

**shape
your
purpose**



★ **asae**[®]
annual
meeting
& exposition

#ASAE23

Navigating the Pitfalls of a Code of Ethics

ASAE Annual Meeting

Nisha Thakker, Esq.

Partner

Tenenbaum Law Group PLLC

Washington, DC

Introduction

- Experience and background
- Roadmap
- Takeaways

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

What are the Options?

- Code of Conduct
- Enforceable Code of Ethics
- Aspirational Code of Ethics

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Code of Conduct

- Designed for events, online forums, and other association-sponsored or -run programs and activities
- Not tied to members' work in their industry or profession
- There should be a full range of potential consequences for violations, but detailed enforcement procedures not needed
- Consequences can be immediate

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Enforceable Code of Ethics

- Relates specifically to the industry/profession a member is a part of and how that member represents in the industry/profession
- Clear and objective language for the requirements being enforced
- Due process enforcement proceeding (including appeals) – enforcement must be objective and consistent
- Full range of potential sanctions

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Aspirational Code of Ethics

- Lofty language focused on ideals
- No enforcement mechanism
- Possibility for suspension or expulsion for egregious behavior (in other words, if desired, it can be enforceable in the event of exceptionally bad conduct)

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

What Do I Need?

- What purpose are you trying to achieve?
- Or better yet, what problem are you trying to solve?
- What is the “appetite” of your association? Having a legally sound enforceable code of ethics is no small undertaking

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

What Do We Have?

- Carefully review the language of your code of ethics
- Is it objective, precise, and reasonable in its language?
- Is it lofty and more focused on the “ideal member?”
- Do you have enforcement mechanisms?

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Do We Need a Code of Ethics?

- Are your members subject to a state licensing authority or other regulatory or licensing body?
- Is your association issuing certifications or credentialing individuals in a specific field?
- Do you have the volunteers to properly enforce a code of ethics?

shape your purpose



Why Now?

- If your association doesn't have a code of ethics, why now?
- Creating a code of ethics is a major undertaking – is it necessary?
- Can the purpose be accomplished through an aspirational code of ethics?

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Drafting a Code of Ethics

- Create a task force or special committee
- Decide on aspirational vs. enforceable
- Consider the rules and behaviors that are important in your industry or profession

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Applicability

- What behaviors does the code of ethics actually cover?
- Need to be clear on the scope
- Confusion between “professional services” and behaviors outside the scope of the profession or industry – as this can be a big problem, try to limit it to the former

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Rules vs. Explanations

- Many association codes of ethics have enforceable rules and unenforceable explanations of the rules
- Helps to clarify what the rule is actually intended to enforce
- Easier to add to explanations rather than redrafting rules

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Enforcement

- Who enforces a code of ethics?
- How are complaints received and processed?
- Anonymity?
- Options for enforcement

shape your purpose



Due Process Proceeding

- Screening of complaints
- Is a hearing warranted?
- Who participates in a hearing?
- Confidentiality

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Sanctions

- Punishment should fit the “crime” and must be objectively and consistently applied
- Monetary, educational, letters to member record
- Should you publish violations?
- Graduated sanctions

shape your purpose



★ **asae**[®]
annual
meeting
& exposition

#ASAE23

Appeals

- Restricted to fundamental failure in due process or new evidence – not “another bite at the apple”
- Who hears appeals?

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Conclusion

- Evaluate what is necessary in your association
- If you already have a code of ethics, is the language reasonable, objective, and clearly defined?
- Are you following consistent due process procedures?
- Are your members aware of their obligations?

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23

Questions?

Nisha Thakker, Esq.

Partner

Tenenbaum Law Group PLLC

Washington, DC

nthakker@TenenbaumLegal.com

shape your purpose



★ asae[®]
annual
meeting
& exposition

#ASAE23



shape your purpose



★ **asae**[®]
annual
meeting
& exposition

#ASAE23