



## 709: Selling Your Nonprofit Board on Governance Best Practices

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## Faculty Biographies

### **Eileen Morgan Johnson**

Eileen Morgan Johnson is general counsel of the National Wildlife Federation (“NWF”) in Reston, Virginia. In this capacity, she oversees the provision of legal services to NWF and four other related corporations including eNature.com, Inc., a for-profit internet company.

Prior to assuming her current position as general counsel and former position as associate general counsel at NWF, Ms. Johnson was in private practice in Virginia and California specializing in domestic relations and estate planning.

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Ms. Johnson received a BA from the College of William and Mary and a JD from Brigham Young University.

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Thomas W. Smith, III is general counsel for the American Society of Civil Engineers (ASCE) and managing director of ASCE's corporate division. His responsibilities as managing director of the corporate division include managing ASCE's information technology, board operations, governance, and history and heritage departments. His responsibilities as general counsel include legal consultation in the areas of employment, tax, corporate, contract, mergers and acquisitions, antitrust, intellectual property, real estate, and construction law. Mr. Smith also staffs ASCE's ethics and construction contract documents committees.

Prior to joining ASCE, Mr. Smith practiced law with the firm of Hazel & Thomas, P.C. in Northern Virginia. Mr. Smith's experience at Hazel & Thomas included litigation of land use and commercial matters in federal and state courts.

Mr. Smith received his BS and Masters of Engineering from the University of Virginia and his law degree from Washington & Lee University.

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James A. Woehlke is been in-house counsel for the New York State Society of Certified Public Accountants (“NYSSCPA”).

Prior to becoming counsel, Mr. Woehlke served as the NYSSCPA tax policy director. Before joining the NYSSCPA, Mr. Woehlke had been a technical manager in the AICPA's tax division. He practiced accounting with KMG/Main Hurdman, including with that firm's Washington national tax office, and law with the Wichita, Kansas, law firm of Fleeson, Goeing, Coulson & Kitch.

Mr. Woehlke holds the certified association executive designation offered by the American Society of Association Executives. He is a member of ACCA's nonprofit and association committee and the American Society of Association Executives legal section counsel.

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## Selling Your Nonprofit Board on Governance Best Practices

### I. Suggested approach:

- A. What today are “best practices” may well become mandated for nonprofits in the not so distant future, so the wise board will adopt them sooner rather than later.
- B. A gentle phase-in of best practices might be more acceptable to some boards than an abrupt overall change in their operations.
- C. Conduct an audit of your organization’s practices and identify those areas that need only slight modifications or enhancements as well as those practices that are completely missing right now. Work with senior staff and your board’s leadership to identify those practices that need to be added to what you already do.

### II. Rationale:

- A. Efforts of the New York Attorney General and others to apply Sarbanes-Oxley Act to nonprofits
  - April 23, 2003, Bill S04836 was introduced in the New York Senate by Senator Leibell at the request of Eliot Spitzer, the NY State Attorney General. The intent of the bill is to apply Sarbanes-Oxley to nonprofits. For the text of the bill, see <http://assembly.state.ny.us/leg/?bn=S04836&sh=t>.
  - Accounting firms that provide outside auditor services to nonprofits have begun warning their clients that the Sarbanes-Oxley standards will likely be applied to them in the near future (Attachment 1)
- B. The Better Business Bureau’s Wise Giving Alliance’s new standards and National Charity Seal Program
  - The Better Business Bureau’s Wise Giving Alliance provides ratings on charities. These ratings are used by foundations and major donors to make their funding decisions.
  - BBB Wise Giving Alliance Standards for Charity Accountability rates charities on their compliance with these fundraising and administrative cost oversight standards that went into effect March 3, 2003. The guidelines can be found at <http://www.give.org/standards/newcbbstds.asp> (Attachment 2). The implementation guide for the new guidelines can be found at <http://www.give.org/standards/implementation.asp>
  - The new National Charity Seal Program became available in early summer 2003. Information on qualifications for the seal and guidance on meeting those qualifications can be found at <http://www.give.org/seal/index.asp>.
- C. Donor backlash from recent examples in the news of charity management practices:
  - A recent series on The Nature Conservancy in the Washington Post resulted in a Senate Finance Committee request on July 16, 2003, for thousands of documents on the Conservancy’s management practices.

- United Way's continuing problems at the national and chapter level over issues ranging from executive compensation to the proper level of board involvement in management.
- Scrutiny on the American Red Cross over its 9/11 Liberty Fund and how the fund would be administered.

D. Likelihood of increased scrutiny by the IRS.

E. Increasing reluctance and caution on the part of potential board members

- A series of recent articles on board recruiters, advice to corporate executives considering nonprofit board membership, etc. have appeared in *The Nonprofit Times* and other publications. These materials are intended to persuade business executives that they can safely serve on nonprofit boards.
- A May 2002 survey by Volunteer Consulting Group says that there are 1.8 million nonprofit board seats available each year, adding to a backlog of 1.2 million standing openings.

III. Examples of best practices:

A. Board meetings

1. Regularly scheduled board meetings
  - The Wise Giving Alliance requires a minimum of 3 equally spaced meetings per year to qualify for its National Charity Seal.
  - Predictability in timing and early announcement of dates helps board members to plan business and family needs around board meetings
  - Organizations might consider naming the board meetings and giving each one a special focus (ex: annual meeting, budget meeting, program review meeting)
2. Preparation materials for the board meetings are easy to understand and are distributed sufficiently in advance of the meetings for the board members to read them
  - Board members should be able to receive the materials in sufficient time to be able to read through them in the evenings before the meeting.
  - Materials should be sufficient in detail so as to prepare board members for discussions to take place or decisions needing to be made.
  - Provide a point of contact for board members to request staff to present additional material or information at the board meeting.
3. Encourage in-person attendance but allow participation by conference call
  - Particularly for new members, face-to-face meetings allow them to interact with their fellow board members socially and to get to know their interests, backgrounds, etc.
  - Allow conference call participation to accommodate those board members with busy work schedules who might not otherwise be able to participate.

- Make sure the conferencing service provides clear instructions and assistance for those experiencing difficulty during the call. Most states require all those participating in board meetings by telephone to be able to hear all other participants and likewise to be able to be heard by them.
4. Allow enough time for members to ask questions and engage in discussions
    - Resist the temptation to cram too much into a meeting.
    - Consider expanding the meeting time or frequency of meeting if meetings are rushed and board members cannot deliberate.
    - Your board will be more committed to your organization and more engaged if they are allowed (encouraged even) to ask questions and discuss matters and do not feel rushed to vote on a matter.
  5. Remove board members who do not attend meetings without good cause (either by policy or by board action)
    - Consider a policy that a certain number of unexcused absences will be construed as the board member having submitted his or her resignation.
    - Have the nominating committee routinely poll all board members, not just those up for re-election, to see if they want to continue to stay on the board.
    - Make way for committed board members who will energize your board and participate in the committee process.
    - If the board member who does not participate in meetings can still add value to your organization, find another role that is more in line with the member's interests and available time.
  6. Actions without meetings must be unanimous or ratified at a subsequent meeting
    - For large boards, the executive committee should be authorized to act on behalf of the full board between meetings. This makes it easier to organize a meeting by conference call, however it should not be used for the sole purpose of bypassing the Board.
    - If an item comes up between regularly scheduled board meetings, have the executive committee handle it or circulate a consent resolution to take action without a meeting.
    - If an action is needed but you are unable to get a consent resolution or there is no executive committee (or for some reason it cannot act), the corporation can take the action if a majority of the board members favor it. That action can be ratified at a subsequent board meeting.
  7. Value of strategic planning and retreats for your board
    - Know the difference between strategic planning and retreats.
    - Strategic planning sessions are used to gain input from the board as to the direction(s) the organizations should go, normally in either the programmatic or financial/fundraising areas.
    - Retreats are used for board training or to develop good working relationships among the board or board and staff.

- Both strategic planning and retreats can be used to identify new leaders among the ranks of the board and to give them opportunities to demonstrate or enhance their leadership skills.

## B. Board minutes

- As a general rule, minutes should report on actions taken and not on discussions held.
- Exception: minutes should provide sufficient detail to explain the reason for a decision that is important to the organization. For example, decisions on investment philosophy, the budget, the pension plan, etc. should be substantiated with a summary of the board's discussion prior to action being taken.
- Minutes should include: date and time of the meeting; board members in attendance, excused or absent; existence of a quorum; motions made and by whom; a brief account of any debate; voting results; names of abstainers and dissenters; reports and documents introduced; future action steps; the time the meeting ends; and the signature of the secretary and chair. (For further information, see [www.boardsource.org](http://www.boardsource.org); Roberts Rules of Order Newly Revised, 10<sup>th</sup> ed., Section 48)
- Copies of committee reports, auditor reports, etc. should be attached to the minutes.
- All board members should receive copies of the minutes.
- Consider the audience for the minutes when drafting them. Will these be published on the website or is distribution limited to board members and senior staff?
- Remember that they are never completely confidential. Your outside auditors will ask to see them and you may get requests from state agencies or foundations to see selected minutes.

## C. Board members

1. "Right size" the board – are there too many or too few members?
  - The right size board will vary with each organization.
  - Large boards provide more people to do the work but they can become unwieldy to manage.
  - Small boards may lead to burnout faster as board members are asked to take on a large workload.
  - A board that has functioning committees can accommodate more members.
  - A board that has few functioning committees or where every action is taken by the board as a committee of the whole probably works better with fewer members.
  - Scheduling board meetings can become difficult the larger and more geographically diverse your board becomes.
  - Review why certain positions exist within your board structure. Are they for geographic representation? Do they represent different constituencies within your organization? Do the reasons they were created still exist?
  - Although directors may perceive their role simply as advocates for their chapter organizations or constituencies, directors have a fiduciary responsibility to the national organization.

2. Use a nominating committee to identify candidates. The committee members should have the opportunity to meet prospective candidates to brief them on the organization and give them an opportunity to learn more about each other.
  - The nominating committee should have a board member job description to give potential candidates. The job description would describe the organization and then say what is expected of potential board members in terms of time, dollars, experience, etc.
  - Encourage your existing or past board members to refer candidates for consideration.
  - Be realistic in setting a time frame for identifying and cultivating potential board members. It may take many months or even years for a prospect to move to candidate status.
  - Give prospective board members a chance to meet members of the board leadership as well as senior staff. This gives them a chance to find out where the organization has been and what direction it is headed.
3. Look for diverse candidates who can fill gaps in the board's areas of expertise or experience
  - The nominating committee should maintain a list of desired board characteristics or experience and identify existing members who meet some of those needs. This reveals any gaps that need to be filled.
  - Be honest when talking to potential board candidates about what you expect them to bring to your board. For example, someone with financial experience may want to know if they will be the only one on your board with that background or if there are others like them on your board.
  - Provide training in board skills (reading financial statements, parliamentary procedure, etc.) for those candidates who have certain qualities or experiences you need but who may lack experience as a board member.
4. Do not allow seats to remain vacant for a long time but do not be hasty in filling them either
  - It is better to wait a while until you find the right board member than to offer the job to someone who does not have the qualities you need.
  - A vacant board seat can be an opportunity to review your current board composition and determine what needs, if any, are not being met that a new board member could fill.
  - If you have too many vacancies, you will need to find out why. Is your nominating committee not doing its job? Is there something about your organization that is scaring board candidates away? Are board politics causing the nominating process to break down?
5. Orientation and training for new board members (Attachments 3-6)
  - Provide orientation before the first board meeting if possible.
  - A written "job description" for a board member can help new members understand what is expected of them. (Attachment 7)



- Give the new board members information on the organization, its governance and management practices. Balance between the urge to flood them with information and their need to be able to read and understand the material that is provided.
  - Explain each of the standing and ad hoc committees. What is their role in the organization? How do the committees function? What is expected of committee members and committee chairs?
  - If there is an executive committee, explain how members are selected and what their role is as a committee. Provide information on how the rest of the board interacts with the members of the executive committee.
  - Cover what is expected of them in their fiduciary capacity (duty of loyalty and duty of care). Be sensitive to their experience level in board service when providing this information.
  - Let them know what major duties they will have as board members. Do they approve the budget or serve as trustees of the pension plan?
  - Bring them into the office during a business day so they can see your employees and volunteers in action.
  - Explain how the board, staff and volunteers interact including any chain of command or other policies or customs impacting board and staff interactions.
  - Provide copies of any forms they will need (trip reports, expense reports, etc.) with clear explanations about how to complete them and how and when to turn them in.
  - Provide ongoing training to all board members to enhance their interaction and performance.
6. Mentoring new board members – an ongoing process
- The chair should assign a mentor to each new board member.
  - Mentors should talk with their mentees before their first few board meetings and see if they have any questions.
  - If possible, mentors and mentees should sit next to each other during the board meeting and serve on the same committee(s).
  - Mentor should introduce the new board members to other members of the board and staff.
  - Mentors should regularly check in with their mentees to make sure that they are feeling comfortable and getting the information they need to serve effectively.
7. Assign a staff liaison to each board member as a single point of contact
- One staff member can serve this role for all board members or each board member can have his or her own staff contact.
  - Staff liaisons should work with mentors to ensure that new board members have briefing materials and sources for information.
8. Have a process for identifying and developing board leadership with opportunities to move up in the organization's governance structure

- Whether it is chairing a board committee, giving a committee report, or leading a topic of discussion at a meeting, allow different members of your board to demonstrate or test their leadership ability.
  - Resist the temptation to allow someone to chair a committee or hold a particular position just because they have always done it.
  - Moving people around to different committees gives them a broader view of your organization, its success stories and problems. This prepares potential leaders to move up in the organization.
9. Term limits
- Consider adopting reasonable term limits. Many board members take several years to know enough about the organization and its governance to be effective, so do not make the terms too short.
  - Term limits allow new board members to know that there is an end to their commitment and might attract someone afraid of a perpetual commitment once they sign on.
  - Term limits force the organization to continue to look for new leadership on a regular basis and to mentor new leaders on the board.
  - Term limits provide a graceful way to move people off the board who have overstayed their usefulness.
10. Conflict of interest policies
- All organizations should have a conflict of interest policy for board members and staff. (Attachments 8-11). For additional information, see <http://www.boardsource.org/ViewBookstoreItem.asp?ID=130>
  - Consider whether your organization also needs a conflict of interest policy for your volunteers.
11. Intellectual Property Policies
- Policy on reproduction of copyrighted works. See, Copyright Clearance Center at [www.copyright.com](http://www.copyright.com).
  - Policy on use of trademarks and service marks. (Attachment 12)
12. Find new roles for former board members who can still make valuable contributions to the organization
- Former board members may be your best ambassadors for fundraising or new board member recruitment.
  - Retired board members may serve in “senior advisor” roles to board committees or other groups within your organization where their experience and advice is useful.

#### D. Board functions

1. Effective, functioning standing committees
- Decide what standing committees make sense for your organization.

- Limit your board members to one or at most two committees. Any more than that and they will not have the time or energy to contribute as they should.
  - Do as much of the board's work as possible through the committees.
  - Committees should meet throughout the year as appropriate using conference calls, list serves and other means to keep in touch.
  - Committee chairs should give reports on their committees' work to the full board.
  - Periodically review the charges to your standing committees and determine if their mission is still relevant or needs adjustment.
2. Use of ad hoc committees when needed with a well-defined charge and timetable for completion of its work
- Do not overburden your standing committees. Judicious use of ad hoc committees can be a useful tool.
  - Consider adding non-board members to your ad hoc committees. This gives you a way to bring in donors, members or others to your organization and perhaps evaluate them for their potential as future board members. It also gives you an "outsider's view" of the issue and may bring new ideas.
  - Give the committee a clear charge as to why they were formed, what they are expected to do, and when the committee's work is expected to be completed.
  - Any ad hoc committee that is around for two or more years should probably be converted to a standing committee or perhaps its work should be transferred to one of the standing committees.
3. Regular board self-evaluations
- The Wise Giving Alliance suggests that each board do a self-evaluation every other year.
  - Use of an outside facilitator, anonymous questionnaires and other tools can help a board do a candid evaluation of how it is functioning and what areas there might be for improvement.
  - Board Source offers an online assessment tool for nonprofit boards.  
<http://www.boardsource.org/ViewBookstoreItem.asp?ID=130>
  - Some foundations or other funders may require that program delivery be evaluated by the organization's board as a condition of future funding.
4. Independent audit committee
- Members of the audit committee should have financial or business experience so that they can read and understand a financial statement.
  - Consider adding some non-board and non-staff members to the committee for an outsider's perspective.
  - The audit committee should hire (or staff should consult with them before hiring) independent auditors, establish policies requiring rotation of auditors every few years, oversee the audit, and solicit management letter comments from the auditor to get the most out of the cost of the audit.
  - The audit committee should recommend policies and procedures that are intended to prevent fraud such as limiting access to checking and other

- accounts, requiring approval of checks or wire transfers, and determining the number of signatures needed on checks for certain dollar amounts.
- The audit committee should have access to confidential meetings with the company's outside auditors so that any concerns involving the management can be discussed.
  - Some audit committees establish policies and procedures for employee "whistle blower" complaints.
  - The audit committee may review salaries or salary ranges for senior staff.
  - Some companies have a separate governance committee that audits all non-financial aspects of the company's operations.
5. Executive session with the outside auditor on an annual basis to review management performance as well as the financial statements
- Ideally this would be with the full board after the outside auditors have met with the audit committee.
  - A copy of the management letter should be given to each member of the board in confidence prior to the meeting with the outside auditor.
6. Use of an outside consultant to benchmark compensation for CEO or other senior staff
- This is strongly advisable to avoid intermediate sanctions being imposed by the IRS for excessive compensation.
  - The consultant should be familiar with both for-profit and nonprofit sectors.
  - The compensation committee or other committee with this responsibility should be able to meet in private with the consultant without the CEO being present.
7. Review liability insurance on a regular basis
- Does the organization have directors and officers (D&O) liability coverage?
  - Does the organization have the correct coverage for its activities? If it publishes a magazine or website, does it cover publisher's liability insurance? Review the major activities of the organization with your insurance advisor and determine what gaps in coverage may need to be filled.
  - Is it carrying any insurance it no longer needs? Insurance that may have been necessary for past programs or special events might no longer be needed.
  - Are the current limits on liability acceptable? What has the claims history been?
  - Can coverage be extended to chapters or other related entities? It may be cheaper to get a group policy than for each chapter or related organization to secure its own insurance. But beware that the claims history of one might negatively impact all of the others.
  - Have competitive bids or a broker who is not aligned with any one insurer been used to get the best rates and coverage? Are the policies shopped around every few years to see if there are better policies or rates available?

