Procedure for Reviewing Complaints about Possible Violations of the ASPA Code of Ethics

Preamble

The American Society for Public Administration (ASPA) advances the science, art, and practice of public administration. The Society affirms its commitment to develop the spirit of responsible professionalism and to increase awareness and commitment to ethical principles and standards within its membership by reviewing and seeking to resolve complaints that a member of ASPA has taken an action that may violate the Code. The purpose is to help members understand and maintain their shared ethical standards. This procedure is designed to support and advance the mission and values of ASPA in promoting ethical, effective and equitable public service.

I. General

A. This procedure governs the review of complaints regarding potential violations by a member of the ASPA Code of Ethics (Code), as adopted by the National Council at its meeting of March 16, 2013, and as amended from time to time.

B. All ASPA members agree to abide by the Code when they become members and renew their membership. They should embody the elements of the Code in their actions. They are subject to sanctions for serious violations of the Code that cannot be resolved or corrected.

C. The review procedure provides guidelines for reviewing a complaint that an ASPA member has violated the Code. It is intended to ensure that fairness and reasonableness are followed in examining and determining violations, and to protect the due process rights of individual members.

II. Responsibilities

A. The ASPA National Council is responsible for making the final decision on matters pertaining to the enforcement of the Code, including, but not limited to, sanctions for egregious violations of the Code. No current or former member may be publicly censured, suspended, expelled or barred from membership without the National Council’s approval.

B. The Ethics and Standards Implementation Committee (Ethics Committee) is the committee of ASPA responsible for assisting the National Council in implementing this procedure.

C. The ASPA Executive Director shall assist the National Council and Ethics Committee in enforcing the Code and implementing this procedure.

III. Initiation of Review

A. A review of a member for an alleged violation of the Code may be initiated by the Ethics Committee upon receiving a written complaint or other written information from any source
indicating that a violation may have occurred. The identity of the complainant will not be revealed. The initial stage of review will be conducted by the Ethics Committee in confidence with communications limited to the complainant and the respondent named in the complaint. No information that identifies the respondent will be disclosed prior to initiating a formal investigation unless the respondent agrees to disclosure. If the Committee’s review leads to the decision to formally investigate the complaint, the respondent will be informed that persons familiar with the events in the complaint may be contacted by members of a fact-finding body to obtain information.

Any conflict of interest between Ethics Committee members and the respondent will be disclosed to other members of the Ethics Committee. Any member of the Ethics Committee who has a close professional or personal relationship to the respondent or extensive links to the respondent’s organization will recuse himself or herself from the Committee’s handling of the complaint.

B. Upon receiving a written complaint or information, the Ethics Committee 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. If the Ethics Committee determines that the conduct is not a violation of the Code or cannot determine whether the conduct might violate the Code, no further action shall be taken with respect to the complaint or information.

The chairperson, in consultation with the Executive Director, also will determine whether the individual named in the complaint is subject to review by another professional association or by his or her employing organization, or whether the behavior alleged in the complaint would be more efficaciously reviewed by another body. If this determination is made and approved by the Ethics Committee, the complainant will be encouraged to pursue the complaint with the other body and inform the Ethics Committee of the outcome of the review.

1. If the Ethics Committee concludes that the complaint is sufficiently clear and complete to warrant further examination and may, if proven, indicate a violation of the Code, a copy of the complaint or information shall be forwarded by registered mail 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 Ethics Committee may also request that the respondent answer specific questions pertaining to the alleged violation.

2. The respondent shall be given thirty (30) days 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 Ethics Committee.

3. As soon as the respondent’s response is received, but within thirty (30) days after written notice of the alleged violation has been given to the respondent, the Ethics Committee will begin its review.

4. The Ethics Committee will provide specific advice as to the corrective action necessary by the member and encourage voluntary corrective action to demonstrate compliance with the Code. With corrective action within a reasonable time, the case will be closed with
only a summary of findings without respondent identifiers provided to the National Council. The Ethics Committee will monitor follow-up corrective actions by the respondent. If the corrective action is not taken, the original complaint will be examined through a formal investigation.

