, staff, and jurors; creating an official Facebook page to better interact with the public about the court; publishing educational YouTube videos about court procedures; posting job recruitments on Facebook and Craigslist; and vetting social media information about job applicants as part of background checking is becoming routine. The use of social media in the recruitment and screening of job applicants must be done with great care, however, to protect privacy rights and ensure that unrelated (and potentially prejudicial) information is not included in hiring decisions (i.e., do not violate legal/EEO standards).

Proactive courts should ensure that they have enacted a robust, official Code of Conduct, promulgated a social media use policy for all court staff, oriented and trained staff on the court's code and policy, have instituted a mechanism for staff to get social media ethical questions answered promptly, included social media use in employee performance monitoring, taken appropriate corrective action if performance violations occur, and enacted appropriate I.T. system controls. Courts and court managers must also consider collateral issues involving social media use that extend to expectations of privacy, freedom of speech, property/ownership rights, and the line between personal and professional conduct.

Ethics Codes and supplementary materials

- NACM Model Code, Canon 2.7: Discretion
A court professional shall be respectful of litigants, the public, applicants, and employees' personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities. A court professional shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.
- Minnesota Code: Article IV. Release of News Information.
No personnel rule is intended to restrict the rights of an individual employee to comment as a private citizen on a public matter. However, all media requests for information on Judicial Branch business should be referred to a supervisor or an employee designated to respond to such requests.
- Washington State Code: (3) Professional Performance of Duties
(B) Court employees should carry out their responsibilities as public servants in as

⁹*The Court Manager*, "Social Media and the Ethical Court Employee," by Norman Meyer, vol. 26 no. 1, 2011, p. 8; www.nacmnet.org

courteous a manner as possible. Court employees should treat all persons with respect and responsiveness, acting always to promote public esteem in the court system.

- United States Courts: Codes of Conduct for Judges and Judicial Employees , “Advisory Opinion #112, the Use of Electronic Social Media,” and “Resource Packet for Developing Guidelines for the Use of Social Media by Judicial Employees,” can all be found at <http://www.uscourts.gov/rules-policies/judiciary-policies/code-conduct>.
- Meyer, N. (June 2014). Social Media and the Courts: Innovative Tools or Dangerous Fad? A Practical Guide for Court Administrators. *International Journal for Court Administration*, vol. 6 no. 1, www.iacajournal.org.

2.15 Honesty and Truthfulness

The NACM Model Code notes that there has been considerable discussion over the inclusion of the words “honesty” and “truthfulness.” The common perception is the prohibition against intentionally lying. Some see it as including the concept of being completely forthcoming (e.g., transparent) and not withholding salient facts. Others see that there is a necessity to protect a larger truth; by protecting judicial officers, court officials, and the courts as an institution. Certainly, court professionals must be as honest and forthcoming as possible without putting another person in jeopardy or impugning the court system as an institution.

Ethics Codes

- NACM Model Code, Canon 1.1, Performing Court Duties
A court professional shall faithfully carry out all appropriately assigned duties striving at all times to perform the work diligently, efficiently, equitably, thoroughly, courteously, honestly, truthfully, and with transparency.
- Minnesota Code: Article V. Performance of Duties
(F) Employees shall support and protect the independence of the judicial branch of government. Employees shall also protect the public’s interest and justice for all persons.
- Washington State Code: 1 Professional Performance of Duties
(E) Court employees should provide accurate and timely information to those requesting it. Court employees 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.

Faculty Resources

Faculty Resources are intended to be used as references and illustrations of content, methodology, and purpose for each topic. Faculty resources are annotated in the content outline in places where their use may be most effective. Faculty for a course based on this curriculum design may have supplemental resources that would be useful to court managers. These faculty resources are not intended to be the only participant materials; they are intended to provide some materials that are considered vital to the content.

For this curriculum design, the faculty resource that has been included is the NACM Model Code of Conduct for Court Professionals. This resource and ethics resources can be found on NACM's [Ethics webpage](#).

NACM Model Code of Conduct for Court Professionals



Canon 1: Avoiding Impropriety and the Appearance of Impropriety in All Activities

Canon 1.1: Performing Court Duties

A court professional shall faithfully carry out all appropriately assigned duties striving at all times to perform the work diligently, efficiently, equitably, thoroughly, courteously, honestly, truthfully and with transparency.

A court professional shall carry out properly issued court orders and rules, not exceeding the court professional's authority.

Canon 1.2: Avoiding Impropriety

A court professional shall avoid both impropriety and the appearance of impropriety.

A court professional shall avoid improper influences from business, family, position, party, or person.

A court professional shall avoid activities that would impugn the dignity of the court.

Canon 1.3: Fairness

A court professional shall conduct his or her work without bias or prejudice including, but not limited to, bias or prejudice based upon race, gender, skin color, religion, age, sexual orientation, national origin, language, marital status, socioeconomic status, or physical or mental challenge.

Canon 1.4: Respect of Others

A court professional shall treat litigants, coworkers and all others interacting with the court with dignity, respect and courtesy.

Canon 1.5: Involvement in Actions Before a Court

A court professional shall notify the appropriate authority whenever he or she, anyone in his or her family, or anyone with whom he or she has a close personal relationship has been arrested, named as a party, or is otherwise formally involved in any action pending in any court.

Canon 1.6: Avoiding Privilege

A court professional shall use his or her official position solely for its intended purpose.



NACM Model Code of Conduct for Court Professionals

A court professional shall not use his or her position (intentionally or unintentionally), to secure unwarranted privileges or exemptions for oneself or others;

A court professional shall not dispense special favors to anyone, whether or not he or she was offered remuneration.

