

Michigan Judicial Institute and Friend of the Court Bureau Webinar

February 22-25, 2021

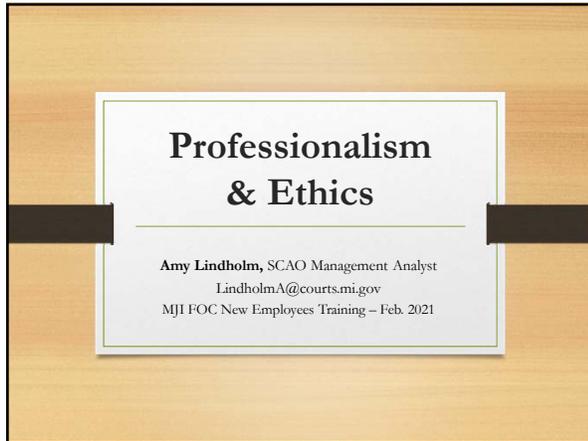
Professionalism and Ethics

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Type your notes...



Learning Objectives

- Identify key components of professionalism
- Review and understand the Model Code of Conduct
- Figuring out if something is ethical
- How ethics & the Model Code apply to your job

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Professionalism Defined

Skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well.

- Merriam Webster Dictionary

Interacting with people in a forthright, courteous, respectful, and responsible manner.

- Jim Inloes, Retired Court Administrator

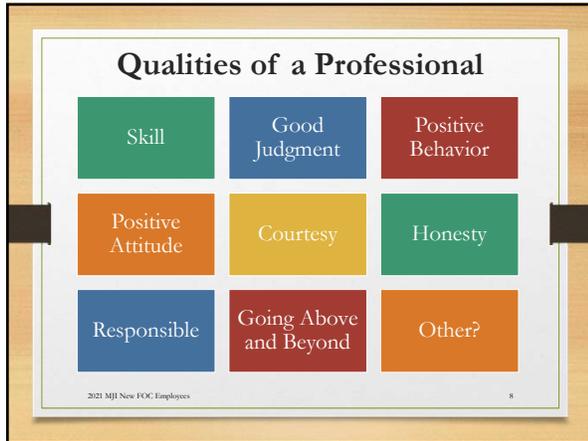
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Are You a Professional?

[Professionalism Quick Test](#) (< link in slides handout)



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Communication Etiquette

- Telephone
- Counter/ in-person
- Email

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Your Appearance Counts!



RESPECT



Credibility



Professional appearance shows you respect yourself and those you serve.

You gain credibility!

Check with your court for applicable policy.

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ETHICS



integrity, principles, moral, honesty, value, right, honor, choice, conscience, responsibility, fairness

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Why do what is right?

- Maintaining authority of the court
- Conscience / self-worth / personal health
- It's the law



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Measures of Conduct

- Code of Judicial Conduct
[\[Judges, Referees, Magistrates, court staff\]](#)
- Rules of Professional Conduct
[\[Lawyers\]](#)
- Model Code of Conduct
[\[Judicial Employees\]](#)

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Model Code of Conduct for Michigan Trial Court Employees

(handout/[link](#))

- Canon 1: Impropriety or the Appearance of Impropriety
- Canon 2: Abuse of Position
- Canon 3: Impartiality
- Canon 4: Proper Use of Public Resources
- Canon 5: Duty to Disclose
- Canon 6: Confidentiality & Discretion
- Canon 7: Discrimination
- Canon 8: Political Activity
- Canon 9: Duty to Serve
- Canon 10: Competency

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1. Impropriety/Appearance

- Avoid conflicts of interest and appearance of conflicts of interest
- Contracting, etc. with court system
- No outside activity that may conflict with court or official responsibilities
- Not misrepresenting the court on social media

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1. Impropriety/Appearance

- Employees shall not engage in the use of social media while also listing his or her affiliation with the court. **If an employee identifies himself or herself as a court employee, they must state that the views they express on social media are their own and not those of the court.**
- If employees choose to identify themselves as judiciary employees on personal social media, some readers may view them as spokespersons for the court and/or for a particular court. Even if you do not identify yourself as a judiciary employee, you should assume that the viewer of any social media is aware that you are a judiciary employee and that **you are held to a high standard of personal and professional conduct.**

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General Social Media Guidelines for Court Employees

Personal use of social media during work hours is subject to your court's policy.

