

As of 2/8/10 Deleted: 11/17/09

# WESTMONT COLLEGE

## CONFLICT OF INTEREST STATEMENT

*The purpose of Westmont's Conflict of Interest Statement is to ensure that trustees, faculty and staff fulfill their fiduciary duty to the College by giving first priority to the interests of the College; or, where an existing or potential conflict of interest arises, to disclose this conflict as indicated in this Statement.*

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### I. Reason for Statement

Westmont College is a non-profit corporation, whose continued existence depends on charitable contributions from the public and other support from the government. Maintenance of the tax exempt status of the College is essential both for its continued financial stability and for the receipt of contributions and support. For these and other reasons, the operations of the College are in the nature of a public trust, subject to scrutiny by the government, tax authorities, and members of the public.

*As between the trustees, faculty and staff, and the College, there exists a fiduciary duty which carries with it a broad and unbending duty of loyalty. These persons have the responsibility of administering the affairs of the College honestly and economically and of exercising their best care, skill, and judgment for the sole benefit of the College. They shall exercise the utmost good faith in all transactions involved in their duties, and they shall not use their positions or knowledge gained therefrom in a manner that places any personal benefit, either directly or indirectly, above one's duty to the College. The interests of the College must have the first priority.*

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All purchases of goods and services must be effected on a basis securing for them full competitive advantages as to product, service, and price. Likewise, all personnel decisions must be free from self-dealing and must comport with college nepotism policies<sup>1</sup>.

In their dealings with the College, all trustees, faculty and staff must be ever mindful of potential conflicts of interest. Before entering into transactions presenting such problems, trustees shall be expected to disclose to the Board, and faculty and staff to report to the Executive Team, the interest which may produce the conflict. The Board or the Executive Team, as appropriate, shall determine whether the contemplated transaction so disclosed is just, fair, and reasonable as to the College, and, after so determining

<sup>1</sup> E.g., Employee Handbook section 3.3, Faculty Handbook section 1.4.3.7 and 2.1.3.5

affirmatively, the Board or the Executive Team may authorize the transaction in the best interests of the College.

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Distribution of this statement does not imply a lack of confidence in the recipients. Rather, the annual distribution of this statement and the annual certification requirement are to serve as reminders of the high fiduciary standards which must guide all those related to the operations of the College and of their duty to reveal any conflict of interest in advance of a transaction.

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## II. Persons Concerned

This statement is directed not only to trustees, but to all faculty and staff who can influence the actions of or commit the College or Board; for example, all, who make purchasing decisions, all who make employment decisions, and all who have confidential information concerning the College. These groups are hereafter referred to as "covered persons."

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## III. Areas in Which Conflicts May Arise

Conflicts of interest may arise in the relations of covered persons with:

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- A. Persons and firms supplying goods and services to the College.
- B. Persons and firms from whom the College leases property and equipment.
- C. Persons and firms with whom the College is dealing or planning to deal in connection with the gift, purchase or sale of real estate, securities, or other property.
- D. Other colleges and educational facilities.
- E. Donors and others giving support to the College.
- F. Students.
- G. Third party payors of student assistance.
- H. Agencies, organizations, and associations which affect the operations of the College.

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### I. Individuals being hired or reviewed.

## IV. Nature of Conflicting Interest

In a covered person's relations with the persons and firms mentioned in Section III, a material conflicting interest may be defined as an interest, direct or indirect, which might affect, or might reasonably be thought by others to affect his/her judgment or conduct as a trustee, officer, or management employee. Such an interest might arise through:

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- A. Owning of stock or other proprietary interests.
- B. Holding debt or debt securities.

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- C. Holding office, serving on the Board, participating in management, or being otherwise employed (or formerly employed).
- D. Receiving remuneration for services with respect to individual transactions.
- E. Receiving of personal gifts or unsecured loans. (Receipt of any gift is disapproved except gifts of nominal value which could not be refused without discourtesy. No personal gift of money should ever be accepted.)
- F. Obtaining an interest in real estate, securities or other property which the College is considering buying or leasing.

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G. Expending time during normal business hours for personal affairs or for other organizations, civic or otherwise, to the detriment of work performance.

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**V. Indirect Interests**

As noted above, conflicting interests may be indirect. A covered person will be considered to have an indirect interest in a firm or transaction if any of the following have an interest:

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- A. The covered person's family (defined for these purposes as all persons related by blood or marriage).
- B. An estate or trust of which the covered person is a beneficiary, personal representative, or trustee.
- C. A company of which a member of the family of the covered person is an officer, director, or employee, or in which he/she has a stock interest or other proprietary interest.

