

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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(editorial changes 3/88)
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(editorial change 2/94
November 21, 1996
(editorial changes 9/97)
June 9, 1999
(editorial changes 6/02)
(editorial changes
September 23, 2005
November 5, 2006
(editorial changes in responsible unit 4/09)
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November 15, 2013