



NEW YORK STATE FUNERAL DIRECTORS ASSOCIATION, INC.

# **Code of Ethics and Enforcement Procedures**

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*Approved by:* NYSFDA Board of Directors – March 5, 2008  
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By-Laws Changes Authorizing Code of Ethics Approved by: NYSFDA Constitution & By-Laws Committee – July 17, 2008



# Code of Ethics

The NYSFDA Code of Ethics is designed to address the obligations of the funeral professional in five key areas:

*OBLIGATIONS TO THE FAMILY*

*OBLIGATIONS FOR THE CARE OF THE DECEDENT*

*OBLIGATIONS TO THE PUBLIC*

*OBLIGATIONS TO THE GOVERNMENT*

*OBLIGATIONS TO NYSFDA*

Each area begins with an Ethical Principle that sets forth the goals and ideals of the profession. The Ethical Principle is followed by the applicable sections of the Code of Ethics which lists specific types of conduct that is either required or prohibited.

Ethical Principles are goals that every funeral professional should strive to achieve. They serve as the justification for the specific requirements of the Code of Ethics. Unlike the Ethical Principles, the Code of Ethics is binding upon NYSFDA members and violations may subject the member to disciplinary action in accordance with the NYSFDA Enforcement Procedures.

It is the duty of every NYSFDA Firm, Individual, Retired and Student Member to know and strictly adhere to the requirements of the Code of Ethics. For the protection of the families we serve, the decedents we care for, the profession we dedicate ourselves to, the communities in which we live, and the Association that represents us, the members of NYSFDA agree to abide by the Code of Ethics.

This Code of Ethics and associated Enforcement Procedures is intended to establish goals for members of NYSFDA, and does not create any enforceable standards for such members with respect to third parties. No person or entity, other than NYSFDA, acquires any rights or benefits with respect to this Code of Ethics, and no legal or other liability results from this Code of Ethics except between the member and NYSFDA.

## **I. SERVICE TO FAMILIES**

Ethical Principle: Members have an ethical obligation to serve each family in a professional and caring manner, being respectful of their wishes and confidences, being honest and fair in all dealings with them.

### ***CODE OF ETHICS***

I - 1 Members shall provide funeral services to families without regard to religion, race, color, national origin, sex, sexual orientation or disability.

I - 2 Members shall comply with all applicable federal or state laws or regulations relating to the prearrangement, prepayment or pre-financing of funeral services or merchandise.

I - 3 Members shall release deceased persons to the custody of the person or entity who has the legal right to affect a release without requiring payment prior to the release.

I - 4 Members shall comply with the Federal Trade Commission's Funeral Industry Practices Regulation (the "Funeral Rule") and all applicable New York State consumer disclosure requirements.

I - 5 Members shall protect confidential information pertaining to the deceased or the family of the deceased from disclosure, except as required or authorized by law.

I - 6 Members shall carry out all aspects of the funeral service in a competent and respectful manner.

I - 7 Members shall properly account for and remit any monies, documents, or personal property of the client family.

I - 8 Members shall not engage in any unprofessional conduct of a character likely to deceive, defraud or harm the families they serve in the course of providing professional services.

## **II. CARE OF THE DECEDENT**

Ethical Principle: Members have an ethical obligation to care for each deceased person with the highest respect and dignity, and to transport, prepare and shelter the remains in a professional, caring and conscientious manner.

### ***CODE OF ETHICS***

II - 1 All deceased persons shall be treated with proper care and dignity during transfer from the place of death and subsequent transportation of the remains.

II - 2 Only authorized personnel of the funeral home or those persons authorized by the family shall be in attendance during the preparation of the remains.

II - 3 Members shall only allow embalmers, funeral directors, registered residents and authorized students, who are licensed to the extent required by state law, to embalm human remains.

II - 4 All deceased persons in the preparation room shall be treated with proper care and dignity and shall be properly covered at all times.

II - 5 Members shall not violate any statute, ordinance, or regulation affecting the handling, custody, care, transportation or disposition of human remains.

### **III. OBLIGATIONS TO THE PUBLIC**

Ethical Principle: Members have an ethical obligation to the public to offer their services and to operate their businesses in accordance with the highest principles of honesty and professionalism.

#### ***CODE OF ETHICS***

III - 1 Members shall not engage in any unprofessional conduct which is likely to defraud or deceive the public.