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**VI. How Statement of Policy Should Be Interpreted**

The areas of conflicting interest listed in Section III, and the relations in those areas which may give rise to conflict, as listed in Sections IV and V, are not offered as an exhaustive exposition. Conceivably, conflicts might arise in other areas or through other relations. (See Appendix.) It is assumed that covered persons will recognize such areas and relations by analogy.

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The fact that one of the interests described in Sections IV and V exists does not mean necessarily that a conflict exists, or that the conflict, if it exists, is material enough to be of practical importance; or if material, that upon full disclosure of all relevant facts and circumstances that it is necessarily adverse to the interests of the College. However, *it is the College policy that the existence of any one or more of the interests described in Sections IV or V shall be disclosed before any transaction is consummated.* It shall be the continuing responsibility of covered persons to scrutinize their transactions for potential conflicts and to make such disclosures.

The questionnaire provided in Section VIII should be used proactively by any covered person to determine if any conflict may exist regarding an anticipated transaction.

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Since such conflicts may be difficult to recognize, covered persons should discuss potential conflicts with their supervisor (e.g., Board Chair, President, Vice President). They should abstain from voting on such potential conflicts, and should withdraw from any relevant discussion. Community members have a professional responsibility to avoid placing themselves or others in situations of conflict of interest.

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**VII. Implementation of Policy**

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Disclosure by trustees shall be made to the Chair of the Board, who shall bring these matters to the attention of the Board through its Executive Committee. Disclosure by faculty and staff shall be made to the President, who shall bring these matters to the attention of the Executive Team. The Board or the Executive Team, as appropriate, shall then determine whether a conflict exists and is material, and in the presence of an existing material conflict, whether the contemplated transaction may be authorized as just, fair, and reasonable as to the College. The decisions of the Board and of the Executive Team on these matters will rest in their sole discretion, and their first concern must be the welfare of the College.

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Anyone who believes that this policy may not have been followed or may have been violated shall bring the matter to the attention of the Board Chair (if pertaining to a trustee) or to the College President (if pertaining to a faculty or staff member) for review. If an alleged violation concerns a faculty or staff member, any investigation and determination must comply with relevant provisions in the appropriate handbook.

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The trustee Executive Committee shall keep a record of the potential or actual conflicts brought to its attention regarding members of the Board of Trustees. The administrative Executive Team shall keep a record of the potential or actual conflicts brought to its attending regarding members of the administration, faculty or staff.

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**VIII. Conflict of Interest / Related Party Questionnaire**

A conflict of interest may relate to you, your spouse, family members, business interests, and/or associates. Conflicts of interest may arise when one party has the ability to influence the management or operating policies of the other, to the extent that one of the transacting parties might be prevented from fully pursuing the interests of Westmont College rather than his/her own separate or related-party interests. The following is intended to assist in identifying such interests:

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Name:

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<b>YES</b>	<b>NO</b>

I (or a party related to me) hold, directly or indirectly, a position of financial interest in an outside concern from which the organization secures, or may secure, goods or services.

I (or a related party of mine) render directive, managerial, or consultative services to, or am an employee of, any outside concern that does business, or is seeking to do business, with Westmont College.

I have accepted gifts or other benefits from any outside concern that does business, or is seeking to do business, with Westmont College.

I have participated in management decisions concerning transactions that affect or benefit me, my family, or my personal financial interests (other than ordinary management decisions on college-wide increases for compensation and benefits).


If you answer "yes" to any of the above questions, you must disclose to the Board Chair or College President, as appropriate, any personal (or family) financial interest *relevant* to the issue and a written statement proposing how any concern about a conflict of interest can be resolved.

**IX. Annual Certification**

Each covered person shall certify on an annual basis whether or not he or she has any relations or interests that may conflict with the person's duty of loyalty to Westmont College. Any potential or actual conflict of interest must be disclosed promptly and fully to the Board Chair or College President, as appropriate.



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**ANNUAL CERTIFICATION REGARDING CONFLICTS OF INTEREST**

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I have carefully read the foregoing Statement of Policy concerning Conflicts of Interest. In signing this certificate, I have considered not only the literal expression of the policy, but also its intents. I hereby certify that, *except as hereinafter stated*, I do *not*, to the best of my knowledge:

1. Have any of the relations described in Section IV and V with any person or firm of the classes listed in Section III; and
2. Have any interests conflicting with the interests of Westmont, nor do I have any relationship that may appear to conflict with the college's interests.

