

# Guide to Judiciary Policy

Vol. 7: Defender Services

Pt. A: Guidelines for Administering the CJA and Related Statutes

## Appx. 4B: Model Code of Conduct for Federal Community Defender Employees

**Note:** *This Model Code of Conduct for Federal Community Defender Employees must be adopted by a community defender organization's board of directors and made applicable to all the community defender organization's employees.*

### I. Overview

#### I.A. Scope

- I.A.1 This code of conduct applies to all employees of the community defender organization named [Name of CDO] (hereafter, "[Name Abbreviation]").
- I.A.2 This code of conduct does not apply to private counsel appointed under the Criminal Justice Act or to attorneys provided by a bar association.
- I.A.3 Nothing contained in these canons is intended to limit or modify the primary responsibility of community defenders, as appointed counsel, to render effective legal representation to clients as required by the Constitution and laws of the United States and by applicable rules governing professional conduct, including the code of professional responsibility applicable in the jurisdiction in which the community defender practices. If there is any conflict between this code and the code of professional responsibility applicable to the defender employee or any state law, the code of professional responsibility or the applicable state law should take precedence.

#### I.B. History

This Code of Conduct is based on the Model Code of Conduct for Community Defender Employees which was approved in September 2010 by the Judicial Conference of the United States. This Code of Conduct was adopted [Date] by the [Name Abbreviation] board of directors, and it became effective [Date].

## **I.C. Definitions**

### **I.C.1 Defender Employees**

As used in this code, "defender employees" means the chief community defender, assistant community defenders, and all other employees of the community defender organization.

### **I.C.2 Community Defenders**

"Community defenders" means only the chief community defender and assistant community defenders.

### **I.C.3 Chief Community Defender**

"Chief community defender" means the head of the community defender organization – the executive director or chief federal defender.

### **I.C.4 Grant and Conditions**

"Grant and conditions" refers to the agreement between [Name Abbreviation] and the Judicial Conference of the United States. In consideration of a sustaining grant from the Conference, the agreement requires that terms of the grant and conditions be followed.

## **I.D Further Guidance**

- I.D.1 Defender employees (other than the chief community defender) should consult with the chief community defender, and the chief community defender may consult with the board of directors and others, as appropriate, for guidance on questions concerning this code and its applicability.

**Note:** The Judicial Conference has authorized its Committee on Codes of Conduct to render advisory opinions concerning the application and interpretation of various judiciary codes of conduct, including the Code of Conduct for United States Judges and the Code of Conduct for Federal Public Defender Employees but does not issue opinions regarding the CDO Code of Conduct. Its opinions may be useful in guiding defender employees and the [Name Abbreviation]'s board of directors. The Committee on Codes of Conduct's published advisory opinions may be found in the [Guide to Judiciary Policy, Vol. 2B, Ch 2](#).

- I.D.2 In assessing the propriety of one's proposed conduct, a defender employee should take care to consider all relevant canons in this code, any applicable statutes and regulations, and applicable codes of professional responsibility.
- I.D.3 Should a question remain after this consultation, the affected defender employee may request guidance from the [Name Abbreviation] board of directors, bar counsel, or other appropriate person.

## II. Text of the Code

- CANON 1 A Defender Employee Should Uphold the Integrity and Independence of the Office
- CANON 2 A Defender Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities
- CANON 3 A Defender Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office
- CANON 4 A Defender Employee May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice
- CANON 5 A Defender Employee Should Regulate Extra-official Activities to Minimize the Risk of Conflict with Official Duties
- CANON 6 A Defender Employee Should Avoid Impropriety and the Appearance of Impropriety in Compensation Received for All Extra-official Activities
- CANON 7 A Defender Employee Should Refrain from Inappropriate Political Activity

### **Canon 1: A Defender Employee Should Uphold the Integrity and Independence of the Office**

An independent and honorable defender system is indispensable to justice in our society. A defender employee should personally observe high standards of conduct so that the integrity and independence of the office are preserved and so that the defender office reflects a devotion to serving the community defender's clients and the principle of equal justice under law. Defender employees should require adherence to such standards by personnel subject to their direction and control. The provisions of this code should be construed and applied to further these objectives. The standards of this

code shall not affect or preclude other more stringent standards required by law, by applicable codes of professional responsibility, or by court order.

