

106. Ethics - Conflicts of Interest - Members of The Board of Trustees and Senior Administrators

The University of Alabama System needs individuals with varied experience and successful involvement in business, industry, education, the professions and government on its Board of Trustees and as its senior administrators. Such Trustees and administrators may be called upon to participate in decisions that directly or indirectly affect their outside responsibilities or property interests. It is those decisions to which this rule is addressed, recognizing that, in some instances, the questions may, of necessity, be resolved on a case-by-case basis.

Members of governing boards and senior administrators of institutions of higher education hold positions of public trust of high order, requiring unquestioned confidence in their professional integrity by all the institution's constituencies. Responsible management of institutional affairs requires that their decisions are based solely on their understanding of what is in the best interest of the institution, uncluttered by any other considerations and unencumbered by conflicting obligations or interests.

As Justice Cardozo wrote in a New York case in 1928, "Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate... Only thus has a level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd." *Meinhard v. Salmon*, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928).

It is for these reasons that the members of The Board of Trustees have voluntarily adopted and subscribed to this rule relating to conflicts of interest, doing business with the University, or revealing sensitive or "inside" information to others who might unfairly benefit therefrom.

While the Board recognizes that, in some instances, these rules may go beyond the basic requirements of the common law and constitutional or statutory provisions, they are adopted for the dual purpose of providing guidance to present and future members and senior administrators and to eliminate situations which could allow, or even give the appearance of allowing, self-interest to enter into Board or administrative procedures and decisions.

I. Conflict of Interest in Business Practices

In any transaction between the Board and another entity, Board members and senior administrators must disclose (i) any substantial interest that they or family members hold in the other entity; (ii) if they or their family members serve as directors or senior executive officers in the other entity; and (iii) if they or their family members receive compensation from the other entity. For purposes of this section, "family members" includes the spouse, ancestor, brother or sister (whole or half blood), child (natural or adopted), grandchild, great grandchild or the spouse of a sibling, child, grandchild or great grandchild; "substantial interest" means more than a thirty-five percent (35%) interest in any entity, individually (including family members) or collectively with other Board members and senior administrators (including their family members), or, in the case of a partnership or professional corporation, more

than a five percent (5%) interest individually (including family members) in such partnership or professional corporation; and “compensation” means any direct or indirect remuneration, gifts, or favors of a value in excess of \$250. Required disclosures shall be made in the manner described below.

A. Disclosure by Board Members

Board members shall voluntarily and promptly disclose any potential conflict of interest, as described above, to the President pro tempore of the Board by a notice in writing of the details of such potential conflict. If the President pro tempore has any reservations about proceeding with the transaction so disclosed, he or she shall share the notice and his or her concerns with the Executive Committee of the Board, which shall have final authority in such matters. In like manner, the President pro tempore shall disclose any personal potential conflict of interest to the other members of the Executive Committee. In troublesome cases, the Executive Committee may seek a ruling from the Public Review Committee described in Section VIII below.

Should Board approval of any transaction described above be required, interested Board members shall abstain from participation, deliberation, and voting in regard to the transaction and the minutes of the meeting shall so reflect. Board members shall also refrain from attempting to influence other Board members on the matter giving rise to the conflict of interest.

B. Disclosure by Senior Administrators

Senior administrators, for purposes of this Rule, are defined to be the Chancellor, other Board officers and Vice Chancellors of The University of Alabama System, the Presidents and Vice Presidents of each campus and any others so designated in writing by the Chancellor. Senior administrators, other than the Chancellor, shall disclose any potential conflict of interest, as described above, to the Chancellor by a notice in writing of the details of such potential conflict, with a copy of such notice being delivered to the appropriate President, in the case of a campus administrator other than a President. The Chancellor shall disclose any potential conflict of interest, as described above, to the President pro tempore of the Board by a notice in writing of the details of such potential conflict. If the Chancellor, in the case of other senior administrators, or the President pro tempore, in the case of the Chancellor, has any reservations about proceeding with the transaction so disclosed, he or she shall share the notice and his or her concerns with the Executive Committee of the Board, which shall have the final authority in such matters. In troublesome cases, the Executive Committee may seek a ruling from the Public Review Committee described in Section VIII below.

