

Rules of Procedure for Ethics Enforcement
Maine Town & City Management Association

Adopted by MTCMA Board of Directors June 5, 2009

I. General

- A. These rules govern the procedures for enforcing the Maine Town and City Management Association (MTCMA) Code of Ethics (the "Code") as provided by the MTCMA Bylaws.
- B. All members of MTCMA agree to abide by the Code of Ethics.
- C. The purpose of these rules is to provide a reasonable process for investigating and determining whether a member has violated the Code, and to afford each individual member who is the subject of an investigation (the "respondent") a full and fair opportunity to be heard throughout the process.
- D. It is the intention of the MTCMA Board of Directors that these rules be carried out carefully but expeditiously in order to minimize the time during which a member may be subject to possible disciplinary action. Accordingly, time limits stated in these rules are binding, subject to extensions which may be granted by the Board of Directors, Ethics Committee or the Ethics Committee Chair (the "Chair"), for reasonable cause, upon request.
- E. No person may participate in any proceedings on a complaint brought under these rules if that person is or may be a witness or complainant in that case, or if his or her participation would otherwise create, or appear to create, a conflict of interest. The Chair may select a replacement for any person (other than a member of the Board of Directors) who is unable to participate in the case for this reason.

II. Jurisdiction

- A. All members of MTCMA in active service to a local government are subject to the Code of Ethics and are subject to sanctions for any violations thereof which occur during their membership. However, elected officials are not subject to Tenet 7, and members not in service are subject only to Tenets 1 and 3. A member may be subject to sanctions for a violation which continues while he or she is a member even though the conduct in question originated prior to admission to membership.
- B. If a complaint is made against a person who was a member at the time the alleged violation occurred, but who is not a member at the time the complaint is made, the complaint will be processed under these procedures only if the former member agrees in writing. In no event shall a person be readmitted to membership if there is an outstanding and unresolved complaint against him or her for conduct while formerly a member.
- C. The committee shall retain jurisdiction over an investigation of a respondent who, before the conclusion of the investigation, resigns from MTCMA or otherwise allows his or her membership in MTCMA to lapse.

III. Responsibilities

- A. The MTCMA Ethics Committee (the "Committee") has the specific duties set forth in the MTCMA Bylaws and is responsible for enforcing the Code of Ethics and implementing these Rules. No current or former member may be censured, expelled, or barred from membership without the approval of the Ethics Committee.
- B. Upon appeal, the MTCMA Board of Directors is responsible for making the final decision on matters pertaining to the enforcement of the Code, including, but not limited to, sanctions for the violation thereof.
- C. Upon request by the International City/County Management Association (ICMA) for the provision of a fact-finding committee to assist ICMA with an ethics investigation, those Ethics Committee members who are ICMA members shall serve as the fact-finding committee. The MTCMA President may appoint additional ICMA members as needed to fulfill any ICMA quorum requirement. Members of a fact-finding committee shall serve until the conclusion of the investigation they were appointed to conduct, or until such later date as the MTCMA president may request.

- D. It is the responsibility of the Ethics Committee to publicize the existence and importance of the Code with elected officials and the general public.
- E. Ethics Committee members may privately advise MTCMA members on the ethical implications of their conduct under the Code. However, such opinion or advice shall not be binding on the Ethics Committee or the Board of Directors.
- F. The Chair may designate a member of the Ethics Committee to carry out any of the responsibilities assigned to the Chair under these rules.