Canon 1.7: Assisting Litigants

A court professional shall be responsive to inquiries regarding standard court procedures, but shall not give legal advice unless it is required as part of one's official position.

Canon 2: Performing the Duties of Position Impartially and Diligently

Canon 2.1: Independent Judgment

A court professional shall avoid relationships that would impair one's impartiality and independent judgment.

A court professional shall be vigilant of conflicts of interest and ensure that outside interests are never so extensive or of such nature as to impair one's ability to perform court duties.

Canon 2.2: Personal Relationships

A court professional shall recruit, select, and advance personnel based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, not on favoritism.

A court professional shall avoid appointing, assigning, or directly supervising, a family member, or attempting to influence the employment or advancement of a family member.

Where circumstances dictate that one must work directly with a family member, a court professional shall report the circumstance to an appropriate authority, regularly assess the situation, and take remedial action at the earliest time practicable.

Canon 2.3: Misconduct of Others

A court professional should expect fellow professionals to abide by the canons set out in this code.



NACM Model Code of Conduct for Court Professionals

A court professional shall report to the appropriate authority the behavior of any court professional who violates this code including, but not limited to, potential conflicts of interest involving one's duties and attempts to inappropriately influence one in performing one's duties.

Canon 2.4: Attempts at Influence

A court professional shall immediately report to the appropriate authority any attempt to compel one to violate these canons.

Canon 2.5: Properly Maintain Records

A court professional shall not inappropriately destroy, alter, falsify, mutilate, backdate or fail to make required entries on any records within the court's control.

Canon 2.6: Legal Requirements

A court professional shall maintain the legally required confidentialities of the court, not disclosing confidential information to any unauthorized person, for any purpose.

A court professional shall properly provide confidential information that is available to specific individuals authorized to receive such by reason of statute, court rule or administrative policy.

Canon 2.7: Discretion

A court professional shall be respectful of litigants, the public, applicants and employees' personal lives; disregard information that legally cannot or should not otherwise be considered; use good judgment in weighing the credibility of Internet data; and be cautious about verifying identities.

A court professional shall treat personal or sensitive information with the same discretion that one would wish others to have if one were involved in a similar case.

Canon 2.8: Proper Use of Public Resources

A court professional shall use the resources, property and funds under one's official control judiciously and solely in accordance with prescribed procedures.

 **NACM Model Code of Conduct for Court Professionals**

Canon 3: Conducting Outside Activities to Minimize the Risk of Conflict with Official Position

Canon 3.1: Outside Business

The court is a court professional's primary employment. 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.

A court professional shall notify the appropriate authority prior to accepting work or engaging in business outside of one's court duties.

A court professional shall not request or accept any compensation or fee beyond that received from their employer for work done in the course of their public employment.

However, court professionals may engage in outside employment as long as it does not conflict with the performance of their official responsibilities or violate this code.

Canon 3.2: Compensation and Post Employment Restrictions

During or following one's employment with a court, a court professional shall not represent a commercial interest to, or do business with, that same court unless both the employment and commercial interest are fully disclosed to and approved by the court's appropriate management authority.

Canon 3.3: Avoiding Gifts

A court professional shall not solicit, accept, agree to accept, or dispense any gift, favor, or loan either for oneself or on behalf of another based upon any understanding, either explicit or implicit, that would influence an official action of the court.

Canon 3.4: Financial Disclosure

A court professional shall dutifully disclose all financial interests and dealings required by law, rule, or regulation.

Canon 4: Refraining from Inappropriate Political Activity

Canon 4.1: Refraining from Inappropriate Political Activity

 **NACM Model Code of Conduct for Court Professionals**

A court professional retains one's right to vote and is encouraged to exercise it as a part of citizenship.

Engaging in any political activity is done strictly as a private citizen and only in accordance with state law or court rules.

A court professional shall participate only during non–court hours, using only non–court resources.

A court professional shall not use one's position or title within the court system to influence others.

Unless a court professional is elected to one's court position, one shall campaign during non–work hours or take an unpaid leave of absence upon declaring one's intent to run for office.

If elected, a court professional shall resign one's post with the court unless one is holding a political office that clearly does not hold a conflict of interest, nor does it interfere with one's ability to perform one's court duties.

Participant Activities

The participant activities are one of the most important parts of the curriculum design as they are the tools faculty members are able to use to determine if participants have achieved the outcomes defined in the learning objectives. Also, participant activities provide tools to faculty to ensure that the training, course, or session is not only informative, but also interactive.

Participant activities are annotated in the content outline in places they may be effectively used. Each activity has a cover page explaining its purpose, the specific learning objective being measured, and how to use the activity. The activities themselves are on a separate page(s) for ease of duplication.

The following activities are to measure achievement of stated learning objectives. Faculty are encouraged to incorporate additional strategies to engage court managers and keep them active during their educational experience

Activity One – Ethics Code – Assessment

Learning objectives: *Identify different ethics codes, both model codes and some from specific states and courts; and describe and assess their own court's ethics code.*

Activity Two – Ethics Code and Personnel Rules

Learning Objective: *Identify different ethics codes, both model codes and some from specific states and courts; and describe and assess their own court's ethics code.*

Activity Three – What Topics Are Contained in Your Ethics Code?

