



# **SRE Resource for Addressing Allegations Against and Misconduct by Board Members**

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# INTRODUCTION

What should you do when allegations of misconduct are made against a board member? What should you do when a board member has actually engaged in misconduct?

A first and preventative step is to have a **Code of Conduct** for board members that outlines board responsibilities and values. The next step is to have policies and processes in place to address allegations against, and misconduct by, board members that will help you respond in a way that is consistent and objective, no matter who the board member is.

The code, policies, and processes should be separate from your employee handbook which the board is unlikely to read, though it can rely on similar policies and processes that are in place with your employees. In the same way that employee policies and processes can help employees feel safe in reporting misconduct and understanding what will happen when they do, your policies for board members can do the same. Remember that the board policies and processes need to work well with the board bylaws and consider the fiduciary obligations of board members who may also be donors, and what is at risk when these issues arise. An important question to address is to whom reports about allegations or misconduct should be made, given board members' relationships with each other and the CEO or organizational leader, and how to go about investigating these reports.

In this document, sample resources are shared for each section.



# Codes of Conduct for Board Members

## Codes of Conduct and Ethics for Nonprofit Board Members

*BoardSource, 2018*

**Focus Areas:** The duties of board members and sample codes of ethics outlining the:

- Duty of care
- Duty of loyalty
- Duty of obedience
- Individual board member responsibilities
- Importance of codes of ethics and what they should include, with practical tips and samples

## SRE Network's Code of Conduct and Norms

**Focus Areas:** SRE Network's Code of Conduct and Norms were created to inform convening participants of the expected behaviors and norms at our annual convening, as well as what will not be tolerated. These may be helpful as you think about creating a code of conduct for board members that captures board members' interactions with each other, staff members, development personnel, and others.



# Board Member Misconduct

## Board Member Misconduct

*Nick Price, Board Effect, 2017*

**Focus Areas:** What board member misconduct encompasses and what to be aware of when it arises.

Nick Price (2017) discusses the various kinds of board member misconduct that can be intentional or unintentional, unethical or illegal, where the most serious include financial misconduct, sexual offenses, and criminal offenses. He notes the special responsibility that other board members have when there are allegations against a board member or actual board member misconduct. He also cautions that the friendship and relationships among board members should not get in the way of board members' responsibilities – fiduciary and otherwise – of doing what they need to. Failure to act can damage their orgs credibility because the public looks to them to see how they respond. When allegations arise, board members have an obligation to investigate, take action where needed, and communicate their findings to the public or shareholders. Price says, "Boards of directors can also suspend another director's duties or ask them to resign when there are allegations of egregious conduct."

## Consequences of CEO Misconduct

*David Larcker and Brian Tayan*

**Focus Areas:** The consequences of CEO misconduct that is not illegal that boards should be aware of.

While focused on CEO misconduct, this article can help explain the damage done when board members behave in similar ways.



After reviewing CEO misconduct that garnered significant media coverage, five main findings stood out:

1. The impact of misbehavior on corporate reputation is significant and long-lasting.
2. Shareholders generally (but do not always) react negatively to news of misconduct.
3. Most companies take an active approach in responding to allegations of misconduct.
4. Corporate punishment for CEO misbehavior is inconsistent.
5. CEO misbehavior can reverberate across the organization.

These impacts may also be felt when board members behave in harmful, but not illegal, ways.

## Responding to Board Member Misconduct

### [Advice to Boards and Leaders When Addressing Misconduct by Donors](#)

*Anne Wallestad and Mike Geiger, 2019*

**Focus Areas:** How to support your staff, including fundraisers, when donor misconduct arises in a way that prioritizes your staff/fundraiser?

- Support your team.
- Set Policies and the right tone at the top - including reporting and escalating complaints, and gift acceptance policies. *(See article for details on the various kinds of policies and codes of conduct organizations can set.)*



- Focus on what you can control. Take action regarding your organizational relationship with the donor. *(See article for further details.)*
  - Barring the donor from service on the organization's board.
  - Ensuring that the donor is not publicly celebrated or honored by the organization for their leadership or generosity.
  - Avoiding inviting the donor to private events.
  - Sharing with the donor that their behavior was inappropriate.
  - Refraining from soliciting the donor for future support.
  - Refusing to accept the donor's support.

