

APPENDIX M

THE DELAWARE CODE OF CONDUCT FOR LAW CLERKS

1995

CANON 1

A LAW CLERK SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND THE OFFICE

An independent and honorable judiciary is indispensable to justice in our society. A law clerk should observe high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective. The standards of this Code shall 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

- A. A law clerk should not engage in any activities that would put into question the propriety of the law clerk's conduct in carrying out the duties of the office. A law clerk should not allow family, social, or other relationships to influence official conduct or judgment. A law clerk should not lend the prestige of the office to advance the private interests of others; nor should the law clerk permit others to convey the impression that they are in a special position to influence the law clerk.
- B. A law clerk should avoid unauthorized contact with attorneys or parties about cases before the court, and should immediately inform the appointing judge of any such contact. A law clerk should never communicate to attorneys or parties in a pending case the law clerk's opinion or attitude toward the issues pending before the judge. A law clerk should not give advice to attorneys or parties on matters of substantive or procedural law. A law clerk should be particularly careful to treat all attorneys and parties equally.

CANON 3

A LAW CLERK SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

The official duties of a law clerk take precedence over all other activities. Official duties include all the duties of the office prescribed by law, by the court in which the law clerk serves, and by the appointing judge. In the performance of these duties, the following standards apply:

- A. A law clerk should respect and comply with the law. A law clerk's conduct should at all times promote public confidence in the integrity and impartiality of the judiciary and of the office.
- B. A law clerk should maintain professional competence in the profession. A law clerk should be dignified, courteous, and fair to all persons with whom the law clerk deals in the law clerk's official capacity. A law clerk should diligently discharge the responsibilities of the office. A law clerk should bear in mind the obligation to treat fairly and courteously the general public as well as the legal profession.
- C. (1) The relationship between the judge and law clerk is essentially a confidential one. A law clerk should never disclose to any person any confidential information received in the course of the law clerk's duties, nor should the law clerk use such information for personal gain. A law clerk should avoid comment on the process of decision making including the extent of the law clerk's involvement. This duty extends beyond the term of clerkship.

 (2) A law clerk enjoys a unique relationship with a judge. While a law clerk must be aware of the proper respect due a judge, a law clerk should not fear expressing a contrary opinion when personal opinions are asked. A law clerk is always an assistant to the judge, who has the ultimate authority and responsibility in deciding a case. Without sacrificing intellectual honesty, a law clerk must accept the decision of the judge.

 (3) A law clerk should abstain from public comment about a pending or impending proceeding in the court in which the law clerk serves, except to the extent authorized by the appointing judge.
- D. A law clerk should promptly inform the appointing judge of any circumstance that might serve as a basis for disqualification of the law clerk or judge, including, but not limited to, any relationship or association of the law clerk with any person or entity interested in a case in any way.
- E. A law clerk should discuss any questions or interpretation or applicability of this 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

A law clerk, subject to the proper performance of official duties, may engage in the following law-related activities:

- A. A law clerk may speak, write, lecture, teach, and participate in other activities concerning the law, the legal system, and the administration of justice.
- B. A law clerk may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A law clerk may assist such an organization in raising funds and may participate in their management and investment but should not

personally participate in public fund-raising activities. A law clerk may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal profession, and the administration of justice.

- C. A law clerk may promote the development of professional organizations and foster the interchange of technical information and experience with others in the profession. A law clerk may 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

- A. *Avocational Activities.* A law clerk may write, lecture, teach and speak on nonlegal subjects and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office or interfere with the performance of official duties.
- B. *Civic and Charitable Activities.* A law clerk may participate in civic and charitable activities that do not detract from the dignity of the office or interfere with the performance of official duties. A law clerk may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal, or civic organization and solicit funds for any such organization subject to the following limitations:
 - (1) A law clerk should not use or permit the use of the prestige of the office in the solicitation of funds.
 - (2) A law clerk 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.
 - (3) A law clerk should not solicit funds from lawyers or persons likely to come before the court in which the law clerk serves.
- C. *Financial Activities.*
 - (1) A law clerk 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 the law clerk's position, or involve the law clerk in frequent transactions with individuals likely to come in contact with the law clerk or the court in which the law clerk serves.
 - (2) Neither a law clerk nor a member of the law clerk's household should solicit or accept a gift, bequest, favor or loan from anyone except for:

- (a) a gift 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 the law clerk 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 a spouse or other family member of a law clerk residing in the law clerk's household, including gifts, awards, and benefits for the use of both the spouse or other family member and the law clerk (as spouse or family member), provided the gift, award or benefit could not reasonably be perceived as intended to influence the law clerk in the performance of 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 the law clerk 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; or
- (h) any other gift, bequest, favor or loan, only if:
 - (i) the donor has not sought or is not seeking to do business with the court or other entity served by the law clerk; 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 the law clerk's official duties.

D. *Practice of Law.* A law clerk shall not practice law in any federal, state, or local court, or undertake to perform legal services, whether or not for remuneration. This prohibition, however, shall not be construed to preclude the performance of routine legal work necessary to management of the personal affairs of the law clerk or a member of the law clerk's family, so long as:

- (1) Such work is done without compensation or for nominal compensation;
- (2) It does not require any act, including the entry of an appearance in a court of the State of Delaware, 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 the law clerk's primary responsibility to the court; and

(3) 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.

E. *Future Employment.* During the clerkship, a law clerk may seek and obtain employment to commence after the completion of the clerkship. A law clerk is 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 a law clerk is seeking or has obtained future employment appears in any matter pending before the appointing judge, the law clerk should promptly bring this fact to the attention of the appointing judge, and the extent of the law clerk's performance of duties in connection with such matter will be determined by the appointing judge. A law clerk may not accept the payment of any bonuses or moving expenses until the end of the clerkship. However, during the tenure of the clerkship, a law clerk may have the expenses of travelling to and from an interview reimbursed. A law clerk may also be reimbursed by a future employer for the expenses of taking a bar examination and a bar review course. A law clerk shall promptly inform the appointing judge of all such payments under this section. A law clerk should 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 *The Delaware Lawyers' Rules of Professional Conduct* 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

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

- A. *Compensation.* Compensation should not exceed a reasonable amount nor should it exceed that normally received by others for the same activity.
- B. *Expense Reimbursement.* Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by a law clerk and, where appropriate to the occasion, by the law clerk's spouse. Any payment in excess of such an amount is compensation.
- C. *Public Reports.* A law clerk should make and file such reports as may be prescribed by law.

Notwithstanding the above, a law clerk shall not 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

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