

*Nonprofit Corporation Code Disciplinary Procedures*  
*By Michael E. Malamut*

**I. A. 1952 Model Non-Profit Corporation Act (“MNCA”)  
Model for Alabama, Iowa, Kentucky, New Jersey, New Mexico, North Dakota,  
Ohio, Rhode Island, South Dakota, Texas, Virginia, Washington, Wisconsin, and  
District of Columbia**

*Member Discipline: MNCA § 11, Members:*

If the corporation has one or more classes of members, . . . the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the by-laws.

*Director Discipline: MNCA § 18, Number and Election of Directors:*

No decrease in the number [of directors] shall have the effect of shortening the term of any incumbent director. . . . Each director shall hold office for the term which he is elected or appointed and until his successor shall have been elected or appointed and qualified. . . . A director may be removed from office pursuant to any procedure therefore provided in the articles of incorporation.

*Officer Discipline: MNCA § 23, Officers:*

[Officers] shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed by the articles of incorporation or the by-laws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors.

*Officer Discipline: MNCA § 24, Removal of Officers:*

Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed.

**Variations:**

**I. B. District of Columbia**

*Member Discipline: D.C. Code § 29-2301.12:*

Members. If the corporation has 1 or more classes of members, . . . the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws.

*Director Discipline: D.C. Code § 29-301.19. Board of directors—Number; election; classification; and removal:*

(a) The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. . . .

(b) . . . [D]irectors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be 1 year.

. . .

(d) A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation or the bylaws, and if none be provided may be removed at a meeting called expressly for that purpose, with or without cause, by such vote as would suffice for his election.

*Officer Discipline: D.C. Code § 29-301.24. Officers—Appointment or election; tenure of office; authority:*

(a) The officers of a corporation shall consist of a president, a secretary, and a treasurer, and may include 1 or more vice-presidents and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding 3 years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors.

*Officer Discipline: D.C. Code § 29-301.25. Officers—Removal:*

Any officer or agent elected or appointed may be removed by the persons authorized to elect or appoint such officer or agent whenever in their judgment the best interest of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not itself create contract rights.

## **I. C. Ohio**

*Member Discipline; Officer Discipline: Ohio Rev. Code § 1702.11 Contents of regulations; amendments or new regulations; emergency authority:*

(A) Without limiting the generality of such authority, the regulations, whether designated a constitution or rules, or by some other term, may include provisions with respect to the following:

. . .

(2) The qualifications, admission, voluntary withdrawal, censure, and suspension of members, and the termination of membership;

. . .

(6) The number, classification, manner of fixing or changing the number, qualifications, term of office, voting rights, compensation or manner of fixing compensation, and the removal of directors;

. . .

(9) The titles, qualifications, duties, term of office, compensation or manner of fixing compensation, and the removal, of officers;

*Member Discipline: Ohio Rev. Code § 1702.13 Record of members; certificate; termination:*

(C) Membership in a corporation may be terminated in the manner provided by law, the

articles, or the regulations, and upon the termination of membership for any cause, such fact and the date of termination shall be recorded in the corporation's membership records.

(D) Unless the articles or the regulations otherwise provide, all the rights and privileges of a member in the corporation and its property shall cease on termination of membership.

*Director Discipline: Ohio Rev. Code § 1702.28 Terms and classifications of directors:*

(A) Unless the articles or the regulations provide for a different term, each director shall hold office until the next annual meeting of voting members and until the director's successor is elected, or until the director's earlier resignation, removal from office, or death.

*Director Discipline: Ohio Rev. Code § 1702.29 Removal of directors; filling vacancies:*

(B) A director may be removed from office pursuant to any procedure therefor provided in the articles or in the regulations and such removal shall create a vacancy in the board.

*Officer Discipline: Ohio Rev. Code § 1702.34 Officers; election; authority; removal:*

(A) The officers shall be elected or appointed at such time, in such manner, and for such terms as may be prescribed in the articles or the regulations. In the absence of any such provision, all officers shall be elected annually by the directors.

(B) Unless the articles or the regulations otherwise provide, and subject to the exceptions applicable during an emergency for which provision is made in division (G) of section 1702.11 of the Revised Code:

...

(2) Any officer may be removed, with or without cause, by the persons authorized to elect or appoint the officer without prejudice to the contract rights of such officer. The election or appointment of an officer for a given term, or a general provision in the articles, the regulations, or the bylaws with respect to term of office, shall not be deemed to create contract rights.

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## **II. A. 1988 Revised Model Nonprofit Corporation Act ("RMNCA")**

**Model for Alaska, Arizona, Arkansas, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, Oregon, South Carolina, Tennessee, Utah, Vermont, West Virginia, Wyoming**

*Member Discipline: RMNCA § 6.21, Termination, Expulsion and Suspension:*

(a) No member of a public benefit or mutual benefit corporation may be expelled or suspended, and no membership or memberships in such corporations may be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

(b) A procedure is fair and reasonable when either:

(1) The articles or bylaws set forth a procedure that provides:

(i) not less than fifteen days prior written notice of the expulsion, suspension or termination and the reasons therefore; and

(ii) an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or persons authorized to decide that the proposed expulsion, termination or suspension not take place; or

(2) It is fair and reasonable taking into consideration all of the relevant facts and circumstances.

(c) Any written notice given by mail must be given by first-class or certified mail sent to the last address of the member shown on the corporation's records.

(d) Any proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension or termination.

(e) A member who has been expelled or suspended may be liable to the corporation for dues, assessments or fees as a result of obligations incurred or commitments made prior to expulsion or suspension.

*Director Discipline: RMNCA § 8.05, Terms of Directors Generally:*

(a) The articles or bylaws must specify the terms of directors. Except for designated or appointed directors, the terms of directors may not exceed five years. In the absence of any term specified in the articles or bylaws, the term of each director shall be one year. Directors may be elected for successive terms.

(b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.

(c) Except as provided in the articles or bylaws:

(1) the term of a director filling a vacancy in the office of a director elected by members expires at the next election of directors by members; and

(2) the term of a director filling any other vacancy expires at the end of the unexpired term that such director is filling.

(d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, designated or appointed and qualifies, or until there is a decrease in the number of directors.

*Director Discipline: RMNCA § 8.08, Removal of Directors Elected by Members or Directors:*

(a) The members may remove one or more directors elected by them without cause.

(b) If a director is elected by a class, chapter or other organizational unit or by region or other geographic grouping, the director may be removed only by the members of that class, chapter, unit or grouping.

(c) Except as provided in subsection (i), a director may be removed under subsection (a) or (b) only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect directors.

(d) If cumulative voting is authorized, a director may not be removed if the number of votes, or if the director was elected by a class, chapter, unit or grouping of members, the number of votes of that class, chapter, unit or grouping, sufficient to elect the director under cumulative voting is voted against the director's removal.

(e) A director elected by members may be removed by the members only at a meeting

called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

(f) In computing whether a director is protected from removal under subsections (b) - (d), it should be assumed that the votes against removal are cast in an election for the number of directors of the class to which the director to be removed belonged on the date of that director's election.

(g) An entire board of directors may be removed under subsections (a) - (e).

(h) A director elected by the board may be removed without cause by the vote of two-thirds of the directors then in office or such greater number as is set forth in the articles or bylaws; provided, however, that a director elected by the board to fill the vacancy of a director elected by the members may be removed without cause by the members, but not the board.

(i) If, at the beginning of a director's term on the board, the articles or bylaws provide that the director may be removed for missing a specified number of board meetings, the board may remove the director for failing to attend the specified number of meetings. The director may be removed only if a majority of the directors then in office vote for the removal.

(j) The articles or bylaws of a religious corporation may:

(1) limit the application of this section; and

(2) set forth the vote and procedures by which the board or any person may remove with or without cause a director elected by the members or the board.

*Director Discipline: RMNCA § 8.09, Removal of Designated or Appointed Directors:*

(a) A designated director may be removed by an amendment to the articles or bylaws deleting or changing the designation.

(b) Appointed Directors:

(1) Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director;

(2) The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary; and

(3) A removal is effective when the notice is effective unless the notice specifies a future effective date.

*Director Discipline: RMNCA § 8.10, Removal of Directors by Judicial Proceeding:*

(a) The [name or describe] court of the county where a corporation's principal office is located may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least 10 percent of the voting power of any class, or the attorney general in the case of a public benefit corporation, if the court finds that

(1) the director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation, [if section 8.13 [regarding transactions of public benefit corporations with financially interested parties] is adopted, that the provisions of section 8.13 have been violated,] or a final judgment has been entered finding that the director has violated a duty set forth in sections 8.30 – 8.33 [director standards of conduct], and

(2) removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

(c) If members or the attorney general commence a proceeding under subsection (a), the corporation shall be made a party defendant.

(d) If a public benefit corporation or its members commence a proceeding under subsection (a), they shall give the attorney general written notice of the proceeding.

(e) The articles or bylaws of a religious corporation may limit or prohibit the application of this section.

*Officer Discipline: RMNCA § 8.43, Resignation and Removal of Officers:*

(b) A board may remove any officer at any time with or without cause.

## **Variations**

### **II. B. Florida**

*Member Discipline: Fla. Stat. § 617.0601 Members, generally:*

(5) Membership in the corporation may be terminated in the manner provided by law, by the articles of incorporation, or by the bylaws, and a termination of membership shall be recorded in the membership book. Unless otherwise provided in the articles of incorporation or the bylaws, all the rights and privileges of a member cease on termination of membership.

...