Learning objective: *Identify different ethics codes, both model codes and some from specific states and courts; and describe and assess their own court's ethics code.*

Activity Four – Giving Legal Advice

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Five – Maintaining Records

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Six – Confidentiality

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Seven – Confidentiality – Human Resources

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Eight – Gifts

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Nine – Loyalty and Personal Relationships

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Ten – Privilege

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Eleven – Conflicts of Interest and Dignity of the Court

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Twelve – Involvement in Matters before the Court

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Thirteen – Public Resources

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Fourteen – Financial Disclosure

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Fifteen – Political Activity

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Sixteen – Social Media

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity Seventeen – Honesty and Truthfulness

Learning objective: *Analyze differences between their own court's ethics code and others; and apply ethics codes to a variety of topical ethical situations and issues.*

Activity One: Ethics Code -- Assessment

Purpose

The purpose of this activity is to allow the faculty and participants to explore their own court's ethics code as well as learn about their classmates' ethics code. This exploration provides insight for the participants about how code are organized in different states and agencies.

Notes about Using this Activity

Have each attendee individually take the assessment, then ask individuals to provide specific answers to some of the questions below. You can address many of these questions by asking for a show of hands and then asking specific individuals to explain the situation in their court.

Facilitate this conversation with the attendees using an easel chart to record the show of hands and individual perceptions until you think you have a representative impression of the attendees in the room. You can use this information to frame later exercises. Alternatively, this assessment can be provided to the students prior to the start of class to help the faculty gather information about the students prior to the start of class. If you choose to use it as pre-work, begin the class by sharing the accumulated information with the students and debriefing them on the answers they provided.

Question #6: Typically, when a code is incorporated in the personnel rules it might be shown as a separate section within the rules labeled "Ethics Code" or "Code of Conduct." Some courts have their ethics code separate, but the essence of the code is often duplicated within the personnel rules.

Question #7: This question may or may not be relevant depending on the make-up of the class (e.g., all attendees come from a single jurisdiction or state).

Relevant Learning Objective

1. Identify different ethics codes, both model codes and some from specific states and courts; and
2. Describe and assess their own court's ethics code.

Ethics Code – Assessment

1. Does your court have an ethics code specific to court staff?				
1. If you work for a trial court, does your state supreme court or administrative office have an ethics code for staff?				
2. If your state administrative office has an ethics code, does it differ from your court's code? How?				
3. When was your court's code developed or approved? When was the administrative office code developed or approved?				
4. Since it was approved has it ever been reviewed and revised?				
5. Is the code incorporated into the court personnel rules or is it separate?				
6. For those courts without an ethics code specific to court staff, does your court have a judicial code of conduct that includes court staff by inference?				
7. On a scale of one to five how familiar do you think your court's staff is with the code of conduct?				
Very Familiar	Familiar	Somewhat Familiar	Vaguely Familiar	Completely Unfamiliar
1	2	3	4	5
8. With what areas do you think court staff are most and least familiar regarding ethics?				
9. Why do court staff have the level of familiarity with ethics that they do?				

Activity Two: Ethics Code and Personnel Rules

Purpose

The purpose of this activity is to allow the faculty and participants to further explore their own court's ethics code as well as learn about their classmates' ethics code. In this activity, participants discuss how ethics code may be contained or referenced in the personnel rules and the pros and cons to that inclusion.

Notes about Using this Activity

Break up the class into small discussion groups and provide time for the groups to discuss the questions. Ensure that the groups know that you plan to have them discuss their answers with the full group. Debrief the small groups by seeking responses to the questions.

Relevant Learning Objective

1. Identify different ethics codes, both model codes and some from specific states and courts; and
2. Describe and assess their own court's ethics code.

Ethics Code and Personnel Rules

Answer the following questions in your small group. Be prepared to share your discussion with the class.

1. How does your court maintain its ethics code?
2. List the reasons why a court should embed their ethics code in their personnel rules.
3. List the reasons why a court should keep the ethics code separate from the rules even if the wording from the canons are duplicated within the rules.
4. Is it advisable to have the ethics code reference that the “appropriate canons” also apply to court staff? List the reasons for and against this approach.

Activity Three: What Topics Are Contained in Your Ethics Code?

Purpose

The purpose of this activity is to allow the faculty and participants to further explore their own court's ethics code as well as learn about their classmates' ethics code. In this activity, participants discuss why types of topics are generally contained in ethics codes.

Notes about Using this Activity

Break up the class into small discussion groups and provide time for the groups to discuss the questions. Ensure that the groups know that you plan to have them discuss their answers with the full group. Debrief the small groups by seeking responses to the questions.

Relevant Learning Objective

1. Identify different ethics codes, both model codes and some from specific states and courts; and
2. Describe and assess their own court's ethics code.

Activity Four: Giving Legal Advice

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

Have an attendee recite the scenario or have the class read the scenario silently. The scenario depicts a veteran court employee with considerable operational and legal knowledge placed in an untenable position by a judge who wants her courtroom run efficiently and practices her version of effective caseload management. The court administrator is facing multiple challenges and needs to focus on pressing the matters at hand.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Giving Legal Advice

Read the scenario below and answer the questions as a small group. Be prepared to share your answers with the class.

Scenario

Sam has supervised the Family Court Department in a large metropolitan court for years and, although not an attorney, is quite knowledgeable in court procedures. He has been trained not to give legal advice to the public, and he has trained his staff. Even Sam acknowledges however that when it comes to giving instructions on how to complete orders of protection, the admonitions against giving legal advice are daunting.

The court forms are written in legalese and abused applicants often don't understand the questions and have no patience to work through legal subtleties. For example, the law requires parties to distinguish between married couples, singles living together, the elderly living with family members, or the elderly cared for by professional care givers under the direction of a conservator.

Family Court Judge Jane Harris is annoyed with applicants coming to her court with incomplete or incorrect paperwork; she has repeatedly directed staff not to allow such people into her courtroom. She wants to see only applicants with correctly completed paperwork and with a legitimate request for an order.

