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## **ADMINISTRATIVE MANUAL**

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# **CONFLICT OF INTEREST**

POLICY 006

## *Conflict of Interest Policy*

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### **I. Introduction**

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The Goal of the Associated Students, Inc. ("ASI") is to promote the establishment of, and provide the means for, effective avenues of student input into the governance of the campus: provide an official voice through which student opinion may be expressed; provide an opportunity where student may gain experience and training in responsible political participation and community leadership. The ASI also assists in the protection of the rights and interests of individual students and stimulates the educational, social, physical, and cultural well being of the University Community.

This shared responsibility brings with it possibilities for conflicts of interest and conflicts of commitment (referred to jointly as "conflicts"). Conflicts may arise from the different but related positions that individual Board members may hold on the University campus and in other organizations or entities.

An ASI Board member may find himself or herself in a position where the Board member may be called on to vote on matters that affect an organization or entity that he or she represents in another capacity. This concern reaches not only voting on such matters, but taking part in discussions, or being present during deliberations or other actions that may benefit the other organization entity or that may harm ASI.

In addition, an ASI Board member may find that he or she has access to information held by ASI that could be used to negatively affect the future operations, goals or status of ASI, or to benefit another organization or entity. Conversely, an ASI Board member may find that he or she has access to information held by another organization that could be used to negatively affect the future operations, goals, or status of ASI.

To address the concerns surrounding possible conflicts, and to prevent conflicts from hindering the participation of Board members in the governance process, ASI has looked to the California Education Code and the California Corporations Code for guidance. The result is a policy that seeks to deface conflicts, so that Board members can access their activities within ASI and with other organizations and entities.

It is not the intent of this policy to regulate or eliminate all conflicts, but rather to enable Board members to recognize situations that may be subject to question and ensure that such situations are properly disclosed and, if necessary, reviewed and resolved. Thus, an integral part of the policy is a disclosure mechanism whereby Board members regularly review their roles on other boards and their activities, with their responsibilities to ASI clearly in mind.

## II. Types of Conflict

### A. Conflicts of Commitment

With the acceptance of an appointment to the Board of Directors of ASI, an individual makes a commitment to ASI that is understood to be a commitment in the most inclusive sense. Board members are expected to act with professional loyalty within their roles as directors of ASI. Accordingly, they should arrange outside activities, loyalties and financial interests so as not to interfere with this responsibility.

#### **General Duty of Care**

Directors of Public Benefit Corporations, such as ASI, are held to a general duty of care. This standard requires that a director follow the prudent person rule. The director must act in good faith, in the best interests of the corporation, after reasonable inquiry, with the care of an ordinarily prudent person under similar circumstances (See Cal. Corp. Code § 5231 (a).)

Directors should use this standard to gauge their involvement in other organizations or entities. Most important is the legal requirement to act in the best interests of ASI.

#### **Outside Directorships and Activities**

ASI recognizes that its members may participate as officers and board members of other campus and outside organizations and entities. To the extent that these activities serve ASI's interests, as well as those of the participant, ASI encourages such involvement.

#### **Participation in Decisions Affecting Other Interests**

Each Board member must be aware that situations may arise where he or she may be asked by ASI to participate in a decision that may affect an organization or entity which that Board member represents in another capacity. Likewise, the Board member may be asked by another organization, voting, or the mere presence during deliberations, discussions, or voting on such matters. In such cases, the Board member must act in a manner consistent with his or her professional loyalty and fiduciary obligation to ASI. If uncertain a conflict exists, the Board member should recuse himself or herself from discussions, deliberations and voting on the matter or follow the disclosure procedures outlined in Section III.

Additionally, a Board member has a duty to present to the Board information the Board member may obtain that potentially hurts ASI including, but not limited to, its current and future operations, goals, or status, even if it involves another member of the Board.

All Board members shall maintain the confidentiality of any and all sensitive or confidential matters discussed by the Board or its subcommittees, as well as issues that are discussed in closed session of the Board.

### B. Conflicts of Interest

#### **Financial Interest**

A Board member is considered to have a conflict of interest when he or she, any family member, or any associated entity possesses a financial interest in an activity that involve his or her responsibilities as a Board member of ASI.

No member of the Board shall be financially interested in any contract or other transaction entered into by the Board of which he or she is a member, and any contract or transaction entered into in violation of this section is void. (See Cal. Educ. Code § 899066)

No contract or other transaction entered into **shall be** void nor shall any member of the Board be disqualified or deemed guilty of misconduct if:

- A. The fact of such financial interest is disclosed or known to the governing Board and noted in the Minutes, and the governing Board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members, and
- B. The contract or transaction is just and reasonable as to ASI at the time it is authorized or approved. (See Cal. Educ. Code § 89907 (a)(b).)

