

CLUB PROCESS FOR CONDUCT UNBECOMING

Kiwanis International Policies, which are determined by the Kiwanis International Board, define 'conduct unbecoming' as follows.

Be aware that clubs (or districts) do **not** have the option to adjust this definition in any way.

Conduct Unbecoming a Member of the Kiwanis Family (4/13)

"Conduct unbecoming a member of the Kiwanis family" is defined as any conduct that: (4/12)

- Is incompatible with the best interests of the public or of members of the Kiwanis family; or (4/12)
- Tends to harm the standing of Kiwanis in the local or global community. (4/12)

Note: For conduct unbecoming purposes, the Kiwanis family is defined in the Kiwanis International Bylaws as members of Kiwanis clubs, Aktion Clubs, Circle K clubs, and Key Clubs. (4/12)

344 – CLUB MEMBER ACCUSED OF 'CONDUCT UNBECOMING'

344.1 - Allegation and Investigation (4/13)

A. Allegation: If any club member observes or has knowledge of* behavior by another club member that he or she believes constitutes 'conduct unbecoming a

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member of the Kiwanis family,' as defined in Kiwanis International policy, the member shall report such allegation in writing (hereinafter referred to as the "Allegation Report") immediately to the president of the Kiwanis club to which the accused member belongs. (10/12) (4/13)

However, if the president is the subject of the allegation, then, throughout the entire 'conduct unbecoming' process, whenever it is stated that the president shall normally act, the immediate past president shall act instead. (10/12) (4/13)

The allegation report shall include as much detail as possible regarding the time, place, persons, actions, etc. (10/12) (4/13)

*Note: "Has knowledge of" may include a nonmember making a club member aware of behavior or actions by another Kiwanian, in which case, such allegation shall be submitted via the club member who has been made aware of it. (10/12) (4/13)

B. Capacity: If the accused member is also a district officer or a Kiwanis International officer and the 'conduct unbecoming' appears to have been committed in his/her capacity as an officer, or if it is impossible to determine in what capacity the 'conduct unbecoming' was committed, the matter shall first be submitted to the Kiwanis International President or the

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district governor, in that order, as appropriate, who shall determine the capacity and either begin an investigation at the International or District level or refer it back to the club level to investigate and decide. If the President or governor alone is unable to clearly determine the capacity of the allegation, he/she may consult up to two fellow officers as deemed necessary. (4/13)

C. Allegation Process: Upon receipt of an Allegation Report, the president shall follow the steps outlined in this procedure. (10/12) (4/13)

d Investigator: Also within seven (7) days of receiving the Allegation Report, the president shall appoint a special investigator, which may be a single individual or a committee (hereinafter referred to as “the Investigator”). The Investigator shall be composed of disinterested club members (that is, those without bias on the allegations or for/against the accused member personally) and shall not include any members of the club board of directors. In the event the president believes no club member has the necessary skills or lack of bias to adequately investigate the subject matter, the president may select a non-club member or non-Kiwanian as the Investigator. If the Investigator charges a fee for his/her services or if the investigation itself involves some costs (such as fees for requesting records, etc.), then such fees/costs must be approved by the board. The Investigator will represent the club throughout the entire investigation, determination, and discipline process, and appeal if any. (10/12) (4/13)

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D. Investigation Process and Initial Notice: Within fourteen (14) days after being appointed, the Investigator shall endeavor to gather enough information to determine if the allegation is substantive enough to warrant investigation. If so determined, the president or designee shall send written notice to the accused member of the allegation, a copy of the process to be followed, and the possible outcomes, and the investigation shall continue more fully, including a reasonable attempt to interview the accused member and other relevant persons. (10/12)

E. Investigation Reports: The Investigator shall provide a progress report to the president within thirty (30) days of appointment. A final written report of the Investigator's findings (hereinafter referred to as 'the Investigation Report') shall be made by the Investigator, signed by all persons who comprise the Investigator, and submitted to the president within 30 days after the initial progress report (no later than sixty (60) days after the appointment of the Investigator), unless there are extenuating circumstances. The Investigation Report shall include an outline of the investigation as well as (1) whether the investigation finds in favor of the accused; or (2) whether the Investigator finds the matter can be resolved without a hearing; or (3) a recommendation of the charges and related specifications to be made against the accused member. (10/12) (4/13)