### Governance committee

- assesses the effectiveness of the board as a whole and individual members at least annually
  - either with or in place of a nominating committee, identifies skills and experience needed for new board members and assists in identifying and recruiting potential board members
  - provides orientation, training and mentoring to board members
  - with the chair of the board, recommends candidates to fill leadership positions on the board
  - either with or in place of the executive committee, conduct the annual review of the CEO and report back to the full board
  - either with or in place of the executive committee, act as a compensation committee in setting guidelines and ranges for compensation of senior staff and compensation of the CEO
  - provide oversight and assessment of the relationship between the chair and board leadership and the CEO and senior staff.
8. Compliance policies:
- Human Resources (EEO, sexual harassment, etc.) ([Attachments 13-15](#))
  - Antitrust
  - Disaster recovery
  - Document retention ([Attachment 16](#))
  - Political activities ([Attachment 17](#))
  - Solicitation registrations

### E. Governance

1. Electronic balloting for members
  - State law and your articles or bylaws would need to allow electronic balloting.
  - DC Code §29-301.16 allows electronic voting for members of nonprofit corporations.
  - BoardSource now offers electronic balloting services for boards.
2. Proxy Voting
  - The general rule is that directors may only vote when present in person, when participating on a meeting by conference call, or by signing a consent resolution.
  - Exceptions: Proxy voting is allowed for directors of nonprofit corporations in Colorado and Texas.
3. Virtual meetings – thing of the future or are they valid now?
  - Small step from committee or board meetings by conference call to virtual meetings.
  - Check state law and your articles and bylaws before attempting.

### Parliamentary procedure

- Is your organization using the best controlling authority for the way it wants meetings to be conducted? Robert's Rules of Order is not for everyone. (Attachment 18) For additional information, see American Institute of Parliamentarians, [www.parliamentaryprocedure.org](http://www.parliamentaryprocedure.org); National Association of Parliamentarians [www.parliamentarians.org](http://www.parliamentarians.org); and the resource list on the website of attorney/parliamentarian Jim Slaughter [www.jimslaughter.com](http://www.jimslaughter.com).
  - Do the members of your board understand the rules of parliamentary procedure under which you operate?
4. Indemnification of board members
- Check your state nonprofit corporations code to see if it allows organizations to indemnify their board members.
  - State law may require indemnification.
  - Indemnification provisions should be clearly stated in the organization's bylaws. (See Attachment 17)
  - Some organizations may decide not to provide indemnification for gross negligence if the common law allows it for simple negligence, or they may specifically choose not to.
5. Affiliation agreements
- If your chapters are not part of your corporation, consider an affiliation agreement with each one that would set forth the terms of your relationship, use of trademarks, financial expectations, cooperation on programs, etc.
  - See Jeffrey Tenebaum's book, *Association Tax Compliance Guide*, for a sample affiliation agreement.
  - Affiliation agreements may also be advisable as between "related" organizations such as a "parent" trade association, its taxable subsidiary, its tax-exempt educational foundation, and its political action committee.
  - Also consider educating your chapters on important legal issues. (Attachment 19)

### F. Controversial Best Practices (not necessarily endorsed by the panelists)

- Have chief staff officer and chief financial officer "certify" financial information to the board, whether or not required by law
- Publish governance minutes - Board, Executive Committee, Finance Committee, Audit Committee - for the world to see, i.e. on the organization's website
- Prepare "bulletized" summary of the Executive Committee and distribute to the entire Board immediately following the Executive Committee meeting, i.e. before minutes are prepared and approved
- Populate the audit committee solely with nonboard members
- Keeping at least one seat on your board vacant allows you to invite someone who is truly outstanding to join your board when that person crosses your organization's path.

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# *Goodman & Company*

## The Sarbanes-Oxley Act of 2002 What does it mean for Not-for-Profit Organizations?

### **What is the sudden concern?**

The Sarbanes-Oxley Act of 2002 (the Act), aimed at reforming the accounting profession and corporate ethical practices for publicly traded companies, was signed into law on July 30, 2002. This legislation, written as a reaction to recent Wall Street scandals, was designed to ensure adequate internal controls within publicly traded companies and to close loopholes that allowed corporate abuses to go unnoticed. It has caught the eye of state officials across the country who wish, using state legislative authority, to expand the protections that it affords investors of publicly traded companies to those doing business with smaller businesses and not-for-profit organizations.

New York Attorney General, Eliot Spitzer, is extremely vocal on this subject. He is using his position to address both corporate and not-for-profit fraudulent practices: currently, he is seeking legislation that would broaden the reach of the Act to smaller businesses and not-for-profit organizations. He cites the fact that not-for-profit organizations have “custody of billions of dollars in charitable funds,” and that there is a need to protect charitable donors. Stating that meeting certain provisions of the Act would be difficult for smaller businesses and not-for-profit organizations, accounting and financial professionals have objected to Mr. Spitzer’s proposed \$250,000 annual revenue threshold for applying its provisions. Mr. Spitzer is pushing for the proposal to be implemented over the next legislative cycle.

New York State’s initiative may set the tone for similar legislative action around the country. As a result, it is important for not-for-profit organizations and their executive officers and boards to understand the Act and its possible implications.

### **Who does the Act currently affect?**

As enacted, the law directly impacts the following groups:

- CPAs and CPA firms auditing public companies;
- Publicly traded companies, their employees, officers, board of directors and owners of more than 10 percent of the outstanding common shares;
- Attorneys who work for, or have as clients, publicly traded companies; and
- Brokers, dealers, investment bankers and financial analysts who work for publicly traded companies.

### **How does the law create oversight and how extensive is this oversight?**

- The law establishes a five-member Public Company Accounting Oversight Board (the Board) that is subject to Securities and Exchange Commission (SEC) oversight.

- Duties of the Board include registering public accounting firms that prepare audit reports for publicly traded companies; and establishing or adopting auditing, quality control, ethics and independence standards.
- The Board has the authority to inspect, investigate and discipline public accounting firms and enforce compliance with the Act.
- The Board may investigate any act, omission or practice by a registered public accounting firm or an individual associated with a registered firm for any possible violation of the Act, the Board's rules, professional standards, or provisions of the securities laws relating to the preparation and issuance of audit reports for publicly traded companies.

### **How does the law affect services that CPAs can offer publicly traded audit clients?**

- Most consulting is banned for publicly traded audit clients. These services are prohibited even if pre-approved by the company's audit committee and include:
  - Bookkeeping and related services,
  - Design and implementation of financial information systems,
  - Appraisal or valuation services including fairness opinions and contribution-in-kind reports,
  - Actuarial services,
  - Internal audit outsourcing,
  - Management functions or human resources,
  - Investment advisory or broker/dealer services, and
  - Legal and "expert services unrelated to the audit."
- Audit Partner rotation is required every five years.
- CPA firms are required to report directly to the audit committee.
- A registered CPA firm is prohibited from auditing any SEC registered client whose Chief Executive Officer (CEO), Chief Financial Officer (CFO), controller or equivalent was on the audit team within the past year.

### **How does Sarbanes-Oxley affect publicly traded companies?**

- The Act makes it unlawful for an officer or director or anyone acting for a principal to take any action to fraudulently influence, coerce, manipulate or mislead the auditing CPA firm.
- The SEC is mandated to issue rules requiring companies to disclose whether or not they have adopted a code of ethics for senior financial officers.
- The SEC is required to issue rules requiring a publicly traded company's audit committee to be comprised of at least one member who is a financial expert.
- The audit committee of a publicly traded company has responsibility for the appointment, compensation and oversight of any registered public accounting firm employed to perform audit services.
- Requires audit committee members to be members of the board of directors of the company, and otherwise be independent.

- CEOs and CFOs must certify, in every annual report, that they reviewed the report and that it does not contain untrue statements or omissions of material facts. If material noncompliance causes the company to restate its financials, the CEO and CFO forfeit any bonuses and other incentives received during the 12-month period following the first filing of the erroneous financials.
- CEOs and CFOs will be responsible for establishing and maintaining internal controls to ensure they are notified of material information.

### **How can the Sarbanes-Oxley Act potentially affect not-for-profit organizations?**

*The legislation raises the bar on corporate governance.* As many not-for-profit organizations receive federal funding, the requirements imposed by the SEC under the auspices of the Act may be viewed as best practices by various federal agencies. By way of example, the Comptroller General of the United States is performing a study of auditor independence for the SEC. As the Comptroller General has general rule making authority over audits for recipients of federal funds, many commentators believe that these rules may cascade to the various federal agencies providing funding to not-for-profit organizations.

In addition, a specific section of the Act requires state regulators to make an independent determination of the proper standards applicable for those subject to their regulation. Ultimately, this may raise the bar for legal considerations involving executive officers and board members. If the provisions of the Act governing board conduct are seen as ordinary, reasonable and prudent practices (best practices), this may raise the standard of care imposed by the courts on executive officers and board members of not-for-profit organizations.

In light of the potential for legislation and other regulatory action there are many practical changes not-for-profits should be currently considering, for example:

- Assess the need for creating an audit committee and using it to address accounting policy and services provided by independent auditors.
- Consider requiring audit committee members be independent of the organizations they govern, and recruiting and/or appointing a member who is a financial expert.
- The CEOs and CFOs of public companies are required to provide certification to publicly issued financial reports under the Act; there is an assumption that those officers providing the information and certifying the reports have an understanding of all material financial matters and related disclosures. Audit committees should assess whether or not their executive officers have this capability.
- Scrutinize transactions involving investment portfolios to make sure there is no conduct (for example favoritism afforded board members who are investment advisers or broker/dealers) that could damage a not-for-profit organization's reputation.

- Study compensation arrangements with board members (for example legal services) to ensure that relationships between audit committee members and the organizations they govern are free of conflict.
- Study compensation arrangements with executive officers (for example interest free loans to officers) to ensure that transactions meet new IRS regulations. The issues brought to light by Sarbanes-Oxley in the compensation area is the subject of IRS Intermediate Sanction regulations, which require that a committee of the board of directors approves the total compensation package for executive officers annually.
- The Act requires an assessment of internal control over financial reporting. If you are a recipient of Federal funding you already have the requirement to have an established internal control structure, and all organizations should consider whether or not their internal control structures are sufficient to provide safeguards over the accuracy and veracity of financial reporting
- The Internal Revenue Service is also considering changes to increase public confidence in the information provided by not-for-profit organizations in their tax returns. These proposed changes include disclosure of: the existence of conflicts of interest; whether the organization has an independent audit committee; any transactions or financial relationship with their substantial contributors, officers, directors, trustees and key employees.

# STANDARDS FOR CHARITY ACCOUNTABILITY

## PREFACE

The BBB Wise Giving Alliance *Standards for Charity Accountability* were developed to assist donors in making sound giving decisions and to foster public confidence in charitable organizations. The standards seek to encourage fair and honest solicitation practices, to promote ethical conduct by charitable organizations and to advance support of philanthropy.

These standards replace the separate standards of the National Charities Information Bureau and the Council of Better Business Bureaus' Foundation and its Philanthropic Advisory Service that were in place at the time the organizations merged.

The *Standards for Charity Accountability* were developed with professional and technical assistance from representatives of small and large charitable organizations, the accounting profession, grant making foundations, corporate contributions officers, regulatory agencies, research organizations and the Better Business Bureau system. The BBB Wise Giving Alliance also commissioned significant independent research on donor expectations to ensure that the views of the general public were reflected in the standards.

The generous support of the Charles Stewart Mott Foundation, the Surdna Foundation and Sony Corporation of America helped underwrite the development of these standards and related research.

Organizations that comply with these accountability standards have provided documentation that they meet basic standards:

- ◆ In how they govern their organization,
- ◆ In the ways they spend their money,
- ◆ In the truthfulness of their representations, and
- ◆ In their willingness to disclose basic information to the public.

These standards apply to publicly soliciting organizations that are tax exempt under section 501(c)(3) of the Internal Revenue Code and to other organizations conducting charitable solicitations. The standards are not intended to apply to private foundations, as they do not solicit contributions from the public.

The overarching principle of the BBB Wise Giving Alliance *Standards for Charity Accountability* is full disclosure to donors and potential donors at the time of solicitation and thereafter. However, where indicated, the standards recommend ethical practices beyond the act of disclosure in order to ensure public confidence and encourage giving. As voluntary standards, they also go beyond the requirements of local, state and federal laws and regulations.

In addition to the specific areas addressed in the standards, the BBB Wise Giving Alliance encourages charitable organizations to adopt the following management practices to further the cause of charitable accountability.

- ◆ Initiate a policy promoting pluralism and diversity within the organization's board, staff and constituencies. While organizations vary widely in their ability to demonstrate pluralism and diversity, every organization should establish a policy, consistent with its mission statement, that fosters such inclusiveness.
- ◆ Ensure adherence to all applicable local, state and federal laws and regulations including submission of financial information.
- ◆ Maintain an organizational adherence to the specific standards cited below. The BBB Wise Giving Alliance also encourages charities to maintain an organizational commitment to accountability that transcends specific standards and places a priority on openness and ethical behavior in the charity's programs and activities.

## GOVERNANCE AND OVERSIGHT

**The governing board has the ultimate oversight authority for any charitable organization. This section of the standards seeks to ensure that the volunteer board is active, independent and free of self-dealing. To meet these standards, the organization shall have:**

**1. A board of directors that provides adequate oversight of the charity's operations and its staff.** Indication of adequate oversight includes, but is not limited to, regularly scheduled appraisals of the CEO's performance, evidence of disbursement controls such as board approval of the budget and fund raising practices, establishment of a conflict of interest policy and establishment of accounting procedures sufficient to safeguard charity finances.

**2. A board of directors with a minimum of five voting members.**

**3. A minimum of three evenly spaced meetings per year of the full governing body with a majority in attendance, with face-to-face participation.** A conference call of the full board can substitute for one of the three meetings of the governing body. For all meetings, alternative modes of participation are acceptable for those with physical disabilities.

**4. Not more than one or 10% (whichever is greater) directly or indirectly compensated person(s) serving as voting member(s) of the board. Compensated members shall not serve as the board's chair or treasurer.**

**5. No transaction(s) in which any board or staff members have material conflicting interests with the charity resulting from any relationship or business affiliation.**

Factors that will be considered when concluding whether or not a related party transaction constitutes a conflict of interest and if such a conflict is material, include, but are not limited to: any arm's length procedures established by the charity; the size of the transaction relative to like expenses of the charity; whether the interested party participated in the board vote on the transaction; if competitive bids were sought and whether the transaction is one-time, recurring or ongoing.

## MEASURING EFFECTIVENESS

**An organization should regularly assess its effectiveness in achieving its mission. This section seeks to ensure that an organization has defined, measurable goals and objectives in place and a defined process in place to evaluate the success and impact of its program(s) in fulfilling the goals and objectives of the organization and that also identifies ways to address any deficiencies. To meet these standards, a charitable organization shall:**

**6. Have a board policy of assessing, no less than every two years, the organization's performance and effectiveness and of determining future actions required to achieve its mission.**

**7. Submit to the organization's governing body, for its approval, a written report that outlines the results of the aforementioned performance and effectiveness assessment and recommendations for future actions.**

## FINANCES

**This section of the standards seeks to ensure that the charity spends its funds honestly, prudently and in accordance with statements made in fund raising appeals. To meet these standards, the charitable organization shall:**

*Please note that standards 8 and 9 have different denominators.*

**8. Spend at least 65% of its total expenses on program activities.**

**Formula for Standard 8:**

$$\frac{\text{Total Program Service Expenses}}{\text{Total Expenses}} \text{ should be at least } 65\%$$

**9. Spend no more than 35% of related contributions on fund raising.** Related contributions include donations, legacies and other gifts received as a result of fund raising efforts.

