

Promoting Ethics in Local Government: A Year in Review Fiscal Year 2018

Ongoing Code Review

Consistently from year to year, a member's length of service generates a significant amount of inquiries from members seeking ethics advice to determine whether their specific situation creates an exception to the Tenet 4 guideline recommending a minimum of two years of service in a position. Furthermore, about 10% of the total number of ethics complaints the Committee on Professional Conduct (CPC) investigates each year involve allegations of a member's short tenure.

As part of the ongoing tenet review process, the CPC focused on Tenet 4 and its length of service guideline in Fiscal Year 2018. The CPC proposed changes and more than 1,600 members provided feedback to the CPC, sharing over 1,400 written comments. The CPC drafted revised tenet language; proposed revising the length of service guideline so that the two-year tenure requirement would apply only to the Chief Administrative Officer (CAO); and added guidelines on inclusiveness and the obligation of members to ensure that their governing body is fully informed of any disparate impacts a policy decision may have on specific portions of the population.

Members overwhelmingly approved the new Tenet 4 language in May 2018. In June 2018, the Executive Board approved the new guidelines the CPC drafted to address inclusion and equity. The guidelines give more direction and guidance on how to implement the principles of inclusion and equity. The Board also approved amendments to the length of service guideline to limit the requirement to serve two years to CAOs and to require that all members honor their employment commitments. The length of service guideline was moved to Tenet 3 as it relates more to the professional commitment to integrity as outlined in Tenet 3.

The Tenet 4 revision and new guidelines follow, below:

Length of Service Guideline moved under Tenet 3. For chief administrative/executive officers appointed by a governing body or elected official, a minimum of two years is considered necessary to render a professional service to the local government. In limited circumstances, it may be in the best interests of the local government and the member to separate before serving two years. Some examples include refusal of the appointing authority to honor commitments concerning conditions of employment, a vote of no confidence in the member, or significant personal issues. It is the responsibility of an applicant for a position to understand conditions of employment, including expectations of service. Not understanding the terms of employment prior to accepting does not justify premature separation. For all members a short tenure should be the exception rather than a recurring experience, and members are expected to honor all conditions of employment with the organization.

Tenet 4. Serve the best interests of the people.

Impacts of Decisions. Members should inform their governing body of the anticipated effects of a decision on people in their jurisdictions, especially if specific groups may be disproportionately harmed or helped.

Inclusion. To ensure that all the people within their jurisdiction have the ability to actively engage with their local government, members should strive to eliminate barriers to public involvement in decisions, program, and services.

Tenets 1 and 2 were selected as the next tenets for review. The CPC developed a member survey to determine whether the Tenets and related guideline are still relevant or in need of revision. Over 600 members responded to the May 2018 survey and provided over 1,000 written comments. The CPC is currently drafting revisions to Tenet 1 and 2, and the Tenet 2 guideline with a timeline for completion in later 2018.

Ethics Enforcement

ICMA enforces the Code of Ethics through a formal review process administered by a peer-review body, the ICMA Committee on Professional Conduct (CPC). The confidential process provides a member with the opportunity to respond to the complaint and for the appointment of a fact-finding committee when additional documentation and information is required to reach a decision.

After the review process, the CPC can decide to close a case where no violation has occurred; issue a private censure for an ethics violation; or recommend that the ICMA Executive Board publicly censure and/or expel, bar, or revoke the credential of a member who has violated the Code of Ethics. In reaching a decision, the CPC takes into consideration, as examples, the nature of the violation, any past ethics violations, the willfulness of the violation, and the level of responsibility of the member.

The ICMA Committee on Professional Conduct reviewed **13** ethics complaints filed against ICMA members. The reviews resulted in:

- 1 public censure and membership bar;
- 3 private censures; and
- 9 closed cases with or without advice

Conduct that resulted in a public censure and membership bar

► Public confidence; employee compensation; public trust; and private employment

- (Alan Kapanicas) A member pled guilty to one felony count of embezzlement of public funds as well as one felony count of misappropriation of public funds. He was placed on three years of formal probation, ordered to serve one year of custody to be served with electronic monitoring, and pay \$1 million in restitution to his former employer. (Tenets 2, 3, 11 and 12)

Conduct that resulted in a private censure

► Political activity

- A member's actions concerning the election of a member of his governing body created the appearance of improper engagement in the political process. (Tenet 7)

► **Public confidence**

- A manager failed to set a high ethical standard for the organization, comply with the letter and intent of city policies, and implement appropriate, effective policies. (Tenet 3)

► **Length of service**

- A city manager self-reported he had applied for a manager's position open with his former employer 15 months into his length of service with his current local government. (Tenet 4)

Working with Fact-Finding Committees

Fact-finding committees appointed by the state association president to assist in gathering information on cases serve as an arm of the CPC and play an invaluable role in the ethics process. ICMA staff worked with one fact-finding committee, appointed at the request of the CPC, to investigate a member's conduct in California.

Ethics Advice and Resources

ICMA staff responded to **110** ethics inquiries requests from members for confidential advice and assistance in resolving ethical dilemmas. Challenging ethical issues are publicized in the ethics column of the monthly *PM Magazine*.

Members seeking ethics advice are encouraged to contact ICMA Director of Membership and Ethics, Martha Perego at 202-962-3668 or mperego@icma.org.