

STATE OF NEW HAMPSHIRE
JUDICIAL CONDUCT COMMITTEE

#2017-016

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State of New Hampshire Supreme Court
Advisory Committee on Rules
One Charles Doe Drive
Concord, NH 03301

RE: Application of the Code of Judicial Conduct to Court Staff Generally

Advisory Committee on Rules:

I write at the direction of the Judicial Conduct Committee and upon suggestion of Attorney Dempsey as General Counsel for the Administrative Office of the Courts to inquire of the Rules Advisory Committee as to what appears to be the prevailing opinion regarding the application and reach of Supreme Court Rule 40 (2) defining the term "judge" and the Application section of Supreme Court Rule 38 as to court staff beyond clerks, deputy clerks, court stenographers, monitors (now referred to as assistants), and reporters.

Supreme Court Rule 40 (2) defines the terms "judges" as follows:

Judge - This term includes: (1) a full-time or part-time judge of any court or division of the State of New Hampshire Judicial Branch; (2) a full-time or part-time marital master; (3) a referee or other master; (4) a court stenographer, monitor or reporter, a clerk of court or deputy clerk, including a register of probate or deputy register, and any person performing the duties of a clerk or register. Not everyone who is a "judge" as defined herein is bound by every canon of the Code of Judicial Conduct -- the Code of Judicial Conduct applies to a judge to the extent provided in Supreme Court Rule 38.

The Application section of Supreme Court Rule 38 provides as follows:

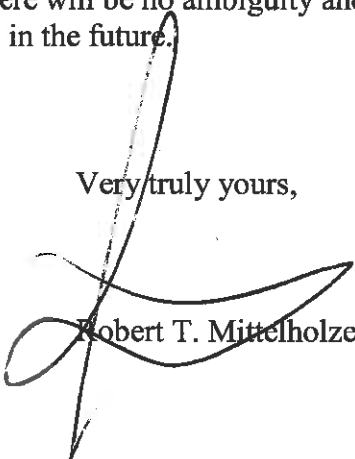
D. Clerks, Deputy Clerks, Registers of Probate, Deputy Registers of Probate, any persons performing the duties of a Clerk or Register, and Court Stenographers,

Monitors and Reporters shall comply with Rules 2.1, 2.2, 2.3, 2.5, 2.8, 2.10, 2.12, 2.15, and 2.16.

Attorney Dempsey has recently informed us that to the best of the Administrative Council's knowledge the language "duties of a clerk ..." has never been interpreted to apply to court staff beyond the clerk and deputy clerk but instead only relates to individuals who may be acting in the capacity of the clerk on an interim basis. Attorney Dempsey has suggested that should the Judicial Conduct Committee be inclined to interpret the language of Rules 40 and 38 more broadly to encompass other court staff beyond clerks, deputy clerks, registers of probate, deputy registers of probate, any persons performing the duties of a clerk or register, and court stenographers, monitors and reporters; this issue might best be referred to the Advisory Committee on Rules for a full discussion as to the implications of a broader interpretation of these rules potentially affecting numerous court employees who are union members and who, as such, are entitled to union representation in certain disciplinary matters including investigations. The JCC agrees.

Therefore, assuming that the New Hampshire Supreme Court also concurs with the prevailing interpretation of these Rules, the Judicial Conduct Committee would respectfully recommend that the language of Rules 38 and 40 be amended to clarify the meaning of the phrase "duties of a clerk ..." so that there will be no ambiguity and possible misunderstanding of the intent of these Rules in the future.

Very truly yours,



Robert T. Mittelholzer

RTM

cc: Chief Justice Linda S. Dalianis
Chief Justice Tina L. Nadeau
Administrative Judge Edwin W. Kelly
Deputy Administrative Judge David D. King
Christopher Keating, Director
Attorney Mary Ann Dempsey
Mary E. Collins, JCC Chair
Attorney Jaye Rancourt, JCC Vice Chair