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A Seat at the Table – Appointed: Opportunities to Shape Government and the Judiciary Through Local and State Appointments

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Friday, Oct 26, 2018

11:00 a.m. – 12:00 p.m.
When most people think of civic engagement, they think of volunteering with community-based organizations, voting or other political and nonpolitical activities that directly impact the life of the community. A sometimes-overlooked civic engagement opportunity is serving in an appointed position. Appointments provide great opportunities to impact local communities while helping to shape an effective and responsive government. For new lawyers or those early in their careers, appointments can provide unique opportunities for career advancement while living up to the public service mandate inherent in the legal profession.

This article will provide an overview of common appointed positions, the benefits of appointment, select rules and regulations that may apply to those serving in appointed capacities, and considerations for navigating the appointment process.

**Common Appointed Positions**

Appointments are often viewed as crucial building blocks for shaping pivotal government decisions and for maintaining government integrity. Appointed positions can exist across local, state and federal governments, and come in the form of service on boards, commissions, and task forces, just to name a few. Appointed positions can span virtually every public policy area, and those serving in appointed capacities play vital advisory, policy-making and regulatory roles within all levels of government.

Appointed positions are typically rooted in law or executive order, such as being created by federal or state legislation, by local ordinance or authorized by statute. When appointed positions are created, governing authorities may include information stating the purpose of the appointed positions, the responsibilities and expectations, the selection and appointment procedures, required background qualifications for those seeking appointment, and the role of the appointed positions within the larger context of the governing body.

Many appointed positions are voluntary in nature while others are part- or full-time paid positions. For example, some appointments are for employment in senior roles at government agencies or for advisory roles to legislative bodies. Additionally, appointed positions can be subject to “terms” – a designated amount of time in which a person serves and that may include term limits – or service “at the pleasure of” and subject to reappointment at the discretion of the appointing person or entity. In Florida, for instance, appointed officers to certain executive departments are appointed by and serve at the pleasure of the governor.¹

Lawyers looking for unique opportunities to serve their communities should consider pursuing voluntary appointed positions. These positions align with the call to action for lawyers to engage in public service and to help create a fair and just society. Moreover, serving in voluntary appointed positions can be a unique way for lawyers to engage in pro bono service. Under Comment on Rule 6.1 of the American Bar Association (ABA) Model Rules of Professional Conduct (Model Rules), lawyers are urged to provide pro bono services that can include legislative lobbying or administrative rule making.

As governments themselves strive to be fairer and more just, those who are responsible for making appointment decisions are increasingly looking to find knowledgeable and talented professionals, including people with certain backgrounds or expertise as well as general public members. Appointing
authorities also seek candidates who represent the racial, gender, age and geographic diversity of the communities being served. Governing bodies are beginning to outline processes for creating balanced and representative appointments that reflect the changing demographics of the communities being served. When appointing people to state bodies in Oregon, for example, those who are responsible for making appointment decisions are required to “include in the criteria for appointment, but need not limit the criteria to, the degree to which the candidate will contribute to” viewpoint diversity, the demographic makeup reflective of the region served through the appointed body, and remediation of existing disparities in gender and race.2

Benefits of Appointment

Appointments are great opportunities for lawyers to enhance their resumes while gaining increased public visibility. Appointments provide opportunities for lawyers, particularly those new to the profession, to grow competence, develop or deepen expertise in various policy areas, gain hands-on training, and develop a record of greater responsibility and trustworthiness. Serving in appointed positions can also place lawyers at the forefront of emerging issues, such as evolving legislation or arising policy concerns impacting the community, which can assist lawyers in gaining subject matter expertise in new areas.

Serving in appointed positions can help lawyers pursue future leadership opportunities, such as nonprofit or corporate board service, as well as find or qualify for new job opportunities. Appointments can also open access to policymakers and government officials, and can provide networking opportunities with community members, policy experts and business leaders who otherwise may be out of reach.

Common Rules and Regulations Shaping Appointee Conduct

Serving in appointed positions requires the ability to uphold public trust since those serving are typically considered public officials. For lawyers, serving in appointed positions may also hold those serving to higher standards than that of the general public. The Comment on Rule 8.4 of the Model Rules acknowledges that lawyers who are considered public officials may take on additional legal responsibilities. The comment also suggests that lawyers’ conduct within public office can directly impact their legal standing, and abuse of public office can suggest an inability to fulfill the professional role of lawyers.

Serving in appointed positions comes with higher standards of conduct, and there are rules and regulations in place to shape appointee conduct and to aide those who are serving in performing their duties such that they retain public trust. The following overview illustrates common rules and regulations that may apply to those serving in appointed positions.

A. Service in more than one appointed position.

Appointment provides great opportunity to achieve personal and professional goals. Those interested in seeking appointment may find numerous positions tempting, but there may be limitations on the number or types of appointments that can be concurrently pursued. For example, there may be restrictions on having concurrent appointments within the same level of government, such as restrictions in serving in more than one state appointed position. Other restrictions may prohibit concurrent appointments that are similar in capacity but that sit across levels of government, such as
restrictions on serving in a state appointed position that has jurisdiction or influence over the local appointed position. In South Carolina, for instance, “no person may hold two offices of honor or profit at the same time.” Judges in that state who are interested in pursuing additional appointments may, on the other hand, pursue concurrent appointment in certain capacities. Related, Rule 3.4 of the ABA Model Code of Judicial Conduct suggests that judges should not accepted other appointed positions unless “it is one that concerns the law, the legal system, or the administration of justice.”

