

The American Law Institute

Conflicts of Interest Policy

(Adopted by resolution of the Council on October 23, 2009.)

I. Purpose

A. The Institute expects all those who hold a position of responsibility or trust in the Institute to conduct their duties in accord with the best interests of the Institute and high ethical standards. The purpose of this Conflicts of Interest Policy (“Policy”) is to further that objective.

B. Section II of this Policy applies to officers and Council members. Sections III, IV, and V apply to officers and members of the Council and Audit and Investment Committees.

II. Conflicts of Interest Relating to Institute Projects¹

In order to preserve the Institute’s reputation for thoughtful and disinterested analysis of legal issues, the participation of an officer or Council member in the consideration of an ALI project should be based on personal and professional experience and conviction, without seeking to advance the economic, political, or client interest of the officer or Council member or of his or her clients, family members (as defined in section IV.A.1 below), or other persons with whom the officer or Council member has a business, institutional, or other relationship.

III. Gifts and Favors

A. No person to whom this section III applies should accept, either directly or indirectly, any gift or favor from a company, organization, or other person or entity that is doing or seeking to do business with ALI, unless the gift or favor is nominal or otherwise could not reasonably be intended to reward or influence official action. (“Nominal” means that the aggregate fair market value of all gifts and favors from the same or a related source within a single calendar year is less than \$100; cash gifts, no matter their size, are never nominal.)

B. This Policy does not prohibit acceptance of a meal, complimentary or upgraded guest room, or other moderate benefit provided as part of an overall event or hotel contract or provided in conjunction with negotiations or discussions relating to an existing or possible contract, such as might be conducted with a hotel, restaurant, or other venue, service provider or publisher, or other third parties. The President or Chair of Council should be consulted if there reasonably may be a question about the propriety of accepting a particular gift or favor. (If the President or Chair of Council has a question, the chair of the Audit Committee should be consulted.)

¹ See also (i) Council Rule 4.03, which applies to all Institute members, including Council members, who participate in proceedings on Institute projects, and (ii) the Institute’s *Policy Statement and Procedures on Conflicts of Interest*; although primarily addressed to project Reporters and to the Director, the Policy Statement contains two paragraphs, B.1 and B.8, that also apply to Council members (as well as to project Advisers and Consultative Group members).

IV. Possible Conflicts of Interest Relating to Transactions

A. Disclosure; Procedures

1. A conflict of interest may be present whenever a person to whom this section IV applies has a substantial financial interest (as defined in part B below), or knows that a family member has a substantial financial interest, in a transaction or arrangement to which ALI is or may be a party. Family members include (a) spouse or domestic partner; (b) parent, child, grandchild, grandparent, great-grandparent, great-grandchild, sibling by whole or half-blood, and the spouses or domestic partners of those individuals.

2. A person to whom this section IV applies who knows that he or she has an actual or potential conflict of interest must disclose the interest and all material facts (a) to the President or Chair of Council prior to participating in discussion, consideration, or action on the transaction or arrangement under consideration by ALI, and (b) through the annual disclosure process described in section V below. (If the President or Chair of Council is the person who has the actual or potential conflict of interest, disclosures pursuant to clause (a) above must be made to the Chair of the Audit Committee.)

3. The interested individual may participate in the information-gathering stage of the discussion of the Council or the relevant Committee, as applicable, but may not be present during, or participate in, the consideration or action on the transaction or other arrangement. The interested individual may be counted in determining the presence of a quorum.

4. For disclosures made pursuant to clause (a) of paragraph 2 above, if there is a question as to whether a conflict of interest exists, the question will be resolved by a vote of the Council or Executive Committee in which the interested individual may not vote.

B. Substantial Financial Interest

1. A person has a substantial financial interest if the person has, directly or indirectly, through business or investment:

- a. an actual or potential ownership or investment interest in excess of 5% in any entity with which ALI has or is negotiating a transaction or arrangement, or
- b. a compensation arrangement with any entity or individual with which ALI has or is negotiating a transaction or arrangement that would reasonably be expected to be affected to the extent of \$1000 or more by the proposed transaction or arrangement.

2. Ownership is measured by stock ownership (either voting power or value) of a corporation, profits or capital interest in a partnership or limited liability company, membership interest in a nonprofit organization, or beneficial interest in a trust, and includes indirect ownership (for example, ownership in an entity that has ownership in the entity in question).

3. Compensation includes direct and indirect remuneration as well as gifts or favors that are not nominal (as defined in section III above).

4. The types of transactions and arrangements contemplated by this section IV include but are not limited to: contracts to purchase equipment and supplies; publication and licensing agreements; leases; employment and benefit contracts; hotel, restaurant, and travel agreements; and contracts for banking, investment, auditing, building management, construction, legal, brokerage, consulting, equipment maintenance, satellite, and other services.

5. In determining whether to approve a contract or other transaction, the restrictions regarding excess benefit transactions under § 4958 of the Internal Revenue Code will be taken into account.²

V. Annual Disclosure Process

On an annual basis, each officer and member of the Council and Audit and Investment Committees must complete and sign the Annual Disclosure Questionnaire sent to them by the Institute. The conflict-of-interest disclosures in the completed Questionnaires will be reviewed annually by the Audit Committee. If the Audit Committee determines that an actual or potential conflict of interest exists, it will recommend an appropriate remedy to the President or Chair of Council. (If the President or Chair of Council is the person who has the actual or potential conflict of interest, the Audit Committee will make its recommendation to the Executive Committee.)

² An example of an excess benefit transaction is as follows: The going rate for executive directors of comparable nonprofit organizations is \$X, but the organization decides to pay its executive director \$400,000 more than \$X.