

Committee on Codes of Conduct--Advisory Opinion No. 104

Participation in Court Historical Societies and Learning Centers

Court historical societies have been established in many communities for the purpose of developing, preserving, and promoting historical information and materials pertaining to a court or circuit and its judges, attorneys, and notable litigation. In addition, learning centers have been established to perform educational and outreach functions to educate the public about the role of the federal courts in American society and to present the history of a court or circuit.

The involvement of judges and court personnel in court history preservation activities funded solely from court funds does not present ethical concerns under the Codes of Conduct. Often historical societies and learning centers are operated, however, by nonprofit corporations that raise funds to finance programs and activities. The society or center may employ staff to conduct its operations and to engage in fund raising. Their boards of directors and officers may include judges, judicial employees, and attorneys who practice in the court or circuit. This opinion addresses the ethical issues that may arise when judges and court personnel are involved in court historical societies or learning centers that engage in fund raising.

Under Canon 4A(3) and 4B of the Code of Conduct for United States Judges ("Judges' Code"), judges may participate in nonprofit organizations such as historical societies and learning centers, subject to certain conditions. Likewise, under Canon 4A of the Code of Conduct for Judicial Employees ("Employees' Code"), court personnel may participate in nonprofit organizations such as historical societies and learning centers, subject to restrictions.

The Codes place limitations, however, on how judges and employees may participate in fund-raising efforts by court historical societies and learning centers. Canon 4C of the Judges' Code sets out the restrictions for fund raising by judges on behalf of any organization:

A judge may assist nonprofit law-related, civic, charitable, educational, religious, or social organizations in planning fund-raising activities and may be listed as an officer, director, or trustee. A judge may solicit funds for such an organization from judges over whom the judge does not exercise supervisory or appellate authority and from members of the judge's family. Otherwise, a judge should not personally participate in fund-raising activities, solicit funds for any organization, or use or permit the use of the prestige of judicial office for that purpose. A judge should not personally participate in membership solicitation if the solicitation might reasonably be perceived as coercive or is essentially a fund-raising mechanism.

Other Canons of the Judges' Code indirectly place restrictions on fund raising; for example, under Canon 2 a judge may not lend the prestige of office to a fund-raising effort (as is repeated in Canon 4C). Canon 2 also prohibits a judge from being involved with a fund-raising effort that would create an appearance of impropriety. See also Advisory Opinion No. 35 ("Solicitation of Funds for Nonprofit Organizations, Including Listing of Judges on Solicitation Materials").

Canon 4B of the Employees' Code states the restrictions on fund raising by court personnel:

A judicial employee may solicit funds in connection with outside activities, subject to the following limitations:

(1) A judicial employee should not use or permit the use of the prestige of the office in the solicitation of funds.

(2) A judicial employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign. A member of a judge's personal staff should not solicit any court personnel to contribute funds to any such activity under circumstances where the staff member's close relationship to the judge could reasonably be construed to give undue weight to the solicitation.

(3) A judicial employee should not solicit or accept funds from lawyers or other persons likely to come before the judicial employee or the court or office the judicial employee serves, except as an incident to a general fund-raising activity.

Other provisions of the Employee's Code place independent restrictions on fund raising by court personnel. Like the Judges' Code, Canon 2 of the Employees' Code prohibits involvement with any fund raising that would raise an appearance of impropriety.

Judges and court personnel may therefore participate in fund raising efforts for court historical societies and learning centers only to the extent set out above. In light of these limitations, judges and court personnel should be sensitive to public perception of whether the court itself is engaged in fund-raising activities on behalf of a court historical society or learning center. Public perception of the court's involvement with fund-raising activities of a court historical society or learning center is affected by several factors including: (1) the extent of involvement of judges or court personnel as the organization's founders, incorporators, members of the governing board, chair, officers, or staff; (2) the physical location of the program inside the courthouse or in a separate facility; (3) the identification of the organization as independent of the court in its written materials and fund-raising activities; (4) the name chosen for the organization; and (5) the location of activities or of permanent plaques designed to recognize financial contributors to the organization.

The public may reasonably perceive that fund-raising activities conducted by a court historical society or learning center whose creation, governance, and staffing is dominated by judges or court employees or whose programs and materials are housed inside the courthouse rather than in a separate facility are fund-raising activities of the judges and court employees themselves rather than those of an independent organization. Likewise, the public may reasonably attribute the organization's fund-raising activities to the court's judges and employees if a reception honoring financial donors is conducted in the courthouse or a permanent plaque recognizing contributors is placed inside the courthouse. The judge or court employee should assess how the factors listed above, or any other such factors that surface, affect the permissibility of participating in a court historical society or learning center or of becoming involved in that organization's fund-raising activities.

June 2009