

AN OVERVIEW OF THE DELAWARE CODE OF CONDUCT FOR LAW CLERKS

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Family Court Law Clerk Orientation

Administrative Directive Number 102 – effective June 1, 1995

1. The Delaware Code of Conduct for Law Clerks (the “Code”) are rules that have been adopted by the Delaware Supreme Court for all Delaware courts. They apply to “all full-time, part-time, paid and unpaid law clerks and judicial interns” in those courts.
2. If the presiding judge of a court determines that any part of the Code is impractical in application to any part-time, unpaid law clerk or judicial intern, the presiding judge may enter a specific order with the advance approval of exemptions from the Code as the presiding judge deems appropriate. Therefore, you should determine whether there are any specific orders of this nature that ~~have been entered in the Family Court.~~
3. You should familiarize yourself with the Code and ~~with the Delaware Lawyers’ Rules of Professional Conduct (“DLRPC”)~~ promptly upon the assumption of your duties.

Delaware Lawyers’ Rules of Professional Conduct

1. The DLRPC are applicable to all members of the Delaware Bar, whether they be practicing lawyers, law clerks, or otherwise.
2. Law clerks should be familiar with all of the Rules, particularly those that impact directly on conduct relating to service as a law clerk, both during the clerkship and post-clerkship.
3. During Clerkship

DLRPC 1.11(c):

Except as law may otherwise expressly permit, a lawyer serving as a public officer or employee shall not: (1)

participate in a matter in which the lawyer participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the lawyers' stead in the matter; or (2) negotiate for private employment with any person who is involved as party or as attorney for a party in a matter in which the lawyer is participating personally and substantially, except that a lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for private employment as permitted by Rule 1.12(b) and subject to the conditions stated in Rule 1.12(b).

DLRPC 1.12(b):

A lawyer shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer, or arbitrator. A lawyer serving as a law clerk to a judge, other adjudicative officer or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the lawyer has notified the judge, other adjudicative officer or arbitrator.

See also Code, Canon 5(E) (Future Employment), discussed hereafter.

4. Post-clerkship

DLRPC 1.11(a):

Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation.

No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless: (1) the disqualified lawyer is screened from any participation in the matter and is apportioned no part of

the fee therefrom; and (2) written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this rule.

SUMMARY OF THE CODE

The following is merely an overview and outline of the contents of the Code. You should always consult the Code itself (2001 Del. Rules Ann., vol. 2) for the full text, citations, and explanations relating to its requirements. Also, please note that the sub-numbers and sub-letters used in this Summary are mine, and do not correspond to those contained in the Code.

- **Canon 1 – A law clerk should uphold the integrity and independence of the judiciary and the office.**

(1) An independent and honorable judiciary is indispensable to justice in our society.

(2) You should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved.

~~3) The Code should be construed to and applied to further that objective.~~

(4) The Code does not affect or preclude other more stringent standards required by law, by court order, or by direction of the appointing judge.

- **Canon 2 – A law clerk should avoid impropriety and the appearance of impropriety in all activities.**

(1) You should not engage in any activities that would put into question the propriety of your conduct in carrying out the duties of the office.

(2) Your family, social, or other relationships should not influence your official conduct or judgment.

(3) You should not use the prestige of the office to advance the private interests of others, nor should you permit others to convey the impression that they are in a special position to influence you.

(4) Unauthorized contact with attorneys or parties about cases before the court should be avoided. If it occurs, you should immediately inform the appointing judge.

(5) You should never communicate to attorneys or parties in a pending case your opinion or attitude toward the issues pending before the judge.

(6) You should not give advice to attorneys or parties on matters of substantive or procedural law.

(7) You should be particularly careful to treat all attorneys and parties equally.

NOTE: The observance of high standards of conduct and the avoidance of impropriety and the appearance of impropriety that are called for by Canons 1 and 2 apply to all activities in which you are engaged during your clerkship, including activities that have no direct connection to your performance of the duties of the office. Always be aware that your conduct, whether it takes place inside or outside the offices of the court, can have a significant impact—either positively or negatively—on the public's perception of and confidence in the judicial process.

- **Canon 3 – A law clerk should perform the duties of the office impartially and diligently.**

(1) Your official duties as a law clerk take precedence over all other activities.

(2) In the performance of these duties, the following standards apply:

(A) Respect and comply with the law. Your conduct should at all times promote public confidence in the integrity and impartiality of the judiciary and of the office.

(B) Be competent in the profession; dignified, courteous, and fair to all persons with whom you deal in your official capacity, including members of the legal profession and members of the general public; and diligent in discharging the responsibilities of your office.

(C) You owe a stringent duty of confidentiality to the judge. You should never disclose to any person any confidential information received the course of your duties as a law clerk, nor should you ever use such information for personal gain. You should avoid comment on the process of decision making including the extent of your involvement. Note that this duty of confidentiality extends beyond the term of your clerkship.

You have a unique relationship with the judge. However, your role is always as the assistant to the judge, who has the ultimate authority and responsibility in deciding a case. If requested, honestly and respectfully express your views, but always accept the judge's decision.

You should abstain from making any public comment about a pending or impending proceeding in the court in which you serve, unless authorized by the appointing judge.

(D) You should promptly inform the appointing judge of any circumstance that might serve as a basis for your disqualification or the judge's disqualification, including, but not limited to, any relationship or association you have with any person or entity interested in the case in any way. Always construe this requirement broadly, and, being informed, the judge can make the decision as to whether it is truly a disqualifying circumstance.

