

# Conflict of Interest Policy

## New Mexico Legal Aid, Inc.

*A Nonprofit Corporation Chartered Under the Laws of the State of New Mexico*

Effective 3/1/2008

A copy of this Conflict of Interest Policy shall be given to all members of the Board of Directors and staff. When a new person joins the board, becomes an officer, or commences work as a staff member, the board president or secretary shall see to it that the new person receives a copy of this policy. On an annual basis, each director, officer, and staff member shall complete, sign, and date the policy and file it with the corporation's secretary. A Conflict of Interest Disclosure Form (see below) has been provided for this purpose. Failure to sign does not nullify the policy.

A copy of this policy should likewise be given to any other person who plays a significant role in the conduct of the corporation's affairs (*see* Section II, Definitions, below).

### I. Purpose

The purpose of this Conflict of Interest Policy is to protect the interests of and preserve the proper public charitable function of New Mexico Legal Aid, Inc. (NMLA). Adherence to the policy is especially important when the corporation contemplates entering into a transaction or arrangement that might benefit the private interest of a director, officer, staff member, or other interested person, or that might result in an "excess benefit" transaction.

### II. Definitions

**Conflict of Interest** means a conflict—and even the *appearance* of a conflict—between the private interests and the official responsibilities of a person holding a position of trust in the corporation. Generally, one should be sensitive to situations and presume a conflict of interest exists whenever a trust-holder stands to benefit financially or otherwise in a not insubstantial way, whether directly or indirectly, from the work, projects, and affairs of New Mexico Legal Aid.

**Interested Person** An "interested person" is someone who influences, participates in, directs, manages, or governs the financial affairs and resources of New Mexico Legal Aid. Included are board members, officers, and staff members, and possibly other persons, such as volunteers, who serve the corporation.

**Director** means a member of the Board of Directors.

**Officer** means an officer of the Board of Directors.

**Staff Member** means a person who receives all or part of his or her income from the payroll of New Mexico Legal Aid.

**Volunteer** means a person other than a director or officer who does not receive compensation for services and expertise provided to New Mexico Legal Aid but who has a significant, independent decision-making authority to commit resources of the organization (usually by virtue of having been delegated certain powers by the governing board).

**Member** means a member of New Mexico Legal Aid whose membership is in accordance with the membership guidelines of the corporation.

**Supporter** means an individual, business, civic group, corporation, foundation, or another 501(c)(3) nonprofit organization that contributes to New Mexico Legal Aid.

**Financial Interest** means the position or condition of receiving or being eligible for a fee for goods or services, compensation, indirect remuneration, favors, gifts, or other interests in property that are not insubstantial in value either to oneself or to one's family (spouse, child, parent, sibling, in-law), close friend, co-habitant, business partner, business, or investment portfolio. A financial interest is not necessarily a conflict of interest. A person should disclose any matter that could reasonably be considered a conflict of interest. When in doubt, disclose! The governing board or a committee designated by the board will decide whether or not a conflict actually exists.

**Excess benefit transaction** means a transaction in which an economic or other benefit is provided by New Mexico Legal Aid either directly or indirectly to or for the use of any disqualified person, and the value of benefit provided by the organization exceeds the value of the consideration (including the performance of services) received for providing such benefit.

### III. Policy in a Nutshell: Duty to Disclose

**An interested person has a duty to fully disclose any actual or potential conflicts of interest. Furthermore, an interested person has a *continuing duty* to disclose any actual or potential conflicts of interest as he or she becomes aware of them.**

#### IV. Procedures

1. ***Board of Directors Will Issue and Collect Annual Conflict of Interest Disclosure Form.***

Disclosure(s) shall be solicited at least once a year using a form prescribed by the Board of Directors (see sample form below) and shall be kept on file by the secretary of the corporation. Interested persons may give supplemental disclosure orally or in writing during a regular or specially called meeting of the board, in which case the subject and any action taken by the board thereon shall be recorded in the meeting minutes.

Directors and officers should be mindful of the many situations and scenarios that could give rise to a conflict of interest. For example, it is possible for a conflict to exist if an interested person is:

- paid by New Mexico Legal Aid, Inc., to provide goods or services;
- affiliated with another person or group that could benefit financially or otherwise from an NMLA transaction (e.g., by receiving payment for goods or services, by receiving grant money, by entering into a subcontract for goods or services, or by receiving in-kind benefits);
- serving as a board member or officer of another organization that competes with New Mexico Legal Aid, Inc. for funding; or
- related by blood or marriage to a director, officer, or staff member.

