



The State Bar *of California*

Ethics and Conflict of Interest

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Trustees' general duty to act ethically and consistent with fiduciary duties

- Trustees must conduct themselves ethically, honestly, and with integrity in all dealings relating to the State Bar
- Trustees are fiduciaries who must exercise disinterested skill and undivided loyalty to the State Bar in their work as Trustees
- Trustees must act for the common good of Californians, and not for any private or personal interest
- Trustees must not use State Bar resources for private gain or any political or personal purposes
- Trustees must avoid acting under any conflicts of interest



What is a conflict of interest?

Government officials and employees owe a paramount duty of loyalty to the public in their performance of their public duties.

A conflict of interest occurs any time a government official or employee make a decision that is impacted—or appears to be impacted—by personal or private considerations of the official/employee.

Each Trustee is responsible for disqualifying/recusing themselves from participating in a decision where they have a conflict of interest.





Types of Conflict of Interest

Financial Conflicts

- Occur when a Trustee participates in a decision that has reasonably foreseeable impact on the Trustee's financial interests (such as a source of income, an investment, or a source of gifts)

Personal conflicts

- Occur when a Trustee participates in a decision where the Trustee has a personal interest in the decision that *may* prevent the Trustee from applying disinterested skill and loyalty to the public in making the decision
- Concept includes appearances of conflict: Occurs when a reasonable person would perceive a conflict



Why is avoiding conflict of interest important?



Public officials are held to high standards of ethical conduct, and public trust is essential for an agency to perform its public service



The State Bar's public protection mission cannot be served if State Bar decisions are made—or are perceived to be made—based in any part on the financial or personal interest of an official, rather than the public interest



Nor can that mission be served if the public does not perceive the State Bar to be impartial





Why is avoiding conflict of interest important?

These principles are reflected in long-standing common law decisions regarding conflicts of interest:

“A public officer is impliedly bound to exercise the powers conferred on him with **disinterested skill, zeal, and diligence and primarily for the benefit of the public** Actual injury is not the principle the law proceeds on. Fidelity in the agent is what is aimed at, and as a means of securing it the law will not permit him to place himself in a position in which he may be tempted by his own private interests to disregard those of his principal.”

Noble v. City of Palo Alto, 89 Cal. App. 47, 51 (1928).



Sources of Conflicts of Interest Rules



**Political
Reform Act
(Gov't Code
Section 81000,
et seq.)**



**Gov't Code
Section 1090**



**State Bar Act (Bus.
& Prof. Code
Section 6036)**

*Recently amended
to include personal
interest that may
create a conflict*




**Conflict of
Interest Code
for Trustees of
the State Bar
of California**



**State Bar Rule
2201**





Financial Conflicts: Bus. & Prof. Code Section 6036 (a) and Conflict of Interest Code

You must disqualify yourself from making, participating in the making of, or attempting to influence any decision that will have a reasonably foreseeable material effect, distinct from its effect on the public generally, on your financial interests.



Financial Conflicts: Bus. & Prof. Code Section 6036 (a) and Conflict of Interest Code (*cont.*)

- Financial interests include sources of income and gifts, and indirect or direct interests in business entities, investments, and real property; generally includes the financial interests of your spouse and dependents
- Materiality is a fact-intensive inquiry; if you have any financial interest that may be affected at all, consult with the Office of General Counsel regarding materiality
- “Distinguishable from effect on the public generally” requirement means that Trustees who are licensees do not generally have a financial conflict based on a decision that affects all licensees equally





Personal Conflicts: Bus. & Prof. Code Section 6036(b); Conflict of Interest Code

- You must disqualify yourself from making, participating in the making of, or attempting to influence any decision where there exists a personal interest that may prevent you from applying disinterested skill and undivided loyalty to the State Bar in making or participating in the making of decisions
 - Statute recently amended to extend to perceived conflicts—not just conflicts that *will* prevent disinterested skill and undivided loyalty—and to remove the qualifier that the personal conflict must be “nonfinancial.”
 - Even if a Trustee believes they can apply disinterested skill and undivided loyalty despite the existence of a personal interest, they have a conflict if it would appear to a reasonable person that the interest would prevent the Trustee from applying disinterested skill and undivided loyalty to the State Bar.



Personal Conflicts: *Effect on Trustee's or Their Personal or Professional Relationships (cont.)*

- A Trustee likely has a disqualifying personal interest if a State Bar decision would have an impact, distinct from the impact on the public generally, on the Trustee or any person with whom the Trustee has, or in the previous 12 months has had, a personal or professional relationship.
 - A Trustee has a “personal relationship” with a person if the person and the Trustee are:
 - Relatives; or
 - They have another relationship of a nature that could be perceived by a reasonable person as personal and potentially affecting the Trustee’s ability to act impartially with respect to the person.
 - Impact can be a financial or other benefit or burden.



Personal Conflicts: *Effect on Trustee's or Their Personal or Professional Relationships (cont.)*

- A Trustee likely has a “professional relationship” with a person if the Trustee is currently or within the previous 12 months:
 - is an employer or coworker of the person
 - represents or is a member of an entity that represents the person
 - is represented by the person or an entity in which the person is a member; or
 - has another relationship of a nature that could be perceived by a reasonable person as professional and potentially affecting the individual's ability to act impartially with respect to the person



Contracts: *Government Code 1090*

“[Covered individuals] shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.”

