

The American Law Institute

Policy Statement and Procedures on Conflicts of Interest with Respect to Institute Projects

(Approved by the Council on May 16, 1994, and amended by the Council on May 17, 2010.)

A. Policy Statement

The Institute's Director and Reporters must exercise sensitivity to conflicts of interest that may result from their professional engagements outside the Institute. They should follow the procedures set forth below, which are designed to reduce the incidence and appearance of conflicts and the effect of any potential conflict on Institute texts. The Institute's reputation for objectivity is one of its most valuable assets. The respect accorded the Institute's texts depends in major part on that reputation. The Institute's reputation will suffer if an accusation is made with any colorable basis that Institute texts were shaped to aid the interests of the Institute's Director or Reporters. If the accusation were justified, the Institute's reputation would suffer justifiably.

The problem of conflicts arises because members of the legal-academic community, from which Reporters are customarily drawn, often are offered engagement on behalf of private and public interests. Reporters are not sufficiently compensated for their part-time Institute work to justify an Institute rule requiring them to renounce all engagements in related matters for the duration of the Institute project, which ordinarily covers several years or more. The Institute therefore hereby adopts procedures that are designed to minimize the incidence of conflict, and its appearance, and to reduce any likelihood that the Institute will be influenced in its adoption of positions by potentially compromised views.

B. Procedures to Minimize Conflict of Interest

1. The Director and Reporters, including Associate and Assistant Reporters, should perform their responsibilities with the objectivity expected of legal scholars. Accordingly, they must exercise sensitivity to the risk and appearance of conflict of interest in their work for the Institute.

2. A risk or appearance of a conflict of interest arises when formulation of text, Comment, or Illustration could advance a position taken by the Director or Reporter in another engagement on an issue within the scope of a pending Institute project. The risk and appearance of conflict are most likely to arise from engagements that involve legal advice, opinions, expert testimony, or participation in briefing, argument, or the development of legal strategy.

3. (a) Before accepting assignment as a Reporter, a prospective Reporter should deliver a memorandum to the Director identifying and explaining previous, existing, and contemplated engagements that may cause conflict, or its appearance, with the work proposed to be undertaken for the Institute. The prospective Reporter and the Director should discuss possible solutions.

(b) A Reporter who is offered another engagement during the pendency of a project should, before accepting it, assess the extent to which conflict, or its appearance, may result from the engagement. If the Reporter concludes that a conflict or its appearance may result, the Reporter should provide a memorandum to the Director explaining the conflict or appearance of conflict. When a Reporter has entered into an engagement unaware of likely conflict but later becomes aware of it, the Reporter should then provide such a memorandum. Delivery of such memoranda may be briefly delayed if premature disclosure would injure the prospective client's temporary need for confidentiality. Where in the Director's judgment the likelihood of conflict or its appearance is high and a satisfactory solution is not apparent, the Reporter should decline or withdraw from the engagement.

(c) The Reporter should advise the Director of any changes in the potential for conflict or its appearance arising from outside engagements.

(d) Reporters should recognize that conflict and its appearance can arise also from engagements of spouses or other close relations. They should consider carefully in each case whether any such engagement warrants following these procedures and, in cases of doubt, should consult the Director.

(e) Where these procedures provide for a report to, or consultation with, the Director, if the Reporter believes, or the Director advises, that the Director has, or is likely to have, a conflict of interest relating to such engagement, the Reporter may instead report to the President, or the President's designee.

4. The Director shall observe procedures similar to those stated in paragraph 3, reporting to the President, or the President's designee.

5. When Reporters are working in teams, the Reporter affected by a possible conflict should consider with the Director whether the Reporter can feasibly withdraw from the drafting and consideration of the particular issue, in favor of a co-Reporter. When reassignment is impractical, the Director shall take other suitable measures to protect the integrity of the project.

6. (a) A Reporter should make a statement about any engagements on issues within the scope of a project draft presented at an annual meeting or a Council meeting where the project draft is considered. The detailed nature of the statement may depend on the circumstances of the Reporter's engagement and whether specific issues in the draft may be perceived as being influenced by the Reporter's engagement.

(b) An Illustration that parallels the facts of a Reporter's or the Director's engagement should not be used in a draft or official text before the final determination of the matter.

7. The Institute will include in all drafts and the official text of each project a statement that: (a) the project's Reporter(s) may have been involved in other engagements on issues within the scope of the project; (b) all Reporters are asked to disclose any conflicts of interest, or their appearance, in accord with the Policy Statement and Procedures on Conflicts of

Interest with Respect to Institute Projects; and (c) copies of Reporters' written disclosures are available from the Institute upon request; however, only disclosures provided after July 1, 2010, will be made available and, for confidentiality reasons, parts of the disclosures may be redacted or withheld.

8. Members of an Advisory Committee, a Members Consultative Group, and the Council should observe the policies stated in paragraph 1 of these procedures. In addition, they should observe the policies of Rule 6.4 of the ABA Model Rules of Professional Conduct when discussing proposals for change in the language of a draft. Rule 6.4 of the ABA Model Rules states that: A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

9. The Director shall report annually to the Governance Committee on the Institute's experience under these procedures.