**Formula for Standard 9:**

$$\frac{\text{Total Fund Raising Expenses}}{\text{Total Related Contributions}} \text{ should be no more than } 35\%$$

**10. Avoid accumulating funds that could be used for current program activities. To meet this standard, the charity's unrestricted net assets available for use should not be more than three times the size of the past year's expenses or three times the size of the current year's budget, whichever is higher.**

An organization that does not meet Standards 8, 9 and/or 10 may provide evidence to demonstrate that its use of funds is reasonable. The higher fund raising and administrative costs of a newly created organization, donor restrictions on the use of funds, exceptional bequests, a stigma associated with a cause and environmental or political events beyond an organization's control are among factors which may result in expenditures that are reasonable although they do not meet the financial measures cited in these standards.

**11. Make available to all, on request, complete annual financial statements prepared in accordance with generally accepted accounting principles.**

When total annual gross income exceeds \$250,000, these statements should be audited in accordance with generally accepted auditing standards. For charities whose annual gross income is less than \$250,000, a review by a certified public accountant is sufficient to meet this standard. For charities whose annual gross income is less than \$100,000, an internally produced, complete financial statement is sufficient to meet this standard.

**12. Include in the financial statements a breakdown of expenses (e.g., salaries, travel, postage, etc.) that shows what portion of these expenses was allocated to program, fund raising and administrative activities.**

If the charity has more than one major program category, the schedule should provide a breakdown for each category.

**13. Accurately report the charity's expenses, including any joint cost allocations, in its financial statements.**

For example, audited or unaudited statements which inaccurately claim zero fund raising expenses or otherwise understate the amount a charity spends on fund raising, and/or overstate the amount it spends on programs will not meet this standard.

**14. Have a board-approved annual budget for its current fiscal year, outlining projected expenses for major program activities, fund raising and administration.**

#### FUND RAISING AND INFORMATIONAL MATERIALS

**A fund raising appeal is often the only contact a donor has with a charity and may be the sole impetus for giving. This section of the standards seeks to ensure that a charity's representations to the public are accurate, complete and respectful. To meet these standards, the charitable organization shall:**

**15. Have solicitations and informational materials, distributed by any means, that are accurate, truthful and not misleading, both in whole and in part.** Appeals that omit a clear description of program(s) for which contributions are sought will not meet this standard.

A charity should also be able to substantiate that the timing and nature of its expenditures are in accordance with what is stated, expressed or implied in the charity's solicitations.

**16. Have an annual report available to all, on request, that includes:**

- (a) the organization's mission statement,
- (b) a summary of the past year's program service accomplishments,
- (c) a roster of the officers and members of the board of directors,

**(d) financial information that includes:**

- (i) total income in the past fiscal year,
- (ii) expenses in the same program, fund raising and administrative categories as in the financial statements, and
- (iii) ending net assets.

**17. Include on any charity websites that solicit contributions, the same information that is recommended for annual reports, as well as the mailing address of the charity and electronic access to its most recent IRS Form 990.**

**18. Address privacy concerns of donors by (a) providing in written appeals, at least annually, a means (e.g., such as a check off box) for both new and continuing donors to inform the charity if they do not want their name and address shared outside the organization, and**

**(b) providing a clear, prominent and easily accessible privacy policy on any of its websites that tells visitors**

- (i) what information, if any, is being collected about them by the charity and how this information will be used,
- (ii) how to contact the charity to review personal information collected and request corrections,
- (iii) how to inform the charity (e.g., a check off box) that the visitor does not wish his/her personal information to be shared outside the organization, and
- (iv) what security measures the charity has in place to protect personal information.

**19. Clearly disclose how the charity benefits from the sale of products or services (i.e., cause-related marketing) that state or imply that a charity will benefit from a consumer sale or transaction. Such promotions should disclose, at the point of solicitation:**

- (a) the actual or anticipated portion of the purchase price that will benefit the charity (e.g., 5 cents will be contributed to abc charity for every xyz company product sold),
- (b) the duration of the campaign (e.g., the month of October),
- (c) any maximum or guaranteed minimum contribution amount (e.g., up to a maximum of \$200,000).

**20. Respond promptly to and act on complaints brought to its attention by the BBB Wise Giving Alliance and/or local Better Business Bureaus about fund raising practices, privacy policy violations and/or other issues.**

**[Organization Name]**  
**New Board Members Briefing**  
**[Date]**  
**Agenda**

1. Welcome (Chief Volunteer Officer, "CVA")
2. Staff Introductions (Chief Staff Officer, "CSA")
3. Legal Responsibilities and Obligations of Nonprofit Board Members in [states of organization and operation] (General Counsel)
  - A. You represent the entire membership: Balancing Their Priorities
  - B. Obligations of Due Care, Loyalty, Obedience
  - C. Attendance Requirements
4. Strategic Plan and the Program Budget (CVA and Chief Financial Officer, "CFA")
5. Meetings & Reimbursement
  - A. Calendar
  - B. Reimbursement Policy & Form
6. Overview of [Leadership Conference, Board Retreat] (CVA)
7. Introducing the Board Manual (General Counsel)
8. Interaction of Society with Other Organizations (CVA and CSA)
  - A. [National; Regionals; Local Affiliates]
  - B. [Federal, state and local regulators affecting the membership]
  - C. [Affiliated organizations, such as for-profit subsidiaries, educational foundations, etc.]
9. Legislative Update (CSA)



## THE BOARD OF DIRECTORS

### A DIRECTOR'S RESPONSIBILITIES

The District of Columbia Non-Profit Corporation Code, under which the National Wildlife Federation (NWF) is incorporated, vests the management of NWF's affairs in its Board of Directors. Article IX(a) of NWF's Bylaws reiterates and amplifies this assignment of responsibility as follows:

The duties of the Federation Board of Directors shall be to direct the business and financial affairs of the Federation, and to engage in such activities as are appropriate to carry out its purposes and objectives, and to establish conservation policy in the interim between Annual Meetings...

The purpose of this section is to inform members of the National Wildlife Federation's Board of Directors of the duties, responsibilities and liabilities arising out of their service as directors. It is intended as an overview of general concepts and standards.

The information is presented in five sections. The first is a general discussion of Board governance and composition. The second describes the duty of loyalty and standard of care required of directors. The third deals with attendance at meetings, transactions with NWF and conflicts of interest, and making public statements regarding NWF or its policies. The fourth and fifth sections discuss a director's liability and right to indemnification.

#### **I. BOARD GOVERNANCE AND COMPOSITION**

Except with respect to the establishment of its conservation policy, the affairs of NWF, like those of for-profit business corporations, are managed by its Board of Directors composed of uncompensated, volunteer leaders. Although the Board has the power to delegate authority, the ultimate responsibility for NWF resides with the Board of Directors, which may not lawfully abdicate its duty.

Directors should be aware that NWF's assets are dedicated to the purposes set out in NWF's Articles of Incorporation and must be treated as a charitable trust. Federation Directors are fiduciaries for its members and, inasmuch as NWF is a "public charity," to some extent for the public-at-large. Their status as fiduciaries is analogous to that of trustees of a trust, though the actual standard of care required is slightly less strict. Directors must protect the interest of NWF and refrain from doing anything to cause injury to NWF or to deny it the advantage of their skills and abilities.

The Board of Directors acts only as a group at duly-convened meetings at which a quorum is present—i.e., participates in person or telephonically—or without a meeting by unanimous written consent of all the directors, provided the directors at a duly-convened meeting would have had the power to take such action.

Article VII(f) of the Bylaws of NWF provides that: "A majority of the actual membership of the Federation Board or fifteen (15) Directors, whichever is greater, shall constitute a quorum ...". "Actual membership" means the number of individuals elected to and serving as directors at the time of any meeting. It does not include vacancies or directorships which could have been but have not been filled. Directors may not vote by proxy. They must be present at a duly-convened meeting of the Board in order to vote.

No individual director, as such, has the power to control, make decisions for or act on behalf of NWF. An informal consensus of the directors is not valid unless approved (before action is taken) or ratified (after action is taken) by the Board. When a quorum participates in a meeting, action by the Board usually requires only a simple majority vote of the directors present, though a greater vote may be required by Robert's Rules of Order or other controlling authority, such as the District of Columbia Nonprofit Corporation Act, the Articles of Incorporation or the Bylaws.

As indicated above, the conservation policies of NWF are established by elected affiliate representatives through the adoption of conservation policy resolutions at Annual Meetings of NWF. It is the responsibility of the President to develop and implement NWF's conservation programs in a manner that is consistent with the resolutions adopted by the affiliate representatives. The Board is, however, authorized to establish conservation policy in the interim between Annual Meetings.

A director may resign from the Board of Directors at any time by delivering written notice to the Chair of the Board or to the Secretary. Resignation is effective upon receipt of the notice or at such future time as is stated in the notice. A director may be removed from office at a meeting specially called for that purpose with or without cause by such vote as would suffice for his or her election. In addition the Board has adopted a policy which provides that if a director is absent from three consecutive regular meetings for reasons which the Board finds to be insufficient, the director's resignation shall be deemed to have been tendered and accepted.

## II. DUTIES AND RESPONSIBILITIES OF NWF DIRECTORS

The obligations of directors can be divided into two broad categories: (a) a duty of loyalty and (b) a duty of care.

**Duty of Loyalty:** The duty of loyalty requires directors to put the interest of NWF above any individual interests. It incorporates the basic principle of corporate law that directors must not use their position for personal profit or other personal advantage. Directors must (1) avoid conflicts of interest, (2) ensure that any dealing between themselves and NWF is fair, (3) avoid preempting any business opportunity available to NWF, and (4) maintain the confidentiality of information made available to them as directors until such time as that information has become a matter of public record or common knowledge.

The Directors' primary responsibility is to maintain vigilance over corporate transactions. The Board of Directors is not expected to operate NWF, but it is responsible for providing oversight of the operation of NWF. Actual operation of NWF is the function of the President and the staff.

The Board can usually fulfill its responsibility by reviewing periodic reports from its President and staff. In general, directors are not personally responsible for the actions or omissions of the President and the staff if the President and staff have been prudently selected. However, the Board of Directors is required to take corrective action in the event that the President or staff takes action, which is not in NWF's best interest. Directors may rely upon financial statements presented to them as correct by appropriate officers of NWF or as set forth in reports or statements made by or certified by NWF's independent certified public accountants. A director is obligated to study and understand to the best of the director's ability NWF's financial and business condition and to review submitted materials. If a director has knowledge that such materials are inaccurate or incomplete but goes ahead and relies upon them, he or she is not exercising good faith. A director must make some reasonable, critical inquiry as to whether there is any basis to disbelieve information that is being presented.

A director has the right to inspect all the books and records of NWF and to receive reports from its officers, employees and agents. Such requests for information or inspection should be directed to the President. Refusal to honor a director's reasonable request for information should be reported to the Chair. In a severe situation, a director may have an obligation to bring certain matters to the attention of the District of Columbia Corporation Counsel, or other regulatory agencies or officials; but, before taking such extreme action, a director should first discuss the matter with the Chair of the Board, the President, NWF's General Counsel, or outside legal counsel.

**Duty of Care:** The duty of care requires directors to perform their duties, including service as a member of any committee, in good faith, in a manner they reasonably believe to be in the best interest of NWF, and with the care an ordinarily prudent person in a like position would use under similar circumstances.

Directors must, of course, pay attention to the affairs of NWF. In general, this obligation can be met by (1) regular attendance at meetings of the Board and any committees of which they are a member and (2) reviewing information regarding matters requiring Board action. (Since a great deal of material is supplied to the directors for their general information, special attention should be given to the budget and other communications directed to them by the President or Secretary, to materials supplied to any committee they are on, and to agenda materials prepared for meetings.) NWF directors should also try to be informed on important conservation issues, especially those that NWF is working on and those which may arise in their home state or region.

Legal action may be brought against a director if this standard of care is not exercised, and a director may be held personally responsible for any harm caused as a result. Directors may ask the advice and informative guidance of others, but, in the end, must use their own judgments in coming to a final decision. As a fiduciary, a director must exercise power for the benefit of NWF and all its members, not for only some of them, with full honesty and reasonable efficiency.

Directors should use common sense, practical wisdom and their informed judgment in fulfilling their responsibilities. The nature and extent of the role played by an individual director will, as a matter of law, vary depending on the special background and qualifications of the director. For example, if a director has experience in financial affairs, he or she is expected to bring that

experience to bear in making decisions as a director and may be expected to exercise greater skill with regard to financial matters than a director who has no special experience in that area. This does not mean the director with special qualifications has special duties; merely that in the exercise of duties which are common to all of the directors, directors with special skills and experience must utilize those special skills and experience in reaching decisions. Thus, for example, a director inexperienced in financial affairs might accept and act on a financial report without liability even if the report turned out to be erroneous while another director who has more knowledge or expertise in financial affairs might be found negligent in failing to note the errors in the report and bringing those errors to the attention of the full Board.

Directors are expected to assist the staff to procure the funds necessary for Federation projects. This assistance may take many forms including, but not limited to, personal gifts, providing staff access to corporations and foundations, and identifying and contacting individuals who have the potential to provide financial assistance to the National Wildlife Federation.

Directorship is a responsibility, not just an honor. A director may make a valuable contribution through relevant inquiry and focused discussion of proposals initiated by management. However, lack of objectivity and putting personal status and aspirations ahead of the needs of NWF may result in the misdirection of Board activity. Directors should be prepared to oppose, if necessary, the position of dominant members of the Board. An individual should seek to become, or consent to be, a director only if he or she is sufficiently qualified and is prepared to devote the attention and effort necessary to fulfill the substantial responsibilities involved.

**Guidelines:** To fulfill their duties and responsibilities directors should adhere diligently to the following guidelines:

1. Attend meetings of the Board of Directors consistently and attentively, and ensure that such meetings are held regularly and as frequently as necessary. A director may be found to be negligent and personally liable for failure to take reasonable steps to be apprised of NWF's activities or conditions. NWF keeps the members of its Board informed of its activities in a variety of ways. Each director receives the major regular publications of NWF such as *National Wildlife*® and *Ranger Rick*®. They also receive copies of various other printed material issued by the National Wildlife Federation including copies of all resolutions adopted by the delegates at the Annual Meetings. In addition, they receive copies of the annual Certified Financial Statements of the National Wildlife Federation, the management letter issued by NWF's independent certified public accountants and tri-annual reports on the current financial status of NWF from NWF's President. Board members also receive information from the Board's list-serve.
2. Carefully review and understand the Articles of Incorporation and the Bylaws to see that they are followed.
3. Be familiar with the facilities, personnel and programs of NWF and view those facilities and activities firsthand from time to time.
4. Maintain the confidentiality of information made available to them as directors, at least until such time as the information has become a matter of public record or common knowledge.
5. Review the agenda and appropriate supporting material distributed prior to each Board meeting and take time in advance of the meeting to prepare for the meeting.

6. Safeguard and ensure the protection of the assets of NWF and be certain that sufficient assets are maintained for the timely fulfillment of NWF's obligations and objectives. A director should also concern himself or herself about the adequacy and type of NWF's funding.
7. Be concerned with the orientation, composition and continuity of the Board, and perpetuate a sound Board by regular elections and, when appropriate, filling interim vacancies.
8. Obtain sufficient information about proposals put before the Board to enable an informed judgment to be made and acted on.
9. Obtain and review information from outside sources, which deal not only with NWF but also with other nonprofit corporations with business and activities in related areas.

Finally, in addition to the foregoing, individual directors should be satisfied that the Board, as a whole, adheres to the following guidelines:

1. Exercises oversight with regard to the management of employee benefit plans.
2. Ensures that there are no improper distributions of cash or other property to officers, directors or members and that there are no dividends paid to any members based on their interest in NWF.
3. Approves important financial and "business" policy decisions of NWF and ensures that annual and interim reports are filed as required by law.
4. Participates in establishing the basic objectives and broad policies of NWF and ensures that these objectives are being met and the policies are being maintained.
5. Selects the President of NWF, approves his or her actions when appropriate and provides for the audit of his or her performance.
6. Delegates the power to sign contracts, open bank accounts, sign checks and engage in other activities as may be required in the course of NWF's activities.
7. Ensures that an effective system for reporting to the Board on present and future developments is established and maintained.
8. Ensures that a written record of each Board meeting is kept, distributed in a timely fashion and ratified at the following meeting.

### **III. ATTENDANCE AT MEETINGS, TRANSACTIONS WITH NWF, AND PUBLIC STATEMENTS**

**Attendance at Meetings:** The primary obligation of members of NWF's Board of Directors is to attend and participate in the meetings of the Board. NWF's Board normally meets three times a year. Two of these meetings are scheduled around the Annual Meeting in March — one preceding and the second following the election of Regional Directors. The third meeting, referred to as the "mid-year meeting," is usually held in August. At this meeting the Board adopts a budget for the upcoming fiscal year.

Directors who are unable to attend meetings of the Board should explain their absence in a letter addressed to the President or Secretary. If a director is absent from three consecutive regular meetings for reasons which the Board finds to be insufficient, the director's resignation shall be deemed to have been tendered and accepted and he or she shall be so notified.

Agenda materials are sent to directors at least two weeks in advance of each meeting. Directors should study the agenda materials and be prepared to act in what they see as the best interest of NWF.

