

BEFORE THE 2007 JUDICIAL COUNCIL OF GUAM  
RESOLUTION NO. JC 07-011

**RELATIVE TO AMENDING THE JUDICIARY'S CODE OF CONDUCT  
FOR NON-JUDICIAL EMPLOYEES**

**WHEREAS,** the Judiciary of Guam's Employees' Association undertakes significant fund-raising efforts on behalf of its members in order to provide the highest level of service possible to such members; and

**WHEREAS,** the Employees' Association has long avoided certain fund-raising efforts out of an abundance of caution in avoiding any possible appearance of impropriety due to the lack of specific language in the Judiciary's Code of Conduct for Non-Judicial Employees expressly legitimizing such fund-raising efforts; and

**WHEREAS,** it has come to the attention of the Employees' Association as well as this Council that the American Judicature Society's Model Code of Conduct for Nonjudicial Court Employees includes a subsection which, if added to the Judiciary of Guam's Code of Conduct for Non-Judicial Employees, would expressly allow the Employees' Association to conduct broader fund-raising activities while preserving fundamentally important aspects of the Judiciary; and

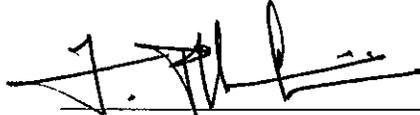
**WHEREAS,** this Council has determined that it will be in the best interest of justice and will assist in improving the morale of the employees of the Judiciary to include in the Judiciary of Guam's Code of Conduct for Non-Judicial Employees language similar to that found in the AJS's Model Code relative to this issue;

**NOW THEREFORE BE IT RESOLVED** that the Judiciary's Code of Conduct for Non-Judicial Employees, a copy of which is attached hereto as Exhibit A inclusive of the present amendment for informational purposes, is amended to add a new Section 3(b)(6)(D) thereto as follows:

- (D) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly reports the gift to the supervisor, who shall be responsible for its proper distribution. However, gifts as contemplated by this subsection (D) shall not exceed \$200 in value in any calendar year if received from an attorney, a law office of attorneys in the aggregate. Further, for the purposes of this limitation, gifts from any staff of such attorneys or law offices shall be included in any calculation regarding such

\$200 annual limit. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are expressly prohibited.

**DULY ADOPTED** this 19<sup>th</sup> day of April, 2007 at a duly noticed meeting of the Judicial Council of Guam.



**F. PHILIP CARBULLIDO**, Chairman

Date: 8/15/07

ATTEST:



**JOLEEN F. RESPICIO**, Acting Secretary

Date: 8/15/07

# **CODE OF CONDUCT FOR NON-JUDICIAL COURT EMPLOYEES**

[As amended on April 19, 2007 by Judicial Council Resolution JC 07- 011]

## **INTRODUCTION**

The holding of public employment in the court system is a public trust justified by the confidence that the citizenry reposes in the integrity of officers and employees of the judicial branch. A court employee faithful to that trust, therefore shall observe high standards of conduct so that the integrity and independence of the courts may be preserved. Court employees shall carry out all duties assigned by law and shall put loyalty to the principles embodied in this Code above loyalty to persons or parties. A court employee shall uphold the Constitution, laws and legal regulations of the United States, the Territory of Guam and all governments therein, and never be a party to their evasion. A court employee shall abide by the standards set out in this Code and shall endeavor to expose violations of this Code whenever they may appear to exist.

## **SCOPE**

- (a) The Code applies to all court employees. The term "court employees" includes those court employees who are managers, supervisors, or who work full or part-time for the court or are temporary employees. The term "court employees" does not include judges, judges pro tempore, or court referees.
- (b) Court employees who are law students, attorneys or members of other professional groups are also bound by the appropriate professional duties of these roles. Court employees who are law students or attorneys are bound by the Model Code of Professional Conduct of the American Bar Association for purposes of their term of employment with the Superior Court of Guam.

Notwithstanding the Code of Conduct for Non-Judicial Employees, other professionals employed by the Superior Court are bound by Standard Model Code of Conduct or Ethics as established within their respective professions and/or governed by rules and regulations set forth by the Judicial Council. These employees include, but are not limited to: Psychologists, Psychiatrists, Mediators, Other employed ADR (Alternative Dispute Resolution) Employees, Counselors, Social Workers, Probation Officers, Marshals, Electronic Court Reporters, etc.

- (c) For purposes of "Section 4. Political Activity", the term "court employees" shall be defined by Rule 13 of the Personnel Rules and Regulations.

## **SECTION 1: ABUSE OF POSITION**

- (a) No employee shall use or attempt to use his or her official position to secure unwarranted privileges or exemptions for the employee or others.
- (b) No employee shall accept, solicit, or agree to accept any gift, favor or anything of

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value based upon any understanding, either explicit or implicit, that the official actions, decisions or judgement of any employee would be influenced thereby. Gifts that do not violate this prohibition against abuse of position are further regulated in Section 3(b)(6).

