

CLE: Outside Activities for Military Judges and Counsel

Class length: 60 minutes

Instructor: Prof. Martin Mitchell

Event: US Court of Appeals for the Armed Force, CLE, 11 May 2023

Hopefully, as judges and attorneys we are aware of our ethical responsibilities when in the courtroom, meeting with clients and acting on their behalf. But what about our responsibilities when we are not directly engaging in the practice of law? Do the bar ethics rules constrain behavior when we are not wearing our attorney or judge hat? Are we ever “off-duty” from bar ethics rules?

Rule 8.4, Misconduct prohibits certain criminal acts that reflect adversely on honesty, trustworthiness, and fitness as an attorney. The Rule therefore contemplates that not ALL criminal acts are simultaneously a violation of the bar ethics rules. On the other hand, it also does not limit the prohibition to solely criminal activities. Rule 8.4(c) also prohibits attorneys from engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. Rule 8.4(d) prohibits conduct that seriously interferes with the administration of justice. DC Bar Rules 8.4 comments explain that this includes words or actions that manifest bias or prejudice based on race, sex, national origin, disability, age, sexual orientation or socioeconomic status.

And what about attorneys who are working non-legal jobs? Are there limits on an attorney’s ability to hold a non-legal job and be a licensed attorney at the same time? (DC Bar Ethics Opinion 306) What about other sources of income? Like investments? We should be aware of the rules of conflict of interests (Rule 1.7-1.9). But do the ethics rules place additional limits on an attorney’s other investments? We will discuss Nebraska Lawyer’s Advisory Opinion, 22-03 and the guidance provided in both the majority and minority opinions.

As attorneys we are also responsible for knowing and understanding the judicial code of conduct. Rule 8.4 (f) prohibits knowingly assist a judge or any judicial officer with engaging in conduct that is a violation of the judicial code of conduct. We will look at the Code of Conduct for Federal Judges, Canon 4 which prohibits a judge from engaging in extrajudicial activities that are inconsistent with the obligations of judicial office. Can a part-time municipal court judge in NJ also work part-time as a stand up comedian in NYC? ([In re Advisory Letter No. 3-11, 215 N.J. 495, 73 A.3d 1244 \(2013\)](#)) Can an administrative law judge have a side – hustle as a performer on a subscription website? What about non-paying positions? Are there limits on a judge’s involvement in non-profits? (DC Court Advisory Opinion 15 – March 28, 2022) What about a judge who want to continue volunteering at a non-profit college radio station? (NY Court ethic opinion 20-49) What about a judge who wants to continue to play in a rock band? (NJ Court ethic opinion 22 – 79) What about a judge on a podcast who examines legal issues in science fiction and comic books? (NJ Opinion 16-05) Surely teaching yoga at a local studio must be ok? (NY Ethics Opinion 18-106).

As attorneys and judges, we have unique responsibilities. These obligations extend beyond the office and the courtroom.