III - 2 Members shall not engage in false or misleading advertising.

III - 3 Members shall not personally or through an agent or employee expressly solicit deceased human remains, whether the solicitation occurs after death or while death is imminent; provided, however, that general advertising directed to the public at large would not constitute a violation of this section.

III - 4 Members shall not pay or offer to pay a commission or anything of value to third parties, such as medical personnel, nursing home and hospice organizations or employees thereof, clergy, government officials or others, to secure deceased human remains for funeral or disposition services.

III - 5 Members shall not allow alcohol or drug use of any kind to adversely impact the member's ability to carry out his or her obligation as a funeral professional.

III - 6 Members shall not be convicted of any felony or serious criminal act.

III - 7 Members shall not offer to sell or arrange the sale of funeral goods or services on a preneed basis in violation of any applicable federal or state laws or regulations.

### **IV. OBLIGATIONS TO THE GOVERNMENT**

Ethical Principle: Members have an ethical obligation to maintain strict compliance with the letter and spirit of all governmental laws and regulations that impact the funeral consumer, the funeral profession, and the public health.

## ***CODE OF ETHICS***

IV - 1 Members engaging in the profession of funeral directing or embalming shall hold all necessary licenses and registrations to engage in such businesses.

IV - 2 Members shall require any person in their employ or under their control who serves as a funeral director or embalmer, or as a registered resident or authorized student, to have all appropriate licenses and registrations.

IV - 3 Members shall not knowingly place a false statement on a death certificate.

IV - 4 Members shall not knowingly make or file false records or reports in the practice of funeral directing.

IV - 5 Members shall comply with all federal, state or local laws, rules or regulations governing or impacting the practice of funeral directing.

IV - 6 Members shall comply with all federal, state or local laws, rules or regulations that were enacted to protect consumers.

IV - 7 Members shall comply with all federal, state or local laws, rules or regulations that were enacted to protect the environment.

## **V. OBLIGATIONS TO THE NEW YORK STATE FUNERAL DIRECTORS ASSOCIATION**

Ethical Principle: Members have an ethical obligation to promote, participate and support the New York State Funeral Directors Association in its mission to help all members enhance the quality of funeral service.

## ***CODE OF ETHICS***

V - 1 Members shall comply with the Constitution and Bylaws of the New York State Funeral Directors Association.

V - 2 Members shall conduct themselves in a proper and appropriate manner while attending or participating in NYSFDA sponsored events and in all forms of communication with NYSFDA staff.

V - 3 Members shall cooperate in a timely, professional and respectful manner in all phases of an investigation, hearing and resolution of a complaint brought before the Ethics Committee.



## Code of Ethics

### ENFORCEMENT PROCEDURES

1. **Ethics Committee.** Members of the NYSFDA Ethics Committee (“EC”) shall serve from time-to-time on the three-member hearing panels set forth in Section 7 below. EC members shall recuse themselves from investigating a complaint or sitting on a panel to hear a complaint that involves an NYSFDA member that the EC member has a business or personal relationship with that could influence or appear to influence the EC member in any way. The Chairperson of the EC is responsible for assigning members of the EC to serve as fact finders and/or members of a hearing panel.

2. **Filing a Complaint.** Any individual or entity (the “Complainant”) who believes himself/herself/itself to be aggrieved by any action or omission of an NYSFDA Firm, Individual, Retired or Student Member that violates the Code of Ethics may file a complaint with NYSFDA (the “Complaint”). The Complainant cannot be a member of NYSFDA, an employee of an NYSFDA member, or any other licensed and registered funeral director in the State of New York, or a member of their immediate family, or an agent or legal representative of any of the aforementioned individuals. The EC reserves the right to file a complaint on its own, against an NYSFDA member, if the EC decides that such action is appropriate. To be considered for resolution under these Enforcement Procedures for the Ethics Committee (the “Enforcement Procedures”), the Complaint shall:

- a) Be submitted in writing to the Chairperson of the EC at NYSFDA’s headquarters,
- b) Be signed by the Complainant and include the Complainant’s address and phone number,
- c) Include a concise statement of the complaint, the names of the NYSFDA member allegedly responsible for, causing or whose conduct is otherwise the subject of the complaint (the “Adverse Party”), including if available any applicable names, addresses and phone numbers of the Adverse Party and all persons related directly to the occurrence, and
- d) State the relief sought.