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**The exceptions are:**

If any situation should arise in the future which I believe may involve me in a conflict of interest, I will promptly and fully disclose the circumstances directly to the College President or the Board Chair.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Position at the College

\_\_\_\_\_  
Date

## APPENDIX

### Other Potential Conflicts of Interest

*The purpose of Westmont's Conflict of Interest Statement is to ensure that trustees, faculty and staff fulfill their fiduciary duty to the College by giving first priority to the interests of the College; or, where an existing or potential conflict of interest arises, to disclose this conflict as indicated in this Statement.*

#### Influencing personnel decisions:

- Teaching, supervising and/or participating in decisions affecting an immediate family member.
- Casting a vote in committee deliberations regarding proposals or actions which lead to a direct personal benefit, as in awarding of faculty development funds.

#### Receiving personal remuneration:

- While consulting or teaching for pay outside the institution, representing oneself as an official representative of the institutions when actually acting as an independent contractor of services;

*Trustees, faculty, and management employees serving as consultants for outside organizations may receive compensation without conflict of interest.*

*The institution encourages consulting by individuals in areas related to their academic or administrative fields of expertise*

*o When the outside work contributes to the individual's professional growth;*

*o When the institution's standing is enhanced by these outside contacts and services; and*

*o Most importantly, when the consulting work can be done without interfering with regular institutional duties.*

*If extramural employment involves substantial time during the academic year, then the Faculty or staff member should undertake consulting work only after receiving approval from their department head or supervisor.*

- When adopting one's own book or other teaching aids results in gaining royalties or profits as personal income;

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The institution encourages faculty authors and supports faculty freedom to select materials for classroom use. However, a faculty member who adopts a text he or she has written for a class may face a conflict of interest if receiving royalties or other compensation from sales. If an author has sole responsibility for a textbook adoption decision of this sort, he or she should review text selections with the department chair.

- When teaching during the contract year at another academic institution, business or agency without prior written approval of the appropriate administrative officer at Westmont.

Accepting an adjunct teaching position elsewhere during the academic year involves a commitment of time which is likely to compete with responsibilities at Westmont. As with any extended commitment (such as serving as a consultant, intensive and continued participation in a research project, or interim pastorate), instructors must secure permission from the Provost or appropriate academic dean before taking on such an assignment.

- When entertaining or being entertained in connection with institutional business beyond what a reasonable person would deem appropriate.

**Using institutional resources:**

- When using without permission the institution's name, facilities, or equipment for personal purposes leading to remuneration for private gain; e.g. for the production of copyrightable or patentable materials;

College facilities and equipment are made available for use by faculty and staff in ways that are consistent with their work responsibilities – e.g., faculty may use College equipment for preparing articles and books, even if there is remuneration for private gain.

**Incidental** use of College computers for transacting personal business (e.g., emails to and from family and friends) is allowable, provided that the use is not significant and does not interfere with one's duty of keeping the College's interests as primary.

- When making personal use of institutional resources to support political candidates or causes even though not for remuneration;
- When purchasing major equipment, instruments, or supplies for teaching or research from a private firm with which the employee is affiliated or receives personal benefits or rewards;
- When disclosing confidential information or research gained within the institution to external entities for personal gain.

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**Influencing business relationships:**

- When influencing institutional business decisions in ways leading to personal gain or inappropriate advantage to anyone.

**Examples from Higher Education**

**Example A:**

A college purchases insurance coverage through a firm owned by a board member. This would constitute a conflict of interest unless the purchase is in the best interests of the organization. The interested board member should not be present at the meeting when the decision is made. If the purchase passes these tests, it does not constitute a conflict of interest but qualifies as a related-party transaction.

**Example B:**

A university receives a significant endowment gift. The organization board establishes investment policy guidelines and appoints a subcommittee of the board to carry out the routine investing of the funds.

An investment broker who sells mutual funds chairs the organization’s investment committee. His firm pays him commissions on his mutual fund sales. The broker recommends that the committee purchase certain mutual funds from his firm.

This is a conflict of interest, even if the broker fully discloses the fees that would be paid to his firm and the commissions he would receive—and even if the fees are comparable to what other brokers would charge. This biased environment makes it nearly impossible to achieve fairness in decision making.

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