

# **NYCLA Foundation Conflict of Interest Policy**

## **PREAMBLE TO NYCLA FOUNDATION CONFLICT OF INTEREST POLICY**

The Conflict of Interest Policy is a component of our system of internal controls and dovetails with our other formal protocols and policies such as the NYCLA Policies and Procedures Manual, the NYCLA Personnel Manual, the Foundation Audit Committee Charter, the Foundation Whistleblower Policy and the Foundation Record Retention Policy. Each of these policies and protocols has been enacted by the Board and communicated to relevant individuals. In addition to enacting these policies and procedures, the Board has taken steps to oversee that the policies and procedures are followed. To the knowledge of the Foundation's leadership, no member of the Board is engaging in any activity that is violative of the Conflict of Interest Policy as presented, and that it is not intended to target any ongoing conduct of Board members. Rather, the "existence" of the Conflict of Interest Policy and the provision for its signature represent the customary means by which the Board exercises its oversight function and its responsibility of "setting the tone at the top." It is imperative not only that the Foundation officers, directors and employees but also others throughout the legal profession and our potential contributors should perceive these matters as indicia of our commitment to maintaining the highest standards of integrity and stewardship. The Foundation should be proud to practice the principles we preach when it comes to issues of this nature.

## **CONFLICT OF INTEREST POLICY\***

A director, officer or employee of the New York County Lawyers' Association Foundation (“the Foundation”), when acting on behalf of the Foundation, must comply with the law, act in an ethical manner, and avoid conflicts of interest or the appearance of conflicts of interest. Specific guidance applicable to financial matters and employees is contained in the Foundation Audit Committee Charter, the NYCLA Employee Personnel Manual and the NYCLA Policies and Procedures Manual. This Conflict of Interest Policy applies to directors, officers and employees of the Foundation.

### **Definitions**

Affiliate. An affiliate of the Foundation is a person or entity that is directly or indirectly through one or more intermediaries, controlled by, in control of, or under common control with the Foundation.

Financial Interest. A person has a Financial Interest if such person would receive an economic benefit, directly or indirectly, from any transaction, agreement, compensation agreement, including direct or indirect remuneration as well as gifts or favors that are not insubstantial, or other arrangement involving the Foundation.

Independent Director. A member of the Board who:

- i. has not been an employee of the Foundation or an Affiliate of the Foundation within the last three years;
- ii. does not have a relative who has been an employee of the Foundation or an Affiliate of the Foundation within the last three years;
- iii. has not received and does not have a relative who has received more than \$10,000 in compensation directly from the Foundation or an Affiliate of the Foundation in any of the last three years (not including reasonable compensation or reimbursement for services as a director, as set by the Foundation);
- iv. does not have a substantial Financial Interest in and has not been an employee of, and does not have a relative who has a substantial Financial Interest in or was an officer of, any entity that has made payments to or received payments from, the Foundation or an Affiliate of the Foundation in excess of the lesser of: (a) \$25,000 or (b) 2% of the Foundation's consolidated gross revenue over the last three years (payment does not include charitable contribution);
- v. is not in an employment relationship under control or direction of any Related Party and does not receive payments subject to approval of a Related Party; and
- vi. does not approve a transaction providing economic benefits to any Related Party who in turn has approved or will approve a transaction providing economic benefits to the director.

Other Interest. A person has an Other Interest in situations where a conflict of interest other than a Financial Interest may arise, which include, but are not limited to, those where the Related Party:

- i. uses his or her position or activities for the Foundation, or could be perceived to be using his or her position or activities for the Foundation, to further the interests of a client or other person; or
- ii. advocates a position (by speaking or voting for the position) that the Related Party knows would benefit a client without disclosing such fact (but not necessarily the name of the client) in accordance with the Rules of Professional Conduct;

provided that, with respect to a potential “Other Interest” in a situation involving an “other person,” such situation will constitute an “Other Interest” for purposes of the provisions set forth under “Review and Voting” in this Conflict of Interest Policy only if, following disclosure of such situation by the Related Party in accordance with the provisions set forth under “Related Party Transactions and Duty to Disclose” in this Conflict of Interest Policy, it is determined that the Related Party has a fiduciary duty to such “other person.”

Related Party. Persons who may be considered a Related Party of the Foundation or an Affiliate of the Foundation under this Conflict of Interest Policy include:

- i. directors, officers, or employees of the Foundation or an Affiliate of the Foundation;
- ii. relatives of directors, officers, or employees of the Foundation or an Affiliate of the Foundation;
- iii. any entity in which a person in (i) or (ii) has a 35% or greater ownership or beneficial interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%; or
- iv. any non-stock entity controlled by one or more directors, officers, or employees of the Foundation or an Affiliate of the Foundation.