Sam repeatedly trains staff to give directions (applicable to all applicants), that comply with the spirit of the judge's directive to the degree possible. Staff however spend considerable time with a small number of applicants who don't fit the legal criteria, but insist on filing their paperwork. Some become belligerent demanding that, "If you would just let me see the judge, I could get him to understand, and sign my order."

Sam shares his concerns again with Judge Harris that his staff are often being forced to the line prohibiting them from giving legal advice. Her honor, becoming irritated, forcefully repeats her initial directive that she will not tolerate incomplete or incorrect forms, or applicants who obviously do not qualify for an order. The judge is convinced that the reason applicants continue insisting on moving ahead with inadequate requests is because staff haven't properly explained the law. "Sam," the Judge says, "making sure I don't have to deal with these people, is your job. *Do your job!*"

Exasperated, Sam instructs staff to send "problem" applicants personally to him. Sam privately counsels them, completes the forms himself (if necessary), or requires them to leave because they do not qualify for an order. Sam does whatever it takes to ensure Judge Harris only sees the applicants with legally sufficient requests. Judge Harris is now happy.

Questions

Has anyone had a somewhat similar experience?

How do you assess Sam's problem solving process? Is he acting ethically? What other options does Sam have?

Did Judge Harris' directives give Sam and his staff "judicial immunity?"

Since the unauthorized practice of law and non-attorneys giving legal advice is illegal in virtually every state, is it necessary to include a prohibition as an ethics canon?

What can courts do to provide better assistance to the public while ensuring staff don't cross over the line and give legal advice?

Activity Five: Maintaining Records

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

Put the participants into small groups and have them discuss how records management changes once a court moves to electronic data management. Debrief the class by asking the small groups to share some of the changes of which they came up with the class.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Activity Six: Confidentiality

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores by its name.

Notes about Using this Activity

The scenario portrays a court staffer who protects his judge and practices, in his mind, good case management. It questions how much information is “too much information” and how much we, as court professionals, must protect judicial officers from bias. Choose class members to play the roles of Sheldon (or Sheila) Beach, Judge Arnold (or Anne) Taylor, Attorney Wendell (or Wendy) Snerdly, and Kandi (or Ken) Kardashian. Have each actor recite their portion of the scenario to the class then allow the class to quiz the characters as to their motivation and thought processes.

Relevant Learning Objective

3. Analyze differences between their own court’s ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Role Play

Sheldon Beach

I'm Sheldon Beach, Judge Taylor's judicial assistant. It's my job to ensure his courtroom runs smoothly; I try to keep him well prepared for everything. I give him a rundown of the calendar every morning. Yesterday it went something like this:

"Good morning Judge. At 9:00 am you have a hearing with Attorney Wendell Snerdly on the Kardashians vs. Kardashians divorce case. You know Snerdly. He asked to reschedule for the third time, this time because he had a conflict at Yuma Superior Court. I called my friend Phyllis at the court in Yuma. They had no hearing set with Snerdly so I left it on your calendar here today.

At 10:00 a.m. you have a small claims case with Hank Lawson. Remember he's the guy who believes paper money is worthless and you're not a legal judge, but this time he's arguing he was never properly served. He yelled at the clerk's staff on the phone yesterday and said he's "done with this kangaroo court," whatever that means. He did have a tantrum and threw papers in his last hearing so you'll want security on that one.

At 2:00 p.m. you have a protection order for Debbie McGraw against her husband, Phil. They filed six protection orders in the last six months and dismissed them all a few days later. Oh, one more thing, Phil McGraw is a second cousin to Joanie Schultz in the clerk's office. Not sure if you knew that. Joanie has nothing to do with their weekend brawls though, they live on opposite sides of town and they're not close.

Finally, you have a 3:00 p.m. pretrial on the jury trial that starts the day after tomorrow. I did hear a rumor that the prosecutor can't find a star witness, but they haven't told the defense yet -- they're still hoping for a plea. In other words, if you push them about witness availability, the trial might go away. There you go Judge, that's the lineup."

Judge Arnold Taylor

I'm Judge Arnold Taylor and I depend very heavily on Sheldon, and he does a fantastic job. If someone might be dangerous in a courtroom I need to know that for the sake of everyone's safety. If an attorney is -- well, confused -- about court appearances, or if somebody is bluffing about a lost witness, I need to know that too so we don't waste the court's time. I realize Sheldon's information on family connections with court employees might sound like gossip to some people, but judges need to know about potential conflicts. After all, judges have to weigh information in cases all the time and Sheldon's information is no different. Besides, it's all factual, internal, and strictly confidential. It's no different than draft opinions by law clerks.

Attorney Wendell Snerdly

I'm Attorney Wendell Snerdly. I was sitting in the courtroom with my client, Kandi Kardashian, waiting for the 9:00 a.m. hearing to begin because "Judge Sheldon" denied my continuance. I mean Judge Taylor denied my continuance but I know the judge takes his cues from Sheldon. Well I was just outside Judge Taylor's office this morning and, with the door open, we heard Sheldon's whole morning summary to his honor. So now Mr. Beach is calling other courts to check up on my court appearances, apparently with Judge Taylor's blessing. I guess Mr. Beach is the bar association's new honesty police. And now Judge Taylor thinks one party is a dangerous crazy person, another couple just has drunken fights every weekend, and he's probably going to hand a sweet plea deal to a defense attorney because of a lost witness. Can I get a sweetheart deal for my client too? If Mr. Beach says it's okay, of course.

