Copyright © 2021 by Gary M. Grobman

Published by White Hat Communications.

All rights reserved. No portion of this book may be reproduced in any form, or by any means, mechanical or electronic, or by any information storage and retrieval system or other method, for any use, without the written permission of Gary M. Grobman.

Chapter 10

Codes of Ethics

Whether called a Code of Ethics, Code of Conduct, Standards of Practice, or something similar, it is important for every nonprofit organization to have a document addressing what behavior is acceptable for organization leadership and staff. These documents may be quite general and consist of provisions that express values that provide not much beyond a *spirit* of behavior. Or they may be quite detailed, addressing specific situations that may be plausible for stakeholders to experience, and provide concrete guidance on what is acceptable and unacceptable. They can have explicit provisions relating to sanctions against those who violate their contents, including referral to criminal authorities, suspension, or firing. Or they can simply be a set of aspirational platitudes that provide only broad guidance to those facing actual work situations within the organization.

Written ethics codes have a long history. The first documented case of one is Hammurabi’s Code, which dates from the 18th century B.C.E. The historian Willa Marie Bruce (1998a, 1998b) notes that the Athenian Code 11 centuries later provided that its citizens would “never bring disgrace to this our city by any act of dishonesty or cowardice…,” and that the first code in the United States was spoken as part of a sermon in 1630 by John Winthrop, the first Governor of the Massachusetts Bay Colony. Whereas most of us have heard of the Hippocratic Oath that dates from the 5th century B.C.E., the first modern written code of ethics was proposed in 1794 by Thomas Percival, applicable to physicians and surgeons as a reaction to the hospital where he worked turning away patients in need. Today, almost every recognized profession has its own ethics code, and it has become popular in the last 50 years or so for individual business organizations and nonprofits to have their own ethics codes, supplementing those of their trade and professional associations (Grobman, 2002).

Ethics Codes Are the First Step to Building an Ethical Organization

It is certainly clear to me that simply having such a document is only the first step toward creating an ethical climate and culture within an organization. From my experience, the most valued aspect of building an ethical organization is for leadership to set an example by behaving ethically, and making it clear that unethical behavior is punished and ethical behavior is rewarded. Many organizations have a formal written policy expressing the value of ethical treatment of customers and clients. Yet, some of them take punitive action against individuals within the organization who choose not participate in unethical behavior, and who report the unethical behavior of others. The recent case of Wells Fargo Bank comes to mind as I write these words in December 2016. In this case, bank employees who called the corporation’s ethics hotline to report unethical behavior were fired *(*Egan, 2016*).* According to one press report, employees received ethics training that encouraged them to report ethics violations (Cowley, 2016*).*

Having an ethics code, ensuring that stakeholders know it exists and understand it, having an ethics hotline or other mechanism to report violations, and having training in how one should behave consistent with the code will not guarantee having an ethical organization—particularly when management condones retaliation against those who are trying to behave ethically. One needs only to say the name “Enron” to conjure up the image of a corporation with a reported $63.4 billion in assets that went belly up as 2001 came to a close because of the unethical behavior of its employees—despite the fact that Enron had a comprehensive, 64-page ethics code. This scandal, which also destroyed a previously respected accounting firm, Arthur Andersen, was a prime motivation for enactment of the *Sarbanes-Oxley Act* (see pages 115-116).

So while having an ethics code is not a panacea to avoid unethical behavior within organizations, having an effective ethics code is a good first step in building an ethical organization.

Why Nonprofits Need Ethics Codes

One could argue that having an ethics code is valuable in nonprofit organizations for altruistic reasons alone. The sector is committed to a mission that serves the public rather than for private, personal gain. An ethics code serves to make it clear that this principle deserves to be preserved, particularly when many nonprofits serve individuals who are old, infirm, indigent, or otherwise are vulnerable and do not have access to private markets to meet their needs. Nonprofits rely on private fundraising and have transactions that annually reach $390 billion (Sandoval, 2017), relying on a high degree of trust between donors and the organizations to spend money as intended.

Yet there are some selfish reasons for having an ethics code beyond it being simply “the right thing to do.” When and if organization stakeholders are caught doing something unethical, the effect on the organization, as a result of reduced public trust and bad publicity, can be catastrophic. Having a comprehensive ethics code provides tangible guidance to all stakeholders about what is not acceptable conduct—and some associated with the organization may not be completely clear on what is considered unethical behavior without that guidance. A strong ethics code can serve as a signal to clients that the organization can be trusted, and that those who act unethically on behalf of the organization will be held accountable. Thus, it serves as a warranty for the organization’s services.

