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July 1, 2017

To: ASME Standards and Certification Volunteers and Staff Participants

Subject: Legal Implications of Standards and Certification Activities

The American Society of Mechanical Engineers (ASME) and its Council on Standards and Certification have had the enclosed documents prepared to assist volunteers and staff participants in ASME Standards and Certification activities to understand the legal implications of, and the responsibilities inherent in, such activities.

Further, in approving the Society Policies, which are enclosed, the Society's Board of Governors and the Council on Standards and Certification require that:

CSP-11-Prior to initial appointment to an ASME code, standards or related conformity assessment committee, subordinate group, or project team, each person shall sign and submit the appropriate form:

- (a) I have read and agree to comply with Society Policies [P-15.7](#) Ethics, [P-15.4](#) Ethical Conduct Violation Procedures, [P-15.8](#) Conflicts of Interest, [P-15.9](#) Policy Against Discrimination (including Discriminatory Harassment) and [P-14.6](#) Society Name, Seal, Emblem, Initials, Titles, Identification, and Certificates.
- (b) acknowledging that copyright and all rights in all materials produced in print or electronic form by ASME Standards and Certification Committees are owned by ASME and that ASME may register copyright in its own name; and
- (c) acknowledging that the only permitted reproduction of ASME copyrighted material is for Committee business.

Alternatively, for standards and certification activities, an employee of a government agency may agree to follow a similar Code of Ethics, Conflict of Interest Policy, and/or other relevant policies administered by the pertinent jurisdiction or governmental agency.

Accordingly, in order to conform with the intent of these Society and Standards and Certification Policies, prospective participants in Standards and Certification activities are required to sign and return a Participation Acknowledgement Form prior to approval action being taken on their initial Standards and Certification appointment.

For subsequent appointments to any other code, standard or related conformity assessment committee, or subordinate group and for all reappointments, each person for whom a signed Participation Acknowledgement Form is on file at ASME shall be sent a letter advising of the appointment or reappointment, and reminding the member of his/her previous commitment to adhere to the relevant Society Policies, acknowledgement that copyrights and all rights in materials produced in print or electronic form by ASME Standards and Certification Committees are owned by ASME and that ASME may register copyright in its own name; and acknowledgement that the only permitted reproduction of ASME copyrighted material is for Committee business. Persons for whom a signed Participation Acknowledgement Form is not on file at ASME will be required to return a signed Participation Acknowledgement Form.

Also enclosed for your review and guidance are the companion documents: (1) Guide to Antitrust Compliance and (2) Guide to Tort Law Compliance. The Antitrust Guide has been issued by the Council on Standards and Certification in order to assure adherence to "due process" requirements in the development and implementation of codes and standards and in the administration of conformity assessment activities. The Tort, or products liability, Guide is included as an explanation of an area of law that requires consideration in conjunction with antitrust law compliance during codes and standards or related conformity assessment activities. These documents are tentative, subject to revision or withdrawal, and are enclosed for your information only.

The Society's Constitution and By-Laws Article C4.1.12 on Indemnification is included as background information.

We trust that the enclosed documents will assist you in your participation in ASME Standards and Certification activities and that collective adherence to them will assure the continuing vitality of such activities in the public interest. Thank you for your participation.

Sincerely,



Samuel Koreellis;  
Senior Vice President and Chair,  
Council on Standards and Certification

And



William Berger;  
Managing Director, Standards  
Standards and Certification



P-15.7  
2/1/12

## **SOCIETY POLICY**

### **ETHICS**

ASME requires ethical practice by each of its members and has adopted the following Code of Ethics of Engineers as referenced in the ASME Constitution, Article C2.1.1.

#### **CODE OF ETHICS OF ENGINEERS**

##### The Fundamental Principles

Engineers uphold and advance the integrity, honor and dignity of the engineering profession by:

- I. using their knowledge and skill for the enhancement of human welfare;
- II. being honest and impartial, and serving with fidelity their clients (including their employers) and the public; and
- III. striving to increase the competence and prestige of the engineering profession.

##### The Fundamental Canons

1. Engineers shall hold paramount the safety, health and welfare of the public in the performance of their professional duties.
2. Engineers shall perform services only in the areas of their competence; they shall build their professional reputation on the merit of their services and shall not compete unfairly with others.
3. Engineers shall continue their professional development throughout their careers and shall provide opportunities for the professional and ethical development of those engineers under their supervision.
4. Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest or the appearance of conflicts of interest.
5. Engineers shall respect the proprietary information and intellectual property rights of others, including charitable organizations and professional societies in the engineering field.
6. Engineers shall associate only with reputable persons or organizations.

7. Engineers shall issue public statements only in an objective and truthful manner and shall avoid any conduct which brings discredit upon the profession.
8. Engineers shall consider environmental impact and sustainable development in the performance of their professional duties.
9. Engineers shall not seek ethical sanction against another engineer unless there is good reason to do so under the relevant codes, policies and procedures governing that engineer's ethical conduct.
10. Engineers who are members of the Society shall endeavor to abide by the Constitution, By-Laws and Policies of the Society, and they shall disclose knowledge of any matter involving another member's alleged violation of this Code of Ethics or the Society's Conflicts of Interest Policy in a prompt, complete and truthful manner to the chair of the Ethics Committee.

The Ethics Committee maintains an archive of interpretations to the ASME Code of Ethics (P-15.7). These interpretations shall serve as guidance to the user of the ASME Code of Ethics and are available on the Committee's website or upon request.

Responsibility: Committee of Past Presidents/Ethics Committee

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

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

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

Adopted: March 7, 1976

Revised: December 9, 1976  
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June 15, 1984  
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June 16, 1988  
September 12, 1991  
September 11, 1994  
June 10, 1998  
September 21, 2002  
September 13, 2003  
(editorial changes 6/1/05)  
November 5, 2006  
(editorial changes to the responsible unit 4/09)  
(Unit Realignment Due to Reorganization 2/12)

APPENDIX TO SOCIETY POLICY P-15.7 ETHICS

**PUBLICATION OF PROFESSIONAL/TECHNICAL  
ARTICLES, PAPERS AND REPORTS**

*A statement of the  
Board on Professional Practice and Ethics  
Of  
The American Society of Mechanical Engineers*

**May 24, 1991**

# **POLICY STATEMENT ON PUBLICATION OF PROFESSIONAL/TECHNICAL ARTICLES, PAPERS AND REPORTS**

## **Background**

ASME's Board on Professional Practice and Ethics (BPPE) and other professional engineering bodies have considered cases involving ethics violations of publication rights and authorship of papers. These and similar ethics cases are of serious concern to BPPE because strict adherence to soundly-based ethical standards is essential to the engineering profession if it is to attain professional status in our society and publicly.

Not all universities and industrial research facilities have definitive and clearly written procedures covering the subject of publication rights and authorship. This lack of clear direction has led to misunderstandings and confusion among students performing research and supervising faculty, as well as supervisors and researchers in industry.

In one ASME ethics case, a professor wrote a technical paper based on the thesis work of his graduate student and listed the former student as a junior co-author without the consent, or prior knowledge, of the student. The former student assumed that the professor had used the student's thesis work as his own and, consequently, lodged an ethics complaint against the professor.

The BPPE supports the recognition of joint contributors to professional/technical publications. Persons making substantial or key contributions to a project or work on which such publications are based should receive credit commensurate and appropriate to their contributions. This credit may include co-authorship or acknowledgement. Co-authors listed on proposed and accepted publications should have entered the joint authorship arrangement by mutual consent prior to submittal of the document for publication and should have received written permission to use any unpublished work of others which serves as the major basis or key component of the publication.

## **Policy Statement**

To avoid situations tending to suggest an ethics violation, technical communications for publication (articles, papers, reports, or the like) which are based on research involving more than one individual (including students and supervising faculty, industrial supervisor/researcher, or other co-workers) should adhere to clearly defined and appropriately disseminated guidelines on authorship. These guidelines should be publicized in corporate, university or other employer policies and should take cognizance of professional/technical society recommendations

## **SOCIETY POLICY**

### **ETHICAL CONDUCT VIOLATION PROCEDURES**

#### **I. PREFACE**

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

#### **ETHICAL PRACTICE**

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

Promote and encourage practice in the profession within this code.

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

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

An individual’s ethical conduct shall be evaluated on the basis of the Code of Ethics and Conflicts of Interest Policies as in effect on the date when a given action or omission took place. The review of such conduct, however, shall be conducted in accordance

with the Ethical Conduct Violation Procedures in effect on the first date when a complaint is submitted. If the Ethical Conduct Violation Procedures are amended prior to the completion of the review process, such amendments shall not affect the review of pending matters except insofar as the Board of Governors, in amending the Ethical Conduct Violation Procedures, specifically approves retroactive effect for any portion or all of the amended Procedures

## **II. PURPOSE**

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

## **III. POLICY**

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

## **IV. PROCEDURE**

- A. Complaint Phase
  - 1. Any person contemplating a complaint under this Society Policy may (but is not required to) participate in the following consultative procedure prior to the submission of his or her complaint:
    - a. The person shall notify the Society's Managing Director, Governance, orally or in writing that he or she is considering the filing of an ethics complaint and wishes to participate in the Society's pre-complaint consultative procedure. This notification shall include the name(s) of the person(s) contemplating the complaint and the person(s) who would be subject to the complaint.
    - b. The Managing Director, Governance, shall promptly notify the members of the Ethics Committee, whereupon those members of the Committee who have no conflict of interest with respect to the possible complaints



shall promptly draw lots to determine which of their number will provide pre-complaint consultation.

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

or outside the Society. The complaint shall conclude with the following statement by the complainant:

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

3. No complaint shall be maintained or upheld pursuant to this Society Policy unless such complaint is submitted to the Society pursuant to this Society Policy within five (5) years after:
  - a. the date of the incident (or last of a series of related incidents) constituting the alleged violation; or, if later,
  - b. the earliest date on which the complainant had knowledge, or on which a member of the Society reasonably should have had knowledge, that any such incident (or series of related incidents) might constitute a violation reportable under this Society Policy.
4. The Executive Director, upon receipt of a complaint of alleged unethical conduct, shall within thirty (30) days:
  - a. acknowledge receipt of the complaint to the complainant by Certified Mail,
  - b. ascertain whether the person against whom the complaint has been made is currently a member of the Society,
  - c. determine whether the complaint fulfills the requirements of IV.A.2, and
  - d. if the requirements of either IV.A.4.b or IV.A.4.c or both of them are not met, notify the complainant by certified mail (return receipt requested) that the complaint has been rejected because it fails to fulfill either IV.A.4.b or IV.A.4.c or both of them, as the case may be.

The rejection of a complaint pursuant to this IV.A.4 may not be appealed. Such complaint may be revised and resubmitted, and the date of any such resubmission shall be the submission date for purposes of IV.A.3.

5. If the complaint is not rejected pursuant to IV.A.4, the Executive Director shall within sixty (60) days of receipt of the complaint:
  - a. send the Chair of the Ethics Committee a copy of the complaint received, and
  - b. decide, with concurrence of the Chair of the Ethics Committee, whether the complaint is barred from further consideration
    - (i) by reason of IV.A.3,
    - (ii) because it involves a dispute between an employer or employee or between the parties to a contract which dispute is properly resolved through legal or commercial channels,
    - (iii) because it raises issues that are trivial, frivolous or harassing in nature, or
    - (iv) because the facts alleged in the complaint, even if true, would not constitute violations of the Code of Ethics or the Conflicts of Interest Policy.
6. If the complaint is barred as provided in IV.A.5.b, the Executive Director shall notify the complainant by Certified Mail that the complaint is barred for such of the reasons set forth in IV.A.5.b as shall apply. The rejection of a complaint pursuant to this IV.A.6 may not be appealed except in connection with the complainant's appeal, if any, pursuant to IV.A.8 of a rejection of the written explanation hereinafter provided for. However, the complainant may, within sixty (60) days of receipt of the Executive Director's notification and as the complainant's sole and exclusive remedy, submit to the Executive Director a written explanation of why the reasons for barring the complaint are unfounded. Such written explanation shall be signed and dated and shall conclude with the following statement:

"All facts alleged in this explanation are, to the best of my knowledge, true, correct and complete, and I have neither knowingly misrepresented nor knowingly omitted any information which would be material to the evaluation of the merits of this explanation or the complaint to which it relates. I understand that if the foregoing statements are untrue and I am a member of the American Society of Mechanical Engineers, I may have violated the Society's Code of Ethics. I understand that the entire contents of this explanation including my

identity may be disclosed to the individual or individuals referenced in my complaint or this explanation during the course of any Hearing Board review of my complaint or this explanation and I consent to such disclosures.”

The permitted lapse of time between the submission of the initial complaint and the submission of the written explanation described in this IV.A.6 shall be disregarded for purposes of applying IV.A.3. If such explanation is not timely submitted, the complaint is barred and, even if revised, the complaint may not be resubmitted. Once the complaint is barred, the Executive Director shall close the file on the matter and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.

7. The Executive Director shall within sixty (60) days of receipt of the written explanation, if any, received pursuant to IV.A.6:
  - a. send the Chair of the Ethics Committee a copy of the explanation received, and
  - b. decide, with concurrence of the Chair of the Ethics Committee, whether to accept the explanation and refer the complaint to the Ethics Committee (as provided below) or reject the explanation and the Executive Director shall notify the complainant by certified mail (return receipt requested) that the complaint has been rejected pursuant to this IV.A.7.
8. The rejection of a written explanation pursuant to IV.A.7 may be appealed to the Ethics Committee, but only if the appeal is received by the Office of the Executive Director not more than sixty (60) days after the notification described in IV.A.7.b. Any such appeal shall conclude with the following statement by the member:

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

The appeal shall be denied unless the complainant demonstrates to the satisfaction of the Ethics Committee that the rejection of the written

explanation and the underlying complaint was arbitrary and capricious, in which event the matter shall be handled as provided in IV.A.10. The decision of the Ethics Committee may not be appealed. If the rejection of the written explanation is not timely appealed or if the appeal is not sustained by the Ethics Committee, the complaint is barred and, even if revised, may not be resubmitted.