If the Complainant is an entity, the Complainant shall designate one spokesperson or designated contact.

**3. Processing the Complaint.** Upon receipt of a Complaint, the EC Chairperson, with the administrative assistance of the NYSFDA staff, shall promptly undertake the following actions:

- a) The Chairperson shall make a preliminary determination that the Complaint is directed against a Firm, Individual, Retired or Authorized Student or Registered Resident Member of NYSFDA and alleges an act or omission that could be a violation of the Code of Ethics. The Chairperson may seek additional information from the Complainant to make the preliminary determination. If it does not, the Chairperson shall notify the Complainant that the EC will not take jurisdiction of the complaint and the reason why it will not accept jurisdiction. If the preliminary determination is that the Complaint is not proper, all materials related thereto will be returned to the Complainant. The Chairperson may also decline to take jurisdiction of the Complaint if the matter is also the subject of a complaint previously filed with NYSFDA or with the NYS Bureau of Funeral Directing. If a complaint has been previously filed with the NYS Bureau of Funeral Directing, or if the subject of the complaint appears to be a violation of state statute, rule or regulation, or the subject of a criminal, civil or administrative investigation or proceeding before any court, licensing board or other governmental entity, the Chairperson will notify the Complainant of his or her option to register their Complaint with the NYS Bureau of Funeral Directing. The Complainant would also receive notice of the right to appeal the Chairperson's decision pursuant to Section 10 below.
- b) Prior to accepting a complaint and opening a file on it, the Chairperson may, in his or her sole discretion, elect to contact the Complainant and the Adverse Party to pursue a private settlement of the complaint. If the Adverse Party indicates a willingness to pursue a settlement of the complaint, the Chairperson may opt to hold the complaint without filing it in order to give the parties an opportunity to reach a private settlement. If the parties reach a private settlement, the Chairperson shall close the matter without filing the complaint. If the parties do not reach a settlement in a timely manner, or if one of the parties indicates to the Chairperson that a resolution cannot be reached, the Chairperson shall accept the complaint and open a file on it.
- c) If the Complaint is accepted by the EC and a file opened on the Complaint, the Chairperson shall assign an EC member (the "Fact Finder") to investigate the Complaint that is accepted by the EC and distribute a copy of the complaint to the Fact Finder.
- d) The Chairperson shall acknowledge in writing to the Complainant that the complaint has been accepted and inform the Complainant that the Fact Finder will be contacting the Complainant. A copy of these Enforcement Procedures shall be sent with the notice.
- e) The Chairperson shall acknowledge in writing to the Adverse Party that a Complaint has been filed against the Adverse Party and that the Fact Finder will be contacting the Adverse Party. A copy of the complaint and these Enforcement Procedures shall

be sent with the notice. The notice shall also inform the Adverse Party that the Adverse Party may submit a written response to the Complaint and any relevant documentary evidence to the Fact Finder within thirty (30) calendar days of the date of the notice.

**4. Fact Finding and Report.** The assigned Ethics Committee Fact Finder, with the administrative assistance of NYSFDA Staff, shall contact the Complainant, the Adverse Party and any other persons having information related to the subject matter of the complaint. All parties will receive and maintain a copy of the NYSFDA Code of Ethics Notice of Confidentiality, which strongly emphasizes the need to keep all information with regard to each and every case strictly confidential. The Fact Finder may attempt to mediate between the parties in order to obtain a resolution of the Complaint. If mediation is successful, the agreed-upon resolution must be in writing, signed by each of the parties and submitted to the EC Chairperson. If mediation is not successful, the Fact Finder, after conducting the interviews and obtaining any written responses or documentary evidence submitted by the parties, shall draft a written summary of the facts of the case containing any relevant documentary evidence (the “Case Summary”) and a separate written recommendation on the appropriate resolution of the complaint to the Chairperson (the “Fact Finder’s Recommendation”). Such resolution shall be limited to the disciplinary options described in Section 9 of this document. The Case Summary and Fact Finder’s Recommendation shall be submitted to the Chairperson in a timely manner.

