

RECUSAL POLICY FOR BOARD AND HEARING COMMITTEE MEMBERS

APPROVED MAY 17, 2018

Board Policy Regarding Recusals:

The following recusal policy is intended to give guidance to Board members to enable them to decide all cases fairly in accordance with the Board's duty to decide. It is not intended to impose new due diligence requirements on Board members, nor is it intended to cover remote financial interests or other connections that would not bear on the case at hand.¹

- A. Mandatory Recusal for Actual Bias or Prejudice: A Board member shall be recused when, in the view of the Board member or the Board Chair, he or she has a personal bias or prejudice that would prevent the Board member from deciding the case fairly and impartially. Board members who served as Contact Members or Hearing Committee members in the case below are recused under this policy.
- B. Procedure for Non-Mandatory Recusal: If a Board member believes that his or her impartiality might reasonably² be questioned, regardless of whether the Board member believes he or she will be able decide the case fairly, the Board member should consult with the Executive Attorney before deciding whether to recuse. In deciding whether to recuse, the Board member and Executive Attorney should be guided by Part C below.
- C. Guidance for Non-Mandatory Recusal: The following is a non-exhaustive list of situations in which Board members should consider whether their impartiality might reasonably be questioned. Notwithstanding the suggestions outlined below, all recusal decisions should take into account the particular facts and circumstances at hand.

¹ All attorney members of the Board are still expected to run conflicts checks on respondents in cases before the Board and to abide by conflict rules imposed by their employers.

² Reasonableness should be assessed from the perspective of an objective disinterested observer who is thoughtful, has full knowledge of the surrounding facts and circumstances, and is not unduly suspicious or concerned about a trivial risk of bias.

1. Ordinarily, Board Members should be recused where:

- a) The Board member has a close personal or professional relationship with a respondent or complainant;
- b) The Board member has previously formed an impression of the credibility or character of a respondent, complainant, or fact witness³;
- c) The Board member has personal knowledge of contested material facts in the disciplinary proceeding;
- d) The Board member has personal knowledge that he or she has a personal or imputed financial interest⁴ that may be affected by the outcome of the disciplinary proceeding;
- e) The Board member has personal knowledge that a respondent, complainant, or fact witness in the disciplinary proceeding is an opposing party, opposing counsel, or expert witness in litigation in which his or her firm or legal department⁵ represents a party.

2. Ordinarily, recusal is not necessary where:

- a) The Board member is acquainted with a respondent, complainant, or fact witness, but has not formed an impression regarding the individual's credibility or character;
- b) The Board member has previously formed an impression regarding the expert witness's expertise in an unrelated area;

³ For the purposes of this Policy, "fact witness" is limited to a witness who testifies about contested material facts.

⁴ For the purposes of this Policy, "Financial interest" should be construed as including ownership of a material legal or equitable interest, except that:

- (i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the Board member participates in the management of the fund;
- (ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;
- (iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest; and
- (iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

An "imputed" financial interest is one that is held by the Board member's employer or a member of the Board member's immediate family and of which the Board member is aware.

⁵ In the governmental context, "legal department" should be construed as any local office (*e.g.*, U.S. Attorney's Office for the Eastern District of Virginia) or any first-level subdivision of a legal department (*e.g.*, D.C. Office of the Attorney General, Public Safety Division). For in-house counsel, "legal department" should be construed to cover all lawyers working for the company, but does not extend to parent companies, affiliates, or regional offices with separate legal offices.

- c) The Board member is acquainted with counsel in the disciplinary proceeding; or
 - d) The Board member has a personal or professional relationship with a member of the Hearing Committee below.
- 3. A Board Member should consider recusal if he or she has a concern that one of the following circumstances might prevent him or her from deciding the case fairly:
 - a) The Board member has a close personal or professional relationship with a member of a respondent's immediate family;
 - b) The Board member has a close personal or professional relationship with counsel in the disciplinary proceeding;
 - c) The Board member served on a Hearing Committee or as a Contact Member in a previous disciplinary proceeding involving the same respondent or a fact witness, where the individual's credibility is at issue in the current disciplinary proceeding;
 - d) The Board member has previously formed an impression regarding the expert witness' proffered expertise; or
 - e) The Board member's supervisor is a member of the Hearing Committee below.

Hearing Committee Recusal Procedure:

Recusal decisions at the Hearing Committee level should be guided by the principles laid out in the Board Recusal Policy. At any time before a hearing, if any Hearing Committee member believes that his or her impartiality might be questioned, reasonably or otherwise, he or she should consult with the Executive Attorney to decide whether recusal is appropriate. If the circumstances creating a perception of bias arise during the pendency of a Hearing Committee's consideration of a case, the Hearing Committee may disclose the issue to the parties and ask whether they have any objection to the Hearing Committee member's continued participation. If a party objects, he or she must file a formal objection for consideration by the Chair.