

## **SOCIETY POLICY**

### **ETHICAL CONDUCT VIOLATION PROCEDURES**

#### **I. PREFACE**

- A. Article C2.1.1 of the Constitution states in part, “The purposes of this Society are to: ... Promote a high level of ethical practice. In all professional and business relations the members of the Society shall be governed by the Code of Ethics as stated in the Society Policies.”
- B. By-Law B2.1 states in part: “To promote the art, science and practice of mechanical and multidisciplinary engineering and allied sciences to diverse communities throughout the world the Society shall:...

#### **ETHICAL PRACTICE**

Maintain a Code of Ethics of Engineers consistent with the standards of the profession.

Promote and encourage practice in the profession within this code.

Arrange for adjudication within the structure of the Society for violations of the code brought to its attention.”

- C. By-Law B3.3.1 states in part: “Any member who has been found to have violated the Constitution, By-Laws or Code of Ethics of the Society, may be expelled by the affirmative vote of seven members of the Board of Governors.”
- D. ASME requires ethical conduct by its members and adherence to the provisions of the Constitution, By-Laws, Society Policies, and the Code of Ethics. There may be occasions when a complaint of unethical conduct is filed against a member of the Society, and the following procedure is designed to ensure a prompt, thorough investigation and disposition of the matter. It is in the best interests of the member against whom a complaint has been filed, the Society, and the profession that such matters be handled in an impartial and confidential manner. Members and staff involved in the investigation and disposition of such cases shall not disclose particulars of any case except as required by their assigned duties.
- E. Occasionally, complaints are brought to the attention of the Society rising out of a dispute between an employer or employee or between the parties to a contract. Ordinarily, such disputes are properly resolved through legal and commercial channels and not through an ethics complaint and inquiry.
- F. The Ethics Committee and the Executive Director of the Society have the responsibility for implementing the procedure defined in this Society Policy.
- G. At any phase of a complaint the Executive Director may, at his or her discretion, request the advice of Legal Counsel.

- i. An individual's ethical conduct shall be evaluated on the basis of the Code of Ethics and Conflicts of Interest Policies in effect on the date when a given action or omission took place. The review of such conduct, however, shall be conducted in accordance with the Ethical Conduct Violation Procedures in effect on the first date when a complaint is submitted. If the Ethical Conduct Violation Procedures are amended prior to the completion of the review process, such amendments shall not affect the review of pending matters except insofar as the Board of Governors, in amending the Ethical Conduct Violation Procedures, specifically approves retroactive effect for any portion or all of the amended Procedures.

## **II. PURPOSE**

- A. To state the Society's policies related to alleged violation of the Code of Ethics and alleged violation of the Conflicts of Interest Policy.
- B. To provide a fair and responsible procedure for handling complaints and charges of violation of the Code of Ethics or the Conflicts of Interest Policy.

## **III. RESIGNATION**

If a member against whom a complaint has been filed resigns prior to the final disposition of the case, or is administratively dropped from the Society's membership rolls (for reasons such as not paying dues in a timely manner, not signing a conflict of interest statement, etc.), the Society will accept the resignation or may initiate the termination of membership with the stipulation that the person may not reapply for membership. At its discretion the Society may continue the investigation and disposition of the case in accordance with this Society Policy. Member records of persons removed for unethical conduct violations, or administratively dropped while subject to the ethics violation process shall be kept by the Society.

## **IV. PROCEDURE**

- A. Complaint Phase
  1. Any person contemplating a complaint under this Society Policy may (but is not required to) participate in the following consultative procedure prior to the submission of his or her complaint:
    - a. The person shall notify the Society's Managing Director, Governance, orally or in writing that he or she is considering the filing of an ethics complaint and wishes to participate in the Society's pre-complaint consultative procedure. This notification shall include the name(s) of the person(s) contemplating the complaint and the person(s) who would be subject to the complaint.
    - b. The Managing Director, Governance, shall promptly notify the members of the Ethics Committee, whereupon those members of the Committee

who have no conflict of interest with respect to the possible complaint(s) shall promptly draw lots to determine which of their number will provide pre-complaint consultation.

