



# Staff Memorandum

## HOUSE OF DELEGATES Agenda Item #13

**REQUESTED ACTION:** Approval of amendments to the NYSBA Code of Conduct, Business Conduct Standards, and Audit Committee Duties and Responsibilities.

In December, the Governor signed into law the Nonprofit Revitalization Act of 2013, which was designed to reform the governance of New York nonprofit organizations as well as to modernize and clarify the laws applicable to not-for-profit corporations. As of this writing, the Act is scheduled to take effect on July 1, 2014. In order to ensure Association compliance with the requirements of the Act, the Audit Committee has completed a review of the Association's Code of Conduct, Business Conduct Standards, and its own Duties and Responsibilities and has recommended amendments to each. Redlined copies of all three documents are attached.

### ***Code of Conduct***

The Association's Code of Conduct originally was adopted in 2009 in connection with the report and recommendations of the Special Committee on Sarbanes-Oxley Issues. The Code is designed to give members guidance as to potential conflicts of interest; the use of confidential information; antitrust issues; and reporting suspected violations of the Code. The Audit Committee has recommended replacement of the section entitled "Rule on Business Decisions" with sections entitled "Rule on Related Party Transactions" and "Conflicts of Interest." In addition, the committee has recommended amendment of the reporting section to denote its status as a "Whistleblower" policy.

### ***Business Conduct Standards***

The Business Conduct Standards are specifically applicable to Association staff members. As with the Code of Conduct, the Audit Committee has recommended that the conflict of interest policy contained in the Standards be expanded to cover both conflicts and related party transactions, as required by the Nonprofit Revitalization Act, and to modify the whistleblower policy applicable to staff.

### ***Audit Committee Duties and Responsibilities***

Pursuant to the Association Bylaws, the Audit Committee is responsible for ensuring the independence of the Association's independent auditor, reviewing the Association's accounting policies and adequacy of internal controls, and overseeing the accuracy of

the Association's financial statements and reports. The specific duties of the committee are set forth in Appendix B of the Association's Bylaws. The proposed amendments include a new section requiring that the committee be comprised of "independent members" and setting forth the criteria for such members.

The proposed amendments will be presented at the June 21 meeting by Scott M. Karson, chair of the Audit Committee, and committee member Lesley Friedman Rosenthal.

# **CODE OF CONDUCT OF THE NEW YORK STATE BAR ASSOCIATION**

## **A. Introduction**

The purposes of the New York State Bar Association include elevating the standards of integrity, honor and courtesy in the legal profession, as well as promoting the public good and advancing the interests of the legal profession. Members of the Association carry out these purposes on a volunteer basis by their participation in the Association. This Code is intended to assist members in carrying out the purposes of the Association in accordance with the law, the Rules of Professional Conduct, and the high ethical standards the Association espouses.

## **B. Applicability**

This Code applies to all officers, members of the Executive Committee, members of the House of Delegates, and all other members of the Association who: (1) participate in any business decision, as defined in Section D (2) (a) below, of the Association or any of its sections, committees or task forces, or (2) hold a position entitling them to vote on a position or policy of the Association or any of its sections, committees or task forces (“Officers or Other Members”).

## **C. Other Mandates**

The Association and its members are subject to various federal and state laws, rules and regulations. In addition, those members practicing in New York are subject to the Rules of Professional Conduct and those members practicing in other jurisdictions are subject to similar rules of professional conduct. In the event of a conflict between the provisions of this Code and such other authorities, the latter shall control, except for matters concerning conflicts of interest.

## **D. Financial Conflicts of Interest Policy**

### 1. Fiduciary Duties of Officers and Other Members with Respect to Financial Issues

- a. The purpose of this Financial Conflicts of Interest Policy is to protect the Association’s interests when it enters into a transaction or arrangement that might benefit the personal financial interests of an Officer or Other Members who participate in conducting the business of the Association. Officers and ~~such~~ Other Members have a fiduciary responsibility to the Association in connection with transactions or arrangements of the Association which includes a duty of care and a duty of loyalty.
- b. The duty of care concerns an Officer or Other Member’s competence in performing his or her responsibilities in connection with transactions or arrangements of the Association (“Responsibilities”). The Officer or Other Members must carry out his or her Responsibilities with that degree of diligence, attention, care and skill that a reasonable prudent person would exercise under similar circumstances.