(7) Where the articles of incorporation expressly limit membership in the corporation to property owners within specific measurable geographic boundaries and where the corporation has been formed for the benefit of all of those property owners, no such property owner shall be denied membership, provided that such property owner once admitted to membership, shall comply with the terms and conditions of membership. Any bylaws, rules, or other regulations to the contrary are deemed void and any persons excluded from membership by such bylaws, rules, or other regulations are deemed members with full rights, including the right, by the majority, or as otherwise provided in the articles of incorporation, to call for a meeting of the membership.

*Director Discipline: Fla. Stat. § 617.0803 Number of directors:*

(2) The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but the corporation must never have fewer than three directors.

(3) Directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws.

*Director Discipline: Fla. Stat. § 617.0808 Removal of directors:* A director may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws, which shall provide the following, and if they do not do so, shall be deemed to include the following:

(1) Any member of the board of directors may be removed from office with or without cause by the vote or agreement in writing by a majority of all votes of the membership.

- (2) The notice of a meeting of the members to recall a member or members of the board of directors shall state the specific directors sought to be removed.
- (3) A proposed removal of a director at a meeting shall require a separate vote for each board member sought to be removed. Where removal is sought by written agreement, a separate agreement is required for each board member to be removed.
- (4) If removal is effected at a meeting, any vacancies created thereby shall be filled by the members at the same meeting.
- (5) Any director who is removed from the board shall not be eligible to stand for reelection until the next annual meeting of the members.
- (6) Any director removed from office shall turn over to the board of directors within 72 hours any and all records of the corporation in his or her possession.
- (7) If a director who is removed shall not relinquish his or her office or turn over records as required under this section, the circuit court in the county where the corporation's principal office is located may summarily order the director to relinquish his or her office and turn over corporate records upon application of any member.

*Officer Discipline: Fla. Stat. § 617.0840 Required officers:*

- (1) A corporation shall have the officers described in its articles of incorporation or its bylaws who shall be elected or appointed at such time and for such terms as is provided in the articles of incorporation or the bylaws. In the absence of any such provisions, all officers shall be elected or appointed by the board of directors annually.

*Officer Discipline: Fla. Stat. § 617.0842 Resignation and removal of officers:*

- (2) A board of directors may remove any officer at any time with or without cause. Any officer or assistant officer, if appointed by another officer, may likewise be removed by such officer.

## **II. C. Illinois**

*Member Discipline: 805 Ill. Comp. Stat. § 105/107.03. Members:*

- (b) If the corporation has one or more classes of members, the designation of the class or classes and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws.

*Director Discipline: 805 Ill. Comp. Stat. § 105/108.10. Number, election and resignation of directors:*

- (a) . . . The number of directors may be increased or decreased from time to time by amendment to the bylaws.
- (b) The bylaws may establish a variable range for the size of the board by prescribing a minimum and maximum (which may not be less than 3 or exceed the minimum by more than 5) number of directors. If a variable range is established, unless the bylaws otherwise provide, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the directors without further amendment to the bylaws.
- (c) The terms of all directors expire at the next meeting for the election of directors following their election unless their terms are staggered under subsection (e). The term of

a director elected to fill a vacancy expires at the next annual meeting of the members entitled to vote at which his or her predecessor's term would have expired or in accordance with Section 108.30 of this Act. The term of a director elected as a result of an increase in the number of directors expires at the next annual meeting of members entitled to vote unless the term is staggered under subsection (e).

(d) Despite the expiration of a director's term, he or she continues to serve until the next meeting of members entitled to vote on directors at which directors are elected. A decrease in the number of directors does not shorten an incumbent director's term.

*Director Discipline: 805 Ill. Comp. Stat. § 105/108.35. Removal of directors:*

(a) One or more of the directors may be removed, with or without cause. In the case of a corporation having a board of directors which is classified in accordance with subsection 108.10(e) of this Act, no director may be removed except for cause if the articles of incorporation or the bylaws so provide.

(b) In the case of a corporation with no members or with no members entitled to vote on directors, a director may be removed by the affirmative vote of a majority of the directors then in office present and voting at a meeting of the board of directors at which a quorum is present.

(c) In the case of a corporation with members entitled to vote for directors, no director may be removed, except as follows:

(1) A director may be removed by the affirmative vote of two-thirds of the votes present and voted, either in person or by proxy.

(2) No director shall be removed at a meeting of members entitled to vote unless the written notice of such meeting is delivered to all members entitled to vote on removal of directors. Such notice shall state that a purpose of the meeting is to vote upon the removal of one or more directors named in the notice. Only the named director or directors may be removed at such meeting.

(3) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed, with or without cause, if the votes cast against his or her removal would be sufficient to elect him or her if then cumulatively voted at an election of the entire board of directors.

(4) If a director is elected by a class of voting members entitled to vote, directors or other electors, that director may be removed only by the same class of members entitled to vote, directors or electors which elected the director.

(d) The provisions of subsections (a), (b) and (c) shall not preclude the Circuit Court from removing a director of the corporation from office in a proceeding commenced either by the corporation or by members entitled to vote holding at least 10 percent of the outstanding votes of any class if the court finds (1) the director is engaged in fraudulent or dishonest conduct or has grossly abused his or her position to the detriment of the corporation, and (2) removal is in the best interest of the corporation. If the court removes a director, it may bar the director from reelection for a period prescribed by the court. If such a proceeding is commenced by a member entitled to vote, such member shall make the corporation a party defendant.

*Officer Discipline: 805 Ill. Comp. Stat. § 105/108.50. Officers:*

Officers. (a) Officers and assistant officers and agents as may be deemed necessary may



be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws.

*Officer Discipline: 805 Ill. Comp. Stat. § 105/108.55. Removal of Officers:*

Any officer or agent may be removed by the board of directors or other persons authorized to elect or appoint such officer or agent but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create any contract rights.

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**III. 2008 Model Nonprofit Corporation Act (3d ed.) (“MNCA3d”)**

**Not yet adopted in any state**

*Member Discipline: MNCA3d § 6.21: Termination and Suspension:*

- (a) A membership in a membership corporation may be terminated or suspended for the reasons and in the manner provided in the articles of incorporation or bylaws.
- (b) A proceeding challenging a termination or suspension for any reason must be commenced within one year after the effective date of the termination or suspension.
- (c) The termination or suspension of a member does not relieve the member from any obligations incurred or commitments made prior to the termination or suspension.

*Official Comment:*

Section 6.21 does not deal with the question of the substantive grounds for termination. It also does not specify any requirements that the procedures for termination or suspension must satisfy, but leaves the determination of those procedures to the members. The procedures will require due process for the member being terminated or suspended, but the nature of the process to be provided will depend on the reason for the termination or suspension. Suspension for failure to comply with administrative requirements such as paying dues, for example, do not require the type of due process required when a member is to be terminated for misconduct.

The prior version of the act differentiated between termination and expulsion, using the term “termination” when speaking of memberships and the term “expulsion” when speaking of members. That distinction has been eliminated from the current act in favor of the single term “termination.”

If the membership in a membership corporation is limited to persons who are members in good standing in a lodge, church, club, society, or other entity, the articles of incorporation or bylaws may provide that failure on the part of a person to remain in good standing in the other entity will be sufficient cause to terminate the membership of the person in the corporation.

To provide finality subsection (b) requires that a proceeding challenging a termination or suspension be commenced within one year after the date of the termination or suspension.

A person who has been terminated or suspended is liable for dues, assessments, and fees based on commitments made or obligations incurred prior to the termination or suspension. If the person has contracted or agreed to make payments to the nonprofit corporation regardless of his or her status as a member, that obligation continues even though the person is suspended or is no longer a member.

*Director Discipline: MNCA3d § 8.05, Terms of Directors:*

- (a) The articles of incorporation or bylaws may specify the terms of directors. If a term is not specified in the articles or bylaws, the term of a director is one year. Except for directors who are appointed by persons who are not members or who are designated in a manner other than by election or appointment, the term of a director may not exceed five years.
- (b) A decrease in the number of directors or term of office does not shorten an incumbent director's term.
- ...
- (d) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected, appointed, or designated and until the director's successor takes office unless otherwise provided in the articles of incorporation or bylaws.

*Official Comment:*

The usual term of directors is one year, but Section 8.05(a) permits the articles of incorporation or bylaws to provide for longer terms. In the case of directors elected by the members, the permissible longer term is limited to five years. However, Section 8.05(a) permits directors who are not elected to serve for terms longer than five years. Directors who serve "ex officio" are "designated" for purposes of Section 8.05(a) and thus are not limited to a term of five years. The act does not provide for term limits and thus a director may be elected to more than one term, regardless of the length of a term, unless the articles of incorporation or bylaws limit the number of terms a director may serve.

Section 8.05(b) provides that a decrease in the number of directors does not shorten the term of an incumbent director or divest any director of his office. Rather, the incumbent director's term expires at the meeting of members at which the incumbent's successor would otherwise be elected.

Section 8.05(d) provides for "holdover" directors so that directorships do not automatically become vacant at the expiration of their terms but the same persons continue in office until successors qualify for office, unless otherwise provided in the articles of incorporation or bylaws. Thus the power of the board of directors to act continues uninterrupted even though an annual meeting of the members is not held or the members are deadlocked and unable to elect directors at the meeting.