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F. Charges and Specifications: A charge sets forth the general offense the accused member is alleged to have committed. A specification states specifically what the accused member is alleged to have done which, if true, constitutes an instance supporting the charge. Charges and specifications must be carefully worded to make no broader allegation than intended or can be supported. An accused member must be found 'guilty' of at least one specification in order to be found 'guilty' of the related charge, and an accused member must be found 'guilty' of at least one charge before a penalty can be imposed. (If necessary, refer to Robert Rules, Section 63 – Investigation and Trial, for more information and examples of charges and specifications.) (10/12)

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344.2 - Disclosure and Confidentiality

A. During Investigation: During the investigation, the president shall not disclose any information regarding the investigation to the public or to any other member of the club, including the club board, until the investigation process is complete, except that, the president may report to the board only that an allegation has been received and an investigation is being conducted, without disclosing the name of the accused member or any details of the investigation. (10/12) (4/13)

B. After Investigation: Once the investigation is complete, the president may disclose information regarding the investigation only to the board for a hearing on the matter (and to any club staff who has a need to know), but not to the public or to any other member of the club. (10/12) (4/13)

C. If Appealed: In the event the final determination by the board is appealed to the club membership, then information can be disclosed to those members who attend the appeal meeting, subject to the obligation of those club members to keep the information confidential. (10/12)

D. General: All materials, facts, and information related to the investigation, determination, and appeal (if any) shall be kept confidential at all times by any parties or

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persons involved in any part of the process. The person presiding over each step should remind all participants of the need to maintain confidentiality. (10/12)

344.3 - Criminal Wrongdoing

If at any time during the investigation, the Investigator discovers criminal wrongdoing or what appears to be criminal wrongdoing, it must be reported immediately to the president, who is then obligated to report the matter to the proper authorities. If the president does not act, then the Investigator is obligated to report the matter to the proper authorities. In any case, the process regarding conduct unbecoming shall proceed to conclusion. (10/12)

344.4 – Resignation

An accused member may resign at any time during the conduct unbecoming process, and the club may or may not accept the resignation; however, after investigation, charges and specifications are made against the accused member, then the club is obligated to continue the hearing, determination, and discipline processes through to completion. (10/12) (4/13)

344.5 – Board Hearing

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- A. Referral to Board:** After receiving the Investigation Report, the President shall refer it to the club board to determine whether to proceed with a hearing. A special board meeting for this purpose shall be held within seven (7) days after the matter is referred to the board, and shall be conducted in executive session (i.e., closed to non-board members). (10/12) (4/13)
- B. Notice of Hearing:** Within seven (7) days after the special board meeting, the president or designee shall send notice to the accused member of the investigation results, including charges and specifications, and whether the board intends to pursue the allegation(s) and proceed with a hearing. If a hearing is to be held, the accused member shall have the option to say nothing or to admit or deny the allegation(s). If denied, the hearing shall determine if the allegation(s) are true. If admitted, the hearing shall determine the resulting discipline. A date for a hearing shall be set in consultation with the accused member, to be held as soon as reasonably possible but no later than thirty (30) days after the accused member receives notice of the allegation. The date shall be set when at least a quorum (which is a majority) of the board members can be present. (10/12)
- C. Temporary Suspension:** If the board intends to proceed with a hearing, the accused member may be temporarily suspended from club membership, pending the outcome of the proceedings. (10/12)

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D. Hearing: A special meeting of the board, with at least a quorum present, shall be held to conduct a hearing. The only persons allowed to attend the hearing are club board members, the accused member, the Investigator, and any representatives or counsel for the accused or the club (and any club staff as needed). Witnesses are permitted only during their own testimony. The president shall preside; however, if the president is the subject of the allegation or wishes to decline, the board shall determine who presides. If a board member is the subject of the allegation, he/she shall continue to be counted as a board member in determining the number needed for quorum, but will not be allowed to be present during deliberations or to vote at any point in the process. (10/12) (4/13)

At the hearing, the Investigator shall present evidence on behalf of the club, and the accused member shall have the opportunity to present evidence in his/her defense. If the Investigator is a committee, any member of the committee may represent the club at the hearing. The Investigator or the accused member may present evidence through testimony of witnesses. Witnesses shall not be required to swear-in. Either side may question the other or any witnesses. The accused member may testify in his/her behalf, either in person or in written form without being present. The accused member also shall have the right of