Dissemination of court information is a policy decision for the chief judge and/or court administrator. Court employees should not be posting court business on social media.

- This applies whether on court or personal time.

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WHO MIGHT BE ABLE TO READ THIS?

COULD SOMEONE MISINTERPRET WHAT I'M SAYING?

AM I POSTING IN ANGER?

COULD SOMEONE FEEL DISRESPECTED?

AM I SHOWING A BAD SIDE OF MYSELF?

AM I REVEALING TOO MUCH ABOUT MYSELF?

THINK
BEFORE YOU POST ONLINE

- Posts remain accessible long after they are used.
- Nothing that is posted on the internet is legitimately private.
- Do not post anything that you wouldn't want on the front page of your local newspaper.

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2. Abuse of Position

- Use of position to secure **“privileges”**
- **“Special treatment”** in exchange for a gift or favor
- Access to judges and court files

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3. Impartiality

- Treating people or cases differently - **bias**
- Provide information only; *no legal advice*

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Ethical Decision Process

- Is it legal?

More than just "Is it criminal?"

Legal Principles

- Legal Authority (statutory, case law, court rule, administrative order)
- Constitutional Issues

Ethical Decision Process

1. Is it legal?
2. Is it fair, objective, and impartial to everyone around me?
3. Would it make me feel proud of myself?
4. Would I put it in writing to my supervisor or manager?
5. Would others view it as appropriate?

You Decide



The judge calls you to his office before a hearing, where you find an attorney for one party. They have some questions for you. You know that the other (unrepresented) party is waiting for the hearing in the courtroom.

- Do you answer their questions?
- Which canon(s)?

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Performance of Duties

- Work impartially and diligently (**4. Public Resources**)
- Promote ethical conduct and report any improper conduct (**5. Duty to Disclose**)
- Do not release confidential information (**6. Confidentiality & Discretion**)
- No bias or discrimination based on protected class (**7. Discrimination**)

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You Decide



You're single and online dating. You receive a message from someone who looks like a great match!

After messaging, you realize they are a client, and you've had to work on their case before.

- What would you do?
- Which canon(s)?

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You Decide



A good friend of yours hasn't been receiving child support lately. He doesn't understand why. He asks you what he should do, and if you could talk to the caseworker on his behalf.

- What would you do?
- Which canon(s)?

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Performance of Duties

Avoid ALL activity which may **reflect adversely** on your position or the court

- Keep political work out of the office (8. Political Activity)
- Provide service professionally (9. Duty to Serve)
- Pursue learning opportunities (10. Competency)

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Harassment & Hostile Work Environment

- Title VII of the Civil Rights Act of 1964
- **Harassment:** unwelcome discriminatory conduct
 - **Hostile work environment:** when a "reasonable person" would consider the work environment intimidating, hostile, or abusive
- Includes: offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance
- **Harasser:** supervisor, agent of employer, co-worker, or non-employee
- **Victim:** anyone affected by the offensive conduct

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You Decide



Your judge asks you to design and print flyers for her re-election campaign.

- What would you do?
- Which canon(s) apply?

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Facing Unethical Situations



1. Don't do it!
2. Keep it! (Confidential)
3. Avoid it!
4. Report it!
5. Enforce it!
6. ASK about it!

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Ethics is Intentional

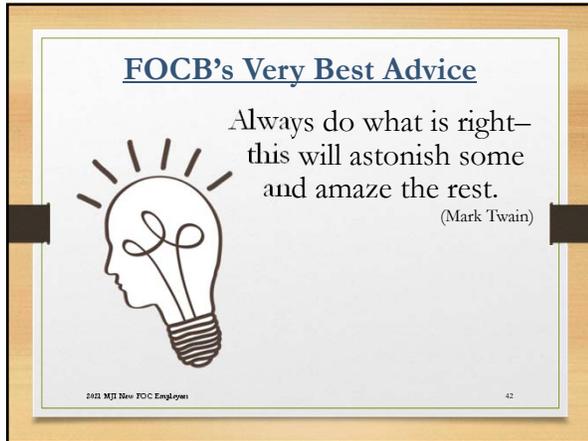
What you can do:

- ✓ Set personal boundaries
- ✓ Plan for common situations
- ✓ Make suggestions

What your court can do:

- ✓ Court policies
- ✓ Information - common types of requests
- ✓ Institutionalize appropriate conduct

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Model Code of Conduct for Michigan Trial Court Employees

All employees in Michigan's courts hold highly visible positions of public trust. We must conduct our business in an environment and in a manner that favorably reflects the ideals consistent with the fundamental values of the Michigan judicial system, as identified by the Michigan Supreme Court. These values include: fairness, accessibility, accountability, effectiveness, responsiveness, and independence. Our actions at all times should uphold and increase the public trust and confidence in the judicial branch, reflect the highest degree of integrity, and demonstrate commitment to each principle embodied in this model code.

**Canon One
IMPROPRIETY OR THE
APPEARANCE OF
IMPROPRIETY**

I will avoid activities that could cause an adverse reflection on my position or the court. I will maintain dignity in every comment, photograph, or video shared in person or via electronic means including social networking sites.

**Canon Two
ABUSE OF POSITION**

I will not use or attempt to use my position to secure unwarranted privileges for others or myself.

**Canon Three
IMPARTIALITY**

I will provide impartial treatment to all persons interacting with the court. I will not make comments in person or via electronic means including social networking sites regarding pending matters, including comments regarding parties, or attorneys who appear before the court.

**Canon Four
PROPER USE OF
PUBLIC RESOURCES**

I will use the resources, property, and funds of the court judiciously and solely in accordance with prescribed procedures.

**Canon Five
DUTY TO DISCLOSE**

I will respectfully disclose information required by the court.

**Canon Six
CONFIDENTIALITY &
DISCRETION**

I will not disclose confidential or discretionary information gained through my court employment to any unauthorized person. Information on blogs or other social media should comply with the court's confidentiality and any other relevant court policies. I will not post internal reports, policies, procedures, or other internal business-related confidential communications on social media. I will not use my court e-mail address to register on or engage in social media or professional social networking utilized for personal use.

Canon Seven
DISCRIMINATION

I will not discriminate on the basis of race, color, religion, national origin, gender, or other protected group.

Canon Eight
POLITICAL ACTIVITY

I am free to participate in political activities during nonworking hours as long as such activity does not use or appear to use my position or court in connection with such activities.

Canon Nine
DUTY TO SERVE

I will carry out my responsibilities to the court, litigants, coworkers, and all others interacting with the court in a timely, diligent, and courteous manner. I will not harass, threaten, retaliate or disparage court employees, or anyone associated with, or doing business with the court, whether in person or through other means, including the use of social media.

Canon Ten
COMPETENCY

I will actively pursue educational opportunities to improve my professional knowledge, skills, and abilities in order to provide quality service to the court and the public.

Guidelines

The following guidelines clarify the aforementioned canons:

Canon One

IMPROPRIETY OR THE APPEARANCE OF IMPROPRIETY

Court employees are highly visible and should conduct themselves in a way that instills public trust and confidence. Their actions reflect not only on themselves, but on the court as well. Improper behavior or the appearance of improper behavior may compromise the integrity of the court. Activities an employee engages in that are improper or may be perceived as improper include:

- Violating federal, state, or local laws and regulations.
- Entering into a contract directly or indirectly for services, supplies, equipment, or realty with the court system.
- Outside employment that may conflict or appear to conflict with the employee's job duties. Seek approval from the appropriate authority before accepting outside employment. **NOTE:** No form of outside employment shall be performed utilizing the resources of the court and shall not require or induce the employee to disclose information acquired in the course of his or her official duties.
- Employees shall abide by the Michigan Supreme Court anti-nepotism policy found in AO 2016-05.
- Employees shall not engage in the use of social media while also listing his or her affiliation with the court. If an employee identifies himself or herself as a court employee, they must state that the views they express on social media are their own and not those of the court.
- If employees choose to identify themselves as judiciary employees on personal social media, some readers may view them as spokespersons for the court and/or for a particular court. Even if you do not identify yourself as a judiciary employee, you should assume that the viewer of any social media is aware that you are a judiciary employee and that you are held to a high standard of personal and professional conduct.