IV. Sanctions

- A. Sanctions may be imposed in accordance with these rules upon members who are found to have violated the Code. In determining the kind of sanction to be imposed, the following factors may be considered: the nature of the violation, prior violations by the same individual, the willfulness of the violation, the level of professional or public responsibility of the individual, and any other factors which bear upon the seriousness of the violation.
- B. The following sanctions may be imposed singly or in combination at the conclusion of an investigation and/or hearing under these rules:
 1. Private Censure. A letter to the respondent, with copies to the Ethics Committee and ICMA, indicating that the respondent has been found to have violated the Code of Ethics, that MTCMA disapproves of such conduct, and that, if it is repeated in the future, it may be cause for more serious sanctions.
 - a. If the complainant is an MTCMA member, a copy of the censure shall also be provided to the complainant.
 - b. If the complainant is a nonmember, he or she shall be notified only that the case was considered and resolved, and that no public action was taken.
 2. Public Censure. Notification to the respondent, MTCMA membership, ICMA, complainant, and news media, indicating that a violation of the Code took place and that MTCMA strongly disapproves of such conduct and the nature of the sanction(s) imposed. In addition, such notice shall be provided to appropriate local governing bodies where the Ethics Committee has found it necessary to do so in order to protect the public against unethical conduct in local government.
 3. Expulsion. A revocation of the respondent's membership privileges. Notifications shall be as for a Public Censure.
 4. Membership Bar. A prohibition against reinstatement of the respondent's membership in MTCMA. Notifications shall be as for a Public Censure.
- C. Upon receiving documented evidence that a member has been found guilty after trial by a judge or a jury of criminal conduct, which constitutes a violation of the MTCMA Code of Ethics and which occurred while the person was a member of MTCMA, the Chair shall immediately issue a notice of suspension of membership to that person by certified mail, return receipt requested, and that person's membership shall be suspended as of the date of that notice. The Chair shall advise the Ethics Committee of any such action and shall refer the case to the Ethics Committee. The Ethics Committee may commence an investigation in accordance with Part VI hereof, or it may defer proceedings until the person has exhausted all appeals or the time for appeal has expired. The suspension shall continue in effect until such time as sanctions are imposed, or the case is dismissed, in accordance with these Rules.
- D. A member who has been barred or expelled from membership under these rules may apply for reinstatement to MTCMA membership only after a period of at least five (5) years from the date of the bar or expulsion, or from the date of the last review of a request for reinstatement. The barred or expelled former member must submit a written request to the Board of Directors for a reinstatement review and include the reasons why he or she believes it should be considered. Such requests shall automatically be referred to the Ethics Committee. If the applicant is an ICMA member, the Ethics Committee may ask the ICMA Ethics Advisor to provide input. The Ethics Committee will review all the information provided, including any ICMA report, and make a recommendation to the Board of Directors. The former member requesting reinstatement review is entitled to a hearing before the Board of Directors.

V. Initiation of Procedures

- A. Proceedings against an individual for an alleged violation of the Code of Ethics may be initiated by the Chair upon receiving a written complaint or other written information from any source indicating that a violation may have occurred.
- B. Upon receiving such a written complaint or information, the Chair must ascertain whether it is sufficiently clear and complete to initiate proceedings, and, if so, whether it alleges conduct that may be a violation of the Code of Ethics. If the Chair concludes that the complaint is not sufficiently clear or complete to initiate proceedings, he or she shall seek further clarification from the complainant or other source before taking any further action.
 - 1. If the Chair cannot determine whether the conduct alleged, if proven, might violate the Code of Ethics, he or she shall refer the question to the Ethics Committee for a ruling. No further action shall be taken with respect to the complaint or information unless the Ethics Committee rules that the conduct alleged, if true, may constitute a violation of the Code.
 - 2. If the Chair concludes that the complaint is sufficiently clear and complete to initiate proceedings, and may, if proven, indicate a violation of the Code:
 - a. If the respondent is a member of ICMA, the Chair shall refer the complaint to the ICMA Ethics Advisor for enforcement.
 - b. If the respondent is a member of MTCMA, but not a member of ICMA:
 - i. The Chair shall contact the respondent either in person or by telephone to advise him/her of the receipt of information that may indicate that a violation has occurred, that an investigation has been opened, the provision(s) of the Code which he/she is alleged to have violated, and how the investigation will be processed.
 - ii. A copy of the complaint or information shall be forwarded by certified mail, return receipt requested, to the respondent named in the complaint or information. The respondent shall be informed at the time of the provisions of the Code which he or she is alleged to have violated. The Chair may also request that the respondent answer specific questions pertaining to the alleged violation.
 - iii. The respondent shall be given thirty (30) days from the date of mailing within which to respond in writing to the complaint or information, to provide any further information or material he or she considers relevant to the allegations, and to answer any specific questions asked by the Chair.
 - iv. As soon as the respondent's response is received, but in no event more than thirty (30) days after written notice of the alleged violation has been mailed to the respondent, the Chair shall refer the case to the Ethics Committee for proceedings in accordance with these rules.

VI. Investigations

- A. Upon receiving a case of an alleged violation of the Code of Ethics from the Chair, the Ethics Committee shall commence an investigation into the allegations. However, no investigation shall be required if (1) the respondent admits to the violation in his or her initial response, or (2) the respondent has already entered a guilty plea, or has been found guilty and has exhausted all appeals, in a criminal case involving the same conduct.
- B. The Ethics Committee shall afford the respondent an opportunity to meet with the committee in person and may, at its discretion, afford such an opportunity to the complainant as well. The respondent may appear at such a meeting personally and be accompanied by a representative. Alternatively, the respondent may appear through a representative.
- C. The Ethics Committee shall prepare and maintain notes of all meetings and interviews with the respondent, the complainant, and any witnesses, and may request any such person to sign a statement prepared on the basis of those notes. The respondent shall be entitled to review these notes and

statements, and any other documentary evidence gathered in the course of the investigation, and shall be afforded the opportunity to respond in writing thereto.

