

## **NABL – Subject Matter Conflicts**

### **Conflicts of Interest Relating to Subject Matter.**

Those serving on the NABL Board should be mindful of their dual roles: (1) as members of the Board and (2) as lawyers providing advice to clients or members of law firms providing advice to clients. On the one hand, NABL's statement of purposes, set forth in its Articles of Incorporation and its Bylaws, includes the providing of advice and comment at the federal, state and local levels with respect to legislation, regulations, rulings and other action, or proposals therefor, affecting state and municipal obligations, and the providing of advice and comment with respect to state and municipal obligations in proceedings before courts and administrative bodies through briefs and memoranda as a friend of the court or agency. On the other hand, it is recognized that each member of the Board, or such member's firm, may have clients that may stand to especially benefit (or may especially be adversely affected by) the resolution of a legal (or other) issue discussed in a NABL submission to a government agency or other regulatory body.

In addition, NABL's statement of purposes includes educating its members and others in the law relating to state and municipal obligations. Such education is frequently carried out through the issuance of papers targeted to NABL's members for purposes of educating them about the state of the art in the field of public finance. Clients of Board members or their firms may find that positions taken in such papers, while furthering NABL's mission of educating its members, may be consistent with, or may be contrary to, such clients' particular practices or the particular legal advice such clients have received.

Because of the dual role of Board members, there exists the potential for a conflict of interest relating to a particular subject matter. Specifically, clients of a Board member or the Board member's firm may, from time to time, have a special interest in a subject matter that is being addressed by the Board in a submission to a government agency or other regulatory body or in an educational piece for members. Not every situation, however, in which a client of a Board member or the Board member's firm stands to benefit (or be adversely impacted) creates a subject matter conflict of interest. Board members should be aware of ABA Model Rule 6.4, which is attached hereto as Exhibit A.

It is important to preserve and, as possible, enhance the credibility of NABL, particularly in the context of submissions to government agencies or other regulatory bodies. Accordingly, in light of the above, Board members should adhere to the following principles:

1. Board members should not allow the particular interest of a client of the Board member or the Board member's firm to be the overriding basis to actively support or oppose a position on a matter being considered by the Board or one of its committees or a task force or working group formed or designated by the Board (including, without limitation, a written submission to Congress, a government agency or other regulatory body or an educational paper). Active support of or opposition to a position on a matter being considered by the Board or one of its committees or a task force or working group formed or designated by the Board should not be based solely on the particular interest of a client.

2. If a Board member determines that a client of the Board member or, to the Board member's actual knowledge, the Board member's firm stands to especially benefit (or especially be adversely affected) specifically by a matter being considered by the Board or one of its committees or a task force or working group formed or designated by the Board (including, without limitation, legislation, regulations, rulings or other pronouncements by a government agency or other regulatory body or a court decision), the Board member should disclose such subject matter conflict at each successive Board meeting (whether in person or by phone), or if the Board member chooses to do so earlier, by email to the President and the Chief Operating Officer. In disclosing the subject matter conflict, the Board member need not disclose name of the client unless the Board member wishes to and can do so pursuant to applicable ethical standards. Such Board member should continue to disclose the subject matter conflict in each successive Board meeting until such conflict has been resolved or otherwise no longer exists. The following are non-exclusive examples of application of these principles

(a) If, during the time the Board or one of its committees or a task force or working group formed or designated by the Board, is addressing, in a government or regulatory body submission, or in an educational paper, a particular subject matter, a client of a Board member or, to a Board member's actual knowledge, the Board member's firm is involved in (a) an IRS examination, (b) an IRS "VCAP" request, (c) an SEC investigation, (d) other enforcement action, or (e) a bankruptcy, receivership, workout or other restructuring in which such subject matter is an issue, the Board member should disclose, as a subject matter conflict, in the time and manner described above that the Board member has a client involved in one of the above situations.

(b) If a Board member or, to the Board member's actual knowledge, the Board member's firm, has been engaged by a client to influence a government decision or policy determination on an issue that is also under consideration by the Board or one of its committees or a task force or working group formed or designated by the Board, the Board member should disclose, as a subject matter conflict, in the time and manner described above that the Board member has a client involved in one of the above situations.

For Board members who are members of the NABL Executive Committee, the timing of disclosure as set forth herein would apply, in addition to successive Board meetings, to successive Executive Committee meetings.

## EXHIBIT A

### ABA Model Rules of Professional Conduct

#### Rule 6.4 Law Reform Activities Affecting Client Interests

A lawyer may serve as a director, officer or member of an organization involved in reform of the law or its administration notwithstanding that the reform may affect the interests of a client of the lawyer. When the lawyer knows that the interests of a client may be materially benefitted by a decision in which the lawyer participates, the lawyer shall disclose that fact but need not identify the client.

#### Comment on Rule 6.4

#### Rule 6.4 Law Reform Activities Affecting Client Interests - Comment

[1] Lawyers involved in organizations seeking law reform generally do not have a client-lawyer relationship with the organization. Otherwise, it might follow that a lawyer could not be involved in a bar association law reform program that might indirectly affect a client. See also Rule 1.2(b). For example, a lawyer specializing in antitrust litigation might be regarded as disqualified from participating in drafting revisions of rules governing that subject. In determining the nature and scope of participation in such activities, a lawyer should be mindful of obligations to clients under other Rules, particularly Rule 1.7. A lawyer is professionally obligated to protect the integrity of the program by making an appropriate disclosure within the organization when the lawyer knows a private client might be materially benefitted.