

Promoting Ethics in Local Government: A Year in Review Fiscal Year 2019

Ongoing Code Review

In 2013, the ICMA Executive Board began a structured effort with the ICMA Committee on Professional Conduct (CPC) to review each tenet with the membership. To date, Tenets 3, 4, 7, and 12 and/or their respective guidelines, have been reviewed and revised. New proposed language for Tenets 1 and 2 will be presented to the membership for consideration in September 2019. Amendments to the tenets require membership approval while changes to the guidelines require Executive Board approval.

While this effort is ongoing, the CPC continues its work to review ethics complaints. That process often provides the CPC with the opportunity to identify issues where members can benefit from additional advice or new guidance.

New Guideline on Conduct Unbecoming

A recent series of ethics cases involving harassment by ICMA members as well as the prevalence of harassment and inappropriate conduct occurring generally in society were the catalysts for addressing this issue within ICMA's Code of Ethics. While unprofessional personal or work conduct is addressed in Tenet 3 with its focus on integrity and respect, the ICMA Committee on Professional Conduct considered whether a more direct statement to members on conduct unbecoming was required. They concluded that the profession needed more guidance on this serious issue.

On June 8, the Executive Board adopted the following guideline under Tenet 3 on Conduct Unbecoming.

Tenet 3. Demonstrate by word and action the highest standards of ethical conduct and integrity in all public, professional, and personal relationships in order that the member may merit the trust and respect of the elected and appointed officials, employees, and the public.

Conduct Unbecoming. Members should treat people fairly, with dignity and respect and should not engage in, or condone bullying behavior, harassment, sexual harassment or discrimination on the basis of race, religion, national origin, age, disability, gender, gender identity, or sexual orientation.

Tenets 5 and 6 were selected as the next tenets for review. After the discussions that occurred with members during the regional conferences, the CPC's next step is to draft proposed language revisions to Tenet 5 and 6, and the Tenet 5 guideline. The CPC will then solicit feedback through a member survey about the CPC's proposed revisions in later 2019.

Rules of Procedure Update

Based on recommendations from the CPC, the Executive Board approved amending the ICMA Rules of Procedure for Enforcing the Code of Ethics to streamline the enforcement process to address when a member resigns their membership in response to an ethics complaint. ICMA retains jurisdiction over an ethics complaint to its conclusion even if the member resigns from ICMA or allows their membership to lapse.

Under the prior Rules, the member who resigned was afforded all the due process privileges including the right to meet with a fact-finding committee, review the fact-finding committee report, request that the CPC reconsider a recommendation, and lastly, appeal and request a hearing before the full Executive Board.

In an effort to streamline the process, the new Rules provide that members who resign their membership upon receiving notice that they are subject to an ethics complaint shall waive further opportunities to participate in the review process.

Ethics Enforcement

ICMA enforces the Code of Ethics through a formal review process administered by a peer-review body, the 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 CPC reviewed **44** ethics complaints filed against ICMA members. The reviews resulted in:

- 5 public censures and membership bar;
- 5 public censures;
- 14 private censures; and
- 20 closed cases with or without advice

Conduct that resulted in a public censure and membership bar

► Public confidence; public trust; equal opportunity; and gifts

- (Wanda Greene) Dr. Greene pled guilty to two counts of federal program fraud, one count of making and subscribing a false federal tax return, and one count of receipt of kickbacks and bribes. The member entered into a financial settlement with her former employer agreeing to pay \$750,000 so that the employer could recover funds related to her personal use of county credit cards, unauthorized purchase of whole life insurance policies for herself and other employees, a \$240,000 employee retention benefit she received before her retirement that was not properly approved, and benefits that accrued to her and others from a vendor involved in a kick-back scheme. (Tenets 2, 3, 4, 5, 9, 11 and 12)

► Public confidence; public trust; influence; and gifts

- (Amanda Stone) Ms. Stone pled guilty to one federal charge of conspiracy as a result of her conduct involving a bribery and kickback scheme with a contractor that began while she was serving as the assistant county manager. (Tenets 2, 3 and 12)

- (Ricardo Fernandez) Mr. Fernandez entered into a settlement agreement with a state ethics commission where he admitted to failing to report a gift of a discounted catering rate for his daughter's wedding reception at a city-affiliated restaurant, soliciting football tickets from a lobbyist, and accepting prohibited gifts from a lobbyist. (Tenets 3 and 12)

► **Public confidence; public trust; relationships in the workplace; and personal relationships**

- (Brian Kischnick) Mr. Kischnick pled no-contest to a misdemeanor charge of domestic violence. Based on information made available as part of the fact-finding process, the member was involved in a personal relationship with the victim, who was employed by the city. (Tenets 3 and 12)