- c. The duty of loyalty requires that an Officer or Other Members act in good faith and in a manner they believe to be in the best interests of the Association when performing their Responsibilities. The duty of loyalty forbids self-dealing and usurpation of corporate opportunities. ~~An officer or other member may not act in carrying out his or her Responsibilities if those actions may be affected by a conflict of interest; provided, however, that any member, prior to participating in such matter, may notify the Association's Counsel (or such other Association attorney as may be designated by the Executive Director) in writing, fully describing the conflict. Upon Counsel's written determination that the conflict is not substantial and is outweighed by the benefit to the Association by the member's participation, the member may participate. A conflict of interest arises when an officer or other member in performing his or her Responsibilities on behalf of the Association or conflicts with the best interests of the Association.~~

## ~~2. Rule on Business Decisions~~

~~a. A "business decision" is one concerning the purchase of services, equipment, materials or other items or the negotiation of any contract involving the Association.~~

~~b. No officer or other member who participates in conducting the business of the Association shall participate in any business decision of the Association, unless he or she makes disclosure to and obtains approval of the Association's Counsel pursuant to Section D (1)(c), when he or she know that:~~

~~(i) the member, or his or her spouse, domestic partner, child, parent, sibling, or employer has a personal financial interest in such decision; or~~

~~(ii) a business in which any such person or employer has more than a 10 percent interest, or a corporation in which any such person or employer owns or controls more than 10 percent of the outstanding stock, has a financial interest in such decision.~~

~~c. This provision shall not apply to purchases of an arms length nature for less than \$500 when made in the general marketplace.~~

## 2. Rule on Related Party Transactions

a. A "Related Party Transaction" means any transaction, agreement or any other arrangement in which an Officer or Other Members, or any Related Party with respect to such individual, has a financial interest, and in which the Association or any affiliate of the Association is a participant.

b. The Association shall not enter into any Related Party Transaction, unless the following occur:

(i) The Audit Committee determines that such transaction is fair, reasonable, and in the Association's best interest;

(ii) With respect to Related Party Transactions in which an Officer or Other Members (or any Related Party thereof) has a substantial financial interest, the Audit Committee

(A) considers, prior to entering into such transaction, alternative transactions to the extent available, (B) approves such transaction by a majority vote of the committee members present at the meeting, and (C) the Audit Committee contemporaneously documents in writing the basis for its approval, including considerations of any alternative transactions.

### 3. Conflicts of Interest

- a. Except in compliance with this Policy, an Officer or Other Members may not act in carrying out their Responsibilities or enter into a Related Party Transaction if those actions involve a conflict of interest. A conflict of interest arises, for example, when an Officer or Other Members have a personal financial interest, which affects the objectivity of that individual in performing his or her Responsibilities on behalf of the Association or conflicts with the best interests of the Association.
- b. Each member of the Executive Committee, Finance Committee, and Audit Committee of the Association shall annually complete, sign and submit to the Secretary of the Association a written statement (i) identifying any entity of which such individual is an officer, director, trustee, member, owner or employee and with which the Association has a relationship and (ii) any transaction in which the Association is a participant and in which such individual might have a conflict of interest. Each member of the Executive Committee, Finance Committee and Audit Committee shall, prior such individual's initial election, complete, sign, and submit to the Secretary of the Association a questionnaire identifying any entity or transaction with which such person might have a conflict of interest.
- c. Immediately upon an Officer or Other Members learning of a Related Party Transaction between such individual (or his or her Related Party) and the Association or other potential conflict of interest ("Interested Member(s)"), an Interested Member prior to participating in such matter, shall notify the Association's attorney (or such other Association attorney as may be designated by the Executive Director) (the "Counsel") in writing, fully describing all material facts of such matter. The Counsel shall disclose to the Audit Committee all Related Party Transactions or other potential conflicts of interest reported to her or him under this Policy.
- d. Interested Members shall not be present at or participate in a committee deliberation or vote on the matter giving rise to such conflict, but may, at the option of such committee, be present prior to the vote or discussion of the vote to make a presentation to such committee, disclose additional facts or respond to questions, provided, however, that Interested Members shall not attempt to influence the deliberation or voting on the matter giving rise to such conflict.
- e. The minutes of any committee meeting during which a Related Party Transaction or conflict of interest is discussed shall document the existence thereof, any action taken to determine where a conflict of interest was present, the committee's determination whether a conflict of interest existed, and a decision on whether the transaction shall be approved notwithstanding the conflict.

