

NAFER - CODE OF CONDUCT

CANON I. A RECEIVER MUST UPHOLD THE INTEGRITY AND FAIRNESS OF THE RECEIVERSHIP PROCESS.

1. To Whom Duties are Owed Receivers must recognize the diverse goals of a federal equity receivership: recovering monies, discovering and reporting on the true prior conduct of the entities in receivership, assisting law enforcement, and fulfilling roles not well-suited for government entities. A receiver must balance the interests of all intended beneficiaries of the receivership, while remaining true to his role as a court-appointed fiduciary.

A. Court Receivers owe their primary duty to the court that appointed them and should act at all times consistent with the principle of being an officer of the court. This includes obligations of honesty, full disclosure, and respect for the role of the court. Receivers should always observe high standards of conduct that will preserve the integrity, dignity, and independence of the appointing court and judicial system.

B. Victims In most cases, the primary objective of a federal equity receivership is to recover assets so monies can be returned to victims of fraud or other violations of the law. While victims are intended beneficiaries of the receiver's work, they are not the clients and their desires are only one factor for a receiver to consider in performing her duties.

C. Government agencies Federal equity receivers generally work closely with the government agencies who requested their appointment. Ordinarily, the work of these government agencies complements the work being done by receivers. However, the receiver must remember that she owes duties to the court, not to the agencies. Nevertheless, the interests of justice and the special role of a receiver almost always means the receiver should coordinate with and assist civil and criminal government agencies in their investigations and enforcement actions.

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CANON II. A RECEIVER MUST BE IMPARTIAL AND TAKE

ADEQUATE STEPS TO AVOID CONFLICTS OF INTEREST AND APPEARANCES OF CONFLICTS.

2. Neutrality:

A. **Improper Relationships** A receiver may not have a relationship with the parties, counsel, action, or appointing court that would require disqualification of a judge under 28 U.S.C. §455, unless waived by the parties with the court's approval after full disclosure of any potential grounds for disqualification.

B. **Financial Interest** A receiver may not own a legal or equitable interest, however small, in a party, nor have a relationship with a party, such as serving as its director or advisor.

C. **Conflicts of Interest** - A receiver should avoid conflicts of interest in the performance of official duties. A conflict of interest arises when a receiver knows that he or she (or a close relative) might be so personally or financially affected by a matter that a reasonable person with knowledge of the relevant facts would question the receiver's ability to properly perform the assigned responsibilities. A receiver should not engage in any activities that would call into question the propriety of the receiver's conduct in carrying out the activities assigned by the appointing court.

D. **Disclosure of Potential Conflicts Before Appointment** Before appointment, a receiver should disclose to the appointing court and the parties all matters required by applicable law, any actual or potential conflict of interest or relationship, or other information of which the receiver is aware that reasonably could lead a person to question the receiver's impartiality.

E. **Avoiding Improper Influences** A receiver should not:

i. Allow family, social, or other relationships to influence official conduct or judgment;

ii. Not be swayed by outside pressure, public clamor, or fear of criticism in the performance of her duties; or

iii. Use the prestige of the office for private gain or to advance or appear to advance the private interests of others.

F. **Dealing with Conflicts that Arise After Appointment** - The receiver's duty of disclosure continues throughout the assignment and requires prompt disclosure of any interest or relationship that is

discovered, that a party recalls, or that arises during the operation of the receivership.

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CANON III. A RECEIVER MUST ENSURE COMPETENCE IN THE PERFORMANCE OF THE RECEIVER'S DUTIES.

3. Competence:

Acceptance of Appointment A receiver should accept only assignments:

- i. For which the receiver is suited by education, training, and experience;
- ii. That the receiver is able to undertake and complete in a competent, professional, and timely fashion,
- iii. As to which the receiver is physically and mentally able to meet the reasonable expectations of the parties and the appointing court;
- iv. As to which the receiver can serve impartially, and
- v. As to which she can serve independently from the parties, intended beneficiaries, and those holding assets that are the subject of the receivership.

b. Performance A receiver must maintain professional competence and diligently discharge assigned responsibilities in a prompt, fair, nondiscriminatory, and professional manner.

c. Demeanor A receiver must be patient, dignified, respectful, and courteous; apply an even-handed and unbiased process; and treat all parties with respect. A receiver must maintain order and decorum in judicial proceedings.

4. Advancing the Goals of the Receivership: A receiver should conduct the receivership in a manner that advances the fair and efficient attainment of the objectives prescribed by the court. A receiver should make all reasonable efforts to prevent delaying tactics, harassment of parties or other participants, or other abuse or disruption of the receivership process.

5. Conduct: A receiver should respect and comply with the law and should at all times act in a manner that promotes public confidence in the integrity and impartiality of the receiver and the judiciary.

6. Limits of Authority: A receiver must not exceed the authority

granted to him by the court. A receiver must comply with the procedures set forth in the order appointing receiver.

7. Exercise of Discretion: A receiver has responsibility to use discretion frequently in making decisions and making recommendations to the court. A receiver will use his discretion to make decisions that will best fulfill the objectives of the receivership.

8. Resignation: Once appointed, a receiver should not withdraw or abandon the appointment unless compelled to do so by unanticipated circumstances that would render it impossible or impractical to continue. A receiver who withdraws prior to conclusion of the receivership should take reasonable steps to protect the interests of the court, the parties and the beneficiaries of the receivership.

CANON IV. A RECEIVER MUST MAINTAIN THE CONFIDENTIALITY OF NON-PUBLIC INFORMATION

9. Public Statements. A receiver should avoid making public comment on the merits of a pending action, except as appropriate in the course of official duties.

10. Confidential Information: A receiver should never disclose confidential information received in the course of official duties, except as required in the performance of those duties. A receiver should ensure that personal and financial information is redacted from all documents and information filed with the court or posted on the receiver's website.

11. Continuing Duty These restrictions on disclosure continue to apply after the conclusion of the receiver's service, unless modified by the appointing judge.

CANON V. A RECEIVER SHOULD ADHERE TO STANDARDS OF INTEGRITY AND FAIRNESS WHEN SEEKING COMPENSATION AND REIMBURSEMENT OF EXPENSES

12. Compensation:

a. Court Approval A receiver's compensation shall be determined by the appointing court.

b. Fees All billings should be fair, reasonable, and accurate as to the time spent on the matter. The receiver should document time spent

performing receivership duties with sufficient detail to allow the court to evaluate the work of the receiver and the reasonableness of the fees being requested.

c. Expenses Reimbursement for expenses incurred in the course of service as a receiver shall be clearly disclosed and shall be limited to the actual costs the receiver reasonably incurs.

13. No Personal Benefit A receiver should not solicit or accept anything of more than de minimus value from anyone doing business with the receiver or with the appointing court, or from anyone whose interest may be substantially affected by the performance of the receiver's official duties. Upon completion of an assignment, a receiver may not accept gifts of any kind until a period of time has elapsed sufficient to negate any appearance of a conflict of interest.

Additional Sources:

- Bressi, Jess R., [The Elephant in the Courtroom, Ethical Issues and Criteria in Selecting Receivers](#), Receivership News (California Receivers Forum), Summer 2010. Mr. Bressi is a partner in the California law firm Luce, Forward, Hamilton & Scripps, LLP
- Fed. R. Civ. P. 53(b)
- Code of Ethics for Arbitrators in Commercial Disputes

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