### **Canon 2: A Defender Employee Should Avoid Impropriety and the Appearance of Impropriety in All Activities**

A defender employee should not engage in any activities that would put into question the propriety of the defender employee's conduct in carrying out the duties of the office. A defender employee should not use position or office for private gain.

### **Canon 3: A Defender Employee Should Adhere to Appropriate Standards in Performing the Duties of the Office**

In performing the duties prescribed by law, by resolution of the Judicial Conference of the United States, by court order, or by the chief community defender or the [Name Abbreviation] board of directors, the following standards apply:

- (A) A defender employee should respect and comply with the law and these canons. A defender employee should report to the appropriate supervising authority any attempt to induce the defender employee to violate these canons.

#### **[Optional Language:**

**Note:** A number of criminal statutes of general applicability govern defender employees' performance of official duties. These include:

- [18 U.S.C. § 201](#) (bribery of public officials and witnesses);
- [18 U.S.C. § 211](#) (acceptance or solicitation to obtain appointive public office);
- [18 U.S.C. § 285](#) (taking or using papers relating to government claims);
- [18 U.S.C. § 287](#) (false, fictitious, or fraudulent claims against the government);
- [18 U.S.C. § 508](#) (counterfeiting or forging transportation requests);
- [18 U.S.C. § 641](#) (embezzlement or conversion of government money, property, or records);
- [18 U.S.C. § 798](#) (disclosure of classified information);
- [18 U.S.C. § 1001](#) (fraud or false statements in a government matter);

- [18 U.S.C. § 2071](#) (concealing, removing, or mutilating a public record);
- [31 U.S.C. § 3729](#) (false claims against the government).

This is not a comprehensive listing but sets forth some of the more significant provisions with which defender employees should be familiar.]

- (B) A defender employee should be faithful to professional standards and maintain competence in the defender employee's profession.
- (C) A defender employee should be patient, dignified, respectful, and courteous to all persons with whom the defender employee deals in an official capacity, and should require similar conduct of personnel subject to the defender employee's direction and control. A defender employee should diligently discharge the responsibilities of the office in a nondiscriminatory fashion.
- (D) A defender employee should not solicit or accept a payment of money or anything of value from a client, except that a defender employee may accept an appropriate memento or token that is neither money nor of commercial value. A defender employee should never disclose any confidential communications from a client, or any other confidential information received in the course of official duties, except as authorized by law. A former defender employee should observe the same restrictions on disclosure of confidential information that apply to a current defender employee.
- (E) A defender employee should not engage in nepotism prohibited by the Grant and Conditions.
- (F) Conflicts of Interest.
  - (1) In providing legal representation to clients, a community defender should observe applicable rules of professional conduct governing the disclosure and avoidance of conflicts of interest.
  - (2) In the performance of administrative duties, a defender employee should avoid conflicts of interest. A conflict of interest arises when a defender employee knows that he or she (or the spouse, minor child residing in the defender employee's household, or other close relative of the defender employee) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the defender employee's ability properly to perform administrative duties.

- (3) When a defender employee knows that a conflict of interest may be presented in the performance of duties, the defender employee should promptly inform the chief community defender. The chief community defender, after determining that a conflict or the appearance of a conflict of interest exists, should take appropriate steps to restrict the defender employee's performance of duties in such a matter so as to avoid a conflict or the appearance of a conflict of interest. If the conflict involves a conflict between or among clients, the chief community defender should consider withdrawal from one or more representations, or other appropriate remedial actions, as necessary to comply with applicable rules of professional conduct. A defender employee should observe any restrictions imposed by the chief community defender in this regard.

**Canon 4: A Defender Employee May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice**

A defender employee, subject to the proper performance of official duties, may engage in the law-related activities enumerated below.

- (A) A defender employee may speak, write, lecture, teach, and participate in other activities concerning defender services, the legal system, and the administration of justice.
- (B) A defender employee may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. A defender employee may assist such an organization in raising funds and may participate in the management and investment of such funds. A defender employee may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal profession, and the administration of justice. A defender employee may solicit funds for law-related activities, subject to the following limitations:
  - (1) A defender employee should not use or permit the use of the prestige of the office in the solicitation of funds.
  - (2) A defender employee should not solicit subordinates to contribute funds to any such activity but may provide information to them about a general fund-raising campaign.