When ethics codes become widespread and are enforced, it can often forestall action by government to provide statutory regulation as an alternative to self-policing. Ethics codes make sure everyone in the organization is on the same page with respect to enforcing common values, such as when there are provisions relating to anti-discrimination of staff and clients. With employees of organizations being much more culturally and educationally diverse than they might have been a few decades ago, an ethics code can serve as a template for shared values expected from the staff.

Perhaps the most important purpose of having an ethics code is to influence behavior of stakeholders. Without an ethics code, it is often not clear whether actions by a stakeholder are inconsistent with what is deemed acceptable by the organization’s governors and top management. Thus, it may seem like “common sense” that there is nothing wrong with a fundraiser receiving a percentage of funds he or she raises. But there is a consensus among the professional associations that serve the fundraising sector (see page 123) that there are unintended consequences of compensating fundraisers based on the amount they raise that often result in unethical behavior. If an ethical code exists and this particular behavior is included as being unethical and unacceptable, then fundraising managers will know to avoid compensating their staff in this manner. While it may be true that “you can’t legislate morality,” it is equally valid that you cannot avoid bad behavior if you do not know what that encompasses.

Creating an Ethics Code

Although it may be the case that certain generic provisions can be included in virtually any nonprofit ethics code, it makes sense to consider the organization’s mission, values, vision, culture, and expectations from the public and create a custom-made ethics code.

Putting that aside, certain provisions belong in every nonprofit ethics code. The Internal Revenue Service (IRS) itself has encouraged organizations to have formal ethics policies with respect to conflicts of interest, advocacy, and lobbying not only for ethical reasons, but to ensure compliance with tax laws that apply to federally-exempt nonprofit organizations. A sample conflict of interest policy suggested by the IRS can be found at: *https://www.irs.gov/instructions/i1023/ar03.html*

The Internal Revenue Service (2016) recommends that nonprofit organizations adopt this sample policy when filing the documents required to qualify as federally tax-exempt. The IRS’s 1023 Form Instruction Book notes that—

*A “conflict of interest” arises when a person in a position of authority over an organization, such as a director, officer, or manager, may benefit personally from a decision he or she could make.... Adoption of a conflict of interest policy is not required to obtain tax-exempt status. However, by adopting the sample or similar policy, you will be choosing to put in place procedures that will help you avoid the possibility that those in positions of authority over you may receive an inappropriate benefit.*

Whistleblowing Policies

Another generic provision of value is a whistleblower policy. The federal *Sarbanes-Oxley Act,* enacted in 2002, is a comprehensive accountability, transparency, and anti-corruption law that applies mostly to for-profit corporations. However, there are two provisions that apply to nonprofit corporations, as well, relating to destruction of documents and prohibiting retaliation against whistleblowers. The latter provision provides that—

*Sec. 1107. RETALIATION AGAINST INFORMANTS.*

*(a) IN GENERAL- Section 1513 of title 18, United States Code, is amended by* *adding at the end the following:*

*(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.*

The federal protection afforded to whistleblowers by this law only applies when the misconduct is reported to a law enforcement officer and does not apply when it is reported within the organization or to the public via the media. This law provides limited protection to whistleblowers, and as I write this, it is not apparent that this section has ever been invoked to protect a whistleblower who was retaliated against in the nonprofit sector.

Ethical organizations should be encouraging their employees to make good-faith reports of misconduct internally without fear of retaliation so it can be addressed by the leadership appropriately. The alternative is risking a public scandal that could result in unnecessary and irreversible damage to the organization’s reputation. A whistleblower policy provides the infrastructure to reinforce a culture that supports employees who know the importance of maintaining an ethical environment in their organizations.

A sample of a reasonable whistleblower protection policy published by the National Council of Nonprofits (2010) may be found at: *https://www.councilofnonprofits.org/sites/default/files/Sample%20WhistleblowerPolicy%202.2010.pdf*

Common Provisions in Nonprofit Organization Ethics Codes

The following are among the most common generic provisions that are found in the ethics codes of nonprofit organizations, with some samples taken from an actual code where noted:

*1.* *Supremacy of the public interest.* “Promote the interests of the public and put service to the public above service to oneself.” Code of Ethics, American Society for Public Administration (ASPA).

*2. Client interest over profit motive.* “Conduct oneself in a professional manner and represent a client’s best interests within the limits of one’s professional responsibilities.” American Society of Media Photographers.

*3. Respect and comply with all federal, state, and local laws. “Respect and support government constitutions and laws, while seeking to improve laws and policies to promote the public good.”* American Society for Public Administration (ASPA).

*4. Respect and honor confidentiality.* “Certified Records Managers shall be prudent in the use of information acquired in the course of their duties. They should protect confidential, proprietary, and trade secret information.…” Institute of Certified Records Managers.

