

What to Do if You Suspect Fraud or Wrong-Doing by a Maine Nonprofit

This white paper is part of a series of MANP documents created to enhance understanding of the rules and regulations governing Maine's nonprofit organizations.

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Note: No one may rely on this guide as legal advice, and we encourage you to consult a qualified attorney for advice on any particular situation. Consulting with an attorney will be useful in helping you to understand your rights and the options available to you throughout each of the steps described in this guide.

Before You Report

Be cautious

You may be certain that there has been wrong-doing or may just suspect misconduct, but either way, it is very important to be thoughtful about how you address your concerns.

- ▶ **Be very careful about saying anything in public, by email or online that might damage the reputation of the organization or people who work there.** You risk both personal and legal challenges if your understanding of a situation is wrong or cannot be substantiated.
- ▶ **Understand your protections.** Federal and Maine law prohibits all employers, including nonprofits, from retaliating against employees who “blow the whistle” on any suspected violation of law, or on any practices that risk someone’s health or safety. In addition, Maine law provides that employees of a nonprofit corporation may not be terminated for contacting a Board director, and such contact between employees and directors cannot be prohibited. Many organizations have a “whistleblower protection policy” in place that applies to these concerns. If you are a staff or board member, determine whether your organization has a policy in place and what procedures may exist to help you report a concern.

Learn About Appropriate Nonprofit Practices + Resources to Prevent Fraud/Misconduct

It is important to recognize that actions by an organization that you do not agree with or approve of are not necessarily illegal. An important step in any case of suspected fraud or misconduct is to educate oneself before making a report. There are many resources

available to help nonprofit staff, leaders and board members learn about legal responsibilities as well as best practices in nonprofit management. In addition to this document you may want to review the following:

- ▶ The Maine Attorney General's office has compiled **links to sections of Maine law relevant to public charities:**
<http://www.maine.gov/ag/consumer/charities/laws.shtml>.
- ▶ **Maine Attorney General's Guide for Board Members of Charitable Corporations**
http://www.maine.gov/ag/consumer/charities/guide_charities.shtml
This guide is meant to help board members understand their rights and responsibilities during service to a charitable organization.
- ▶ **Association of Fundraising Professionals Code of Ethics**
<http://www.afpnet.org/Ethics/EnforcementDetail.cfm?itemnumber=3261>
- ▶ **Guiding Principles + Practices for Nonprofit Excellence in Maine**
This document outlines legally required practices for 501(c)(3) nonprofits, as well as recommended best practices. This document can be downloaded from MANP's website at www.nonprofitmaine.org.
- ▶ Visit **MANP's Answer Center**, which includes information about nonprofit legal compliance (<http://www.nonprofitmaine.org/learn/resources/the-answer-center/>) as well as a range of other resources that describe and support nonprofit management best practices.
- ▶ Contact **MANP's Help Desk** by visiting <http://www.nonprofitmaine.org/learn/resources/the-answer-center/nonprofit-help-desk/>. MANP's staff can guide you to resources to help you determine whether the situation of concern is an instance of poor management or illegal activity.

Gather information

Public charities are required to make a number of organizational documents public. While these documents may not contain evidence of misconduct, it's worth reviewing them. If you find the reports are incomplete or nonexistent, or if they contain information that is easily demonstrated to be false or misleading, these can be good starting points for calling for official investigation. Documents accessible to you that you may want to review include:

- ▶ **Corporate filings**
An organization's **Articles of Incorporation** and the corporation's **State of Maine Annual Report** (which includes basic information about the organization's directors and officers) can be requested by visiting the Maine Bureau of Corporations "Interactive Corporate Services" at <https://icrs.informe.org/nei-sos-icrs/ICRS> and searching for the nonprofit by name. There is a fee per document ordered.
 - Many organizations create a public annual report (different from the State of Maine Annual Report listed above) and make this available on their websites and a few post their Articles of Incorporation and/or Bylaws online as well.
 - *For membership organizations*, minutes, Bylaws, and all books and records of accounts of the organization must be made available for inspection to any voting member for all legitimate purposes. Good

faith investigation of suspected misconduct is generally considered a legitimate purpose.

► **Fundraising-related records**

Most organizations that solicit contributions from the public should be licensed in Maine, and organizations that solicit contributions in other states may need to register in those as well. Maine's Charitable Solicitations Act makes publicly available a variety of fundraising-related records that must be filed. These include an **annual registration application**, an **annual fundraising activity report**, and **contracts with professional fundraisers**, which are available upon request from the Office of Professional and Occupational Regulation. You can look up charitable organizations that have filed for a license in Maine at <http://pfr.informe.org/almsonline/almquery/welcome.aspx> to see their license history and if any disciplinary action has been taken against them.

► **Federal records**

Certain federal tax records must be disclosed, and copies must be provided for a reasonable fee upon request (usually immediately for in-person request and within 30 days in the case of written requests). These include the **IRS Form 1023** (the original application for 501(c)(3) status), the **IRS's 501(c)(3) determination letter**, and the **IRS Form 990 for the three most recent years**. These documents can be requested from the IRS (usually for free, see IRS Form 4506-A). Form 990s are available on Guidestar (www.guidestar.org) for free if you register. More details on these federal disclosure requirements can be found in IRS Publication 557, pages 13-15. In general the disclosed information includes: the names and address (can be work addresses or simply the address of organization) of the organization's officers and directors; the names and compensation levels of the top five employees paid more than \$100,000 annually; gross income for the year; dues received from members; expenses; the organization's balance sheet; and total contributions, including gifts, grants, and government contracts. However, for reasons of privacy, charities are not required to publicly disclose the attachment to the 990 that includes an itemized list of all contributions of over \$5,000, or any trade secrets.