**Transactions with NWF and Conflicts of Interest:** Since a director is a fiduciary and must act for the benefit of NWF, not for personal gain, a director normally should not have any personal interest in transactions of NWF. Because of this the NWF Board has adopted a conflict of interest policy. This policy is set forth in Section III A of the National Wildlife Federation Board of Directors Policy Manual. As that policy states, you will be asked each year to review and sign a copy of the Conflict of Interest Policy. In addition, NWF has, over the years, attempted to avoid entering into any financial transactions with members of its Board of Directors. The sort of personal interest which is prohibited could be direct or indirect (as through a family member or another organization in which the director holds a significant interest as an investor or as a shareholder).

A director must exercise care not to preempt corporate opportunities. A director will be in breach of his or her duties to NWF if he or she "misappropriates" for personal use or gain any opportunity that should have been utilized by NWF. This includes misappropriating an opportunity for another organization the director is involved with, including state affiliates. Whether an opportunity is NWF's or is within the legitimate scope of the director's individual interests depends upon all of the facts and circumstances. An opportunity should not be used by a director if NWF has a right to or interest in the opportunity as would be the case where the funds, personnel or facilities of NWF have been used to develop a particular opportunity. A director who is unsure whether a corporate opportunity is being appropriated for personal use should consult with the Chair of the Board, or the General Counsel and, if necessary, seek a Board resolution determining that NWF has no interest in the opportunity before proceeding to use it.

Though it would be an unusual situation, NWF may from time to time, because of different financial interests and occupations of directors, want to engage in a transaction with a director or with an organization in which a director has a direct or indirect financial interest. Such transactions are not illegal, but they present various legal problems and should be thoroughly reviewed in advance with NWF's General Counsel.

**Public Statements:** The complexities of modern public relations, the complex interrelationships of various issues, and the importance of consistent policy expression suggest that, whenever possible, directors should contact the President before making any public statements as a director of NWF or on NWF's behalf. If there is any doubt as to the official NWF policy or the facts or issues at stake, directors should exercise caution and contact the President.

#### **IV. A DIRECTOR'S LIABILITY**

A director who behaves fairly and honorably and who, acting in good faith, is diligent in discharging his or her duties is not likely to be subjected to personal liability. Courts recognize that business judgment inevitably involves risk evaluation and that directors are not normally committed to full-time involvement in the affairs of NWF. Courts further recognize that directors must make important decisions which, in retrospect, may prove to be erroneous. If it turns out

the decision of the Board was a mistake, the question of whether or not the directors have been careless is decided in terms of the facts as they were or reasonably appeared to be when the decision was made and not in terms of 20-20 hindsight. Directors are generally protected from honest mistakes if they (1) exercised their good-faith judgement without carelessness, (2) acted within the power granted to NWF by the District of Columbia Code, the Articles of Incorporation and the Bylaws, and (3) executed such judgment after due consideration of what they reasonably believed to be the relevant facts. If, however, a director violates his or her duty of loyalty to NWF, a court may hold the director responsible for such willful neglect.

A director who votes for or concurs in an improper action of the Board of Directors may be jointly (with the other directors) and severally (individually) liable. Making sure that the written record indicates good faith is one method of protection. When a matter in which any doubt regarding personal conduct of a director may arise, a director should insist that his or her views and acts be reflected in the minutes.

The absence of a director at a Board meeting usually does not excuse the director from personal liability for actions taken at the meeting. If the director is absent from a Board meeting, he or she is responsible for obtaining the minutes of the meeting, and if he or she objects to any action taken, promptly dissent, preferably in writing, to the entire Board. If this is not done, the director may be deemed to have acquiesced in the action.

## **V. RIGHT TO INDEMNIFICATION**

The Bylaws of NWF authorize NWF, under certain circumstances, to indemnify its officers and directors for costs and expenses incurred by him or her as a result of legal proceedings brought by a third party. The right to indemnification is governed by statute, however, and NWF may indemnify its officers and directors only to the extent permitted by the statute. A bylaw or agreement which extends this right is unenforceable.

Article XV of the Bylaws was drafted to provide the maximum coverage possible. Unfortunately, the provisions of the D.C. Nonprofit Code authorizing indemnification of officers and directors are not clearly established. To the extent authorized by the D.C. Nonprofit Code, this Bylaw provides for defense and indemnification by NWF for any Board member or trustee from any claim arising out of that person's service on the NWF Board or the Board of any member of the NWF corporate family. NWF also maintains a fairly broad coverage Association Professional Liability Insurance Policy that includes directors and officers liability coverage.



**FROM:** James A. Woehlke, CPA  
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(212) 719-8347 (fax - 4759)

**RE:** Board Member Responsibilities

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## Introduction

This is a summary of the responsibilities of members of the Board of Directors for your review and consideration. Much of what follows is drawn from general corporation law, including the New York Not-For-Profit Law, and the Society's bylaws.

For new Board members, we have included a copy of the National Center For Nonprofit Boards' (now known as BoardSource) *How to Help Your Board Govern More and Manage Less* by Richard P. Chait. This is an excellent pamphlet, which addresses the balance between the responsibilities of an association's leadership and its staff. We will be providing all board members a membership in BoardSource.

Directors who serve associations, although not compelled to serve and not compensated for their service, nevertheless have certain legal obligations to their associations. In general, a member of a non-profit's board of directors has a fiduciary duty to the association. The fiduciary duty has two aspects, a duty of care and a duty of loyalty.

## Duty of Care

To meet the duty of care, a Board member should

- Be reasonably informed and exercise independent judgment,
- Participate in the Board's decisions, and
- Fulfill these obligations honestly, in good faith and with the care of an ordinarily prudent person in similar circumstances.

In the ordinary course of business, a director may rely on information received from sources that the director reasonably regards as trustworthy. Generally, Board members may rely on information from the staff, but if a Board member thinks such information is in any way inadequate, he or she should request additional information.

The Board does not manage the Society's affairs on a day-to-day basis and must, therefore, delegate managerial functions to the Executive Director and the staff. This



does not relieve the Board from its responsibility to monitor the Society's affairs, but directors have no personal responsibility for errors and omissions of management, employees or agents of the Society as long as those persons were prudently selected and the directors' reliance on them is reasonable. Put in other words, the Society's Board is expected to properly delegate its authority to the officers and staff; but it may not abdicate its responsibilities to monitor and evaluate the performance of Society staff.

## Duty of Loyalty

The duty of loyalty requires that directors exercise their powers in the interest of the Society and not in their own interest or the interest of another entity or person. This duty primarily relates to

- Conflicts of Interest,
- Corporate Opportunity, and
- Confidentiality

A major responsibility of association directors is the obligation to avoid conflicts of interest. A director must provide undivided allegiance to the association and its mission. The existence of occasional conflicts of interest is not a problem, but they need to be properly handled.

- Directors should be sensitive to any interest they have in any decision to be made by the Board.
- When a director has an interest in a transaction, they should disclose it in advance of any Board action.
- At that time the Board should review the matter.

Disclosure of material conflicts of interest should be in writing and recorded in the minutes.

Occasionally, a conflict of interest will be such that the director cannot disclose it to the Board. In those instances, the director should disclose that a conflict exists and then, depending on the circumstances, either leave the meeting or abstain from discussion and voting. If even this lower level of disclosure is impossible under the circumstances, the director may need to resign.

Your fiduciary duty also subjects you to the "corporate opportunities" doctrine. This precludes a director who learns of a business opportunity through the director's service to the association from pursuing the opportunity outside the association.

Another important responsibility of association directors relates to confidential information. A director must maintain in confidence whatever information the association desires to keep confidential and that it treats as confidential. A Board member should

not disclose information about the Society's legitimate activities unless the information is already known to the public or is part of the public record. Similarly, from time-to-time Board members receive information that is protectable under the attorney-client privilege. The protections available to these confidential communications are waived if a Board member discloses them outside a proper venue.

### **Duty Regarding Illegal Activities**

Directors cannot ignore potentially illegal activities. If a board member believes some activity of the Society may not be legal, he or she should bring the matter to the attention of the President and the Executive Director with a demand for an investigation. If ignored, the matter should be brought to the full Board. If not satisfied with the handling of the matter, the Board member should consult his or her attorney to determine if disclosure outside the organization is required or if resignation is in order.

### **Meeting Requirements**

The Society's bylaws require that a Board member who misses three consecutive meetings without cause (as determined by a majority of the Board) be automatically removed from the Board.

### **Rights of Board Members**

To fulfill your responsibilities as Board members, you have certain rights, including

- Reasonable access to management;
- Access to the Society's books and records at reasonable intervals and during business hours;
- Notice of meetings;
- Minutes of meetings.

### **Liability of Directors**

Association directors, even though they serve voluntarily and without pay, may be exposed to personal liability for acts they perform on behalf of the association. In general, as long as a director exercises ordinary diligence and care, no personal liability will arise, even when actions and decisions are made in poor judgment, or cause damage or injury. Good faith is the principal test of ordinary diligence and care.

The Business Judgment Rule. Even where a corporate action has proven to be unwise or unsuccessful, a director will not be liable if he or she acted in good faith, in a manner reasonably believed to be in the corporation's best interest, and with independent and informed judgment.

In general, directors may be held liable if they

- Perform or approve association activities that are beyond the corporate power and authority of the association (*ultra vires*)
- Intentionally cause injury or damage to others
- Commit or facilitate acts while representing the association that violate anti-trust or other laws

In addition, the New York Not-For-Profit Corporation Law (Section 719) provides for director liability in certain situations, including

- Distributions of cash or property to members, directors or officers (other than reasonable compensation for services rendered and distributions in liquidation); and
- Making loans to officers, directors or firms, in which any officer or director has a substantial financial interest.

Board members are presumed to concur in these transactions unless their dissent is noted in the minutes of the Society.

Under State law, an association may indemnify its directors against liability incurred from their activities on behalf of the association. Associations may also provide insurance for this purpose. For your information, the Society carries two Directors and Officers insurance policies, the primary policy with \$5 million of coverage is with Chubb, and the excess liability policy with AIG is for an additional \$5 million.

New York State law also provides statutory protection for directors of 501(c)(3) organizations (e.g., FAE) unless the conduct of the director constitutes gross negligence or an intentional act resulting in injury or harm.

## Resources

Jerald A. Jacobs, "Fiduciary Duty, Conflicts, Confidentiality" and "Personal Liability of Officers and directors," Chapters 17 and 18, *Association Law Handbook*, ASAE (1996).

*Corporate Director's Guidebook (3<sup>rd</sup> Ed.)*, ABA Section of Business Law (2001).

Gregory V. Varallo and Daniel A Dreisbach, *Fundamentals of Corporate Governance*, ABA Section of Business Law (1996).

*Guidebook for Directors of Nonprofit Corporations (2<sup>nd</sup> Ed.)*, ABA Section of Business Law (2002).

George Webster and Hugh K. Webster, "Responsibilities and Liabilities of association Directors and Officers," Chapter 2A, *The Law of Associations*, Matthew Bender (1999).

Victor Futter, Editor-in-Chief, *Nonprofit Governance and Management*, ABA Section of Business Law (2002).

BoardSource, [www.boardsource.org](http://www.boardsource.org).

## Attachment 6

I. **ASCE'S TAX STATUS:** THE SOCIETY QUALIFIES AS A NONPROFIT CORPORATION UNDER § 501(C)(3) OF THE UNITED STATES INTERNAL REVENUE CODE.

1. **Section 501(c)(3):** A nonprofit corporation may qualify for exemption from federal income tax as a § 501(c)(3) organization if it is organized and operated exclusively for religious, charitable, educational, literary or scientific purposes.
2. **Benefits of § 501(c)(3) Status:** The Society is exempt from most federal income taxes and some state and local taxes. Additionally, contributions made to the Society may be tax deductible, the Society may finance its exempt activities by issuing tax-exempt bonds, and the Society qualifies for privileged postal rates.
3. **Limitations of § 501(c)(3) Status:** The Society is subject to a number of restrictions to maintain its tax exemption.
  - A. **Unrelated Business Activities:** The Society may not conduct substantial activities that are unrelated to its tax exempt purposes.
  - B. **Lobbying:** The Society may not devote a substantial part of its activities to lobbying, propaganda or attempting to influence legislation.
  - C. **Political Campaign Activities:** The Society may not participate or intervene in any political campaign.
  - D. **Private Inurement:** The Society's activities may not be for the benefit of a private individual or shareholder.

II. **ASCE MANAGEMENT:** THE BOARD OF DIRECTION MANAGES THE AFFAIRS OF THE SOCIETY.

1. **Board of Direction:** The corporate powers of the Society are vested in the Board of Direction. ASCE Constitution, § 5.0; New York Nonprofit Corporation Law ("NPCL") § 701. The Board of Direction manages the affairs of the Society in accordance with the Society's governing documents and the laws under which the Society is organized. ASCE Constitution, § 5.0; ASCE Bylaws, § 5.0; ASCE Rules of Policy and Procedure, § 5.0.
2. **Executive Committee:** Subject to certain limitations, the Board of Direction has designated an Executive Committee to act on its behalf. NPCL § 712; ASCE Constitution, § 5.1. The Society's Executive Committee exercises delegated Board authority in the administration of the Society's affairs, and may act for the Board upon a finding of urgency. ASCE Bylaws, § 5.1; ASCE Rules of Policy and Procedure, § 5.1.

3. **Executive Director:** Under the authority of the Board of Direction and the oversight of the Executive Committee, the detailed management of the Society is exercised by the Executive Director acting as general manager. ASCE Constitution, § 5.2; ASCE Bylaws, § 5.2; ASCE Rules of Policy and Procedure, § 5.2.
4. **Governing Documents:** The Society is governed in accordance with its governing documents, which include a Certificate of Incorporation, Constitution, Bylaws and Rules of Policy and Procedure.
5. **Function:** The Society's purpose, objective, mission and vision are defined in its Certificate of Incorporation, Constitution and Strategic Plan.
  - A. **Society Purpose:** The purposes for which the Society was incorporated are educational, scientific, literary and charitable. As more fully defined in ASCE's Certificate of Incorporation, these purposes include the advancement of the science of engineering, the furtherance of education in the science of engineering, and the maintenance of the highest standards of excellence in the educational fields relating to the science. ASCE Certificate of Incorporation.
  - B. **Society Objective:** The objective of the Society is the advancement of the science and profession of engineering to enhance the welfare of humanity. ASCE Constitution, § 1.3.
  - C. **Society Mission:** To provide essential value to our members, their careers, our partners, and society through:
    - \_ Developing leadership,
    - \_ Advancing technology,
    - \_ Advocating lifelong learning, and
    - \_ Promoting the profession. ASCE Strategic Plan.
  - D. **Society Vision:** Engineers as global leaders building a better quality of life. ASCE Strategic Plan.

III. **ASCE INSTITUTE AND GEOGRAPHIC UNIT MANAGEMENT:** THE SOCIETY'S INSTITUTES AND GEOGRAPHIC UNITS ARE MANAGED BY INSTITUTE AND GEOGRAPHIC UNIT BOARDS OF DIRECTORS.

1. **Board of Directors:** Institutes and geographic units are managed by Boards of Directors, consisting of officers and other designated persons. Institute Bylaws; Sample Constitution and Bylaws, Section/Branch Operations Handbook.

2. **Governing Documents:** In addition to ASCE's governing documents, Institutes and geographic units are managed in accordance with specialized governing documents, including Institute Bylaws, Section Constitutions and Bylaws, and Branch Bylaws. ASCE Bylaws, §§ 9.3 and 9.5; Institute Bylaws; Sample Constitution and Bylaws, Section/Branch Operations Handbook.
3. **Function:** Institutes and geographic units share consistent objectives and purposes with the Society and may be created or terminated by the Board of Direction. ASCE Constitution, § 9.0; ASCE Bylaws, § 9.0.
  - A. **Objective:** Institute objectives are set forth in ASCE's Rules of Policy and Procedure and in the Institutes' individual Bylaws. ASCE Rules of Policy and Procedure, § 9.5; Institute Bylaws. The objective of Sections and Branches is the advancement of the science and profession of engineering, in a manner consistent with the purposes of the Society. Sample Constitution and Bylaws, Section/Branch Operations Handbook.
  - B. **Authorization:** Institutes and geographic units may not speak for the Society as a whole unless authorized by the Board of Direction. No actions of Institutes and geographic units may contravene any act, policy, or purpose of the Society. ASCE Bylaws, § 9.1.

IV. **OFFICER AND DIRECTOR DUTIES:** OFFICERS AND DIRECTORS (AND OTHER VOLUNTEERS) HAVE A FIDUCIARY DUTY TO THE SOCIETY, INCLUDING A DUTY OF CARE AND LOYALTY.