*Director Discipline: MNCA3d § 8.08, Removal of Directors by Members or Other Persons:*

- (a) Removal of directors of a membership corporation is subject to the following provisions:
  - (1) The members may remove, with or without cause, one or more directors who have been elected by the members, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal. See Section 10.22(a) (bylaw amendments requiring member

- approval).
- (2) Except as provided in the articles of incorporation or bylaws, if a director is elected by a voting group of members, or by a chapter or other organizational unit, or by a region or other geographic grouping, only the members of that voting group or chapter, unit, region, or grouping may participate in the vote to remove the director.
  - (3) The notice of a meeting of members at which removal of a director is to be considered must state that the purpose, or one of the purposes, of the meeting is removal of the director.
  - (4) The board of directors of a membership corporation may not remove a director except as provided in subsection (c) or in the articles of incorporation or bylaws.
- (b) The board of directors may remove a director of a nonmembership corporation:
- (1) With or without cause, unless the articles of incorporation or bylaws provide that directors may be removed only for cause. The articles or bylaws may specify what constitutes cause for removal.
  - (2) As provided in subsection (c).
- (c) The board of directors of a membership corporation or nonmembership corporation may remove a director who:
- (1) has been declared of unsound mind by a final order of court;
  - (2) has been convicted of a felony;
  - (3) has been found by a final order of court to have breached a duty as a director under [Subchapter] 8C;
  - (4) has missed the number of board meetings specified in the articles of incorporation or bylaws, if the articles or bylaws at the beginning of the director's current term provided that a director may be removed for missing the specified number of board meetings; or
  - (5) does not satisfy at the time any of the qualifications for directors set forth in the articles of incorporation or bylaws at the beginning of the director's current term, if the decision that the director fails to satisfy a qualification is made by the vote of a majority of the directors who meet all of the required qualifications.
- (d) A director who is designated in the articles of incorporation or bylaws may be removed by an amendment to the articles or bylaws deleting or changing the designation. See Section 10.30 (approval of amendments by third persons).
- (e) Except as provided in the articles of incorporation or bylaws, a director who is appointed by persons other than the members may be removed with or without cause by those persons.

*Official Comment:*

Section 8.08(a) adopts the view that the members should normally have the power to change at will the directors elected by them. This section reverses the common law position that directors have a statutory entitlement to their office and can be removed only for cause – fraud, criminal conduct, gross abuse of office amounting to a breach of trust, or similar conduct. The power to remove directors of a membership corporation is subject to certain restrictions set forth in Section 8.08:

- (1) The power to remove a director without cause may be eliminated by a provision in the articles of incorporation or bylaws.
- (2) If the articles of incorporation provide that a voting group of members or other group is entitled to elect a director (see Section 8.04), only that group may participate in the vote whether or not to remove that director. But that director may be removed by court proceeding under Section 8.09 despite this section.

*Director Discipline: MNCA3d § 8.09, Removal of Directors by Judicial Proceeding:*

- (a) The [name or describe] court of the county where the principal office of a nonprofit corporation (or, if none in this state, its registered office) is located may remove a director from office in a proceeding commenced by or in the right of the corporation if the court finds that:
  - (1) the director engaged in fraudulent conduct with respect to the corporation or its members, grossly abused the position of director, or intentionally inflicted harm on the corporation; and
  - (2) considering the director's course of conduct and the inadequacy of other available remedies, removal would be in the best interest of the corporation.
- (b) A member, individual director, or member of a designated body proceeding on behalf of the nonprofit corporation under subsection (a) shall comply with all of the requirements of [Chapter] 13.
- (c) The court, in addition to removing the director, may bar the director from being reelected, redesignated, or reappointed for a period prescribed by the court.
- (d) Nothing in this section limits the equitable powers of the court to order other relief.
- (e) If a proceeding is commenced under this section to remove a director of a charitable corporation, the plaintiff must give the attorney general notice in record form of the commencement of the proceeding.

*Official Comment:*

Section 8.09 is designed to operate in the limited circumstance where other remedies are inadequate to address serious misconduct by a director and it is impracticable for members to invoke the usual remedy of removal under Section 8.08. In recognition that director election and removal are principal prerogatives of members, Section 8.09 authorizes judicial removal of a director who is found to have engaged in serious misconduct as described in subsection (a)(1) if the court also finds that, taking into consideration the director's course of conduct and the inadequacy of other available remedies, removal of the director would be in the best interest of the nonprofit corporation. Misconduct serious enough to justify the extraordinary remedy of judicial removal does not involve any matter falling within an individual director's lawful exercise of business judgment, no matter how unpopular the director's views may be with the other members of the board. Policy and personal differences among the members of the board of directors should be left to be resolved by the members.

Section 8.09(d) makes it clear that the court is not restricted to the removal remedy in actions under this section but may order any other equitable relief. Where, for

example, the complaint concerns an ongoing course of conduct that is harmful to the nonprofit corporation, the court may enjoin the director from continuing that conduct. In another instance, the court may determine that the director's continuation in office is inimical to the best interest of the corporation.

A proceeding under this section may be brought directly by the board of directors. A proceeding may also be brought by a member or an individual director or member of a designated body suing derivatively. If an action is brought derivatively, all of the provisions of Chapter 13, including dismissal under Section 13.05, are applicable to the action.

Section 8.09 is designed to interfere as little as possible with the usual mechanisms of corporate governance. Accordingly, except for limited circumstances such as those described above, where members have reelected or declined to remove a director with full knowledge of the director's misbehavior, the court should decline to entertain an action for removal under Section 8.09. It is not intended to permit judicial resolution of internal corporate disputes involving issues other than those specified in subsection (a).

*Officer Discipline: MNCA3d § 8.43, Resignation and Removal of Officers:*

(b) Except as provided in the articles of incorporation or bylaws, an officer may be removed at any time with or without cause by:

- (i) the board of directors;
- (ii) the officer who appointed the officer being removed, unless the board provides otherwise; or
- (iii) any other officer authorized by the articles, the bylaws or the board.

(c) In this section, "appointing officer" means the officer (including any successor to that officer) who appointed the officer resigning or being removed.

*Official Comment:*

In part because of the unlimited power of removal confirmed by Section 8.43(b), a board of directors may enter into an employment agreement with the holder of an office that extends beyond the term of the board of directors. This type of contract is binding on the nonprofit corporation even if the articles of incorporation or bylaws provide that officers are elected for a term shorter than the period of the employment contract. If a later board of directors refuses to reelect that person as an officer, the person has the right to sue for damages but not for specific performance of the contract.

Section 8.43(b) is consistent with current practice and declaratory of current law. It recognizes that the officers of the nonprofit corporation are subject to removal by the board of directors and, in certain instances, by other officers. It provides the corporation with the flexibility to determine when, if ever, an officer will be permitted to remove another officer. To the extent that the corporation wishes to permit an officer, other than the appointing officer, to remove another officer, the articles of incorporation or bylaws or a board resolution should set forth clearly the persons having removal authority.

A person may be removed from office irrespective of contract rights or the presence or absence of "cause" in a legal sense. Section 8.44 provides that removal from office of a holder who has contract rights is without prejudice to whatever rights the former officer may assert in a suit for damages for breach of contract.

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#### **IV. A. Delaware General Corporation Act**

#### **Similar to General Corporation Acts in Kansas, Maryland, Oklahoma, and Puerto Rico, with limited provisions for membership corporations or non-stock corporations**

Delaware General Corporation Act, Delaware Code tit. 8

*Member discipline:* Non-stock corporation provisions, Del. Code tit. 8, § 215, do not address member discipline

*Director Discipline: Del. Code tit. 8, § 141. Board of directors; powers; number, qualifications, terms and quorum; committees; classes of directors; nonprofit corporations; reliance upon books; action without meeting; removal:*

(b) The number of directors shall be fixed by, or in the manner provided in, the bylaws, unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment of the certificate. . . . Each director shall hold office until such director's successor is elected and qualified or until such director's earlier resignation or removal. . . .

(k) Any director or the entire board of directors may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors, except as follows:

(1) Unless the certificate of incorporation otherwise provides, in the case of a corporation whose board is classified as provided in subsection (d) of this section, shareholders may effect such removal only for cause; or

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no director may be removed without cause if the votes cast against such director's removal would be sufficient to elect such director if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which such director is a part.

Whenever the holders of any class or series are entitled to elect 1 or more directors by the certificate of incorporation, this subsection shall apply, in respect to the removal without cause of a director or directors so elected, to the vote of the holders of the outstanding shares of that class or series and not to the vote of the outstanding shares as a whole.

*Officer Discipline: Del. Code tit. 8, § 142. Officers; titles, duties, selection, term; failure to elect; vacancies:*

(b) Officers shall be chosen in such manner and shall hold their offices for such terms as are prescribed by the bylaws or determined by the board of directors or other governing body. Each officer shall hold office until such officer's successor is elected and qualified or until such officer's earlier resignation or removal. . . .

#### **Variations:**

#### **IV. B. Maryland**

*Director Discipline: Md. Code Corps. & Ass'ns §2-402:*

(b) Subject to the provisions of subsection (a) of this section and except for a corporation that has elected to be subject to § 3-804(b) of this article, a Maryland

corporation shall have the number of directors provided in its charter until changed by the bylaws.

(c) Subject to the provisions of subsection (a) of this section and except for a corporation that has elected to be subject to § 3-804(b) of this article, the bylaws may:

- (1) Alter the number of directors set by the charter; and
- (2) Authorize a majority of the entire board of directors to alter within specified limits the number of directors set by the charter or the bylaws, but the action may not affect the tenure of office of any director.

*Director Discipline: Md. Code Corps. & Ass'ns §2-404:*

(b) (1) Except as provided in paragraph (2) of this subsection, at each annual meeting of stockholders, the stockholders shall elect directors to hold office until the earlier of:

- (i) The next annual meeting of stockholders and until their successors are elected and qualify; or
- (ii) The time provided in the terms of any class or series of stock pursuant to which such directors are elected.

§2-405.

(a) In case of failure to elect directors at the designated time, the directors holding over shall continue to manage the business and affairs of the corporation until their successors are elected and qualify.

(b) A director not elected annually in accordance with § 2-501(b) of this title shall be deemed to be continuing in office and shall not be deemed to be holding over under subsection (a) of this section until after the time at which an annual meeting is required to be held under § 2-501(b) of this title or the charter or bylaws of the corporation.