Kandi Kardashian

I'm Kandi Kardashian and I don't get it. I called the court myself yesterday to tell the judge that my ex-husband just signed a new sports contract for a lot more money, but they said I wasn't allowed to talk to the judge -- but now my attorney tells me that a court clerk can dish family gossip to a judge and that's okay? And if Judge Taylor thinks some guy who lives on a compound in Montana is a dangerous lunatic or has a silly case, I wonder what the court clerks might have said about me. After all, I live in a compound in L.A. Maybe Judge Taylor thinks I'm just ridiculous too. I might as well hire some other attorney if Judge Taylor thinks Snerdly is a big liar about his court dates.

Confidentiality

In small groups discuss and report back on the following questions.

1. How authentic is this scenario? Has anyone had a similar experience?
2. Judge Taylor seems undisturbed by Sheldon's morning briefing. Should court professionals be concerned when the judges are not?
3. Assess Sheldon's view of his role with the judge. Is he violating the ethics canons by disclosing confidential information to the judge or is he preparing the judge to be a more efficient case manager?
4. Is this simply a logistics issue? (Sheldon should just make sure attorneys and clients like Snerdly and Kardashian are kept out of conversational earshot of the judge.)

Activity Seven: Confidentiality – Human Resources

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

The scenario represents a relatively new court administrator who has had an uneasy relationship with a dismissive long term employee. After a number of difficult years, the employee leaves for another court. The administrator is faced with the question of what he should or should not tell the executive of the court where the employee is applying for a job. Put the class into small groups and have them work through the scenario and answer the questions. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Confidentiality – Human Resources

In your small groups, read the scenario, discuss it and answer the following questions. Be prepared to discuss the scenario in the large group.

Scenario

Court administrator Grace has been with the court for three years, but she has never really gotten along with Bob: the criminal lead clerk. Bob is a twenty-year veteran of the court and sees Grace as a “newbie” wimp of a manager; he believes Grace needs to forcefully advocate for a cleaner office and ultimately to have criminal administration moved to the new Family Justice Complex about half a mile away from the criminal courts. He is privately hoping that most defendants won’t be able to find their way to criminal administration if it is that far from the criminal courtrooms. Bob sees this as a big plus since he gets annoyed at constantly responding to defendants asking dumb questions.

Grace, on the other hand, views Bob as a whiner. He undoubtedly knows criminal operations better than anyone else in the office, but he has little tolerance for staff who are not completely versed in the statutes, rules, and operations. He is brusque with defendants; continually complains about the aging criminal court offices; and constantly criticizes court management. Grace verbally counseled Bob once when he went over her head to the presiding judge on an issue Bob thought was critical, and Grace thought was trivial. At the end of the counseling session Bob and Grace “agreed to disagree.”

Grace has separately asked the family, juvenile, and civil managers if they would consider swapping lead clerks thinking that Bob was just ill suited for criminal, but each manager emphatically said “no.” Grace concluded that Bob has alienated himself from every department over the years.

Eventually Bob quits his job out of frustration. Grace hears at a national court administrators’ conference that Bob is interviewing for the assistant court administrator’s position at Merle’s court in the neighboring state. After the conference both Grace and Merle find themselves in the airport waiting for the same plane back home. They chat cordially, but Grace does not share that she knows Grace is interviewing for Merle’s second-in-command, or that Bob used to work at her court. Merle likewise does not bring up the subject. For reasons unknown, Merle’s human resources department never calls Grace’s court for a reference.

A Year Later:

Merle sees Grace again at the national conference and is furious. “You could have said something” Merle spits out. “You could have said something when we were both at the airport last year.” Grace, having all but forgotten about Bob, is completely taken aback. Merle explains that she had to spend the entire year managing, counseling, documenting, disciplining, fighting, and ultimately terminating Bob. “Why didn’t your HR folks call me?” asks Grace, but Merle just turns and walks away.

Questions

Has anyone ever been in a situation similar to the one described in the scenario?

What ethical responsibility do we have to other courts? What if the caller doing the reference check “doesn’t ask the right questions?”

What ethical responsibility do we have to our employees? What if we have nothing that ever rose to the point of being put into the employee’s personnel file?

What should courts be telling managers and supervisors about reference calls?

Activity Eight: Gifts

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

The video describes a court administrator fighting an uphill battle against the long held practice of law firms showering gifts on the clerk's office during the holidays. Play the video Gifts, Gifts, Gifts (6:06) for the class [<https://youtu.be/SJwRuzzecll>]. Put the class into small groups and have them work through and answer the questions. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Gifts

In your small groups, review and answer the following questions. Be prepared to discuss your answers with the whole class.

1. Has anyone experienced a situation where an organization such as an attorney firm gave gifts to court staff?
2. What different kinds of gifts can be offered to court personnel and judicial officers?
3. Do you think Owen Edwards was doing the right thing trying to stop attorney firms from giving gifts? What would you have done differently?
4. Does Rachel Dexter have a right to attempt to give gifts to the clerk's office? What would stop her?
5. Do you see a difference between a favor offered with the expectation of reciprocity and a gift given out of thanks (presumably not expecting reciprocity)?
6. What should courts be doing to change situations like these?

Activity Nine: Loyalty and Personal Relationships

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

The scenario illustrates an experienced supervisor whose family is facing a crisis with legal implications. It poses the question of whether it is realistic, despite the prohibition against recommending specific attorneys, that court employee can place their obligation to the court ahead of their obligation to family. The second part of the exercise asks if the court can credibly place requirements on employees once they have left the court's employ. Choose class members to play the roles of Betty (or Bob) Allen, Mary Larson, and Delores (Darrell) Bates and have them act out the roles. Put the class into small groups and have them work through and answer the questions. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Role Play

Betty Allen

I'm Betty Allen and I supervise the civil and family section of a pretty large court. Although I work enough with parties and attorneys to know who is a good attorney and who isn't, I regularly instruct my staff to be fair and impartial. Staff do *not* recommend specific attorneys to the public, even when asked.