### 3-4. Rule on Receipt of Gifts

No Officer or Other Members who participate in conducting the business of the Association shall solicit or accept any gift, either in cash or in kind, where it could reasonably be inferred that the gift was intended to obtain a benefit from the Association; provided, however, that gifts valued at less than \$100 shall be presumed not to have been given for this purpose.

### E. Confidential Information

Officers and Other Members who acquire confidential information of the Association in connection with their Association activities shall not disclose or use such information other than for the benefit of the Association and shall maintain the confidentiality of such information when such information is not generally available and is not intended to be disseminated beyond the Association. Such confidential information includes, but is not limited to: non-public information regarding Association employees; proprietary and business information; financial information; product or marketing plans; technical information and computer source codes; information about litigation; contracts and sponsorships or royalty agreements; and membership lists.

### F. Antitrust Policy

The Association is subject to both federal and state antitrust laws. The Association is committed to obeying the letter and spirit of these laws. Accordingly, officers or other members acting on the Association's behalf and all other members participating in Association activities shall take whatever steps are necessary to ensure that the member shall not violate or cause the Association to violate these laws.

### G. Reporting Suspected Violations (Whistleblower Policy)

1. The purpose of this Whistleblower Policy is to protect from retaliation any Officer or Other Members, who in good faith, report any action or suspected action taken by the or within the Association that is illegal, fraudulent, or in violation of policy of the Association.

2. Any Officer and ~~or~~ Other Members who possess knowledge or suspect that any other Officer or Other Members or staff have engaged in conduct while acting on behalf of the Association that raises a substantial question as to whether such person has violated the law, this Code or other policies of the Association, including procedures for preserving the confidentiality of reported information, may make a confidential report of such suspected misconduct to the Association's Counsel ("Whistleblower Reports"). ~~Any officer or other member who possesses knowledge that a staff member has engaged in conduct that raises a substantial question as to whether the staff member has violated the Business Conduct Standards applicable to staff may make a confidential report of such suspected misconduct to the Association's Counsel.~~ The Association does not permit retaliation against any Officer or Other Members who, in good faith, reports a possible violation of laws, the policies of the Association, including this Code or the Business Conduct Standards. ~~and~~ Any Officer or Other Members found to have been involved in improper retaliation shall be subject to sanctions as described in Section H.

## **H. Administration**

The Executive Committee shall appoint a special committee consisting of three or more former Presidents of the Association to administer, investigate and make a recommendation concerning disposition of any reported alleged violation of a provision of this Code, including Whistleblower Reports. Any alleged violation or Whistleblower Reports shall be referred to the special committee and shall not be disclosed to the Executive Committee unless and until the special committee submits a recommendation to the Executive Committee under the procedure set forth in this section. The special committee shall notify the alleged violator, if such notice has not previously been given, describing the alleged violation of the Code or Whistleblower Report, and provide such alleged violator with a fifteen day period in which to submit a written response setting forth information relating to the activities cited in the Whistleblower Reports or as an alleged violation. If the special committee thereafter makes a determination that further inquiry is justified, it shall give the alleged violator an opportunity to be heard. If the special committee determines at any time that there has been no violation, it shall so advise the alleged violator and the complainant. If the special committee determines that there has been no violation, all of the foregoing shall be confidential. Absent such determination, the special committee shall submit its recommendation to the Executive Committee, and the Executive Committee may have access to all material considered by the special committee. If the Executive Committee finds that a violation of the Association's policies, including the Code, has occurred, or a violation of law may have occurred, the Executive Committee may impose such sanctions as it deems fair and appropriate.

Any member may seek the guidance of the ~~Association's~~ Counsel with respect to any question that may arise under this Code, and may request a written opinion; provided, however, that in providing any written opinion or other advice, the ~~Association's~~ Counsel shall act only as counsel to the Association and shall advise the member accordingly. Any member who receives a written opinion from the ~~Association's~~ Counsel after having fully revealed all relevant facts may not be sanctioned by the Association for acting pursuant to such advice.