9. If the Executive Director and the Chair of the Ethics Committee do not concur as to any matter for which their concurrence is required under IV.A.5.b or IV.A.7.b, the matter shall be presented to the President of the Society, whose determination shall govern and may not be appealed, or, if the complaint shall involve the President as either a witness or the member subject to the complaint, the matter shall be presented to the Board of Governors (other than the President), whose determination shall govern and may not be appealed.
10. If the complaint is not rejected pursuant to IV.A.4 or IV.A.5, the Executive Director shall notify the complainant that the matter is being referred to the Ethics Committee within thirty (30) days of the last to occur:
  - (a) the determination by the Executive Director and Chair of the Ethics Committee, per Section IV.A.5, that the complaint is not barred
  - (b) the determination by the Executive Director and Chair of the Ethics Committee, per Section IV.A.7, that the explanation has been accepted
  - (c) the vote of the Ethics Committee sustaining an appeal as described in IV.A.8 or
  - (d) the determination by the President or Board of Governors, per Section IV.A.9, sustaining an appeal.

Within sixty (60) days of the last to occur of such events, the Executive Director and the Chair of the Ethics Committee shall prepare (in consultation with legal counsel) a statement of preliminary charges and the Executive Director shall:

- a. Notify the member subject to the complaint, by certified mail (return receipt requested), that an ethics complaint has been filed,
- b. Include with the notification a copy of the statement of preliminary charges and the following statement:
  - i. That the preliminary charges allege matters to be within the scope of the Code of Ethics or Conflicts of Interest Policy of the Society,

- ii. That an investigation will be made to determine if the complaint is substantiated by facts, and
  - iii. That the member is encouraged to respond within thirty (30) days and to inform the Society of his or her preferred address.
- c. Designate an Investigator from the Society's staff or membership to conduct an investigation of the matter, and
  - d. Provide the Investigator with a copy of the complaint, any written explanation provided pursuant to IV.A.6, and a copy of the statement of preliminary charges (the complaint and preliminary charges not to foreclose the Investigator from determining that there may have been violations of provisions of the Code of Ethics or the Conflicts of Interest Policy other than or in addition to those cited in the complaint or the preliminary charges).

The designation of an Investigator pursuant to this IV.A.10 may not be appealed.

- 11. In any case in which a complaint or other written or oral submission (including without limitation testimony at a Hearing) in connection with the submission, investigation and review of an ethics complaint contains statements or makes omissions that may give rise to an ethics complaint against the individual making the complaint or other submission, the Executive Director shall submit the relevant information to the Secretary of the Society, whose responsibility it shall be to evaluate the information and determine whether to make an ethics complaint in respect of such individual's conduct. This IV.A.11 shall not limit the right of any other person to make a complaint in respect of such individual's conduct, provided the person making the complaint has properly obtained the information on which his or her complaint is based.

#### B. Investigative Phase

- 1. The Investigator shall hold individual informal conferences on the subject matter of the complaint with the member against whom a complaint has been filed, the complainant and any other persons known or believed to have knowledge of the matter (such other persons, the "witnesses"), and shall advise each of them that his or her legal counsel, if desired, may be present at such conferences. In the conduct of these informal conferences, the following should be kept in mind by all concerned:
  - a. the purpose is to determine if there is cause for further action by the Society,

- b. the investigation is not a legal hearing, but an informal conference to determine the facts in the matter, and the member is not “accused” by the Society in a legal sense,
  - c. the greatest tact must be exercised by the Investigator,
  - d. if, during the conference, information is obtained which suggests the need to broaden the scope of the investigation, the Investigator must conduct such additional investigation before completing the investigation of the matter, and
  - e. at the start of each conference, the Investigator should advise each witness that the information may or may not be used in a Hearing and it may be furnished to the member subject to the complaint.
2. After the Investigator is assured that all pertinent information concerning the matter has been secured, he or she shall prepare a detailed written report giving all data concerning the matter and send the report to the Chair of the Ethics Committee.
3. Reasonable expenses incurred by the Investigator shall be paid by the Society.
4. Based on a review of the report of the Investigator during a face-to-face meeting of a simple majority of the members of the Ethics Committee, the Committee shall make one (1) of the following determinations on the basis of the Investigator’s report:
- a. That the facts, as found by the Investigator, do not support the complaint and as such do not provide a sufficient basis for any further action by the Society, in which case the matter shall be handled as provided in IV.B.5, or
  - b. That the facts, as found by the Investigator, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is minor and as such does not warrant suspension or expulsion of the member subject to the complaint, in which case the matter shall be handled as provided in IV.B.6, and IV.B.7, or
  - c. That the facts, as found by the Investigator, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is severe and as such may warrant suspension or expulsion of the member subject to the complaint, pursuant to a formal statement of charges adopted by the Ethics Committee as a part of its determination, in which case the matter shall be handled as provided in IV.B.8.

Within thirty (30) days of a determination under this IV.B.4, the Chair of the Ethics Committee shall notify the Executive Director in writing of such

determination, such notification, in the case of a determination described in IV.B.4.c, to include the formal statement of charges adopted pursuant to IV.B.4.c. A determination pursuant to this IV.B.4 may not be appealed.

5. If there is a determination, pursuant to IV.B.4.a, that the facts, as found by the Investigator, do not support the complaint and as such do not provide a sufficient basis for any further action by the Society, the Executive Director shall within thirty (30) days of receiving the notification specified in IV.B.4:
  - a. notify the Board of Governors of the determination,
  - b. by certified mail (return receipt requested), notify the complainant, the member subject to the complaint and all witnesses who have been interviewed by the Investigator that the matter is closed pursuant to this IV.B.5, and
  - c. shall close the official file on the matter and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.

A complaint disposed of pursuant to this IV.B.5, even if the complaint is revised, may not be resubmitted.

6. If there is a determination, pursuant to IV.B.4.b, that the facts, as found by the Investigator, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is minor and as such does not warrant suspension or expulsion of the member subject to the complaint, the Chair of the Ethics Committee shall within thirty (30) days of such determination notify the member subject to the complaint by certified mail (return receipt requested) (with a copy to the Ethics Committee and the Executive Director) that a letter of warning/admonishment is forthcoming at the end of a period of sixty (60) days, such notification to include a proposed draft of such letter of warning/admonishment.
7. At the end of the period of sixty (60) days described in IV.B.6, the Chair shall send the letter of warning/admonishment to the member subject to the complaint by certified mail (return receipt requested) (with a copy to the Ethics Committee and the Executive Director), unless such member shall have timely appealed the determination to send the letter of warning/admonishment (pursuant to IV.C), after which appeal the Chair shall send the letter of warning/admonishment (insofar as the letter shall be determined in the appeal to be warranted) or shall send notification that the proposed letter of warning/admonishment is withdrawn (insofar as the letter shall be determined in the appeal to be unwarranted), such letter or notification to be sent to the member subject to the complaint by certified mail (return receipt requested) (with a copy to the Ethics Committee and the Executive Director) within thirty



(30) days of the determination of his or her appeal pursuant to IV.C.5 or IV.E.9, as the case may be. Within thirty (30) days after the Chair sends a letter of warning/admonishment or notification that a proposed letter of warning/admonishment is withdrawn, the Executive Director shall:

- a. provide the Board of Governors with, as the case may be, a copy of the letter of warning/admonishment or a copy of the notification that the proposed letter of warning/admonishment is withdrawn,
- b. by certified mail (return receipt requested), notify the complainant and all witnesses who have been interviewed by the Investigator that the matter is closed pursuant to this IV.B.7, and
- c. shall close the official file on the matter and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.

A complaint disposed of pursuant to this IV.B.7, even if the complaint is revised, may not be resubmitted.

8. If there is a determination, pursuant to IV.B.4.c, that the facts, as found by the Investigator, appear to establish a violation of the Code of Ethics or Conflicts of Interest Policy that is severe and as such may warrant suspension or expulsion of the charged, the Executive Director, within thirty (30) days of receipt of the notification described in IV.B.4
  - a. shall notify the President in writing that a Hearing Board is mandated pursuant to IV.B.4 and shall provide the President with a copy of the complaint, a copy of the formal statement of charges against the charged member, and a copy of the Investigator's report, and
  - b. shall notify the charged member in writing that a Hearing Board is mandated pursuant to IV.B.4 and that further information will be forthcoming once the Hearing Board has been appointed.

C. Appeal Phase (Proposed Letters of Warning/Admonishment)

1. No letter of warning/admonishment shall be sent at the end of the period of sixty (60) days described in IV.B.6 if the Executive Director of the Society shall receive before the end of such period from the member subject to the complaint either:
  - a. a signed written statement setting forth mitigating circumstances to explain why the member's alleged misconduct does not warrant a warning or admonishment,

- b. a signed written request for a meeting or telephone conference with the Chair of the Ethics Committee to present mitigating circumstances to explain why the member's alleged misconduct does not warrant a warning or admonishment, or
- c. a signed written statement alleging facts in addition to or different from those found by the Investigator, explaining why such alleged facts demonstrate that a warning or admonishment is not warranted, and requesting that the matter be referred to a Hearing Board for a determination;

provided in each case that the signed written statement or request is accompanied by the statement described in IV.C.2.

- 2. Any written statement pursuant to IV.C.1.a or IV.C.1.c shall conclude with the following statement by the member subject to the complaint:

"All facts alleged in this statement are, to the best of my knowledge, true, correct and complete, and I have neither knowingly misrepresented nor knowingly omitted any information which would be material to the evaluation of the merits of this statement. I understand that if the foregoing statements are untrue, I may have violated the Society's Code of Ethics."

Any written request pursuant to IV.C.1.b shall conclude with the following statement by the member subject to the complaint:

"All facts that I will allege in the meeting or telephone conference I am hereby requesting will be, to the best of my knowledge, true, correct and complete, and I will not knowingly misrepresent or knowingly omit any information which would be material to the evaluation of the merits of the facts I will allege. I understand that if I make statements that are untrue, I may have violated the Society's Code of Ethics."

- 3. If a meeting or telephone conference is requested pursuant to IV.C.1.b, such meeting or telephone conference must take place, if at all, within thirty (30) days of the Executive Director's receipt of the written request for such meeting or telephone conference (unless the Chair of the Ethics Committee consents to extend such period). If it does not take place within such time period, a letter of warning/admonishment shall be issued as if no request had been timely submitted pursuant to IV.C.b.1. The Chair of the Ethics Committee shall designate the time and place of any meeting or telephone conference requested pursuant to IV.C.1.b and may request staff assistance by the Society.
- 4. Following consultation with the Ethics Committee, the Chair of the Committee shall determine, on the basis of the complaint, the report of the Investigator,

and the information supplied pursuant to IV.C.1, whether and to what extent a letter of warning/admonishment is warranted or, if a Hearing Board has been requested, whether a Hearing Board is warranted. A determination pursuant to this IV.C.4 shall be made (and the Chair shall provide written notification to the Executive Director of such determination) not less than thirty (30) days after the first to occur of (i) the receipt of a written statement provided in accordance with IV.C.1.a or IV.C.1.c or (ii) the conduct of a meeting or telephone conference requested pursuant to IV.C.1.b. Except as provided in IV.D, a determination pursuant to this IV.C.4 may not be appealed.

5. If, pursuant to IV.C.4, a proposed letter of warning/admonishment is determined to be warranted or unwarranted, in whole or in part, the matter shall be handled as provided in IV.B.7 for situations in which proposed letters of warning/admonishment are appealed and deemed warranted or unwarranted, as the case may be. If a proposed letter of warning/admonishment is deemed warranted only in part, there shall be both a letter of warning/admonishment with respect to those matters deemed warranted and a notification of withdrawal of the proposed letter of warning/admonishment with respect to those matters deemed unwarranted. A determination that a Hearing Board is unwarranted shall be treated as a determination that a letter of warning/admonishment is warranted.
6. If, pursuant to IV.C.4, a Hearing Board is determined to be warranted, the Executive Director, within thirty (30) days of receipt of the notification described in IV.C.4
  - a. shall notify the President in writing that a Hearing Board is mandated pursuant to IV.C.4 and shall provide the President with a copy of the complaint, a copy of the Investigator's report, a copy of the proposed letter of warning/admonishment, a copy of the written statement described in IV.C.1.c, and a copy of the determination of the Chair of the Ethics Committee provided pursuant to IV.C.4.
  - b. shall notify the member who is subject to the complaint in writing that a Hearing Board is mandated pursuant to IV.C.4 and that further information will be forthcoming once the Hearing Board has been appointed.

D. Appeal Phase (Letters of Warning/Admonishment)

1. Notwithstanding the closure of a matter pursuant to IV.B.7.b, a member who receives a letter of warning/admonishment may appeal the matter to the Board of Governors, provided the letter of appeal is received by the Office of the Executive Director not later than thirty (30) days after the letter of warning/admonishment is sent to the member. Any such appeal shall conclude with the following statement by the member:

“All facts alleged in this appeal are, to the best of my knowledge, true, correct and complete, and I have neither knowingly misrepresented nor knowingly omitted any information which would be material to the evaluation of the merits of this appeal. I understand that if the foregoing statements are untrue, I may have violated the Society’s Code of Ethics.”

2. A member’s appeal shall be disqualified if it is made directly to members of the Board of Governors or is accompanied by direct communications with the Board of Governors. The member and his or her legal counsel shall be permitted to meet with the Board of Governors only at its option. The appeal shall be denied unless the member demonstrates to the satisfaction of the Board of Governors (a) that the procedure for issuance of such a letter was not followed and (b) that no letter of warning/admonishment was warranted.
3. In the event of an appeal, the Board of Governors may elect to remand the matter to the Chair of the Ethics Committee for further consideration, in which case a further unfavorable determination may not be appealed other than for a further failure to follow the procedure for the issuance of a letter of warning/admonishment.