*Director Discipline: Md. Code Corps. & Ass'ns §2-406:*

(a) The stockholders of a corporation may remove any director, with or without cause, by the affirmative vote of a majority of all the votes entitled to be cast generally for the election of directors, except:

- (1) As provided in subsection (b) of this section;
- (2) As otherwise provided in the charter of the corporation; or
- (3) For a corporation that has elected to be subject to § 3-804(a) of this article.

(b) Unless the charter of the corporation provides otherwise:

- (1) If the stockholders of any class or series are entitled separately to elect one or more directors, a director elected by a class or series may not be removed without cause except by the affirmative vote of a majority of all the votes of that class or series;
- (2) If a corporation has cumulative voting for the election of directors and less than the entire board is to be removed, a director may not be removed without cause if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there is more than one class of directors, at an election of the class of directors of which the director is a member; and
- (3) If the directors have been divided into classes, a director may not be removed without cause.

*Officer Discipline: Md. Code Corps. & Ass'ns §2-413:*

- (a) Unless the bylaws provide otherwise, the board of directors shall elect the officers.
- (b) Unless the bylaws provide otherwise, an officer serves for one year and until his successor is elected and qualifies.
- (c) (1) If the board of directors in its judgment finds that the best interests of the corporation will be served, it may remove any officer or agent of the corporation.
- (2) The removal of an officer or agent does not prejudice any of his contract rights.

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## **V. Stand-Alone State-Specific Acts**

### **California, Louisiana, Michigan, Massachusetts, Nevada, New Hampshire, New York, Pennsylvania**

#### **V. A. California**

##### *California Corporations Code*

##### *Public Benefit Corporations*

##### *Disciplinary Powers, General: Cal. Corp. Code § 5151:*

- (b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).
- (c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:
  - ...
  - (3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.
  - ...
  - (5) The appointment, duties, compensation and tenure of officers.
- (d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 5341.

##### *Member Discipline: Cal. Corp. Code § 5340:*

- (a) A member may resign from membership at any time.
- (b) This section shall not relieve the resigning member from any obligation for charges incurred, services or benefits actually rendered, dues, assessments or fees, or arising from contract or otherwise, and this section shall not diminish any right of the corporation to enforce any such obligation or obtain damages for its breach.
- (c) A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed.

##### *Member Discipline: Cal. Corp. Code § 5341:*

- (a) No member may be expelled or suspended, and no membership or membership rights may be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.
- (b) Any expulsion, suspension or termination must be done in good faith and in a fair and



reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination, or expulsion are considered.

(c) A procedure is fair and reasonable when:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all the members as required by the articles or bylaws;

(2) It provides the giving of 15 days prior notice of the expulsion, suspension or termination and the reasons therefor; and

(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the member shown on the corporation's records.

(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, if it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedures for expulsion, suspension or termination and not the substantive grounds therefor. An expulsion, suspension or termination based upon substantive grounds which violate contractual or other rights of the member or are otherwise unlawful, is not made valid by compliance with this section.

(g) A member who is expelled or suspended or whose membership is terminated shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments or fees incurred before the expulsion, suspension or termination or arising from contract or otherwise.

*Director Discipline: Cal. Corp. Code § 5221:*

(a) The board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or been found by a final order or judgment of any court to have breached any duty under Article 3 (commencing with Section 5230), or, if at the time a director is elected, the bylaws provide that a director may be removed for missing a specified number of board meetings, fails to attend the specified number of meetings.

(b) As provided in paragraph (3) of subdivision (c) of Section 5151, the articles or bylaws may prescribe the qualifications of directors. The board, by a majority vote of the

directors who meet all of the required qualifications to be a director, may declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director's current term of office.

*Director Discipline: Cal. Corp. Code § 5222:*

(a) Subject to subdivisions (b) and (f), any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members pursuant to Section 5310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 5616, no director may be removed (unless the entire board is removed) if the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) If by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) If by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 5221 and 5223, a director may not be removed prior to the expiration of the director's term of office.

(e) If a director removed under this section or Section 5221 or 5223 was chosen by designation pursuant to subdivision (d) of Section 5220, then:

(1) If a different person may be designated pursuant to a governing article or bylaw provision, the new designation shall be made.

(2) If the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) If by the provisions of the articles or bylaws a person or persons are entitled to designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the

written consent of the designating person or persons.

*Director Discipline: Cal. Corp. Code § 5223:*

(a) The superior court of the proper county may, at the suit of a director, or twice the authorized number (Section 5036) of members or 20 members, whichever is less, remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation or breach of any duty arising under Article 3 (commencing with Section 5230) of this chapter, and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

(b) The Attorney General may bring an action under subdivision (a), may intervene in such an action brought by any other party and shall be given notice of any such action brought by any other party.

*Officer Discipline: Cal. Corp. Code § 5213:*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

...

(c) If the articles or bylaws provide for the election of any officers by the members, the term of office of the elected officer shall be one year unless the articles or bylaws provide for a different term which shall not exceed three years.

*Mutual Benefit Corporations*

*Disciplinary Powers, General: Cal. Corp. Code § 7151:*

(b) Once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

...

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

...

(5) The appointment, duties, compensation and tenure of officers.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members, consistent with the requirements of Section 7341.

*Member Discipline: Cal. Corp. Code § 7340:*

(c) A membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed.

*Member Discipline: Cal. Corp. Code § 7341:*

(a) No member may be expelled or suspended, and no membership or memberships may

be terminated or suspended, except according to procedures satisfying the requirements of this section. An expulsion, termination or suspension not in accord with this section shall be void and without effect.

(b) Any expulsion, suspension, or termination must be done in good faith and in a fair and reasonable manner. Any procedure which conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the suspension, termination, or expulsion are considered.

(c) A procedure is fair and reasonable when:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of such provisions are sent annually to all the members as required by the articles or bylaws;

(2) It provides the giving of 15 days' prior notice of the expulsion, suspension or termination and the reasons therefor; and

(3) It provides an opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension or termination by a person or body authorized to decide that the proposed expulsion, termination or suspension not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or registered mail sent to the last address of the members shown on the corporation's records.

(e) Any action challenging an expulsion, suspension or termination of membership, including any claim alleging defective notice, must be commenced within one year after the date of the expulsion, suspension or termination. In the event such an action is successful the court may order any relief, including reinstatement, if it finds equitable under the circumstances, but no vote of the members or of the board may be set aside solely because a person was at the time of the vote wrongfully excluded by virtue of the challenged expulsion, suspension or termination, unless the court finds further that the wrongful expulsion, suspension or termination was in bad faith and for the purpose, and with the effect, of wrongfully excluding the member from the vote or from the meeting at which the vote took place, so as to affect the outcome of the vote.

(f) This section governs only the procedures for expulsion, suspension or termination and not the substantive grounds therefor. An expulsion, suspension or termination based upon substantive grounds which violate contractual or other rights of the member or are otherwise unlawful is not made valid by compliance with this section.

(g) A member who is expelled or suspended or whose membership is terminated shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments or fees incurred before the expulsion, suspension or termination or arising from contract or otherwise.

*Director Discipline: Cal. Corp. Code § 7221:*

(a) The board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or, in the case of a corporation holding assets in charitable trust, has been found by a final order or judgment of any court to have breached any duty arising as a result of Section 7238, or, if at the

time a director is elected, the bylaws provide that a director may be removed for missing a specified number of board meetings, fails to attend the specified number of meetings.

(b) As provided in paragraph (3) of subdivision (c) of Section 7151, the articles or bylaws may prescribe the qualifications of the directors. The board, by a majority vote of the directors who meet all of the required qualifications to be a director, may declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director's current term of office.

*Director Discipline: Cal. Corp. Code § 7222:*

(a) Subject to subdivisions (b) and (f) of this section, any or all directors may be removed without cause if:

(1) In a corporation with fewer than 50 members, the removal is approved by a majority of all members (Section 5033).

(2) In a corporation with 50 or more members, the removal is approved by the members (Section 5034).

(3) In a corporation with no members, the removal is approved by a majority of the directors then in office.

(b) Except for a corporation having no members, pursuant to Section 7310:

(1) In a corporation in which the articles or bylaws authorize members to cumulate their votes pursuant to subdivision (a) of Section 7615, no director may be removed (unless the entire board is removed) when the votes cast against removal, or not consenting in writing to the removal, would be sufficient to elect the director if voted cumulatively at an election at which the same total number of votes were cast (or, if the action is taken by written ballot, all memberships entitled to vote were voted) and the entire number of directors authorized at the time of the director's most recent election were then being elected.

(2) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(3) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

(d) Except as provided in this section and Sections 7221 and 7223, a director may not be removed prior to the expiration of the director's term of office.

(e) Where a director removed under this section or Section 7221 or 7223 was chosen by designation pursuant to subdivision (d) of Section 7220, then:

(1) Where a different person may be designated pursuant to the governing article or bylaw provision, the new designation shall be made.

(2) Where the governing article or bylaw provision contains no provision under which a different person may be designated, the governing article or bylaw provision shall be deemed repealed.

(f) When by the provisions of the articles or bylaws a person or persons are entitled to

designate one or more directors, then:

(1) Unless otherwise provided in the articles or bylaws at the time of designation, any director so designated may be removed without cause by the designating person or persons.

(2) Any director so designated may only be removed under subdivision (a) with the written consent of the designating person or persons.

*Director Discipline: Cal. Corp. Code § 7223:*

(a) The superior court of the proper county may, at the suit of one of the parties specified in subdivision (b), remove from office any director in case of fraudulent or dishonest acts or gross abuse of authority or discretion with reference to the corporation or breach of any duty arising as a result of Section 7238 and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

(b) An action under subdivision (a) may be instituted by any of the following:

(1) A director.

