

## **Section 9**

### **Board of Trustees for Fort Lewis College**

### **Legal Services**

## **POLICY CONCERNING LEGAL SERVICES**

Attorneys practicing in Colorado are subject to the Rules of Professional Conduct, which recommends that attorneys employed in a corporate setting with non-lawyers serving as board members or officers have a written understanding, which defines the relationship between the lawyers and the organization and provides for the lawyers' professional independence. For this reason, and to prevent misunderstanding as to the appropriate respective roles of attorney, Board member, and executive officer, the Board establishes the following policy concerning legal services.

1. On its own behalf and for the College, the Board shall employ and receive legal advice from lawyers in the Office of the Attorney General ("the Attorney General's Office"). All attorneys on the staff of the Attorney General's Office shall be responsible to the Board and the President. Although the Board naturally requires the development of good working relationships between its attorneys and its executive staff, the attorneys must observe their ultimate fiduciary responsibilities to the Board as a whole, and not solely to any single individual. The attorneys shall provide legal advice in the first instance to officers of the College. The attorneys shall not render advice to any individual on the individual's personal legal issues, but only in his or her capacity as a member or employee of the Board. The attorneys shall have an opportunity to advise the Board directly at such times as legal advice is sought by the Board. At all other times, the attorneys shall provide their advice to the President, and other appropriate officers responsible for administrative decisions and policy recommendations in representation of the College.

An attorney must represent the client competently. Competently advising on legal issues may require a degree of candor concerning alternative points of view and the risks involved in a particular course of action which would be inadvisable for public discussion. Also, competent advice cannot be rendered without adequate preparation. For these reasons: (1) the Attorney General's Office shall have a reasonable opportunity to review and comment on items presented for Board action before they are included in the agenda; (2) legal questions of concern to board members should be brought to the attention of the Attorney General's Office before the Board meeting whenever possible; and (3) the Board and its executive officers normally should raise legal questions and receive legal advice in executive session or private consultation unless the Board decides to waive the attorney-client privilege by asking an attorney to address legal issues in public session.

Legal advice and communications, both written and oral, to the Board is protected by the attorney-client privilege. Colorado law requires affirmative action by the entire Board to waive the attorney-client privilege. No Board member, by his or her individual actions, is authorized to waive this privilege. Actions to disclose privileged information without the affirmative vote of the Board may be a breach of a Board member's fiduciary obligation.

2. The unqualified endorsement of an attorney is not required for any action by the Board or its authorized representatives. Occasions may arise in which the Board or its authorized executive officer determines that overriding considerations of public policy require action in the face of legal issues. In such cases, the Board's attorneys will defend the actions of the Board and its members and officers against legal claims in such judicial and quasi-judicial

forums as may be required, so long as such defenses can be raised consistently with the attorney's obligations under the Code of Professional Responsibility and applicable law.

3. In order to make efficient use of the Board's limited legal resources, all requests for legal advice shall be subject to the protocol and procedures determined by the College. Board members who wish to be advised on legal issues will ordinarily submit their requests through the President. The President shall resolve priority among such requests. The attorneys shall keep the President informed as to their workload, and, upon request, shall advise the President as to the relative legal and financial significance of individual projects, and the estimated amounts of time required to complete them.
4. The Board acknowledges the attorneys' professional responsibility to exercise independent legal judgment, and requires that its attorneys adhere to this and all other professional responsibilities.
5. When, in their judgment, the Code of Professional Responsibility or applicable law so requires, the Board's attorneys may withdraw from representation of the Board in a particular matter and provide the Board with independent legal counsel. In the event that the Attorney General's Office is unable to do so, the Board will retain other counsel on the particular matter.