## **I. Effective Date and Amendment**

This Code shall become effective ninety days after adoption of a resolution by the House of Delegates approving the Code. Upon approval, it shall be published on the Association's web site. The Code may be amended from time to time by approval of a resolution by the House of Delegates. The Audit Committee shall review the Code at least once every three years to determine whether any amendments should be proposed.

## **16. NYSBA Business Conduct Standards**

### **Introduction**

Just as the New York State Bar Association (herein referred to as NYSBA or Association) promotes the goal of achieving the highest standards of professionalism, competence, and ethical conduct in law practice, it is committed to these objectives in its daily operations as a professional association. It therefore rightfully expects its employees to conduct their Association activities according to the highest ethical standards. The Standards set forth below are intended to guide employee behavior and decisions.

These Standards are not intended to be a complete listing of all possible situations encountered by an employee during their employment with the Association. Each employee must strive to apply the spirit and intent of these guidelines to the circumstances which he or she may encounter, many of which are not specifically listed here. In the event these Business Conduct Standards are more restrictive than those contained in other Association policies or practices, these Standards shall govern.

While there may be honest differences of opinion concerning ethical behavior in specific situations, the NYSBA expects its employees to discuss any questions or differences about ethical behavior through normal management channels. If necessary, employees should contact the NYSBA General Counsel (herein referred to as NYSBA Counsel), for assistance in resolving any such differences that might exist.

Any employee who violates the NYSBA Business Conduct Standards will be subject to appropriate disciplinary action based on the severity of the violation. Appropriate action may include termination of employment.

### **1. Conflict of Interest**

#### **A. General Policy**

The Association expects employees, including key employees, to avoid any conflict of interest or any appearance of conflict of interest in their performance of their duties for the Association. Employees must disclose potential conflicts of interest or the appearance of conflicts of interest that might arise because of economic or personal self-interest. For example, a conflict of interest may arise when: (i) an employee causes the Association to engage in a business transaction with family, relatives, or friends; (ii) the employee uses confidential Association information for personal gain or the gain of family, relatives, or friends; (iii) the employee or his or her family member owes a fiduciary or financial duty to, or has more than a 1% ownership or other financial interest in, any association supplier or competitor; (iv) the employee engages in part-time or other employment, including consulting arrangements, with any competitor or supplier; or (v) the employee receives an improper benefit, as referred to in this policy, from the Association or a third party as a result of his or her position with the Association.

#### **B. Guidelines**

##### **a. Rule on Related Party Transactions**

- (i) A "Related Party Transaction" means any transaction, agreement or any other arrangement in which an employee, or any Related Party with respect to such individual, has a financial interest, and in which the Association or any affiliate of the Association is a participant.**
- (ii) The Association shall not enter into any Related Party Transaction, unless the following occur:**
  - I. The Audit Committee determines that such transaction is fair, reasonable, and in the Association's best interest;**
  - II. With respect to Related Party Transactions in which an employee (or any Related Party thereof) has a substantial financial interest, the Audit Committee (A) considers, prior**



to entering into such transaction, alternative transactions to the extent available, (B) approves such transaction by a majority vote of the committee members present at the meeting, and (C) the Audit Committee contemporaneously documents in writing the basis for its approval, including considerations of any alternative transactions.

(iii) Conflicts of Interest

- I. Except in compliance with this Policy, Key employees may not act in carrying out their responsibilities in connection with transactions or arrangements of the Association (“Responsibilities”) or enter into a Related Party Transaction if those actions involve a conflict of interest. A conflict of interest arises, for example, when an employee has a personal financial interest, which affects the objectivity of that individual in performing his or her Responsibilities on behalf of the Association or conflicts with the best interests of the Association.
- II. Key employees of the Association shall annually complete, sign and submit to the Secretary of the Association a written statement (i) identifying any entity of which such individual is an officer, director, trustee, member, owner or employee and with which the Association has a relationship and (ii) any transaction in which the Association is a participant and in which such individual might have a conflict of interest.
  - a. Immediately upon an employee learning of a Related Party Transaction between such individual (or his or her Related Party) and the Association or other potential conflict of interest (“Interested Member(s)”), an Interested Member prior to participating in such matter, shall notify the Association’s attorney (or such other Association attorney as may be designated by the Executive Director) (the “NYSBA Counsel”) in writing, fully describing all material facts of such matter. The Counsel shall disclose to the Audit Committee all Related Party Transactions or other potential conflicts of interest reported to her or him under this Policy.
  - b. Interested Members shall not be present at or participate in a committee deliberation or vote on the matter giving rise to such conflict, but may, at the option of such committee, be present prior to the vote or discussion of the vote to make a presentation to such committee, disclose additional facts or respond to questions, provided, however, that Interested Members shall not attempt to influence the deliberation or voting on the matter giving rise to such conflict.
  - c. The minutes of any committee meeting during which a Related Party Transaction or conflict of interest is discussed shall document the existence thereof, any action taken to determine where a conflict of interest was present, the committee’s determination whether a conflict of interest existed, and a decision on whether the transaction shall be approved notwithstanding the conflict.