Addressing Your Concerns

If after gathering information you still have concerns, you have a few options:

Work to Solve the Issue Internally

Consider trying to raise your concerns directly. The Executive Director or Board President may be the most appropriate person to approach, but any board member or leadership team member who you trust can be a good starting place. It is a good idea to request a private meeting and come prepared with specific concerns and any evidence you have gathered. Be clear that you are bringing the issue to their attention because you wish to see it resolved rather than because you are seeking to place blame. If you are a staff or board member, be sure you are familiar with any organizational policies and procedures regarding the submission of complaints and/or whistleblower protection.

Seek a Change in Leadership

A common complaint in the nonprofit world involves an Executive Director or Board President who is mismanaging the organization, whether or not fraud or misconduct is suspected. Board directors and organizational members have certain rights under most bylaws and under the Maine Nonprofit Corporation Act that can be effective in forcing

leadership change, such as calling a special meeting of the Board (or of the members, if it is a membership organization).

Make a Formal Report

It may be more appropriate, or feel safer, to make a complaint or report to the appropriate government entity. You may wish to consult with an attorney before doing so, to better understand the implications for yourself, the organization, and any other individuals involved in the suspected wrongdoing. The process for reporting a complaint depends on the type of misconduct you suspect:

▶ **Inappropriate Charitable Solicitation**

If you believe the organization has violated the public trust in relation to charitable solicitations (activities related to asking the public for money, selling products, using the charity's name to entice sales) you can submit a complaint to the Maine Department of Professional and Financial Regulation, Office of Professional And Occupational Regulation at http://www.maine.gov/pfr/professionallicensing/complaint_form.htm (under licensing board, choose "charitable solicitations").

▶ **Violations of the Maine Nonprofit Corporation Act**

If you suspect violations of the Maine Nonprofit Corporation Act (Title 13-B M.R.S.) you can submit a complaint to the Maine Attorney General's Consumer Protection Division at <http://www.maine.gov/ag/consumer/complaints/index.shtml>. Common concerns include mismanagement of funds, conflict of interest transactions, board composition problems, or board members not exercising appropriate "duty of care."

▶ **Violations of State Gaming Laws**

Reports about violations of gaming laws (such as illegal raffles, gambling activities, etc.) should be reported to the Maine State Police at (207) 624-7210.

▶ **Federal Tax Law Violations**

If you suspect violation of federal tax laws, such as unreasonable compensation, excess benefit transactions (i.e., transactions in which an insider derives an undue benefit), or excessive lobbying or campaign activities, you can submit a report to the Internal Revenue Service (IRS) at <http://www.irs.gov/pub/irs-pdf/f13909.pdf>.

Share Your Experience

There are a number of charity and business watchdog organizations that allow members of the public to submit comments about organizations, such as:

- ▶ GuideStar: <http://www2.guidestar.org/rxg/give-to-charity/review-a-charity.aspx>
- ▶ Better Business Bureau Wise Giving Alliance: <http://www.bbb.org/us/Charity-Complaints/>
- ▶ Charity Navigator: <http://www.charitynavigator.org/> (registered users may submit reviews)

Complaint Reporting Tips

Idealist.org published the following tips for those reporting concerns.

Dave Horn, who was then an Assistant Attorney General in the Consumer Protection Division of the Office of the Attorney General for Washington State*, wrote this advice about how to help the attorney general approach a possible case of fraud or abuse in a nonprofit.

All of us appreciate it when members of the public bring suspicious or unlawful activity to our attention. If you do so, here are some tips for making your complaint effective:

- ▶ Provide the most specific information possible: Who, what, where, when, and how. Keep the expressions of opinion to a minimum or put them in a separate document.
- ▶ Provide names, addresses and telephone numbers, if you have them, for individuals and organizations about whom you are complaining, or who may have knowledge of the violations. If your nonprofit receives calls from citizens who are being solicited by a copycat organization (one that is pretending to be your group), remember to get their names and phone numbers so law enforcement officials can call them back. No case can be brought without witnesses.
- ▶ Put your complaint in writing. Make it succinct. Begin with a summary: "I am aware of a fundraising campaign which claims funds support the XYZ program, but they don't." Follow with some details. If it is complicated, include a chronology. Offer to provide other information if needed.
- ▶ Attach copies of any pertinent documents.
- ▶ Be as specific as you can be about the conduct you regard as illegal or wrong.
- ▶ Identify yourself. If you have a very good reason not to identify yourself, at least provide names of persons who can corroborate your story or documents that help substantiate it.
- ▶ Be patient. Most enforcement and regulatory offices are short-staffed, but want to help you as well as they can. Most will at least contact the organization complained of to obtain their response to the allegations (unless it is the rare kind of matter best investigated first by other means). This can take a little time.
- ▶ Lastly, don't threaten. It is not likely to help you get attention for your complaint to threaten to publicly embarrass the officials whose help you are seeking. Such threats are too common these days and are usually simply ignored. If the complaint has merit, and the agency has sufficient resources, it will be pursued. If it does not have merit, no agency is going to push aside pressing work just because someone has threatened to make them look bad.

**The author added at the end of his message:
"Speaking for myself and not necessarily the Attorney General of Washington".*