

501(c)(3) Corporations Supporting Problem-Solving Courts and Fundraising

Recommended Guidelines and Best Practices

I.) *General Considerations*

It is permissible for a problem-solving court or a third party to form a [501\(c\)\(3\) corporation](#), a tax-exempt organization, for the express purpose of financially supporting a problem-solving court. Pursuant to [IC 33-23-16-22\(b\)](#), a problem-solving court may receive “gifts, bequests, and donations from private sources” to supplement other funding sources.

501(c)(3) corporations are governed by both state and federal law, including the Code of Judicial Conduct (“CJC”). CJC Rules 1.1 and 1.2. Accordingly, judicial officers and court staff must recognize and understand their obligations under state law, federal law, and the CJC when engaging in 501(c)(3) activities, for example:

- The duties of judicial office must take precedence over any issue created or raised by the 501(c)(3) organization and/or its operation. CJC Rule 2.1.
- Judicial officers and/or court employees may not engage in 501(c)(3) activities while on court time or use court resources for 501(c)(3) activities. CJC Rules 2.12(A) and 3.1(E).
- Judicial officers and court staff may not share case or participant-specific information or otherwise evaluate matters that are pending, or likely to come before the court, to avoid ex parte communication and violations of 42 CFR Part 2. CJC Rule 2.9.

II.) *Establishment of a 501(c)(3) Corporation*

State laws concerning the creation and/or operation of non-profit corporations are codified under [IC 23-17](#) et seq. Articles of Incorporation (“articles”) must be filed with the [Secretary of State](#) to create a 501(c)(3) organization.

IC 23-17-3-3 specifies discretionary elements that may be included in an organization's articles. Specifically, IC 23-17-3-3(1) codifies the "purpose or purposes for which the corporation is organized..." as a discretionary element. Despite this discretionary status, 501(c)(3) organizations that support problem-solving courts are strongly encouraged to include this element in their articles. Conflicts of interest arise when members of the 501(c)(3) personally benefit from organizational actions taken by the 501(c)(3). CJC Rule 1.3. A clear purpose statement helps to prevent the impermissible comingling of personal and organizational interests.

CJC Rule 1.2 requires judicial officers to avoid "...impropriety or the appearance of impropriety" at all times. Consequently, it is strongly recommended that the 501(c)(3) membership consist of persons other than judicial officers and court staff to the extent practicable. If court staff and/or judicial officers must be included as members of the 501(c)(3), non-officeholder positions devoid of governance duties are encouraged. The organization's professional duties and/or obligations that conflict with the CJC shall preclude membership in the 501(c)(3) organization if recusal is not possible. CJC Rules 2.2, 2.4, and 3.1.

The organization membership should be large enough to accommodate the possibility of officeholder and/or member recusal due to conflicts of interest and/or prohibitions concerning regulated activity (e.g., direct solicitation of funds in violation of CJC Rule 3.7). All applicable bylaws concerning voting, quorums, and related activities should be drafted accordingly.

A 501(c)(3)'s articles will be subject to inspection by, or disclosure to, the public pursuant to the Access to Public Records Act ("APRA"). IC 5-14-3 et seq. Bylaws, though not public documents per se, may be directly requested from the 501(c)(3) by private parties wishing to inspect or audit the 501(c)(3)'s compliance with applicable state and federal laws. Accordingly, bylaws should also be drafted with the expectation that disclosure will occur.

III.) Fundraising

Due to the close nexus between the 501(c)(3) organization and the court, the risk of impropriety and/or appearance of impropriety as defined by CJC Rule 1.2 is high.¹ CJC Rule 3.7(a) explicitly prohibits court staff and judicial officers from directly soliciting funds on behalf of an organization. Accordingly, persons subject to the CJC may not directly fundraise on behalf of the 501(c)(3) organization. Court staff and judicial officers may, however, assist in planning related to fundraising, volunteer services, or goods at fundraising events, and/or participate in the management and/or investment of funds raised during fundraising efforts.²

Accordingly, fundraising bylaws should clearly specify permissible and impermissible activities for those subject to the CJC. Finally, fundraising activity, even if permitted pursuant to the plain language of CJC Rule 3.7, remains subject to the parameters of CJC Rule 3.1 (concerning extrajudicial activities by judicial officers). As such, permissible fundraising activity must comply with both CJC Rules 3.1 and 3.7.

The full text of the Code of Judicial Conduct may be accessed at:
<https://rules.incourts.gov/Content/judicial-conduct/default.htm>

¹ Comment 5 of CJC Rule 1.2 provides: “Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament, or fitness to serve as a judge.

² For example, it is permissible for court staff to bake cookies to be sold at a bake sale, but court staff cannot sell the cookies to fundraise. See CJC Rule 3.17(A)(1). 501(c)(3) members are encouraged to review CJC Rule 3.7(A) in its entirety for additional examples of permissible and impermissible conduct within the context of fundraising activity.