**2. Outside Business or Professional Activities**

**A. General Policy**

All employees are prohibited from engaging in outside business or professional activities that conflict with their obligations to the Association. Attorneys employed by the Association are prohibited from performing outside legal services for compensation. Attorneys may perform transactional legal services at no fee for members of their immediate family or for charitable organizations with which the attorney is associated and may perform pro bono services in accordance with the staff attorney Pro Bono Policy

referenced on page 3 and in Appendix 1. Employees who undertake other outside professional activities on their own time must understand their responsibility to refrain from engaging in activities that are in conflict with the interests of the Association.

## **B. Guidelines**

Employees shall disclose existing or proposed outside activities to their Senior Director for evaluation whenever there may be doubt whether the activities are contrary to the best interests of the Association. Examples include acceptance of employment or consulting arrangements from firms that have business relationships with the Association, outside employment that affects work performance, or writing or speaking engagements in which employment with the NYSBA is identified. All such activities require the approval of the Executive Director.

When an affiliation with the NYSBA is identified by the employee in connection with the employee's speech or printed matter (unless specifically authorized to represent the NYSBA and its positions) there should be a disclaimer that the employee is not speaking on behalf of the NYSBA and a clear statement that the views expressed are those of the author and do not necessarily represent an official position of the NYSBA. Advance notice to the Executive Director is required for such engagements.

The personal financial interests from outside business or professional activities of an employee should not conflict in any manner with Association duties and responsibilities. All circumstances of potential financial conflict of interest situations must be disclosed to the NYSBA Counsel.

## **3. Request or Acceptance of Gifts**

### **A. General Policy**

The request or acceptance of gifts, including but not limited to, merchandise, services, travel, cash or gift certificates, by an employee or member of the employee's household from suppliers or other persons with whom the NYSBA does business or who are seeking the business of the NYSBA is generally unacceptable except as provided below.

### **B. Guidelines**

From time to time, employees may receive or be offered gifts at work or at home from those with whom they have dealt in the course of their NYSBA work, such as suppliers, vendors, corporate sponsors, members or others desiring to show their appreciation for past or expected assistance. Gifts of nominal value are acceptable and may be retained. Employees are not required to report nominal gifts. However, acceptance of a substantial gift as defined below may be inappropriate or a conflict of interest and must be declined or returned unless acceptance is specifically approved in writing by the Executive Director. This policy will also apply to gifts from members.

In general, a gift (or gifts) from a supplier or vendor to one individual employee, exceeding \$150 in total value for the year shall be considered a substantial gift. A gift (or gifts) to one individual employee exceeding \$150 in total value for the year, paid using Association funds from any source (general revenue or section funds) shall also be considered a substantial gift and must be approved by the Executive Director. A gift (or gifts) to one individual employee from another employee, supplier, vendor, or agent of the Association, paid from private funds exceeding \$150 in total value for the year shall also be reported to the Executive Director for approval. Gifts of flowers to staff are exempt in all cases. Retention of a substantial gift or solicitation of a substantial gift for personal benefit from the sources listed above without written approval from the Executive Director is a serious infraction and constitutes grounds for disciplinary action, including dismissal. An employee shall not use Association funds from any source for the purpose of purchasing a gift for another employee without the prior approval of the

Executive Director. Gifts may include, but are not limited to, meals, tickets, trips, lodging or other goods and services.

An employee may accept complimentary travel, lodging and transportation only if in conjunction with business purposes, meetings or meeting site inspections and approved in writing, in advance by the Executive Director.

#### **4. Purchases and Sales**

##### **A. General Policy**

The NYSBA purchases goods and services from many sources on the basis of merit without favoritism. Sales of products, seminars and services are made in accordance with ethical business practices and applicable law.