- (c) No employee shall discriminate by dispensing special favors to anyone, whether or not for remuneration, nor shall any employee so act that the employee is unduly affected or appears to be affected by kinship, rank, position or influence of any party or person.
- (d) No employee shall request or accept any fee or compensation, beyond that received by the employee in his or her official capacity, for advice or assistance given in the course of his or her public employment.
- (e) Each employee shall use the resources, property and funds under the employee's official control judiciously and solely in accordance with prescribed statutory and regulatory procedures.
- (f) Each employee shall immediately report to the appropriate authority any attempt to induce him or her to violate any of the standards set out above.

### **SECTION 2: CONFIDENTIALITY**

- (a) No court 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. An employee should abstain from public comment about pending or impending proceeding in the Court, other employees, their superiors, or judges.
- (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, law clerk, staff attorney or other employee including, but not limited to, notes, papers, discussions and memoranda, as prescribed under the Freedom of Information - Sunshine Act, Title 5 GCA, Chapter 10. Confidential information also includes information involving juvenile matters.
- (c) Confidential information that is available to specific individuals by reason of statute, court rule or administrative policy shall be provided only by persons authorized to do so.
- (d) Every court employee shall report confidential information to the appropriate authority when the employee reasonably believes this information is or may be evidence of a violation of law or of unethical conduct. No court employee shall be

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disciplined for disclosing such confidential information to an appropriate authority.

- (e) Court managers should educate court employees about what information is confidential and, where appropriate, should designate materials as confidential.
- (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 actions, should be summarized in writing and made available to litigants. All media requests for information should be referred to the Court Director of Communications.
- (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.
- (h) A former court employee should not disclose confidential information when disclosure by a current court employee would be a breach of confidentiality.

### SECTION 3: CONFLICT OF INTEREST

- (a) Every court employee shall avoid conflicts of interest, as defined below, in the performance of professional duties. Even though no misuse of office is involved, such a conflict of interest involving a court employee can seriously undermine the community's confidence and trust in the court system. Therefore, every court employee is required to exercise diligence in becoming aware of conflicts of interest, disclosing conflicts to the Administrative Director and ending them when they arise.
  - (1) A conflict of interest exists when the court employee's objective ability or independence of judgement in the performance of his or her job is impaired or may reasonably appear to be impaired or when the court employee, or the employee's immediate family, as defined below, or business would derive financial gain as a result of the employee's position within the court system.
  - (2) No conflict of interest exists if any benefit or detriment accrues to the employee as a member of a profession, business or group to the same extent as any other member of the profession, business or group who does not hold a position within the court system.

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- (3) For purposes of this Code, except Section 3(b) (5)(B), "immediate family" shall include the following, whether related by marriage, blood or adoption: spouse; dependent children; brother; sister; parent; grandparent; stepmother; stepfather; grandchildren; father-in-law; mother-in-law; sister-in-law; brother-in-law; son-in-law; daughter-in-law; stepdaughter; stepson; stepbrother; stepsister; half-brother; half-sister.

### (b) Prohibited Activities:

- (1) No court employee shall enter into any contract with the court system for services, supplies, equipment, leases or realty, apart from the employment contract relating to the employee's position, nor use that position to assist any member of his or her immediate family in securing a contract with the court system in a manner not available to any other interested party.
- (2) No court employee shall receive tips or other compensation for representing, assisting or consulting with parties engaged in transactions or involved in proceedings with the court system.
- (3) No court employee shall participate in or influence any business decision involving a party with whom either the court employee or any member of the employee's immediate family is negotiating for future employment.
- (4) No former court employee shall engage in transactions or represent others in transactions or proceedings with the court system for one year after termination of employment in any matter in which the former employee was directly involved or in any dealing with offices or positions that the former employee once held. The former court employee can obtain a waiver of the applicability of this provision from the Administrative Director.
- (5) No court employee shall knowingly employ, advocate or recommend for employment any member of his or her immediate family.
  - (A) The spouse of the Administrative Director, deputy director, or other department head of the Superior Court of Guam may not be employed within the department, agency or instrumentality so headed by such director, deputy director, or division head.

Source: 4 G.C.A. Sec. 4105 (b)

- (B) Whenever there are already two (2) members of an immediate family in the service of the Courts, no other member of such family shall be eligible for employment. As used in this section, "immediate family"

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means collective body of persons living together in one home under one head.

Source: 4 G.C.A. Sec. 4204.