*5. Fairness. “Be fair and reasonable in all professional relationships....”* Certified Financial Planner Board of Standards.

*6. Anti-discrimination. “*The organization shall not on the basis of race, color, creed, sex, national origin, marital status, or religious beliefs, family, social or cultural background, or sexual orientation, unfairly: exclude any student from participation in any program....” Code of Ethics, Nebraska State Education Association.

*7. Corruption.* “The enterprise shall prohibit bribery in any form.” Asia-Pacific Economic Cooperation Anti-corruption Code of Conduct for Business.

*8. Truthfulness. “*Seek truth and report it.” Society of Professional Journalists.

*9. Professional competence.* “Social workers should provide services and represent themselves as competent only within the boundaries of their education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.” National Association of Social Workers.

*10. Responsibility/taking credit for work.* “A health information management professional shall... take responsibility and credit, including authorship credit, only for work they actually perform or to which they contribute. Honestly acknowledge the work of and the contributions made by others verbally or written, such as in publication.” American Health Information Management Association Code of Ethics.

*11. Enforcement.* “If the Commission on Standards and Ethics determines that unethical conduct has occurred, it may impose sanctions, including reprimand, censure, probation, suspension, or permanent revocation of membership....” The American Occupational Therapy Association.

*12. Promoting the profession.* “The Logistician will strive to enhance the public awareness and knowledge of logistics….” SOLE, The International Society of Logistics.

*13. Sexual harassment.* “...it is unprofessional behavior to condone sexual harassment or to disregard complaints of sexual harassment from students, staff or colleagues. Such actions allow a climate of sexual harassment to exist and seriously undermine the atmosphere of trust essential to the academic enterprise....” Organization of American Historians.

*14. Equality and impartiality in decision-making*. “A mediator shall decline a mediation if the mediator cannot conduct it in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice.” American Bar Association, American Arbitration Association, & Association for Conflict Resolution—Model Standards of Conduct.

*15. Accuracy and truthfulness of marketing. “...*Marketing communications must be clear and truthful. Marketers must not knowingly make a representation to a consumer or business that is false or misleading....” Canadian Marketing Association Code of Ethics and Standards of Practice.

*16. Quality.* “We will strive constantly to provide high quality and educationally valuable programs and services. We regularly will evaluate and review our work in order to improve those programs and services and will seek out and adopt exemplary practices.” NAFSA: Association of International Educators.

*17. Substance abuse.* “It is unethical for a dentist to practice while abusing controlled substances, alcohol or other chemical agents which impair the ability to practice. All dentists have an ethical obligation to urge impaired colleagues to seek treatment. Dentists with first-hand knowledge that a colleague is practicing dentistry when so impaired have an ethical responsibility to report such evidence to the professional assistance committee of a dental society.” American Dental Association.

*18. Personal integrity.* “All employees and leadership are expected to conduct their personal and professional life in a manner which “inspire(s) the confidence of the public.” Code of Ethics, Association of Arson Investigators.

*19. Information transparency and accountability.* “Truthfulness and transparency are essential to ethical education abroad practices. The fundamental premise is that education abroad practices should be open and clear, and that decision-making processes should be appropriately disclosed and periodically reviewed.” Forum on Ethics Abroad Code of Ethics.

*20. Misrepresentation of professional/academic credentials.* Members shall not “claim that an IAAO professional designation unless authorized, whether the claim is verbal or written, or to claim qualifications that are not factual or may be misleading.” Code of Ethics, International Association of Assessing Officers.

*21. Objectivity.* “The financial analyst, in relationships and contacts with an issuer of securities, whether individually or as a member of a group, shall use particular care and good judgment to achieve and maintain independence and objectivity.” Chartered Financial Analysts Institute (formerly known as the Association for Investment Management and Research).

*22. Reporting violations of the ethics code or laws to the appropriate authorities.* Members are expected to “immediately report to the ethics committee any known or suspected violation of this code of ethics.” American Institute of Parliamentarians.

*23. Conflicts of interest.* “Marriage and family therapists do not provide services that create a conflict of interest that may impair work performance or clinical judgment.” American Association for Marriage and Family Therapy.

*24. Gifts.* “A member should not directly or indirectly solicit any gift, or accept or receive any gift whether in the form of money, services, loan, travel, entertainment, hospitality, promise, or any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence him, or could reasonably be expected to influence him, in the performance of his official duties or was intended as a reward for any official action on his part.” International City/County Management Association.

*25. Respect for client dignity and self-determination.* “AOM members respect the dignity and worth of all people and the rights of individuals to privacy, confidentiality, and self-determination. AOM members are aware of and respect cultural, individual, and role differences, including those based on age, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status, and they consider these factors when working with all people.” Academy of Management Code of Ethics.