##### **B. Guidelines**

Use of the NYSBA name or the purchasing power of the NYSBA to obtain discounts or rebates on purchases made for personal use, other than offers made available to all employees, is prohibited.

#### **5. Association Property**

##### **A. General Policy**

The Association acquires property for the purpose of serving the interests of its members. To protect the interests of our members, strict accountability for all Association assets is absolutely necessary. All employees are expected to protect the Association's assets and ensure their efficient use in compliance with Association policies and procedures. Association property should be used solely for conducting Association business.

##### **B. Guidelines**

The Association's property includes, but is not limited to, equipment, supplies, intellectual property, computer data and time, confidential information, and the time and skill of Association employees during work hours. Theft, carelessness, and waste have a direct impact on the Association's operations and effectiveness. Association property may be used only for legitimate business purposes, and the unauthorized use of Association property is prohibited.

#### **6. Staff Attorney Pro Bono Policy**

Attorneys employed by the NYSBA may perform pro bono services in accordance with the Association's Staff Attorney Pro Bono Policy (see Appendix 1). Property of the NYSBA, such as computers, research material, etc., may only be used for pro bono services in accordance with this policy. Attorneys are reminded that they are not covered by any Association insurance policy in connection with any legal malpractice claims, and should ensure that any clients understand that they are clients of the individual attorney and not of the Association.

## **7. Financial Records**

### **A. General Policy**

The Association's financial records and accounts shall be prepared and maintained in accordance with generally-accepted accounting principles and in a manner that will provide its members with accurate, complete, objective, relevant, timely, and understandable information.

### **B. Guidelines**

All employees and their supervisors are responsible for assuring that the Association's financial transactions within their control are authorized and accurately recorded in the Association's records. Similarly, no employee shall falsify or submit false records or vouchers to the Association. A knowing failure to follow these requirements will result in disciplinary action.

An employee who becomes aware of any falsification, misrepresentation, or deviation from the Association's financial policies or procedures in the recording or reporting (internally or externally), whether that matter is within the employee's control or not, shall report that matter ~~to the NYSBA Counsel~~ pursuant to the Employee Whistleblower Policy (detailed below). The failure to report may be grounds for disciplinary action including dismissal.

All receipts and expenditures must be fully accounted for and promptly recorded in the Association records. Payments shall be made upon appropriate approval only for services rendered or products delivered as required by the Association in the conduct of its business. No employee should request or approve any payment that is to be used for a purpose that is not reflected in the documents supporting the payment.

No Association funds or accounts shall be established or maintained for purposes that are not fully and accurately described as part of the Association's records. No employee shall keep any Association funds, and any unspent portion of travel advances, plus documentation reflecting expenditure of all or any portion of a travel advance shall be remitted to the Accounting Department following the completion of the travel or other purpose for which the funds may have been advanced.

Although periodic discarding of documents is necessary, there may be legal or policy requirements that require certain documents (both on paper and electronic) be retained for specific periods of time. Employees should refer to the Association's Document Retention Policy and consult their supervisor before disposing of any related document.

## **8. Confidential Information**

### **A. General Policy**

In the course of employment, employees may become aware of significant information relating to the Association and its members which is not generally known to the public. Every employee has a duty to use this confidential information solely in the conduct of NYSBA business in accordance with NYSBA policy. Employees with access to information, including ideas, plans, documents, and research materials that are confidential must recognize their employment with the NYSBA imposes an obligation of confidentiality which requires them to maintain and protect the confidentiality of certain information.

### **B. Guidelines**

Members rightfully expect that information given to the NYSBA will be kept safe from unnecessary disclosure. Employees shall refrain from disclosing member information unless disclosure is necessary in

the conduct of NYSBA business and is permitted or required by law or is consented to by the member. Member information that should be kept confidential includes, but is not limited to the following:

- Member lists, including addresses, e-mail addresses and telephone numbers;
- Customer profiles and purchasing history;
- Credit and payment information; and
- Information obtained while serving a member or other customer.

## **9. Political Process and Government Relations**

### **A. General Policy**

The NYSBA supports the right of each employee to associate and speak freely in support of the candidates and issues of the employee's personal choice, within the constraints applicable to any other outside activity. Employees are responsible for taking care that personal views are not presented as official positions of the NYSBA.