B. Conflicts of interest.

Acting as a public official can carry additional conflicts of interest considerations and obligations beyond those typically placed on lawyers, and those obligations can vary across states and even across appointed positions. For instance, public officials in California are bound by the Political Reform Act, which states that “Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”

In some appointed capacities, higher conflicts of interest standards may also impact decision making even when there is a perceived bias in favor of personal gain or in benefit to one’s employer. On the other hand, there are appointed capacities that are bound by conflict of interest laws like those in Alaska. Alaska recognizes that certain minor or inconsequential conflicts of interest may be unavoidable, finding that “so long as it does not interfere with the full and faithful discharge of an officer’s public duties and responsibilities,” public officials are not prevented from pursuing independent ventures.

C. Seeking employment during or after appointment.

Certain rules and obligations may regulate legal representation tied to or otherwise associated with current or former appointed positions, as well as other income generating activities. Rule 1.11 of the Model Rules suggests that lawyers receive informed consent from the government agency before representing “a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee.” It also denotes circumstances in which legal representation should be prohibited or that requires informed consent. Similar restrictions are in place for those serving in certain federal appointed positions. In particular, those serving in executive agency appointed positions are required to sign and contractually commit to a declaration stating that, among other things, they will not engage in specified types of employment following the termination of the appointment.

Other restrictions may include revolving door policies that restrict certain business dealing within a specified amount of time. For example, these prohibitions can restrict former appointees from working with certain people associated with the formerly appointed role or working on certain matters that came under the purview of the appointed office. Connecticut, for instance, restricts most state appointees from representing anyone, other than the state, before the state body on which they previously served on matters where the state has substantial interest for one year following the termination of appointment.

D. Outside income.

Those serving in paid appointed positions may be restricted from receiving income through outside employment or other business ventures, even in situations that may not create conflicts of interest. For
example, certain President appointed position may restrict appointees from receiving income from any
outside employment during the term of their appointment or require prior agency approval for outside
employment that complies with agency standards of conduct.10

Navigating the Appointment Process

The benefits of serving in appointed positions far outweigh the legal obligations and high standards
placed upon those who serve. Deciding to reap those benefits by seeking appointment can be exciting
but navigating the appointment process can be challenging, particularly for those who have never gone
through that process. For those new to the appointment process and looking for advice on ways to
approach it, the below tips may prove helpful.

❑ **Research appointed positions to learn about what opportunities exist at the local, state and
  federal levels and the eligibility criteria for pursing those positions.** This research should
  include reviewing current appointment vacancy lists and developing an understanding of the
current goals of the appointed positions. For example, attending upcoming board or commission
meetings or interviewing current or former appointees serving in the desired appointed capacity
can shed light on what to expect and how to best approach the appointment process.

❑ **Determine which appointed position(s) to pursue.** Both paid and voluntary appointed positions
  require dedication and may require at least minimal time commitment on a regular basis. Those
interested in pursuing appointment should consider the amount of time and energy they can
commit to appointed service and which appointed positions best match their personal and
professional goals.

❑ **Examine the appointment process to fully understand the time commitment and paperwork
  requirements that may be involved.** The intensity of the appointment process varies across
positions and may range from requiring a minimal amount of time and energy to a more
intensive process. Research the appointment process to understand the ways in which
candidates are vetted, who ultimately makes the appointment decision, and any applicable
submission requirements.

❑ **Assess personal and professional qualifications and create a strong application packet.** The
appointment process can be very competitive requiring applicants to build a strong resume,
assemble letters of recommendation, or to first pursue additional appointment or other
leadership opportunities in order to better stand out. Seeking advice from mentors and
colleagues, or from those who have gone through the appointment process, can also provide
intel into what is needed to best become a qualified candidate.

❑ **Participate in local organizations and associations that can help prepare candidates for the
  appointment process.** For example, local political and nonpartisan organizations, nonprofits or
other organizations may provide training on navigating the appointment process or assist with
resume building, mock interviews and application preparation.

❑ **Network.** One of the best ways to learn more about appointed positions and the appointment
process is to connect with those who have experience serving and those who are responsible for
making appointment decisions. Look within existing networks for people who may be able to
shed light on the appointment process or attend events that may attract people who have more
information about appointments. For example, public and private organizations, academic institutions or government bodies may host events themed around appointments or other activities that allow attendees to interact with appointees, elected officials or others involved in the appointment process.

1 FLA. CONST. art. IV, § 6.
3 S.C. Const. art. XVII, § 1A.
4 Id.
5 CAL. GOV’T. CODE § 81001(b).
6 See, e.g., Witt v. Morrow, 70 Cal. App. 3d 817 at 823 (1977) (finding that conflicts of interests arise not only when there are actual improprieties but also with “the appearance of possible improprieties.”).
7 ALASKA STAT. § 39.52.110.
8 Executive Order 13770 (Jan. 28, 2017).
9 CONN. GEN. STAT. § 1-84b(b).
10 Executive Order 12674 (Apr. 12, 1989).