Related Party Transaction. Any transaction, agreement or any other arrangement with the Foundation or an Affiliate of the Foundation in which a Related Party has a Financial Interest or an Other Interest. Any Related Party Transaction will be considered a conflict of interest for purposes of this Conflict of Interest Policy.

### **Related Party Transactions and Duty to Disclose**

A Related Party Transaction is not necessarily a prohibited transaction. Under this Conflict of Interest Policy, if the Foundation contemplates entering into a Related Party Transaction, the Audit Committee must determine if the transaction is fair, reasonable, and in the best interests of the Foundation at the time of such determination.

If in the judgment of the Audit Committee a Related Party Transaction is of a magnitude that would otherwise require Board approval, the Audit Committee shall submit such

Related Party Transaction to the Board for consideration, provided it recommends approval of it.

If at any time during his or her term of service a Related Party acquires any Financial Interest or Other Interest or when any matter for decision or approval comes before the Board or the Audit Committee in which a Related Party has a Financial Interest or an Other Interest, the material facts of that Financial Interest, Other Interest or potential Related Party Transaction must be promptly disclosed in writing by the Related Party to the Chair of the Audit Committee and each member of the Board. The Board or the Audit Committee, as the case may be, will then follow the procedures set forth in this Conflict of Interest Policy.

Any failure by a Related Party to disclose to the Board a known Financial Interest, a known Other Interest or a known potential Related Party Transaction may be grounds for removal of such person from the Board and/or his or her termination from the Foundation.

### **Review and Voting**

Non-Participation and Review. All transactions, agreements or any other arrangements between the Foundation and a Related Party, and any other transactions that may involve a potential conflict of interest, shall be reviewed by the Independent Directors. All Related Parties with a Financial Interest or an Other Interest shall leave the room in which such deliberations are conducted. The Independent Directors will then determine whether the contemplated Related Party Transaction is fair, reasonable and in the best interests of the Foundation at the time of such determination. The Foundation will not enter into any Related Party Transaction unless it is determined to be fair, reasonable and in the best interest of the Foundation at the time of such determination.

Consideration of Alternate Transactions and Comparability Data. If the contemplated Related Party Transaction pertains to compensation for services or the transfer of property or other benefit to a Related Party, the Independent Directors must determine that the value of the economic benefit provided by the Foundation to the Related Party does not exceed the value of the consideration received in exchange by obtaining and reviewing appropriate comparable data prior to entering the transaction. In those instances where the contemplated Related Party Transaction does not involve compensation, transfer of property or benefits to a Related Party, the Independent Directors must consider alternative transactions to the extent possible, prior to entering into such transaction.

Comparability Data. When considering the comparability of compensation, for example, the relevant comparability data that the Independent Directors may consider includes, but is not limited to (1) compensation levels paid by similarly situated organizations, both exempt and nonexempt; (2) the availability of similar services within the same geographic area; (3) current compensation surveys compiled by independent firms; and (4) written offers from similar institutions competing for the same person's services.

Voting. The Independent Directors after considering alternate transactions and/or comparability data shall determine in good faith whether the transaction or arrangement is fair, reasonable and in the best interest of the Foundation at the time of such decision. Any such transaction shall be approved by not less than a majority vote of the Independent Directors present at the meeting of the Audit Committee or the Board, as the case may be. The Independent Directors shall make their decision as to whether to enter into the transaction or arrangement and shall contemporaneously document the meeting in accordance with this Conflict of Interest Policy.

All Related Parties with a Financial Interest or an Other Interest must not be present for deliberations and voting on the transaction or arrangement in which he or she has a Financial Interest or an Other Interest. Only Independent Directors shall vote on Related Party Transactions. No Related Party shall vote, act or attempt to influence improperly the deliberations on any matter in which he or she has been determined by the Audit Committee or the Board, as the case may be, to have a Financial Interest or an Other Interest. Any attempt to vote, act, or improperly influence deliberations by a Related Party on any matter with which such person has a Financial Interest or an Other Interest may be grounds for such person's removal from the Board or termination from the Foundation, as applicable.

Compensation. A voting member of the Board or an officer who receives compensation directly or indirectly from the Foundation for services or a director serving as a voting member of any Committee whose jurisdiction includes compensation matters is precluded from voting or acting on matters pertaining to that director's or officer's compensation. No voting member of the Board or any committee thereof whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Foundation, either individually or collectively, is prohibited from providing information to the Board or any committee thereof regarding compensation.

### **Records and Proceedings**

The minutes of all meetings of the Audit Committee or the Board, as the case may be, at which a Related Party Transaction is considered shall contain:

- i. The names of the persons who disclosed or otherwise were determined to have a potential or actual Financial Interest, Other Interest and/or conflict of interest, the nature of the potential or actual Financial Interest, Other Interest and/or conflict of interest, any action taken to determine whether a Financial Interest, Other Interest or conflict of interest exists, and the Audit Committee or the Board's decision as to whether a Financial Interest, Other Interest and/or conflict of interest exists.
- ii. The names of the persons who were present for discussions and votes relating to any determinations under clause (i) above, including whether the Related Party and any Board members not considered to be Independent Directors left the room during any such discussions, the content of such discussions,

including discussion of alternative transactions, and whether or not the transaction with the Related Party was approved by the Audit Committee or the Board, as the case may be.

