

Committee on Codes of Conduct
Advisory Opinion No. 81

United States Attorney as Law Clerk's Future Employer

In Advisory Opinion No. 74, the Committee dealt with appropriate procedures when a law clerk has been extended an offer of employment by a lawyer or a law firm and the offer has been or may be accepted by the clerk. This opinion deals with appropriate procedures when a clerk has been offered employment by a particular United States Attorney's office, and the offer has been or may be accepted by the law clerk. The United States Attorney's office is not a law firm and the law clerk would have no financial interest in that office. *See* Advisory Opinion No. 38 ("Disqualification When Relative Is an Assistant United States Attorney"). Nonetheless, participation by the law clerk in a pending case involving the prospective employer may reasonably create an appearance of impropriety and a cause for concern on the part of opposing counsel. *See* Canon 3F(1) of the Code of Conduct for Judicial Employees.

The judge should isolate the law clerk from cases in which that particular United States Attorney's office appears. *See* Advisory Opinion No. 74.

To avoid a future appearance of impropriety or potential grounds for questioning the impartiality of the court, a former law clerk should be disqualified from work in the United States Attorney's office on any cases that were pending in the court during the law clerk's employment with the court. A court rule may be adopted for this purpose. *See, e.g.,* Sup. Ct. R. 7; D.C. Cir. R. 4.

June 2009