2. ***Board of Directors Will Evaluate Possible Conflicts.***

After disclosure has occurred of a possible conflict of interest, the Board of Directors or a committee constituted for that purpose shall determine whether or not a conflict of interest exists. The board or committee shall gather all material facts, including discussing the matter with the interested person. The interested person has the right to make a presentation to the governing board or review committee. If a committee is used

to investigate the alleged conflict, the committee shall report its findings and recommendations to the board of directors. While the board deliberates and votes, the interested person may not be present in the meeting room; furthermore, if the interested person is a director or officer, he or she may not participate in the vote.

If the board decides that a conflict of interest exists, the board has several options: the board may reject the transaction; it may determine that the conflict is harmless, insubstantial, or unavoidable and proceed to authorize the transaction; or the board may take any other action deemed necessary to address the conflict. In every case, the board shall protect the best interests of the corporation. The majority vote of the directors participating in the vote shall prevail. (If recusal of an interested director or directors causes there to be less than a quorum on the vote, the board may nonetheless proceed with the vote, provided, however, that at least one director is disinterested.) The vote on the conflict-of-interest issue shall be recorded in the official minutes of the corporation. In particular, the record should reflect the following information:

- (a) the name of the interested person who disclosed or otherwise was thought to have a financial or other interest in connection with an actual or possible transaction;
- (b) the nature of the financial or other interest;
- (c) any action taken to determine whether or not a conflict of interest existed;
- (d) the names of the persons who were present for discussions and the content of the discussion, including any alternatives to the proposed transaction or arrangement; and
- (e) any decisions made or votes taken in the matter.

3. ***Arm's-Length Transaction Necessary in Employment Context.*** A board member or officer who is planning to apply for paid employment with NMLA shall submit to the board secretary a written request for a temporary leave of absence, to be in effect until the position is filled. The board member's term in office shall not be extended because of this leave. The secretary will inform the president of the board of the request, and the president will bring the request to the board for action. The request for leave and any action taken shall be reflected in the official minutes of New Mexico Legal Aid, Inc.

4. ***Violations of the Conflict of Interest Policy.*** If the governing board or review committee has reasonable cause to believe that an interested person has failed to disclose an actual or possible conflict of interest, it shall inform the person of the basis for such belief and afford him or her an opportunity to explain the alleged failure to disclose. If, after hearing the member's response and after making further investigation as warranted by the circumstances, the governing board or committee determines that the person has failed to disclose an actual or possible conflict of interest, the board shall take appropriate disciplinary and corrective action.

ADOPTED by the Board of Directors of New Mexico Legal Aid, Inc. on March 1, 2008.

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President

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Secretary

This policy in part reflects content supplied by the Internal Revenue Service and the National Council of Nonprofit Associations.

New Mexico Legal Aid, Inc.  
Conflict of Interest Disclosure Form

This form must be filed annually by all directors, officers, staff members, and other "interested persons" as defined in the Conflict of Interest Policy of New Mexico Legal Aid (NMLA). The policy was adopted by the Board of Directors on March 1, 2008, and will remain in effect until further notice. Please read the Conflict of Interest Policy before completing this disclosure form.

Questions to Ask Yourself:

<p>1. Am I related to another board member or staff member by blood or marriage or do we share living quarters?      Yes ___      No ___</p> <p>2. Do I supervise another staff member to whom I am related by blood or marriage or with whom I share living quarters?      Yes ___      No ___</p> <p>3. Applicable to officers and members for the Board of Directors: Do I receive payment from New Mexico Legal Aid (NMLA) supplying goods or services? Yes ___      No ___ <i>Reimbursement for expenses incurred in carrying out assignments for NMLA need not be declared so long as reimbursement is reasonable and is authorized by the board in accordance with board policy and the bylaws.</i></p> <p>4. Do I belong to an organization that receives funding from NMLA? Yes ___      No ___</p> <p>5. Do I belong to the governing body of an organization that contributes to NMLA? Yes ___      No ___</p> <p>6. Do I belong to an organization that competes against NMLA for funding? Yes ___      No ___</p> <p>7. Do I have any other possible conflict of interest that I should disclose? Yes ___      No ___</p>
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**If you answered "yes" to any of these questions, please explain in the space below.**

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I understand the implications of this policy, and I agree to disclose any actual or potential conflict of interest that may develop or arise after I sign this document.

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

Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_