My kid sister, Mary and her husband Larry were going through a rough patch for a while. About a year ago Mary finally confessed to me that she and Larry had separated. Six months ago she told me that she had an appointment with Wendell Wimpwright. Privately, I know Wimpwright; he has a reputation of caving in so his clients end up losing their shirts. Plus he charges outrageous fees. I texted Mary to have her go see Ann Hutton. Ann is a solid and aggressive divorce attorney who charges a fair fee. Mary took my advice and did pretty well in the divorce. Larry didn't do so well. I understand he eats out of cans most nights in his new apartment across from the county jail. But, hey! I have to look after my kid sister.

Mary Larson

My name is Mary Larson and I'm Betty's kid sister. Betty and I are close and she *always* looks out for me. Betty texted me to go see Ann Hutton and I'm glad she did! I know Betty told me not to tell anyone else, but I don't see a problem posting her advice on my Facebook page. My friend Sophie, is also getting divorced so she went to Ann. Apparently Sophie tweeted it out and Ann's business has really taken off.

Delores Bates

My name is am Delores Bates and I just got divorced. I asked the folks at the court who I should get as an attorney, but this dork of a supervisor named Betty kept giving me the standard bureaucratic BS: "we can't advise you on who to hire." I told her I called this attorney named Wendell Wimpwright, and she just gave me this blank look. Well, Earl, my creepy husband got the house and now I live with the kids in this lousy apartment next to the county jail.

You know it is the job of public servants to *serve the public* and that's me! It's ridiculous for these government workers to refuse to let good folks like me know who the best attorneys are! *I pay their salaries!*

Also my friend Franny told me that her friend Sophie tweeted that Ann Hutton was a much better lawyer. I wonder who told Sophie about this Hutton guy? I think I'll tweet Sophie to find out.

(Calms down) Anyway, I have just met a nice guy who lives in the same apartment building named Larry.

Loyalty and Personal Relationships

In your small groups, discuss and answer the following questions. Be prepared to share your answers with the class.

Part 1

1. Has anyone experienced a situation where a close friend or family member asked you for advice that drew upon “inside information” you possessed?
2. Many people have said honestly “family before the job.” Do you think Betty was justified recommending an attorney to her sister?
3. The prohibition against recommending specific attorneys to customers isn’t in every code. Is this a universal canon by implication or does it depend on the situation?
4. Court professionals have a great deal of experience and information. Computer applications are now giving medical advice over the internet.¹⁰ People now trust a medical expert to diagnosis you through an iPhone. How dangerous can it be for court staff to give legal advice? Why?

Part 2

5. Does your court’s ethics code have a canon addressing departed employees?
6. Does a court’s ethics code have any legitimacy imposing expectations on employees who have left the court’s employ?

¹⁰ There is a computer application “Ask A Doctor” where you log in and a doctor answers your questions. It is available at <http://www.healthcaremagic.com> You log in and a doctor answers your questions online.

Activity Ten: Privilege

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

Put the class into small groups and have them provide examples of how a court professional could use his or her court title or position to obtain special deals or favors. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Activity Eleven: Conflicts of Interest and Dignity of the Court

Purpose

This two-part activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

First Activity: Choose class members to play the roles of Sarah Reynolds and Cecilia Sweeny. Have each actor recite her portion of the scenario to the class then allow the class to quiz the characters as to their motivation and thought processes. Put the class into small groups and have them discuss the role play. Debrief the class by asking the small groups to share their responses to the questions.

Second Activity: The second part of the exercise asks the question of how should a court address new phenomenon of blogging and social media. Put the class into small groups and have them discuss the scenario. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Role Play – Conflicts of Interest

Sarah Reynolds

I'm Sarah Reynolds and I clerk in a large metropolitan municipal court. The pay here is lousy and I support my daughter, Megan, who is in middle school. To make ends meet, I took a job in the evenings as a waitress at a suburban sports bar and grille about 20 miles away from the courthouse. I serve cocktails but only along with food when it is ordered. Okay, I have to wear the trademark outfit: orange hot pants and a tight fitting tank top, but I don't have to do anything lewd.

I told Ms. Sweeny, the court administrator, and she immediately told me to either quit the restaurant or quit the court. I told her I wouldn't have to work there if the court paid me a decent wage. Besides there is no conflict of interest; my food service has absolutely nothing to do with court work, and I'm not going to run into anyone from the courthouse.

Cecilia Sweeny

I'm court administrator Cecilia Sweeny. I told Ms. Reynolds that she knew the pay when she applied to work at the court. Besides I have no control over pay or position classifications. I can't change Sarah's salary. The fact that the grille is 20 miles away from the courthouse is irrelevant; the place is risqué and projects an unsavory image. Working there is unethical. Sarah must quit the bar or quit the court, period.

Conflicts of Interest

In your small group, discuss and report back on the following questions.

1. Has anyone had staff that took a questionable outside job? Did they use the argument that they couldn't support themselves on the pay they received from the court alone?
2. What obligation, if any, does the court have to pay a "living wage"? What is the definition of a "living wage"?
3. What are acceptable outside jobs? What are some that are unacceptable?
4. What limitations, if any, does your court place on employees' working outside jobs?

Dignity of the Court

In small groups, read the scenario, discuss and answers the questions below. Be prepared to share your answers with the class.

