

# MICHIGAN STATE BAR FOUNDATION

## WHISTLEBLOWER POLICY

### **I. Introduction**

The Michigan State Bar Foundation (“Foundation”) is committed to conducting its affairs in full compliance with the law and with its own policies and procedures. Members, employees, and agents of the Foundation are required to perform their duties with integrity and in compliance with all applicable laws and Foundation policies and procedures.

This Policy governs reporting and investigations of allegations of suspected improper conduct. The Foundation encourages members, trustees, employees, and agents of the Foundation and others to use the guidance set forth in this Policy to report any and all allegations of suspected improper conduct. This Policy provides for confidentiality, and confirms that any person who makes a good faith report of suspected improper conduct or who in good faith participates in the investigation of such a report will be protected from retaliation by the Foundation or anyone within its control.

This Policy is subject to the direct oversight of the Finance-Audit Committee of the Foundation.

### **II. Definitions**

For purposes of this Policy, the following terms shall have these meanings:

- A. Improper Conduct** is any action or activity by a member, trustee, employee or agent of the Foundation that is undertaken in the performance of the individual’s official duties, or with the appearance or representation that it is undertaken in the performance of official duties, whether or not within the scope of those duties, and that: (1) is in violation of any federal, state, or local law or regulation; (2) constitutes misuse or misappropriation of Foundation property, or willful omission to perform duty, or intentional violation of a Foundation policy, procedure, rule or regulation; (3) is economically wasteful, involves gross misconduct, incompetence or inefficiency, or creates potential exposure to liability and financial irregularities for the Foundation; (4) suggests strongly that the action or activity is a criminal act; (5) is a significant threat to the health or safety of employees, trustees or officers of the Foundation; (6) is an unauthorized invasion, alteration or manipulation of records and/or computer files; (7) is in pursuit of a benefit or advantage in violation of the Foundation’s Conflict of Interest Policy; (8) constitutes interference with a Foundation investigation conducted in accordance with this Policy, including any attempt to intimidate or retaliate against Whistleblowers or witnesses; or (9) is determined by the Finance-Audit Committee to be detrimental to the best interests of the Foundation.
- B. Protected Disclosure** is any report, communication or other disclosure that may evidence Improper Conduct, if made in good faith for the purpose of correcting the conduct or while participating in an investigation of Improper Conduct.

- C. **Whistleblower** is the reporting party who makes a Protected Disclosure. The Whistleblower is not an investigator, fact finder or one who determines the corrective or remedial action.
- D. **Disinterested Person** is a member of the Foundation who is not a Subject of the Protected Disclosure.

### III. **Reporting Allegations of Suspected Improper Conduct**

#### A. **Filing a Report**

1. Reports of suspected Improper Conduct should be filed with the Executive Director of the Foundation, the Chair of the Foundation's Finance-Audit Committee, the President of the Foundation, or any Disinterested Person who is a member of the Foundation's Board of Trustees. Contact information for the Chair of the Finance-Audit Committee, the President of the Foundation, or members of the Board of Trustees may be obtained from the Executive Director or on the Foundation's web site at <http://www.msbf.org/dir/trustees.html>.
2. Each trustee, officer and employee of the Foundation must report Improper Conduct in accordance with this Policy.
3. Any person may report allegations of Improper Conduct. Anonymous reports may be made. An anonymous report must include sufficient corroborating evidence to justify initiating an investigation.
4. The Foundation encourages reports of alleged Improper Conduct to be made in writing, so that there is a clear understanding of the issues raised. Oral reports may be made. Reports should focus on facts, and avoid speculation.
5. Nothing herein shall preclude Whistleblower from reporting a violation of law, regulation, or rule to a public body pursuant to Public Act 469 of 1980 or any other applicable whistleblower or protected disclosure law, regulation, or rule.

#### B. **Confidentiality**

1. Whistleblowers frequently make their reports in confidence. To the extent reasonably possible within the limitations of law and policy and the need to conduct a competent investigation, confidentiality shall be maintained. The identity of Whistleblowers may become known for reasons beyond the control of the investigators and the Foundation. Whistleblowers should be prepared to be interviewed by the investigator. If there is a self-disclosure by the Whistleblower, the Foundation has no obligation to maintain confidentiality.
2. The identity of the subject(s) of the investigation shall be maintained in confidence subject to the same limitations.

