

Updated: June 4, 2020

RECUSAL POLICY FOR LAWYER BOARD MEMBERS

Background

Each Director of the Board of Directors (the “Board”) of the Public Interest Law Center (the “Law Center”) has, by virtue of her position as a director, fiduciary obligations, including the duties of loyalty, care, and obedience. For example, as part of the duty of loyalty, each Director has the obligation to avoid financial conflicts of interest. *See* Policy Regarding Board Member Financial Conflicts of Interests. This Policy describes the additional obligations owed by Directors who are practicing lawyers (“lawyer-Directors”).

The need for the Policy arises because the Law Center represents clients and files lawsuits on behalf of those clients. From time to time, the Law Center may file a lawsuit on behalf of a client whose interests are adverse to those of a client represented by a Director or the Director’s law firm. The Law Center also may disclose confidential information about its cases and clients to its Directors, in particular Directors who serve on the Board’s Litigation Committee. Both of these possibilities require that the Law Center and lawyer-Directors be mindful of the Directors’ obligations to the Law Center and to their (or their law firm’s) clients.

The Pennsylvania Rules of Professional Conduct provide the framework for lawyer-Directors’ obligations. As a starting point, a lawyer may serve as a director of a legal services organization such as the Law Center even though the Law Center is representing a client adverse to a client of the lawyer or the lawyer’s firm.¹ That is because a lawyer-Director does not *represent* the Law Center or its clients. Rather, she is a fiduciary providing the type of governance services expected of a member of the board of a not-for-profit organization.²

Rule 6.3 does, however, require that a lawyer-Director recuse herself from participating in or becoming involved with certain decisions of the Law Center. Specifically, a lawyer-Director is obligated to refrain from making a decision or taking an action on behalf of the Law Center that (a) is inconsistent with the Director’s duties to her client or that of her firm; or (b) could have a material adverse effect on the Law Center’s representation of a client.³ As part of these obligations, lawyer-Directors should avoid exposure to confidential information regarding Law Center cases and clients on matters in which the Director is obligated to refrain from making a decision or taking an action on behalf of the Law Center.

The Law Center is committed to provide lawyer-Directors the information they need to discharge these obligations. The Law Center therefore adopts the following policy, which is intended to identify matters in which the interests of a lawyer-Director’s client or a client of her firm are adverse to the interests of the Law Center’s clients; or where a decision by a Director could have a material adverse effect on the Law Center’s representation of a client.

¹ Rule 6.3, Pennsylvania Rules of Professional Conduct

² *Id.*, Comment 1.

³ Rule 6.3(a), (b), Pennsylvania Rules of Professional Conduct.

Policy

1. This policy uses the term “need for recusal” to mean the need arising from circumstances in which the interests of a client of the Director or the Director’s firm are adverse to the interests of the Law Center’s client or prospective client; or where a decision by the Director could have a material adverse effect on the Law Center’s representation of a client.

2. Prior to discussing any potential litigation with Directors, the Law Center staff will circulate to the Directors the name(s) of the Law Center’s potential client(s), the names of other parties, and whether the interests of such other parties are expected to be adverse to the interests of the Law Center’s potential client(s). The communication from the Law Center staff will ask each lawyer-Director to notify the Law Center if the Director needs to be “recused from decision-making or discussion of non-public information regarding the matter, in accordance with the Recusal Policy for Lawyer Board Members” (or words to that effect). Lawyer-Directors will then determine whether a need for recusal exists as that term is used in this policy.

3. If a lawyer-Director determines that a need for recusal exists, she will inform the Law Center staff, recuse herself from any Board deliberations regarding the matter, and avoid any exposure to confidential information regarding the client(s) or case (see Paragraph 6 below).

4. The Law Center shall maintain a litigation docket that identifies the name of each active case, the parties, the court, and a brief description, including the status of the case. The docket shall be updated as new parties are added or identified, and it shall be circulated monthly to Directors with additions clearly marked; newly elected Directors shall be provided with the docket promptly after their election.

5. Each lawyer-Director has the responsibility to review the litigation docket and advise the Law Center of any need for recusal. Lawyer-Directors should check on a regular basis to determine whether a new need for recusal has arisen, either because a party has been added to the Law Center’s lawsuit or because she or her firm has taken on a new client.

6. No confidential information regarding a case or the Law Center’s client(s) will be distributed to or discussed in the presence of any lawyer-Director who has advised the Law Center of a need for recusal. If non-public information concerning a client or matter is to be discussed at a meeting of the Board or any committee thereof, all lawyer-Directors with a need for recusal regarding that client or matter shall absent themselves from the meeting while the discussion takes place.

7. If a lawyer-Director participates in or expects to participate⁴ in representing a party in any matter in which the Law Center represents or expects to represent an adverse party in the same matter (e.g., the Law Center represents client P against D, and the lawyer-Director participates in representing D in that matter), the lawyer-Director will immediately inform the Law Center of the adverse representation or expected representation so that the Law Center may

⁴ “Participation” refers to the Lawyer-Director’s own participation in the matter; she is not deemed to participate by virtue of being or because she is a lawyer in a firm that is participating in the matter.

determine whether any steps should be taken beyond the recusal measures set forth above (including, in an appropriate case, requiring the lawyer-Director to resign from the Board).

8. Finally, the Law Center maintains two further safeguards to maintain the confidences of its clients and matters.
 - a. No Director shall have access to any client files which may contain confidential information, unless that Director is acting as the Law Center's co-counsel or the Law Center staff grants access for the purpose of consultation with that Director or other reason in accord with the applicable rules of professional conduct.
 - b. Confidential client information relating to the Law Center's representation of a client may be disclosed only to Directors, but only for a reason in accord with the applicable rules of professional conduct or (1) if the client consents after consultation regarding the potential benefits and risks of disclosure and (2) if such disclosure is necessary in order to obtain Board or Litigation Committee approval of the litigation and/or expert consultation in connection with the provision of legal services to the client. In making any such disclosure, no more information shall be disclosed than is necessary to achieve the purpose of the communication. By their participation, Directors agree to maintain the confidentiality of any client information disclosed to them.