*26. Respect for pluralism and diversity.* “Members (shall) demonstrate concern for the legal, social codes and moral expectations of the communities in which they live and work even when the dictates of one’s conscience may require behavior as a private citizen which is not in keeping with these codes/expectations.” Code of Ethics, Student Affairs Administrators in Higher Education.

*27. Macro advocacy.* (Members shall) “work to improve and change laws and policies that are counterproductive or obsolete.” Code of Ethics, American Society for Public Administration.

As a matter of preference, some organizations with ethics codes choose to have separate documents that deal with conflict of interest policy, whistleblowing, conduct of employees, and computer/Internet use (including social media)—each of which directly or indirectly have an ethics component. As with ethics codes, it is essential that all board and staff know these policies exist and will be enforced, and have sufficient knowledge and training relating to their content.

Online Resources

Illinois Institute of Technology Ethics Code Collection

*http://ethics.iit.edu/ecodes/*

Independent Sector’s Statement of Values and Code of Ethics

*https://www.independentsector.org/resource/is-code-of-ethics/*

Michigan Nonprofit Association’s Code of Ethics

*http://www.c4npr.org/clientuploads/Board%20Governance%20Resources/NCNA%20Sample.Board%20Code%20of%20Ethics.Michigan%20Nonprofit%20Association.pdf*

National Council of Nonprofits’ Ethics Code Pages

*https://www.councilofnonprofits.org/tools-resources/code-of-ethics-nonprofits*

Sample Ethics Code for Nonprofit Board Members

*http://www.adelphi.edu/wp-content/blogs.dir/91/files/2012/09/codeofethics.pdf?t=1347913001-77806*

Illinois Institute of Technology Searchable Ethics Codes Collection

*http://ethics.iit.edu/ecodes/about*

Andrew Olson: How to Create an Ethics Code

*http://ethics.iit.edu/ecodes/authoring-code*

**Discussion Questions**

1. Discuss the advantages and disadvantages of having a formal organizational ethics code.

2. Discuss the advantages and disadvantages of having specific sanctions mandated within an ethics code.

3. Discuss the pros and cons of having policies that regulate romantic relationships between managers and those they supervise, and between co-workers without such a direct relationship.

**Activities**

1. Download a sample of nonprofit organization ethics codes that you find on the Internet. Make a list of ethics codes provisions that tend to be featured in these codes.

2. Obtain any ethics codes or codes of conduct of your school/institution, and analyze it in the context of what you have learned from reading this textbook.

3. Analyze the ethics code of the professional association that you are likely to join or have already joined. Considering what you have read in this book, what modifications might you suggest to this code that would promote more ethical conduct by your professional colleagues in that field?

References

Bruce, W. M. (1998a). *Codes of conduct.* In *The international encyclopedia of public policy and administration* (Shafritz, J., Ed.), Boulder, CO: WestView Press.

Bruce, W. M. (1998b). *Codes of ethics.* In *The international encyclopedia of public policy and administration* (Shafritz, J., Ed.), Boulder, CO: WestView Press.

Cowley, S. (2016, September 27). *Wells Fargo employees claim retaliation.* ArchyNewsy.com. Retrieved from: *http://archynewsy.com/wells-fargo-workers-claim-retaliation-for-playing-by-the-rules-new-york-times*

Egan, M. (2016, September 21). *I called the Wells Fargo ethics line and was fired.* CNN Money USA. Retrieved from: *http://money.cnn.com/2016/09/21/investing/wells-fargo-fired-workers-retaliation-fake-accounts/*

Grobman, G. (2015). *The nonprofit handbook (7th Ed.).* Harrisburg, PA: White Hat Communications.

Grobman, G. (2002). *An analysis of codes of ethics of nonprofit, tax-exempt, membership organizations: Does principal constituency make a difference?* Doctoral Dissertation. The Pennsylvania State University.

Internal Revenue Service. (2006)*. Instructions for Form 1023.* Retrieved from: *https://www.irs.gov/pub/irs-pdf/i1023.pdf*

National Association of Social Workers. (1999). *Code of ethics.* Retrieved from *http://www.naswdc.org/pubs/code/default.asp*

National Council of Nonprofits (2010). *Sample whistleblower protection policy.* Retrieved from: *https://www.councilofnonprofits.org/sites/default/files/Sample%20WhistleblowerPolicy%202.2010.pdf*

*Sandoval, T. (2017, June 13).* Donations grew 1.4% to $390 billion in 2016, says ‘Giving USA.’ *The* *Chronicle of Philanthropy.* Retrieved from *http://www.philanthropy.com/article/Donations-Grew-14-to-390/240319*