

## Regents Policy 1112: Policy on Review of Allegations of Board Member Misconduct

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*Approved March 16, 2017*

This policy (“Policy”) provides procedures to address any allegation that a member of the Board of Regents (“Regent”) “has not fulfilled [his or her] duties as set forth in University Bylaws, policy or applicable law” and to “implement appropriate response(s) when such allegation is found to have merit” as required by Bylaw 21.11. This Policy concerns only the investigation of misconduct and the administration of sanctions, and it should not be interpreted as modifying or expanding the duties or responsibilities of a Regent as set forth in other University policies or Bylaws.

Section I addresses the Policy’s purpose and scope. Section II provides procedures for the investigation of alleged misconduct. Section III provides options for sanctions.

### **Section I – Introduction and General Policy**

#### **1. Purpose**

The Board of Regents of the University of California (the “Board”) holds the University in trust for the people of the State of California. In this role, members of the Board are expected to conduct themselves ethically, honestly, and in a manner that strengthens the public’s trust and confidence; to exercise their powers and duties in the interest of the public, the University, and the Board; and to preserve and enhance the assets and reputation of the University for the education and betterment of current and future generations.

#### **2. Applicability**

This Policy applies only to the eighteen gubernatorial-appointed Regents, the ex-officio Regents, and any non-student Regents-designate. The Policy does not apply to the Student Regent or any faculty representative or staff advisors to the Regents.

#### **3. Free Speech and Academic Freedom**

Members of the University community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution and Article I, Section I of the California Constitution. This Policy is intended to protect the reputation and integrity of the University, not to regulate protected speech. It is intended that the sanctions listed in this Policy be imposed and enforced for the protection of the University community and for the maintenance of the reputation and integrity of the University. No provision of this Policy shall be interpreted in a manner that results in a violation of any person’s rights of free speech and association or other fundamental rights.

### **Section II – Procedures for Investigation of Allegations and Imposition of Sanctions**

The Board shall have the authority to censure or sanction a Regent who is found by the Board to have violated the Regent’s fiduciary or ethical duties to the University.

In order for the Board to censure a Regent, the Regent must be found by a preponderance of the evidence to have violated the ethical principles or breached his or her duties as set forth in the University Bylaws, policy, or applicable law. Such a finding shall be made by the Board only after an investigation directed by the Office of the General Counsel. The Office of the General Counsel shall, as provided herein, consult with a three member panel (“the Regent panel”) comprising the Chair of the Board, the Vice Chair of the Board, and the Chair of the Governance and Compensation Committee; provided that, if one of the members of the panel cannot, in light of the allegations or for any other reason, appropriately serve, the other two members of the panel shall jointly select a third panel member. The investigation must include an opportunity for the Regent to respond to the allegations.

A Regent’s acts or omissions in his or her non-official capacity shall not be the basis for sanctions unless the acts or omissions (a) constitute a violation of the University’s Statement of Ethical Values and Standards of Ethical Conduct, the University’s Sexual Violence and Sexual Harassment Policy, or another policy that expressly applies to a Regent’s non-official conduct and (b) affect the University’s reputation, integrity, or policy objectives.

Any allegations, investigation, or proposed sanction of a Regent may be resolved informally at any time, following consultation with the Office of the General Counsel and with the approval of the Regent panel.

For the purposes of this Section, outside counsel may be used in the place of the Office of the General Counsel when good cause exists, as determined by unanimous vote of the Regent panel.

### **1. Preliminary Review of Allegations**

When allegations of a Regent’s misconduct or breach of duties come to the attention of the Board or a member thereof, the allegations shall be forwarded to the Office of the General Counsel. The Office of the General Counsel shall promptly notify the accused Regent of the allegations and shall conduct a confidential preliminary investigation of the allegations. The preliminary investigation should be conducted in a manner designed to minimize any intrusion into the accused Regent’s personal or non-University affairs.

The Office of the General Counsel shall, with the concurrence of at least two of the three Regent panel members, initiate a formal investigation if, on the basis of its preliminary investigation, it finds (a) the allegations are plausible and not frivolous, (b) the alleged conduct, if substantiated, would constitute a breach of the Regent’s duties or responsibilities or otherwise be cause for sanctions, and (c) the allegations concern conduct by the Regent in his or her official capacity or conduct that affects the University’s reputation, integrity, or policy objectives. If either the preliminary investigation determines that these criteria are not satisfied or it is determined that it is not possible, based on the reasonable investigative methods available to the Office of the General Counsel, to reach a conclusion, no further action shall be taken. The results of the preliminary investigation shall be treated as privileged and confidential to the extent permitted by law.

Where appropriate, the Office of the General Counsel shall provide a complainant with a written explanation of rights and available options for reporting to and/or notifying law enforcement or other campus authorities of the alleged misconduct.

## **2. Investigation**

Upon determining that a formal investigation is warranted, the Office of the General Counsel shall, with the concurrence of at least two of the three Regent panel members, appoint an investigator who may or may not be a University employee ("Investigator").