- (3) A defender employee should not solicit or accept funds from lawyers, clients, or other persons likely to have official business with the community defender office, except as an incident to a general fund-raising activity.
- (C) A defender employee may promote the development of professional organizations and foster the interchange of information and experience with others in the profession. A defender employee may make himself or herself available to the public at large for speaking engagements and public appearances designed to enhance the public's knowledge of the operation of defender services and the criminal justice system.

**Canon 5: A Defender Employee Should Regulate Extra-official Activities to Minimize the Risk of Conflict with Official Duties**

(A) Avocational Activities

A defender employee may write, lecture, teach, and speak on subjects unrelated to the profession, and may engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the community defender's role as an advocate. A defender employee may solicit funds for avocational activities, subject to the limitations set forth in canon 4B.

(B) Civic and Charitable Activities

A defender employee may participate in civic and charitable activities that do not detract from the dignity of the office, interfere with the performance of official duties, or adversely reflect on the community defender's role as an advocate. A defender employee may serve as an officer, director, trustee or advisor of an educational, religious, charitable, fraternal, or civic organization, and may solicit funds for any such organization subject to the limitations set forth in canon 4B.

(C) Financial Activities

- (1) A defender employee should refrain from financial and business dealings that tend to detract from the dignity of the office or interfere with the performance of official duties.
- (2) A defender employee should not solicit or accept a gift from anyone seeking official action from or doing business with the community

defender office, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a defender employee may accept a gift as permitted for Federal Public Defender employees by the Ethics Reform Act of 1989 (Pub.L. No. 101-194, § 303, [5 U.S.C. 7351](#) and [7353](#)) and the Judicial Conference regulations on gifts. [Guide to Judiciary Policy, Vol. 2C, §§ 620.10 to 620.45](#). A defender employee should endeavor to prevent a member of a defender employee's family residing in the household from soliciting or accepting any such gift except to the extent that a defender employee would be permitted to do so.

- (3) A defender employee who exercises any supervisory, financial, or procurement authority should report to the chief community defender the value of any gifts of more than *de minimis* value received from any source other than a relative of the reporting individual. The chief community defender must provide an annual report to the board of directors on all such gifts received by covered defender employees.

**[Note: For reporting requirements for federal public defender employees, see [5 U.S.C. App. §§ 101 to 111](#) (Ethics Reform Act financial disclosure provisions).]**

(D) Practice of Law

A defender employee should not engage in the private practice of law. Notwithstanding this prohibition, a defender employee may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the defender employee's family, so long as such work does not present an appearance of impropriety and does not interfere with the defender employee's primary responsibility to the defender office.

**Note:** See *Grant and Conditions, Outside Practice of Law* (prohibiting community defender employees from engaging in the practice of law outside the scope of his/her official duties with the grantee and defining "family" as all relatives listed in [5 U.S.C. § 3110\(a\)\(3\)](#)).

### **Canon 6: A Defender Employee Should Avoid Impropriety and the Appearance of Impropriety in Compensation Received for All Extra-official Activities**

A defender employee may receive compensation and reimbursement of expenses for outside activities provided that receipt of such compensation or reimbursement is not prohibited or restricted by the chief community defender, [Name Abbreviation] board of directors, this code, the grant and conditions, or applicable law, and provided that the source or amount of such payments does not influence or give the appearance of influencing the defender employee in the performance of official duties or otherwise give the appearance of impropriety. Expense reimbursement should be limited to the actual cost of travel, food, and lodging reasonably incurred by a defender employee and, where appropriate to the occasion, by the defender employee's spouse or relative. Any payment in excess of such an amount is compensation. Any defender employee who exercises any supervisory, financial, or procurement authority should make and file reports of compensation and reimbursement for outside activities to the extent prescribed by the chief community defender, [Name Abbreviation] board of directors, grant and conditions, applicable law, or the Judicial Conference of the United States.

Notwithstanding the above, a defender employee (other than a defender employee serving without compensation) should not receive any salary, or any supplementation of salary, as compensation for official services from any source other than the United States through a grant to the community defender organization.

### **Canon 7: A Defender Employee Should Refrain from Inappropriate Political Activity**

A defender employee should not engage in any political activity while on duty or in the defender employee's workplace and may not utilize any federal resources in any such activity. A defender employee may engage in political activity not otherwise prohibited, provided that such activity does not conflict with any other provision of this code, detract from the dignity of the office, or interfere with the proper performance of official duties. A defender employee who participates in political activity should not use his or her position or title in connection with such activity.