

ADVISORY COMMITTEE
ON STANDARDS OF JUDICIAL CONDUCT

OPINION NO. 3 - 2021

RE: Propriety of a probate judge serving on an Association of Counties committee regarding the preservation of court records where the Association employs a lobbyist.

FACTS

A probate judge has been asked to join an Association of Counties committee regarding the preservation of court records. Probate records are considered permanent records by state law and probate courts are required to keep hard copies of their records. There are some statutes and regulations that allow the probate court to use microfilm and digital imaging so that the court can store hard copies off site to conserve office space. Most probate attorneys and title abstractors use imaged records, but, on occasion, will need to see a hard copy. The probate court is allowed to destroy hard copies that have been imaged after ten years. However, the county in which the judge serves is running out of room to store hard copies. As people continue to die or become incapacitated, the amount of probate records continues to increase. Moreover, the current storage facility has an ongoing problem with mold and mildew. The county is considering building a new facility or other options involving the renovation of the current or another existing building.

There is a need to study the issue to develop a plan for the long term, as well as consider the wisdom of the policy of retaining permanent records indefinitely, since there are modern record-keeping alternatives. The committee, which would be formed through the Association of Counties, would evaluate these issues as well as whether money could be saved by changing record retention rules. The judge has been asked to sit on this committee but is aware that the Association of Counties employs a lobbyist and inquires as to whether service on the committee is permissible.

CONCLUSION

A probate judge may serve on an Association of Counties committee to study court record retention rules and develop a long-term plan for retention of probate records.

OPINION

Canon 4C(3) states:

A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable, fraternal or civic organization not conducted for profit, subject to the following limitations and the other requirements of this Code.

The committee here involves the study of the rules and procedures for preservation of court records (and recommendations for the future) and therefore is related to “the improvement of the law, the legal system or the administration of justice.” Thus, service on such a committee is permissible under Canons 4C(3).

The fact that the Association of Counties employs a lobbyist does not change our conclusion. In Opinion 1-2009, we found that an association of probate judges could use its funds (some of which were collected from individuals as member fees) to hire a lobbyist. In this situation, the judge is even further removed from the lobbyist as the judge is not paying any member fees which in turn will be used to employ the Association of Counties’ lobbyist. Thus, we see no reason why the Association’s employment of a lobbyist should prevent the judge from serving on a committee to address “the improvement of the law, the legal system or the administration of justice” in studying and recommending procedures for retention of court records.

s/ Letitia H. Verdin
LETITIA H. VERDIN, CHAIR

s/ Usha Jeffries Bridges
USHA JEFFRIES BRIDGES

s/ Keith M. Babcock
KEITH M. BABCOCK

February 8, 2021