

EXPECTATIONS FOR THE CONDUCT OF THE DIRECTORS OF NOT FOR PROFIT ORGANIZATIONS

Joshua J. Mintz, Vice-President, General Counsel, and Secretary
John D. and Catherine MacArthur Foundation¹

Not for profit organizations come in all shapes and sizes but directors of not-for-profit organizations generally have the same legal duties as defined by State law. Beyond a director's legal and fiduciary duties, organizations often have expectations for directors in terms of their conduct and behavior. These expectations can differ depending on the nature of the organization. Private foundations with significant assets and no need for fundraising have different expectations for directors than a smaller public charity that depends on outside resources to sustain itself and often expects its directors to contribute financially if they can.

This is a general outline of expectations for the conduct of directors that will need to be adjusted for the circumstances of each organization. Organizations may make different choices depending on their history, culture, needs and operations. It is hoped this outline can serve as a starting point for organizations to produce their own guidelines depending on their circumstances.

General Statement

As directors of the [insert name of organization] we aspire to the highest level of ethical conduct. We appreciate that our actions, and that of executive leadership, set the tone for the organization and may be scrutinized by our funders, the staff, the public, media, legislators, and regulators.

We will review periodically this document and any incidents or conduct that suggest action or additional guidance is necessary. We will also engage in appropriate training when necessary to ensure we are meeting expectations. And we will hold ourselves accountable to the expectations we have for each other.

If we have questions regarding any expected or actual conduct, we will raise them with the Chair, President, or counsel as appropriate.

Our Specific Commitments

A. Our Responsibilities to the Organization's Mission and Values

- *We are committed to our mission and to upholding our values and principles.*

¹ Title for identification purposes only. The views expressed herein are the personal views of the author based on his experience over 28 years as General Counsel of MacArthur and as a member of other not for profit boards. 2023.

- *We will be ambassadors for the organization in furthering our mission and values while maintaining our appropriate role as directors.*

B. Our Conduct as Directors and Responsibilities to Each Other

- *We will be sensitive to real and perceived conflicts of interest and make sure we follow the letter and spirit of the Conflicts of Interest Policy and other policies and law applicable to directors.*
- *We will maintain the confidentiality of sensitive, proprietary, and personal Information.*
- *We will take time to be briefed periodically on legal issues, other risks facing the organization and our fiduciary duties as directors.*
- *We will attend, participate, and be attentive in Board meetings, whenever possible, and be knowledgeable about the organization's mission, strategies, and financial affairs.*
- *We will be collaborative, cooperative, and respectful to fellow directors yet willing to dissent constructively.*
- *We will be sensitive to and respect cultural differences in our work for the organization and on any site visits we may take.*
- *We will conduct ourselves with appropriate regard for dynamics of power relationships and avoid comments or actions that could be considered inappropriate, sexual in nature, or demeaning when engaging with funders, staff, grantees, consultants, or others in our role as directors.*

C. Maintaining the Appropriate Role as Board Members With Staff

- *We will exercise the strategic and oversight role of the Board and respect the President's and the senior staff's roles in managing the organization.*
- *We will assist the Chair in the evaluation of the President's performance and participate as appropriate in the process of selecting a new President when there are transitions.*
- *We will honor the respective roles of Board, President, and staff in our interactions with grantees and be cognizant that grantees will likely view us as speaking for the organization.*
- *We will refer any concerns that staff bring to us to the President without engaging substantively with the staff member or, if we believe that the concern amounts to a whistleblower complaint, to the Chair of the Board, the Audit Committee Chair, or our Counsel.*

D. Engaging with Third Parties

- *We will refer press, grant or investment inquiries by third parties to the President or to another staff member (copying the President) when in our judgment the inquiry might be of interest to the organization without making any commitment to the inquirer about any action by the organization.*
- *We will refer media inquiries to the board chair and president or person charged with communications and not engage with media without coordinating with the organization.*
- *We will refer investigative inquiries made by governmental agencies or complaints by third parties to our Counsel.*
- *We will pass inquiries made by other funders regarding potential collaborations with the organization to the Chair of the Board and the President if we believe such discussions might be of interest to the organization.*

E. Our Role as Fund Raisers and Personal Contributions²

- As directors of a not-for-profit organization that depends on funding from third parties, we recognize our responsibilities to assist in fund raising as requested by the President or [director of development].
- As part of our responsibilities to the organization, we also recognize that we should contribute our personal funding as feasible given our own circumstances and consistent with the organization's needs and culture

² This section should be modified to the organization's own needs and culture regarding the expectation of personal contributions from a director.