These exceptions, however, will not apply if one of the following circumstances exist:

- A. The contract or transaction is between ASI and a member of the governing Board of ASI
- B. The contract or transaction is between ASI and a partnership or unincorporated association of which any member of the Board of ASI is a partner or in which he or she is the owner or holder, directly or indirectly, or a proprietorship interest
- C. The contract or transactions between ASI and a corporation in which any member of the Board of ASI is the owner or holder, directly or indirectly, of five percent (5%) or more of the outstanding common stock.
- D. A member of the Board of ASI is interested in a contract or transaction, and without first disclosing such interest another member or members of the Board to enter into the contract or transaction (See Cal. Educ. Code § 89908 (a)(b)(c)(d).)

### **Utilization of Public Information**

It is unlawful for any person to utilize any information, not a matter of public record, which is received by him or her by reason of his or her membership on the Board of ASI, for personal pecuniary gain, regardless of whether he or she is not a member of the Board at the time such gain is realized (See Cal. Educ. Code § 89909).

### **Self-Dealing Transactions**

Directors are prohibited by law from engaging in self-dealing transactions to which the ASI is a party and in which one or more directors have a material financial interest. A mere common directorship is not in itself a material financial interest. (See Cal. Educ. Code § 5233 (a), § 5234).

There are exceptions from the definition of self-dealing transactions and they are:

- (1) Actions fixing the compensation of directors or officers;
- (2) Transactions that are part of public or charitable programs that benefit a class of which directors or their families are members
- (3) Transactions of which interested gross annual receipts or \$100,000, whichever is smaller (See Cal. Corp. Code § 5233 (b) (1)(2)(3).)

Directors are thus liable to ASI for self-dealing transactions, unless the transaction was approved by one of the following:

- (1) Approval by the Attorney General, or by court in an action in which the Attorney General was an indispensable party, either before or after confirmation of the transaction;
- (2) Approval before consummation of the transaction by a disinterested board under the following circumstances:
  - a. ASI entered into the transaction for its own benefit.
  - b. Transaction was fair and reasonable to ASI.
  - c. More advantageous arrangements could not have been made with reasonable effort
- (3) Interim approval by a committee having authority for the Board, where immediate action was needed and action by the full board was not feasible, and ratification by the full Board at its next meeting, under the circumstances listed in (2) above. (See Cal Corp Code § 5233 (d) (1)(2)(3).)

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### **III. Disclosure and Review Procedure**

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If a Board member finds that he or she is faced with a possible conflict, the Board member shall inform, in writing, the President of the Board, who shall have the affirmative duty to advise the Judicial Review Committee (JRC) of the conflict as soon as possible.

The Judicial Review Committee, with advice as needed from ASI's attorneys, shall review the circumstances surrounding the possible conflict and shall make a determination as to whether an actual conflict exists. If a conflict is found to exist, the JRC shall present the information to the Board member, with a recommendation that the Board member rescues himself or herself from any further discussions, deliberations, voting or presence on the matter to alleviate or avoid the conflict or potential conflict, or take other appropriate action as required.

If a Board member has knowledge of a possible or actual conflict involving another member of the Board, the Board member who has acquired the information has an affirmative duty to disclose, in writing, such information to the President of the Board. Procedures as outlined above shall subsequently be followed. Where such a possible or actual conflict involves the President of the Board, disclosure shall be made, in writing, to at least one member of the JRC, who shall then follow the procedures above and inform the President if a conflict is determined to exist, as a recommendation as described above.

In such cases where the JRC determines that a Board member has knowingly violated this Conflict of Interest Policy by failing to disclose a possible conflict, by ignoring the Board's directive to cease or modify activities or conduct posing a conflict or potential conflict, or in any other manner knowingly and purposefully acted in a way that violated the spirit or purpose of this Conflict of Interest Policy, the Judicial Review Committee.

The Judicial Review Committee shall be a standing subcommittee of the Board and shall consist of the three members of the Board, excluding the chairperson, who are not members of the Finance/Personnel Committee. The JRC shall recommend the disciplinary action to the Board. Such action shall include, but not be limited to (1) a notice to the Board member's appointing constituency or body of the specific activities or conduct which constitute the violation, (2) the specific provisions of this Conflict of Interest Policy which have been violated, and (3) a recommendation for an appropriate sanction or sanctions by that constituency or body.

#### **Grievance Procedure**

All disputes relating to or resulting from a position on or term of office with the Associated Students, Inc. ("ASI") Board of Directors (BOD) or the relationship between a Board member and ASI shall be resolved by following this grievance procedure. Failure to follow the procedure shall be deemed as a waiver of the right to submit the dispute to arbitration pursuant to this section.