IV. Investigations

A. Upon determining that an alleged and unresolved violation of the Code has occurred, 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; (2) the respondent admits to the conduct outlined in the complaint that may constitute a violation of the Code, or (3) 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. If the respondent has been sanctioned by another body after a due process review and accepts the outcome of that review, the Ethics Committee will consider what action if any ASPA should take without pursuing a full investigation. If the respondent objects to the outcome of the other review, the Ethics Committee will determine whether the circumstances warrant an independent investigation.

B. In all cases in which an investigation is required and at the request of the Ethics Committee, the Executive Director in consultation with the ASPA President shall appoint a fact-finding body composed of ASPA members whose backgrounds are appropriate to conduct the investigation depending on the nature of the complaint and who do not have a conflict of interest in dealing with the respondent or the respondent’s organization. The Ethics Committee will designate one of its members to chair the fact-finding body.

1. The fact-finding body shall consist of not less than three (3) ASPA members including the chair who is a member of the Ethics Committee. No one other than an ASPA member may serve on it.

2. A fact-finding body must be appointed within fifteen (15) days of the request made by the Ethics Committee.

3. The fact-finding body shall afford the respondent an opportunity to meet with the body in person and may, at its discretion, afford such an opportunity to the complainant. The respondent may appear at a meeting personally and be accompanied by a representative. Alternatively, the respondent may appear through a representative.

4. The fact-finding body shall prepare and maintain notes of all meetings and interviews with the respondent, 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.

5. The fact-finding body 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.

6. Within sixty (60) days of the appointment of the fact-finding body, the investigation shall be concluded, and a written report of the body’s proposed findings of fact shall be sent to the Ethics Committee. Each finding must be supported by reliable and relevant evidence which has been made available to the respondent for review. After review of the report for completeness and substantiation of facts, the Ethics Committee will send the report of the fact-finding body to the respondent.

7. If the investigation reveals evidence of a possible legal violation, the Ethics Committee with the approval of the ASPA Executive Committee will forward that material to the appropriate external investigating authority.

V. Sanctions

A. Sanctions may be recommended by the Ethics Committee to the National Council in accordance with this procedure 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 individual, the willfulness of the violation, the level of professional or public responsibility of the individual, and any other factors that 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 and the complainant, indicating that the respondent has been found to have violated the Code, that ASPA disapproves of such conduct and that, if it is repeated in the future, it may be cause for more serious sanctions. If the complainant is a nonmember, he or she shall be notified that the case was considered and resolved, and that no public action was taken.

2. Public Censure. Notification to the respondent, complainant, and the public through appropriate means, indicating that a violation of the Code took place, and that ASPA strongly disapproves of such conduct and the nature of the sanction(s) imposed.

3. Membership Suspension. A suspension of membership and all related benefits for a period to be determined by the Ethics Committee, subject to provisions for National Council approval. Adherence to the Code is a condition of serving a suspension. The term of the suspension shall not exceed five (5) years. Notice of the suspension will be given to the respondent, complainant, and appropriate stakeholders.

4. Expulsion or Membership Bar. A revocation of the respondent's membership privileges, where the respondent is a current member; or a prohibition against
reinstatement of the respondent’s membership in ASPA, where the respondent’s membership has lapsed or otherwise ended.

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 Code, the Ethics Committee will assess the nature of the action. If it is a serious violation of the Code, the Committee may instruct the Executive Director, with the approval of the Executive Committee, to issue a notice of suspension of membership to that person by registered mail and that person’s membership shall be suspended as of the date of that notice. The Ethics Committee may commence an investigation, 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.

VI. Decisions

A. The Ethics Committee shall promptly review the fact-finding body’s findings of fact and ascertain whether they are supported by sufficient reliable and relevant evidence.

1. If the evidence is not sufficient, the Ethics Committee may either (a) dismiss the case; or (b) return it to the fact-finding body for further investigation in accordance with these rules.

2. If the Ethics Committee determines that the proposed findings are supported by the evidence, it shall determine whether they demonstrate that a violation of the Code has occurred. If not, it shall dismiss the case and so advise the respondent, the fact-finding body, and the complainant.

3. If the Ethics Committee concludes on the basis of the fact-finding body’s report that a violation has occurred, it shall determine the appropriate sanction(s). The Ethics Committee shall then notify the respondent of its intent to adopt the fact-finding body’s report as final, and to impose the specified sanction(s) for the reasons stated, unless the respondent can show that the findings of facts are erroneous, or that the proposed sanctions(s) should not be imposed in light of certain mitigating factors which the Ethics Committee did not previously consider. The respondent shall have fifteen (15) days in which to submit a written response to the Ethics Committee and/or to request a hearing.