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representation at the hearing by the person of his/her choice and/or by legal counsel, at the member's own expense. Legal counsel may be engaged by the club board to provide advice to the board; however, the role of such legal counsel is entirely separate from the role of the Investigator. Counsel for the club or the accused may be a non-Kiwanian. (10/12) (4/13)

If it is determined that additional time is needed to present evidence not available at the initial hearing, the board may adjourn the hearing and reconvene it later. (10/12)

If the accused member fails to appear for the hearing, it shall proceed without him/her. (10/12)

E. Hearing Record: A written record of the hearing (hereinafter referred to as "the Hearing Record") shall be made. The hearing also may be recorded for transcription purposes. The Hearing Record shall include:

- Date, time, and location of the hearing;
- Names of all persons present or participating;
- Nature of allegation(s), including charges and specifications;
- Evidence, including testimony of witnesses;
- A summary of the essential content of all discussions;
- Any findings determined during the proceedings;
- Any motions made or votes taken.

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The Hearing Record shall be reviewed and adopted by the board in an executive session at the next special meeting of the board on the subject (see next step) and retained by the club secretary. (10/12)

344.6 –Determination and Discipline (4/13)

A. Determination: Within seven (7) days of conclusion of the hearing – or within no later than thirty (30) days, if extenuating circumstances exist – the board shall hold another special meeting in executive session (attendance limited to board members) to consider the charges and specifications against the accused member. Each of the specifications, and then the charge, is read, opened to debate, and voted on separately, although the several votes can be collected on a single written ballot. If the accused is found guilty of one or more of the specifications but not of the charge, a lesser charge may be moved and voted on. In each case, a majority vote* is necessary. If the accused is a member of the Board, he/she shall not have a vote on the matter. (10/12) (4/13)

B. Discipline: If the accused member is determined to have engaged in conduct unbecoming as alleged by at least one of the charges, then, by separate majority vote*, the board shall determine the appropriate disciplinary action, as follows: informal counseling, a verbal reprimand, written reprimand, suspension from office or club membership, or removal from office or

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club membership. The determination of the discipline should be based on the seriousness of the unbecoming conduct. (4/13)

If the discipline is removal from club membership, a two-thirds (2/3) vote* is required, per the Standard Form for Club Bylaws. For all other discipline, a majority vote* is required. If the accused member is a member of the board, he/she shall not have a vote on the matter. (10/12)

*Each of these votes refers to those board members present and eligible to vote. (10/12)

Note: If the discipline is determined to be suspension, and if the member was previously suspended, then the time the accused member has already been temporarily suspended may be credited toward the discipline. (10/12)

C. Board Report: Within seven (7) days of conclusion of the special meeting, the board shall produce a written report of its findings, conclusions, and decision(s) (hereinafter referred to as “the Board Report”), which shall become part of the club record on the matter. The board report shall include a copy of the Hearing Record, as reviewed and adopted by the board. A copy of the Board Report shall be provided immediately to the accused member and the investigator. The club membership shall be informed

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of the board's decision(s) on the matter, but other details from the Board Report shall remain confidential unless needed during a subsequent appeal of the board's decision(s) to the membership. (10/12) (4/13)

344.7 – Due Diligence (4/13)

As stated in the Kiwanis International bylaws: "A club shall discipline any member whose conduct is determined to be 'conduct unbecoming a member of the Kiwanis family,' or else the club shall be considered out of compliance with acceptable standards of Kiwanis International and may have its charter suspended or revoked as provided in the Kiwanis International Bylaws." (10/12)

Therefore, if an accused member is determined to have engaged in 'conduct unbecoming,' some form of discipline must be given for the club to have properly completed due diligence on the matter. (10/12)

344.8 – Reinstatement of membership (4/13)

If the charges against the accused member are not substantiated by the hearing or, if substantiated, then after discipline has been completed by the accused member (other than removal from membership), the accused may be reinstated to membership in the club. (10/12) (4/13)

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344.9 – Appeal

A. Request for appeal: Within thirty (30) days of the Board Report being provided to the accused member and the investigator, either party has the right to appeal the board's decision(s) to the club membership. Such appeal must be made in writing to the president (or secretary, if the president is accused) and must state the specific reason(s) for the appeal. Either party may appeal either the board's finding that 'conduct unbecoming' did or did not occur or the resulting disciplinary action. (10/12)