If a dispute should arise, as defined above, the person seeking to resolve that disputes (“grievant”) shall adhere to the following procedure:

**STEP ONE:**

Within ten (10) days of the incident in dispute, a written description of the dispute must be submitted to the ASI Board containing the following information:

1. Name(s) and title(s) or position(s) of the person(s) involved in the dispute.
2. A brief description of the facts of the dispute
3. What steps, if any, the grievant has taken with the adverse party to resolve the dispute.
4. The adverse affects (if any) on the grievant caused directly by the dispute and this adverse party.

The ASI Board shall, after reviewing the written description of the grievant’s position, confer with the other parties to the dispute in an effort to mediate the problem. The Board shall then call a meeting between the parties to discuss possible remedies.

If the grievant or the adverse party is not satisfied with the result reached through STEP ONE of the grievant procedure, that person may appeal through the procedures outline in STEP TWO.

**STEP TWO:**

Within five (5) days after the procedures in STEP one has been exhausted, and the grievant or adverse party is dissatisfied, an appeal may be made in writing to the ASI Judicial Review Committee. The appeal shall contain the following information:

1. Name(s) and title(s) or position(s) of the person(s) involved in the dispute.
2. A brief description of the facts of the dispute.
3. What steps, if any, the grievant has taken with the adverse party to resolve the dispute.
4. The adverse affects (if any) on the grievant caused directly by the dispute and this adverse party.
5. A description of the decision made by the ASI President or Board chosen representative as a result of the process followed in STEP ONE.
6. A brief description of why the STEP ONE decision is unsatisfactory.

The Judicial Review Committee shall, after reviewing the written description of the grievant’s position, confer with the other parties to the dispute in an effort to mediate the problem. The Judicial Review Committee shall then call a meeting between the parties to discuss possible remedies.

The if the grievant or the adverse party are not satisfied with the result reached throughout STEP TWO of the grievance procedure, that person may appeal through the procedures outlined in STEP THREE.

**STEP THREE:**

Within five (5) days after the procedures in STEP TWO have been exhausted, and only after the procedures in STEP ONE have been exhausted, a dissatisfied grievant or adverse party may make an appealing writing to the University’s Vice President of Student Affairs. The appeal contains the following information:

1. Name(s) and title(s) or position(s) of the person(s) involved in the dispute
2. A brief description of the facts of the dispute

3. What steps, if any, the grievant has taken with the adverse party to resolve the dispute.
4. The adverse affects (if any) on the grievant caused directly by the dispute and this adverse party.
5. A description of the decision reached after review by the ASI Board as a result of the process followed in STEP ONE and a description of the decision reached after review by the ASI Judicial Review Committee as a result of the appeal process in STEP TWO.
6. A brief description of why the decisions made in STEP ONE and STEP TWO are unsatisfactory to the appellant.

The Vice President of Student Affairs will have the final decision-making authority for the resolution of any disputes relating to or resulting from a position on or term of office with the Associated Students, Inc. ("ASI") Board of Directors (Board) nor the relationship between a Board member and ASI as the third and final step on the Internal grievance process.

### **ARBITRATION**

Only after all three steps of the internal grievance process have been exhausted in an effort to resolve any and all disputes relating to or resulting from a position on or term of office with the Associated Students, Inc. ("ASI") Board of Directors (BOD) or the relationship between a Board member and ASI, which exceed the jurisdictional limits of small claims court, the dispute(s) shall be submitted to and settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association or any successor association. The place of arbitration shall be Los Angeles, California. One arbitrator shall be selected by the American Arbitration Association or its successor, provided however, that if said Association does not provide a selection procedure, then Associated Students, Inc. and aggrieved Board member shall each submit the names of two arbitrators from which both parties will agree on one arbitrator. Judgment upon an arbitration award may be entered in any court having competent jurisdiction and shall be binding the final. Associated Students, Inc. and \_\_\_\_\_ (Board Member's Name) hereby waived to the fullest extent permitted by law, any right to or claim for any punitive or exemplary damages against the other and agree that in the event of a dispute between them each shall be limited to the recover; of any actual damages sustained by it.

This arbitration provision shall be deemed to be self-executing and shall remain in full force and effect after expiration or termination of the aggrieved Board member's term in office. In the event either party fails to appear at any properly noticed arbitration proceeding, an award may be entered against such party by default or otherwise, notwithstanding such failure to appear. The parties shall each bear their own arbitration expenses except that the arbitrator's fees and costs shall be equally divided between the parties and the non-prevailing party shall pay the prevailing party's reasonable attorney's fees. The limit on a Board member's possible recovery shall not exceed the amount of any damages sustained (i.e., stipend amount).