### **B. Guidelines**

The NYSBA will fully comply with all political contribution and reporting laws.

## **10. Antitrust Compliance**

### **A. General Policy**

The NYSBA expects that all business and other conduct on behalf of the Association will be conducted in a manner consistent with, and respectful of, all relevant federal and state antitrust laws. Each employee of the NYSBA is responsible for conducting himself or herself in a manner consistent with those laws, and to seek guidance from appropriate senior personnel or legal counsel in the event of any uncertainty as to how to proceed.

### **B. Guidelines**

In participating in Association activities, employees shall fully comply with federal and state antitrust laws. When employees are attending Association meetings or otherwise engaged in Association activities, they ~~shall not~~:

shall not discuss, exchange information or agree on legal fees (including discounts, payment terms, credit terms and other terms which affect the cost of service) charged or to be charged by Association members to clients;

shall not discuss, exchange information or agree on bids or proposals being made or to be made;

shall not discuss, exchange information or agree on markets served or to be served; and

shall not discuss or agree to refuse to deal with or to boycott individuals or organizations because of their fees or other considerations.

When the Association offers and administers continuing legal education (CLE) programs and sells publications and other products, employees shall:

~~shall~~ cause the Association to operate independently and compete fairly with other CLE providers and other publishers/booksellers;

~~shall~~ not discuss, exchange information or agree on CLE fees or on prices with any other CLE provider or any other publisher/bookseller;

~~shall~~ not discuss, exchange information or agree on bids or proposals to be made with any other CLE provider or any other publisher/bookseller;

~~shall~~ not discuss, exchange information or agree on markets served or to be served with any other CLE provider or any other publisher/bookseller; and

~~shall~~ not discuss or agree with any person acting for an entity other than the Association whether the Association will deal with any other commercial entity (i.e., suppliers of space, food, entertainment, or other elements necessary to providing programs, publications or other services in a commercial setting).

Under certain circumstances, the Association may co-sponsor programs or publications along with another provider; in those circumstances, employees are permitted to discuss the terms and conditions under which the co-sponsored program or publication will be offered to the public. If an employee has any questions or concerns about the limits of proper conduct in connection with a co-sponsored program, or other questions regarding antitrust compliance, the employee should consult with the Executive Director of the Association.

## **11. Reporting Suspected Violations / Protection Employee ( Whistleblower Policy)**

### **A. General Policy**

As part of its commitment to ethical and legal conduct and compliance, the Association expects all employees and volunteers who provide substantial services to the Association to bring to the attention of the NYSBA Counsel information regarding any activity reasonably believed to be: (i) a violation or suspected violation of any law; (ii) fraudulent or criminal; (iii) questionable accounting or auditing practices; ~~or~~ (iv) a misappropriation of Association funds; or (v) a violation or suspected violation of any other policy of the Association ("Suspected Misconduct"). The NYSBA will not retaliate against any person for disclosing Suspected Misconduct. A confidential, anonymous report of any Suspected Misconduct may be made to the NYSBA Counsel. Failure to report actual knowledge of Suspected Misconduct or substantiate a report of Suspected Misconduct may constitute grounds for disciplinary action against those who fail to report.

~~No supervisor, director, department head, delegate, or any other employee or member with authority to make or materially influence significant personnel decisions shall undertake or recommend adverse action against an employee in retaliation for disclosing Suspected Misconduct by other persons.~~

An employee's protection under this policy with respect to the reporting of Suspected Misconduct is in addition to any protections such employee may have pursuant to any applicable state or federal law. This policy shall not be construed as limiting any such protections.

### **B. Guidelines**

The NYSBA Counsel is responsible for administering the Employee Whistleblower Policy and shall disclose all reports of Suspected Misconduct to the Audit Committee. Suspected Misconduct will be

investigated by the NYSBA Counsel and other required personnel, including outside parties, necessary to complete a thorough investigation. Employees are expected to cooperate in such investigations. Employees should be aware that persons conducting investigations are obligated to act in the best interest of the Association and do not act as personal representatives or lawyers for employees.

Violations of the Business Conduct Standards by any employee reflect adversely on the reputation of the entire Association. Each employee, therefore, has a personal interest in assuring that such violations are detected and remedied.