(2) In the case of a corporation where the total number of votes entitled to be cast for a director is less than 5,000, twice the authorized number (Section 5036) of members, or 20 members, whichever is less.

(3) In the case of a corporation where the total number of votes entitled to be cast for a director is 5,000 or more, twice the authorized number (Section 5036) of members, or 100 members, whichever is less.

(c) In the case of a corporation holding assets in charitable trust, the Attorney General may bring an action under subdivision (a), may intervene in such an action brought by any other party and shall be given notice of any such action brought by any other party.

*Officer Discipline: Cal. Corp. Code § 7213:*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

*Religious Corporations*

*Disciplinary Powers, General: Cal. Corp. Code § 9151:*

(b) Except as otherwise provided in the articles or bylaws, once members have been admitted, a bylaw specifying or changing a fixed number of directors or the maximum or minimum number or changing from a fixed to a variable board or vice versa may only be adopted by approval of the members (Section 5034).

(c) The bylaws may contain any provision, not in conflict with law or the articles, for the management of the activities and for the conduct of the affairs of the corporation, including but not limited to:

...

(3) The qualifications, duties and compensation of directors; the time of their election; and the requirements of a quorum for directors' and committee meetings.

...

(5) The appointment, duties, compensation and tenure of officers.

(d) The bylaws may provide for the manner of admission, withdrawal, suspension, and expulsion of members.

*Member Discipline: Cal. Corp. Code § 9340:*

(c) Except as provided in subdivision (b) of Section 9320 [expiration of membership on death or dissolution] or in subdivision (a) of this section [resignation], a membership issued for a period of time shall expire when such period of time has elapsed unless the membership is renewed.

(d) A membership may be terminated as provided in the articles or bylaws of the corporation.

*Director Discipline: Cal. Corp. Code § 9221:*

(a) The board may declare vacant the office of a director who has been declared of unsound mind by a final order of court, or convicted of a felony, or, if at the time a director is elected, the bylaws provide that a director may be removed for missing a specified number of board meetings, fails to attend the specified number of meetings.

(b) As provided in paragraph (3) of subdivision (c) of Section 9151, the articles or bylaws may prescribe the qualifications of the directors. Unless otherwise provided by the articles or bylaws, the board, by a majority vote of the directors who meet all of the required qualifications to be a director, may declare vacant the office of any director who fails or ceases to meet any required qualification that was in effect at the beginning of that director's current term of office.

*Director Discipline: Cal. Corp. Code § 9222:*

(a) Except as provided in the articles or bylaws and subject to subdivision (b) of this section, any or all directors may be removed without cause if the removal is approved by the members (Section 5034).

(b) Except for a corporation having no members pursuant to Section 9310:

(1) When by the provisions of the articles or bylaws the members of any class, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class.

(2) When by the provisions of the articles or bylaws the members within a chapter or other organizational unit, or region or other geographic grouping, voting as such, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members within the organizational unit or geographic grouping.

(c) Any reduction of the authorized number of directors or any amendment reducing the number of classes of directors does not remove any director prior to the expiration of the director's term of office.

*Director Discipline: Cal. Corp. Code § 9223:*

(a) The superior court of the proper county may, at the suit of a director, or twice the authorized number (Section 5036) of members, remove from office any director in case of fraudulent acts and may bar from reelection any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

(b) The Attorney General may bring an action under subdivision (a), may intervene in such an action brought by any other party and shall be given notice of any such action

brought by any other party.

*Officer Discipline: Cal. Corp. Code § 9213:*

(b) Except as otherwise provided by the articles or bylaws, officers shall be chosen by the board and serve at the pleasure of the board, subject to the rights, if any, of an officer under any contract of employment.

## **V. B. Louisiana**

*Member Discipline: La. Rev. Stat. § 210. Members, shareholders and certificates*

H. A corporation shall have the power to exclude from further membership, any member who fails to comply with the reasonable and lawful requirements of the rules and regulations made by the corporation for the government of its members.

*Member Discipline: La. Rev. Stat. § 218. Membership dues; assessments:*

C. The articles or by-laws may include provisions for the cancellation of membership, and for the forfeiture of shares, upon reasonable notice, for nonpayment of dues or assessments, and for the reinstatement of membership or shareholder status.

*Director Discipline: La. Rev. Stat. § 224. Board of directors*

B. No amendment to the articles or the bylaws reducing the number of directors shall have the effect of shortening the term of any incumbent director. Unless the articles or the bylaws provide otherwise, the directors shall hold office for one year and until their successors are chosen and have qualified.

C. Each director shall hold office for the term for which he was named or elected, and until his successor is elected and qualified.

E. The number, classification, qualifications, compensation, terms of office, manner of election, time and place of meeting, and powers and duties of the directors, may, subject to the provisions of this Chapter, be prescribed by the articles or the bylaws. Except as otherwise prescribed in the articles or bylaws:

...

(2) The board of directors may declare vacant the office of a director:

(a) If he is interdicted or adjudicated an incompetent;

(b) If he is adjudicated a bankrupt;

(c) If he becomes incapacitated by illness or other infirmity to perform his duties for a period of six months or longer;

(d) If he ceases at any time to have the qualifications required by the articles or by-laws;

(e) If, within sixty days, or such other time as the articles or by-laws may specify, after notice of his election, he does not accept office either in writing or by attending a meeting of the board of directors, or if he fails to fulfill any other requirement or qualifications which the articles or the by-laws specify.

...

(4) The members, by vote of a majority in interest of all of the voting members, may, at any special meeting called for the purpose, remove from office any one or more of the directors, notwithstanding that his or their terms of office may not have expired, and may forthwith at such meeting proceed to elect a successor for the unexpired term. Whenever



the members of any class or series are entitled to elect one or more directors, the provisions of this subsection shall apply, in respect of the removal of a director or directors so elected, and the election of a successor or successors, to the vote of the members of that class or series, and not to the vote of all of the members. If a director has been elected by the exercise of the privilege of cumulative voting, such director may not be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part;

H. Unless the articles or by-laws provide otherwise, the court may, at the suit of five or more voting members, remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion, with reference to the corporation. The court may bar from reelection any director so removed, for a period prescribed by the court. The corporation shall be made a party to such action.

*Officer Discipline: La. Rev. Stat. § 225. Officers and agents:*

E. Any officer or agent may be removed by the board of directors with or without cause at any time, without prejudice, however, to the contract rights of the person so removed.

F. The articles may provide that only the members, or only a particular class or classes of directors, or only directors elected by the vote of a particular class or series of members, may elect certain or all of the officers, in which event officers so elected may be removed without cause only by the members or directors empowered to elect their successors.

## **V. C. Massachusetts**

*Disciplinary Powers, General: Mass. Gen. L. c. 180, § 6A, Bylaws, Contents:*

Except as otherwise expressly provided, a corporation may by its by-laws determine . . . the tenure of office of the directors and officers and the manner of their selection and removal; and may annex suitable penalties to such by-laws, not exceeding twenty dollars for one offense . . . .

## **V. D. Michigan**

*Member Discipline: Mich. Comp. Laws § 450.2304, Corporation organized upon membership basis; provisions of articles or bylaws; rights, preferences, and limitations of or upon members; classes of members; voting rights; condominium association; homeowners or property owners association; transferability and termination of membership; rules of qualification and government; limitations on membership:*

(6) Except as otherwise provided in this act, the articles of incorporation or the bylaws, membership shall not be transferable and shall be terminated by death, resignation, expulsion, or expiration of a term of membership.

(7) A corporation may adopt rules of qualification and government of its members, including rules of admission to, retention of, and expulsion from membership, pursuant to its articles and bylaws. Such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

(8) The articles of incorporation of a corporation organized upon a membership basis may provide that membership shall be limited to persons who are members in good

standing in other corporations. The articles of incorporation may provide that failure to remain a member in good standing in the other corporation constitutes grounds for expulsion of a member if the bylaws of the corporation prescribe the nature of the evidence and the procedures for expulsion which shall be followed.

*Member Discipline: Mich. Comp. Laws § 450.2311, Fees or dues required as condition of shareholding or membership; fixing; enforcement:*

A corporation may fix in the bylaws, or the bylaws may authorize the board to fix, an amount as fees or dues which shareholders or members may be required to pay initially or periodically as a condition of shareholding or admission or retention of membership. The corporation may make bylaws necessary to enforce this requirement, including provisions for cancellation of shares or termination of membership for nonpayment of dues or obligations and for reissuance of shares or reinstatement of membership.

*Member Discipline: Mich. Comp. Laws § 450.2528, Committee designated pursuant to § 450.2527 [board committees]; powers and authority:*

Sec. 528. A committee designated pursuant to section 527 [board committees] . . . does not have power or authority to:

. . .

(h) Cancel stock or terminate membership.

*Director Discipline: Mich. Comp. Laws § 450.2505, Board; number, term, and election or appointment of directors; resignation of director:*

(1) The board shall consist of 1 or more directors. The number of directors shall be fixed by or in the manner provided in the bylaws, unless the articles of incorporation fix the number.

(2) The articles or a bylaw adopted by the shareholders or members of a corporation organized upon a stock or membership basis may specify the term of office and the manner of election or appointment of directors. If the articles of incorporation or bylaws do not so specify the term of office or manner of election or appointment of directors, the first board of directors shall hold office until the first annual meeting of shareholders or members, and at the first annual meeting of shareholders or members and at each annual meeting thereafter the shareholders or members shall elect directors to hold office until the succeeding annual meeting, except in case of the classification of directors as permitted by this act.

(3) The articles or a bylaw of a corporation organized upon a directorship basis shall specify the term of office and the manner of election or appointment of directors.

(4) A director shall hold office for the term for which the director is elected or appointed and until a successor is elected or appointed and qualified, or until the resignation or removal.