E. Hearing Phase

1. The President shall, within thirty (30) days of receipt of the notification described in IV.B.8 or IV.C.6 appoint a Hearing Board composed of three (3), four (4), or five (5) members of the Committee of Past Presidents, such appointment to be made by certified mail (return receipt requested). The President shall include with the appointment a copy of the materials supplied to the President pursuant to IV.B.8 or IV.C.6, as the case may be. The President shall designate one (1) member of the Hearing Board as its Chair. The President shall simultaneously notify the Executive Director and the Board of Governors of the appointees to the Hearing Board. The appointment of the members of a Hearing Board and the appointment of its Chair may not be appealed.
2. At the time the Hearing Board is appointed, the President shall also designate one (1) additional member of the Committee of Past Presidents as an alternate member of the Hearing Board. Once the alternate appointee has joined the Hearing Board, the President shall have the authority to fill any other vacancies which arise by reason of the resignation or death of a Hearing Board appointee. Notwithstanding the foregoing, no alternate appointee may join the Hearing Board and no vacancy may be filled after the commencement of the Hearing.
3. Each appointee shall review promptly the materials provided pursuant to IV.E.1 and shall notify the President within thirty (30) days of receipt of such materials of his or her resignation from the Hearing Board if there exists any conflict of

interest, friendship, prejudice, or other prejudice that might interfere with his or her ability to consider the matter in a disinterested manner, whereupon the alternate member of the Hearing Board shall join the Hearing Board.

4. Promptly upon receipt of notification of the President's appointees to the Hearing Board, the Office of the Executive Director shall contact the charged member (in matters described in IV.B.8) or the member subject to the complaint (in matters described in IV.C.6) in writing or by telephone in order to ascertain dates, times and locations that would be convenient or inconvenient for the Hearing. The Office of the Executive Director shall provide the information to the Chair of the Hearing Board. Such information is ascertained as a courtesy only, and the Hearing Board shall in no way be limited in setting the date, time and location of the Hearing by reason of such information.
5. Within thirty (30) days of notification of their appointment, the members of the Hearing Board shall confer by telephone or other means to determine a convenient date, time and place for the Hearing. The date selected shall be such as to afford at least thirty (30) days' notice of the Hearing to the following "interested parties": the complainant, the charged member or member subject to the complaint, the Investigator and all other persons who will be invited to provide testimony at the Hearing.
6. The Executive Director shall notify the interested parties by certified mail (return receipt requested) of the date, time and place of the Hearing. In matters described in IV.B.8, the notification to the charged member shall be accompanied by a copy of the statement of charges. In matters described in IV.B.8 or IV.C.6, the notification to the charged member or member subject to the complaint, as the case may be, shall also be accompanied by a copy of the report of the Investigator.
7. In order to respond to the statement of charges or the proposed letter of warning/admonishment, the charged member or member subject to the complaint, as the case may be, is eligible (but not required) (a) to appear at the Hearing in person, with legal counsel if desired, and (b) to provide a written statement to the Hearing Board. Although the member's attendance is not required, he or she is urged to attend.
8. The Hearing shall be conducted as follows:
  - a. Attendance at Hearings shall be limited to:
    - 1) members of the Hearing Board,
    - 2) the Executive Director and other designated Society staff members,
    - 3) the Investigator,

- 4) the charged member or the member subject to the complaint, as the case may be, and his or her invitees
  - 5) the complainant,
  - 6) witnesses,
  - 7) a qualified court reporter,
  - 8) Legal counsel for the Society and for any of the above if desired,
  - 9) observers from the Ethics Committee.
- b. The charged member or member subject to the complaint, as the case may be, and his or her counsel shall have the right to be present throughout the Hearing and the right to question any witness, the complainant, if present, and the Investigator.
  - c. A record of the Hearing shall be made by a qualified court reporter. A transcript will be prepared of the Hearing and a copy made for the Society and a copy made for the charged member or member subject to the complaint, as the case may be.
  - d. The Chair of the Hearing Board shall preside.
9. The Agenda for the Hearing shall be as follows:
- a. Opening statement by the Chair of the Hearing Board containing a summary of the issues before the Hearing Board (to be accompanied with distribution to all present of the statement of charges or the proposed letter of warning/admonishment, as the case may be).
  - b. Statement by the Chair that the Hearing Board will limit its deliberations and voting to the statement of charges or the proposed letter of warning/admonishment, as the case may be.
  - c. Opening statement by the charged member or member subject to the complaint, as the case may be, or his or her counsel (the opening statement to be made at the option of the charged member or member subject to the complaint).
  - d. Presentation by the Investigator of evidence relating to the matter.
  - e. Defense or rebuttal by the charged member or member subject to the complaint (the defense or rebuttal to be made at the option of the charged member or member subject to the complaint). (If no defense or rebuttal is presented either in person or in writing, the Hearing Board shall proceed with the Hearing on the basis of the statement of charges or proposed letter of warning/admonishment, as the case may be, the materials presented to the Hearing Board pursuant to IV.E.1, and Investigator's oral presentation at the Hearing).

- f. A short recess to allow the Hearing Board members opportunity to review the evidence and prepare questions.
  - g. Opportunity for members of the Hearing Board to question any witness; the charged member or member subject to the complaint, as the case may be, if present; the complainant if present; and the Investigator.
  - h. Closing statements, if desired, by the Investigator and by the charged member or member subject to the complaint, as the case may be, or his or her counsel (the closing statement by or on behalf of the charged member or member subject to the complaint to be made at the option of that member).
  - i. The Chair shall then close the Hearing and the Hearing Board shall go into executive session to discuss the evidence presented and reach a decision.
10. An alleged violation of the Code of Ethics or Conflicts of Interest Policy shall be sustained or deemed to have been proven only if the preponderance of the evidence establishes facts which, if true, would constitute a violation of the Code of Ethics or Conflicts of Interest Policy. Accordingly, the Hearing Board is charged with evaluating both (a) the sufficiency of the allegations to establish a violation of the Code of Ethics or Conflicts of Interest Policy and (b) the truth of those allegations.
11. The Hearing Board shall determine the case by voting by ballot. A majority vote of the entire Hearing Board shall prevail.
12. The following procedure will be followed sequentially in the case of matters involving the appeal of a proposed letter of warning/admonishment:
- a. With respect to each provision of the Code of Ethics or Conflicts of Interest Policy alleged in the proposed letter to have been violated, the Hearing Board shall determine in a separate ballot with respect to each such provision whether the alleged violation has been sustained or proven.
  - b. If no alleged violation is voted to have been sustained or proven, the member subject to the complaint shall be declared "cleared of all allegations," whereupon the procedure in IV.B.7 for situations in which proposed letters of warning/admonishment are appealed and deemed unwarranted shall be followed.
  - c. If any alleged violation is voted to have been sustained or proven, the issuance of a letter of warning/admonishment with respect to those violations only shall be deemed to be warranted, whereupon the procedure

in IV.B.7 for situations in which proposed letters of warning/admonishment are appealed and deemed warranted shall be followed.

- d. If a proposed letter of warning/admonishment is deemed warranted only in part, there shall be both a letter of warning/admonishment with respect to those matters deemed warranted and a notification of withdrawal of the proposed letter of warning/admonishment with respect to those matters deemed unwarranted.
  - e. Except as provided in IV.D, a determination pursuant to this IV.E.12 may not be appealed.
  - f. The remaining portions of IV.E shall not apply with respect to matters involving the appeal of a proposed letter of warning/admonishment.
13. The following procedure will be followed sequentially in the case of matters involving a statement of charges:
- a. With respect to each provision of the Code of Ethics or Conflicts of Interest Policy alleged in the statement of charges to have been violated, the Hearing Board shall determine in a separate ballot with respect to each such provision whether the alleged violation has been sustained or proven.
  - b. If no alleged violation is voted to have been sustained or proven, the member subject to the complaint shall be declared “cleared of all charges.”
  - c. If one (1) or more charges are sustained, a ballot shall be taken on the question: “Shall the Hearing Board recommend that the charged member be expelled from the Society?” A vote of two-thirds of the entire Hearing Board shall be required for expulsion.
  - d. If the ballot on expulsion fails to carry, a ballot shall then be taken on the question: “Shall the Hearing Board recommend that the charged member be suspended for one (1) year from the Society?” A majority vote of the entire Hearing Board shall prevail.  
  
Suspension shall withdraw all rights and privileges of the member, but it shall not affect any Society insurance protection.
  - e. If the ballot on suspension fails to carry, a ballot shall be taken on the question: “Shall the Hearing Board recommend that the charged member be sent a letter of censure?” A majority vote of the entire Hearing Board shall prevail.



- f. If the ballot on censure fails to carry, the charged member shall be declared “cleared of all charges.”
  - g. If the charged member has resigned without right of reapplication and is subsequently “cleared of all charges,” suspended, or censured, per IV.E.13.b, d or e, the words, “without right of reapplication” shall be removed from the charged member’s resignation record.
  - h. If the charged member has resigned without right of reapplication and is subsequently expelled, per IV.E.10.c, the member’s resignation shall remain “without right of reapplication.”
14. Within five (5) business days of its determination with respect to a matter involving a statement of charges, the Hearing Board shall provide written notification of the determination (including the text of any opinion in which the determination is recorded) (the “decision”) to the Executive Director, the President, and the Chair of the Ethics Committee.
15. A determination by the Hearing Board that a charged member is “cleared of all charges” may not be appealed, and the complaint in the matter is barred and, even if revised, may not be resubmitted.
16. Within thirty (30) days after receipt of a decision that a charged member is “cleared of all charges,” the Executive Director shall:
- a. provide the Board of Governors and the members of the Ethics Committee with a copy of the decision,
  - b. by certified mail (return receipt requested), provide all interested parties with a copy of the decision together with notice that the matter is closed pursuant to IV.E.15,
  - c. shall deposit the decision in the official file of the matter, close such file, and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.
17. Within thirty (30) days after receipt of a decision that a charged member has violated the Code of Ethics or Conflicts of Interest Policy, the Executive Director shall:
- a. provide the Board of Governors and the members of the Ethics Committee with a copy of the decision,
  - b. provide the Board of Governors with a copy of the materials supplied to the President pursuant to IV.B.8 and a copy of any written statement

submitted by or on behalf of the charged member pursuant to IV.E.7.b, and

- c. by certified mail (return receipt requested), provide the charged member with a copy of the decision and notification that, unless the decision is appealed within thirty (30) days as provided in IV.F.1, the Hearing Board's determination will be reviewed by the Board of Governors pursuant to IV.F.5.

18. The expenses incurred by the Hearing Board for travel of the Hearing Board members, the court reporter, the Society's legal counsel, and witnesses required by the Hearing Board shall be covered by the Society. The charged member or member subject to the complaint shall be responsible for any expenses relating to the member's defense, including counsel and witnesses.

F. Review and Appeal Phase (Expulsion, Suspension or Censure)

1. If a Hearing Board determines that a member has violated the Code of Ethics or Conflicts of Interest Policy, the member may appeal the matter to the Board of Governors, provided the letter of appeal is received by the Office of the Executive Director not later than thirty (30) days after the notification described in IV.E.14.c is sent to the member. Any such appeal shall conclude with the following statement by the member:

"All facts alleged in this appeal are, to the best of my knowledge, true, correct and complete, and I have neither knowingly misrepresented nor knowingly omitted any information which would be material to the evaluation of the merits of this appeal. I understand that if the foregoing statements are untrue, I may have violated the Society's Code of Ethics."

2. A member's appeal shall be disqualified if it is made directly to members of the Board of Governors or is accompanied by direct communications with the Board of Governors. The Board of Governors will review the record of the Hearing, the written request for the appeal and any written statement submitted by or on behalf of the charged member and will hear the charged member in person or by his or her legal counsel. The appeal shall be denied unless the member demonstrates to the satisfaction of the Board of Governors (a) that there were substantial errors in significant information presented to the Hearing Board, (b) that there is additional information, not made available to the Hearing Board, which might reasonably have led it to a different result, (c) that the Hearing Board's decision was erroneous, or (d) that the Hearing Board failed to follow the procedures set forth in IV.E. Procedural errors prior to the Hearing shall not be grounds for the appeal of a Hearing Board decision.

3. The Board of Governors may take the following action after the appeal:
  - a. The Board of Governors may sustain the decision of the Hearing Board and implement the recommended action against the charged member.
  - b. The Board of Governors may sustain the decision of the Hearing Board, but modify the recommended action against the charged member to a less serious action.
  - c. The Board of Governors may dismiss the charge against the charged member.
4. If the Board of Governors elects action under IV.F.3.a. or b., the following voting rules shall apply (notwithstanding any contrary provision of the Society's Constitution or By-Laws):
  - a. An affirmative vote of seven (7) members of the Board of Governors, at a meeting where a quorum is present, shall be required to confirm a decision of the Hearing Board leading to the expulsion of the charged member.
  - b. An affirmative vote of six (6) members of the Board of Governors, at a meeting where a quorum is present, shall be required to confirm a decision of the Hearing Board leading to the suspension or censure of the charged member.
5. If the charged member does not appeal the decision of the Hearing Board, the Board of Governors shall at its next regularly scheduled meeting vote on whether to confirm the decision of the Hearing Board and to implement the recommended action. If the Board of Governors elects not to confirm the decision of the Hearing Board, the Board of Governors shall determine such actions as it deems fitting and proper.
6. It shall be within the discretion of the Board of Governors to determine what portion, if any, of its fact-finding and deliberations concerning an appeal under this IV.F shall be conducted in executive or special session.
7. Within thirty (30) days of a decision by the Board of Governors, the Executive Director shall:
  - a. provide the Chair of the Ethics Committee with written notification of the decision together with any accompanying explanations provided by the Board of Governors, to be used for the future guidance of the Committee in its administration of ethics matters brought before it,

- b. by certified mail (return receipt requested), provide all interested parties with written notification of the decision together with notice that the matter is closed pursuant to IV.F.6,
  - c. shall deposit a copy of such written notification in the official file of the matter, close such file, and retain the file in the records of the Society for not less than ten (10) years from the date on which the initial complaint was received by the Society.
8. Decisions of the Board of Governors may not be appealed. A complaint disposed of by the Board of Governors, even if the complaint is revised, may not be resubmitted.
9. All files concerning ethics complaints and the resolution thereof shall be confidential and may not be disclosed except by authority of the Board of Governors. The records shall be retained for a period of not less than ten (10) years from the date on which the initial complaint was received by the Society. The proceedings may be synopsisized and made anonymous for later publication for instructive purposes.
10. The membership shall be notified of all disciplinary actions taken by the Board of Governors under this IV.F for violations of the Code of Ethics or Conflicts of Interest Policy, by publication of a suitable notice in MECHANICAL ENGINEERING or ASME NEWS. The name of the disciplined member shall not be published. However, the action of the Board of Governors, including the name of the disciplined member, shall be reported to the section chair and appropriate Society officers.

