

## **New York City Conflicts of Interest Board**

### **Notice of Adoption of Final Rules**

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE NEW YORK CITY CONFLICTS OF INTEREST BOARD by Section 1043 of the City Charter and Section 3-907 of the New York City Administrative Code, that the Conflicts of Interest Board has adopted Board Rules that govern legal defense trusts authorized in Chapter 11 of Title 3 of the New York City Administrative Code.

The proposed Rules were published in the City Record on July 1, 2019, and a public hearing was held on August 1, 2019. No testimony or comments were received. The Conflicts of Interest Board now adopts the following Rules.

### **Statement of Basis and Purpose**

Local Law No. 48 of 2019 amended the New York City Administrative Code to permit the creation of legal defense trusts to pay for enumerated expenses related to certain legal liabilities incurred by public servants. This law, codified at Chapter 11 of Title 3 of the New York City Administrative Code, is entitled “Legal Defense Trusts” (“Chapter 11”), and it sets forth requirements about the types of legal defense trusts that may be created, the manner in which such trusts must be registered with the Conflicts of Interest Board (“Board”), the source and amount of the contributions the trust may accept, how trust funds may be utilized, and reporting requirements for donations and expenditures. The Board is charged with administering, enforcing, and promulgating rules necessary to implement Chapter 11.

These rules implement Chapter 11 and are codified as a new Chapter 5 of Title 53 of the Rules of the City of New York (“Board Rules”). To clarify and assist with compliance with the requirements set forth in Chapter 11, the rules: (1) define “in-kind donation” and “pro bono assistance”; (2) establish how the Board will aggregate contributions; (3) identify specific documents and information that must be submitted to the Board as part of the reporting requirements of Administrative Code § 3-1103; (4) establish reporting requirements related to the dissolution of legal defense trusts; (5) establish the manner in which information and documents must be submitted; and (6) establish document retention requirements.

Set forth below is a detailed description of the rules.

**Section 5-01:** This section defines “in-kind donation” and “pro bono assistance.” The definition of “in-kind donation” includes any donation of any value, but excludes routine and incidental personal expenses paid by a trustee or volunteer clerical staff for the administration of the trust, such as the use of a personal laptop or a trustee paying for his or her own travel expenses. Such personal expenses of the trustee(s), including the value of travel, meals, or the use of space in connection with the administration of the trust, are not expenditures payable or reportable by the trust pursuant to Administrative Code § 3-1102(f)(1)(b) when they are not billed to or paid by the trust.

The definition of “pro bono assistance” includes only professional services, such as legal, accounting, and fundraising services. The definition excludes work done by a trustee for the purpose of administering the trust, such as preparing the trust agreement and submissions to the Board, maintaining required records, or communicating with beneficiaries and government agencies, as well as work done by clerical volunteers, such as folding letters for a mass mailing.

**Section 5-02:** This section requires the aggregation of donations for both the \$5,000 donation limit and for the \$100 reporting threshold. In the interests of preventing the use of cash to circumvent or otherwise evade scrutiny on the source of contributions, Board Rules § 5-03(b) prohibits the acceptance of cash totaling \$100 or more from a single donor.

This section also clarifies that in-kind donations and pro bono services may only be accepted for the purpose of administering the trust pursuant to Administrative Code § 3-1102(f)(1)(b). This establishes that a legal defense fund can only accept in-kind donations or pro bono services for which it could have permissibly made expenditures to acquire.

**Section 5-03:** This section implements the reporting requirements of Administrative Code § 3-1103. Sections 5-04(a)(2) and 5-04(b)(2) require the trustee(s) to submit electronic copies of the listed documents to ensure compliance with the law’s limitations on the source of donations, donation limits, and permissible expenditures.

**Section 5-04:** This section establishes reporting requirements for the termination of legal defense trusts. Upon dissolution of a legal defense trust, the trustee(s) will be required to submit the listed documents and information to confirm compliance with Administrative Code § 3-1104.

**Section 5-05:** This section requires submission of all documents and information required by these rules using the reporting website maintained by the Board.