*Director Discipline: Mich. Comp. Laws § 450.2511, Removal of director or entire board:*

(1) Unless otherwise provided in the articles of incorporation or bylaws, a director or the entire board may be removed:

(a) With or without cause, by vote of the holders of a majority of the shares or by majority vote of members entitled to vote at an election of directors.

(b) With cause, by the vote of a majority of the directors then in office in the case of a corporation organized upon a directorship basis.

(2) In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no 1 of the directors may be removed if the votes cast against the director's removal would be sufficient to elect the director if then cumulatively voted at an election of the entire board of directors, or, if there are classes of directors, at an election of the class of directors of which the director is a part.

(3) When shareholders or members of a class are entitled by the articles or a bylaw adopted pursuant to section 506(2) to elect 1 or more directors, this section applies, with respect to removal of a director so elected, to the vote of the holders of the outstanding shares or members of that class and not to the vote of the outstanding shares or membership as a whole.

*Officer Discipline: Mich. Comp. Laws § 450.2531, Officers of corporation; election or appointment; person holding 2 or more offices; term of office; authority and duties:*

(3) An officer elected or appointed as herein provided shall hold office for the term for which the officer is elected or appointed and until a successor is elected or appointed and qualified, or until the resignation or removal of the officer.

*Officer Discipline: Mich. Comp. Laws § 450.2535, Removal of officer; suspension of authority to act; contract rights; resignation of officer; notice:*

(1) An officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the shareholders or members may be removed, with or without cause, only by vote of the shareholders or members. The authority of the officer to act as an officer may be suspended by the board for cause.

(2) The removal of an officer shall be without prejudice to the contract rights of the officer, if any. The election or appointment of an officer does not of itself create contract rights.

## **V. E. Nevada**

*Member Discipline: Nev. Rev. Stat. § 82.251: Expulsion of member; suspension or termination of membership:*

1. A member may not be expelled or suspended, and a membership may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith. This section does not apply to the termination of a membership at the end of a fixed term.

2. A procedure is fair and reasonable when it is fair and reasonable taking into consideration all of the relevant facts and circumstances. In addition, a procedure is fair and reasonable if it provides:

(a) Not less than 15 days' prior written notice of the expulsion, suspension or termination, and the reasons for it; and

(b) An opportunity for the member to be heard, orally or in writing, not less than 5 days before the effective date of the expulsion, suspension or termination by a person authorized to decide that the proposed expulsion, termination or suspension not take place.

3. A proceeding challenging an expulsion, suspension or termination, including a proceeding in which defective notice is alleged, must be begun within 1 year after the effective date of the expulsion, suspension or termination.
4. The expulsion or suspension of a member, or termination of a membership, does not relieve the member from obligations he may have to the corporation for dues, assessments or fees or charges for goods or services.

*Director Discipline: Nev. Rev. Stat. § 82.196. Board of directors or trustees: Number and qualifications of members:*

All corporations may provide in their articles or bylaws for a fixed number of directors or a variable number of directors within a fixed minimum and maximum, and for the manner in which the number of directors may be increased or decreased.

*Director Discipline: Nev. Rev. Stat. § 82.296. Directors: Removal; filling of vacancies:*

1. Any director may be removed from office by the vote of members, if any, representing not less than a majority of the voting power of the members entitled to vote for the election of the director being removed or a majority of the voting power of the members entitled to vote for delegates who vote for the election of the director being removed, but:
  - (a) In case of corporations which have provided in their articles or bylaws for the election of directors by cumulative voting, no director may be removed from office under the provisions of this section except upon the vote of members holding sufficient voting power to have prevented his election to office in the first instance; and
  - (b) The articles or bylaws may require the concurrence of a larger percentage of the members entitled to voting power in order to remove a director.
2. If there are no members entitled to vote for the election of directors or entitled to vote for delegates who vote for the election of directors, any director may be removed from office by a majority vote of those directors entitled to vote for the director being removed.
3. Except as otherwise provided in the articles or bylaws, a director appointed by public officials or other persons specified in the articles or bylaws may be removed with or without cause by a written notice from the person or public official who appointed the director being removed, delivered to the chairman of the board or president of the corporation. The vacancy created may be filled by that public officer or other person.

*Officer Discipline: Nev. Rev. Stat. § 82.211. Officers of corporation: Selection; terms; duties:*

3. All officers must be natural persons and must be chosen in such manner, hold their offices for such terms and have such powers and duties as may be prescribed by the bylaws or determined by the board of directors.
4. An officer holds office after the expiration of his term until a successor is chosen or until his resignation or removal before the expiration of his term.

**V. F. New Hampshire**

New Hampshire Revised Statutes §§ 292:1 *et seq.*, Voluntary Corporations and Associations, contain no provisions on discipline.

**V. G. New York**

*Member Discipline: N.Y. Not-for-Profit Corp. Law § 601. Members:*

(e) Except as otherwise provided in this chapter or the certificate of incorporation or the by-laws, membership shall be terminated by death, resignation, expulsion, expiration of a term of membership or dissolution and liquidation under articles 10 and 11.

*Director Discipline: N.Y. Not-for-Profit Corp. Law § 702. Number of directors:*

(b) The number of directors may be increased or decreased by amendment of the by-laws or, in the case of a corporation having members, by action of the members, or of the board under the specific provisions of a by-law adopted by the members, subject to the following limitations:

(1) If the board is authorized by the by-laws to change the number of directors, whether by amending the by-laws or by taking action under the specific provisions of a by-law adopted by the members, such amendment or action shall require the vote of a majority of the entire board.

(2) No decrease shall shorten the term of any incumbent director.

*Director Discipline: N.Y. Not-for-Profit Corp. Law § 703. Election and term of office of directors; alternates:*

(c) Each director shall hold office until the expiration of the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified.

*Director Discipline: N.Y. Not-for-Profit Corp. Law § 706. Removal of directors:*

(a) Except as limited in paragraph (c), any or all of the directors may be removed for cause by vote of the members, or by vote of the directors provided there is a quorum of not less than a majority present at the meeting of directors at which such action is taken.

(b) Except as limited in paragraph (c), if the certificate of incorporation or the by-laws so provide, any or all of the directors may be removed without cause by vote of the members.

(c) The removal of directors, with or without cause, as provided in paragraphs (a) and (b) is subject to the following:

(1) In the case of a corporation having cumulative voting, no director may be removed when the votes cast against his removal would be sufficient to elect him if voted cumulatively at an election at which the same total number of votes were cast and the entire board, or the entire class of directors of which he is a member, were then being elected; and

(2) When by the provisions of the certificate of incorporation or the by-laws the members of any class or group, or the holders of bonds, voting as a class, are entitled to elect one or more directors, any director so elected may be removed only by the applicable vote of the members of that class or group, or the holders of such bonds, voting as a class.

(d) An action to procure a judgment removing a director for cause may be brought by the attorney-general or by ten percent of the members whether or not entitled to vote. The court may bar from re-election any director so removed for a period fixed by the court.

*Officer Discipline: N.Y. Not-for-Profit Corp. Law § 713. Officers:*

(c) Each officer shall hold office for the term for which he is elected or appointed, and until his successor has been elected or appointed and qualified. Unless otherwise provided in the certificate of incorporation or the by-laws, all officers shall be elected or appointed annually.

*Officer Discipline: N.Y. Not-for-Profit Corp. Law § 714. Removal of officers:*

(a) Any officer elected or appointed by the board may be removed by the board with or without cause. An officer elected by the members or a class of members may be removed, with or without cause, only by the vote of the members or such class of members, but his authority to act as an officer may be suspended by the board for cause.

(b) The removal of an officer without cause shall be without prejudice to his contract rights, if any. The election or appointment of an officer shall not of itself create contract rights.

(c) An action to procure a judgment removing an officer for cause may be brought by the attorney-general, by any director, by ten percent of the members, whether or not entitled to vote, or by the holders of ten percent of the face value of the outstanding capital certificates, subvention certificates or bonds having voting rights. The court may bar from re-election or reappointment any officer so removed for a period fixed by the court.

## **V. H. Pennsylvania**

*Member Discipline: 15 Pa. Cons. Stat. § 5544. Fees, dues and assessments:*

(c) Enforcement of payment—A nonprofit corporation may make bylaws necessary to enforce the collection of such dues or assessments, including provisions for the termination of membership, upon reasonable notice, for nonpayment of such dues or assessments, and for reinstatement of membership.

*Director Discipline: 15 Pa. Cons. Stat. § 5724. Term of office of directors:*

Each director shall hold office until the expiration of the term for which he was selected and until his successor has been selected and qualified or until his earlier death, resignation or removal. Directors, other than those selected by virtue of their office or former office in the corporation or in any other entity or organization, shall be selected for the term of office provided in the bylaws. In the absence of a provision fixing the term, it shall be one year.

*Director Discipline: 15 Pa. Cons. Stat. § 5726. Removal of directors:*

(a) By the members—Unless otherwise provided in a bylaw adopted by the members, the entire board of directors, or a class of the board, where the board is classified with respect to the power to select directors, or any individual director, may be removed from office without assigning any cause by the vote of members entitled to cast at least a majority of the votes which all members present would be entitled to cast at any annual or other regular election of the directors or of such class of directors. In case the board or such a class of the board or any one or more directors are so removed, new directors may be elected at the same meeting. If members are entitled to vote cumulatively for the board or a class of the board, no individual director shall be removed unless the entire board or class of the board is removed in case sufficient votes are cast against the resolution for his

removal, which, if cumulatively voted at an annual or other regular election of directors, would be sufficient to elect one or more directors to the board or to the class.