The Scenario

Years ago an employee could “blow off steam” at a local lounge or social club that might include complaining about one’s boss. If a court employee did that they were relatively confident that their comments would not travel beyond that establishment, but it was not assured. Now people post these comments on social media. Should employees be held accountable for their social network postings? Have the small groups discuss and report back on the following questions.

Questions

1. Are you aware of anyone in your court posting comments about the court or their job on social networking sites?
2. What limitations, if any, does your court place on social network posts and blogs”?
3. What obligation do employees have regarding their social networking posts? Don’t employees have a First Amendment right to say whatever they want as long as it isn’t libelous?
4. What obligation does the court have to monitor social networking sites?
5. Do courts need to provide guidance by listing examples of acceptable and unacceptable types of comments?

Activity Twelve: Involvement in Matters before the Court

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

This activity involves using the video Supervisors Dilemma (4:33) [<https://youtu.be/3QVddZkz-bQ>] to explore issues when a court employee has to deal with the misconduct of one of his employees. The supervisor employees bail out a court employee and long-time friend from jail. The supervisor struggles over when to tell the administrator and whose job it is to tell. Play the video for the class. Then, put the class into small groups and have them discuss the scenario. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Involvement in Matters before the Court

Watch the video. Then, in small groups answer the following questions. Be prepared to discuss your answers with the class.

1. Has anyone experienced a situation where an employee was involved in a court matter? Does your court have a policy on this?
2. Supervisor Dan thought Dale was going to tell the court administrator. What was Dan's ethical obligation?
3. Do court employees have to report every time they, or their family, have a court matter? Are there types of matters that don't need to be reported? Matters in other courts? Matters in other states?
4. This situation can often be extremely personal and traumatic for an employee. Is there a good way for a supervisor to handle this type of situation?
5. Does the fact that the judge learned of the situation while engaging in inappropriate ex parte socializing come into play in this situation?

Activity Thirteen: Public Resources

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

This activity involves a scenario that portrays a probation manager who teaches a local community college class and spends a considerable amount of time helping his students possibly at the expense of his probationers. This type of situation can be extremely difficult for some court staff. Have the small groups discuss and report back 1) ways court management can address this issue in advance with line staff and 2) determine if there are any types of matters that need not be disclosed.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Public Resources

In small groups, read the scenario, discuss and answers the questions below. Be prepared to share your answers with the class.

The Scenario

Mark manages the pretrial unit of the local court's adult probation department and is constantly on both his computer and phone keeping in touch with probation officers and pretrial release officers. He routinely brings work home sometimes spending over an hour after dinner emailing staff while he and his wife, Mary, watch television.

Mark also teaches an online introduction to criminal justice class at a local community college. He only communicates electronically with his students sending out reading assignments and electronic lectures. Students email questions and comments to the entire class as well as to Mark, in a sort of electronic round table discussion room. At the end of the class students write a 15-page paper, which they submit electronically.

Lately the Probation Chief notices how distracted Mark has become and suspects it is due to his online class. The Chief has the technology bureau run a log of Mark's emails; the bureau finds nothing suspicious and in fact notes the large number of emails sent after five o'clock. The Chief then asks the bureau to track Mark's personal account usage. The bureau finds that Mark spends up to five hours per business day logged onto Gmail and Facebook, however it cannot log emails sent to employees' personal accounts so it cannot tell the Chief exactly what Mark is doing online during for those five hours.

The Chief confronts Mark, who does not specifically admit or deny that he emails and texts his students at work. The Chief, in a moment of candor, tells Mark that if he had just asked permission this wouldn't have been such a problem. Mark replies that the Chief would have just refused Mark's request, and mutters under his breath something about it being better to seek forgiveness than ask permission.

Mark contends that his communications are valid, business related, and relevant to local criminal justice system policies and procedures. In fact, Mark's students are most likely the faces of the county's next generation of probation officers. This class should be considered part of the county's long term recruitment effort bringing the best and the brightest into adult probation. The Chief remains unconvinced. Despite lacking solid evidence, the Chief decides that Mark is spending way too much time on his class. The class is neither sponsored nor specifically sanctioned by the court. Time spent communicating to his students is not work time.

1. How many professional knowledge workers do you have on staff? Do they have a different set of job expectations from clerical staff?
2. What new ethical challenges are courts facing with these types of workers?
3. Supplies and equipment are obvious examples of public resources. List other examples.

Activity Fourteen: Financial Disclosure

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

Some states require court staff to complete financial disclosure statements, others do not. Have attendees write out what are the benefits and drawbacks of implementing financial disclosure requirements. Select attendees to share their comments with the class.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Activity Fifteen: Political Activity

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

In this activity, you will be asking participants to list ways politics can affect the operations of a state trial court, Federal court, or state administrative office. Have attendees discuss their ideas for court administrators to cope with the specter of politics slipping into court operations.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Activity Sixteen: Social Media

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

This activity involves using the video “I Found It on Facebook” (5:01) [<https://youtu.be/ehTkRZ9QoNE>] that describes a court administrator’s first foray into social media to check on candidates for a high level court position. It depicts the pitfalls of relying too much on such information. Play the video for the class. Then, put the class into small groups and have them discuss the scenario. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court’s ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Social Media

Watch the video. Then, in small groups answer the following questions. Be prepared to discuss your answers with the class.

1. Does your court have a social network policy? Should courts have such a policy? Why or why not?
2. Should courts use social media sites to aid in evaluating candidates? Can a court afford not to check the Internet in case something significant is missed?
3. How should a court evaluate social media postings on a candidate?
4. What ethical obligation does a candidate have concerning the integrity of social media postings?

Activity Seventeen: Honesty and Truthfulness

Purpose

This activity is part of a group of activities (14 in total) that will help the class explore the primary issues and topics that arise in ethics. Each of these activities is identified with the issue or topic that it explores in its title.