An appeal may **not** be used to "re-try" the allegations against the accused member, and no new facts that were reasonably accessible at the time of the hearing will be allowed. An appeal will be allowed only if some part of the process or facts used to determine the board's decision(s), the Hearing Record, or the board's report is alleged to be faulty, incorrect, insufficient, or otherwise erroneous, or if the decision of the Board was contrary to the overwhelming weight of the evidence. (10/12) (4/13)

B. Appeal Process: If a written notice of appeal is received by the club president (or secretary, if the president is accused), the board shall call a special appeal meeting of the club membership to consider the appeal within thirty (30) days, provided at least fourteen (14) days advance notice of the meeting is

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given to the club membership. Any person who is not a current club member in good standing shall be excluded from the meeting. The accused member, investigator, and counsel for either side shall be excluded from the meeting, even if they are club members. All materials and information provided to the club membership shall remain confidential among those attending. At least a quorum of the membership (which is one-third) must be present at the appeal meeting. The president shall preside; however, if the president is the subject of the allegation or wishes to decline, the board shall determine who presides. The materials to be considered for the appeal shall be the Hearing Record, the Board Report, and the appellant's basis for appeal. Members may ask only questions that are relevant to the appeal, and relevancy shall be determined by the presiding officer at the appeal.
(10/12) (4/13)

C. Permitted Motions: Only two separate and specific types of motions may be made during the appeal meeting by a club member in attendance, as follows:
(4/13)

1. Regarding the board's original determination of 'conduct unbecoming': move **either** to uphold the original decision; **or** they may move to overturn the original decision. Other motions are out of order.
2. Regarding the resulting disciplinary action, if any was given and if any is still in order: move **either** to uphold the board's original discipline; **or** they may

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move to overturn the board's original discipline and change it to some other disciplinary measure(s) which must be specified as part of the motion.

Other motions are out of order.

Any motion shall require a majority vote of those present and eligible to vote to adopt. (10/12)

D. Final Authority: The decision of the club membership on the matter shall be final. (10/12)

E. Appeal Record: A written record of the appeal meeting of the club membership (hereinafter referred to as the "the Appeal Record") shall be made, similar to that for the Hearing Record, and shall be reviewed and approved by the club board and retained by the club secretary. (10/12)

344.10 – Official Records, Notification, and Separate Disciplinary Action

A. Official Records: The club shall retain all official records on the matter in a confidential file, as long as required by applicable law. Official records are: the Allegation Report, Investigation Report, Hearing Record, Board Report, and Appeal Record if any. (10/12) (4/13)

B. Notification of Kiwanis International: A copy of all official records shall be sent to the Executive Director of Kiwanis International within thirty (30) days of the

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conclusion of all proceedings to retain in a confidential file. This provides documentation that the club completed due diligence regarding the allegation, as well as a safeguard against club records being lost or destroyed at a later date. (10/12) (4/13)

If the member was disciplined by the club in any way for 'conduct unbecoming' and if he/she is also a Kiwanis International officer, Kiwanis International may take separate disciplinary action against the member as it deems appropriate. (4/13)

C. Notification of District: If an accused member is removed from the club for 'conduct unbecoming', the club shall so notify the district governor. (10/12) (4/13)

If the member was disciplined by the club in any way for 'conduct unbecoming' and if he/she is also a district officer, Kiwanis International shall send a copy of the official records on the matter to the district governor, and the district may take separate disciplinary action against the member as it deems appropriate. (4/13)

D. Notification of Other Clubs: If the member was disciplined by the club in any way for 'conduct unbecoming' and he/she also belongs to another Kiwanis club(s), Kiwanis International shall send a copy of the official records on the matter to the president(s) of the member's other club(s) and each

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club may take separate disciplinary action against the member as it deems appropriate. (4/13)

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344.11 – Parliamentary Authority

The most recent edition of Roberts Rules of Order shall be the parliamentary authority for all procedural matters related to investigation, determination, discipline, and appeal (if any) for 'conduct unbecoming' which may not be specifically covered in Kiwanis governing documents, including but not limited to this procedure. (In the 11th edition of Roberts Rules, see Section 63 – Investigation and Trial). In the event of any inconsistency between Kiwanis governing documents and Roberts Rules, the Kiwanis provisions shall prevail. (10/12)