1. **Duty of Care:** Officers and directors must exercise ordinary and reasonable care in performing their duties. The Duty of Care requires an officer or director to (1) be reasonably informed, (2) participate in decisions, and (3) do so in good faith exercising the care of an ordinary person in similar circumstances. *Guidebook for Directors of Nonprofit Corporations*, American Bar Association (1993). See also, NPCL § 717; Va. Code § 13.1-870.
  - A. **Business Judgement Rule:** An officer or director is generally judged by whether he or she exercised good faith judgement in a manner reasonably believed to be in the best interest of the Society, and not by the substantive merit of his or her decisions.
2. **Duty of Loyalty:** Officers and directors must exercise their powers in the best interest of the Society and not in their own interest or the interest of another entity or person.
  - A. **Conflicts of Interest:** "A conflict of interest exists when a director participates in the deliberation and resolution of an issue important to the association while, at the same time, the director has other professional, business, or volunteer responsibilities outside the association that could

predispose or bias the director to a particular view or goal.” *Legal Risk Management for Associations*, Jacobs & Ogden (1995). When faced with a real or potential conflict of interest, an officer’s or director’s options include (1) full disclosure, (2) recusal or (3) withdrawal as director. See, e.g., NPCL § 715; Va. Code § 13.1-871.

- B. **Corporate Opportunity:** An officer or director should not engage in a transaction which may be of interest to the Society unless he or she discloses the transaction to the Board of Direction to allow the Board to act or decline to act with respect to the transaction.
  - C. **Confidentiality:** An officer or director generally should not disclose information about the Society’s activities unless the information is already known by the public or is of public record.
3. **ASCE Code of Ethics:** The Code of Ethics embodies many of the foregoing principles. (Attachment 1).
- A. **Canon 4.** Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest.
    - a. Engineers shall avoid all known or potential conflicts of interest with their employers or clients and shall promptly inform their employers or clients of any business associations, interests, or circumstances which could influence their judgement or the quality of their services.
  - B. **Canon 6.** Engineers shall act in such a manner as to uphold and enhance the honor, integrity, and dignity of the engineering profession.
    - a. Engineers shall not knowingly act in a manner which will be derogatory to the honor, integrity, or dignity of the engineering profession, or knowingly engage in business or professional practices of a fraudulent, dishonest or unethical nature.

V. **ASSOCIATION LIABILITY:** PROTECTION AGAINST RISK.

1. **Potential Liability:** Association activities may result in legal claims such as negligence, defamation, or antitrust violations. Legal claims may be brought against individual participants and/or, more likely, the Society. The United States Supreme Court has found an association liable for the actions of its volunteers acting with apparent authority, even when the association did not know about or benefit from the volunteers’ actions. (Attachment 2 - *American Society of Mechanical Engineers, Inc. v. Hydrolevel Corp.*) Association volunteers should have a general awareness of the legal issues that may arise during the course of their volunteer services. (Attachment 3 - Outline of Volunteer Legal Issues).
2. **Protections Against Risk:** There are a number of protections available against risk.

- A. **Federal Law:** On June 18, 1997, President Clinton signed the Volunteer Protection Act ("VPA") of 1997. (Attachment 4). ASCE supported the VPA, which took effect in September 1997. The VPA provides generally that a nonprofit volunteer will be relieved of liability for any harm caused by his or her act or omission if (1) the volunteer was acting within the scope of his or her responsibilities, (2) the volunteer was properly licensed or certified (where applicable), (3) the harm was not caused by willful, criminal, or reckless misconduct, gross negligence, or a conscious, flagrant indifference to the rights or safety of the individual harmed, and (4) the volunteer was not operating a motor vehicle, vessel or aircraft. Even if unable to meet these requirements, the VPA still provides relief from punitive damages and noneconomic losses except under egregious circumstances.
- B. **State Law:** State laws may provide additional protections.
- a. **New York:** A director is not liable for his or her actions if, among other things, the director discharges his or her duties in good faith and with the degree of diligence, care and skill which ordinarily prudent persons would exercise under similar circumstances in like positions. NPCL §§ 717, 719. Section 719 identifies specific instances where a director shall be liable to the corporation for the benefit of its creditors or members or the ultimate beneficiaries of its activities, and NPCL § 720 identifies relief which may be sought against a director. NPCL § 720-a provides that directors serving without compensation shall not be liable to any person other than the corporation except for gross negligence or intent to cause harm.
- b. **Virginia:** A director is not liable for his or her actions or inactions where the directors' duties were discharged in accordance with his or her good faith judgement of the best interest of the Society. Va. Code § 13.1-870. Additionally, in any proceeding against a director of a Section 501(c) organization, the director's liability is limited to the compensation received by the director in the preceding twelve months, or if the director served without compensation, no liability for damages. Va. Code §§ 13.1-870.1(B), (E) and -870.2.
- C. **Indemnification:** The Society's Bylaws permit the Society to indemnify its directors, officers, committee members, employees, agents and volunteers for liability arising from the performance of duties on behalf of the Society provided that the directors' activities are not illegal nor inconsistent with the Society's purposes or objectives. ASCE Bylaws, § 10.2. State laws also address indemnification rights of directors. NPCL §§ 721-725; Va. Code §§ 13.1-875 through 13.1-883.



- D. **Insurance:** The Society has insurance coverage to protect its officers, directors and other volunteers.
- a. **Directors and Officers Liability Policy:** Subject to exclusions, this policy provides liability coverage for officers, directors and volunteers for losses resulting from claims due to actual or alleged errors, misstatements, acts, omissions, neglect or breach of duty while acting as an authorized representative of the Society.
  - b. **Commercial Package Policy:** Subject to exclusions, this policy provides liability coverage for volunteers for bodily injury or property damage arising out of their duties.
  - c. **Professional Errors and Omissions Policy:** Subject to exclusions, this policy provides liability coverage for geographic units for claims resulting from acts, errors or omissions in the performance of professional services.
- E. **Risk Management:** In spite of the foregoing protections for directors, officers and members, the Society's volunteers must exercise sound risk management practices for the Society. Such practices should include careful review and approval of official correspondence on Society letterhead, careful review and negotiation of contracts (Attachment 5 - Fax News Article; Attachment 6 - Sample ASCE Hotel Contract Addendum; Attachment 7 - Sample ASCE Hotel Contract; Attachment 8 - Sample Vendor Contract Addendum) and obtaining releases where appropriate (Attachment 9 - Sample Generic Release Provisions).

VI. **QUESTIONS:** Thomas W. Smith, III  
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## QUALIFICATIONS, EXPECTATIONS, AND TRAINING OF DIRECTORS AND VICE PRESIDENTS

The Director and Vice President of ASCE are important management positions in the Society. Service to ASCE at this level is personally and professionally challenging, and a rewarding experience.

This overview has been prepared to provide guidance to ASCE members seeking to become a Director or Vice President of the Society. It describes the required qualifications for these positions, expected time commitments, expected financial resources, and the training required. An outline of the nomination process, including a list of the documents that must be submitted by each nominee, is provided at the end.

Each District and Zone nominating committee, potential candidate, and anyone soliciting potential candidates should become familiar with these qualifications, expectations, and commitments. The Society can move forward if its leadership is qualified, able to serve effectively, and dedicated to the success of the organization and its strategic plan.

### I. **Qualifications.**

- A. **Directors.** The Society Bylaws require that a Director of the Society meet the following criteria: "shall be a Society member and shall have served as a Section or Branch officer, as a Board of Governors member of an Institute, or as a member of a national committee of the Society."
- B. **Vice Presidents.** The Society Bylaws require that a Vice President of the Society meet the following criteria: "shall be a Society member and shall have had prior service on the Board of Direction."

Directors and Vice Presidents of the American Society of Civil Engineers must possess many traits and abilities beyond those specified by the Bylaws. This has always been true, but because of the 1995 Strategic Plan, which redefined the roles of Officers and the Board of Direction, it is now even more so. The most noteworthy of the traits that an ASCE Officer should possess is the ability to be a skilled communicator, as public speaking is a requirement of the position. The Officers must be the conduits between the Board of Direction and its committees, and the local sections and branches.

Additionally, the Society expects the Officer to be a spokesperson for the profession at the local level. The Officer should also be able to competently participate in the planning and policy setting duties of the Board, as well as be able to understand and address the Society's goals. The Board is delegating oversight responsibility for managing the Society to the Executive Committee and will concentrate on planning, setting policy, and prioritizing programs, along with allocating resources. It is essential that Officers be able to work with ASCE staff and volunteers to accomplish the stated goals of the Society. They must be able to fulfill these functions well, and at the same time always display the highest degree of professional integrity to benefit the civil engineering profession and ASCE.

A prospective Officer should review the *Official Register* and visit the ASCE website. After careful study of these, the candidate will be prepared to offer an informed commitment to the qualifications and expectations herein delineated.

It is also expected that Officers have the appropriate support from both their family and employer. As the time commitment is great, it is essential that those who have demands or expectations on the Officers' time be fully aware of, and are agreeable to, the commitment being made.

### II. **Expectations.**

- A. **Time.** In addition to carrying out any specific assignments given by the Board and/or the President, Officers must make a commitment of both time and financial resources. The minimum time expected from each Officer annually is as follows:

	<b>District Director (days)</b>	<b>Vice President (days)</b>
Annual Conference incl. Board Meeting (October/November)	5	6
Spring Board Meeting (April/May)	3	4
Board Committee Weeks (January; July)	8	10
District Council Meetings	2	5
Workshop for Section and Branch Leaders (WSBL) (1st Qtr)	3	3
Younger Member Forum (1st Qtr)	2	2
Section, Branch, Student Chapter Meetings	20	10
Miscellaneous Local Activities, Committee and Task Group Assignments, Preparation, Coordination, and Planning	5	30
<b>Minimum expected total</b>	<b>48 days</b>	<b>70 days</b>

Additionally, Vice Presidents are responsible for the management of activities within their Zone.

This time is representative and not an absolute. Many of these days will be over weekends, but week days will also be required. An Officer must be able to attend all Board and applicable committee meetings to be effective and to give adequate representation.

B. *Financial.* Financial requirements are also substantial.

- I. **Directors.** The Society generally reimburses Directors for reasonable transportation costs, plus \$20 toward ground transportation and \$75.00 per day for meetings attended. The Director bears all other expenses. There is no reimbursement for spouse travel. (See Bylaws and Rules for specific guidelines.) Reimbursement begins with the Director's attendance at the Fall Board meeting and Annual Conference.

The personal expense to a Director is estimated to be approximately \$2,000 to \$3,000 per year. This may vary depending on the size of the District and the number of units within the District. The expenses of the International Director will be significantly greater due to the requirement of international travel.

- II. **Vice Presidents.** ASCE reimburses the Vice Presidents on the basis of actual expense incurred. There is no reimbursement for spouse travel.

- III. **Training.** Society Bylaws state that candidates must review and agree to the Q & E in order to proceed with nomination. Additionally, candidates should attend a Board meeting if possible. Candidates should also attend a District Council, WSBL, and Board Committee week. They should consult with the incumbent Officer when considering candidacy and again after the election for transition. They should read ASCE News and scan the Official Register, ASCE website, Policy Book, Constitution, Bylaws, Rules, and Code of Ethics. Finally, the newly elected Officer will attend Board Orientation (typically in September) prior to being installed as a Society Officer.

IV. **Process**

- A. Obtain the nomination of the District (for District Directors), the Board of Direction Nominating Committee (for International Director), or of the Zone (for Vice President).

- B. Provide a written acceptance letter (stating understanding of the *Qualifications, Expectations and Training of Directors and Vice Presidents*, willingness to serve, consent of family and employer), to current officeholder, a current photograph for publication in ASCE News, and a 100 word biographical sketch.
  
- C. Current officeholder to forward candidate's letter, photograph, and biographical sketch with an official letter of nomination from the District/Zone to the Secretary of ASCE by March 1.

## Conflict of Interest Policy

Whenever any Director has a conflict of interest with the Federation, he or she shall call such conflict to the attention of the Board of Directors.

After identifying the issue, matter or transaction with respect to which a conflict exists, a Director with a conflict shall withdraw from any further involvement in that issue, matter or transaction unless a majority of the disinterested Directors shall determine that the conflict is (i) immaterial or not adverse to the interests of the Federation or (ii) the benefits of allowing the person with the conflict to participate in the discussion or consideration, but not the final decision, outweigh the dangers; in which case the person may participate in the discussion, study or consideration of the issue, matter or transaction, but not the final discussion or decision.

It is the duty of each Director to disclose any conflict of interest he or she is aware of to the Board.

A Director who is uncertain as to whether he or she may have a conflict should ask the Secretary for an opinion. The Secretary shall issue a written opinion which shall be presumed to be correct and may be relied upon unless challenged by another Director, in which case the final decision as to whether a conflict exists shall be made by the Directors. The Secretary shall advise the Chair of the Board and the President of each and every opinion issued. Opinions shall, to the extent possible, avoid the disclosure of personal information while, at the same time, disclosing the basis for the opinion. Copies of all opinions shall be retained by the Secretary and made available to the Board upon request to permit and encourage consistency.

The minutes of the meeting at which the disclosure of any conflict is made shall reflect that occurrence and whether the person with the conflict withdrew, after making full disclosure of the matter in question and the conflict, and was not present for the final discussion of the matter and any vote thereon.

A conflict of interest exists when:

- (1) any Director or close relative of a Director or the employer of either of the foregoing has an interest in an issue, matter or transaction in which the Federation has an interest other than an interest arising solely out of passive investment provided that his or her interest does not exceed 5% of the equity or control of a business entity having an interest in the issue, matter or transaction; or
- (2) when any Director or a close relative of a director acts as an agent, representative or spokesman for any person, business, group or organization, other than an affiliate of the National Wildlife Federation, in order to influence the Federation on any issue, matter or transaction.

An individual or organization has an interest for purposes of this policy if he, she, or it: (1) is an agent for a person or organization with an identified goal of influencing a decision by NWF; or (2) would experience a material economic gain or loss from a decision by the Federation on an

issue, matter or transaction identifiably different from the economic gain or loss that would be experienced by (a) a member of the general public, (b) the holder of less than 5% of the equity in any business entity, or (c) a nonexempt employee of the Federation.

Someone is a close relative if they are a spouse, a child, natural or adoptive parent, grandparent, grandchild, brother or sister whether natural, adoptive or by marriage of a director. The term also includes any other family member who resides in the same household as or is financially dependent upon a Director or shares living quarters with a director under circumstances that closely resemble a marital relationship.

In addition to the foregoing, Directors should not:

- a. Use inside information--i.e., information made available to them because of their position as a Director which is proprietary or confidential or otherwise not generally known to the public--for their personal advantage or that of any close relative.
- b. Accept any service, discount, concession, fee for advice or service or thing of value from any person or organization with an interest in an issue, matter or transaction in which NWF also has an economic or programmatic interest under circumstances that would suggest an obligation of the part of the Director to exert any influence on NWF to enter into a transaction or adopt, alter or abolish any policy or position.

New Directors will be given a copy of this policy and specifically asked to read and understand it. Each Director will be asked to complete a Conflict of Interest Policy Disclosure Statement upon his or her election to the Board and on an annual basis thereafter.

**Print your name:** \_\_\_\_\_

\_\_\_\_ I have read the above Conflict of Interest Policy and I have no conflicts as described in this policy.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_ I have read the above Conflict of Interest Policy and I have no conflicts, as described in this policy, except for those noted below or on the attached paper.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Conflict of Interest Policy

### NATIONAL WILDLIFE FEDERATION HUMAN RESOURCES POLICIES & PROCEDURES

**RATIONALE:** National Wildlife Federation (NWF) is judged by the individual and collective performance of our employees. We must recognize that our first duty to NWF, and its members and supporters, is to act in a manner that merits public trust and confidence.

**GENERAL STATEMENT:** This Conflict of Interest Policy has been adopted to protect employees, as well as the organization, against public embarrassment and financial loss which could arise from the misuse of an individual's position or influence.

Each employee, and his or her close relatives, must act in all matters in a manner that will safeguard the reputation and integrity of NWF and will preserve and strengthen public confidence in our activities. Likewise, these individuals must refrain from engaging in any transaction in which personal interests conflict, potentially conflict, or appear to conflict with those of NWF.

Duality of interest (where individuals also have outside interests which may influence their decisions) is not always disadvantageous. In fact, there is often an advantage in duality. The goal is to avoid conflicts without arbitrarily prohibiting certain situations which are advantageous.

#### DEFINITIONS:

**NATIONAL WILDLIFE FEDERATION (NWF):** National Wildlife Federation or any other entity controlled by or related to NWF, i.e. National Wildlife Federation Endowment, Inc., National Wildlife Productions, Inc., or National Wildlife Action.

**EMPLOYEE:** Any individual employed in the service of NWF as defined herein; whether exempt, nonexempt, full-time or part-time, regular or temporary, but excluding independent contractors. This term also includes officers.

**RELATED ORGANIZATION:** Any organization in which the person indicated, directly or indirectly:

- A. owns or controls 5% or more of any voting securities of the organization.
- B. has power to control the election of a majority of directors of the organization; or
- C. has power to exercise a controlling influence over the management or policies of the organization.

**CLOSE RELATIVE:** This includes a person's spouse, children (whether natural, adopted, or by marriage), parents, and siblings (whether natural or by marriage), grandparents, and grandchildren. Close relative also includes any other family member who resides in the same household as, or is financially dependent upon, the person indicated. It also includes any individual or organization which represents any such person as agent, attorney-in-fact, or

fiduciary. Likewise, for purposes of this policy, a person sharing living quarters with an employee under circumstances that closely resemble marriage is considered a close relative.

**INSIDE INFORMATION:** Any material information that, is confidential, proprietary, or not generally known to the public, pertaining to the business and affairs of NWF as defined herein; whether related to a specific transaction or to matters pertaining to NWF's interests, activities, and policies.