(b) By the board—Unless otherwise provided in a bylaw adopted by the members, the board of directors may declare vacant the office of a director if he is declared of unsound mind by an order of court or is convicted of felony, or for any other proper cause which the bylaws may specify, or if, within 60 days, or such other time as the bylaws may specify, after notice of his selection, he does not accept such office either in writing or by attending a meeting of the board of directors, and fulfill such other requirements of qualification as the bylaws may specify.

(c) By the court—The court may, upon petition of any member or director, remove from office any director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the corporation, or for any other proper cause, and may bar from office any director so removed for a period prescribed by the court. The corporation shall be made a party to such action.

*Officer Discipline: 15 Pa. Cons. Stat. § 5732. Officers:*

(a) General rule— The officers and assistant officers shall be elected or appointed at such time, in such manner and for such terms as may be fixed by or pursuant to the bylaws. Unless otherwise provided by or pursuant to the bylaws, each officer shall hold office for a term of one year and until his successor has been selected and qualified or until his earlier death, resignation or removal.

*Officer Discipline: 15 Pa. Cons. Stat. § 5733. Removal of officers and agents:*

Unless otherwise provided in the bylaws any officer or agent may be removed by the board of directors or other body whether in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights of any person so removed.

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Legal resources for case law on the disciplinary process:

Howard L. Oleck & Cami Green, *Parliamentary Law & Practice for Nonprofit Organizations* (2d ed. 1991), § 77, at 130–31 (officer discipline), § 81, at 139–40 (director discipline), § 88, at 149–50 (member discipline)

Howard L. Oleck, *Nonprofit Corporations, Organizations & Associations* (5th ed. 1988 & Supp. 1992), § 273, at 751–53 (director and officer discipline), § 285, at 791 (officer discipline), §§ 335–40, at 901–08 (member discipline)

Annotation, *Right of association to expel or discipline member for exercising a right, or performing duty, as a citizen*, 14 A.L.R. 1446 (1921 & 2009 supp.)

Annotation, *Suspension or expulsion from social club or similar society and the remedies therefor*, 20 A.L.R.2d 344 (1952 & 2009 supp.)

Annotation, *Suspension or expulsion from church or religious society and the remedies therefor*, 20 A.L.R.2d 421 (1952 & 2009 supp.)

Annotation, *Suspension or expulsion from professional association and the remedies therefor*, 20 A.L.R.2d 531 (1952 & 2009 supp.)

Annotation, *Propriety of suspension or expulsion from trade association*, 72 A.L.R.3d 422 (1972)

Comment, *Protection of Membership in Voluntary Associations*, 37 Yale L.J. 368 (1928)

Note, *Equitable Procedure to Protect Membership in a Voluntary Association*, 58 Yale L.J. 999 (1949)

Development in the Law, *Judicial Control of Actions of Private Associations*, 76 Harv. L. Rev. 1006 (1963)

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Parliamentary resources for a model disciplinary process:

George Demeter, *Demeter's Manual of Parliamentary Law and Procedure* (Blue Book ed. 1969), pp. 259–69 (discipline of members, directors, and officers)

Henry M. Robert, *Robert's Rules of Order Newly Revised* (10th ed. 2000), pp. 624–42 (member discipline); pp. 642–43 (director and officer discipline)

Alice Sturgis, *The Standard Code of Parliamentary Procedure* (4th ed. 2001), pp. 173–74 (director and officer discipline); pp. 223–25 (member discipline)

### ***American Institute of Parliamentarians, Official Opinions***

#### **Opinion 2009-534: Default disciplinary procedure for a member under *The Standard Code*.**

**Question** Member A, a long-time member of our horticultural club, was on the minority side on an election that was decisively resolved for the other side. The defeated candidate has been gracious and worked with the newly elected officers. Member A, however, continues to snipe from the sidelines, make loud “whispered” comments during meetings, and lace any comments in debate with sarcasm directed at the current officers. The last straw came when Member A wrote an opinion piece in the local newspaper, not just rehashing her grievances, but impugning the integrity and motives of the current officers without a shred of evidence. After reading the article, potential new members might be dissuaded from joining and local businesses might refrain from further dealings with the organization. Several members now want to expel Member A from the club. Our adopted parliamentary authority is the latest edition of *The Standard Code of Parliamentary Procedure* (“TSC”). Despite the recommendation on p. 223, our bylaws do not contain a procedure for member discipline. How should we proceed?



**Opinion** Despite stating that organizations *should* adopt bylaws regarding member discipline, TSC goes on to say that organizations have the inherent right to discipline members for a valid cause, even if there is no specific procedure adopted in the bylaws. TSC pp. 223–24. Member A’s comments in the local newspaper would clearly be improper if made during debate. TSC pp. 125–26. It is the duty of all members to accept and abide by the decisions of the majority (or other vote quantum, if applicable). TSC p. 8. A member may be expelled for failing to work within the framework of the organization. TSC p. 224. Publishing personal opinions impugning the motives of an organization’s leadership in a vehicle read by individuals outside the organization, particularly when this is done without any evidence, would be valid cause for disciplining Member A.

The question is: What procedure is to be used for member discipline in a TSC organization when it has no formally adopted procedure in its bylaws? TSC provides at pp 224-225 six essential steps for imposing severe discipline or expelling a member. These steps come under the headings of Charges, Investigation, Notification, Hearing, Decision and Penalty. The suggested procedure in the six steps concisely state most of the details necessary to carry out a disciplinary proceeding against a member.

It is instructive to compare the procedure contained in these six steps with the procedure contained in *Robert’s Rules of Order Newly Revised* (RONR), pp. 631-42, as it varies somewhat from TSC.

For example, TSC does not state who may make a charge against a member, simply that the charges must be in affidavit form. TSC p. 224. RONR does not require an affidavit; instead, any member of the organization may initiate the disciplinary process by a motion made in executive session. RONR p. 632. Presumably, under TSC, any member may, at any time, lodge charges against another member in an affidavit filed with the secretary. The next step under TSC is that an investigating committee is appointed.

The TSC default is that the disciplinary hearing takes place before a committee, TSC pp. 225, while under RONR it would take place before the membership, RONR pp. 638–40. Also, under TSC, the board recommends a penalty to the membership. TSC p. 225. In RONR, any member may propose discipline as an ordinary motion during a post-hearing membership meeting, although generally this is done by one of the managers (the members who conduct the case against the accused). RONR p. 640. Under TSC, the investigating committee decides on its own whether the charges warrant a formal hearing and sets the date of the hearing. TSC p. 224. Under RONR, the investigating committee merely recommends to the members that the charges go forward to a hearing and the members decide if the matter will proceed to hearing and set the hearing date. RONR pp. 633–36.

Another distinction is that, under TSC, the hearing committee finds facts and recommends a determination of guilt or innocence to the board, which in turn ultimately determines guilt or innocence and recommends a penalty to the members as a whole, who ultimately decide on the penalty. TSC p. 225. Under RONR, on the other hand, if a hearing committee is appointed and it exonerates the accused member, that ends the

matter. Otherwise, the hearing committee finds facts and decides guilt or innocence and recommends a penalty, but the members as a whole ultimately decide any penalty. RONR pp. 640–41. The board has no intermediate role in the RONR default disciplinary process.

TSC does not directly address which body (the members, the board, or perhaps the president) appoints the disciplinary committee. Ordinarily the bylaws contain provisions on how committees are to be created and how members are to be appointed to committees. If there are no such provisions, TSC provides that the president or the board may appoint special committees and delegate investigative duties to them. TSC p. 176. Under TSC, while members do have the right to form membership committees (committees of the organization), the principal role in committee formation is assigned to the board and president. TSC p. 176. In this case, the president has no special role in discipline, but TSC states that the board is to make a recommendation as to a penalty to the members, who make the ultimate decision on the penalty. TSC p. 225. Therefore, under TSC, if there is no specific provision in the bylaws, the investigating committee for a membership disciplinary matter should be appointed by the board.

TSC is also not clear about whether one committee or two (an investigating committee and a hearing committee) should be used in the disciplinary process. RONR is clear that, if the hearing is to be conducted by a committee rather than the membership as a whole, the hearing committee should not include members of the investigating committee. RONR p. 635. TSC says, “The *proper* committee should investigate the charges,” TSC p. 224 (emphasis added), but does not otherwise define “proper committee.” TSC goes on to state, under the heading *Hearing*, “In conducting the hearing, *the* committee should preserve decorum . . . .” TSC p. 225. This might imply that the investigating committee serves as the hearing committee, because it is the most recent committee mentioned in the text. Subsequently, however, under the heading *Decision*, TSC refers to the “hearing committee.” This implies that the hearing committee is separate from the investigating committee. The Opinions Committee is of the opinion that the investigating committee and the hearing committee should be entirely separate. The Opinions Committee finds that the text of TSC is ambiguous and falls back on the fundamental principle of fairness and good faith. TSC p. 9. Basic fairness would separate the investigative function, which can take place in a number of closed meetings with witnesses who may disclose information that should not be considered in a hearing, from the neutral hearing function. Both the investigating and the hearing committees should be appointed by the board, pursuant to TSC p. 176.

A final open issue in a TSC disciplinary proceeding is who presents the evidence underlying the charges to the hearing committee. Under RONR, the members appoint managers to present the case against the accused member. RONR p. 636. TSC mentions only that charges are to be lodged in the form of an affidavit (meaning that at least one member must state in writing under oath that he or she believes certain facts to be true and that they are sufficient for discipline to be considered against another member). TSC p. 224. Because of the lack of other references, by default under TSC the charging party or parties (the individual or individuals who sign the affidavit) would have the obligation of putting evidence forward before the hearing committee.

