

Eastern Iowa Light & Power Cooperative

BOARD POLICY

SUBJECT: Legal Representation and Use of Attorneys

OBJECTIVE: The objective of this policy is to lay out guidelines for the relationship between the Board of Directors and the cooperative attorney.

POLICY:

The Board of Directors of Eastern Iowa Light & Power Cooperative (“Board”) recognizes competent legal representation and effective use of attorneys are critical to successful operations. Although an attorney or law firm retained or employed, and the attorney’s representation, are governed by rules of professional conduct and other local, state, and federal laws, the objective of this policy is to provide additional guidance for, and emphasize important aspects of, the attorney’s representation of the cooperative and the cooperative’s use of the attorney.

EXPECTATIONS:

- A. General Counsel. The cooperative shall retain or employ an attorney to continually provide general legal services including, but not limited to: (1) attending and drafting or reviewing minutes of meetings of the Board and annual and special meetings of cooperative members; (2) negotiating, drafting, and reviewing contracts; (3) disposition or acquisition of and interests in real property; (4) borrowing or lending of money; and (5) general business, cooperative, tax, and electric utility law.
- B. Special Counsel. As reasonably necessary, and following consultation with the general counsel, the cooperative may retain or employ an attorney to provide special legal services which requires competence in a particular field of law. This can include but are not limited to: (1) representing the cooperative in state or federal court, or before a local, state, or federal agency; and (2) providing labor, employment, tax, antitrust, environmental, or intellectual property law. In providing special legal services, a special counsel shall provide the general counsel with copies of all communications, memoranda, briefs, notices, motions, and other documents prepared, filed, received, or sent by the special counsel. As determined by the Board, the general counsel may provide special legal services.
- C. Board Counsel. As determined by the Board, it may retain, employ, direct, and discharge an attorney or law firm to provide legal services to the Board. The cooperative shall pay Board counsel a reasonable fee and reasonable expenses. To the extent practical, a Board counsel’s representation of the Board must be governed in a manner similar to that in which an attorney’s representation of the cooperative is governed under this policy.
- D. Competent Legal Representation and Conflicts of Interest. An attorney shall provide competent legal representation to the cooperative, and shall have or acquire the appropriate knowledge, skills, time, and qualifications necessary to provide competent legal representation. No attorney, however, guarantees, promises, or warrants a successful or favorable outcome. An attorney shall comply with conflict-of-interest requirements prescribed in applicable local, state, and federal law and rules of professional

conduct. An attorney may provide legal services to an entity in which the cooperative owns an interest only if the attorney complies with these conflict-of-interest requirements. An attorney shall inform the cooperative's CEO of any other entity engaged in generating, transmitting, distributing, marketing, or selling energy to which the attorney provides legal services.

- E. **Retaining, Employing, and Discharging Attorney.** The Board shall make decisions regarding retaining, employing, and discharging the general counsel and shall evaluate the performance of the general counsel. Following consultation with the general counsel, the CEO shall make decisions regarding retaining, employing, and discharging any other attorney. By providing written notice to an attorney, the cooperative may discharge the attorney, and terminate any attorney engagement agreement, at any time for any reason. By providing written notice to the cooperative, and as required or allowed by applicable law and rules of professional conduct, an attorney shall or may withdraw from representing the cooperative and terminate any attorney engagement agreement.
- F. **Third Party.** As part of providing legal services to the cooperative, and with the CEO's prior consent, an attorney may retain another attorney or may use an attorney or paraprofessional associated with the attorney in a law firm. As reasonably necessary or helpful in providing legal services to the cooperative, and subject to any limitations stated in an attorney engagement agreement, an attorney may contract for a non-attorney and non- paraprofessional third party to provide goods or services.
- G. **Directing Attorney.** Only the Board, the President of the Board, or the CEO may request an attorney provide legal services to the cooperative. As requested by an attorney, and as reasonably necessary or helpful in providing legal services, the cooperative shall provide the attorney reasonable access to its Directors, officers, employees, consultants, agents, representatives, records, and documents. The CEO and an attorney shall keep the Board reasonably informed. In consultation with or as directed by the Board, the CEO shall direct an attorney. In providing legal services, and subject to the Board or CEO's direction, an attorney may act on the cooperative's behalf in any manner reasonably believed to be in the cooperative's best interest. Unless the CEO gives his or her prior consent, an attorney may not make a statement outside of a tribunal regarding the attorney's provision of legal services to the cooperative, which statement the attorney knows or reasonably should know will be disseminated by means of public communication. No Director, officer, employee, consultant, agent, or representative may interfere with the attorney's ability to exercise independent professional judgment and render candid advice.
- H. **Attorney Fees and Expenses.** The cooperative shall pay an attorney a reasonable fee and reasonable expenses. An attorney shall provide legal services in a cost-effective and efficient manner. The fees and expenses must be specified in an attorney engagement agreement. The cooperative shall indemnify an attorney for liability and expenses, including reasonable attorney fees, to which the cooperative has exposed the attorney without the attorney's fault.
- I. **Unauthorized Practice of Law.** No cooperative Director, officer, employee, consultant, agent, or representative may provide legal services unless the individual is an attorney admitted to practice law in an appropriate jurisdiction.
- J. **Cooperative as Client.** In providing legal services, an attorney represents the cooperative as client, acting through its authorized Directors, officers, employees, and members. In representing the cooperative, an attorney does not represent the cooperative's Directors, officers, employees, or