Senior administrators who have a potential conflict of interest shall refrain from attempting to influence other administrators or Board members on the matter giving rise to the potential conflict of interest. In the event the transaction requires the approval of the disqualified senior administrator, that approval authority shall be delegated by operation of this Rule as follows: In

the case of disqualification of the Chancellor, the approval authority shall be delegated to the President pro tempore of the Board, who will notify the Executive Committee. In the case of the disqualification of any other senior administrator, the approval authority shall be delegated to that senior administrator's supervisor. In the case of disqualification of multiple senior administrators, such that the delegation of authority as outlined above is not possible, the approval authority shall be delegated to the President pro tempore of the Board or his or her designee.

II. Conflict of Interest in Employment

For the purpose of this Section II, the Chancellor is considered to be the appointing and employing authority for the employees of the System Office, and the President of each campus is considered to be the appointing and employing authority for the employees of that campus. This authority may be delegated in whole or in part, and, to the extent that it is, the designee of that authority, and not the Chancellor or President, becomes the appointing and employing authority.

No appointing authority shall employ or appoint a person related to him or her within the fourth degree of affinity or consanguinity to any job or position within the University.

Neither members of the Board nor any family members of Board members or senior administrators, as defined in Section I above, may be offered employment for compensation in a regular position within the University until approved as follows: Offers to employ any member of the Board or family members of Board members or senior administrator must be submitted to and approved or disapproved by the President of the campus offering the employment and reported by that President to the Chancellor, who shall inform the President pro tempore of the Board. Offers to employ any family members of the Chancellor shall be submitted to and approved or disapproved by the President pro tempore of the Board, who shall inform the members of the Board. Offers to employ any family members of a President shall be submitted to and approved or disapproved by the Chancellor, who shall inform the members of the Board.

The members of the Board and senior administrators shall not advocate or attempt to influence the employment of any of their family members.

Any employment in violation of this policy shall be void.

III. Conflict of Interest in Revealing or Using Confidential Information

No Board member or senior administrator shall disclose confidential information regarding Board or administrative decisions or future actions to others who might

unfairly benefit therefrom, nor use such inside information for his or her own benefit or for the benefit of his or her family members (as defined in Section I above).

IV. Conflict of Interest in Other Matters

In addition to the matters identified above, members of the Board and senior administrators should not:

- (a) Condition any actual or potential business relationship with the Board, its constituent universities, or its related foundations and associations, on a charitable gift or contribution to the Board, its constituent universities, or related foundations and associations.
- (b) Use the authority, title, influence, or prestige of his or her position to solicit or influence the award of business to others or to otherwise obtain a private financial, social, or political benefit, special privilege, or exemption for the Board member, senior administrator, or family member as defined above in Section I.
- (c) Solicit personal gifts or special favors from individuals or entities that provide, or seek to provide, services or supplies to the Board, its constituent universities, or related foundations and associations. This does not include occasional gifts of nominal or modest value (less than \$250 or isolated invitations to meals or events).
- (d) Engage in any other activity that a reasonable person would expect to impair, or that would appear to impair, the independent judgment of a Board member or senior administrator in the performance of his or her public duties.

V. Annual Disclosure

Each Board member and each Senior Administrator shall complete The University of Alabama System Conflict of Interest Disclosure available on The University of Alabama System website on an annual basis or upon a significant change in circumstance or financial interest.

VI. Independent Auditors

No Board member or senior administrator shall take any action to fraudulently influence, coerce, manipulate, or mislead an auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.

VII. Campus Responsibility

The campus Presidents shall be responsible for promulgating and publicizing a conflicts of interest policy covering all employees, other than senior administrators, on that campus.

VIII. Public Review Committee

A Public Review Committee, consisting of three members appointed by the Board for three-year terms, may be established, if the Board deems it necessary. The Board may fill vacancies occurring on the Public Review Committee during the three-year term.

Notice and details of potential conflicts of interest involving Board members and senior administrators, which are to be reviewed by the Public Review Committee pursuant to the terms of this rule, shall be submitted to it in writing. It shall advise the Executive Committee of the Board of Trustees of its rulings by letter or other writing.

IX. Effective Date of Rule

This rule shall become effective upon its adoption by The Board of Trustees of The University of Alabama, and, to the extent its requirements exceed existing applicable law, shall not be given retroactive application.

(Adopted November 15, 1984 as Rule 170; amended and renumbered December 5, 1997; amended November 9, 2007; April 13, 2012.)