It is also noted that RONR permits member discipline without a trial for conduct at a meeting, on the basis that all members at the meeting have directly witnessed the relevant conduct. RONR pp. 626–28. TSC has no parallel procedure. *See* TSC pp. 223–25. Under RONR, a two-thirds vote is necessary for expulsion and a majority for lesser penalties, RONR p. 640, but under TSC, a majority vote is sufficient for all disciplinary penalties including expulsion, TSC p. 225. Nevertheless, a TSC organization may find that reference to the RONR disciplinary procedure is a useful way to fill in ministerial gaps in TSC’s suggested procedure, such as the precise wording to be used for charges against the accused and for notice of the charges and disciplinary hearing.

With these gaps filled, the Opinions Committee believes that the six steps in TSC pp. 224–25 provide a complete default disciplinary procedure.

**Opinion 2009-535: Default procedure for officer discipline under *The Standard Code*.**

**Question** Our treasurer has refused to cooperate with our audit committee. He has turned over copies of some records, but not others. We don’t suspect fraud, but sloppy bookkeeping. However, it is hard to tell, given the lack of cooperation. We want to suspend our treasurer before any real damage occurs, clean up the books, and require her to take a remedial bookkeeping course before returning to office. Our treasurer was elected by the members to a three-year term and is just at the end of the first year. Our adopted parliamentary authority is the latest edition of *The Standard Code of Parliamentary Procedure* (“TSC”). Despite the recommendation on p. 173, our bylaws do not contain a procedure for officer discipline. How should we proceed?

**Opinion** Despite stating that organizations *should* adopt bylaws regarding officer discipline, TSC goes on to say that organizations have the inherent right to remove or suspend officers and directors for a valid cause, even if there is no specific procedure adopted in the bylaws. TSC p. 173. The procedure for officer discipline under TSC, however, is very different from that in *Robert’s Rules of Order Newly Revised* (10th ed. 2000) (RONR). As discussed in Opinions 2006-515 and 2006-515a, RONR does not provide for suspension of officers as a lesser form of officer discipline. The only sanctions for officer misconduct under RONR are removal from office and censure. RONR p. 642. TSC, on the other hand, specifically states that the right to suspend officers is inherent. TSC p. 173.

The treasurer’s mere ineptness, in this case, would not ordinarily constitute cause for officer discipline. TSC p. 174 (poor performance as an officer due to lack of ability not a valid cause). In this case, however, the underlying inability has led the treasurer to refuse to cooperate with the audit committee. Failure to disclose necessary information on matters of an organization’s business is valid cause for officer discipline. TSC p. 174.

While suspension, and possibly, eventually, removal from office might be an inherent right under TSC, TSC does not provide much guidance on how the procedure is to be carried out if the bylaws fail to provide for it. TSC specifically disavows use of the procedures for member discipline as a model. Officer discipline “procedures are quite

different from those for disciplining or expulsion of a member.” TSC p. 173. *See* RONR p. 643 (officers elected for fixed terms or “and until their successors are elected” may be removed only after following the trial procedure for member discipline). On the other hand, TSC does discuss some aspects of member discipline (regarding the exhaustion of internal remedies) in connection with officer discipline. TSC p. 174.

Unlike RONR p. 642–43, TSC does not recognize removal from office by rescission when an organization’s bylaws provide that officers serve a specified term “or until their successors are elected.” Under TSC, officer discipline must be for cause only. TSC pp. 173–74. TSC mentions the essential elements of an officer discipline process in cursory form: “adequate notice to the accused officer, a fair hearing, the right to counsel, and a reasonable opportunity for the officer to present a defense.” TSC p. 174. The same procedures apply for removal of elected directors or committee members. TSC p. 173. (Appointed officers, directors, and committee members may be removed by the appointing authority, TSC p. 173; it is not clear from TSC whether cause is a prerequisite or what, if any, process is required.) The only other place in TSC where these procedures are mentioned is in regard to member discipline. TSC pp. 224–25. In light of TSC’s guidance that officer discipline follows a different procedure than member discipline, TSC p. 173, it is not clear from the text how the officer discipline procedure is different. *See* Opinion 2003-492, *Removing the President from Officer when The Standard Code is the Parliamentary Authority* (discussing simplifications of the membership discipline process applicable to officer discipline).

Some insight can be gained from the statement, “Officers, directors, or committee members can be removed by the same authority that elected or appointed them. . . . An elected officer can be removed by a vote of the members.” TSC p. 173. As discussed in Opinion 2009-534, under TSC the Board plays a significant role in member discipline. Because officers and directors are generally elected by the members, the entire officer and director discipline process would, in such cases, be in the hands of the members; if the officers are elected by the board, then only the board would have authority over officer discipline. TSC p. 173. That is not to say that the members could not model a procedure based on the forms on TSC pp. 224–25. For example, the members could vote to establish a hearing committee to report to the members. The language in RONR pp. 632–40 could also serve as a model to the members. The point is that the procedure is in the hands of the members and, aside from conforming to the minimal requirements of TSC p. 174, the members can establish such procedures as they deem fit on a case by case basis or by adoption of a policy. Ultimately, after the results of the fair hearing process either in front of or reported to the members at a meeting, the members would vote on whether discipline were warranted and, if so, what form of discipline to impose. Under the barebones requirements of TSC p. 174, two separate votes, one on whether cause for discipline exists and a second of penalty, are not necessary. Nevertheless, the clarity provided by separate votes on each issue might be advisable. In this case, a suspension is proposed and would be permissible under TSC. As TSC states no other vote requirement, a majority vote would be sufficient for suspension or removal. The presiding officer should make sure that the suspension motion is complete, including mention of what duties and authority, if any, the Treasurer will have during the course of

the suspension and what requirements are necessary to terminate the suspension (e.g., mere passage of a specific period of time, passage of time and good behavior, passage of time and request for reinstatement, or occurrence of an event, such as completion of a course in this case).

**Opinion 2009-536: Who appoints a temporary Treasurer when the Treasurer is suspended under *The Standard Code*?**

**Question** Our elected treasurer refused to cooperate with our audit committee and was suspended by a vote of the members for a thirty-day period pursuant to the officer discipline procedures in *The Standard Code* (“TSC”), our adopted parliamentary authority. The bylaws contain no procedure for officer discipline. After voting to suspend the treasurer the members elected a temporary Treasurer to serve during the suspension. The bylaws provide that the board fills vacancies in office. A dispute has now arisen between the board and the membership over the temporary treasurer position. The board says that it has authority to fill the position under the vacancy-filling provision of the bylaws and wants to appoint someone else. The board says that the members’ election of a temporary treasurer was outside their authority and a void act. The members say it is their right to elect a treasurer and that they can also elect a temporary treasurer. How do we resolve this dispute? Someone needs to do the treasurer’s work while the elected treasurer is suspended.

**Opinion** The members were correct in filling the temporary Treasurer position that they had created by suspending the elected Treasurer. Under TSC, the power to suspend an officer is inherent in the right to elect the officer. TSC p. 173. Therefore, unless the bylaws state otherwise, the same body that elects the officer may suspend the officer. TSC places considerable power in the electing body. TSC p. 173. It is not necessary in some cases to provide for a temporary officer. For example, a vice president who has no duties other than presiding when the president is absent does not need to be replaced by a temporary vice president. If the president is absent from a meeting while the vice president is under suspension, a temporary presiding officer may be elected. (Presumably, a vice president under suspension could not succeed automatically if the presidency becomes vacant during his term.) The treasurer and secretary ordinarily have duties outside of meetings, for example deposit of funds by the treasurer and sending of notices by the secretary. Other officers may have duties between meetings assigned by the bylaws. In these cases, the duties assigned must be carried out during the officer’s suspension. The power to elect to office and to suspend, carries with it the power to provide terms for the suspension. *See* Opinion 2009-535. Crafting the terms of the suspension carries with it the right to elect a temporary replacement. The position is not vacant; there is an incumbent. By suspending an officer with continuing duties outside the meeting, the members effectively created the position of temporary treasurer and they have the right to fill that temporary position. This is part of their power to craft the terms of the suspension. Therefore, the board’s vacancy-filling powers do not come into play. If, through inadvertence, the members had failed to provide for a temporary treasurer, that would have created a new, temporary office with no incumbent. In that case, the

board at its next meeting could have filled the vacancy in the office of temporary treasurer at its next meeting.

**Opinion 2009-537: Deposing A President Who Took Office after Serving as President Elect**

**Question** Once again, we, unfortunately, find ourselves in the position of setting out to remove a sitting president from office for good and sufficient reasons. We did not anticipate any particular difficulty in this effort as our bylaws describe the term in office as “for two years or until his successor is elected,” giving us the option of considering and voting on a properly noticed motion to rescind his election. However, one of the president’s (few) friends has raised the point that we did *not* actually *elect* him as president; he was elected, per our bylaws, as “President-Elect” for a one year term in that position after which he automatically became president for the remaining two year term. Since there is no actual election to the presidential office to rescind, the friend claims, the association would have to resort to a full trial to depose the president, something the association seems unwilling to undertake. We still think that the president has to go. What might we attempt short of a full trial?

**Opinion**

A full trial is not required. It is proper to go ahead and move to rescind the election, even though the election was, seemingly, to the position of president-elect. The actual situation, as RONR points out on page 441, is that the single election *was* to the position of the presidency, not to a president-elect position. The election just took place a year ahead of time and during the time the person was waiting to become president, the person held the position of “president-elect.” From a slightly different point of view, the election was to *both* offices simultaneously, offices which are linked together by the automatic succession from the first office to the second office. Clearly then, the person was elected to the presidency and that election can be rescinded. Once the motion to rescind is (presumably) adopted, the association should promptly proceed to elect a new president to complete the remainder of the two year term, as is noted on page 643. *See* Opinion 2003-488, President Removed from Office, Who’s *in* Office? The sitting President-Elect and the Vice-President (if there is one) will remain in their respective offices.

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