- c. Within thirty (30) days of the initial notification to the Managing Director, Governance, the Committee member selected by lot to provide pre-complaint consultation (the “consulting member”) shall notify the person contemplating a complaint and provide consultation to him or her with respect to:
    - i. The identification and clarification of the ethical issues, if any, presented by the proposed complaint.
    - ii. The completion of the Society’s complaint form in a manner that fulfills as nearly as possible the requirements of this Society Policy for complaints.
    - iii. The applicable procedures under this Society Policy, with the objective of assisting the person contemplating a complaint to understand the phases and nature of an ethics complaint under this Society Policy.
  - d. The consulting member shall at all times maintain neutrality and shall explain to the person contemplating a complaint that the role of the consulting member is limited to assisting the Society’s membership to ensure that there is fair access to a forum for the impartial consideration of good-faith ethics complaints.
  - e. Once a complaint is filed, the consultation period shall be concluded, and the consulting member shall thereupon recuse himself or herself from further review of or participation in the matter. Without limiting the generality of the foregoing, there may be no post-complaint consultation by the consulting member. Additionally, the consulting member may terminate the consultation period at any time at his or her discretion, without regard to whether a complaint is filed, if he or she concludes that further consultation would not serve a useful purpose.
2. To initiate action, a signed and dated written complaint shall be filed with the Executive Director of the Society. The written complaint must be prepared using the form of complaint supplied by the Society for this purpose and state with particularity (a) the name or names of those members of the Society who are the subject of the complaint (referred to hereinafter collectively as the “member subject to the complaint”), (b) those specific provisions of the Society’s Code of Ethics or the Conflicts of Interest Policy that the member subject to the complaint is alleged to have violated, and (c) the alleged facts that are alleged to establish each such alleged violation (including without limitation those specific provisions

of the Constitution, By-Laws or Policies of the Society, if any, by which the subject(s) of the complaint have allegedly failed to abide). The complaint may be filed by any interested person or group within or outside the Society. The complaint shall conclude with the following statement by the complainant:

“All facts alleged in this complaint are, to the best of my knowledge, true, correct and complete, and I have neither knowingly misrepresented nor knowingly omitted any information that would be material to the evaluation of the merits of this complaint. I understand that if the foregoing statements are untrue and if I am a member of the American Society of Mechanical Engineers, I may have violated the Society’s Code of Ethics. I understand that the entire contents of my complaint including my identity may be disclosed to the individual or individuals referenced in my complaint during the course of any review of my complaint, and I consent to such disclosures.”

3. No complaint shall be maintained or upheld pursuant to this Society Policy unless such complaint is submitted to the Society pursuant to this Society Policy within three (3) years after:
  - a. the date of the incident (or last of a series of related incidents) constituting the alleged violation; or, if later,
  - b. the earliest date on which the complainant had knowledge, or on which a member of the Society reasonably should have had knowledge, that any such incident (or series of related incidents) might constitute a violation reportable under this Society Policy.
  
4. The Executive Director, upon receipt of a complaint of alleged unethical conduct, shall within thirty (30) days:
  - a. acknowledge receipt of the complaint to the complainant by Certified Mail,
  - b. ascertain whether the person against whom the complaint has been made is currently a member of the Society,
  - c. determine whether the complaint fulfills the requirements of IV.A.2, and
  - d. if the requirements of either IV.A.4.b or IV.A.4.c or both of them are not met, notify the complainant by certified mail (return receipt requested) that the complaint has been rejected because it fails to fulfill either IV.A.4.b or IV.A.4.c or both of them, as the case may be.

Such complaint may be revised and resubmitted, and the date of any such resubmission shall be the submission date for purposes of IV.A.3.

5. If the complaint is not rejected pursuant to IV.A.4, the Executive Director shall within sixty (60) days of receipt of the complaint:
  - a. send the Chair of the Ethics Committee a copy of the complaint received, and
  - b. decide, with concurrence of the Chair of the Ethics Committee, whether the complaint is barred from further consideration
    - i. by reason of IV.A.3,
    - ii. because it involves a dispute between an employer or employee or between the parties to a contract which dispute is properly resolved through legal or commercial channels,
    - iii. because it raises issues that are trivial, frivolous or harassing in nature, or
    - iv. because the facts alleged in the complaint, even if true, would not constitute violations of the Code of Ethics or the Conflicts of Interest Policy.
6. If the complaint is barred as provided in IV.A.5.b, the Executive Director shall notify the complainant by Certified Mail that the complaint is barred for such of the reasons set forth in IV.A.5.b as shall apply.
7. If the Executive Director and the Chair of the Ethics Committee do not concur as to any matter for which their concurrence is required under IV.A.5.b, the matter shall be presented to the President of the Society, whose determination shall govern and may not be appealed, or, if the complaint shall involve the President as either a witness or the member subject to the complaint, the matter shall be presented to the Board of Governors (other than the President), whose determination shall govern and may not be appealed.
8. If the complaint is not rejected pursuant to IV.A.4 or IV.A.5, the Executive Director shall notify the complainant that the matter is being referred to the Ethics Committee within thirty (30) days of the determination by the Executive Director and Chair of the Ethics Committee, per Section IV.A.5, or by the President or Board of Governors per Section IV.A.7 that the complaint is not barred.
9. Within sixty (60) days of the notice sent to the complainant per Section IV.A.8, the Executive Director and the Chair of the Ethics Committee shall prepare (in