Responsibility: Committee of Past Presidents/Ethics Committee

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

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

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

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(Unit Reassignment Due to Reorganization 2/12)  
November 15, 2013



## SOCIETY POLICY

### CONFLICTS OF INTEREST

#### I. PREFACE

- A. Article C2.1.1 of the Constitution lists the following as one purpose of the Society: To “[p]romote a high level of ethical practice.”
- B. Article C2.1.1 further provides that “[i]n all professional and business relations the members of the Society shall be governed by the Code of Ethics.”
- C. Society Policy P-15.7 states in part, “Engineers shall act in professional matters for each employer or client as faithful agents or trustees, and shall avoid conflicts of interest or the appearances of conflicts of interests.”

#### II. PURPOSE

Each individual acting for or in the name of the American Society of Mechanical Engineers (“ASME” or the “Society”) is in a position of trust. This Society Policy is intended:

- A. To further assure the objectivity and public confidence in the integrity of all Society deliberations and statements, by establishing guidelines and procedures concerning conflicts of interest. It is acknowledged and understood that competent and knowledgeable individuals of recognized abilities, qualifications and interest who participate in professional activities may have potential conflicts of interest.
- B. To establish guidelines and procedures to enable individuals to act ethically and to uphold the integrity of the Society's policies, rules, codes and standards.
- C. To ensure that individuals act in the Society's best interest and comply with applicable legal requirements.

#### III. POLICY APPENDIX A & APPENDIX B

- A. Appendix A (Technical or Membership Matters)

Appendix A of this Society Policy applies to decisions or actions pertaining to ASME and involving Technical or Membership Matters. A matter is a “**Technical or Membership Matter**” if it pertains primarily to a technical issue or a membership issue and is not a Financial Matter. Generally speaking, matters coming before the following bodies within ASME are Technical or Membership Matters: the Nominating Committee, the Committee on Organization and Rules, the Strategy Advisory Committee, Council on Standards and Certification and the Committee of Past Presidents as well as any units or sub-units of the Society that normally consider Technical or Membership Matters.

B. Appendix B (Financial Matters)

Appendix B of this Society Policy applies to decisions or actions pertaining to ASME (or an ASME affiliate) and involving Financial Matters, but only if the Financial Matter is a **“Covered Arrangement”** as defined in Appendix B. The term **“Financial Matters”** means a matter involving the expenditure, augmentation, use, disposition or allocation of ASME's resources or the resources of an ASME affiliate. A Financial Matter includes (without limitation) any recommendation, advice, decision or action concerning:

- an expenditure by ASME (e.g., payment of compensation or a reimbursement, leasing or licensing property from third parties, buying property, contracting for services, and granting a prize or award);
- an augmentation of ASME's resources or capacity (e.g., accepting a gift or bequest of money or property, accepting the use of services, or joining forces with another organization); or
- the use, investment, disposition or allocation of ASME resources (e.g., selling ASME's property, leasing or licensing ASME property to third parties, selecting an investment advisor or manager, and allowing third parties to use ASME property or other resources such as staff time, endorsements, logos, or other intellectual property).

If a matter involves both Financial Matters and Technical or Membership Matters, it should be handled in a manner consistent with both Appendix A and Appendix B of this Society Policy to the extent possible, and in the event of uncertainty, in a manner consistent with Appendix B.

C. INTEGRAL PART AND USE OF DEFINED TERMS

Appendix A and Appendix B are incorporated in (and therefore are an integral part of) this Society Policy. Capitalized terms used in Appendix A or Appendix B and not defined in such Appendices have the meanings set forth above.

**IV. USE OF ASME NAME, SEAL, EMBLEM, INITIALS, TITLES, ETC.**

The use of Society titles for those holding elected and non-elected office within the Society shall follow the guidelines stated in paragraph III.D.4 of Society Policy P-14.6, Society Name, Seal, Emblem, Initials, Titles, Identification and Certificates. Violations of those guidelines by volunteers shall be considered under violations of the Code of Ethics. (See Society Policy P-15.7, Ethics.)

**V. USE OF ASME STATIONERY**

Society Policy P-14.6 Society Name, Seal, Emblem, Initials, Titles, Identification and Certificates contains provisions with respect to the use of ASME stationery in Paragraph III.B.4.



## VI. NOTICE, STATEMENT OF ADHERENCE, AND OVERSIGHT

A. *Notice.* Before taking office (including as a Governor-elect or President-elect), each member of a unit or sub-unit of the Society and each volunteer elected or appointed to represent ASME in some other capacity shall be sent by mail or as an electronic link, as appropriate, a copy of this Society Policy, Society Policy P-15.7, Ethics and Society Policy P-14.6, Society Name, Seal, Emblem, etc., and be directed to adhere to the applicable provisions of these policies as a condition of acting for or representing the Society.

B. *Statement of Adherence.* Before taking office (including as a Governor-elect or President-elect), unless there is in ASME's files a prior signed acceptance of Society Policy P-15.8, each member of a unit or sub-unit of the Society and each volunteer elected or appointed to represent ASME in some other capacity shall state in writing his or her commitment to adhere to the applicable provisions of this Society Policy. If this signed Statement of Adherence is not on file, the volunteer may not take office.

C. *Updated Statement of Adherence.* If either Policy P-14.6 or P-15.8 receives substantive revision as determined by the Board of Governors, all volunteers required to have a Statement of Adherence on file shall receive a copy of the revised Policy and shall be requested to sign an updated Statement of Adherence. Should there be any occurrence where a volunteer does not sign a new Statement of Adherence and forward it to the Society within 90 days, the Executive Director shall inform the pertinent board, committee, sector or other pertinent body that the volunteer is in violation of this provision of this Society Policy and may not continue in office or further represent ASME. When action is taken by a volunteer to comply with this Policy, that individual shall be reinstated to his or her position and allowed to represent ASME in his or her previous position.

D. *Oversight.* At least twice a year, the Executive Director of ASME shall submit a report to the Ethics Committee certifying that the requirements of subparagraphs (A), (B) and (if applicable) (C) have been met and shall include names of those volunteers not in compliance.

E. *Employees.* Notice to ASME employees and the handling of Statements of Adherence and Updated Statements of Adherence will be pursuant to ASME employment procedures determined by the Executive Director.

## VII. GUIDANCE

Volunteers and employees are urged to seek prompt input from the Office of the General Counsel if they have a question about the proper application of this Society Policy, including a decision whether a matter is a Technical or Membership Matter, a Financial Matter, both, or neither.

**APPENDIX A**  
**(ASME Conflicts Policy for Technical or Membership Matters)**

**1. PREAMBLE (for Technical or Membership Matters)**

Because ASME holds as paramount the safety, health, and welfare of the general public, each member and non-member (each, a “volunteer”) participating in decisions with respect to Technical or Membership Matters has a fundamental responsibility to exercise impartial professional judgment to enhance the Society and the practice of mechanical engineering in the public interest. Appendix A applies to volunteers when there are discussions, deliberations or voting with respect to Technical or Membership Matters, whether or not arising during the formal session of a committee or other body within ASME.

This Appendix A is in addition to, and not in lieu of, any policy or operating guide applicable to a particular ASME activity (e.g., honors and awards) or body (e.g., a Sector Board or Council or a Board within a Sector). In the event of a conflict between the terms of any such policy or operating guide and this Appendix A, the terms of this Appendix A shall govern the matter.

Each individual has the primary responsibility for assuring his or her adherence to this Appendix A as well as to Appendix A and other applicable ASME policies or operating guides that address conflicts of interest.

**2. DEFINITIONS (for Technical or Membership Matters)**

- a. *“Conflicts of Interest.”* The potential for a “conflict of interest” involving Technical or Membership Matters exists whenever a person owes a loyalty to multiple interests or organizations. Having different interests or loyalties does not constitute a conflict of interest when the action desired by each interest is the same. This situation may be described as a community of interest. A conflict of interest in Technical or Membership Matters occurs only when loyalty to one interest would impel a course of action different from that impelled by another interest. For example, while acting for or on behalf of the Society in a Technical or Membership Matter, a volunteer may be asked to consider a matter which directly affects the specific rather than the collective interests of the individual's employer or a competitor of the employer. In such instances, there could be a conflict of interest between exercise of the volunteer's independent professional judgment on behalf of ASME and the public and the individual's loyalties and responsibilities to his or her employer or another entity.
  
- b. *“Balance of Interest.”* In many ASME standards-writing committees and other committees, the procedures for appointment provide for a balanced or diversified representation among the various categories of interest within the scope of that committee's concern. This “balance of interest” minimizes the instances of appearance of conflict of interest in Technical or Membership Matters by preventing situations in which a single interest group could control the action on an issue. Accordingly, where general categories of interest were considered in appointing a balanced committee or other group, an individual's identification with the particular interest shall not be grounds for raising an issue of the

appearance of a conflict of interest in Technical or Membership Matters. This is particularly so because the removal of one or more individuals representing a particular category of interest on conflict of interest grounds could upset the planned balance of economic and technical interests.

### 3. **DUTIES AND RESPONSIBILITIES (for Technical or Membership Matters)**

- a. It is the duty of volunteers acting for or on behalf of the Society in Technical or Membership Matters to be aware of the possibility of a conflict of interest between their responsibilities to ASME and the public on the one hand and to their employer or another entity on the other.
- b. All volunteers have a fundamental responsibility to refrain from participating in Society decision-making on Technical or Membership Matters when a competing interest precludes or inhibits the exercise of the volunteer's independent professional judgment on behalf of ASME, or when the nature of the competing interest is such that the volunteer's continued participation would unreasonably jeopardize the integrity of the decision-making process in Technical or Membership Matters.

### 4. **PROCEDURES (for Technical or Membership Matters)**

- a. In instances where it is clear to an individual volunteer that his or her judgment with respect to a Technical or Membership Matter is controlled by his or her loyalty to a competing interest, he or she should disqualify himself or herself and refrain from influencing and participating in the deliberations and decision-making regarding the conflict-affected matter. This does not preclude the volunteer's attendance and participation at any meeting of a committee or other body on the same basis as any non-member of the committee or other body.
- b. In instances where an individual volunteer believes that there may be the appearance of a conflict of interest (a "possible conflict situation") involving a Technical or Membership Matter, although he or she believes that his or her independent judgment will not be affected by a competing interest, the volunteer should nevertheless take at least one of the following consultative courses of action:
  - i. If the individual is serving on a unit or sub-unit of the Society considering a Technical or Membership Matter, the individual should make certain that all concerned with the projected deliberations or decision-making on the Technical or Membership Matter clearly understand the facts and circumstances involved in this possible conflict situation. Then, following due consideration of the circumstances involved, unless a three-fourths majority concur by secret ballot that the individual's continued participation will not unreasonably jeopardize the integrity of the decision-making process, the individual shall not attempt to influence, be present at or participate in deliberations and decision-making regarding the conflict-affected matter. Such disqualification considerations may be either referred or appealed, in the first instance, to the appointing committee or supervisory body, if any, and then, if unresolved, to the

Ethics Committee. Such referral and appeals may be made by the chair of the unit or sub-unit, the individual volunteer or any other participant in the consideration of the possible conflict situation. Additionally, the member may elect to bypass the secret-ballot measure described above and take the matter directly to the appointing committee or supervisory body, if any, and then, if unresolved, to the Ethics Committee.

- ii. If the individual is acting for or on behalf of ASME other than in a committee or group participation capacity, the individual should bring the possible conflict situation directly to the attention of the appointing committee or supervisory body, if any, and then, if unresolved, to the Ethics Committee.
  
- c. Any member of a sector, board, division, committee, section, subcommittee or other decision-making body who believes that the continued participation of any other member of that body in a Technical or Membership Matter may unreasonably jeopardize the integrity of the decision-making process may call for the consultative courses of action set forth in Paragraph 4(b)(i) or (ii) above.

## 5. **IMPLEMENTATION AND COMPLIANCE**

The Ethics Committee shall oversee the implementation of, and compliance with, this Appendix A. The Ethics Committee shall have authority to review questions of conflicts of interest under this Appendix A and to render opinions thereon. The Ethics Committee may authorize the Chair of the Ethics Committee to issue a letter of warning or admonishment to persons who violate this Appendix A or request that the Chair refer the matter to the Executive Director for processing as an ethics complaint under Society Policy P-15.4. A decision of the Ethics Committee shall be binding and final if a letter of warning or admonishment is the course of action.

## APPENDIX B

### (ASME Conflicts Policy for Financial Matters)

#### 1. PREAMBLE (for Financial Matters)

Because ASME is a not-for-profit corporation formed under the laws of the State of New York, those who serve ASME have a duty to adhere to the purposes to which ASME is dedicated and to conduct the affairs of ASME in a manner consistent with those purposes and not to advance their personal financial interests when Financial Matters are under consideration. This Appendix B is intended to ensure that those who fulfill leadership roles with respect to Financial Matters act in ASME's best interest and comply with applicable legal requirements, despite the existence of a conflict of interest. This Appendix B is designed to promote the identification, disclosure, evaluation and disposition of any real, potential or apparent conflicts of interest that might, in fact or in appearance, call into question the duty of undivided loyalty owed to ASME by its leaders.