- (6) No court employee shall solicit, accept or agree to accept any gifts, loans, gratuities, discounts, favors, hospitality or services under circumstances from which it could reasonably be inferred that a major purpose of the donor is to influence the court employee in the performance of official duties.
  - (A) Nothing in this section shall prohibit an employee from accepting a public award presented in recognition of public service.
  - (B) Nothing in this section shall prohibit an employee from receiving a commercially reasonable loan made as part of the ordinary transaction of the lender's business.
  - (C) Nothing in this section shall prohibit any person or group from donating a gift of historical or other significant value that is given for the benefit of the court system, provided that such a gift is received on behalf of the court system by the appropriate designated authority.
  - (D) Nothing in this section shall prohibit any person from donating a gift to a group of employees, e.g. all the employees of an office or unit of the court system, provided that the value and circumstances of the gift are such that it could not be reasonably inferred that the gift would influence the employees in the performance of their official duties or that such influence was the purpose of the donor, and provided that any employee accepting such a gift promptly reports the gift to the supervisor, who shall be responsible for its proper distribution. Gifts received with the understanding that they will influence employees' official actions, decisions or judgments are expressly prohibited.
- (c) 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 on a regular basis shall file a financial disclosure statement with the secretary for the Judicial Council upon beginning employment in such position, at termination of employment, and annually while so employed. Such disclosure shall include all sources of 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 independent children, and shall follow the guidelines established by the Administrative Director. Court employees who are

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obligated to submit financial disclosure statement are the Administrative Director and the Deputy Administrative Director. Other court employees who may be obligated to submit financial disclosure statements include the Clerk of Court, Special Assistant to the Presiding Judge, Controller, Human Resources Administrator, Chief Marshal, Chief Probation Officer, Client Services and Family Counseling Administrator, Management Information Systems Coordinator, Director of Communications, Special Projects Coordinator, and the Court Staff Attorney.

- (d) Each full-time court employee's position with the court system must be the employee's primary employment. Outside employment is permissible only if it complies with all the following criteria:
- (1) The outside employment is not with an entity that regularly appears in court or conducts business with the court system, and it does not require the court employee to have frequent contact with attorneys who regularly appear in the court system; and
  - (2) The outside employment is capable of being fulfilled outside of normal working hours and is not incompatible with the performance of the court employee's duties and responsibilities; and
  - (3) The outside employment does not require the practice of law; and
  - (4) The outside employment does not require or induce the court employee to disclose confidential information acquired in the course of and by reason of official duties; and
  - (5) The outside employment shall not be within the judicial, executive or legislative branch of the government without written consent of both employees; and
  - (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 Administrative Director prior to accepting the other employment; and

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- (7) Prior to accepting the outside employment, the employee complies with the procedures outlined in Rule 3.62 of the Personnel Rules and Regulations and approved internal policies relative to outside employment for the Superior Court of Guam.
- (8) Pursuant to the Judicial Council Resolution 02-93, employees of the Superior Court of Guam working within the Court Reporters Unit shall not perform any non-court ordered transcribing either during or after working hours.

### **SECTION 4: POLITICAL ACTIVITY**

A court employee may engage in political activities outside of working hours as long as the employee's affiliation or status with the court is not utilized and the employee complies with Rule 13 of the Personnel Rules and Regulations for the Superior Court of Guam.

### **SECTION 5: PERFORMANCE OF DUTIES**

- (a) Every court employee shall endeavor at all times to perform official duties, properly and with diligence. Every court employee shall apply full-time energy to the business and responsibilities of the employee's office during working hours.
- (b) Every court employee shall carry out responsibilities as a servant of the public in as courteous a manner as possible.
- (c) Every court employee shall maintain or obtain current licenses or certificates as a condition of employment as required by law or court rule.
- (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 of documents pursuant to a court order.
- (e) No court 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.

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- (f) No court employee shall give legal advice or refer the names of private attorneys.
- (g) Every court employee shall immediately report violations of this Code to the Administrative Director.

### **SECTION 6: COURT MANAGERS**

- (a) Court managers are all unclassified employees who are division heads. The Division Heads include the Administrative Director, Deputy Administrative Director, Clerk of Court, Controller, Human Resources Administrator, Chief Marshal, Chief Probation Officer, Client Services and Family Counseling Administrator. Court managers also include Special Assistant to the Presiding Judge, Management Information Systems Coordinator, Director of Communications, Court Staff Attorney and the Special Projects Coordinator.
- (b) Court managers shall require employees subject to their direction and control to observe the ethical standards set out in this Code.
- (c) Court managers shall diligently discharge their administrative responsibilities, maintain professional competency in judicial administration and facilitate the performance of other court employees.
- (d) Court managers shall take action regarding any unethical conduct of any employee by filing a complaint with the Administrative Director for investigation and appropriate disciplinary measures.
- (e) Court managers shall not act as leaders in or hold office in any political organization, make speeches for any political organization or publicly endorse a candidate for political office.