consultation with legal counsel) a statement of preliminary charges and the Executive Director shall:

- a. Notify the member subject to the complaint, by certified mail (return receipt requested), that an ethics complaint has been filed,
  - b. Include with the notification a copy of the statement of preliminary charges and the following statement:
    - i. That the preliminary charges allege matters to be within the scope of the Code of Ethics or Conflicts of Interest Policy of the Society,
    - ii. That an investigation will be made to determine if the complaint is substantiated by the facts, and
    - iii. That the member is encouraged to submit a written response (of not more than ten (10) double-spaced letter-sized pages in Times New Roman type with a minimum font size of 10) to the complaint within thirty (30) days and to inform the Society of his or her preferred address.
  - c. In consultation with the Chair of the Ethics Committee, designate an Investigative Panel of no more than five members from the Society's staff or membership (or both) to conduct an investigation of the matter, and
  - d. Provide the Investigative Panel with a copy of the complaint and a copy of the statement of preliminary charges (the complaint and preliminary charges shall not foreclose the Investigative Panel from determining that there may have been violations of provisions of the Code of Ethics or the Conflicts of Interest Policy other than or in addition to those cited in the complaint or the preliminary charges).
10. Reasonable expenses incurred by the Investigative Panel shall be paid by the Society.
11. In any case in which a complaint or other written or oral submission in connection with the submission, investigation and review of an ethics complaint contains statements or makes omissions that may give rise to an ethics complaint against the individual making the complaint or other submission, the Executive Director shall submit the relevant information to the Secretary of the Society, whose responsibility it shall be to evaluate the information and determine whether to make an ethics complaint in respect of such individual's conduct. This Section IV.A.11 shall not limit the right of any other person to make a complaint in respect of such individual's conduct, provided the person making the complaint has properly obtained the information on which his or her complaint is based.

B. Investigative and Review Phase

1. The Investigative Panel shall hold individual conferences on the subject matter of the complaint with the member against whom a complaint has been filed, the complainant and any other persons known or believed to have knowledge of the matter (such other persons, the “witnesses”). In the conduct of these informal conferences, the following should be kept in mind by all concerned:
  - a. the purpose is to determine if there is cause for further action by the Society,
  - b. the investigation is not a legal hearing, but an informal conference to determine the facts in the matter, and the member is not “accused” by the Society in a legal sense,
  - c. the greatest tact must be exercised by the Investigative Panel,
  - d. if, during the conference, information is obtained that suggests the need to broaden the scope of the investigation, the Investigative Panel shall conduct such additional investigation before completing the investigation of the matter, and
  - e. at the start of each conference, the Investigative Panel shall advise each witness that the information may or may not be used in a written report and it may be furnished to the member subject to the complaint.
2. After the Investigative Panel is assured that all pertinent information concerning the matter has been secured, the Investigative Panel shall prepare a detailed written report giving all data concerning the matter and send the report to the Chair of the Ethics Committee. The Investigative Panel shall make one (1) of the following determinations:
  - a. That the facts, as found by the Investigative Panel, do not support the complaint and as such do not provide a sufficient basis for any further action by the Society, in which case the matter shall be handled as provided in IV.B.3, or
  - b. That the facts, as found by the Investigative Panel, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is minor and as such does not warrant suspension or expulsion of the member subject to the complaint, in which case the matter shall be handled as provided in IV.B.4, or
  - c. That the facts, as found by the Investigative Panel, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is more

than minor and as such may warrant suspension or expulsion of the member subject to the complaint, pursuant to a formal statement of charges adopted by the Investigative Panel as a part of its determination, in which case the matter shall be handled as provided in IV.B.5.