**EMPLOYEE CONDUCT RULES:** A conflict of interest exists when an employee, close relative, or the employer of a close relative:

- A. acts as an agent, representative or spokesperson for any business, group or organization in order to influence NWF on any issue, matter or transaction; or
- B. has an interest in an issue, matter or transaction in which NWF has an interest.

Some situations are easily identifiable, whereas others are more subtle. Some of the more common situations giving rise to potential conflicts are set out below, together with NWF's position on each issue. This list is illustrative only and should not be regarded as all-inclusive.

- A. **IMPROPER INFLUENCE:** Any employee, or close relative, should not, when acting on his or her own behalf or when acting on behalf of another person, business or organization, attempt to influence NWF's position on any issue, matter or transaction nor participate in any discussions pertaining to a related organization.
- B. **INSIDE INFORMATION:** Inside information should not be used either for the purpose of gaining advantage for one's self, a close relative, or another organization or for any other purpose not specifically approved by NWF.
- C. **ACCEPTING AND GIVING GIFTS OR GRATUITIES:** No employee or close relative shall accept from, or offer to, any individual who has an interest in an issue, matter or transaction in which NWF has an interest, any gift, service, discount, concession or other similar item or benefit with a value more than \$100 annually.
- D. **RECEIVING OR PROVIDING TRAVEL OR ENTERTAINMENT:** No employee or close relative shall accept from, or offer to, any individual who has an interest in an issue, matter or transaction in which NWF has an interest, any transportation, meal, lodging, entertainment or similar item or benefit with a value of more than \$100 annually.
- E. **ACCEPTING BEQUESTS OR LEGACIES:** Employees or their close relatives shall not accept a bequest or legacy from any individual who has an interest in an issue, matter or transaction in which NWF has an interest unless the bequest of legacy is from a close relative.
- F. **EMPLOYMENT OF CLOSE RELATIVES:** No employee will be placed in a division where the employee and a close relative will have the same supervisor or manager. Likewise, no employee will be placed in a position where he or she will report, either directly or indirectly, to close relative.
- G. **COMPETING WITH NWF:** No employee or close relative shall prevent or hinder NWF from lawfully competing with others or divert business or personnel from NWF.

No employee or close relative shall: (1) enter into a partnership or any joint venture with any individual who has an interest in an issue, matter or transaction in which NWF has an



- interest; (2) receive a commission from another party on an NWF transaction; (3) be employed by or advise a business or organization which competes with NWF; or (4) otherwise profit, directly or indirectly from a transaction with NWF. In addition no employee or close relative shall take for him or herself an opportunity which belongs to NWF or purchase or acquire any real estate, stock, security or other property of any kind which he or she knows, through his or her capacity as an employee or close relative, is presently being considered for purchase or acquisition by NWF, except a security publicly traded in a recognized market.
- H. FEES FOR ADVISORY SERVICES: No employee or close relative shall accept any fee or other consideration for advising or consulting services provided to any individual who has an interest in an issue, matter or transaction in which NWF has an interest except reasonable fees paid to the individual in connection with his or her service as a director or trustee of such business or organization.
- I. OUTSIDE DIRECTORSHIPS: No NWF employee shall serve as a director or trustee of any other corporation or organization which has an interest in a matter, issue or transaction in which NWF also has an interest without disclosing that fact and first obtaining approval unless the organization is a religious, civic, professional, educational, social, residential, recreational or other organization of a similar purpose, in which case prior approval is not required.
- J. OUTSIDE EMPLOYMENT: Employees shall not engage in any employment or activity outside NWF which will materially encroach upon the time or attention that should be devoted to their duties of NWF or adversely affect the quality of their work on behalf of NWF. Any other employment shall not compete with NWF's activities, involve any significant use of NWF's equipment, supplies or facilities, infer NWF's sponsorship or support of the outside employment or activity; or adversely affect the public image of NWF.
- K. POLITICAL ACTIVITIES: Employees are encouraged to take an active interest and to participate in the political and governmental process. However, except for registered lobbyists and other employees authorized to act on behalf of NWF, employees participating do so as individuals and not as representatives of NWF. To avoid any inference of support or sponsorship by NWF, an employee must never represent that his or her political donation, endorsement or other political activity was made or engaged in with the approval, or on the behalf, of NWF. Likewise, employees must not engage in political activities in the workplace.
- L. THE MAKING OF STATEMENTS: No employee shall use NWF stationery or any title of NWF or refer to NWF or identify him or herself as an employee thereof in connection with any matter as to which he or she is not authorized as a representative of NWF and to express an opinion on its behalf.
- M. PROFESSIONAL STANDARDS: Some employees must perform their work in accordance with standards prescribed by an external authority. Just as NWF expects and

requires its employees to act at all times in accordance with applicable laws, it also expects its employees to act in accordance with the requirements of their profession. Thus, doing so should not create a conflict of interest. Nevertheless, if adherence to applicable professional standards would or might reasonably be thought to pose a problem for NWF, the employee shall disclose this matter.

- N. **KNOWLEDGE OF POLICY:** Any employee who is aware of a potential conflict of interest should advise the employee who may have the conflict of interest of the possibility, and recommend that he or she disclose the potential conflict in accordance with this policy. If an employee who believes another employee may have a conflict of interest and is uncomfortable raising this question with the other employee, or the employee who may have the conflict fails to disclose that as required by this policy, he or she should notify the person who the employee with the potential conflict should have advised.

**ADMINISTRATION:** Whenever an employee wishes to engage in any activity prohibited by a provision of this Conflict of Interest Policy and believes that the circumstances would justify the granting of an exception by NWF, he or she shall submit a written request for approval through his or her supervisor to the departmental Vice President for the area in which he or she works. While the request is pending, the employee should refrain from participating in the questionable activity or withdraw from any discussion of or decision on the matter.

The Vice President will perform an appropriate investigation and make a decision as to whether the request should be denied, approved, or approved with conditions. The Vice President will inform the employee of the decision in writing with a copy to the President and a copy to the Vice President of Human Resources.

Should a Vice President have a conflict, the President should be informed in writing and will decide the matter. Should the President have a conflict, the matter shall be disclosed in writing to the Chair of the Board of Directors for a decision.

Every request for approval should describe in detail the particular activity in question, the reasons why the employee believes the request should be granted, and any special circumstances surrounding the case.

In the event of an adverse decision by a Vice President, the employee may appeal the decision to the President. A decision by the President is final. A copy of the President's decision will be given to the employee, the departmental Vice President, and the Vice President of Human Resources.

**ACKNOWLEDGMENT:** New employees will receive a copy of NWF's Conflict of Interest Policy during orientation. It is important that every employee reads and understands all provisions of this policy and seeks answers to any question(s) he or she may have. This document should be retained for future reference as well.

Individuals employed with the functional title of director and above are required to affirm their compliance with NWF's Conflict of Interest Policy by completing a Conflict of Interest Acknowledgment and Disclosure Statement when first employed and on an annual basis thereafter.

CONCLUSION: NWF is proud of the high standard of ethics which our employees have displayed throughout the years and is confident that this will continue to be our hallmark. This policy has been designed to educate those joining us in the principles and responsibilities of NWF and serves as a reminder to all employees of the high ideals for which we stand. Strict adherence to the principles of this policy is a condition of employment and violations may result in disciplinary action up to and including termination.

**CONFLICT OF INTEREST POLICY, ACKNOWLEDGEMENT AND DISCLOSURE FORM**

A Conflict of Interest shall be defined as any activity, transaction, relationship, service, or consideration which is, or appears to be, contrary to the best interests of the Society, or in which the interests of an individual or another organization has the potential to be placed above those of the Society. Any interested individual must disclose the existence of any actual or possible Conflict of Interest and all material facts to the Society entity considering the proposed transaction. Action to address the conflict shall be taken by either the interested individual or the Society entity. (ASCE Bylaws §10.1)

All Society officers, directors, members and employees acting on behalf of the Society shall adhere to the highest standard of ethical conduct and avoid any activity or situation where their personal interests could conflict, or reasonably appear to conflict, with the best interests of the Society.

\* \* \* \* \*

I have read and agree to abide by the above policy. To the best of my knowledge and belief, except as disclosed on this form, neither I nor any person with whom I have or have had a personal or business relationship is engaged in any transaction or activity or has any relationship that may represent a potential Conflict of Interest or be contrary to the best interests of the Society. I agree immediately to disclose to the Society any potential Conflict of Interest that should arise hereafter.

\_\_\_\_\_  
Officer/Director Name

\_\_\_\_\_  
Date

Please identify any potential Conflicts of Interest here:

\_\_\_\_\_  
\_\_\_\_\_

## **AFFIRMATION OF FIDUCIARY DUTY AND RESPONSIBILITY TO RESPECT CONFIDENTIALITY**

I understand that as a member of the Board of Direction of the American Society of Civil Engineers ("ASCE"), I have fiduciary duties to ASCE, including the duty of care and loyalty. I further understand that during the course of exercising my responsibilities to ASCE, I may have access to certain information that is confidential and proprietary, including specifically employment information relating to ASCE staff. I hereby affirm that I will treat such information, including all information distributed or discussed for or during Executive Session meetings, as confidential and proprietary. I will not disclose such information to others, except as authorized by the Board of Direction or required by law. I further affirm that I will not use such information in any other manner that would be detrimental to the interests of ASCE.

\_\_\_\_\_  
Officer/Director Name

\_\_\_\_\_  
Date

(Rev. 6/1/99)

## Attachment 12


**RULES OF POLICY AND PROCEDURE****Article 1. General**

1.0 *Marks*. Marks of the Society include, but are not limited to, names, acronyms, emblems, logos, and trademarks of the Society and its Organizational Entities. Such marks are the sole and exclusive property of the Society and may not be altered or used without the Society's permission.

1.0.1 *Official Society Marks*. Official marks of the Society include, but are not limited to, those identified below, which are registered Society marks with the U.S. Patent and Trademark Office.

1.0.1.1 *Name*. The official name of the Society is the American Society of Civil Engineers®.

1.0.1.2 *Acronym*. The official acronym of the Society is ASCE®.

1.0.1.3 *Emblem*. The official emblem of the Society is ®.

1.0.1.4 *Logo*. The official logo of the Society is **ASCE**®.

1.0.2 *Use*. The Society's marks may only be used for official Society purposes in the manner prescribed by the Society. The Society's marks may not be used in any manner that discredits or tarnishes the Society's reputation or goodwill; is false or misleading; violates any law, regulation or public policy; or misrepresents the relationship between the Society and the user, including any use that might incorrectly be construed as an endorsement, sponsorship or approval by the Society.

1.0.2.1 *Society Use of Marks*. For the Society and its Organizational Entities, examples of permissible uses of Society marks include official: badges, charms, pins, placards, banners, awards, certificates, Society publications and website, reports, stationery, programs, identification cards, and apparel. The design of badges, charms, and pins denoting membership in the Society, as well as the cost to the Society members, of such badges, charms, or pins, shall be determined by the Executive Director. The Society's marks may not be used for personal or business use by members or others on items such as stationery and business cards for either individuals or companies, except as expressly provided herein or as otherwise authorized by the Executive Director.

1.0.2.2 *Member Use of Marks*. A Society member may use the following applicable abbreviation denoting grade of membership in connection with professional work, but must discontinue use in the event of separation from the Society.

Honorary Member - Hon.M.ASCE

Fellow - F.ASCE

Member - M.ASCE

Associate Member - A.M.ASCE

Student Member - S.M.ASCE

Affiliate Member - Aff.M.ASCE

**NATIONAL WILDLIFE FEDERATION****EQUAL EMPLOYMENT OPPORTUNITY STATEMENT**

The President shall establish and maintain policies and programs designed to prevent discrimination against any employee or patron of any NWF sponsored activity from discrimination based on his or her religion, race, color, national origin or heritage, age, disability, sex, sexual orientation, or service in the armed forces of the United States, and to further the goals, objectives and policies as are expressed or inherent in the following policy statement:

**EQUAL EMPLOYMENT OPPORTUNITY  
POLICY STATEMENT**

The National Wildlife Federation wishes to voluntarily reaffirm its commitment to practicing nondiscrimination in all matters. The purpose of the Federation is to educate, inspire and assist individuals to conserve wildlife and other natural resources and to protect the Earth's environment. Our organization exerts a leadership role and maintains a worldwide reputation for excellence in conservation and environmental protection. We believe that human and cultural diversity is an important part of our organization. We seek to treat everyone with respect and dignity. Our continued success depends on the full and effective utilization of qualified persons, without regard to race, color, religion, sex, sexual orientation, marital status, age, national origin, or disabled status.

We encourage all employees to inform the Human Resources Division of any policy or practice they perceive to be unjustified or discriminatory. This policy dictates that all aspects of recruiting, hiring, compensation, benefits, promotions, transfers, recall from lay-offs, company sponsored training, education tuition assistance, social and recreational programs be free of discrimination.

## Anti-Harassment Policy

### NATIONAL WILDLIFE FEDERATION HUMAN RESOURCES POLICIES & PROCEDURES

The National Wildlife Federation is committed to providing a work environment that is free from discrimination. Employees should be aware that discrimination may take the form of harassment such as sexual and other forms of harassment. Because NWF will not tolerate harassing words and actions, all employees should understand what harassment is, how to report harassment, what happens when harassment is reported, and what discipline may be expected as a result of harassment. The Federation encourages employees to bring any incidents of harassment to the immediate attention of management.

What is sexual harassment? Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment. If submission to such conduct is used as the basis for employment decisions, that is one kind of sexual harassment. If such conduct unreasonably interferes with an individual's work performance by creating an intimidating, hostile, or offensive working environment, that is another kind of sexual harassment. Neither kind of sexual harassment will be tolerated at NWF.

It is possible for employees to be sexually harassed by supervisors, co-workers, or by non-NWF employees who conduct business with the NWF.

What are other forms of harassment? Harassment may take other forms such as harassment that is based on a person's race, religion, ethnicity, gender, or other legally protected characteristic. As with sexual harassment, these forms of harassment are also actionable under NWF's Anti-Harassment Policy.

How should harassment be reported? Any employee who feels harassed should report the problem promptly to one of three persons: 1) the employee's supervisor, or 2) the Vice President of Human Resources, or 3) an attorney in the Office of the General Counsel. A complaint may be made by phone, in writing, or in person.

Supervisors or managers who become aware of possible harassment must report the situation promptly to the Vice President of Human Resources or to an attorney in the Office of the General Counsel.

Employees who report harassment in good faith will not be subjected to reprisals or other adverse consequences. All information concerning a complaint, investigation, or determination will be communicated only to the parties involved and will be treated as strictly confidential.

How will a report be investigated? The NWF will investigate all reports of harassment promptly, fairly, and thoroughly. Investigations will be conducted by Human Resources, in conjunction with a person from the alleged harasser's department. That person will be chosen by Human Resources, with the concurrence of the department's vice president. The departmental representative should be someone informed, responsible, and discreet, whose participation will



promote an understanding of the situation yet minimize inappropriate disclosure. If the complaint is made about someone who works in Human Resources, the investigation will be conducted by the General Counsel.

An investigation will include interviews with the complainant, the accused, and any actual or possible witnesses or other persons involved. The investigators will prepare a written report of their findings, and the Vice President of Human Resources and the designated departmental representative will determine whether the alleged harassment took place. If the investigators disagree, the matter will be resolved by the President.

What disciplinary action can be expected? Anyone engaging in harassment will be subject to disciplinary action, ranging from an oral warning, written warning, or suspension, to termination. The severity of the discipline will depend on the seriousness of the offense and on the employee's past record.

In addition, any employee who knowingly makes a false charge of harassment will be disciplined.

An employee may appeal a determination or the resulting discipline to the President, whose decision will be final.

**Respect for Co-Workers and Others:  
Policy Against Discrimination and Harassment**

**Policy # 2.02**

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**Introduction**

This document sets out policies for The New York State Society of CPAs and the Foundation for Accounting Education (“NYSSCPA and FAE”) against discrimination and harassment in the workplace. It also contains procedures you should follow if you believe the policies on equal employment, discrimination or harassment have been violated.

NYSSCPA/FAE intend that all their employees should be treated with respect. At NYSSCPA and FAE all employees and applicants for employment are treated equally without regard to race, color, religion, gender, age, sexual orientation, national origin, physical or mental disability, marital status, veteran status, or any other condition or category protected by applicable federal, State or local law. We believe each person should be able to work in a professional atmosphere, which promotes equal opportunity and prohibits illegal, discriminatory practices.

It is also our policy to make reasonable accommodation for the disability of any otherwise qualified employee and applicant and for the religious practices of employees and applicants.

Harassment of and inappropriate, disrespectful or demeaning behavior toward applicants, employees and third parties is strictly prohibited and will not be tolerated. While this prohibition includes sexual harassment as the courts have defined it, it goes beyond legal definitions and includes any behavior that is reasonably likely to create a hostile, intimidating or offensive environment for others.

**1. Sexual Harassment Prohibited**

At NYSSCPA/FAE sexual harassment, whether verbal, physical or environmental, is unacceptable and will not be tolerated. This policy applies, regardless of the sex of the individuals involved.