**5. Preliminary Action by Chairperson.** After receipt of the Case Summary and Fact Finder’s Recommendation, the Chairperson shall take one of the following actions on the complaint:

- a) Attempt to mediate it between the parties in accordance with Section 6 below;
- b) Refer it to a Hearing Panel in accordance with Section 7 below; or
- c) If the Fact Finder’s Recommendation finds that there is no probable cause to believe the Adverse Party violated the NYSFDA Constitution, Bylaws or Code of Ethics, and the Chairperson agrees, inform the Complainant and the Adverse Party that the Complaint is being dismissed, and provide each party with a copy of the Case Summary and Fact Finder’s Recommendation. The Complainant would also receive notice of the right to appeal pursuant to Section 10 below.

**6. Mediation of the Complaint.** If the EC Chairperson elects to mediate the complaint with the Complainant and the Adverse Party, the Chairperson may use any meeting format acceptable to the parties and the EC Chairperson. Any mediation efforts shall be commenced within a reasonable time after the receipt of the Case Summary and the Fact Finder’s Recommendation. If mediation is successful, the agreed-upon resolution must be in writing and signed by the EC Chairperson and each of the parties.

**7. Hearing Panel.** If any attempted mediation is unsuccessful or if the EC Chairperson deems mediation inadvisable, the EC Chairperson will then appoint three members of the

EC to serve as the panel that will hear the complaint (the “Hearing Panel”). These appointments shall be subject to the following:

- a) The Chairperson of the EC may not appoint himself/herself to the Hearing Panel.
- b) The Fact Finder may not be a member of the Hearing Panel.
- c) The appointment of the Hearing Panel will include the designation of a Chair of the Panel (“Panel Chair”).

**8. Conduct of the Hearing.** The Panel Chair will select the time and place for the hearing so as to have the hearing occur at the earliest convenient date. The Panel Chair will attempt to make the location of the hearing convenient for all parties. The Panel Chair may, at the Chair’s option, conduct the hearing by conference call or other similar electronic means. The Panel Chair will communicate the information about the hearing schedule, and the identity of the other two members of the Hearing Panel, to the parties. Prior to the hearing, the EC Chairperson will provide to the Hearing Panel a copy of the Complaint, any written response previously submitted by the Adverse Party, documents collected by the Fact Finder, and the Case Summary. The Hearing Panel will not receive (and neither party may introduce as evidence) the Fact Finder’s Recommendation nor any statements or offers made by the Chairperson of the EC or any of the parties during mediation. At the Hearing, each party may be represented by counsel at their own expense, present oral or written evidence, cross-examine witnesses and present such factual or legal claims as are desired. If requested, the hearing shall be recorded with a transcript made available to each party, at that party’s expense. All procedural and evidentiary decisions shall be made by the Panel Chair. The Panel Chair may place reasonable limits on the number of witnesses and the length and scope of the testimony. Decisions regarding the merits of the complaint and the form of any discipline shall be made by majority vote of the Hearing Panel. The Hearing Panel shall report its decision on the merits in the form of written findings of fact, conclusions, and any discipline imposed within ten (10) calendar days of the conclusion of the hearing (“the Panel Report”). The Panel Report, together with notice on the right to appeal pursuant to Section 10, shall be sent to the parties, the EC Chairperson, and the NYSFDA Executive Board. The decision of the Hearing Panel shall be final and binding on all parties, unless the decision is appealed in accordance with Section 10.

**9. Discipline.** The Panel Report may decide to impose no disciplinary measures or its decision may be to impose one or more of the following disciplinary measures on the Adverse Party:

- a) Reprimand. A reprimand may be issued against the Adverse Party. The Hearing Panel may direct that the reprimand be private or public.
- b) Probation. A ruling of probation that, for a specified time, the Adverse Party’s continued participation in NYSFDA’s activities, member benefits, or membership programs is conditioned upon satisfaction of certain conditions. These conditions

shall be described specifically, as shall the consequences of failing to meet them. The Hearing Panel may direct that the probation be private or public.

- c) **Suspension.** A ruling that the Adverse Party is prohibited from participating in NYSFDA activities, programs, and any other privileges of membership. The Hearing Panel may limit the effect of a suspension to certain benefits or programs, and may establish conditions that, if satisfied, will result in the lifting of a suspension.
- d) **Termination.** A ruling that, either permanently or pending reinstatement, the Adverse Party's membership in NYSFDA is terminated. The Hearing Panel may establish conditions that, if satisfied, will result in reinstatement. If a membership is terminated, NYSFDA shall not be required to refund or reimburse membership fees or dues.

