

## **Alternative 1**

### **Title 6. Governance**

#### **Division 3. Conflicts of Interest**

##### **Chapter 1. Conflict of Interest Policy for State Bar Subentities**

###### **Rule 6.70. Subentities Subject to Conflict of Interest Policy**

The conflict of interest policy set forth in this chapter is applicable to the State Bar subentities listed below:

Committee of Bar Examiners (CBE)

California Board of Legal Specialization (CBLS)

Council on Access and Fairness (COAF)

Client Security Fund Commission (CSF)

Lawyer Assistance Program Oversight Committee (LAP)

California Commission on Access to Justice (CCAJ)

Legal Services Trust Fund Commission (LSTFC)

Committee on Professional Responsibility and Conduct (COPRAC)

###### **Rule 6.71. Intent of Conflict of Interest Policy**

The conflict of interest policy is intended to establish standards and procedures to assist subentity members in avoiding conflicts of interest that may interfere with the subentity's ability to discharge its duties without conflicts of interest or the appearance of conflicts of interest.

###### **Rule 6.72 Financial Conflicts**

Subentity members are disqualified from making, participating in the making of, or attempting to influence any decision of the subentity that has a reasonably foreseeable material effect on their financial interests.

Financial interests for purposes of this policy are defined by Government Code section 87103, and include income, gifts, and indirect or direct interests in business entities, investments, and real property.<sup>1</sup>

#### Rule 6.73 Gifts

Financial interests include gifts as defined by Government Code section 87103. A gift is a payment or other benefit that confers personal benefit where equal value is not provided in return.

- Exceptions include: gifts from close relatives, reciprocal exchanges on holidays, gifts returned unused or donated to charity, and devises or inheritances.
- Financial interests generally include gifts to spouses or dependent children.
- As of January 2019, receipt of gifts totaling \$500 or more from a single source within 12 months prior to the decision in question results in disqualification with respect to that source.

#### Rule 6.74 Personal Conflicts

Subentity members are disqualified when they have a personal nonfinancial interest that prevents them from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions for their respective subentity.

The question whether a personal conflict exists is highly fact-specific. Examples of decisions in which a subentity member has a personal nonfinancial interest include decisions affecting friends, family, professional/business associates, or organizations or persons to which the subentity member owes fiduciary duties or in which they otherwise have an interest, including but not limited to organizations for which the subentity member serves as a board member or manager.

#### Rule 6.75 Disclosure of Conflict

A subentity member required to disqualify himself or herself because of a conflict of interest should initially disclose the conflict to the subentity's chairperson and shall:

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<sup>1</sup> As of January 2019, under Government Code section 87103, a financial interest is any source of income that is received or promised to the subentity member and totals more than \$500 in the 12 months prior to the decision in question.

- (1) Immediately disclose to the subentity the fact that he or she has a disqualifying financial or personal interest;
- (2) Withdraw from any participation in the matter;
- (3) Refrain from attempting to influence another subentity member; and
- (4) Refrain from voting.

It is sufficient for the purpose of this provision that the member indicate only that he or she has a disqualifying financial or personal interest.

#### Rule 6.76 Appearance of Conflict

Even where the specific criteria set forth in this policy are not met and a true conflict of interest does not exist, subentity members should be sensitive to the appearance of conflict, and should carefully consider whether to participate in a decision-making process in which there may be an appearance of conflict.

#### Rule 6.77 Mandatory Resignation from Subentity or Elimination of Conflict

If, during any three-month period, a subentity member is disqualified under Rule 6.72 or Rule 6.74 from participating in more than 25 percent of the subentity's votes, including the votes of any sub-committee on which the subentity member sits, the subentity member must either eliminate the conflict(s) causing disqualification (for example, through divestment of a financial interest) or resign from membership of the subentity.

## Alternative 2

### Title 6. Governance

#### Division 3. Conflicts of Interest

##### Chapter 1. Conflict of Interest Policy for State Bar Subentities

###### Rule 6.70. Subentities Subject to Conflict of Interest Policy

The conflict of interest policy set forth in this chapter is applicable to all State Bar subentities except the Commission on Judicial Nominees and the Review Committee of the Commission on Judicial Nominees.

###### Rule 6.71. Intent of Conflict of Interest Policy

The conflict of interest policy is intended to establish standards and procedures to assist subentity members in avoiding conflicts of interest that may interfere with the subentity's ability to discharge its duties without conflicts of interest or the appearance of conflicts of interest.

###### Rule 6.72 Financial Conflicts

Subentity members are disqualified from making, participating in the making of, or attempting to influence any decision of the subentity that has a reasonably foreseeable material effect on their financial interests.

Financial interests for purposes of this policy are defined by Government Code section 87103, and include income, gifts, and indirect or direct interests<sup>2</sup> in business entities, investments, and real property.<sup>2</sup>

###### Rule 6.73 Gifts

Financial interests include gifts as defined by Government Code section 87103. A gift is a payment or other benefit that confers personal benefit where equal value is not provided in return.

- Exceptions include: gifts from close relatives, reciprocal exchanges on holidays, gifts returned unused or donated to charity, and devises or inheritances.

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<sup>2</sup> As of January 2019, under Government Code section 87103, a financial interest is any source of income that is received or promised to the subentity member and totals more than \$500 in the 12 months prior to the decision in question.

- Financial interests generally include gifts to spouses or dependent children.
- As of January 2019, receipt of gifts totaling \$500 or more from a single source within 12 months prior to the decision in question results in disqualification with respect to that source.

#### Rule 6.74 Personal Conflicts

Subentity members are disqualified when they have a personal nonfinancial interest that prevents them from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions for their respective subentity.

The question whether a personal conflict exists is highly fact-specific. Examples of decisions in which a subentity member has a personal nonfinancial interest include decisions affecting friends, family, professional/business associates, or organizations or persons to which the subentity member owes fiduciary duties or in which they otherwise have an interest, including but not limited to organizations for which the subentity member serves as a board member or manager.

#### Rule 6.75 Disclosure of Conflict

A subentity member required to disqualify himself or herself because of a conflict of interest should initially disclose the conflict to the subentity's chairperson and shall:

- (5) Immediately disclose to the subentity the fact that he or she has a disqualifying financial or personal interest;
- (6) Withdraw from any participation in the matter;
- (7) Refrain from attempting to influence another subentity member; and
- (8) Refrain from voting.

It is sufficient for the purpose of this provision that the member indicate only that he or she has a disqualifying financial or personal interest.

#### Rule 6.76 Appearance of Conflict

Even where the specific criteria set forth in this policy are not met and a true conflict of interest does not exist, subentity members should be sensitive to the appearance of conflict, and should carefully consider whether to participate in a decision-making process in which there may be an appearance of conflict.

**Rule 6.77 Mandatory Resignation from Subentity or Elimination of Conflict**

If, during any three-month period, a subentity member is disqualified under Rule 6.72 or Rule 6.74 from participating in more than 25 percent of the subentity's votes, including the votes of any sub-committee on which the subentity member sits, the subentity member must either eliminate the conflict(s) causing disqualification (for example, through divestment of a financial interest) or resign from membership of the subentity.