The appointed Investigator shall, at the direction of the Office of the General Counsel and consulting as appropriate with the Regent panel, gather information relevant to the allegations of misconduct or breach; afford the accused Regent an opportunity to respond to the allegations and comment on the information gathered; and make a written report of its review, findings, and recommendation ("Investigator's Report") within 90 days from the date of appointment, unless the Office of the General Counsel determines that circumstances warrant a longer period. The investigation should, to the extent reasonable in the circumstances, be conducted in a manner designed to minimize any intrusion into the accused Regent's personal or non-University affairs.

The Investigator's Report shall be treated as privileged and confidential to the extent permitted by law.

## **3. Opportunity to Respond to the Investigator's Findings**

Prior to finding a violation or breach of the University Bylaws, policy, or applicable law, the Investigator shall notify the accused Regent in writing of their intention to do so and the reasons therefor and shall invite the Regent to respond. Said notification will be delivered to the office and residence of the accused by registered mail. The Regent may respond, either in writing or in a personal conference, or both. Such response shall be within 14 days of the receipt of the notice. If there is a personal conference, the Regent and the Investigator shall each be entitled to bring a representative of their choice, including an attorney, to the conference.

Any written response by an accused Regent to the allegations shall become part of the formal record and shall be appended to the Investigator's Report.

## **4. Determination of Appropriate Sanctions**

The Investigator shall submit the Investigator's Report, upon completion, to the Office of General Counsel and the Regent panel.

If the Investigator has determined by a preponderance of the evidence that the Regent violated the ethical principles or breached his or her duties as set forth in the University Bylaws, policy or applicable law, the Office of the General Counsel shall, in consultation with the Regent panel, recommend an appropriate sanction and shall forward the Investigator's Report and the recommended sanction to the individual members of the Board. If the Investigator has concluded that the preponderance of the evidence standard

is not met or that he or she lacks the ability to determine whether the preponderance of the evidence standard is met, no further action will be taken.

#### **5. Board Consideration and Vote**

Upon receiving from the Office of the General Counsel the Investigator's Report and the recommended sanction, and unless the matter is resolved informally, the Board shall, at either a regularly or specially set meeting, vote on any proposed sanction.

Any sanction may be imposed only by majority vote of the Board, excluding the affected Regent, who may not participate in the vote.

#### **6. Confidentiality**

All individuals affected by the investigation shall be accorded confidential treatment to the maximum extent possible, consistent with University policy and applicable law.

#### **7. Required Communications**

If an investigation leads University officials to conclude that a crime has probably been committed, the results of the investigation shall be reported to the District Attorney or other appropriate law enforcement agency. The UC Police should be the conduit for communications with law enforcement agencies unless the Office of the General Counsel, in consultation with the Regent panel, in a particular situation determines a different communications strategy.

### **Section III – Types of Sanctions**

The types of sanctions that may be imposed on a Regent are as follows: written censure, removal or suspension from a committee assignment, revocation of University privileges, recusal from certain Board proceedings or decisions, or restitution.

More than one sanction may be imposed for a single act of misconduct, e.g., a letter of censure and removal from a committee assignment. The Board may remove or terminate a sanction, either automatically or by administrative discretion, in individual cases. The severity and type of sanction selected for a particular offense must be appropriately related to the nature and circumstances of the case.

Prior to the imposition of any sanction described below, the Board may waive or limit any or all sanctions on the condition that the accused Regent performs some specified action(s) designed to address the harm and/or to prevent future harm. Such actions may include, but are not limited to, monetary restitution, compliance with a commitment not to repeat the misconduct, or other act to make whole injury caused by the Regent's misconduct or to prevent future misconduct.

If the imposition of a sanction is waived, the subsequent failure to perform the required act or otherwise comply with the conditions of the waiver will immediately subject the Regent to the implementation of the underlying sanction without an additional hearing. The authority to determine whether the Regent has complied with the conditions of the waiver rests with the Board.

**1. Written Censure**

The Board may convey a formal written expression of institutional rebuke that contains a brief description of the censured conduct. Written censure is to be distinguished from an informal written or spoken warning, and must be delivered confidentially to the recipient and maintained in a designated personnel file or files indefinitely or for a lesser period of time specified in the writing. Informal written or spoken warning is not an official disciplinary action.

**2. Removal or Suspension from Committee Activity**

The Board may remove or suspend a Regent from his or her position as a member, chair, or vice-chair of a committee or subcommittee. In the case of a suspension, the duration of the suspension shall be specified.

**3. Revocation of University Privileges**

The Board may revoke a Regent's University privileges such as access to University property, use of University administrative staff, or parking and library privileges. The degree and duration of the revocation shall be specified.

**4. Recusal from Certain Board Proceedings or Decisions**

The Board may recuse a Regent from participating in specified Board proceedings, including from voting on specified matters, where the subject matter of the vote relates to the allegations of misconduct or breach of duties or the Regent's participation would otherwise be inappropriate in light of the misconduct or breach of duties.

**5. Restitution**

In the appropriate case, the Board may require divestiture, restitution, or forfeiture as appropriate to remedy an official violation of University policy.