► **Public confidence and public trust**

- (Lee Niblock) Dr. Niblock made unprofessional, highly inappropriate comments to the principal of a school located in the community where he served. He also made unwelcome physical advances towards her during a dinner meeting he arranged to discuss a job opportunity with the city. (Tenets 2, 3 and 12)

<p>Conduct that resulted in a <u>public censure</u></p>
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► **Public confidence; public trust; influence; conflicting roles; and personal relationships**

- (Manuel Esquibel) While serving in dual roles as a city manager and executive director of a redevelopment authority, Mr. Esquibel failed to follow procurement policies in compensation paid to a consultant; engaged in a questionable financial transaction with regard to transferring funds between entities; did not ensure proper oversight of the consultant; and lacked transparency in communicating about the redevelopment process with the city council and the public. (Tenets 2, 3, 5, 9 and 12)

► **Public confidence; public trust; investments; and personal relationships**

- (Cathy Davison) Ms. Davison participated in the making and awarding of her governing body's contract with a company owned by her spouse and leveraged her position for personal gain by receiving a financial benefit. Furthermore, Ms. Davison only disclosed her husband's ownership of the firm to the Commission's auditors during the audit process and not to the Commission. (Tenets 3 and 12)

► **Political activity and running for office**

- (Charles Coney) Mr. Coney was an elected official while he worked as a city manager. Mr. Coney had an affirmative responsibility to comply with the ICMA Code of Ethics and when notified that his dual responsibilities constituted a violation of the Code, failed to take timely action to remedy the situation. (Tenet 7)

► **Public confidence**

- (William Jordan) Mr. Jordan failed in his responsibility to model good conduct, set the appropriate tone for the organization, address other employee's inappropriate conduct that could create a hostile work environment for all staff, and protect the organization from potential liability because of the inappropriate conduct. (Tenet 3)

- (Yousry Zakhary) Mr. Zakhary created an environment in which his employees were offended by his language and conduct. The member’s conduct continued after harassment training occurred and despite his direct reports informing him that his behavior towards female employees was inappropriate. In addition to creating an uncomfortable work environment, the member placed the city at risk for legal liability for his conduct. (Tenet 3).

<p>Conduct that resulted in a <u>private censure</u></p>

► **Political activity (Tenet 7)**

- **Elections**
 - A manager publicly endorsed a candidate for elected office during a campaign event.
 - A manager was involved in a petition effort to recall a member of his governing body.
 - A manager made a one-time \$250 campaign contribution to a candidate running for a federal office.
- **Running for office**
 - A manager ran for elected office while serving as a city manager. The member mistakenly thought their ICMA membership has expired, which was a factor in the decision for private censure.

► **Public confidence**

- After a manager had accepted a new position, the member made an inappropriate comment about a member of the governing body in a local media article. (Tenet 3)
- A manager made an inappropriate personal social media post regarding the community the member formerly managed. (Tenets 2 and 3)

► **Length of service (Tenet 3)**

In reaching a decision about a member’s length of service, the CPC considers, as examples, the reasons for the separation; the extent to which the member assisted in the transition period; whether the member fulfilled his or her obligations in the employment agreement; and the effects of the member’s conduct on the community, governing body, and professional local government management.

- A manager applied for a different position 18 months into his length of his service and accepted the position when it was offered ultimately rendering a service of 22 months.
- A manager was a finalist for a new position only 15 months into his length of his service. The manager remained in his current position.
- A member with no history of short tenures self-reported his 22-month length of service after he accepted a deputy manager position for personal reasons. The CPC concluded that the reasons cited for departure did not meet the limited exceptions to the two-year length of service guideline.
- A manager with no prior history of a short tenure served in his position for less than six months before he accepted a preferred position closer to his home.
- A manager new to the profession served 10 months in his position before he accepted a manager’s position in a different community.
- A manager sought advice from ICMA but ultimately left his position after three months of service for personal reasons to return to a position in his hometown.

- A member had two short tenures and provided reasons to the CPC that did not meet the limited exceptions to the two-year length of service guideline.

► **Public confidence and appointment commitment**

- A member verbally accepted the offer of a new position, then changed his mind after a residency requirement was communicated and decided to remain in his current manager's position.

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 six fact-finding committees, appointed at the request of the CPC, to investigate a member's conduct in Colorado, Florida (two different committees), Georgia, Michigan, and Texas.

Ethics Advice and Resources

ICMA staff responded to **144** 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 Martha Perego, ICMA Director of Membership and Ethics, at 202-962-3668 or mperego@icma.org or Jessica Cowles, Ethics Advisor, at 202-962-3513 or jcowles@icma.org