4. In event that the respondent makes no submission, and does not request a hearing, the Ethics Committee shall promptly adopt the proposed findings and sanction(s) as a formal recommendation and so inform the ASPA national officers.

5. In the event that the respondent makes a written submission, but does not request a hearing, the Ethics Committee shall review the submission and may either adopt, or revise and adopt as revised, the proposed findings and/or sanction(s), as it deems appropriate. The Ethics Committee shall promptly notify the Executive Committee of its decision.
6. In the event that the respondent requests a hearing, the Ethics Committee shall refer the case, including its recommended sanction(s), for a hearing before the National Council. Hearings shall be conducted in accordance with part VII of this procedure. No sanction(s) shall be imposed before the hearing is concluded. The Ethics Committee’s report shall be kept in confidence by members of the National Council regardless of the outcome of the hearing.

B. Upon receiving notice from the Ethics Committee of its determination that a private censure is the appropriate sanction, and that the respondent has not requested a hearing, the ASPA President with the approval of the Executive Committee shall send a letter of private censure to the respondent, with copies to the complainant.

The case shall then be closed.

1. No other notification of a private censure shall be made. However, ASPA 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.

C. Upon receiving notice from the Ethics Committee of its determination that a public censure, suspension, expulsion or membership bar is the appropriate sanction, and that the respondent has not requested a hearing, the National Council may vote to adopt the recommended decision of the Ethics Committee, to modify the decision, or to dismiss the case without imposing sanctions. The respondent shall be immediately notified of the decision of the National Council and the sanction, if any, shall be implemented.

D. The Ethics Committee will provide to Executive Committee once a year a list of the complaints that have been received and resolved, dismissed without an investigation, or dismissed after an investigation. The names of the respondents will not be included in this report.

VII. Hearings

A. These procedures shall govern hearings conducted by the National Council regarding ethics complaints. All discussions and hearings regarding ethics complaints shall be held in Executive Session, with any final decision to be reported out at the next regular meeting of the National Council following the issuance of the decision.

B. No National Council member may hear a case if his or her participation in that case would create an actual or apparent conflict of interest.

C. Within ten (10) days of receiving a request for a hearing, the Executive Director shall notify the respondent by registered or certified mail that a hearing has been scheduled before the

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1 This section draws extensively on Part VIII of the “ICMA Code of Ethics: Rules of Procedure for Enforcement.”
National Council using electronic communication. 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 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.
5. To submit documentary evidence, to present testimony, including the respondent's, in his or her defense at the hearing.

D. The National Council 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 fact-finding body’s report shall be admissible evidence at the hearing.
2. The National Council may not hear evidence of any alleged ethics violation by the respondent that was not the subject of the initial investigation.

E. At any hearing conducted under these rules, the chairperson or a member representing the chairperson of 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 or her defense.

F. Within five (5) working days of the conclusion of the hearing, the National Council shall render a decision in the case.

1. The decision shall be in writing and shall include a statement of the reasons for the decision. Only evidence which was put before the National Council may be considered as a basis for the decision.
2. The National Council's decision may be to:
   a. Dismiss the case.
   b. Adopt the findings and recommendations by the Ethics Committee, or
   c. Revise and adopt as revised, the findings and recommendations of the Ethics Committee. However, the National Council 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.

3. A copy of the written decision of the National Council shall be sent immediately by registered mail to the respondent, the complainant, the Ethics Committee, and the Executive Director.

4. Promptly after receiving a copy of the written decision, the Executive Director shall implement the sanction(s), if any, imposed by the National Council.

5. The respondent may request an appeal if critical information not available at the time of the hearing is obtained. The appeal will be handled following the guidelines for investigations with the possibility of a new hearing before the National Council.

 Adopted by the ASPA National Council, November 8, 2015.

The Ethics and Standards Implementation Committee acknowledges the assistance of the International City/County Management Association and the “ICMA Code of Ethics: Rules of Procedure for Enforcement” (revised in September 2014) in developing this procedure.