### **SECTION 7: PENALTIES**

Any violation of any provision of this Code, except Section 4 dealing with Political Activities, is subject to disciplinary action outlined in Rule 11 of the Superior Court Personnel Rules and Regulations and as modified by Section 8 below.

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## SECTION 8: COMPLIANCE

- (a) All court employees shall comply with this Code. The word “days” as used in this Code shall be defined as follows: “Days” means “work days” if it is ten (10) days or less and “calendar days” if it is greater than ten (10) days.
  
- (b) When any person has reason to believe that an employee has violated any provision in this Code, he or she shall report the matter to the Administrative Director for the Court. The Administrative Director will then interview the employee to determine if the report has any merit. If the Administrative Director determines that the report has merit, then the Administrative Director shall:
  - (1) Appoint a Review Committee within five (5) days from the date of the interview to investigate and to hear the case; and
  - (2) Notify the employee immediately in writing that the matter has been referred to a Review Committee which will determine if any violation has occurred. The employee shall have the right to counsel and may be represented by a person of his or her choice. Counsel may be present while the employee is being interviewed by the Review Committee. The employee shall also have the right to respond to the charges personally or in writing during the Review Committee hearing.
  
- (c) Members of the Review Committee; Responsibilities:
  - (1) Committee Members: The Committee shall consist of three (3) members who shall be selected from different divisions of the court excluding the division where the accused employee works.
  - (2) Chairperson: The Chairperson shall be elected by the panel who is expected to convene and initiate the inquiry appropriate to the nature and scope of the issues involved in the alleged violation. The inquiry will typically include the securing of documentary evidence and personnel interviews in an effort to fully understand the issues, and obtain the maximum information available pertinent to the issues.
  - (3) Hearing: The Chairperson of the Review Committee shall schedule the time and location of the hearing. The hearing shall be scheduled within two (2) days of the appointment of the Review Committee. Personnel called to

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attend the hearings shall do so without loss of salary. The hearing will be informal and technical rules of evidence shall not apply. Proceedings of the hearing shall be recorded in summary form and shall contain all pertinent facts brought out during the hearing.

- (4) **Hearing Limitation:** The Review Committee shall conduct its investigation and complete its hearing within five (5) days.
- (5) **Committee's Recommendation:** The Review Committee shall, within five (5) days after the hearing, render a recommendation in writing to the Administrative Director.

(d) **Administrative Director's Written Decision:**

The Administrative Director shall render a written decision to the employee within seven (7) days of the receipt of the written recommendation from the Review Committee. This decision shall indicate any adverse action the Court will take against the employee and shall be delivered to the employee at or before the time the action will be made effective. The decision shall also be dated; state the facts found upon which such action is based; and inform the employee of his or her rights to appeal to the Judicial Council within twenty (20) calendar days of the effective date of the adverse action. Copies of the decision to take adverse action shall be filed by the Court with the Judicial Council not later than the next workday following the effective date of the action.

(e) **Appeal to the Judicial Council**

- (1) If the employee is not satisfied with the Administrative Director's decision, he or she may appeal the decision to the Judicial Council within twenty (20) calendar days from the effective date of the adverse action by filing a written response with the Judicial Council answering the charges against him or her. Appeals to the Judicial Council shall be governed by the rules and regulations as adopted.
- (2) **Appeals Board.** There is hereby created an Appeals Board consisting of the non-judicial members of the Judicial Council, namely, the Attorney General of Guam, the Chairman of the Committee on Criminal Justice of the Guam Legislature and the President of the Guam Bar Association, which shall sit as an appellate body solely to hear and decide appeals from dismissals, demotions for cause, suspensions, and certain other adverse personnel

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transactions. The Chairman shall be elected from among the members and shall serve for one (1) year from the date of election.

- (3) **Quorum.** Two members present shall constitute a quorum, and the concurrence of two (2) members shall be necessary to make any action effective. The council's secretary shall maintain records and files of the Board. Any citizen or employee shall be authorized to examine the minutes of the proceeding of the Board at such times and under such conditions as may be prescribed by the Director.
- (4) **Representation by an Attorney.** A classified employee who retains an attorney to represent him or her before the Judicial Council to challenge the adverse action brought against the employee and prevails shall be awarded and paid costs, if any, and reasonable attorney's fees from the operational funds of the Superior Court.

**COMMENT:** Section 8 modifies the existing procedure outlined in Rule 11 of the Superior Court Personnel Rules and Regulations by creating a Review Committee. The purpose of this modification is to transfer the responsibility of investigating the nature and scope of the issues involved in the alleged violation from the Administrative Director to the Review Committee. All subsections of Rule 11, not affected by Section 8 of the Code of Conduct, shall remain in full force and effect.

