



## NOTICE TO ATTORNEYS REPRESENTING DONORS TO WATERSEDGE

### **Introduction:**

WatersEdge exists to financially empower donors and ministries to transform lives with the Gospel of Jesus Christ. In advancement of that purpose, WatersEdge offers a limited attorney fee reimbursement to donors who sign an estate plan that leaves a qualifying gift to WatersEdge for the benefit of a qualifying ministry. A qualifying gift can be a gift which may be immediately withdrawn by the ministry or held by WatersEdge as an endowment perpetually. Since WatersEdge exists to support other ministries, WatersEdge rarely assists with an estate plan that provides a gift to WatersEdge for its own benefit.

This document addresses the ethical considerations of such an arrangement and outlines best practices for attorneys who prepare these estate plans.

The central issues fall under the Oklahoma Rules of Professional Conduct, particularly Rule 1.8 – Conflicts of Interest: Current Clients: Specific Rules. These provisions govern both (i) the prohibition against lawyers preparing instruments that give themselves or their relatives substantial gifts, and (ii) the circumstances under which a lawyer may accept compensation for representing a client from someone other than the client. Together, these rules establish the framework within which attorneys must evaluate any reimbursement of estate planning fees by a charitable organization.

### **Rule 1.8 – Relevant Provisions:**

#### 1. Rule 1.8(c)

A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, for the lawyer or a person related to the lawyer. Nor shall the lawyer prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client.

This provision ensures attorneys do not use their professional position to secure personal benefits. It is not implicated when a client makes a charitable gift, provided the lawyer is not personally a beneficiary. It is for this reason that WatersEdge attorneys do not prepare estate planning documents for its donors.

#### 2. Rule 1.8(f)

A lawyer shall not accept compensation for representing a client from one other than the client unless:

- (1) the client gives informed consent;
- (2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and

(3) information relating to representation of a client is protected as required by Rule 1.6.

This rule is applicable where a charity pays an attorney directly for the client's attorney fees. While the existence of this rule implies that there are concerns, charities are not prohibited from reimbursing attorney fees to obtain estate plans that benefit the charity, and attorneys are not prohibited from preparing those plans.

### **Application:**

Attorneys should take special care when a client independently retains counsel to prepare an estate plan; the estate plan includes a charitable gift; and the charity intends to pay the attorney directly or reimburse the client for part or all of the attorney's fees.

The attorney should follow these guidelines:

1. **Informed Consent** – When the charity intends to pay the attorney directly, the client must be advised, in writing, of the reimbursement arrangement and its implications, and must give consent. The attorney should also consider providing such advice and getting consent when the charity intends to reimburse the client for any part of the attorney's fees.
2. **Independent Judgment** – The attorney must remain free to advise the client regarding all aspects of the estate plan, including options that may not align with the charity's interests or preferences.
3. **Confidentiality** – The attorney must not share client confidences with the charity unless the client expressly authorizes disclosure.
4. **No Improper Influence** – The reimbursement arrangement must not create an actual or apparent conflict of interest that could cause the attorney to favor the charity's interests over those of the client.

### **Best Practices**

To safeguard against ethical risks, attorneys should:

- Document the arrangement in writing using a Client Disclosure and Consent Form (the "Form") (a sample of which is provided at Exhibit A).
- Retain the Form in the client's file along with the engagement letter.
- Regularly reassess conflicts of interest if the attorney or firm provides ongoing representation to the charity or its donors.
- Advise the client that they are free to alter or revoke the charitable disposition at any time, regardless of any promised reimbursement or any reimbursement made in the past, with the understanding that any current or future reimbursement may be conditioned on the inclusion of the charitable gift

**Exhibit A**  
**Client Disclosure and Consent Regarding Third-Party Fee Reimbursement**

**1. Purpose of Disclosure**

You have engaged the undersigned attorney or law firm to provide estate planning services, including preparation of documents that may provide for a gift to The Baptist Foundation of Oklahoma dba WatersEdge Ministry Services and WatersEdge Advisors (“WatersEdge”), for the benefit of a qualifying ministry. WatersEdge has agreed to provide a limited reimbursement of the attorney fees incurred in connection with this engagement upon your execution of such documents.

**2. Required Disclosures**

Pursuant to the Oklahoma Rules of Professional Conduct:

- **Independent Judgment:** Our professional judgment and legal advice will only be given in your best interest. The charity’s agreement to reimburse you will not interfere with our independent judgment or the attorney-client relationship.
- **Confidentiality:** All communication between you and our firm are confidential. We will not disclose your intentions, estate planning details, or any other information to WatersEdge without your explicit authorization.
- **Informed Consent:** You have the right to know about and consent to this reimbursement arrangement.

**3. Acknowledgment and Consent**

By signing below, you confirm that:

1. You understand that the undersigned attorney or this firm may have a working relationship with the Baptist Foundation of Oklahoma d/b/a WatersEdge by which the attorney or firm receives referrals from WatersEdge but is not employed by WatersEdge.
2. You have been fully informed of WatersEdge’s attorney fee reimbursement policy and you consent to this reimbursement arrangement.
3. You understand you are responsible for paying the attorney’s fee if you do not sign any documents or the documents do not contain the qualifying charitable gift.
4. You understand that WatersEdge’s involvement in paying or reimbursing fees does not affect our duty of loyalty and confidentiality to you.
5. You have had the opportunity to ask questions about this arrangement and are satisfied with the explanations provided.
6. You authorize the attorney or law firm to send WatersEdge a copy of the drafts of your estate planning documents for approval, a copy of all fully executed documents signed by you, and a copy of the attorney’s invoice.

**Client Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Attorney Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_