members. If the Board gives its informed, written, and prior consent, and if an attorney complies with applicable conflict of interest requirements, then the attorney may represent an affiliated entity and individual cooperative Directors, officers, employees, and members in matters related to the attorney's representation of the electric cooperative.

- K. **Attorney-Client Privilege.** Confidential communications between the cooperative, or its agent or representative, and the attorney, or the attorney's agent or representative, made to facilitate the attorney's provision of legal services are protected by the attorney-client privilege. Cooperative Directors, officers, employees, consultants, agents, and representatives shall not disclose these communications to third parties, other than those to whom disclosure is made in furtherance of this provision of legal services, or those reasonably necessary for transmitting the communications. To the extent these communications are disclosed to employees, consultants, agents, or representatives, they must be disclosed only to individuals who reasonably need to know of the communications.
- L. **Attorney's Duty to Inform and Consult.** An attorney shall keep the Board and the CEO reasonably informed regarding a matter for which the attorney is providing legal services. For decisions regarding the matter to be made by the cooperative, the attorney shall explain the matter to the Board and the CEO to the extent reasonably necessary to make an informed decision. An attorney shall promptly comply with the cooperative's reasonable requests for information.
- M. **Reliance.** In providing legal services, an attorney may rely upon information provided by the cooperative, unless the attorney knows the reliance is unwarranted. In performing duties, a Director, officer, or employee may rely upon information, opinions, reports, and statements prepared or presented by an attorney. A Director, officer, or employee's reliance, however, is only permitted regarding matters involving skills or expertise reasonably believes they are within the attorney's professional or expert competence. Further, this reliance is permitted only if the Director, officer, or employee acts in good faith and reasonably believes the reliance is warranted and the attorney merits confidence.
- N. **Evidence of Violation of Law or Breach of Duty.** If an attorney, other than the general counsel, knows or reasonably should know of any evidence of an actual or intended material violation of law or material breach of duty, or evidence of an actual or intended violation of law or breach of duty likely to result in substantial injury to the cooperative, by the cooperative or by a cooperative Director, officer, employee, consultant, agent, or representative, then the attorney shall report the evidence to the general counsel. If the general counsel knows or reasonably should know of any evidence, then the general counsel shall report the evidence to the CEO.

Within thirty (30) days of evidence being first reported, the general counsel or the CEO, as determined by the CEO, shall investigate the evidence, respond appropriately to the evidence, and inform the reporting attorney regarding the investigation and the response. If an attorney, other than the general counsel, reasonably believes neither the general counsel nor the CEO has investigated or responded appropriately to the evidence, or if the attorney believes it is reasonably necessary in the best interest of the cooperative, then the attorney shall report the evidence to the Board in person and without the presence of any other person, except a person invited by the attorney. If the general counsel reasonably believes the CEO has not investigated or responded appropriately to the evidence, or if the general counsel believes it is reasonably necessary in the best interest of the cooperative, then the general counsel shall report the evidence to the Board in person and without the presence of any other person,

except a person invited by the general counsel.

If a reporting attorney reasonably believes the attorney has been discharged because the attorney reported evidence, then the attorney shall inform the Board of this belief. To encourage and facilitate the reporting and investigating of evidence, and responding appropriately to evidence, they shall meet at least quarterly with the general counsel and without the presence of any other person, except a person invited by the general counsel.

LIMITATIONS:

To the extent this policy is inconsistent with rules of professional conduct or similar requirements governing attorneys, the rules or requirements govern.

RESPONSIBILITY:

The Board is responsible for compliance with this policy. The CEO is responsible for communicating with an attorney regarding the attorney's provision of legal services to the cooperative.

ADOPTED BY THE BOARD OF DIRECTORS ON MARCH 31, 2022.

REVIEWED BY THE BOARD OF DIRECTORS ON JULY 1, 2022.