Canon Two

ABUSE OF POSITION

The use of the real or apparent power of a position as a court employee to personally benefit the employee or someone else is prohibited. Court employees should never use their position to secure privileges, gifts, special favors, or exemptions. Generally, these would be special considerations given by others to the employee specifically because of his or her position as a court employee. The solicitation or acceptance of a gift, favor, or additional compensation can give the impression that something will be done in return for the donor. This contravenes the core ideals of the judiciary.

A court employee shall not attempt to take advantage of his or her access to judges and court files to further any personal interest, or engage in ex parte discussions.

Canon Three
IMPARTIALITY

The official actions of an employee should not be affected or appear to be affected by kinship, rank, position, or influence of any party or person involved in the court system. Many times relationships place temptation upon the employee to provide special service or nonservice. Differential treatment in any of these situations undermines the integrity of the employee and the judicial system.

Employees need to be able to provide impartial and understandable answers to the public's questions in an efficient manner, without providing legal advice.

Employees must act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary.

Canon Four
**PROPER USE OF
PUBLIC RESOURCES**

Court employees are stewards of public resources. A court employee shall use the resources, property, and funds judiciously and solely in accordance with prescribed procedure. Pitfalls include temptations such as personal phone calls at the court's expense, personal use of government property (such as office supplies, printers, computers, vehicles, etc.), or the use of court property to assist nonemployees as a favor.

Canon Five
DUTY TO DISCLOSE

A court employee should expect coworkers to abide by the canons set out in this code. A court employee shall report violations of this code or attempts to compel one to violate this code.

Court employees must inform the appropriate authority if he or she is arrested in any jurisdiction or involved in any pending legal action at the court of employment. This will allow the court to take the appropriate actions related to the employee's status.

When required by law, rule, or regulation, court employees will dutifully disclose all financial interests and dealings.

Canon Six
**CONFIDENTIALITY &
DISCRETION**

Although most court records are public, some are nonpublic, and cannot be released. Court employees need to understand the types of cases, and documents that are considered confidential. Confidential information should never be disclosed to any unauthorized person for any purpose to the media, general public, in person, or over the phone, or on social media. Employees shall never disclose confidential information including, but not limited to, the possible outcome of a pending case, case processing procedures, and other nonpublic information in person or via electronic means including social media platforms.

Canon Six (con't.)
**CONFIDENTIALITY &
DISCRETION**

Sensitive information acquired by court employees in the course of performing their official duties should never be revealed until it is made a matter of public record. Even when the information becomes public, court employees should exercise a great deal of discretion.

Sometimes breaches of confidentiality do not involve intentional disclosures of official court records. Some are the result of innocent and casual remarks about pending or closed cases, about participants in litigation, or about juries, which could give attorneys, litigants, reporters, and the public confidential information. Such remarks can seriously compromise a case or a person's standing in the community. Court staff should discuss cases only for legitimate reasons. Court employees 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.

Examples of confidentiality issues are not limited to cases. Personnel, probation, health records, and information accessed through the Law Enforcement Information Network (LEIN) or the Judicial Data Warehouse (JDW) have confidential limitations. Counter clerks should guard against being overheard when discussing legitimate confidential information.

Canon Seven
DISCRIMINATION

Essential to the administration of justice is allowing equal access and treatment for all. Every day court employees are called upon to assist people, and it is their responsibility to provide customers and coworkers with courteous service, regardless of the individual's race, religion, gender, national origin, political activities, etc. Discrimination can come in varying forms (words and actions), yet court employees should be aware that no form of discrimination is acceptable and when discovered should be exposed and discouraged.