This Appendix B is in addition to, and not in lieu of, any conflict of interest policies promulgated by the Executive Director with respect to ASME employees and is also in addition to, and not in lieu of, Appendix A and any policy or operating guide applicable to a particular ASME activity (e.g., honors and awards) or body (e.g., a Sector Board or Council or a Board within a Sector). In the event of a conflict between the terms of any policies, operating guides or Appendix A and this Appendix B, the terms of this Appendix B shall govern the matter.

Each individual has the primary responsibility for assuring his or her adherence to this Appendix B as well as to Appendix A and other applicable ASME policies or operating guides that address conflicts of interest.

#### 2. DEFINITIONS (for Financial Matters)

- a. The term "**Authorized Body**" means any one of the following: (a) the ASME Board of Governors, (b) the Audit Committee, or (c) a Committee of the Board having delegated authority with respect to a given sphere of activity. If no Committee of the Board has delegated authority with respect to a given sphere of activity, the term "**Authorized Body**" means the ASME Board of Governors or the Audit Committee.
- b. The term "**Committee Member**" means each member of the following bodies: the Committee on Finance and Investment, the Committee on Executive Director Evaluation and Staff Compensation, the Audit Committee, Pension Plan Trustees, and any committee, task force, or similar body appointed or designated by the Board of Governors or the President.
- c. The term "**Committee of the Board**" is a committee appointed by the Board of Governors and whose voting membership consists of at least three individuals, all of whom are members of the Board of Governors. At the time of adoption of this Society Policy, the

only committees that are Committees of the Board are the Audit Committee and the Executive Director Evaluation and Staff Compensation Committee. Because the Committee on Finance and Investment includes members who are not members of the Board of Governors, it is not a Committee of the Board.

- d. The term “**Covered Arrangement**” means each proposed transaction, agreement or other arrangement (including any grant, scholarship or compensation arrangement) in which:
- i. (A) one or more Related Parties (defined below) would have a financial interest and (B) the Society or any affiliate of the Society (including without limitation the ASME Foundation) would be a participant; or
  - ii. there could be an actual or perceived conflict of interest for some other reason, including any transaction, agreement or other arrangement in which the interests of a Related Party could be seen as competing with the interests of the Society or any affiliate of the Society.
- All Covered Arrangements are circumstances that constitute a perceived, potential or actual conflict of interest and as such are subject to the terms of this Appendix B. If a Covered Arrangement involves an affiliate of the Society, it is an “**Affiliate Covered Arrangement.**”
- e. The term “**Governor**” means each member of the Board of Governors in office from time to time, as well as each Governor-elect.
- f. The term “**Key Employee**” means each person who is in a position to exercise substantial influence over the affairs of the Society within the meaning of Section 4958(f)(1)(A) of the Internal Revenue Code and Section 53.4958-3(c), (d) and (e) of the Treasury Regulations or analogous provisions. The group of Society employees who are deemed to be Key Employees includes (but is not necessarily limited to) employees designated from time to time by the Executive Director, in consultation with the Treasurer.
- g. The term “**Officer**” means each volunteer officer of the Society holding office from time to time and holding the rank of Vice President, Senior Vice President, President, Immediate Past President or President-elect.
- h. The term “**Related Parties**” means:
- i. The Governors, Officers, Committee Members and Key Employees of the Society.
  - ii. The following living relatives of each individual described in subparagraph (i):
    - (A) his or her ancestors
    - (B) his or her spouse or domestic partner
    - (C) his or her siblings and half-siblings

- (D) the spouses or domestic partners of his or her siblings and half-siblings
  - (E) his or her children, grandchildren, and great-grandchildren<sup>1</sup>
  - (F) the spouses or domestic partners of his or her children, grandchildren and great-grandchildren.
- iii. The following entities and trusts:
- (A) any entity or trust of which any individual described in subparagraph (i) or (ii) serves as a director, trustee, officer or employee.
  - (B) any entity or trust in which any one or more individuals described in subparagraph (i) or (ii) have a 5% or greater ownership or beneficial interest.

### 3. PROCEDURES (for Financial Matters)

#### a. Individual Responsibilities

- i. *Disclosure.* If a Governor, Officer, Committee Member or Key Employee of ASME has a direct interest in a Covered Arrangement, or an indirect interest through a person who is a Related Party with respect to him or her, he or she must immediately disclose in writing the existence and circumstances of the arrangement (including the material facts concerning his or her interest) to an Authorized Body.
- ii. *Refraining from Influence.* The individual must refrain from attempting to influence the deliberation or voting on the Covered Arrangement.
- iii. *Deliberations and Voting.* The individual may not participate in or attend the deliberations or vote on the Covered Arrangement. However, at the request of the Authorized Body, the individual may present background information or answer questions on the Covered Arrangement. The conflict does not preclude the individual's attendance at and participation in the rest of the meeting of the Authorized Body.
- iv. *Affiliate Covered Arrangements.* If the Covered Arrangement is also an Affiliate Covered Arrangement, the disclosure required by Paragraph 3(a)(i) shall be made only to the Audit Committee of the Society and the Audit Committee of the affiliate (or, if the affiliate does not have an Audit Committee, to the governing body of the affiliate). The Audit Committee of the Society must confirm that the steps required in this Paragraph 3(a) have been and are being taken, and no further action by the Society shall be required pursuant to this Appendix B except as the Audit Committee shall determine in the specific instance following consultation with the Audit Committee of the affiliate.

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<sup>1</sup> Adoptive children, grandchildren, and great-grandchildren are included within this definition.

b. Society Responsibilities

- i. *Authorized Body Tasked with Fulfilling These Responsibilities.* An individual's disclosure with respect to a Covered Arrangement pursuant to Paragraph 3(a) triggers the Society's responsibilities under this Paragraph 3(b) (unless it is an Affiliated Covered Arrangement, in which event the Audit Committee will determine which, if any, responsibilities under this Paragraph (b) will apply or if some other course of action is warranted). However, the Authorized Body receiving the disclosure may request that another Authorized Body perform the Society's responsibilities under this Paragraph 3(b), in which event references below are to that Authorized Body if it undertakes the responsibilities. For example, if disclosure is made to the Audit Committee, the Audit Committee may request that the Board of Governors fulfill the remaining responsibilities under this Paragraph 3(b).
- ii. *Confirmation of Individual Actions.* The Authorized Body must confirm that the steps required in Paragraph 3(a) have been and are being taken.
- ii. *Fairness and Reasonableness.* Before approving a Covered Arrangement, the Authorized Body must determine that it is fair, reasonable and in the Society's best interest at the time of such determination.
- iv. *Comparability Data.* Prior to entering into the Covered Arrangement, the Authorized Body must obtain and rely on comparable market data, to the extent available.
- v. *Alternative Transactions.* Prior to entering into the Covered Arrangement, if a related party has a "substantial financial interest" in it within the meaning of New York law, the Authorized Body must consider alternative transactions, agreements or arrangements, to the extent available.
- vi. *Materiality to ASME.* The Authorized Body must determine whether the arrangement is material to the financial, reputational or other interests of the Society, in which event consideration must be given to alternative transactions, agreements or arrangements, to the extent possible. If an Authorized Body other than the Board of Governors makes a determination that the arrangement is material, it (A) must promptly notify the Board of Governors of this determination and (B) may condition its approval, if any, of the arrangement on the further review, approval, endorsement or other input of the Board of Governors.
- vii. *Voting.* All determinations and approvals with respect to a Covered Arrangement require the affirmative vote of not less than a majority of the members of the Authorized Body present at the meeting of the Authorized Body (provided a quorum is present and no greater portion is required by applicable



law or Society requirement). Interested members of the Board of Governors may be counted solely for determining the presence of a quorum. Notwithstanding the foregoing, the salary of the Executive Director may be set only by the affirmative vote of a majority of the entire Board of Governors.

- viii. *Contemporaneous Documentation.* All disclosures and recusals with respect to a Covered Arrangement together with the basis for all determinations and approvals of the Authorized Body must be contemporaneously documented in writing (including in the minutes of any meeting at which the arrangement was discussed and voted on). This documentation must include an account of the consideration of comparable market data and alternative transactions, agreements or arrangements, to the extent considered or available.
- ix. *Reporting to the Board or Audit Committee.* If the arrangement is before an Authorized Body other than the Board of Governors or Audit Committee, the existence of the matter and its disposition must be promptly disclosed to the Board of Governors and Audit Committee.

#### **4. ANNUAL COMPLIANCE AND DISCLOSURE STATEMENT**

At least once per year, each Governor, Officer, Committee Member and Key Employee must complete, sign and submit to the Secretary a written Compliance and Disclosure Statement acknowledging that he or she has read and is in compliance with this Policy and identifying to the best of his or her knowledge:

- a. any business or nonprofit of which the individual is an officer, director, trustee, member, owner or employee and with which the Society or any affiliate of the Society has a relationship.
- b. any transaction in which the Society or any affiliate of the Society is a participant and in which the individual or Related Party with respect to that individual might have a conflicting interest;
- c. any other interests that could give rise to conflicts of interest.

Prior to the initial election or appointment of any Governor, he or she must supplement his or her Statement of Adherence (referenced above) with the disclosure described in Paragraphs 4(a), (b) and (c).

In addition, the Executive Director, in consultation with the Board of Governors, shall identify those levels of ASME employees who are also subject to the requirement to provide the Compliance and Disclosure Statement described above and shall require each employee at those levels to complete, sign and submit a Compliance and Disclosure Statement to the Secretary on an annual basis as described above.

The Secretary shall provide a copy of all completed Compliance and Disclosure Statements to the Chair of the Audit Committee and shall periodically update the Chair of the Audit Committee concerning compliance with the annual disclosure statement requirements of this Society Policy. Completed disclosure statements shall be available for inspection by any member of the Board of Governors and may be reviewed by the Society's legal counsel.

## 5. IMPLEMENTATION AND COMPLIANCE

The Audit Committee shall oversee the implementation of, and compliance with this Appendix B.

Responsibility: Ethics Committee (Appendix A)  
Audit Committee (Appendix B)

Reassigned from Ethics Committee

Reassigned from Committee of Past Presidents/Ethics Committee

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

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

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

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(Unit Realignment Due to Reorganization 2/12)  
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(editorial change 8/18/14)  
(editorial change 5/25/16)  
(editorial change 6/17)



## **SOCIETY POLICY**

### **POLICY AGAINST DISCRIMINATION (INCLUDING DISCRIMINATORY HARASSMENT) - MEMBERS**

#### **I. PREFACE**

- A. Discrimination (including discriminatory harassment) by a member of ASME against any other member or ASME employee or job applicant on the basis of race, color, religion, sex, national origin, age, citizenship status, disability, covered veteran or military status, or any other characteristic protected by state or local equal employment opportunity laws, shall not be tolerated.
- B. Discrimination (including discriminatory harassment) by a member of ASME against an individual who is neither a member nor an employee or job applicant of ASME on the basis of race, color, religion, sex, national origin, age, citizenship status, disability, covered veteran or military status, or any other characteristic protected by state or local equal employment opportunity laws, is also of concern to ASME when the conduct occurs on ASME premises or during an ASME activity.
- C. Conduct in violation of this Policy is grounds for discipline by ASME, up to and including expulsion from membership.

#### **II. PURPOSE**

- A. To state the ASME policy against discrimination (including discriminatory harassment) by members.
- B. To describe the types of conduct prohibited by this Policy.
- C. To establish a procedure for dealing with violations of this Policy.

#### **III. POLICY**

- A. ASME prohibits discrimination on the basis of race, color, religion, sex, national origin, age, citizenship status, disability, covered veteran or military status, or any other characteristic protected by state or local equal employment opportunity laws with respect to any decision or recommendation made by a member concerning (a) the participation of another member in an ASME activity or (b) the hiring, performance evaluation or a work assignment of an ASME employee.
- B. Prohibited discriminatory conduct also includes conduct by a member that constitutes harassment based on race, color, religion, sex, national origin, age, citizenship status, disability, covered veteran or military status, or any other characteristic protected by state or local equal employment opportunity laws.
  - 1. Examples of such conduct are racial or ethnic slurs and threatening, intimidating or hostile acts directed at a particular sex or religion, or directed at a member or ASME employee because of his or her national origin or color.

2. Harassment does not require an intent to offend. Thus, when unwelcome by the recipient, certain conduct meant as a joke, a prank, or even a compliment can lead or contribute to harassment.
- C. Sexual harassment is a specific type of discriminatory harassment. ASME prohibits conduct that constitutes sexual harassment.
1. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature constitutes sexual harassment for purposes of this Policy when:
    - a. Submission to such conduct is made explicitly or implicitly a term or condition of an individual's work assignment at ASME or participation in any activity of ASME;
    - b. Submission to or rejection of such conduct by an individual is used as the basis for decisions or recommendations affecting such individual's employment at ASME or participation in any activity of ASME; or
    - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance at ASME or participation in any activity of ASME.
  2. No member with a leadership role is at any time to (1) threaten or imply that an individual's submission to or rejection of a sexual advance will in any way influence any decision, recommendation or evaluation regarding that individual's employment at ASME or participation in any activity of ASME; or (2) make any decision or recommendation concerning an individual's employment at ASME or participation in any activity of ASME on such a basis.
- D. Other conduct by members in ASME's workplace or in connection with any ASME activity that creates or could lead or contribute to an intimidating, hostile or offensive work environment, whether it be in the form of physical, visual or verbal harassment, is also prohibited. Such conduct includes, but it is not limited to:
1. repeated unwelcome sexual flirtations, advances, gestures, or propositions;
  2. verbal abuse of a sexual nature;
  3. graphic verbal comments of a sexual nature about an individual's body;
  4. sexually degrading words used to describe an individual;
  5. the access to, or display or distribution of, sexually suggestive objects or pictures (including via the use of computers); and

6. inappropriate touching of an individual.
- E. ASME also prohibits retaliation against any ASME member for making a good faith report or complaint of an alleged violation of this Policy, or for participating in an investigation of such a report of complaint, under the procedures set forth below.