**Definition of Sexual Harassment**

NYSSCPA/FAE adopts the Equal Employment Opportunity Commission definition of sexual harassment, which is unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature, when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of employment;
- B. submission to or rejection of such conduct is used as the basis for work-related decisions affecting an individual; or

- C. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile or offensive work environment.

This behavior is unacceptable in the workplace itself and in other work-related settings such as business trips and business-related social events. Examples of prohibited conduct include, but are not limited to:

- Demanding sexual favors in exchange for favorable reviews, assignments, promotions, continued employment or promises of the same.
- Sexual jokes, language, epithets, flirting, advances or propositions.
- Verbal abuse of a sexual nature.
- Verbal commentaries about an individual's body, sexual prowess or sexual deficiencies.
- Sexually degrading or vulgar words to describe an individual.
- Leering, whistling, touching, pinching, brushing the body, assault, sexual acts or suggestive, insulting, or obscene comments or gestures.
- Name-calling, relating stories, gossip, comments, jokes, or e-mail that may be derogatory toward a particular sex.
- The display of sexually suggestive graffiti, posters or computer images.
- Asking questions about sexual conduct or sexual orientation or preferences.
- Harassment of any kind, even if the content of the verbal abuse is not sexual.
- Retaliation against employees for complaining about such behaviors.

### **Individuals Covered Under the Policy**

NYSSCPA/FAE will not tolerate, condone or allow sexual harassment, whether engaged in by fellow employees, directors, managers, supervisors, NYSSCPA members, FAE registrants, or others who conduct business with the organization. NYSSCPA/FAE requires reporting of all incidents of sexual harassment, regardless of whom the offender may be.

Respect should be given to all people with whom you come into contact, including fellow employees, NYSSCPA members, FAE registrants, job applicants or visitors to our business or off-site functions.

## 2. **Reporting and Complaint Procedures**

Any person who feels that he or she has been subjected to discrimination or harassment should generally notify the offender that his or her behavior is unwelcome.

IN ALL CASES, any person who believes he or she has been subjected to conduct that may violate this policy should take the following steps.

### A. **Notification of Appropriate Staff**

Any person who feels this policy has been violated is expected and urged to report the offensive conduct to any of the following:

- ◆ Immediate supervisor
- ◆ Human Resources Manager
- ◆ Legal Counsel
- ◆ Executive Director

If the employee believes that any person listed above is the one responsible for the conduct, the report should not be made to that person.

### B. **Description of Misconduct**

An accurate written or oral report in sufficient detail to describe the objectionable behavior or the misconduct is necessary to resolve a formal complaint of discrimination or sexual harassment.

### C. **Timeframe for Reporting Complaint**

The prompt reporting of a complaint is encouraged so that rapid response and appropriate action may be taken.

## 3. **Protection Against Retaliation**

Retaliation against any person for the following is absolutely prohibited:

- ◆ reporting a complaint
- ◆ complaining about what he or she considers to be a violation of this policy
- ◆ cooperating in any investigation pursuant to this policy
- ◆ filing a complaint with or cooperating in an investigation of a complaint by any federal, State or local equal employment opportunity agency or commission

Any such retaliation will be considered a very serious violation of this policy and should be reported.

#### 4. **Confidentiality**

Any report of discrimination or harassment brought to the attention of the company will be promptly investigated in a confidential manner. Requests for confidentiality will be respected to the extent consistent with the need to conduct a fair, complete and responsive investigation and the needs of the NYSSCPA or FAE.

#### 5. **Resolving the Complaint**

An investigation by an appropriate member of management will be conducted as soon as is reasonably practicable. The NYSSCPA/FAE will communicate its findings and intended actions to the complainant and alleged violator. If it is found that harassment has occurred, the violator will be subject to appropriate disciplinary action, up to and including termination of employment.

The NYSSCPA and FAE do not expect individual employees to be experts on issues like discrimination and harassment. Therefore, an investigation may not reveal that discriminatory or offensive conduct actually occurred, or that the offensive conduct violated the policy. This is not a reason to fail to report conduct that is believed to violate this policy. It is to everyone's benefit that conduct, which violates this policy, be reported. If it is determined that no violation of this policy has occurred, this finding will be communicated to the complainant in an appropriate manner.

##### **A. Actions That May Be Taken**

The NYSSCPA's and FAE's immediate goal is to take prompt remedial action to stop the discriminatory, harassing or offensive conduct if a violation of this policy is found. A second goal is to assure that the violation will not occur again. The NYSSCPA and FAE consider violations of this policy to be as serious as violations of any other fundamental policy. This is not only because the NYSSCPA or FAE or both may be placed at legal risk, but also their basic concept of fairness and respect is undermined.

Actions may include reprimanding the offender and including a written record in his or her personnel file, referral to counseling, withholding of a promotion, reassignment, temporary suspension without pay, withholding raises or bonuses or termination. These measures may also be taken as interim measures during the pendency of an investigation.

With regard to members, registrants and others who conduct business with the NYSSCPA/FAE, action may include immediate discussion with the party or his or her employer, sending a letter of objection or refusal to continue the business relationship.

##### **B. Appeals Process**

If either party directly involved in a discrimination or sexual harassment investigation is dissatisfied with the outcome or resolution, that individual may appeal the decision to the Executive Director.

### **C. False Accusations**

If it is found that the complainant falsely, knowingly and maliciously accused another of discrimination or sexual harassment, the complainant may be subject to appropriate sanctions. Because we do not wish to discourage sincere complaints, such action will be taken only if there is clear and convincing evidence that there has been a knowingly false and malicious accusation.

### **6. Maintaining a Written Record of the Complaint**

NYSSCPA/FAE shall maintain a confidential, complete written record of each complaint and how it was investigated and resolved.

### **7. Distribution**

The NYSSCPA and FAE have developed this policy to ensure that all employees can work in an environment free from discrimination and harassment. We will make every effort to ensure that all personnel are familiar with the policy and know that any complaint received will be thoroughly investigated and appropriately resolved. To this end, all current and new employees will receive a copy of this policy and will be asked to sign a receipt acknowledging that they have read it and understand it. Questions can be directed to the Human Relations Manager or Legal Counsel. Copies are also posted in the lunchroom.

## **RELATED POLICY**

Policy No. 6.01, Complaint Resolution Procedure. **Complaint Resolution Procedure**

### **Policy # 6.01**

(Rev. 6/1/99)

NYSSCPA/FAE encourages employees to express their concerns about work-related issues. This Employee Problem Resolution Procedure provides a framework that allows employees and management to work together in the resolution of employee concerns in a timely, fair and equitable manner.

If an employee has a work-related problem or question regarding some aspect of the work environment, the issue should generally first be raised with the employee's immediate supervisor. The supervisor should meet with the employee and attempt to resolve the issue. If the complaint concerns some action or inaction of the employee's immediate supervisor, however, the matter may be presented directly to the next level of management or directly to the Human Resources Department. The manager receiving the complaint should attempt to resolve the issue at this point. If the employee is satisfied with the manager's response, no further action is necessary.

If the problem is not resolved at this stage, the employee should submit a written statement outlining the problem to the next management level or to the Human Resources Department. Putting the problem in writing establishes the employee's view of the facts of the case and eases handling. Management at this next level will attempt to resolve the issue. The employee will be given a written response, which summarizes the steps taken to resolve the issue or reasons why it could not be resolved. If the employee is satisfied, no further action is necessary.

If the employee is not satisfied at that stage, the employee can appeal the decision to subsequent levels of management up to and including the Executive Director. The decisions at each level will be communicated to the employee in writing.

Employees should feel free to use these procedures, exhausting all of the steps when necessary, without fear of management reprisal.

The Human Resources Department serves as an impartial third party by interpreting established policies and practices to assure that they are consistently applied and that employees are treated fairly and equitably. While the employee should attempt to exhaust all the steps with management before the Human Resources Department becomes involved, the employee should feel free to contact the Human Resources Department at any time. If the Executive Director or legal counsel determine that fact-finding needs to occur, the Human Resources Department and the parties involved will be notified.

The exceptions to the employee exhausting all the steps with management are as follows:

1. If the matter involves allegations of harassment or discrimination then the procedure set forth in Policy 2.02, Respect for Co-Workers and Others, should be followed.
2. The Human Resources Department will need to conduct fact-finding and then a management decision made.
3. Health and Safety.

Any questions regarding the complaint resolution procedures should be directed to the Human Resources Department.

#### **RELATED POLICY**

Policy No. 2.02, Respect for Co-Workers: Policy against Discrimination and Harassment.

## Document Retention Policy

\* Time period in years unless otherwise noted. P = Permanent    DH = Department Head  
All time periods begin to be measured after the item has occurred. For example, contracts are to be kept for 7 years after they have terminate. CPE records are kept for a period after the event has ended.

The objective of the NYSSCPA/FAE Records Retention Policy is to implement a records retention program that meets the following criteria:

1. All records shall be retained for the period required by applicable state and federal laws and regulations.
2. Adequate records shall be developed and maintained to document the companies' compliance with all relevant laws and regulations.
3. All records necessary for business reasons shall be retained for a period of time that will reasonably assure the availability of those records when needed.
4. Records vital to the ongoing operation of the business shall be identified and appropriately safeguarded.
5. All records not necessary for legal or business reasons and not required to be retained by law or regulation shall be destroyed in order to reduce the high cost of storing, indexing, and handling the vast amount of documents that would otherwise accumulate and to maximize the performance of the computer systems.
6. Destruction of records shall take place only in compliance with a standard written policy in order to avoid any inference that any document was destroyed in anticipation of a specific problem.
7. Documents that are not otherwise subject to retention for business reasons may need to be retained because of unusual circumstances, such as litigation or a government investigation. If for any reason it is felt that an unusual circumstance exists or arises, the legal department shall be notified immediately. When litigation or investigations occur, the legal department will notify the appropriate departments and direct that relevant categories of documents be labeled for retention until further notice.
8. The privacy and security of records shall be appropriately assured.
9. This policy shall apply to records maintained on all types of storage media, including electronic storage.
10. Records, such as notes, memoranda, letters, reports, computer disks, tapes, and so forth, located in individual offices, at home, or any other offsite location are subject to these guidelines and shall be managed consistent with these guidelines.



***Off-Site Storage***

The office services manager shall be responsible for maintaining a master log, based on the combined departmental logs, and sending of boxes to and retrieval from off-site storage. These logs shall be made available office wide by being posted on a public folder on the computer network.

***Departmental Record Keepers***

Each department head shall designate one or more persons in their area to be the keeper of records, responsible for making a listing of boxes, i.e. keeping departmental logs, and checking the retention requirements before the boxes are toted off to storage.

***Audit***

The director of finance and legal counsel shall be responsible for auditing the content of the records retention program. Each department head shall be responsible for auditing the actual implementation of such programs within their respective departments.

***Exceptions***

Requests for exceptions from this policy must be submitted to the director of finance and legal counsel for approval before implementation. In order to obtain an exception from this policy, there must be a program that will assure compliance with the basic objectives stated above at least as effectively as this policy.

***Review***

The director of finance and legal counsel will review this policy annually. Suggested changes should be submitted to both of them. Changes in this policy necessitated by changes to laws or regulations (or the existence of new litigation or an investigation) will be communicated directly by the director of finance or legal counsel to each of the department heads who shall cause appropriate changes to be made in the records retention requirements applicable to their respective department.

***Interpretation***

The director of finance and legal counsel will be responsible for interpreting any portions of this records retention policy as they may apply to specific situations.

## Record Retention Schedule Worksheet

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
Society-wide requirements					
<ul style="list-style-type: none"> <li>Correspondence and Email: <ul style="list-style-type: none"> <li>Important items (consult DH*)</li> </ul> </li> </ul>	3	P	<ul style="list-style-type: none"> <li>Periodicals and books</li> </ul>	DH	--
<ul style="list-style-type: none"> <li>Routine items</li> </ul>	1	--	<ul style="list-style-type: none"> <li>Property ownership records (deeds, assignments, etc.)</li> </ul>	P	--
<ul style="list-style-type: none"> <li>Contracts (unless otherwise noted)</li> </ul>	7	--			
Accounting Department					
<ul style="list-style-type: none"> <li>Audited financial statements</li> </ul>	P	--	<ul style="list-style-type: none"> <li>Cancelled checks <ul style="list-style-type: none"> <li>for special purposes (purchasing property or paying taxes)</li> </ul> </li> </ul>	P	--
<ul style="list-style-type: none"> <li>Accounts receivable / Accounts payable / Employee expense reports / Member reimbursements / Petty cash receipts /</li> </ul>	2	5	<ul style="list-style-type: none"> <li>Cancelled checks <ul style="list-style-type: none"> <li>routine</li> </ul> </li> </ul>	2	5
<ul style="list-style-type: none"> <li>Bank statements and reconciliations / Bank deposit slips</li> </ul>	2	5	<ul style="list-style-type: none"> <li>General ledgers &amp; year-end journal entries (computerized)</li> </ul>	P	--
<ul style="list-style-type: none"> <li>Budgets (computerized)</li> </ul>	P		<ul style="list-style-type: none"> <li>Property records</li> </ul>	P	--
<ul style="list-style-type: none"> <li>Chapter financial records</li> </ul>	2	5	<ul style="list-style-type: none"> <li>Tax returns (except payroll)</li> </ul>	P	--
Chapters					
<ul style="list-style-type: none"> <li>CPE files</li> </ul>	See FAE		<ul style="list-style-type: none"> <li>Officer positions (computerized)</li> </ul>	P	
Committees					
<ul style="list-style-type: none"> <li>Appointment / reappointment material (incl. committee evaluations)</li> </ul>	2	5	<ul style="list-style-type: none"> <li>CPE records</li> </ul>	See FAE	--
<ul style="list-style-type: none"> <li>Awards committee materials</li> </ul>	2	5	<ul style="list-style-type: none"> <li>Minutes and agendas (paper)</li> </ul>	0	--

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Award recipients	P	--	• Minutes and agendas (web)	P	--
• Committee annual report info	2	5	• Technical comments (paper)	2	5
• Committee event files	2	5	• Technical comments (web)	P	--
• Committee service records (computerized)	P	--	• Telephone inquiry statistical information (hotline)	7	--
Communications / Production					
• Insertion orders and tear sheets	7	--	• Newspaper clippings	3	--
CPA Journal					
• Artwork and ad materials	3	--	• Magazine – back copies	*	--
• Content backup for each issue (documenting entire process from receipt of manuscript through editing and production)	2	--	• Manuscripts returned to authors for revision	2	--
• Copyright letters / author agreements on all published manuscripts	2	P	• Rejected manuscripts	2	--
• Magazine – permanent copy	P	--	• Reprint authorizations	2	P
Ethics					
• Files			• Minutes, agendas, meeting files	P	--
• Expulsion	P	--			
• No-violation/ no further action	1	--	• Telephone inquiry documentation	6 mo	--
• Required corrective action	5	--	• Written inquiries and responses	10	--
• Subject files	P	--			
• Suspension	10	--			
FAE					

\* 50 copies kept for 12 months thereafter 10 copies are retained, all at the printers.

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Brochures / promotional materials	2	3	• Trustees' Minutes and agendas	P	--
• Contracts for speakers / authors / hotels	2	5	• Speaker outlines / manuals	2	3
• Evaluations / summaries	2	3	• Rosters / CPA credit slips	2	3
<b>Governance</b>					
• Agenda materials (Board/EC)	2	P	• Minute books	P	--
• Meeting handouts	2	P	• Tax exemptions letters	P	--
<b>Government Affairs / PAC</b>					
• Audited financial statements	P	--	• PAC Reports ?What is this?	6	--
• Checks/ bank statements	2	5	• Tax returns	P	--
• Minutes, agendas	P	--			
<b>Human Resources (incl. payroll)</b>					
• Employment-tax records	2	5	• I-9's	▼	--
• Employee time records	2	5	• Payroll journals and records	3	5
• Employee releases / nondisclosure agreements	P	--	• Personnel files after termination	7	--
• Employment applications	1	--	• Retirement plan description / financial statements / notices	P	--
• Hiring solicitations, incl resumes	1	--	• Workers' Compensation / Unemployment Insurance	5	--
• FMLA leave information	7	--			
<b>Information Technology</b>					
• Backup of AM4		1	• Backup of "F: drive"		1
• Backup of Exchange Server		?	• Software		P
<b>Legal</b>					

▼ Later of 3 years after hire date or 1 year after employment termination.

Department / Item	Ret'n Period *		Department / Item	Ret'n Period *	
	Here	Stor'g		Here	Stor'g
• Contracts (after termination)	7	--	• Insurance policies (after cancellation)	2	5
• Insurance claims	7	--			
Membership					
• Applications	P		• Dues batches	2	1
Peer Review					
• Acceptance letters	3		• Workpaper files		90 da
Trusted Professional					
• Newspaper (one copy)	P		• Back copies	1	
Website					
• Committee minutes & agendas	P				

## **BYLAWS of the American Society of Civil Engineers**

A Not-For-Profit Corporation

### **Article 10. Administrative Provisions**

10.0 *Official Society Publications.* For the purpose of notices and announcements to the members of the Society, CIVIL ENGINEERING and ASCE NEWS shall be the Official Society Publications. Notices and announcements relating to Society affairs published in an Official Society Publication, shall be deemed to have been brought to the attention of all members of the Society.