Within thirty (30) days of a determination under this Section IV.B.2, the Chair of the Ethics Committee shall notify the Executive Director in writing of such determination. Such notification, in the case of a determination described in IV.B.2.c, to include the formal statement of charges adopted pursuant to IV.B.2.c.

3. If there is a determination, pursuant to IV.B.2.a, that the facts, as found by the Investigative Panel, do not support the complaint and as such do not provide a sufficient basis for any further action by the Society, the Executive Director shall within thirty (30) days of receiving the notification specified in IV.B.2:
  - a. notify the Board of Governors of the determination,
  - b. by certified mail (return receipt requested), notify the complainant, the member subject to the complaint and all witnesses who have been interviewed by the Investigative Panel that the matter is closed pursuant to this Section IV.B.3, and
  - c. close the official file on the matter and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.

A complaint disposed of pursuant to this Section IV.B.3, even if the complaint is revised, may not be resubmitted.

4. If there is a determination by the Investigative Panel, pursuant to IV.B.2.b, that the facts, as found by the Investigative Panel, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is minor and as such does not warrant suspension or expulsion of the member subject to the complaint, the Executive Director on behalf of the Investigative Panel shall within thirty (30) days of such determination send a letter of warning/admonishment to the member subject to the complaint by certified mail (return receipt requested) and
  - a. notify the Board of Governors of the determination,
  - b. by certified mail (return receipt requested), notify the complainant that the matter is closed pursuant to this Section IV.B.4 and if the matter is not resolved publicly that the resolution of the matter shall be held confidential and not revealed to any other party by the complainant.

- c. by certified mail (return receipt requested), notify all witnesses who have been interviewed by the Investigative Panel that the matter has been resolved and is closed, and
  - d. close the official file on the matter and retain in the file records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.
5. If there is a determination, pursuant to IV.B.2.c, that the facts, as found by the Investigative Panel, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is more than minor and as such may warrant suspension or expulsion of the charged, the Executive Director, within thirty (30) days of receipt of the notification described in IV.B.2 shall notify the President in writing that the matter will be submitted to the Board of Governors for determination. In making its determination, the Board of Governors shall not be bound by the recommendations of the Investigative Panel and may upon review of the complaint; (1) determine that the complaint is not supported by the facts; (2) determine that a lesser sanction such as a letter of warning/admonishment should be issued; or (3) suspend or expel the member. The Board of Governors should ordinarily make such determination in a closed session of the Board.

Within thirty (30) days of the rendering of a decision by the Board of Governors, the Executive Director shall:

- a. by certified mail (return receipt requested), notify the subject of the complaint of the resolution of the matter pursuant to this Section IV.B.5;
  - b. by certified mail (return receipt requested), notify the complainant that the matter is closed pursuant to Section IV.B.5 and if the matter is not resolved publicly that the resolution shall be held confidential and not revealed to any other parties by the complainant;
  - c. by certified mail (return receipt requested), notify all witnesses who had been interviewed by the Investigative Panel that the matter is closed, and
  - d. close the official file on the matter and retain in the files of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.
6. A complaint disposed of by the Board of Governors, even if the complaint is revised, may not be resubmitted.
7. All files concerning ethics complaints and the resolution thereof shall be confidential and may not be disclosed except by authority of the Board of Governors. The records shall be retained for a period of not less than ten (10) years from the date on which the initial complaint was received by the Society.

The proceedings may be synopsisized and made anonymous for later publication for instructive purposes.

8. The membership shall be notified of all disciplinary actions taken by the Board of Governors under this Section IV.B for violations of the Code of Ethics or Conflicts of Interest Policy, by publication of a suitable notice in MECHANICAL ENGINEERING or ASME NEWS. The name of the disciplined member shall not be published. However, the action of the Board of Governors, including the name of the disciplined member, shall be reported to the section chair and appropriate Society officers.

Responsibility: Committee of Past Presidents/Ethics Committee

Reassigned from Centers Board of Directors/Center for Career and Professional Advancement/Committee on Ethical Standards and Review 2/2012

Reassigned from Centers Board of Directors/Center for Professional Development, Practice & Ethics/Committee on Ethical Standards and Review 4/23/09

Reassigned from Council on Member Affairs/Board on Professional Practice & Ethics 6/1/05

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