#### IV. PROCEDURE

- A. Any member who believes that he or she has been subjected to any behavior by any ASME member or employee that violates this Policy should immediately bring the matter to the attention of the appropriate individual as set forth in paragraphs 1. and 2. below. Members who have information about conduct violative of this Policy directed toward other members or any ASME employee are also encouraged to report the relevant facts pursuant to this Policy. Prompt reporting is very important so that ASME can take action to stop the conduct before it is repeated.
  1. If the alleged victim and the alleged offender are members who are not employees of ASME, the complaint should be made to either of two members of the Committee of Past Presidents that have been designated by that Committee to serve in this function, currently Susan Skemp and Reginald Vachon, by e-mailing [asmepastpresidentcontact@asme.org](mailto:asmepastpresidentcontact@asme.org). Those individuals (and any other chair, leader, or vice president who may receive information concerning the existence of such a complaint) should immediately report the complaint to the Executive Director, regardless of whether the complaint was written or oral.
  2. If either the alleged victim or alleged offender is an employee of ASME, the complaint should be brought to the attention of the Executive Director. If the alleged offender is an employee of ASME, the procedures set forth in Sections IV.B. and IV.C. for handling the complaint will not apply. Instead, the Executive Director will report the complaint to ASME's Human Resources Department, and the complaint will be handled in its entirety in accordance with ASME's Employee Handbook (the applicable section(s) of which shall be available to any member upon request). If the alleged victim is an employee of ASME but the alleged offender is a member, the complaint will be handled in accordance with ASME's Employee Handbook, except that upon determining that this Policy has been violated, the Human Resources Department will report that determination to the Executive Director and the Chair of the Ethics Committee, who will decide whether disciplinary measures are appropriate in accordance with Section IV.C.4. below, and Sections IV.C.5. and IV.C.6. below will also apply.
  3. If either the alleged victim or alleged offender is neither a member nor an employee of ASME, but the alleged incident occurred on ASME premises or during ASME activities, the Executive Director shall, based on the circumstances, determine what, if any, action should be taken. If the alleged incident did not occur on ASME premises or during ASME activities, the Executive Director shall

inform the complainant that ASME has no jurisdiction and will accordingly take no action.

- B. Upon receiving a report of an alleged violation of this Policy by a member against another member, the Executive Director shall proceed as follows:
1. The Executive Director and the Chair of the Ethics Committee, shall, in consultation with each other, decide whether an attempt should be made to resolve the complaint via communication with the complainant and the alleged offender (“facilitation”). If they decide to pursue facilitation, the Executive Director, the Chair of the Ethics Committee or another individual selected by the Executive Director in consultation with the Chair of the Ethics Committee shall serve as the facilitator. Should facilitation result in resolution, the resolution agreed to by the complainant and the alleged offender shall be committed to writing and signed by both parties.
  2. If the Executive Director and Chair of the Ethics Committee decide that the matter should be formally investigated (whether or not it is referred to facilitation), the complainant will be informed and should promptly forward to the Executive Director a signed complaint detailing the allegations. In such a case, the procedures set forth in Section IV.C below shall apply.
  3. Notwithstanding any other provision of this Policy, the Executive Director, President or the Board of Governors may investigate any report of an alleged violation of this Policy (whether or not the complainant has submitted a signed complaint).
- C. An investigation of any complaint submitted pursuant to Section IV.B.2. shall proceed as follows:
1. The Executive Director or the Chair of the Ethics Committee will investigate or appoint another individual to investigate. The investigator will conduct interviews of the complainant, the alleged offender and other individuals as necessary.
  2. After completion of the investigation, the investigator will make a written report to the Executive Director and the Chair of the Ethics Committee, who will determine whether this Policy has been violated.
  3. If the Executive Director and the Chair of the Ethics Committee determine that this Policy has not been violated: (i) the complainant and alleged offender will be so informed; (ii) any written records concerning the investigation will be kept by the Executive Director in a confidential file for three years and will be destroyed at the end of that period if within that period no similar complaint against the alleged offender has been found to be valid; and (iii) no further action will be taken.



4. If the Executive Director and the Chair of the Ethics Committee determine that this Policy has been violated, they will decide on any appropriate remedial measures and/or disciplinary measures, up to and including expulsion from ASME, and inform the offender and the Board of Governors of their decision in writing. The Executive Director or the Chair of the Ethics Committee will also inform the complainant of the determination that the Policy has been violated, and, if applicable, of any remedial measures, and will determine what, if anything, the complainant shall be advised about any disciplinary measures taken as to the offender.
  5. The individual found to have violated this Policy may request in writing that the Board of Governors review the investigation process for compliance with Sections IV.C.1 – IV.C.4. of this Policy (or, if relevant, ASME's Employee Handbook). Any such request must be received by the Board of Governors within ten (10) days after the date the individual was informed of the decision. The Board of Governors will not review the merits of the decision. The Board of Governors will complete its review within thirty (30) days of receiving a timely written request. Any remedial and/or disciplinary measures will be held in abeyance pending completion of the Board of Governors' review.
  6. If the Board of Governors conducts a review and finds that the investigation complied with the relevant procedures, the remedial and/or disciplinary measures decided upon by the Executive Director and the Chair of the Ethics Committee will be taken. If the Board of Governors finds that the investigation did not comply with the relevant procedures, they may recommend (i) that the case be closed; (ii) that further investigative steps be taken in accordance with the appropriate policy; or (iii) if the failure to adhere to procedure was insignificant, that the remedial and/or disciplinary measures decided upon by the Executive Director and the Chair of the Ethics Committee be carried out. The Executive Director and the Chair of the Ethics Committee will take any further action necessary to resolve the complaint in accordance with the Board of Governors' recommendation.
- D. If the Chair of the Ethics Committee or Executive Director decides to abstain from participating in handling any complaint or report of an alleged violation of this Policy, he or she shall be replaced as follows:
1. In the case of the Chair of the Ethics Committee, the President shall appoint a replacement.
  2. In the case of the Executive Director, he or she shall be replaced by the Deputy Executive Director with the greatest seniority. If such Deputy Executive Director decides to abstain, he or she shall be replaced by the President, or, if he or she decides to abstain, the immediate Past President.

3. In the event all of the individuals holding the positions specified above shall abstain, the Board of Governors shall appoint from its membership two individuals to fulfill the roles of the Chair of the Ethics Committee and the Executive Director under this Policy.
- E. ASME will strive to keep the identity of persons making complaints pursuant to this Policy as confidential as possible.
  - F. It is a violation of this Policy for any retaliatory action to be taken or threatened against an individual who in good faith reports or provides information about a possible violation of this Policy or who in good faith participates in a related investigation or exercises any other right protected by the equal employment opportunity laws. In the event that a member believes he or she has been retaliated against for such action, he or she should use the reporting procedures outlined in Section IV.A. of this Policy to report the pertinent facts promptly. ASME will investigate and take appropriate action in the manner described above.
  - G. The making by a member of a complaint pursuant to this Society Policy which such member knows to be false or the providing by a member of information which such member knows to be false relating to such a complaint is a violation of the Code of Ethics of Engineers and may be the subject of a complaint against such member brought pursuant to Society Policy P-15.4. Any complaint of a violation of this Policy that has been determined to have been knowingly false shall be expunged from any and all records of ASME relating to the alleged offender.
  - H. The procedures for handling complaints set forth in Sections IV.C. and IV.D. above will also apply:
    1. If a complaint of a violation of this Policy is made against a member of ASME by an individual who is neither a member nor an employee of ASME, and the alleged incident occurred on Society premises or during Society activities; and
    2. If a complaint of a violation of this Policy is submitted to the Chair of the Ethics Committee as an alleged ethical violation.

Responsibility: Ethics Committee

Reassigned from Centers Board of Directors/Center for Career and Professional Advancement 11/2013

Centers Board of Directors/Center for Career and Professional Advancement

Reassigned from Centers Board of Directors/Center for Career and Professional Advancement 6/2012

Reassigned from Centers Board of Directors/Center for Professional Development, Practice and Ethics 4/23/09

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(Unit Reassignment Due to Reorganization 6/2012)  
(Unit Reassignment Due to Reorganization 9/2013)  
(editorial changes 01/14)



## SOCIETY POLICY

### SOCIETY NAME, LOGO, SEAL, EMBLEM, INITIALS, TITLES, IDENTIFICATION AND CERTIFICATES

#### I. PREFACE

- A. The preamble of the ASME Constitution and By-Laws defines and illustrates the seal and emblem of the Society.

#### II. PURPOSE

- A. To illustrate and designate the use of the name, acronym/logo, initials, seal, and emblem of the Society.
- B. To establish the rules and criteria governing the name, acronym/logo, initials, seal, emblem, titles, identification, commemorations and certificates of the Society.
- C. To assign the responsibility for notification of misuse of the name, logo, seal, and emblem of the Society and designate the procedure for taking action.

#### III. POLICY

- A. DESIGNATION AND ILLUSTRATION OF THE SOCIETY NAME, ACRONYM/LOGO, INITIALS, SEAL AND EMBLEM.
  - 1. In official usage, the Society name shall be designated as either THE AMERICAN SOCIETY OF MECHANICAL ENGINEERS, or the acronym ASME.
  - 2. The official Society seal is as shown in the accompanying illustration. This seal constitutes part of the incorporation of the Society under the laws of the State of New York and is utilized as a seal to be fixed to official documents. The design indicates the lever of Archimedes, capable of lifting the world if supported at an appropriate fulcrum point.
  - 3. The official Society logo is shown in the accompanying illustration. The logo symbolizes both the Society's history and its future and incorporates the ASME acronym and a globe. The logo colors are blue and black. It is used to indicate Society relationships or activities. Application has been made with the U.S. Patent and Trademark office to make this a registered trademark. The detailed instructions for use of the logo and name are shown in Graphics Guidelines Manual.



4. The official Society emblem is as shown in the accompanying illustration. The emblem incorporates the Society initials within a four-leaf clover design. It is a proprietary symbol to imply conformity with Society standards and practices.



The Society has registered its cloverleaf as a trademark. The registration mark must always appear with the cloverleaf on all printed material created, developed and owned by the Society. The designation is to be placed at the lower right of the cloverleaf between the M and S, as shown. The detailed instructions for use of the emblem and name are shown in the Graphics Guidelines manual.

5. The official Society initials and their format usage shall be: ASME. The initials ASME have been registered as a trademark. When the Initials are used as a primary display on a product created, developed or produced and distributed by the Society, the trademark registration must appear at the lower right of the E, as shown:

**ASME®**

#### B. USE OF THE ASME NAME, ACRONYM, LOGO, SEAL, EMBLEM AND INITIALS

1. The ASME name and its distinctive emblem have become internationally recognized through their use on Society publications, on its letterheads, codes and standards, membership certificates, certificates of award, honors, awards and its membership pins and badges. Without official authorization from the Board of Governors, no unit or Member of the Society may institute or use a logo different in format or display from the official logo. The Board of Governors has designated that the ASME logo will be used on all ASME materials. The only exceptions are ASME Codes and Standards and membership pins and badges, which still use the cloverleaf (emblem).
2. The formal use of the Society name and logo is to be reasonably uniform and is restricted for identification of Society or Member involvement in officially authorized activities. For joint activities, any printed or other visual materials developed in relation to that activity shall, unless particularly inappropriate, include use of the Society name and logo and emblem in a manner consistent with the significance of the Society and its role in the sponsorship of that activity. The Society name and logo shall constitute a primary display component of any printed or other visual materials, with any additional identification of a Society unit or group in a subsidiary display mode.
3. The Executive Director under the direction of the Board of Governors has responsibility for instituting standards and measures related to the manner and form of display of the Society name, logo, seal and emblem and for control and monitoring of such usage.
4. Members of ASME committees, boards, or other units must use care and good judgment in the use of ASME letterheads and envelopes. A letter written on ASME stationery must clearly distinguish personal comments and opinions of

the writer from official positions of ASME based on the ASME Articles of the Constitution, By-Laws, Society Policies, rules, procedures, or voted actions of units of ASME.

This exercise of care is necessary so that it is clear to the reader that the writer is not representing ASME in all comments on an ASME letterhead or material enclosed within an ASME envelope.

C. CRITERIA FOR INDIVIDUAL-USE ITEMS UTILIZING THE ASME NAME AND EMBLEM

Members may display the Society name, logo, seal, and emblem on certificates, plaques, pins, badges, and in applicable titles in their individual capacities according to the following criteria:

1. Each Member of the Society shall be entitled to obtain and display a certificate of membership, signed by the President and the Executive Director of the Society. A membership plaque or ornament purchased through the Society also may be displayed. Certificates of Membership shall display the ASME logo.
2. All Members of the Society in good standing shall have the right to use their applicable title -- either spelled out or abbreviated as follows:

Honorary Member	Hon. Mem. ASME
Fellow	Fellow ASME
Member	Mem. ASME
Affiliate	Affiliate ASME
Student Member	Student Mem. ASME

Those who additionally have Life membership status may so indicate by the term "Life" preceding the appropriate membership designation.

3. Each Member shall be entitled to wear the Society logo membership pin which distinguishes the various grades of membership or office according to the approved color scheme, or similarly approved jewelry.

The approved pin color scheme is as follows:

(*)President	Gold background with diamond inset in center
(*)Governor	Gold or blue background with emerald inset in center
(*)Vice President	Gold or blue background with ruby inset in center
(*)Senior Vice President	Gold or blue background with ruby inset in center
(*)Honorary Member	Gold background with pearl

inset in center

Fellow	Gold background
Member	Blue background
Affiliate	Gray background
Student Member	Blue center with white border

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(\* ) Presented at Society expense

4. Each Society Member, Auxiliary Member, and staff member holding an official position in the Society shall be entitled to wear a name badge which incorporates the Society emblem or logo and, as desired and appropriate, may additionally indicate Professional Registration and the Society unit with which the individual is associated. Badges may only be worn in connection with business of the Society.

Such badges may be purchased through the Society or agencies approved by the Society. Badge design and format shall be uniform and approved by the Executive Director.

