

ACLU of Ohio
ACLU of Ohio Foundation
Conflict of Interest Policy
Approved by the Board of Directors March 20, 2010

[1] This policy has been adapted from national ACLU policy 515a, adopted by the National Board of Directors on October 24, 2009, which applies to the national ACLU and ACLU Foundation, as well as to all affiliates.

“Conflict of Interest” Defined¹

[2] A conflict of interest affecting a director, officer, volunteer board committee member or employee of the Ohio Affiliate (a “covered person”) may arise with respect to a transaction or action proposed to be entered into or undertaken by the Ohio Affiliate when the covered person has any personal interest with respect to that transaction or action.

[3] A “personal interest” of a covered person with respect to a transaction or action arises when the financial interests (including compensation-related) or organizational interests of (i) that person, (ii) a person in the person's immediate family,² (iii) a person with whom the person has an intimate relationship, (iv) a non-ACLU client of the person, or (v) an employer or business associate of the person, may be directly affected by the transaction or action proposed to be taken by the Ohio Affiliate. A financial interest in a transaction or action shall not include interests that are insignificant or immaterial.

[4] An “organizational interest” exists when a person has fiduciary responsibility to an organization other than the Ohio Affiliate or has a relationship with another organization that includes being able to influence (i) the management or direction of the organization as a whole, such as serving as an employee, or (ii) the management or direction of the specific transaction or action in question. An organizational interest conflict does not arise based on the adoption by the ACLU or another organization of a substantive civil liberties policy.

Disclosure

[5] Each Ohio Affiliate covered person is required to disclose to the Ohio Affiliate any personal interest with respect to an Affiliate transaction or action as soon as s/he becomes aware of the conflict preferably prior to the consideration of the transaction or action.

[6] In the case of board members, officers and volunteer board committee members, the usual procedure for disclosing potential conflicts of interest is to inform the applicable board or board committee (or board committee chair) considering the transaction or action or the President of the personal interest.

[7] In the case of an employee, the usual procedure is to inform the supervisor of the personal interest. If the Executive Director experiences a personal conflict, the Executive Director shall inform the President.

Participation in Discussion and Decision

[8] A covered person may participate in the discussion of a transaction or action with respect to which s/he has a personal interest only after all material facts regarding the covered person's personal interest have first been disclosed to the other participants in the discussion and the participants have had the opportunity to discuss the matter (without that person present if they choose to discuss in that manner³).

[9] Generally, a covered person may not participate in making decisions with respect to any matter in which s/he has a personal interest. However, in certain situations where the covered person's personal interest is determined to be indirect or immaterial, it may be determined (without participation of the covered person in such determination) that the covered person may participate in making decisions concerning such matter under specified conditions.

[10] In all cases, prior to the Ohio Affiliate entering into a transaction or taking an action after a covered person has disclosed a personal interest with respect to that transaction or action, it shall be determined by the Ohio Affiliate that the transaction or action is fair and reasonable to it and does not result in an unfair or unreasonable financial or other benefit to the covered person who has the personal interest.

[11] In cases where a covered person's personal interest is a financial interest, the determination of whether to enter into the transaction or take the action shall be made by the Affiliate's audit committee and shall be made only after considering the value of comparable transactions. If the Ohio Affiliate does not have an audit committee at the time the conflict arises, its executive committee shall make such determination. The audit or executive committee shall report its decision to the board, but the board's approval is not required. The board may, however, override the committee's decision by a simple majority vote.

[12] In cases involving non-financial conflicts, the determination shall be made by the group with the authority to make the determination of whether to enter into the transaction or take the action (i.e., generally for board matters, the board shall determine; for board committee matters, the board committee shall determine; and for staff matters, the Executive Director or Deputy Executive Director (if any) shall determine.

[13] If the Executive Director or Deputy Executive Director has a non-financial conflict, the other shall determine whether to enter the transaction or take the action following consultation with the Board's General Counsel. (In the event the covered person with the personal interest is an ACLU Executive Director and the Ohio Affiliate does not have a Deputy Executive Director when the conflict arises, the determination shall be made by the Ohio Affiliate's audit committee if one exists or by its executive committee if it does not.) The audit or executive committee shall report its decision to the board, but the board's approval is not required. The board may, however, override the committee's decision by a simple majority vote.

Recordkeeping

[14] The Ohio Affiliate will maintain a record of every conflict of interest matter resolved under this policy. The record will describe the nature of the conflict. It will also reflect whether the conflicted person participated in the decision or in the discussion of the matter. The record will also report whether the transaction or action was entered into or undertaken despite the conflict in accordance with this policy (and if comparables were obtained, records of such comparables should be maintained).

[15] In all matters decided by the Executive Director or the Deputy Executive Director of the Ohio Affiliate, that person (or his/her designee) will document in a permanent memorandum to files whether the employee participated in the decision or in the discussion of the matter and that a determination was made whether the transaction or action could be entered into or undertaken in accordance with this policy.

Policy Distribution

[16] To ensure that covered persons are aware of this Policy, the Ohio Affiliate shall deliver either electronically or in hard copy a copy of the Policy to each board member, officer, volunteer board committee member and employee of that entity at the beginning of his or her service. All covered persons will be reminded annually and in writing of the policy on or before January 15th of each year and a copy will be furnished to each person either electronically or in hard copy. Each recipient shall acknowledge having received, read and understood the policy. If a recipient has a matter requiring disclosure under this policy at that time, the recipient shall disclose that matter.

Footnotes

¹ This policy does not modify or supplant the obligations of lawyers to clients and former clients under professional responsibility rules, including conflict of interest legal ethics rules.

² “Immediate family” includes the covered person’s spouse, partner, children, parents and other ancestors, siblings, grandchildren, great grandchildren and spouses and partners of the covered person’s children, siblings, grandchildren and great grandchildren.

³ One example of an action that might be discussed entirely without the covered person present is when a covered person is a board member of an organization against which an ACLU entity is contemplating litigation.