## Tips To Prepare for and Address Board Member Sexual Harassment Allegations

*Duane Morris LLP, 2022*

**Focus Areas:** What to do before and when allegations arise.

### **3 Steps That Make You Ready for Allegations:**

1. "Train HR and others in the organization on how to conduct a prompt, thorough, and impartial investigation.
2. Identify external investigators who can conduct the investigation if appropriate, such as if the claim is about a senior executive.
3. Have template memos ready to be customized so that it can be made clear to the complainant how seriously the organization takes her or his concerns and the accused understands there can be no retaliation."



## **12 Points About Board Responsibility and Responses for When Claims of Sexual Harassment Surface:**

1. Immediately acknowledge the allegation, thank the claimant or person advising the organization about the issue for coming forward, and advise them that the organization will promptly address the claim or issue raised.
2. Immediately assemble a team to conduct an independent and fair investigation to determine if the matter should be investigated in-house or by an outside lawyer or consultant based on the seriousness of the allegations and the position of the accused.
3. Decide the scope of investigation relative to allegations.
4. Advise the claimant, accused and all participants in the investigation that retaliation will not be tolerated.
5. Conduct the investigation expeditiously, but thoroughly.
6. Keep an open mind and ensure that all relevant evidence is considered before a decision is made.
7. Take appropriate remedial action (prompt and proportionate) based on findings and do not tolerate a culture of improper conduct regardless of whom the harasser may be.
8. Advise both parties of findings and the claimant of remedial action taken, if applicable (degree of specificity will depend on facts and circumstances).
9. Take this opportunity to underscore the importance of and the organization's commitment to a workplace free of discrimination and harassment by recirculating the harassment policy, stressing its importance to the organization and conducting harassment training to educate the workforce.
10. Monitor for retaliation and take decisive remedial action if there is any retaliation.
11. Have a media statement ready in the event the complaint goes public. Of course, it will need to be customized.
12. Have statements ready to go to workforce and other stakeholders. Of course, these too will need to be customized.



# Investigations

## Manual on Investigating Alleged Board Member Misconduct

*Sean Radcliffe and T. Markus Funk, ACC Docket, 2013*

**Focus Areas:** What to do when an investigation of a board member has been deemed to be warranted, how to get board members to cooperate, and tips for containing the damage.

### **Questions it examines:**

- What happens when the board member is the one in the investigatory hot seat?
- Do the same investigative rules and techniques apply when, for instance, a director has been accused of trading on insider information or leaking confidential information?
- And what are the best practices companies should consider proactively implementing so they are best positioned to effectively investigate alleged board member misconduct?

**Summary of the manual:** “Once grounds for investigating a board member have been identified, it is important to task outside counsel with the job of conducting a full and independent investigation. This will not only help give counsel’s ultimate investigative findings additional credibility with company stakeholders but will also be a factor considered if and when the authorities step in. The easiest way to ensure board member cooperation in an internal investigation is to explicitly include a duty to cooperate in board member service agreements. If you do not have clear service agreement language in place, or a board member accused of alleged misconduct refuses to cooperate, keep in mind that board members owe a fiduciary duty to their companies. It may be necessary to remind a recalcitrant board member of his duties of care and loyalty.”





## Sacred Spaces Keilim Toolkit - Organizational Response Module

The Keilim Toolkit by [Sacred Spaces](#) was created to guide “Jewish organizations to develop policies and procedures that create safer, more respectful, and more equitable environments for those who work at or access your organization.” It includes six [policy-building modules](#):

- Foundational Elements
- Prohibited Conduct
- Interaction Guidelines
- Screening
- **Organizational Response**
- Living Your Policy

The module on [Organizational Response](#) may be helpful when considering how to address allegations of, or actual, board member misconduct. It considers developing a reporting structure, receiving a report, action planning, and fact-finding and decision-making. Please note, the Fact-Finding and Decision-Making module is still in development and is slated to be ready in November 2022.

### Tipsheet on Internal vs. External Investigations

*Rahel Bayar*

While the focus of this SRE Network session by Rahel Bayar from [The Bayar Group](#), on which this [tip sheet](#) is based, was on determining whether to conduct an internal or external investigation in the workplace, as well as things to consider and steps to follow, some of the tips may be helpful when it comes to considering whether and how to investigate board member misconduct or allegations of misconduct.

**Disclaimer:** This SRE Network resource is intended to provide guidance to organizations who wish to establish safe, respectful and equitable workplaces and communal spaces. It does not guarantee safety, respect or equity and is not legal advice. Any use thereof should be based on the user's own evaluation and consultation with legal counsel and is at the sole risk of the user. SRE Network and its members are not responsible for any harm that may result from any such use.

