

THE ETHICS COMMITTEE-Roles and Responsibilities

NOTE: **This description of an Ethics Committee assigns the Committee with overall responsibility for the program. In many cases, many of the rules outlined below are assigned instead to an Executive Director or Ethics Officer. The Ethics Committee has more of an Advisory vs. Supervisory role.

“In the broadest general terms an ethics committee, satisfies the condition of the Federal Sentencing Guidelines which require that "...specific individuals within high level personnel of the organization have been assigned overall responsibility to oversee compliance with [the organization's] standards and procedures.”

The Ethics Committee is chaired by an external advisor and includes key management from headquarters and group operations.

Seven Possible Roles for An Ethics Committee

1. Contribute to the continuing definition of the organization's ethics and compliance standards and procedures.
2. Assume responsibility for overall compliance with those standards and procedures.
3. Oversee the use of due care in delegating discretionary responsibility.
4. Communicate the organization's ethics and compliance standards and procedures, ensuring the effectiveness of that communication.
5. Monitor and audit compliance.
6. Oversee enforcement, including the assurance that discipline is uniformly applied.
7. Take the steps necessary to ensure that the organization learns from its experiences.

But an ethics committee can do much more. The committee can be charged to meet all seven requirements for an effective ethics management process. For each of the above arenas of responsibility there may be several specific roles.

Contribute to the continuing definition of the organization's ethics and compliance standards and procedures.

- Determine which areas of operation require standards and procedures.
- Review existing standards and procedures for completeness and utility.
- Use information gleaned from employee and member reporting and clarification processes (e.g. employee hot line) to stimulate standards and procedures revisions.
- Review employee and member survey data to determine where revisions to organizational standards and procedures are called for.
- Assign responsible functions the task of redefining the organization's position via a new or revised standards and procedures.
- Recommend methods for communicating standards and procedures to employees and members that ensure they are understood and accepted.
- Recommend the management behavior(s) needed to reinforce the standards and procedures.

Assume responsibility for overall compliance with those ethics and compliance standards and procedures.

- Take the position that the committee is the responsible authority for ethics compliance in its area of jurisdiction.
- Be the final voice concerning interpretations regarding the organization's ethics and compliance standards and procedures.
- Make recommendations on improving the existing compliance mechanisms.
- Oversee the use of due care in delegating discretionary responsibility.

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- Define how the organization will balance the rights of the individual applicant/employee/member and the organization's need to avoid increasing the risk of a future violation that comes with placing a known violator in a position of discretionary responsibility.
- Oversee the background investigations of applicants/employees/members who are being considered for positions of discretionary responsibility.

Communicate the organization's standards and procedures, ensuring the effectiveness of that communication.

- Determine the mechanisms for communicating the organization's ethical standards and procedures.
- Develop and distribute appropriate documents and/or underwrite training, to ensure that all employees know and understand the standards and procedures.
- Develop mechanisms, like needs analyses, to identify employees' or members' areas of concern or confusion.
- Coordinate policies to ensure that the messages contained in them are not in conflict with one another.
- Recognizing that communication is two-way, determine mechanisms for soliciting stakeholder input into how standards and procedures are defined and enforced.
- Develop certification mechanisms to ensure that the organization has evidence that each employee has received the appropriate information and understands the standards and procedures they describe.
- Create mechanisms (such as ombudsman offices or employee hot lines) to facilitate employees receiving "safe" guidance and/or policy interpretation and to ensure each employee's access to a "safe" mechanism for reporting suspected wrongdoing.
- Determine what training is necessary for optimum compliance levels with the published standards and procedures.

Monitor and audit compliance.

- Develop the internal control mechanisms necessary to demonstrate individual and organizational compliance with the published standards and procedures.
- Develop mechanisms to demonstrate the effectiveness and reliability of the internal controls.
- Develop mechanisms to assess the compliance-related risks associated with the organization's strategic and operational goals, objectives and plans.
- Develop mechanisms to ensure that formalized measurements and rewards do not motivate noncompliance with the organization's standards and procedures.
- Develop and support whatever additional reporting mechanisms are deemed necessary to effectively monitor and audit compliance with the organization's standards and procedures.

Oversee enforcement, including the assurance that discipline is uniformly applied.

- Develop mechanisms to ensure consistent disciplinary responses for essentially similar violations (ensure that there are not different standards applied for different employees based on position, performance, function, etc.).
- Ensure that disciplinary provisions exist for both those who violate the standards and procedures and those who knowingly ignore such violations.

Take the steps necessary to ensure that the organization learns from its experiences.

- Develop the mechanisms necessary to identify why misunderstandings and/or violations occur and to ensure that the lessons learned are systematically applied to reduce the probability that similar questions/actions would recur.
- Follow-up on recommendations made to improve compliance mechanisms.

Other roles and responsibilities

The use of ethics committees for executive and/or administrative oversight of the various ethics effectiveness and ethics management processes is widespread but in some cases the ethics committee is also being required to perform functions that are at odds with the seven areas of responsibility shown above.

Ethics committees rightly serve an executive oversight and leadership role. That role should not be compromised by having the committee responsible for the investigation of alleged wrongdoing or the definition of specific disciplinary responses in individual cases. This confuses the issue. Responsibility for oversight should be free from the prejudices associated with advocacy. The ethics committee should be the advocate for effective ethics management processes, nothing more. It best represents the organizations and employees' interests by ensuring that the ethics management systems are effective and meet the requirements of applicable law and guidelines.

It would be inappropriate for an ethics committee to be involved in fact finding and/or discipline regarding alleged or proven ethics violations. That role puts them in the position of being the facilitators of policy, the investigators of specific circumstances and the dispensers of punishment.

The biggest concern is not the committee employees' or members' ability to handle the multiplicity of functions. Rather, it is the impact that such a multiplicity may have on the perceptions of employees or members who might shy away from using available ethics resources because of a perceived conflict of interest between the roles of executive oversight, policy interpretation, and advocacy for the employee or member and advocacy for the organization.

Ethics management processes work best when employees/members believe that they are neutral, when the fairness and impartiality in the process is not compromised. Active participation in the day-to-day management and implementation of ethics processes takes the ethics committee out of the role of overseer and makes them the managers of the ethics functions. This is akin to having the comptroller also be the auditor. There is too great a potential for independence and impartiality to be sacrificed for it to be endorsed as a preferred practice.

While the ideal may be to distance the ethics committee from day-to-day operations, that may not be feasible. If the ethics committee is to provide oversight and operational management that becomes a strong argument for regular ethics effectiveness audits from an independent third party.

Audits come in all shapes and sizes. The closer the ethics committee is to daily operations, the more comprehensive the independent audit should be.

In summary, ethics committees can meet the requirements of the federal sentencing guidelines for high-level responsibility for effective ethics oversight. They can serve a multitude of roles and responsibilities, but special care must be taken when those roles include the day-to-day operation of the ethics management processes. Such care will ensure employee or member confidence in the organization's commitment to independence and impartiality in decision making.