- If one Trustee has a “financial interest,” the State Bar cannot enter into the contract.
- Preventing contract-related conflicts depends on full disclosure of Trustees’ financial interests, primarily through Form 700s.



Conflict of Interest: *Consequences of Violations*

Violations of Conflict of Interest laws and policies can carry serious consequences:

- Personal fines
- Professional discipline (for licensees)
- Disqualification from holding public office
- Criminal sanctions
- Reputational harm to Trustee and State Bar
- Invalidity of State Bar contracts (for certain conflicts involving contracts)
- Admonition/Sanction/Censure by Board



Gifts

- Financial interests subject to disclosure and disqualification rules include gifts
- A gift is a payment or other benefit that confers personal benefit where you do not provide equal value in return
- Subject to various exceptions including gifts from close family members and reciprocal exchanges of gifts of similar value on birthdays and holidays
- Gifts aggregating \$50 from sources in the disclosure categories listed in the Conflict of Interest Code must be reported on your Form 700
- You may not receive any gift of more than \$590 from any sources in the disclosure categories listed in the Conflict of Interest Code



Additional Prohibitions: Honoraria & Loans

- Trustees may not accept honoraria for speeches, articles, or event attendance from a source reportable on Form 700
 - Exception for income earned in connection with customary services in bona fide business, trade, or profession
- Trustees may not receive personal loans from any officer, employee, Trustee, consultant, or contractor of the State Bar
 - Subject to exceptions including for commercial loans and credit card transactions, so long as made in the lender's regular course of business on terms available to public



Addressing and Avoiding Conflicts: Disclosure

- Disclosure: Potential sources of conflicts are disclosed in Form 700 filings (financial) and through the Rule 2201 conflict of interest form (financial/personal)
 - This increases transparency and helps employees identify potential conflicts before they occur



Addressing and Avoiding Conflicts: Disqualification

- Bus. & Prof. Code section 6036(d) sets forth a State Bar-specific disqualification/recusal process: Where you think a conflict exists or may exist, you should not participate in the matter, any discussion or decision relating to it, or try to influence any decisions
 - (1) Immediately disclose that you have a financial or personal interest at any public meeting at which the decision is considered
 - (2) Withdraw from any participation in the matter
 - (3) Refrain from attempting to influence another Trustee or staff
 - (4) Refrain from voting



Disqualification of Trustee by the Board

- Trustees are responsible for determining if they have a disqualifying conflict and to disqualify themselves
- However, if facts indicating existence of a conflict are brought to the Office of General Counsel's attention and the Office of General Counsel advises disqualification, Trustees are generally expected to comply with advice
 - If Trustee does not disqualify, the General Counsel will inform the Board as appropriate, and any Trustee may move to preclude the Trustee from participation in the decision
 - The impacted Trustee and the General Counsel may speak on the motion
 - The impacted Trustee may not vote on the motion



Board Enforcement Actions

- Board Policy Manual provides for enforcement actions by the Board if a Trustee is accused of violating ethics or conflicts of interest laws or regulations
 - The procedures include notice and an opportunity to be heard by impacted Trustees, with greater process provided for more severe actions
 - Allegations should be made to the chair and/or vice-chair or if they are subject of the allegation, to Executive Director and/or General Counsel
 - Executive Director and/or General Counsel will take appropriate steps to review, investigate, and recommend course of action



Board Enforcement Actions: *cont.*

- **No action:** upon determination of no violation
- **Admonition:** least severe; typically directed to all Trustees, reminding them that a particular type of conduct is in violation of applicable law or regulations;
- **Sanction:** directed to a particular Trustee based on particular conduct determined to be in violation of applicable law or regulations; not considered punishment
- **Censure:** most severe from of action available to Board of Trustees; used for serious offenses; may be combined with loss of committee assignments or referral to authority that appointed Trustee along with recommendation that Trustee be removed; requires separately noticed hearing



Identifying Potential Conflicts: *Overview*

- It is each Trustee's responsibility to follow ethics and conflicts of interest laws and regulations; liability for violations ultimately falls on Trustees as individuals
- Trustees should review all agenda items in advance of meetings and consider whether they have connections to individuals or entities mentioned in the items or that would likely be affected by a decision on the item
- Office of General Counsel (OGC) is available to provide information and advice



Identifying Potential Conflicts: *When to Seek Advice*

- Trustees should meet with OGC shortly after taking office to discuss potential sources of conflicts
- Trustees are encouraged to contact OGC to discuss any changed circumstances that could give rise to conflicts
 - New employers, positions, or responsibilities
 - New membership or roles in professional associations or other non-profits; new volunteer roles or activities
 - Instances in which a person with whom a Trustee has a personal or professional relationship is involved in State Bar business



Resources and Contact Information

- OGC is available to discuss and advise on any ethics- or conflict-related questions or concerns:
 - General Counsel Ellin Davtyan: ellin.davtyan@calbar.ca.gov
 - Assistant General Counsel Brady Dewar: brady.dewar@calbar.ca.gov
- FPPC provides useful resources on conflicts-related issues:
 - [Overview of Conflicts of Interest](#)
 - [Fact Sheet on Gifts, Honoraria, Travel and Loans](#)
- Section 11 of the [Board of Trustees Policy Manual](#) provides an overview of ethics and conflicts issues



Questions?

