

## **BOARD AND STAFF**

### **CONFLICT OF INTEREST AND ETHICS POLICY**

**APPROVED BY THE BOARD OF DIRECTORS ON MAY 18, 2011**

The purpose of this policy is to provide guidance to directors, officers, members and employees of the San Mateo County Bar Association (SMCBA) on the handling of actual and potential conflicts of interest. This policy is not intended replace any applicable laws governing conflicts of interest applicable to nonprofit mutual benefit corporations.

#### **I. Directors: Material Financial Interests or Common Directorships**

Directors are expected to disclose to the board of directors material facts and common directorships as discussed below in advance of any pertinent vote.

Pursuant to Section 7233(a) of the Corporations Code, contracts or other transactions involving the SMCBA in which a director has a material financial interest are presumptively void or voidable unless (1) the material facts as to the transaction and the director's interest are fully disclosed or known to the board of directors, and (2) the board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the interested director(s). Section 7233(b) specifies that contracts or other transactions between the SMCBA and another entity of which one or more of the SMCBA directors are also directors of that entity are presumptively void or voidable unless (1) the material facts as to the transaction and the director's other directorship are fully disclosed or known to the board of directors, and (2) the board authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient without counting the vote of the common director(s).

#### **II. Other Potential Conflicts of Interest**

A potential conflict of interest may arise on the part of a director, officer or employee of the SMCBA when a personal, business, financial, or, in the case of a lawyer, client interest may interfere with the person's duty of loyalty to the SMCBA. A personal interest may include the interest of a close family member or partner or an organization the director, officer or employee supports. To uphold the highest standards of transparency and integrity, directors, officers and employees are expected to disclose the circumstances that could be deemed to represent a conflict of interest prior to participating in decisions, contracts or transactions involving the SMCBA.

#### **III. SMCBA Business Relationships**

Members and vendors will be dealt with fairly and honestly. Improper acts or the appearance of impropriety will be avoided.

- a) SMCBA employees will notify their immediate supervisor if they are offered any gifts in connection with a purchasing decision.
- b) Personal discounts not generally available to the public or through an established discount program may not be accepted by SMCBA employees from a member, client or supplier, except as approved by the Executive Director.
- c) Complimentary hotel rooms, upgrades and services may be accepted by employees when offered in conjunction with scheduled programs or as part of the evaluation process for future programs. As part of their public relations program, some hotels – including those that have relationships with the Association – offer complimentary rooms and services such as spa, golf or tennis. Employees may accept these provided such acceptance is not contingent on future contracts.
- d) SMCBA employees may not accept gifts of any significance (a value of \$100 or more) from vendors or members without the approval of the Executive Director. SMCBA employees may accept gifts considered common business handouts (pens, pads, t-shirts, umbrellas, meals, etc.) provided such gifts have a value of less than \$100.
- e) The Executive Director will not accept gifts of any significance (a value of \$100 or more) from vendors or members without the approval of the President.

#### IV. Administration of this Conflict 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 Policy, s/he should disclose the reason for such belief to the Executive Director, or the President of the Board of Directors, who will, in consultation with legal counsel if appropriate, advise the SMCBA regarding a potential violation. If and when the SMCBA concludes that such conflict, potential conflict, or violation has occurred, the SMCBA will so notify the person in conflict or violation, and shall take such action as the SMCBA deems appropriate. Violations of this policy may subject Board members to removal from the Board pursuant to the Bylaws.

Whenever this Policy requires a director, officer, or the Executive Director of the SMCBA to make disclosure to the SMCBA of circumstances that could be deemed to be a conflict of interest, such disclosure shall be made to the Board of Directors or President. When a conflict of interest has been determined to exist and is relevant to a matter that comes under consideration or requires action by the Board, or a Board committee, the interested person shall call it to the attention of the President or Committee Chair. If determined to be appropriate by the President or the Committee

Chair, the interested person shall not be present during Board or committee discussion or decision on the matter. However, that person shall provide the Board or applicable committee with any and all relevant information on the particular matter. The minutes of the meeting of the Board or its committee shall reflect that the conflict of interest was disclosed, whether the interested person was present or not during discussion or decision on the matter, whether the interested person was present or not at the time any vote was taken and that the interested person did not vote if a vote was taken.

Whenever this Policy requires an employee to make disclosure of circumstances that could be deemed a conflict of interest, such disclosure shall be made to the Executive Director, who shall determine whether a conflict of interest exists, and if so, what measures will be taken in light of said conflict. Violations of this policy may subject SMCBA employees to appropriate disciplinary action, as set forth in SMCBA Personnel Manual, as applicable.

For questions regarding this Policy, please consult the Executive Director, or President. All employees, officers, and directors shall sign a statement each year affirming that they have read this policy and agree to comply with it.

#### V. Confidential Information of SMCBA

Except with the prior written consent of the SMCBA or in furtherance of SMCBA activities in which s/he 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 SMCBA's proprietary business or financial information, records, member and client information, results, work product, or other information acquired in connection with the individual's SMCBA activities that is not generally available to the public. As members of the State Bar of California, directors and officers are further obligated to act in compliance with federal and state mandates regulating professional behavior, including their duty to protect client privacy, client confidences, attorney-client privileges, work product, and other protected communications.

#### VI. Legal Obligations of Directors and Officers

The obligations of directors and officers to the SMCBA are governed by the California Non-profit Corporation Law. Directors and officers owe a fiduciary duty to the SMCBA, including the duty of care and the duty of loyalty. Nothing in this Policy is intended to lessen those duties or any duties of disclosure applicable to them.

The **duty of care** concerns a directors' or officer's competence in performing his or her functions as a director or officer. A director or officer must exercise his or her responsibilities in good faith and with that degree of diligence, attention, care, and skill that an ordinarily prudent person would exercise under similar circumstances in a like position.

The **duty of loyalty** 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 SMCBA, during board meetings and events wherein the director is representing the SMCBA. It further requires a director or officer to avoid using his or her position to obtain a personal benefit or advantage that might more properly belong to the SMCBA. To satisfy the duty of loyalty, the director or officer must act in good faith and in a manner s/he reasonably believes to be in the best interests of the SMCBA.

VII. Restrictions on Representing SMCBA

Each director, officer, or employee when acting as a representative of the SMCBA shall act so as not to adversely affect the SMCBA's public image or credibility, or otherwise interfere with providing service to the SMCBA's clients. In any interaction with the public, press, and other entities, a director, officer, or employee may not speak for the SMCBA, other than to repeat explicitly stated Board positions, unless the Board, the President or the Executive Director has previously authorized the subject matter of such statement. The prohibition is not intended to cover the day-to-day activities of SMCBA employees and their typical communications with SMCBA members and clients and the community. However, a director, officer, or employee who is a member of a SMCBA committee may state the views of the committee in accordance with the policies of the committee or as directed by the Board.

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

I have read the SMCBA Conflict of Interest and Ethics Policy. I understand and agree to comply with its provisions. If at any time following the submission of this form I become aware of any circumstances that could constitute an actual or potential conflict of interest, I will promptly notify the SMCBA Executive Director, President or board of directors as appropriate.

Name: \_\_\_\_\_ Position: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_