(E) You should discuss any questions of interpretation or applicability of the Code with the appointing judge.

- **Canon 4 – A law clerk may engage in activities to improve the law, the legal system, and the administration of justice.**

Subject to the proper performance of official duties, you may:

(1) Speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice;

(2) Serve as a member, officer, or director of a governmental agency devoted to the improvement of the law, the legal system, or the administration of justice, and assist in raising funds and participate in their management and investment, but you should not personally participate in public fund-raising activities;

(3) Make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal profession, and the administration of justice;

(4) Promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession; and

(5) Be available to the public at large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of the court system.

- **Canon 5 – A law clerk should regulate extra-official activities to minimize the risk of conflict with official duties.**

(1) Avocational activities: You may write, lecture, teach and speak on nonlegal subjects and engage in the arts, sports, and other social and recreational activities, if such activities do not detract from the dignity of the office or interfere with the performance of official duties.

(2) Civic and charitable activities: You may engage in these activities as long as they do not detract from the dignity of the office or interfere with the performance of official duties. You may serve as an officer, director, trustee or nonlegal advisor of an education, religious, charitable, fraternal, or civic organization and solicit funds for any such organization subject to the following limitations:

(A) You should not use or permit the use of the prestige of the office in the solicitation of funds;

(B) You should not solicit court personnel to contribute to or participate in any civic or charitable activity, but may call their attention to a general fund-raising campaign such as the United Way; and

~~(C) You should not solicit funds from lawyers or persons likely to come before the court in which you serve.~~

(3) Financial activities:

(A) You should refrain from financial and business dealings that tend to detract from the dignity of the office, interfere with the proper performance of official duties, exploit your position, or involve you in frequent transactions with individuals likely to come in contact with the law clerk or the court in which you serve.

(B) Neither you nor a member of your household should solicit or accept a gift, bequest, favor or loan from anyone, except for those allowed for under the Code. The exceptions fall into nine (9) categories, as follows:

(a) gifts of incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to you and a family member to attend a bar-related function or an activity devoted to the improvement of the law, the legal system, or the administration of justice;

(b) a gift, award or benefit incident to the business, profession or other separate activity of your spouse or other family member residing in your household, including those both for your use or the spouse or family member's use, provided that it could not reasonably be perceived as intended to influence you in the performance of your official duties;

(c) ordinary social hospitality;

(d) a gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate with the occasion and the relationship;

(e) a gift, bequest, favor or loan from a relative or close personal friend whose appearance or interest in a case would in any event require that you take no official action with respect to the case;

(f) a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not law clerks;

(g) a scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants;

(h) any other gift, bequest, favor or loan, only if: (i) the donor has not sought and is not seeking to do business with the court or other entity served by you; or (ii) the donor is not a party or other person who has had or is likely to have an interest in the performance of your official duties.

(4) Practice of law:

You are not permitted to practice law in any federal, state, or local court, or undertake to perform legal services, whether or not for remuneration. This does not, however, preclude you from performing routine legal work necessary to management of your personal affairs or a member of your family, so long as:

(A) such work is done without compensation or for nominal compensation;

(B) it does not require any act, including the entry of an appearance in a Delaware court, that would suggest that the position of law clerk is being misused, that preferential treatment is being sought by virtue of the holding of that position, or that would otherwise be inconsistent with your primary responsibility to the court; and

(C) such activity does not have actual conflict or appear in conflict with court duties or will not reflect adversely on the court or create the appearance of impropriety.

(5) Future employment:

During your clerkship, you may seek and obtain employment to commence after the completion of the clerkship. You are not disqualified per se from working on a case in which a prospective employer is involved. If any lawyer, law firm or entity with whom you are seeking or have obtained future employment appears in any matter pending before the appointing judge, you should promptly bring this fact to the attention of the appointing judge, and the extent of your performance of duties in connection with such matter will be determined by the appointing judge.

Furthermore, you may not accept the payment of any bonuses or moving expenses until the end of the clerkship. However, during the tenure of the clerkship, you may have the expenses of traveling to and from an interview reimbursed. You may also be reimbursed by a future employer for the expenses of taking a bar examination and a bar review course. However, you are required promptly to inform the appointing judge of all such payments. You should also ascertain and observe any limitations imposed by the appointing judge or the court which the appointing judge serves concerning the practice of law by a former law clerk before the judge or the court. See DLRPC 1.11(c)(2) and 1.12(b).

- **Canon 6 – A law clerk should regularly file any required reports of compensation received for all extra-official activities.**

You may receive compensation and reimbursement of expenses for all extra-official activities permitted by the Code, if the source of such payments does not influence or give the appearance of influencing you in the performance of official duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(A) Compensation should not exceed a reasonable amount, nor should it exceed that normally received by others for the same activity.

(B) Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by you and, where appropriate to the occasion, by your spouse. Any payment in excess of such an amount is compensation.

(C) You should make and file such reports as may be prescribed by law.

Notwithstanding the above, you are not permitted to receive any salary, or any supplementation of salary, as compensation for official services from any source other than the State of Delaware.

- **Canon 7 – A law clerk should refrain from political activity.**

You should refrain from political activity. You should not act as a leader or hold official in a political organization; make speeches for or publicly endorse a political organization or candidate; solicit funds for or contribute to a political organization, candidate or event; become a candidate for political or public office; or otherwise engage in political activities.