- iii. The minutes shall be documented contemporaneously to the decision and discussion regarding the Financial Interest, Other Interest or conflict of interest.

### **Misuse of Confidential Information of the Foundation**

Except with disclosure to and consent from the Foundation or in furtherance of the Foundation activities in which he or she is authorized to act, a director, officer or employee shall not reveal to any third person or use for his or her own purposes any of the Foundation's proprietary business or financial information, records, results, work product or other information acquired in connection with the director's, officer's or employee's Foundation activities that is not generally available.

### **Legal Obligations of Directors and Officers**

The obligations of directors and officers to the Foundation are governed by New York's Not-for-Profit Corporation Law ("NFPCL") as well as precedents long established by the New York courts. The statutes and legal precedents establish that the directors and officers owe a fiduciary duty to the Foundation, including the duty of care and the duty of loyalty. Nothing in this Conflict of Interest Policy is intended to reduce the duties of disclosure contained in NFPCL §715.

The duty of care owed by a director or officer to a non-profit organization requires that a director or officer shall discharge the duties of his or her respective position in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

The duty of loyalty owed by a director or officer to a non-profit organization requires that the director or officer act in a manner that does not harm the organization. The duty of loyalty requires the faithful pursuit by the director or officer of the interests of the organization rather than the financial or other interests of the director or another organization he or she serves. It further requires a director or officer to avoid using his or her position to obtain improperly a personal benefit or advantage that might more properly belong to the organization. To satisfy the duty of loyalty, the director or officer must act in good faith and in a manner he or she reasonably believes to be in the best interests of the organization.

To the extent not otherwise specified herein, the provisions of NFPCL §715-a(b) and (c) are incorporated by reference herein.

A director shall abstain from voting on any matter in which he or she has a conflict. No director shall participate in or be present at any meeting of the Board on a matter in which he or she has a conflict of interest.

### **Preservation of Tax Exemption**

Directors, officers and employees should be aware that the Foundation is a charitable organization and that, in order to maintain its federal tax exemption, (i) no part of the Association's activities shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and (ii) it shall not participate in, or intervene in, whether by publication or distribution of statements or otherwise, any political campaign on behalf of any candidate for public office.

The Foundation and its Board members shall not be bound by any political statements or activity of any director, officer or employee. No director, officer or employee who makes a political statement or engages in political activity shall state or imply that such statement or activity is on behalf of the Foundation.

### **Restrictions on Representing the Foundation**

Each director, officer or employee when acting as a representative of the Foundation shall conduct himself or herself so as not to adversely affect the Foundation's public image or credibility or hinder the accomplishment of its mission. In any interaction with the public, press or other entities, a director, officer or employee may not speak for the Foundation other than to repeat explicitly stated Board positions. However, a director, officer or employee who is a member of the Foundation committee or section may state the views of the committee or section in accordance with the policies of the committee or section or as directed by the Board.

A director, officer or employee of the Foundation may not use Foundation stationery for personal correspondence or to conduct business or marketing on behalf of his or her law firm, employer or other organization.

### **Administration of the Conflict of Interest Policy**

If a director, officer or employee has reason to believe that another director, officer or employee has an undisclosed conflict or potential conflict of interest or other violation of this Conflict of Interest Policy, he or she should disclose the reason for such belief to the Chair of the Audit Committee, who will advise the Board of the existence of an alleged violation.

### **Initial and Annual Written Disclosures**

Prior to a director's initial election to the Board, or an officer or employee's employment at the Foundation, and thereafter on an annual basis, all directors, officers and employees shall disclose in writing to the Secretary of the Foundation:

- i. any entity of which such person or a relative of such person is an officer, director, trustee, member, owner or employee and with which the Foundation has a relationship;
- ii. any Financial Interest or Other Interest such person may have in any corporation, organization, partnership or other entity that provides professional or other goods or services to the Foundation for a fee or other compensation; and
- iii. any position or other material relationship such director, officer, employee or relative of such person, may have with any not-for-profit corporation with which the Foundation has a business relationship.

Each director, officer and employee shall annually sign and submit to the Secretary of the Foundation a statement that affirms such person: (a) has received a copy of this Conflict of Interest Policy, (b) has read and understands the Conflict of Interest Policy, and (c) has agreed to comply with the Conflict of Interest Policy.

\* The Conflict of Interest Policy, including the Preamble, was approved by the Board of Directors of the New York County Lawyers' Association Foundation at its regular meeting on January 25, 2005 and amended on June 19, 2014.