- D. The Ethics Committee shall take all reasonable steps to ascertain the facts relevant to the case, including, but not limited to, interviews with witnesses, review of the respondent's submission(s), and examination of all published material judged to be relevant and reliable.
- E. Within sixty (60) days of the Chair's referral to the Ethics Committee, the investigation shall be concluded, and the committee shall make findings of fact on each alleged Code of Ethics violation. Each finding must be supported by reliable and relevant evidence which has been made available to the respondent for review.

VII. Decisions

- A. The Ethics Committee shall review the findings of fact and determine:
 - 1. If the evidence of a Code violation is not sufficient, the Ethics Committee may either:
 - a. continue the investigation in accordance with these rules; or
 - b. dismiss the case and so advise the respondent, the complainant and ICMA if appropriate.
 - 2. If the evidence of a Code violation is sufficient, the Ethics Committee shall determine the appropriate sanction(s) as provided under Part IV.
 - 3. The Ethics Committee Chair shall notify the respondent in person or by telephone of the Committee's decision.
 - 4. The Ethics Committee Chair shall send a letter to the respondent by certified mail, return receipt requested, informing the respondent of:
 - a. The Committee's findings of fact,
 - b. the sanction(s) imposed, and
 - c. the right of appeal to the Board of Directors.
 - 5. The respondent shall have fifteen (15) days in which to appeal the decision.
 - a. In the event that the respondent files an appeal, the Ethics MTCMA Rules of Procedure for Ethics Enforcement Committee Chair shall refer the case, including its recommended sanction(s), for a hearing before the Board of Directors. Hearings shall be conducted in accordance with Part VIII of these rules. No sanction(s) shall be imposed before the hearing is concluded.
 - b. In event that the respondent makes no appeal, the Chair shall take action as provided below according to the level of sanction approved by the Committee:
 - i. Private Censure. The Chair shall visit or telephone the respondent and then send him/her a letter of private censure, as provided in Part IV, and the case shall be closed.
 - 1. Except as provided by these Rules, no other notification of a private censure shall be made. However, MTCMA may publish the fact that certain kinds of conduct have resulted in the issuance of private censures, provided that no names or identifying details are disclosed.
 - 2. Public Censure, Expulsion, and/or Membership Bar. The Chair shall visit or telephone the respondent and then send him/her a letter explaining the sanction, as provided in Part IV, and the case shall be closed.

VIII. MTCMA Board of Directors Hearing

These procedures shall govern all appeals and hearings conducted pursuant to these rules.

- A. No board or committee member may hear any case if his or her participation in that case would create an actual or apparent conflict of interest.

B. Within ten (10) days of receiving a request for a hearing, the MTCMA President shall notify the respondent by certified mail, return receipt requested, that a hearing has been scheduled before the Board of Directors. The hearing date shall be at least fifteen (15) days after the date the notice is postmarked. The notice shall also state that the respondent has the following rights:

1. To appear personally at the hearing;
2. To be accompanied and/or represented at the hearing by an attorney or other representative;
3. To review all documentary evidence, if any, against him or her in advance of the hearing;
4. To cross-examine any witness who testifies against him or her at the hearing; and
5. To submit documentary evidence, and
6. to present testimony, including the respondent's, in his or her defense at the hearing.

C. The Board of Directors shall not be bound by any formal rules of evidence but may accord appropriate weight to the evidence based on its relevance and reliability.

1. The Ethics Committee's report shall be admissible evidence at the hearing.
2. The Board of Directors may not hear evidence of any alleged ethics violation by the respondent that was not the subject of the initial investigation.

D. At any hearing conducted under these rules, the Ethics Committee shall first present evidence in support of its recommended decision. Upon conclusion of its presentation, the respondent shall have the opportunity to present evidence in his/her defense.

E. Within five (5) working days of the conclusion of the hearing, the Board of Directors shall render a decision in the case.

1. The decision shall be in writing and shall include a statement of the reasons therefore. Only evidence which was put before the Board of Directors may be considered as a basis for the decision.
2. The Board of Director's decision may be to:
 - a. Dismiss the case;
 - b. Adopt the findings and sanction(s) recommended by the Ethics Committee; or
 - c. Revise, and adopt as revised, the findings and/or sanction(s) recommended by the Ethics Committee. However, the Board of Directors may not increase the sanction(s) recommended by the Ethics Committee unless new evidence, not previously available to the Ethics Committee, is disclosed at the hearing, which indicates that the respondent's violation was more serious. No sanction may be imposed for any violation of which the respondent had no prior notice, but this rule shall not prevent the initiation of new proceedings upon the production of new evidence.

F. The written decision of the Board of Directors shall be sent immediately by certified mail, return receipt requested, to the respondent, with copies to the appropriate parties as provided by Part IV.

G. Promptly after receiving a copy of the written decision, the Ethics Committee Chair shall implement the sanction(s), if any, imposed by the Board of Directors in accordance with the rules.

IX. Revocation of Certification

A. These Rules shall also apply to the revocation of a member's credential under the MTCMA Certified Municipal Manager credential.