## Appendix B

### AUDIT COMMITTEE COMPOSITION, DUTIES AND RESPONSIBILITIES

I. The Audit Committee shall consist solely of "Independent Members." An Independent Member is person who must satisfy all three of the following criteria:

1. The individual is not and has not been an employee of, or does not have a relative that is or was a key employee of, the Association or an affiliate of the Association in the past three years;
2. The individual and his or her relatives have not received compensation or other payments exceeding a total of \$10,000 during the last three fiscal years of the organization from the Association or its affiliate, other than compensation for services provided in the capacity as a member of the Executive Committee or Audit Committee or reimbursement for expenses reasonably incurred as a member of the Executive Committee or Audit Committee; and
3. The individual is not an employee of, nor have a substantial financial interest in, any entity that has made a payment to (other than a charitable donation) or received payments from the Association or its affiliate for property or services in an amount, which in the last three fiscal years, exceeds the lesser of \$25,000 or 2% of such entity's consolidated gross revenues ("Association Vendor"). The individual's relatives may not be an officer of nor have a substantial financial interest in an Association Vendor.

II. The Audit Committee shall:

1. Meet at least twice annually, and more frequently as circumstances may warrant. One of those meetings shall include, in separate executive sessions, meetings with the independent auditor, the Executive Director and such other members of the staff, as the Audit Committee determines, to discuss any matters within the scope of the Committee's duties that these individuals believe or the Committee believes should be discussed privately with the Audit Committee.
2. Assure the independence of the independent auditor and be directly responsible for the appointment, compensation and oversight of the work of the independent auditor. The Audit Committee shall also consider the periodic rotation of auditors or of auditing partners. The Audit Committee shall also discuss with the independent auditor the scope and plan of the annual audit and consider any changes in standard accounting practices from year to year prior to the commencement of the audit.
3. Review and discuss with the independent auditor the adequacy of the Association's internal controls and management's commitment ~~and~~ ability to



effectuate such recommendations for improvements in the internal controls as the independent auditor may recommend, and any material risks and weaknesses in internal controls identified by the independent auditor. The Audit Committee shall also discuss with management its response to the independent auditor's assessment.

4. Review with the independent auditor the coordination of audit efforts to assure completeness of coverage, reduction of redundant efforts, ~~and~~ the effective use of audit resources, and the adequacy of the Association's accounting and financial reporting processes.
5. Inquire of management and the independent auditor about significant risks or exposures and steps management has taken to minimize such risks to the Association.
6. Review the results of the annual audits, the management letter, previous recommendations to management ~~and~~ the extent to which difficulties, if any, were encountered in the course of the audit, including any restrictions on the scope of audit inquiries or access to information, or any significant disagreements between the independent auditor and management, with the independent auditor.
7. Assure that the Association maintains a satisfactory document retention program.
8. Establish procedures for: (a) the receipt, retention, and treatment of complaints received by the Association regarding accounting, internal account controls, or auditing matters; and (b) the confidential, anonymous submission by Association employees or others of concerns regarding questionable accounting or auditing matters.
9. Conduct or authorize investigations into any matters within the Audit Committee's scope of duties and responsibilities, and monitor the possible financial impact of legal matters that could impact the financial health of the Association.
10. Report periodically to the Executive Committee and the House of Delegates on significant activities of the Audit Committee.
11. Coordinate its activities, as may be appropriate, with the Finance Committee.
12. Obtain confirmation from management that all necessary tax filings have been made.

13. Review conflict of interest and whistleblower policies and if appropriate, make recommendations for changes to such policies. Make inquiry, if it deems appropriate, regarding any reported related-party transactions.
14. Assess the independence of all external investment advisers engaged by NYSBA, including any conflicts of interest such adviser has or may have, as required by ~~Section 554(a)(1) of the New York Not-For-Profit Corporation L~~ law.
15. Make provision for such financial training as Audit Committee members may deem appropriate to assist them in the effective and knowledgeable discharge of their duties and responsibilities.
16. Review this set of duties and responsibilities annually and propose any changes that may be warranted to the House of Delegates.
17. Perform such additional functions and have such additional powers as may be necessary or appropriate for the performance of its duties and responsibilities or as may be delegated from time to time by the House of Delegates to the Audit Committee.

Appendix B approved by  
the House of Delegates  
February 1, 2008, as  
amended November 17, 2012  
further amended June \_\_, 2014