Badge color codings and designs require prior approval by the Executive Director. Presently approved are:

Society Officers and Past Presidents	White badges with blue lettering
Other Past Officers of the Society	Light blue badges with white lettering
Fellows	Gold-colored badges with blue lettering
Honorary Members	Platinum colored badges with black lettering
Committee Personnel	Blue badges with white lettering
ECLIPSE Interns	Green badges with white lettering
Members of Staff	Red badges with white lettering

D. RULES GOVERNING DISPLAY AND USE OF ORNAMENTATIONS USING THE SOCIETY NAME, ACRONYM, LOGO, EMBLEM OR INITIALS

1. Other than its use on name badges, it is the policy of the Society that the use of the Society logo be reserved for the identification of the Society or one of its units or of its activities. Society members, staff members or others associated with the Society are not authorized to use the logo or emblem on their personal stationery or letterheads, business cards or other identification.



2. Units of the Society must use the Society name and logo on their publications and letterheads. All such letterheads and publications should additionally indicate the name of the section, technical division, committee or other unit of the Society.
3. A special series of ASME logos has been developed for use with the symbol stamps in the field of Codes and Standards. Their use is controlled by the Council on Standards and Certification under authorization of the Board of Governors.
4. Members holding elected office in the Society or holding non-elective office or membership in the various sections, technical divisions, boards, Codes and Standards and technical or research committee or other Society units may use the appropriate title of office or membership only in connection with Society activities.

Such designation of office or membership may not be used for personal endorsement or identification of personal engagement in non-ASME-related activities.

5. No other official use of the Society name, acronym, logo, seal, emblem or initials is permitted without specific prior approval of the Board of Governors.

E. MISUSE OF ASME NAME, ACRONYM, LOGO, SEAL, EMBLEM OR INITIALS

1. Should any misuse or abuse of the Society name, acronym, logo, seal, emblem or initials be noted by a Member of the Society, Society Headquarters should be notified with substantiating evidence. Individual action should not be undertaken by any Member of the Society.
2. Action against misuse or abuse of the Society name, acronym, logo, seal, emblem or initials shall be taken by the Executive Director following instructions from the Board of Governors.

## Responsibility: Committee on Organization and Rules

Adopted: October 15, 1956

Revised:	September 9, 1966	September 17, 1992
	January 5, 1968	(editorial changes 2/93)
	March 5, 1971	(editorial changes 8/93)
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TENTATIVE  
SUBJECT TO REVISION OR WITHDRAWAL  
SPECIFIC AUTHORIZATION REQUIRED FOR REPRODUCTION OR QUOTATION

A GUIDE TO ANTITRUST COMPLIANCE  
FOR ASME VOLUNTEER AND STAFF MEMBERS

COUNCIL ON STANDARDS AND CERTIFICATION

INTRODUCTION

The federal antitrust laws are intended to encourage and preserve business competition. These laws affect all parts of the business community, including organizations such as ASME. ASME's public service activities in connection with the promulgation, revision and interpretation of industry-wide codes and standards and the operation of certification programs could trigger an antitrust analysis under certain circumstances.

This pamphlet is part of ASME's ongoing program to ensure that its staff and volunteers comply with the requirements of the antitrust laws while performing duties on behalf of ASME. It is intended for non-lawyers and emphasizes only those aspects of the antitrust laws that are relevant to ASME. It does not deal with important antitrust principles that are not relevant to ASME's operations, but may well affect the business practices of individual members or their employers.

ASME volunteers and staff are expected to refer to and use this pamphlet in the course of their work on behalf of ASME. In particular, all members of ASME's committees and subcommittees responsible for codes and standards development, or oversight of certification activities, must be aware of what to avoid and when to question actions or decisions that may present antitrust issues. Questions regarding interpretation of the antitrust laws, or application of these guidelines to particular situations, should be immediately brought to the attention of ASME's officers or staff, who will consult with ASME's legal counsel as soon as possible.

## ANTITRUST LAW AND ASME

### What Are The Antitrust Laws?

The basic federal antitrust law -- the Sherman Act -- was enacted in 1890 to regulate certain business activities in interstate commerce. Most of the substantive antitrust law that governs business today comes from analysis and application of Sections 1 and 2 of the Sherman Act by the federal courts. The Clayton Act of 1914, and the Federal Trade Commission Act (also passed in 1914) elaborate upon and extend some of the Sherman Act concepts and provide additional enforcement mechanisms.

The Sherman Act and the FTC Act contain general prohibitions. The Sherman Act, in sweeping terms, forbids “[e]very contract, combination, or conspiracy, in restraint of trade or commerce” (Section 1 of the Act), and also prohibits monopolization and attempts or conspiracies to monopolize trade (Section 2). The FTC Act prohibits “unfair methods of competition” and “unfair or deceptive acts or practices” (Section 5). The Clayton Act, as amended by the Robinson-Patman Act in 1936, forbids or regulates specific kinds of business transactions, including exclusive dealing and tying arrangements, and certain mergers, acquisitions and joint ventures.

### What Happens When The Antitrust Laws are Violated?

Most importantly, violation of the Sherman Act is a crime -- a felony -- punishable upon conviction by a fine of up to \$100 million for a corporation and up to \$1,000,000 for individuals and imprisonment for up to ten years. Alternatively, or in addition to criminal prosecution, the Justice Department may attempt to punish a violator through civil injunctive relief. Such an injunction could require affirmative action by a defendant, such as sale of part of a business, or could prohibit certain conduct found to be illegal.

In addition to Government action, private lawsuits may also be brought by anyone who alleges that he has been damaged by the defendant's anti-competitive acts. Private antitrust actions, if successful, can result in damage awards three times the amount of actual damages proved. Private parties can also sue for injunctive relief against violations of the antitrust laws. The Federal Trade Commission has enforcement authority with respect to the FTC Act and may institute administrative proceedings and issue cease-and-desist orders against offending business entities.

Obviously it is not only the prospect of conviction or a treble damage award that makes antitrust enforcement actions so costly for companies and individuals alike. Antitrust litigation -- even for the successful party -- is lengthy, complicated and extremely expensive, especially for the defendant. Cost is measured not only in dollars spent on lawyers, expert witnesses and document searches, but in hours of productive time lost for many company employees and officers. Finally, the reputation and name of an individual or company may be forever tarnished by an antitrust violation or lawsuit.

#### What Do The Antitrust Laws Prohibit?

Section 1 of the Sherman Act is written so broadly that it could be interpreted to forbid all joint action that affects interstate or foreign commerce -- even if the results actually increase competition or protect public health and safety. Section 1 has not been interpreted that expansively, however. Instead, much joint action has been found to be legitimate when it has a worthy motive and does not unreasonably restrain trade. This standard, known as the "rule of reason," requires the courts to examine all the facts and circumstances surrounding questioned conduct to decide (1) whether the participant intended to restrain competition, and (2) whether their action unreasonably deprived the public of access to competing goods or services. Because the operation of the rule of reason depends so greatly on the facts of each case, it is often not

clear whether a particular agreement, business practice or other activity will violate the antitrust laws. Because the law in this area is so fact-dependent, any questions about compliance should be immediately brought to the attention of ASME staff.

The Sherman Act is violated where there is joint action or agreement between two or more persons or organizations to thwart competition. Any kind of arrangement or understanding between competitors that directly or indirectly relates to prices, volumes of production, or sales territories could result in a finding of an antitrust violation. Even if the motives are good -- for example, self-regulation by a certain industry to improve everyone's products -- the courts may find a practice illegal if it adversely affects competition.

Moreover, a plaintiff need not establish the existence of a formal agreement; agreements -- and even conspiracies -- can be inferred from circumstantial evidence. Illegal agreements can be inferred, for example, from the existence of unexplained meeting between competitors and changes in the particular industry that do not appear to result from natural market forces.

Certain business activities are seen as so unreasonable that the courts require no more than a showing that they occurred to find that the Sherman Act has been violated. These so-called "per se" violations include price-fixing between competitors (whether maximum or minimum prices), agreements setting terms and conditions of sale; agreements among competitors to divide territory, customers, or products, or to limit production; or acts, including refusals to deal, that result in boycott of a competitor's products or otherwise have the effect of driving it out of the market.

Section 2 of the Sherman Act forbids monopolization and attempts to monopolize. Monopolization is defined as deliberate acquisition or maintenance of power to control prices or foreclose access to a market.

#### What Aspects of ASME's Work Present Potential Antitrust Issues?

Standards setting organizations such as ASME bring together competitors and potential competitors in a spirit of cooperation. Because ASME is a scientific and technical organization, however, whose members come from a broad spectrum of industry, academic life, government and the general public, its members do not run as great a risk as do members of a trade association that their cooperative work on behalf of ASME might be viewed as a collusive effort to help their own particular employers.

ASME's public service activities with respect to codes and standards and certification are those which could most likely trigger an antitrust analysis. Code and standard writing and certification programs are perfectly legal. Courts and government regulators have long recognized the need for such program and their beneficial effect. Nevertheless, by setting standards and establishing industry codes, ASME is engaged in an activity that could have the effect of limiting competition to those products that meet its specifications. Moreover, ASME's codes and standards have served as the basis for governmental and industry regulations. Thus, compliance with ASME codes and standards, or qualifying for certification by ASME, could be required by federal or state regulatory entities in order to do business. ASME and the individual volunteer and staff members who assist it, bear a responsibility to ensure that any ASME impact on competition is principled and controlled.

Generally speaking, antitrust issues can be avoided by maintaining codes and standards and certification programs that are reasonable, impartial and open, and which provide appeal procedures that safeguard the rights of individual manufacturers or users. ASME's codes

and standards and certification programs have been designed to provide safeguards for those individuals and companies who are affected by their operation. Individual volunteer and staff members have a fundamental responsibility, however, to insure that their own participation in these programs is consistent with the requirements of the antitrust laws.

### The Standards Development Organization Advancement Act

In 2004 the United States Congress passed the Standards Development Organization Advancement Act (“SDOAA”). The SDOAA offers qualified protections for standard development organizations (“SDO’s”) in their standards development activities as well as their conformity assessment activities. This action was taken for the purpose of “developing, promulgating, revising, amending, reissuing, interpreting, or otherwise maintaining a voluntary consensus standard or using such standard in conformity assessment activities”, which fall under the protection of the SDOAA.

The SDOAA provides that: (1) standards development activity will be reviewed under the “rule of reason” standard (as opposed to the “*per se* standard”); (2) any damage caused by a private plaintiff is limited to actual (as opposed to treble) damages; and (3) at the end of a private litigation the court may award costs to the “substantially prevailing party”.

However, the following activity will not be protected under the SDOAA:

- (1) Exchanging information among competitors relating to cost, sales, profitability, prices, marketing, or distribution of any product, process or service that is not reasonably required for the purpose of developing or promulgating a voluntary consensus standard, or using such standard in conformity assessment activities.
- (2) Entering into any agreement or engaging in any other conduct that would allocate a market with a competitor.
- (3) Entering into any agreement or conspiracy that would set or restrain prices of any good or service.



Accordingly, while the SDOAA offers substantial protection to SDO's, it will not protect the Society from these violations of antitrust law.

### GENERAL GUIDELINES

Adherence to the guidelines described below will help ASME and all of its volunteer and staff members avoid potential liability under the antitrust laws.

#### Factors to be Considered

Codes and Standards Development. The adoption, or revision, of a particular code or standard may increase the cost of a product that complies with the code, or it may even make non-conforming products unacceptable to buyers. Despite this, if the standard is reasonable and objective, and does not discriminate unfairly between particular products, its adoption or revision should not be found to be unlawful. Every member of a committee or subcommittee responsible for developing a code or standard should be careful that all its provisions can be technically justified. Ask yourself the following questions:

1. Does the code or standard have a proper objective? If it does, it is more likely to be found reasonable by the Justice Department or a court. Certainly safety is a proper objective, as is quality assurance. Most ASME-developed codes and standards have one of those two purposes. Standards may be unreasonable, however, if they are intended to assist one business or group at the expense of others or if they do not have an objective, technically sound basis.

2. Is the form the code takes suitable for the industry in question? That is, is the code fair, is it reasonable in light of the objective it seeks to further, and does it allow room for innovative products and designs where appropriate?

3. Is the code or standard based upon valid and objective criteria? That is, can it be justified technically and logically? Is it the least restrictive (and least costly) standard possible which will lead to the desired result, of safety or quality?

4. Is the group that develops or revises the standard broadly based, and are any potential conflicts of interest on the group considered and publicized? ASME, to provide a balanced review of standards, requires that its standards writing consensus committees include individuals from all affected interests -- producers, distributors, regulators, academics, consumers and the technically qualified public at large. ASME also requires review of a proposed standard by a supervisory board before it promulgates a new or revised standard. This approach helps to ensure that any new or revised standard will not have a discriminatory impact on any particular group.

5. Are the procedures followed in developing or referencing a code or standard fair? If they are, then chances are that opposing views will have been considered and the harm to particular manufacturers or products minimized. Fairness means that the public has been given adequate notice of the proposed adoption of a standard; and accurate record of the consideration of the group is available to interested people, there are formal and publicized ways in which those who disagree with any part of the code or standard can appeal to other bodies within the organization; and finally, standards are periodically reviewed and revised as necessary to ensure that the standards reflect current technology and that all industry members --including those with the most innovative products -- have an opportunity to meet them.

Interpretations. The tremendous volume of interpretations issued by ASME every *year* poses special issues because there is less opportunity for the general public, or parties who may be affected by an interpretation, to become involved in the process. Individuals who serve

on a special committee, subcommittee or standards committee responsible for interpretations of ASME codes and standards must insure that their interpretation of a valid standard does not in itself appear to have an unreasonable effect on competition. Objectivity and technical accuracy are essential. Further, if a member has any doubt as to the correctness of an interpretation, or has any reason to believe that it will have a particular impact on (or damage the competitive position of) any business, he or she must refer it for consideration to the next higher committee or board. Furthermore, individuals participating in the interpretation process must be alert to avoid even the appearance of conflict of interest. If a proposed interpretation might help -- or hurt -- a company or organization with which a member "is affiliated, that individual should, at a minimum, disclose to the ASME staff member involved the nature of the company's interest and, where appropriate, decline to participate in the preparation of the interpretation, as outlined in the Society's conflict of interest policy."