**Section 5-06:** This section establishes record retention procedures by which the Board would ensure compliance with the requirements of Chapter 11.

New material is underlined.

Section 1. Title 53 of the Rules of the City of New York is amended by adding a new Chapter 5, entitled “Legal Defense Trusts” to read as follows:

## **CHAPTER 5** **LEGAL DEFENSE TRUSTS**

### **§ 5-01 Definitions.**

“In-kind donation” means any donation of any value, other than money, such as the use of space, materials, supplies, or perishables. The donation value of an in-kind donation will be established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Personal expenses paid by the trustee(s) or volunteer clerical staff for the purpose of administering the trust are not in-kind donations.

“Pro bono assistance” means the provision of professional services, including but not limited to legal, accounting, and fundraising services. The donation value of pro bono assistance will be established by a reasonable estimate of that portion of its fair market value that is not paid or reimbursed by the trust. Pro bono assistance does not include uncompensated work by the trustee(s) for the purpose of administering the trust or volunteer clerical assistance.

### **§ 5-02 Donations.**

- (a) Multiple donations made by a person shall be aggregated for the purposes of the:
  - (1) \$5,000 donation limit established in Administrative Code § 3-1102(e)(1); and
  - (2) \$100 reporting threshold established in Administrative Code § 3-1103(a)(1).
- (b) A legal defense trust may not accept cash totaling \$100 or more from a single donor.
- (c) A legal defense trust may not accept a donation without having received the signed disclosure document from the donor as required by Administrative Code § 3-1102(e)(3).
- (d) In-kind donations and pro bono assistance may only be accepted for the purposes of administering the trust, pursuant to Administrative Code § 3-1102(f)(1)(b).

### **§ 5-03 Reporting and Disclosure.**

- (a) In addition to the information required by Administrative Code § 3-1103(a)(1) regarding the reporting of donations, the trustee(s) must:
  - (1) Disclose
    - (i) the description and use of any in-kind donation and any pro bono assistance accepted; and
    - (ii) the date and amount of any refund to a donor.
  - (2) Submit the following documents:
    - (i) a copy of the receipt, check, or other document establishing that the donation was made by the donor;
    - (ii) a copy of the receipt, check, or other document establishing that a refund, if any, was made by the legal defense trust;
    - (iii) a copy of the receipt or other written record establishing the value of in-kind donations or pro bono assistance; and
    - (iv) a copy of the donor’s signed disclosure document.
- (b) In addition to the information required by Administrative Code § 3-1103(a)(2) regarding the reporting of expenditures, the trustee(s) must:
  - (1) Disclose
    - (i) the date the expense was incurred;
    - (ii) the date the expense was paid; and

(iii) the amount, if any, returned to the trust pursuant to Administrative Code § 3-1102(f)(4).

(2) Submit the following documents:

(i) a copy of the itemized receipt for each expense; and

(ii) a copy of the check or other document establishing that the expenditure was paid by the legal defense trust.

(c) Quarterly reports submitted by the legal defense trust must include all bank, credit card, and merchant account statements received by the trust during the reporting period.

#### **§ 5-04 Dissolution.**

(a) If the trustee(s) returns donations on dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report pursuant to Administrative Code § 3-1103:

(1) the name and address of each donor receiving a refund;

(2) the amount of the refund;

(3) the date of the refund; and

(4) a copy of the check or other document establishing that the refund was made.

(b) If the trustee(s) transfers donations to a charitable organization upon dissolution of a legal defense trust, the trustee(s) must submit in the last disclosure report submitted pursuant to Administrative Code § 3-1103:

(1) the name and address of each charitable organization receiving a transfer;

(2) the amount of the transfer;

(3) the date of the transfer; and

(4) a copy of the check or other document establishing that the transfer was made.

#### **§ 5-05 Electronic Submission of Compliance Documents.**

All information and documents required by this chapter must be submitted by the trustee(s) using the reporting website maintained by the Board.

#### **§ 5-06 Record Retention.**

The trustee(s) must maintain records and documents sufficient to demonstrate compliance with these rules and must retain these records and documents for 2 years following completion of the final audit upon dissolution of the legal defense trust.