Additionally, the evaluation of prospective employees should be based on their employable qualities such as job skills, knowledge, and attitude. Likewise, the evaluation of existing employees should be based upon criteria such as job skills, knowledge, and attitude in the performance of their duties. Therefore, no employee will discriminate in favor of or against any employee or applicant for employment based on the individual's race, religion, gender, national origin, political activities, etc.

**Canon Eight
POLITICAL ACTIVITY**

A court employee's ability to participate in the democratic process by working for a political cause, party, or candidate should not be hampered by his or her employment if done outside of working hours. This participation includes, but is not limited to, holding party membership, holding public office¹, making speeches, and making contributions of time and/or money to candidates, political parties, or other groups engaged in political activity. This participation in political activity should not transcend into the workplace by the displaying of political material (i.e., literature, badges, signs, or other material advertising a political cause, party or candidate), soliciting signatures for political candidacy, or soliciting, or receiving funds for political purposes. In addition, no government equipment, or resources of any kind are to be used for promoting political activity in the workplace before, during, or after work hours.

**Canon Nine
DUTY TO SERVE**

For the court to be an effective institution, court employees must reflect a high level of professionalism as they faithfully carry out all assigned duties and enforce the rules/orders provided by the court. It is never acceptable to undermine the judge or speak negatively of the court, especially in a public arena. A court employee's primary obligation is to the court. Court employees are not to inappropriately destroy, alter, falsify, mutilate, backdate, or fail to make required entries on any court records.

Court employees must recognize that colleagues are also customers, and they should be given the same level of professional consideration as public clients.

Employees shall refrain from posts on social media that can contribute to a hostile work environment on the basis of race, sex, disability, religion, or any other status protected by law. Some specific examples of prohibited social media conduct include posting commentary, content, or images that are defamatory, pornographic, proprietary, harassing, or libelous.

**Canon Ten
COMPETENCY**

When working within the court system, laws and rules of operation are continually changing due to legislation, court rules, administrative orders, caselaw, technology, etc. Therefore, court employees are encouraged to take advantage of educational opportunities that will enhance their skills, advance their understanding, and allow for better service.

Adopted 8/2008

The Michigan Judicial Institute gratefully acknowledges the contributions of the State Court Administrative Office Regional Administrators, the Management Analysts of Trial Court Services, and Court Administrators Donna Beaudet, David Drain, and Michelle Hill who reviewed the 2010 code and provided valuable feedback throughout the revision of this document.

Amended 8/18/2010

The Code was corrected to omit language on Page 4, Canon Three, which erroneously stated court employees could be authorized to give legal advice.

The social media language is adapted from material and information provided by the 3rd Circuit Court, Wayne County; 8th District and 9th Circuit Courts, Kalamazoo County; 54B District Court, East Lansing; Livingston County Courts; and Van Buren County Courts Social Media Policies. Additional attribution is given to the Resource Packet for Developing Guidelines on Use of Social Media by Judicial Employees, Committee on Codes of Conduct, Judicial Conference of the United States; Maryland Judiciary Employee Handbook; The Supreme Court of Ohio Opinion 2010-7; and American Bar Association – Model Code of Judicial Conduct.

Amended 7/22/2020

¹Holding public office is acceptable unless a conflict of interest exists with employment at the court, or it is prohibited by law. An example of a conflict includes serving on the county board of commissioners whose oversight of budget and other policy issues impact the court.

Acknowledgment of Receipt of the Model Code of Conduct

I have read and understand the Model Code of Conduct. As a court employee, I also agree that I will support the Constitution of the United States and the Constitution of the State of Michigan, and that I will faithfully discharge the duties of my office.

