

Definition of Misconduct

At the 2008 IAAP Convention and Education Forum in New Orleans the members passed a motion/resolution asking the International Board of Directors to compile behavioral guidelines that define/describe “misconduct” as it applies to any IAAP officer at any level of the association. These guidelines should include the wording “including, but not limited to,” and should also define appropriate levels of sanction up to removal from office for violation of the guidelines.

Based on that motion, the International Board consulted with IAAP’s attorney, Mike McCann, and the following has been developed for use by Chapters, Divisions and the International Board when considering possible acts of misconduct by leaders at each of those levels.

“Misconduct” means any act or omission that the Board of Directors determines in good faith to be harmful or detrimental to, or not in the best interests of, the Association or its members. For purposes of illustration, Misconduct may include, but is not limited to:

- (a) misappropriation (or attempted misappropriation) of any of the Association’s funds or property;
- (b) receipt of improper financial benefits that may endanger the tax-exempt status of the Association;
- (c) acceptance of an executive position in a competing enterprise;
- (d) dereliction or neglect of such Chapter/Division/International officer duties, including failure to attend or prepare adequately for Board meetings;
- (e) unprofessional conduct in the performance of Chapter/Division/International officer duties;
- (f) harassment of fellow Chapter/Division/International officers, members, or employees;
- (g) commencing or continuing litigation after being instructed by the Board not to do so;
- (h) conduct detrimental to the reputation of the Association;
- (i) any material deviation from any of the policies or directives of the Board; and
- (j) conviction (including a plea of no contest) of a felony or any crime involving fraud, dishonesty or moral turpitude.

The definitions outlined above were developed for the IAAP International level but may also be used by its Chapters and Divisions to address board misconduct at those levels. Given that IAAP’s Chapters and Divisions have separate boards, any incident of potential misconduct must be addressed at each respective level given that each board is given fiduciary responsibilities to oversee the governance of their organization.

Within this same motion passed by the IAAP delegates at the New Orleans convention was the request to provide and define appropriate levels of sanctions up to removal from office. IAAP’s legal attorney advises against developing a graduated scale of sanctions. Sanctioning an elected officer/board member should not use the same process as sanctioning an employee, for instance. Employees have direct and constant supervision allowing graduated sanctions to be applied.

Applying sanctions to an elected official is much more problematic given that board members are not subject to the same type of direct supervision and are expected to act independently and have significant discretion when performing their duties.

We believe that implementing a progressive discipline system to police the conduct of the officers likely would not strike an appropriate balance between encouraging independent action and requiring the officers to act in good faith and in the best interests of the organization. Subjecting the officers to direct supervision and oversight could dilute the independence of the officers and reduce their ability to make innovative decisions and take calculated risks. In addition, recording negative information about the officers in written disciplinary materials could create an incentive for individuals to improperly use such information against the officers in subsequent elections, distorting the election process and discouraging otherwise qualified individuals from participating. Further, recording such negative information, which may be discoverable in a legal action, could provide a basis for liability against the officers. Therefore, imposing a progressive discipline system on the officers could ultimately reduce the quality of management.

The guidelines above have been unanimously adopted the International Board (because the Bylaws are not being amended, they do not need to be approved at the Annual Convention) and will be posted on IAAP's website. Hopefully, these guidelines will not be needed often, but they will help the International Board and the Chapters and Divisions in the discharge of their duties.

A complete opinion of IAAP's legal counsel is attached for further review.

October 23, 2008

Donald Bretthauer CAE
Executive Director
International Association of
Administrative Professionals
P.O. Box 20404
Kansas City, MO 64195-0404

Re: Director Misconduct

Dear Don:

You asked us to advise you regarding the possible adoption of a progressive discipline system to control the conduct of the board of directors (the "Board") of the International Association of Administrative Professionals, a Missouri benevolent corporation ("IAAP"). The following is a brief summary of our thoughts with respect to this matter.

A progressive discipline system typically is utilized in the employment context. An employer will implement a progressive discipline system in order to correct an employee's behavior through increasingly severe penalties. Such a system typically involves graduated levels of discipline for an employee's failure to comply with the employer's standards of conduct or performance. The levels of discipline typically include one or more oral warnings, one or more written warnings, suspension and finally discharge. Thus, a progressive system of discipline generally requires the employee to be subject to the employer's direct oversight and control in the performance of his or her duties.

Directors, unlike officers and employees, are elected by the members, and act collectively as a board to manage and supervise the organization. As elected representatives, directors are not subject to the same kind of direct supervision and control as officers and employees. The board of directors is expected to act independently, and the individual directors typically enjoy significant discretion in performing their obligations.

There, however, are several constraints on director action.

First, a director that is perceived (whether it is true or not) not to have performed his or her duties in a diligent and professional manner, may be replaced at the end of his or her term by the members in the normal election process.

Second, although directors are not subject to direct supervision and control, they owe fiduciary duties to the organization and its members in the performance of their duties. The fiduciary duties owed by directors generally include the duty of care and the duty of loyalty. The duty of care requires directors to be reasonably informed, to participate in decisions, and to do so in good faith and with the care of an ordinarily prudent person. If this standard is met, courts will not second guess the decisions of directors, even if they prove to have been unwise. The duty of loyalty requires directors to discharge their duties in a manner designed to benefit the organization and not the directors personally through self-dealing. The fact that a director may be sued personally for failing to fulfill his or her fiduciary duties provides directors with an incentive to act diligently and in the best interests of the association.

Third, a director may be removed during his or her term for more egregious conduct amounting to "cause."

We believe that implementing a progressive discipline system to police director conduct likely would not strike an appropriate balance between encouraging independent director action and requiring directors to act in good faith and in the best interests of the organization. Subjecting the Board to direct supervision and oversight could dilute the independence of the Board and reduce its ability to make innovative decisions and take calculated risks. In addition,

recording negative information about the directors in written disciplinary materials could create an incentive for individuals to improperly use such information against directors in subsequent elections, distorting the director election process and discouraging otherwise qualified individuals from participating. Further, recording such negative information, which may be discoverable in a legal action, could provide a basis for liability against the Board or its members. Therefore, imposing a progressive discipline system on the Board could ultimately reduce the quality of management.

We believe that a better course of action is to improve the existing constraints on director conduct by further clarifying kind of conduct that may warrant the replacement or removal of a director for cause. Including a general definition of “misconduct” in the IAAP Bylaws could provide the Board and the members with better guidance in determining whether a director should be removed or replaced. Although commentators caution against attempting to define such a term in an organization’s bylaws because it is impossible to list all behavior that might warrant removal, the definition we have proposed is designed to provide the Board with general guidance without limiting its ability to act with respect to unforeseen situations. The definition includes any act or omission that the Board determines in good faith to be harmful or detrimental to, or not in the best interests of, the IAAP or its members. The definition is followed by a non-exclusive list of illustrations to provide the Board and the members with further guidance in determining whether a director’s conduct rises to the level of misconduct. Including this definition and illustrations in the IAAP Bylaws may provide the Board and the members with a useful tool to review the conduct of individual directors, without inhibiting the Board’s independence to take informed risks on behalf of the organization.

Please call me if you have any questions or if you would like to discuss this further.

Very truly yours,

Michael L. McCann

MLM/ejs