

## **RESOLUTION PROPOSED BY LAWYER AND MEMBER, BOARD OF DIRECTORS, THE CHARITY**

As you know, in addition to serving as a Member of the Board of Directors of the Charity, I have been asked to perform certain legal work on behalf of the Charity.

Before I undertake any further legal work on behalf of the Charity, I must disclose the potential benefits and risks of what would be my dual capacity with the Charity. I would also like to set forth the parameters of my representation of the Charity in my role as occasional legal advisor.

### Role as Legal Advisor

It is necessary for everyone to understand and appreciate the fact that when I perform legal work for the Charity, my client will be the Charity. This means I will not, unless specifically otherwise engaged and only if appropriate, represent any Director, Officer, employee or general contractor of the Charity. I will not be able to keep confidential anything any of you tell me involving personal matters if that information is important or adverse to the interests of the Charity. My duty as legal advisor will be to the Charity as an entity, and not to any of the individual persons associated with it. Therefore, if any of those individuals act or refuse to act in a manner which is a violation of their legal obligation to the organization, or a violation of law that reasonably might be imputed to the organization, and that is likely to result in substantial injury to the organization, then the I must proceed to protect the Charity, including, if necessary, bringing the matter to the attention of the Officers and Directors for action. If the Officers and Directors fail to take appropriate action, it may become necessary for me to disclose information to others in order to protect the interests of the Charity as an entity. In some ways my duty to the Charity as legal advisor will parallel my duty as a member of the Board of Directors: I must act in the best interest of the Charity.

### Risks of Dual Role and Necessary Safeguards

We must always be clear in our communications concerning the capacity in which I am acting. If I am acting as legal advisor, as a general rule, the conversations will be protected by the attorney-client privilege.

If I am acting as a Board member, our communications will not fall within the

protection of that privilege. Therefore, if there are legal issues or disputes concerning which I am called upon to act in my capacity as legal advisor, we all must be clear in our oral and written communications when my legal advice and representation is being sought.

Therefore, at any time the Board of Directors are meeting and request legal advice from me, the minutes should clearly reflect that the Board went into Executive Session and that I am participating as legal advisor.

All requests for legal advice from me should come from either the President or from a majority vote of the Board of Directors. I will always abstain from such a vote.

#### Disclosure

Conflicts of interest may arise due to my dual role as a member of the Board of Directors and as legal advisor. Therefore, I am requesting that each of you execute a written consent to these potential conflicts of interest.

The risks posed by my dual role as Board member and legal advisor include the possibility that privileged attorney-client communications and attorney work product may be waived if appropriate precautions are not taken with respect to separation of those two roles, as described above.

Because of these potential conflicts, my legal advice should not be sought with respect to disagreements among and between Officers and Board members, as my ability to exercise independent professional judgment might be compromised. Furthermore, I will not vote as a Board member on any issues relating to my potential employment as legal advisor.

As a general rule, I should not represent the Charity with respect to positions against which I voted as a Board member. Furthermore, as a general rule, I should not give legal advice to the Charity with respect to legal issues that arise from decisions by the Board of Directors in which I participated. I should not represent the Charity in any litigation wherein (1) I might be called as a witness, (2) the actions of the Board of Directors are being challenged, (3) I am made or might be made a co-defendant, or (4) in which the Charity might have a third-party claim against me.

Despite all of these precautions, situations may arise where my roles as Board

Member and as legal advisor are directly and irreconcilably in conflict, such that your consent to my dual roles would not resolve the conflict. In that event, I may have to resign as Board member or decline to act as legal advisor in a particular matter or situation.

I will be providing legal advice to the Charity on a *pro bono publico* (no charge) basis. Therefore, should the legal matter involve extensive legal work which I cannot or choose not to perform since I make my living earning legal fees, I may decline to provide work or advise on that matter. In that event I will be happy to recommend suitable alternative counsel.

The benefit of my serving in the dual role as Board member and legal advisor is that I have the best interests of the Charity at heart. I pledge to apply my best efforts to my work on behalf of the Charity.

Your decision whether to consent to these conflicts

My role as legal advisor can only be accomplished by the majority vote of the members of the Board of Directors. Before such a vote is proposed, however, I want each of you to carefully consider the risks and benefits of employing me in that capacity. I urge you to consult independent legal counsel, either individually or collectively, during your deliberative process. Thereafter, please return the following resolution to me with your choice indicated below, certified by the Charity's Secretary.

This \_\_\_ day of \_\_\_ 201\_\_\_.

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Lawyer

**RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE CHARITY**

UPON CONSIDERATION of the proposed alternative resolutions of Lawyer,  
Board member of this Charity, duly noticed to this Board; and upon consideration at the  
meeting of the Board of Directors this \_\_\_\_ day of \_\_\_\_\_, 201\_\_, a full  
quorum being present;

BE IT RESOLVED:

- We have had the opportunity to consult independent legal counsel regarding this decision. We have decided not to consent to your serving as legal advisor of the Charity in addition to your position as member of the Board of Directors.
- We have had the opportunity to consult independent legal counsel regarding this decision. We consent to your serving as legal advisor of the Charity in addition to your position as member of the Board of Directors.

SO RESOLVED this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

BOARD OF DIRECTORS

THE CHARITY

BY: \_\_\_\_\_  
Secretary