### **C. Time Limits for Report**

The allegation of suspected Improper Conduct must be reported as soon as practicable.

## **IV. Investigating Alleged Improper Conduct**

### **A. Responsibility of Finance-Audit Committee**

1. The Executive Director and Finance-Audit Committee shall be responsible for investigating and making appropriate recommendations to the Foundation with respect to reports of Improper Conduct received by him/her or it. If either the Executive Director or a member of the Finance-Audit Committee is the Subject of the report of Improper Conduct, he or she shall not participate in the investigation or recommendations. If all members of the Finance-Audit Committee are Subjects of a report of Improper Conduct, then the Foundation shall appoint one or more Disinterested Person(s) to act in place of the Finance-Audit Committee.
2. An investigation shall be undertaken if preliminary consideration of a report establishes that: (a) the allegation, if true, constitutes Improper Conduct; and (b) the allegation is accompanied by information specific enough to be investigated, or (c) the allegation has or directly points to corroborating evidence capable of being pursued.
3. All such reports shall be promptly investigated by the Executive Director, the Finance-Audit Committee, or the person(s) designated by the Finance-Audit Committee to conduct the investigation, and appropriate corrective action recommended to the Foundation, if warranted by the investigation.
4. The Finance-Audit Committee shall assure that all appropriate reporting occurs to the Foundation, funding and regulatory agencies, Whistleblowers, and others, as necessary.
5. Subject to the Foundation's prior approval of the expenses to be incurred, the Finance-Audit Committee may retain outside legal counsel, accountants, private investigators and any other resources deemed necessary to conduct a full and complete investigation of the allegations.

### **B. Roles, Rights and Responsibilities of Whistleblowers, Investigation Participants, and Subjects**

1. Whistleblowers
  - a. Whistleblowers provide initial information related to a good faith belief of Improper Conduct.
  - b. Whistleblowers shall not obtain evidence to which they do not have a right of access.

- c. Whistleblowers must be truthful and cooperative in the investigation of their reports of Improper Conduct.
- d. Whistleblowers have a right to be informed of the disposition of their disclosure.

2. Investigation Participants

- a. Employees, trustees, officers and other investigation participants have a duty to cooperate fully with the investigator. Participants shall cooperate in a truthful and candid manner.
- b. Investigation participants should not discuss or disclose the fact of the investigation, information relating to the investigation, or their testimony with anyone other than the investigator. Under no circumstances shall a participant discuss with the investigation Subject or other witnesses the nature of the evidence requested or provided, or the testimony given to the investigator.

3. Subjects

- a. A Subject is a person who is the focus of an investigation.
- b. Subjects should be informed of the allegations and have opportunities for input during the investigation.
- c. Subjects shall cooperate with the investigator.
- d. Subjects shall not interfere with an investigation. They shall not withhold, destroy or tamper with evidence or influence, coerce or intimidate witnesses.
- e. Subjects shall be informed of the outcome of the investigation.
- f. Disciplinary or corrective action shall be taken against the Subject, if warranted.

**V. Protection Against Retaliation**

Whistleblowers, investigation participants and others who make Protected Disclosures in good faith shall not be retaliated against in any manner for such disclosure. This protection from retaliation is not intended to prohibit supervisors or administrators from taking action, including disciplinary action, in the usual scope of their duties and based upon valid performance-related factors.

Whistleblowers and others who believe they have been subject to retaliation for making a Protected Disclosure or for otherwise participating in an investigation should promptly report such actions to the Executive Director or the Finance-Audit Committee.

**VI. Sanctions for False Claims or Testimony**

A Whistleblower who makes a claim under this Policy in bad faith, or knows or has reason to know that such claim is false or materially inaccurate, shall be subject to disciplinary sanctions. In appropriate cases, the Foundation may assess the costs of conducting the investigation against the Whistleblower.

An investigation participant who knowingly provides false or materially inaccurate information in the course of an investigation shall also be subject to disciplinary sanctions.

**VII. Status and Amendment of Policy**

The Foundation reserves the right to amend this Policy from time to time as the interests of the Foundation may require. This Policy is intended as guidance for the reporting and investigating of allegations of suspected Improper Conducted. This Policy does not create, nor should it be viewed as creating, a contractual obligation between the Foundation and any member, employee or agent of the Foundation or other person.

Adopted by the Board of Trustees on February 13, 2008.