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45 C.F.R. § 1607.3(h)(2) specifically addresses conflicts for recipient board members.

Recipients . . . should consult with the appointing organizations to insure that . . . [a]ppointees do not have actual and significant individual or institutional conflicts of interest with the recipient or the recipient's client community that could reasonably be expected to influence their ability to exercise independent judgment as members of the recipient's governing body.

Emphasis added. LSC has relied on local non-profit corporation law and the ethical rules governing attorney practice for grantee guidance in this area. This provision allows grantees to address such issues through consultation with the appointing organizations and through grantee bylaw provisions "that deal with board membership conflicts as long as the bylaws do not conflict with any requirements of the LSC Act or regulations." 59 FR 65249, 65252 (1994) (Supplemental Information for §1607.3(h)).

LSC has not considered before if a judge or quasi-judicial official falls under the government employee policy. In order to evaluate Mr. Brode's situation, we would need further information about the appointment process for the position of part time Judicial Custody Master. As a general matter, it seems to us that if this position is either elected or appointed, then this policy would most likely apply. As someone subject to future election or re-appointment, he would be subject to the kinds of political influences that LSC grantees are directed to stay free of.

We strongly recommend that you and Mr. Brode seek local ethical guidance on the conflicts aspect of this question. As you have mentioned, your program brings cases before Mr. Brode as the Judicial Custody Officer. We would be surprised if he was not required to at least recuse himself from those cases if he serves on your board (as he has offered to do). Clients in custody matters could question the independence of their attorney when the attorney's employer has on its board one of the Judicial Custody Masters who hear these cases. He may need to further recuse himself from any board decisions that would affect the acceptance or handling of cases that could come before him or other Judicial Custody Officers.

If your program frequently has cases before the Judicial Custody Master, then it seems likely that any Judicial Custody Master would have an institutional conflict that would prevent him or her from serving on your board. Your program needs to be free from any appearance of a conflict that would interfere with your freedom to differ with the judges in this forum during litigation and in appeals.

As a past staff member of your program and an attorney with private practice and judicial experience, Mr. Brode may have very significant contributions to make on your board. Nonetheless, it appears that his current role as a Judicial Master is highly likely to

October 8, 2002

Page 3

at least require his recusal from cases involving your program, and would quite possibly prevent him from serving on your board.

Please feel free to contact me with additional information if you feel that Mr. Brode's circumstances fall into the exception to our government employees prohibition, or if you need further LSC input on the conflicts question this situation presents.

Very truly yours,

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