

INDIANA OFFICE OF COURT SERVICES

PROBLEM-SOLVING COURTS PRACTICE GUIDELINES 501(c)(3) Corporations and Fundraising

I. Establishing a 501(c)(3) Corporation

It is permissible for a problem-solving court to form a 501(c)(3) corporation for the express purpose of financially supporting problem-solving court activities:

Problem-solving courts may apply for and receive “gifts, bequests, and donations from private sources” to supplement the court’s budget. See IC 33-23-16-22(b).

The incorporation process must be conducted in accordance with all applicable laws, rules and regulations. It is recommended that any court considering forming a non-profit corporation seek the advice of an attorney with expertise in this practice area to handle the incorporation process as well as all legal activities thereafter.

Any court establishing a 501(c)(3) corporation should carefully consider the purpose or purposes for which the corporation will serve. Please note that concerns may arise regarding the use of court time to support corporation activities not directly related to the official functions of the problem-solving court, i.e. a court staff member engaging in fundraising activities on court time in which the proceeds may be distributed to non-governmental entities.

II. Problem-Solving Court Employees Serving as Members of the 501(c)(3) Corporation

It is recommended that the membership of the corporation include, to the greatest extent possible, community representatives that are not problem-solving court staff. The number of members should be large enough to account for instances in which one or more members may need to excuse themselves from certain corporation activities to avoid a conflict of interest.

Generally, it is permissible for the problem-solving court judge and problem-solving court staff to serve as members of the 501(c)(3) corporation. However, as with any other activity associated with government employment, neither the judge nor the problem-solving court staff is permitted to personally benefit from membership in the corporation. The problem-solving court judge and staff remain representatives of the court while engaging in corporation member duties and activities.

Some problem-solving court staff and other problem-solving court team members such as, prosecutors, public defenders, treatment providers, probation officers, etc. may be subject to differing rules of professional conduct and must consider the applicable governing authorities when determining whether or not to serve as a corporation member.

It should be noted that there may be times when engaging in corporation activities may create a conflict of interest for one or more problem-solving court staff or team members or the judge who serve as corporation members. If such a situation arises, each of the affected members is required to refrain from engaging in any activity which results in or has the potential to result in a conflict of interest.

III. Fundraising Activities

Problem-solving court judges may engage in fundraising activities consistent with the Code of Judicial Conduct, Canon 4.

The Indiana Commission on Judicial Conduct issued Advisory Opinion #01-96, interpreting Canon 4C(3)(b) stating that a judge "shall not personally participate in the solicitation of funds or other fundraising activities" and "shall not use or permit the use of the prestige of judicial office for fundraising or membership solicitation". Canon 4C(3)(b)(i); Canon 4C(3)(b)(iv), Code of Judicial Conduct.

This opinion advises that a judge may not personally engage in direct solicitation activities, including attending a fundraising event as the guest of honor, to avoid casting reasonable doubt on the judge's impartiality, perceived coercion or exploitation of the judicial office.

If the problem-solving court staff is subject to the Code of Judicial Conduct by operation of local court policy, then the above-referenced opinion would apply to the problem-solving court staff as well. As noted above, some problem-solving court staff and problem-solving court team members may be subject to differing rules of professional conduct and must assess the appropriateness of engaging in any corporation duties or activities in light of the appropriate governing authorities.

The prohibitions on certain fundraising activities reinforce the need to draw corporation membership from the local community without over-reliance on problem-solving court staff. The problem-solving court judge and staff, as well as other team members, need to continually assess their corporation member activities to avoid potential violations of the Code of Judicial Conduct, conditions of employment or other applicable rules and regulations.