Signature

Date

Legal Advice for Court Employees Quick Reference

CAN Provide:

CANNOT Provide:

Can provide legal <i>definitions</i>	Cannot provide legal <i>interpretation</i>
Reason: Legal terminology can be confusing. Providing definitions of legal terms or procedures helps the public understand the court system and does not involve the unauthorized practice of law.	Reason: Court support staff cannot provide legal interpretations because it would be considered the unauthorized practice of law and would violate the concepts of neutrality and impartiality.
Can provide <i>procedural definitions and explanations</i>	Cannot provide <i>procedural advice</i>
Reason: Court procedures can be confusing. Explaining various procedures increases the public's understanding of the system and does not violate the concept of neutrality.	Reason: Court support staff cannot give procedural advice, because in doing so they may favor one party over another or may encourage or discourage a party from a particular course of action. You must remain impartial and neutral at all times. You can, however, point out various factors that individuals can consider to make the decision themselves.
Can provide <i>cites for statutes, court rules and ordinances</i>	Cannot provide <i>research of statutes, court rules and ordinances</i>
Reason: A court employee may cite the legal authority for a specific procedure.	Reason: You cannot research statutes, court rules and ordinances for parties because it would be considered the unauthorized practice of law and violates the concepts of impartiality and neutrality.
Can provide <i>case information that is a matter of public record</i>	Cannot provide <i>confidential case information</i>
Reason: Court support staff can provide case information that is public. Most court records are considered public records and, therefore, are available to the public.	Reason: Court support staff cannot disclose non-public or confidential information. It is very important that clerks understand what information is confidential.
Can provide <i>general information about court operations</i>	Cannot provide <i>confidential information about court operations</i>
Reason: Court employees have considerable knowledge and information about how a court functions. Sharing this knowledge of general court operations is not considered legal advice.	Reason: Court employees cannot disclose confidential information about court operations or ex parte communications because it can give one side an unfair advantage.
Can provide <i>options</i>	Cannot provide <i>opinions</i>
Reason: You can provide information on the various procedural options available and can explain how to do something.	Reason: You cannot give an opinion on or otherwise advise parties to use a particular procedure or remedy.
Can <i>facilitate access</i>	Cannot <i>deny or discourage access, nor encourage litigation</i>
Reason: Most people are not familiar with the court system. They often cannot describe their problem in legal terms. Court staff are gatekeepers to the system. It is their job to ensure that the court system is accessible.	Reason: Most people are not familiar with court procedures or terminology. Legal advice should not be used as an excuse not to provide service. If the question is not asked in the right way, take the time to clarify what is being asked.
Can provide <i>general referrals</i>	Cannot provide <i>subjective or biased referrals</i>
Reason: General referrals can be made to agencies and associations that can provide additional information and assistance.	Reason: Employees of the court must remain neutral and impartial and cannot make referrals to specific individuals.
Can <i>distribute forms and instructions on how to complete forms</i>	Cannot <i>fill out forms unless there is a handicap or physical disability that prevents the person from filling out the form</i>
Reason: Court employees must facilitate access to the court system.	Reason: Court employees should not fill out forms for parties because it violates the principles of neutrality and impartiality. However, there may be some situations where it is appropriate for clerks to record information on a form. Some examples include language barriers (illiteracy or foreign language) and physical handicaps (blindness or deafness).

Ethicality – Figuring out how to respond

Does the action violate any ethical standard?

Is the best justification for doing this that "everyone else does it"?

BEWARE of the ideas that **the rules don't apply to me** or that **the rules (normal procedures) don't apply to this situation.**

This kind of reasoning usually indicates a problem.

ETHICAL DECISION PROCESS		
Answer these questions	YES	NO
Is it (the action, inaction, or conduct) legal?		
Is it fair, objective, and impartial to those (everyone else) around me?		
Would it make me feel proud of myself (if it were on the front page of the newspaper or the lead story on the evening news)?		
Would you put it in writing for your supervisor or manager?		
Would others (public or outsider) view it as appropriate?		
<i>If you answered "no" to any of the questions, it is probably unethical.</i>		

When an action is or might be unethical*:

- 1. Don't Do It!**
- 2. Keep it! (Confidential)**
- 3. Avoid it!**
- 4. Report It!**
- 5. Enforce It!**

****Ask About it!***

Ethical Decision Process and Actions are adapted from MJI CD-DOM Training:
Court Employees: A Commitment to Excellence (Michigan Judicial Institute, 2000)

State Court Administrative Office Friend of the Court Bureau
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