10.1 *Conflict of Interest.* A Conflict of Interest shall be defined as any activity, transaction, relationship, service, or consideration which is, or appears to be, contrary to the best interests of the Society, or in which the interests of an individual or another organization has the potential to be placed above those of the Society. Any interested individual must disclose the existence of any actual or possible Conflict of Interest and all material facts to the Society entity considering the proposed transaction. Action to address the conflict shall be taken by either the interested individual or the Society entity.

10.2 *Indemnification.* If a director, officer, committee member, employee, agent or volunteer (including heirs, executors, administrators or the estate of such person) of the Society is made a party to any civil or criminal action or proceeding in any matter arising from the performance by such party of the individual's duly authorized duties for or on behalf of the Society, in a manner not inconsistent with the purposes or objectives of the Society, and further provided that the performance by the party was not or is not illegal, then, to the full extent permitted by the New York Not-For-Profit Corporation Law or any successor provisions, the Society, upon affirmative vote of the Board of Direction, a quorum of the members of the Board of Direction being present at the time of the vote who are not parties to the action or proceeding, may indemnify such party for judgments, fines, amounts paid in settlement, and reasonable expenses, including attorneys fees actually and necessarily incurred, in connection with the action or proceeding, or appeal therein. The right accruing to any party under the foregoing provision shall not exclude any other right to which the individual may be lawfully entitled, nor shall anything herein contained restrict the right of the Society to indemnify or reimburse such person in any proper case to the extent permitted by law even though not specifically herein provided for. The Society, its Officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment under this article or in refusing to do so in reliance upon advice of counsel to the Society.

10.3 *Earnings/Activities.* No part of the net earnings of the Society shall inure to the benefit of, or be distributable to its directors, officers, or other private persons, except that the Society shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth above. No substantial part of the activities of the Society shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Society shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office.

10.4 *Activities.* Activities of the Society in furtherance of its educational, scientific, literary and charitable purposes shall include, but are not limited to, publications, conferences and continuing education. Notwithstanding any other provisions of these articles, the Society shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from Federal income tax under Section 501 (c) (3) of the Code, or (b) by a corporation, contributions to which are deductible under Section 170 (c) (2) of the Code.

10.5 *Dissolution.* Upon the dissolution of the Society, the Board of Direction shall, after paying or

making provision for the payment of all of the liabilities of the Society, dispose of all of the assets of the Society exclusively for the purposes of the Society in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, literary, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501 (c) (3) of the Code, as the Board of Direction shall determine.

10.6 *Restrictions.* All policies and activities of the Society shall be consistent with applicable federal, state, and local antitrust, trade regulation, or other legal requirements.

10.7 *Limitations.* No member, officer, director, committee, employee, agent, or representative of the Society shall have any right, authority, or power to expend money of the Society, to incur liability on its behalf, or to make any commitment that will or may be deemed to bind or involve the Society in any expense or financial liability, unless such expenditure, liability, or commitment has been authorized and budgeted by the Board of Direction or by specific resolution at a duly called meeting of the Board of Direction or Executive Committee.

## PARLIAMENTARY PROCEDURE FOR COMMITTEE CHAIRS

This packet is designed to provide committee chairs and vice chairs with the basics of parliamentary procedure to facilitate your committee meetings. It provides you with some general rules, special rules for committees, most common mistakes, definitions, and a chart of the most common motions and instructions on how to use it. It is based on Robert's Rules of Order, Newly Revised.

### General rules

The whole point of parliamentary procedure is to move the discussion along without trampling the rights of the minority. These simple general rules should help you in conducting your committee meeting:

- Points of order, parliamentary inquiries, and points of information are handled by the chair without discussion or vote.
- Only one main motion at a time may be discussed. Anyone trying to bring up another topic is out of order.
- Normally a motion requires a simple majority to be adopted. However, if the effect of the motion is to limit discussion or to change an action previously taken (amend or rescind a motion), then a 2/3 vote is required.
- Do not hesitate to rule a speaker out of order. Speakers must be recognized by the chair before speaking and must address the motion at hand.
- The chair normally serves as parliamentarian. If you are not comfortable in that role, you can appoint someone else to serve as parliamentarian to provide advice to you. But you will need to know the basics in order to effectively run your committee meeting.

### Committees

Parliamentary rules are more liberal for committees:

- Informal discussion of a topic is allowed while no motion is pending.
- Members may remain seated while making motions or speaking.
- Motions need not be seconded.
- There is no limit to the number of times a member can speak to a question.
- Motions to close or limit debate are not allowed.
- The chair need not rise while putting questions to vote.
- The chair can enter into the discussion and is allowed to vote.



## Common mistakes

*A motion to call the previous question* must itself be voted on before the motion it addresses is voted upon. It takes a 2/3 vote to end debate. Note: A motion to call the previous question is out of order in a committee meeting as is a *motion to limit debate*. The whole purpose of committees is to allow topics (called “questions”) to be thoroughly discussed.

*A motion to table* is out of order unless the speaker intends to temporarily set the motion under discussion aside to take up more urgent business. *A motion to postpone definitely* should be used when the speaker wants to postpone discussion of the motion until a later time. *A motion to postpone indefinitely* should be used when the speaker wants to kill a motion without taking a vote on it.

## Chart of motions

The attached chart lists 10 of the most common motions in their order of precedence. There should only be one main motion on the floor at any one time but you may have a number of subsidiary motions. If you have a number of motions on the floor, you take them up for discussion and vote in the order in which they appear on the chart. You must dispose of the motion which is highest on the chart before going to the next one on the chart. If you are doing it right, when a motion is under consideration, only those above it on the chart may be considered. The motions listed in the chart of most common motions are defined on the attached definitions page.

For example:

- Speaker #1 has introduced the main motion and speaker #2 has made a motion to amend it. Both motions are in order.
  - Speaker #3 wants to move to postpone discussion indefinitely. Since a motion to postpone indefinitely is lower on the chart, it is out of order.
  - Speaker #4 makes a motion to lay the main motion on the table to take up more urgent business. That motion is in order.
  - Speaker #5 rises to a point of information (i.e., wants to ask a factual question about the main motion). Points of information have no precedence so they can be made at any time. Speaker #5 is in order.
  - Speaker #6 wants to introduce another main motion. Since there is already a main motion on the floor, speaker #6 is out of order.
- 
- As the chair, you handle the motions this way:
  - You rule speakers #3 and #6 out of order.
  - You answer the point of information raised by speaker #5.
  - You take a vote on speaker #4's motion to lay the main motion on the table. If that passes, you take up the urgent matter and return to this main motion later if there is a motion to remove it from the table. If the vote to table fails, then
  - You take a vote on speaker #2's motion to amend.
  - You take a vote on speaker #1's main motion.

**CHART OF MOST COMMON MOTIONS****Motions in Order of Precedence**

<b>Motion</b>	<b>Second?</b>	<b>Debatable?</b>	<b>Amendable?</b>	<b>Vote?</b>
Adjourn	Yes	No	No	Majority (M)
Recess	Yes	No	Yes	M
Lay on the Table	Yes	No	No	M
<i>Previous Question</i> (Call the Question)	Yes	No	No	2/3
<i>Limit Debate</i>	Yes	No	Yes	2/3
Postpone Definitely	Yes	Yes	Yes	M
Commit	Yes	Yes	Yes	M
Amend a Main Motion	Yes	Yes	Yes	M
Postpone Indefinitely	Yes	Yes	No	M
Main Motion	Yes	Yes	No	M

**Motions with No Precedence**

Renew a Main Motion	Yes	Yes	Yes	M
Rescind	Yes	Yes	Yes	2/3
Amend a Previously Adopted Motion	Yes	Yes	Yes	2/3
Point of Order	No	No	No	Chair
Parliamentary Inquiry	No	No	No	Chair
Point of Information	No	No	No	Chair

*Motions in italics are not used in committees.*

## DEFINITIONS

**Adjourn:** end the meeting.

**Amend a previously adopted motion:** this can apply to a motion adopted during the current meeting or a previous meeting.

**Amend a main motion:** offers an amendment to the main motion under consideration.

**Commit:** refers the main motion to a committee or subcommittee.

**Lay on the table:** a motion to set aside a question when another question of immediate urgency has arisen. The motion can be removed from the table by majority vote. Often misused in place of the motions to postpone definitely or indefinitely. Out of order if the chair believes it is being misused to end debate.

**Limit debate:** sets a time limit for discussion in general or limits the amount of time each speaker may have. A motion to limit debate is out of order in a committee.

**Main motion:** a motion which brings business before the assembly.

**Parliamentary inquiry:** a question posed to the chair when the speaker is not sure how to proceed under parliamentary rules.

**Point of information:** a question of fact addressed to the chair. No discussion allowed.

**Point of order:** a question posed to the chair when the speaker thinks the rules of the assembly are being violated.

**Postpone definitely:** puts off discussion until a specified day, time, or meeting.

**Postpone indefinitely:** kills the main motion for that meeting without taking a vote. Used to dispose of a motion when the assembly does not want to actually vote against it.

**Previous question:** Also known as Acalling the question,@ Aquestion,@ or Aclosing debate.@ This motion ends debate. It must be adopted by a 2/3 vote before the question at hand is itself voted upon. A motion to move the previous question is out of order in a committee.

**Recess:** take a temporary break in the meeting with the intent of continuing the meeting. A recess can be as short as a few minutes or it can be overnight.

**Renew a main motion:** this is a motion to reconsider a motion that was not previously adopted.

**Rescind:** a motion to change a previous vote to adopt a main motion.

## ASSOCIATION CHAPTER LEGAL ISSUES

The range of legal issues that an association's local chapters might encounter can be as broad as those of the parent organization. In an effort to heighten awareness of our local organizations on legal issues, ASCE makes periodic presentations to its local organization leadership using the attached outline. Examples of other legal issues a local chapter might encounter include:

- **Americans With Disabilities Act:** Title III of the Americans With Disabilities Act prohibits private entities from discriminating against individuals on the basis of disability in any "place of public accommodation." (42 U.S.C. Subchapter III). Places of public accommodation can include a broad range of locations, such as hotels, restaurants, bars, theaters, concert halls, stadiums, auditoriums, convention centers, lecture halls, museums, parks and golf courses. In addition to the owner of the public accommodation, a local chapter which leases or contracts to use a place of public accommodation for a meeting or other chapter activity is held responsible for ADA compliance. The ADA requires (1) the elimination of eligibility criteria excluding individuals with disabilities, (2) the modification of policies, practices or procedures necessary to afford the public accommodation's services to the disabled, (3) the removal of architectural and communications barriers where such removal is readily achievable, (4) and the provision of auxiliary aids and services to individuals with hearing, visual, or speech impairments to enable effective communication unless such steps would fundamentally alter the nature of the goods or services or result in undue burden. The term undue burden means significant difficulty or expense and is determined on a case by case basis. In determining whether to provide auxiliary aids such as a sign interpreter for a meeting, local chapters should consider such factors as the nature and cost of the aid, the overall financial resources of the chapter, and the need for such aids in light of the program content and presentation.
- **Amicus Curiae Briefs:** Many associations have policies governing their participation in *amicus curiae* briefs, often limiting participation to matters of major importance to the association's general purposes or objectives. In cases where the national organization declines to participate due to the local (state) nature of the case, some cases may nevertheless present an opportunity for local chapter participation.
- **Antitrust:** The Sherman Antitrust Act prohibits "contracts, combinations, or conspiracies" in restraint of trade (15 U.S.C. § 1). The Federal Trade Commission Act prohibits "unfair methods of competition" and "unfair or deceptive acts or practices" affecting commerce (15 U.S.C. § 45). Antitrust violations can result in severe criminal and civil penalties. Local chapters should be forewarned of potential problems with certain activities, including: (1) Price-Fixing: members may not make agreements to set fixed prices; (2) Market Allocation: members may not agree to divide customers or markets; (3) Membership Criteria: Criteria for membership and provision of chapter goods and services must be carefully established for antitrust compliance and chapter membership should not be denied to avoid certain groups of competitors; (4) Standard Setting and Certification: standards and certification programs may not favor some competitors and discriminate against others; (5) Boycotts: group boycotts or refusals to

deal may violate antitrust laws; (6) Code of Ethics: the content and enforcement of a Code of Ethics may not unreasonably restrain competition.

- **Charitable Solicitation:** Most states have enacted legislation with registration and reporting requirements for charities that solicit contributions within their state. (*See, e.g., Va. Code § 57-48, et seq.*). Most states also provide exemptions to the filing requirements, such as for religious and educational institutions or for organizations that solicit only from their members. (*See, e.g., Va. Code § 57-60*). Local chapters that wish to solicit charitable contributions should be aware of their local laws and potential enforcement activities.
- **Contracts:** Local organizations likely enter into a variety of contracts, including vendor and hotel contracts, often times with potential liability for the parent organization. Recognizing that it is often not feasible for staff of the parent organization to review the chapters' contracts, local chapters must carefully review contracts and have a basic familiarity with key contract provisions, including attrition, cancellation and indemnification clauses in hotel contracts. Sample form contracts and addenda help to illustrate the point and define acceptable parameters for chapter contracts.
- **Lotteries:** Private parties that conduct lotteries may be subject to federal and state criminal penalties. A lottery is generally defined as a game involving consideration, chance and a prize. Most states prohibit lotteries by private parties, but many states do permit raffles by certain not-for-profit organizations (*See, e.g., Va. Code § 18.2-340.15, et seq.*). The U.S. Postal Service prohibits distribution of information concerning a lottery in the mail (*18 U.S.C. Chapter 61*). The prohibition does not apply to not-for-profit organizations that distribute information concerning a lottery which is authorized or not otherwise prohibited by the State in which it is conducted. Local chapters that wish to conduct a lottery must first review applicable state laws.
- **Parliamentary Procedure:** Chapters should have a basic familiarity with parliamentary procedure, recognizing that smaller boards may be better served with less formal procedures.
- **Postal Rates:** Chapters of qualifying nonprofit organizations (agricultural, educational, fraternal, labor, philanthropic, religious, scientific and veterans organizations) should be advised to contact their local post office to apply for reduced mailing rates. Applications must be filed at each post office where mailings will be offered.
- **Public Disclosure Rules:** To promote increased public oversight of tax-exempt organizations, the IRS issued public disclosure regulations, effective June 8, 1999 (*26 U.S.C. § 6104; 26 CFR Parts 301 and 602*). Under the regulations, a tax-exempt organization, at its principal office and at certain regional and district offices with at least three full-time employees, must provide requestors with copies of their exemption applications and their three most recent Forms 990. Local or subordinate organizations covered by a group exemption letter that receive in-person requests for inspection or copies of exemption applications must make available within a reasonable time (normally

not more than two weeks) the application for a group exemption letter filed by the parent organization, along with the specific documents submitted to the IRS to include the subordinate in the group ruling. Local or subordinate organizations that do not file their own Forms 990 but are covered under a group return must make available within a reasonable time (normally not more than two weeks) its group return. Schedules relating to other organizations included in the return may be omitted. To ensure compliance with the disclosure rules, the parent organization should inform its subordinate organizations that they should immediately notify the parent organization if they receive any requests for exemption applications or annual returns.

- **Sales Tax:** Qualifying nonprofit organization chapters (generally not 501(c)(6) organizations but often including certain 501(c)(3) organizations) should be advised to contact their state tax authority to determine eligibility for exemption from state sales and use taxes. (*See, e.g., Va. Code §§ 58.1-609.1 - 609.10*) In those states where the exemption is available, associations generally have to apply for the exemption.
- **Tax Exemption:** Not-for-profit corporations are subject to certain benefits and limitations by virtue of their tax exempt status. (See attached outline). Certain limitations are absolute. For example, 501(c)(3) entities may not participate or intervene on behalf of or in opposition to any candidate for political office, and violations of this prohibition can result in loss of tax exemption. (*See, e.g., Christian Broadcasting Network case*). Local Chapters should have a basic understanding of such benefits and restrictions.
- **Trademark:** Chapters should be advised that they may only use the name, logo and other trademarks of the parent organization in accordance with certain terms and conditions, which may be specified in an affiliation agreement, licensing agreement, policy or other governing document. Such terms and conditions may include that the chapter may not speak for the parent organization or misrepresent its relationship with the parent organization, may only use the parent organization's name in conjunction with the chapter's name, and may not use the parent organization's name in any manner that is illegal, false, misleading, or damaging to the reputation of the parent organization.
- **UBIT:** To prevent tax-exempt organizations from abusing tax laws and engaging in profit-making activities, Congress enacted legislation which subjects business income that is not "substantially related" to the objectives of exempt organizations to taxation. (*26 U.S.C. § 511*). A "substantially related" business activity must make an important contribution to the association's tax exempt purpose. Local chapters should be generally aware of such provisions. Local Chapters should also be aware that while income from the sale of advertising generally is taxable, income from "qualified sponsorship payments" is not. (*26 U.S.C. § 513(i)*). The Internal Revenue Code indicates that qualified sponsorship payments means payments for which there is no expectation that the donor will receive any substantial return benefit other than use or acknowledgment of the name or logo. The Code suggests that advertising includes messages with qualitative or comparative language, price information, or other indications of savings or value, an endorsement, or an inducement to purchase, sell or use products or services.