Certification. Certification may be necessary to satisfy governmental or insurance carrier requirements and may even be required for a company to maintain its business. Therefore decisions with respect to certificates of authorization must be based solely upon objective, non-discriminatory and technically justifiable criteria. Safeguards with respect to conflicts of interest of decision-makers, or those conducting surveys or investigations of businesses seeking certification, are important here, since denial of certification could have a serious impact on the company involved. ASME's certification programs have valid purposes, and are conducted in a reasonable and objective manner. Furthermore, ASME has established procedures that allow for ready access to appeal mechanisms for those denied certification, and has provided those companies with what is described in legal terms as due process. That is, in the event of a denial or withdrawal of certification, the grounds for the negative decision *are* disclosed and the

company or organization affected by the decision is given ample opportunity to show why the accrediting group was wrong or to correct whatever problems led it to fail the certification process.

#### A Basic List of “Don’ts”

1. Don’t attend any meetings under ASME auspices that do not have a fixed agenda of matters to be covered. The agenda should be followed carefully and the addition of items not on the agenda should be fully explained by the Chairman of the committee, subcommittee or other group holding the meeting, or by the person proposing the addition.

2. Don’t take part in any “rump” sessions at which matters properly before a committee, or other body, as a whole are to be discussed.

3. Don’t discuss prices of competing or potentially competing products and don’t disparage any particular product -- whether or not it meets ASME standards.

4. If you serve on a committee or subcommittee that is responsible for revising or interpreting a code covering areas in which your company does business, don’t participate in the work of that group without making your company’s interest in the subject clear to other members of the group.

5. If it comes to your attention that any company is harmed, or may be harmed, as a result of an ASME code or standard or written interpretations of an ASME code or standard, don’t ignore the situation but bring it to the attention of ASME’s officers or staff immediately.

6. Don’t attempt to influence ASME programs and standards writing activities to benefit your own private business activities or those of your employer in a manner not available to the public.

7. Don’t discriminate against non-members of ASME.

## CONCLUSION

The antitrust laws *are* complicated, but compliance with them is largely a matter of common sense and fairness. Does any action taken by ASME members lead to an unreasonable restraint of trade? Is any particular business hurt by a code or standard, or interpretation thereof, when it need not be to achieve the technical and public interest objective of the particular code or standard? With these considerations in mind -- and an ever watchful eye out for possible conflicts of interest -- ASME and its members should not go wrong.

If there is any doubt whether any program or action might violate these guidelines, an ASME officer or staff member should be consulted.

7/1/2011



TENTATIVE  
SUBJECT TO REVISION OR WITHDRAWAL  
SPECIFIC AUTHORIZATION REQUIRED FOR REPRODUCTION OR QUOTATION

A GUIDE TO TORT LAW COMPLIANCE  
FOR ASME VOLUNTEER AND STAFF MEMBERS

COUNCIL ON STANDARDS AND CERTIFICATION

INTRODUCTION

A tort is a civil wrong, other than a breach of contract, for which a court will provide a remedy in an action for damages. The law of torts encompasses several different legal theories. The legal theory that is most relevant to our discussion is the law of “negligence”. The promulgation, revision and interpretation of codes and standards and the operation of certification programs are the two areas of Society activity which could give rise to negligence claims. In this litigious society, even not-for-profit entities like ASME, whose activities are for the benefit of the public, must be mindful of potential litigation risks.

This memorandum is part of ASME’s ongoing program to ensure that its volunteer and staff members are aware of the legal concepts which affect their performance of duties on behalf of the Society. It is intended for non-lawyers and emphasizes only those aspects of the law of torts that may be relevant to ASME. It does not deal with important tort law principles that are not relevant to ASME’s operations, but may well affect the business practices of individual members or their employers.

By helping volunteers and staff to have a clearer understanding of the applicability of various legal principles to ASME, we hope to foster greater responsibility and care in the implementation of ASME’s programs and thereby to reduce the level of ASME’s

exposure to legal liability. Accordingly, ASME volunteer and staff members are encouraged to refer to and use this memorandum in the course of their activities on behalf of ASME.

## TORT LAW AND ASME

### Negligence Liability

A party seeking to recover for injury caused by the negligence of another must demonstrate that the other party (1) owed a duty of care to him, (2) breached or failed to discharge that duty (i.e. was negligent), and (3) such breach of duty was the direct or “proximate” cause of injury to his person *or* his property.

The second element of the above test, the breach of duty, or “negligence” is difficult to define precisely. In general, however, negligence is considered conduct which falls below the standard established by law for the protection of others against unreasonable risks of harm. In most instances negligence is the result of carelessness or lack of foresight; however, negligence may also occur where one has fully considered the possible consequences and nonetheless has failed to act with reasonable prudence to avoid the risk of harm to others.

The standard of conduct which the law imposes can perhaps best be understood in terms of the hypothetical “reasonable man.” In essence, the law presumes that there is a standard of behavior which a man of ordinary prudence, skill and care would follow in all situations, so as to avoid creating unreasonable risks of harm to others. When dealing with professionals, or persons of superior learning or skill (such as engineers), the law sometimes imposes an even higher standard of care and diligence. In effect, it hypothesizes a “reasonable engineer,” whose conduct is guided by his special knowledge and abilities.

### ASME Activities

For the purpose of this memorandum, it is useful to view ASME’s codes and standards program as consisting of two related but separate components: (1) standards writing,



which consists of the development and publication of requirements for design, fabrication and inspection of manufactured products; and (2) certification, which consists of all activities relating to the issuance of Certificates of Authorization and certification to use ASME code symbol stamps.

1. Alleged Negligence in the Preparation or Development of a Standard

An organization which renders a service that is necessary to protect a third person or thing is potentially liable for any harm resulting from its a failure to take reasonable care in performing the service. Accordingly, by undertaking to promulgate and maintain safety standards in the public interest, ASME could be subject to negligence claims maintaining that it failed to conduct this activity in a reasonable manner.

For example, Section 324A of the Restatement of Torts 2d provides, in part:

“One who undertakes, gratuitously or for consideration to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect his undertaking, if

-- his failure to exercise reasonable care increases the risk of such harm, or

-- the harm is suffered because of reliance of the other or the third person upon the undertaking.”

Accordingly, a party alleging negligence in the voluntary performance of an undertaking to promulgate a standard would, at a minimum, have to demonstrate that the committee promulgating the standard failed to exercise reasonable care and either that such failure increased the risk of harm or that harm was suffered as a result of reliance upon the standard.

Liability has been imposed upon several trade associations based upon allegations that they were negligent in drawing a standard. Trade associations are different than ASME because they are made up of representatives of various for-profit industry entities and lack the balance of interests found in ASME committees. In addition, in the trade association cases, the plaintiff has generally demonstrated an economic incentive to set an inadequate standard. Because ASME does not produce the “products” which are the subject of the standards it promulgates, the economic incentive found in the trade association cases will be lacking in any action against the Society. Nonetheless, a resourceful plaintiff will attempt to use these precedents to support a claim against the Society.

2. Negligence Claims Relating to  
ASME Certification

ASME’s certification program is intended to facilitate the construction of products in accordance with applicable safety codes and standards. It should be noted at the outset that ASME does not “approve” “certify”, “rate” or “endorse” any product, item, construction or activity. ASME issues Certificates of Authorization to manufacturers and suppliers which in turn permits these entities to place an ASME Code Symbol Stamp on their products. The Code Symbol Stamp indicates that the product was constructed in accordance with ASME Code. Accordingly, it is the holder of the Certificate of Authorization, not ASME, that certifies an individual product.

Before issuing a Certificate of Authorization, ASME reviews data from a quality assurance survey of the entity seeking authorization. The survey is conducted by an authorized ASME third-party quality inspector. The survey results must demonstrate that the entity is capable of producing products in accordance with ASME Code before a Certificate of Authorization is issued. The first potential claim arising out of certification activity could be

premised upon Section 3214A of the Restatement of Torts 2d (described above). Such a claim would allege that ASME failed to exercise reasonable care in its award of a Certificate of Authorization to a particular entity.

A second potential claim arising out of certification activity is an allegation of negligent misrepresentation. Section 311 of the Restatement of Torts 2d regarding negligent misrepresentation provides, in part:

“(1) One who negligently give false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, where such harms results

- (a) to the other, or
- (b) to such third persons as the actor should expect to be put in peril by the action taken.

“(2) Such negligence may consist of failure to exercise reasonable care

- (a) in ascertaining the accuracy of the information, or
- (b) in the manner in which it is communicated.”

Thus, a resourceful plaintiff could argue that the issuance of a Certificate of Authorization to use a code symbol stamp was a representation by ASME of the ability of a manufacturer to produce products in conformance with the requirements of the applicable code, particularly where it is foreseeable that others will rely on the code symbol stamp as assurance of code compliance. A party alleging negligent misrepresentation would have to demonstrate either that there was a failure to exercise reasonable care in ascertaining whether a code symbol stamp should have been issued or reissued to the authorized inspection agency or manufacturer, or that there was inadequate *care* taken in overseeing the use of a code symbol stamp.

Several cases suggest that an organization which maintains a “seal of approval” or similar type program has an affirmative duty to take reasonable steps to examine, with some degree of expertise, the product upon which its symbol appears. ASME’s activities are different

than those discussed in the cases because ASME only certifies that the manufacturer can meet ASME code or standard. The actual certification of a product's compliance with a code or standard is made by an authorized inspection agency or a manufacturer, not ASME.

Nonetheless, the presence of the ASME Symbol on an item may give rise to a claim that ASME represented that the item meets the applicable ASME code or standard.

Once again, the best prescription for avoiding future issues is for all volunteer and staff personnel involved in the certification program to exercise prudence and care in carrying out their responsibilities on behalf of ASME. Accordingly:

a. Care should be taken to insure that quality assurance surveys and inspections are being carried out by competent and qualified personnel. At minimum, this should involve careful selection and review of the work of "ASME designees" and "ASME consultants" conducting quality assurance surveys and inspections.

b. Upon receipt of a report of noncompliance with applicable code requirements by a Certificate of Authorization holder, ASME should act promptly, within the limits of due process procedures, to curtail use of the ASME Code Symbol Stamp and "quarantine" (i.e. - identify) questionable products which bear ASME symbol stampings, pending the taking of corrective action.

### 3. Claims Relating To The Implementation of New Technology

There is some developing precedent suggesting that a standards development organization has a duty to implement new technology into their standards when it becomes available. For example, the New Jersey Supreme Court has found that the American Association of Blood Banks ("AABB") (a trade association) had a duty to consider new technology in

formulating its standards. In that case, the AABB was found negligent for failing to implement surrogate testing for HIV for blood donors into its standards.

In making a policy decision to impose liability, the New Jersey Supreme Court noted:

Although the AABB's mission doubtless has altruistic overtones, the bottom line is that the AABB represents its interests and those of its members. At stake for its members was a substantial financial interest in the regulation of the industry. In 1984, voluntary blood banks generated revenues of approximately one billion dollars.

ASME is not a trade association and does not have the same type of "interests" as the AABB. Nonetheless a creative plaintiff could rely on this precedent to support a claim that ASME should have incorporated new technology into its standards at an earlier time. Accordingly, ASME volunteers should remain abreast of new technology and should take care to implement such technology when it is technically appropriate.

#### INTERACTION BETWEEN TORT AND ANTITRUST LAW

Prudence must be exercised in promulgating and overseeing codes, standards and associated certification programs in order to avoid the imposition of negligent liability resulting in harm in connection with such activities undertaken to insure public safety. However, the more stringent a code or standard, or a certification requirement, the more likely it is that certain manufacturers may be adversely affected and allege that such standards or certification requirements constitute an unreasonable restraint of trade, or antitrust law violation. There is essentially a balancing which must occur between the steps that should be taken to maximize the assurance of public safety and those designed to enhance vigorous business competition. Volunteers and staff are reminded to keep this need to balance interests in mind as they perform their duties.

## CONCLUSION

As can be seen from the foregoing, the operation of codes and standards and certification programs necessarily involves some degree of legal risk. When the programs are as numerous, as diverse and as important to the functioning of industry as ASME's are, the exposure to liability is increased. In the final analysis, however, it is the performance of the volunteers and staff who implement these programs which will determine the real level of ASME's exposure to liability. By carefully and prudently carrying out their responsibilities, volunteers and staff can significantly reduce the likelihood that ASME will ever be faced with a negligence claim. While this may sound simple, it requires constant vigilance on the part of all individuals involved in the process.

It is hoped that this memorandum will serve to heighten the awareness of volunteers and staff to the potential for tort liability and to assist them in intelligently discharging their duties. Questions regarding the proper interpretation or application of the principles discussed herein should be brought to the attention of the appropriate ASME officer or staff member, who will, with the assistance of counsel, provide guidance.

July 1, 2011

## **ARTICLE C4.1 GOVERNMENT**

C4.1.12 The Society shall indemnify each person (or heirs, executors and administrators) made, and the Society may in the discretion of the Board of Governors indemnify each person (or heirs, executors and administrators) threatened to be made, a party to an action or proceeding (other than one by or in the right of the Society to procure a judgment in its favor), whether criminal or civil, by reason of serving or having served as a member of the Board of Governors or member of a sector, board or committee, or an Officer, or employee of the Society, or of another corporation or organization with which such person may serve or have served as such or as a trustee, at the request of the Society, or by reason of otherwise serving or having served as a nominee of the Society, against judgments, fines, amounts paid in settlement and reasonable expenses (including attorney's fees actually and necessarily incurred as a result of such action or proceeding, or any appeal therein) provided that such person acted in good faith for a purpose which is reasonably believed to be in the best interests of the Society and, in criminal actions, had no reasonable cause to believe that the conduct was unlawful. Such expenses shall include the cost of reasonable settlement made with a view to curtailment of litigation. The foregoing right of indemnification shall not be exclusive of other rights to which any such person may be entitled as a matter of law.