Notes about Using this Activity

This scenario pits a court administrator against the head of a private interest group whose motives are suspect. The court administrator struggles with how much she needs to share with the private interest group about accessibility of public information, how forthcoming and transparent the court needs to be, and how concerned the court should be about the ultimate use of information it shares.

Choose class members to play the roles of Carla Caldwell (or Karl) and Earlene Edlund. Have each actor recite her portion of the scenario to the class then allow the class to quiz the characters as to their motivation and thought processes. Put the class into small groups and have them discuss the role play. Debrief the class by asking the small groups to share their responses to the questions.

Relevant Learning Objective

3. Analyze differences between their own court's ethics code and others; and
4. Apply ethics codes to a variety of topical ethical situations and issues.

Role Play

Carla Caldwell

I'm court administrator Carla Caldwell. My court uses a Case and Document Management Information System called CADMIS. One feature I particularly like about CADMIS is that requests for new statistical reports must be formally requested, analyzed, flowcharted, designed, developed, tested, debugged; and then moved to production. This all has to be done by computer programmers and business analysts working for my court's technology unit. Why do I see this laborious development process as a feature? It saves the court from having to respond to ridiculous *ad hoc* information requests from outsiders. For example, CADMIS captures detailed criminal sentencing information by case and by judge, but since no one within my court has ever asked for such a report, we've never developed a program to do it.

Earlene Edlund

I'm Earlene Edlund and I'm president of a court watchdog group called "Justice Accountability." Okay, to be honest it's mostly my Mom and her Tuesday afternoon bridge group, but I have a growing online following. I've repeatedly demanded Ms. Caldwell, under the Freedom of Information Act, for statistical sentencing information by judge along with the electronic image of each sentencing order. Ms. Caldwell always tells me it would cost tens of thousands of dollars for such a program. Blah blah blah! She tells me I can go online and look up the sentences individually. That is way too slow and it still won't show me the actual sentencing orders.

Okay – a couple of things here, 1) the sentencing information is online. Online! How much can it possibly cost to program her precious CADMIS computer to spit out an Excel spreadsheet of all sentences along with the sentencing judge's name? It costs pretty much nothing, that's how much it costs!

Carla Caldwell

Can we can talk privately? To be honest I'm a *teensy weensy* bit nervous about Earlene. For years my standard response to Ms. "Mean Jean" Earlene (oh excuse me – Ms. Edlund) has been the truth. However CADMIS is being replaced as we speak. Our tech unit almost finished with CADMIS 2.0, which includes a data warehouse. The warehouse will permit nonprogrammers to quickly and easily match multiple data elements and create *ad hoc* reports. No more prioritizing, programming, testing, or moving to production.

However, I don't trust Earlene. I think she'll use the sentencing data to blast the judges on my bench who are running for election. She'll manipulate the statistical information to say that the judges are soft on crime. Right now my plan is "what happens in the tech unit, stays in the tech unit." The fact that we have a data warehouse is something to be shared on a "need to know" basis and Earlene Edlund definitely does not need to know.

Honesty and Truthfulness

In your small groups discuss the role play and report back on the following questions. Be prepared to share your answers with the class.

1. Not all codes call for court professionals to be truthful and transparent (e.g., the AJS model code does not contain such a canon). If ethics are “timeless truths” should honesty and transparency be in all ethics codes or not?
2. How have technological changes altered the way public information is disseminated? Does this change the ethics of honesty and transparency?
3. Carla is torn between being transparent and handing a cudgel to Earlene that can be used to pummel the court. What options does Carla have? Does Earlene have any ethical responsibility?
4. How should courts address these issues?

Bibliography

American Bar Association. (2007). *ABA Model Code of Judicial Conduct* available at http://www.americanbar.org/content/dam/aba/migrated/judiciaethics/ABA_MCJC_approved.auth_checkdam.pdf.

American Judicature Society. (1988). *Model Code of Conduct for Nonjudicial Court Employees* available at <https://www.ajs.org/judicial-ethics/nonjudicial-court-employees/>.

Conlon, C.K., Milford, L.M., & Shaman, J. M. (1996). *The Ethics Fieldbook: Tools for Trainers*. American Judicature Society available at <http://www.courtethics.org/Training%20Materials.htm>.

National Association for Court Management. (2012). *Model Code of Conduct for Court Professionals* available at <https://nacmnet.org/ethics/index.html>.

State Specific Ethics Codes

Arizona Supreme Court. (2010). *Code of Conduct for Judicial Employees* available at <http://www.azcourts.gov/portals/137/rules/Arizona%20Code%20of%20Conduct%20for%20Judicial%20Employees.pdf>.

Delaware Supreme Court. (2011). *Code of Conduct for Judicial Branch Employees* available at <http://courts.delaware.gov/supreme/admdir/AD115Code1.pdf>.

State of Delaware *Merit Rules* Adopted January 1, 2004 Last Updated July 31, 2009. http://hrm.omb.delarae.gov/mrules/doucuments/mrule_complete0731.

Florida Seventh Circuit Code

Maryland (2004) Administrative Office of the Courts Human Resources Policy Manual

Minnesota Supreme Court. (2006). *Minnesota Court Employee Code of Ethics* available at: www.courtethics.org/MN%20code%20of%20ethics%202006.doc.

North Dakota Supreme Court. (2008). North Dakota Code of Conduct for Judicial Employees, available at <http://www.courtethics.org/North%20Dakota%20Code%20of%20Conduct%20for%20Judicial%20Employees.pdf>.

Ohio Code

Washington State Code