It is the intent of the Enforcement Procedures that the range of disciplinary measures be as broad and flexible as possible so that disciplinary measures can be employed to remedy and redress the violation that has been committed. In dealing with violations committed by Firm Members, the disciplinary measures may be tailored to address particular funeral home(s) owned by the Firm Member or funeral home personnel employed by the Firm Member who are responsible for the violation.

**10. Appeals.** An appeal from a dismissal of the complaint by the Chairperson or an appeal from the Panel Report may be taken by any party to the NYSFDA Executive Committee. A notice of appeal must be filed within thirty (30) calendar days of the date of notice of the action being appealed. The notice of appeal shall be in writing, must set forth the basis for the appeal, and shall be sent to the NYSFDA President. Upon receipt, the NYSFDA President will forward copies of the notice of appeal to the other party, who shall have the right to submit written responses to the appeal within thirty (30) calendar days of receiving the notice of appeal. Any responses must be in writing and delivered to the NYSFDA President. The NYSFDA President will then deliver to the Executive Committee the complete record on appeal, including the notice of appeal, and any responses submitted by the other party. The Executive Committee shall, by majority vote of all non-abstaining members and without considering new evidence or conducting additional hearings, render a decision with respect to the appeal. A written notice of that decision shall be sent to all parties within ten calendar (10) calendar days of the Executive Committee decision. The decision of the Executive Committee with respect to an appeal shall be final and binding on all parties.

**11. Report of Suspension or Termination.** If an Adverse Party's membership in NYSFDA is suspended or terminated and such disciplinary measures is final and non-appealable, NYSFDA shall publish notice of such membership suspension or termination in any NYSFDA publication of general circulation among NYSFDA membership and shall send notice of such suspension or termination to any applicable state funeral licensing board or agency with jurisdiction over the Adverse Party.

**12. General.** All notices, reports and decisions under these Enforcement Procedures shall be made in writing and delivered in person by overnight delivery, or certified mail or other form of delivery creating a record of receipt. The NYSFDA General Counsel will be available to the EC Committee to maintain compliance with these Enforcement Procedures. The EC Chairperson, Panel Chair, and President may, when warranted by the interest of justice, adjust any time periods set forth in these Enforcement Procedures. The EC Committee, NYSFDA staff members who have been designated to provide administrative assistance to the EC Committee and NYSFDA General Counsel shall use their best efforts to protect against unauthorized disclosures of confidential information concerning EC Committee activities and records.

**13. Disclosure of Information.** Members of the EC, NYSFDA Staff and NYSFDA General Counsel shall utilize the following directives in the disclosure of information regarding on-going and completed activities of the EC:

- a) If a Complaint has been filed and an investigation is on-going, that fact may be confirmed by the statement: “A Complaint on this matter has been received and is under investigation; no further information may be released while the investigation is on-going.”
- b) If a Complaint has been dismissed without a finding of any violations by the Adverse Party, if a Complaint has been resolved by mediation, or if a Complaint is resolved by a finding that a violation has occurred, but either no discipline is imposed or the discipline imposed is not to be publicly disclosed, then the completion of the investigation shall be confirmed by the statement: “The matter has been resolved and no further information may be released.”
- c) If the Complaint results in a finding of a violation and the imposition of disciplinary measures which are to be publicly disclosed under Sections 9 and/or 11 above, then that fact may be confirmed by the statement: “The Ethics Committee determined that [name of Adverse Party] committed a violation or violations of [name of section or sections] of the Code of Ethics and has imposed [description of discipline imposed] against [name of Adverse Party]. No other information regarding this matter shall be released by NYSFDA.”

**14. Limitations Period.**

- a) The Code of Ethics took effect on January 1, 2009. Therefore, a violation of the Code of Ethics must have occurred on or after January 1, 2009 in order to be the subject of a Complaint.
- b) Complaints alleging violations of the Code of Ethics shall be brought within one (1) year after the cause arose. For purposes of this Section 14, a cause arises upon the date the alleged violation occurs or the date on which, by the exercise of reasonable diligence, the Complainant should have become aware of the alleged violation, whichever is later.

**15. Re-Admission to NYSFDA Membership.** If a Complaint is brought against a non-member or if a member with a pending Complaint chooses to withdraw from NYSFDA membership before the Complaint is finally resolved, the non-member or the withdrawing member shall not be admitted or re-admitted into NYSFDA membership until the Complaint has been satisfactorily resolved. The EC Chairperson shall be notified by NYSFDA of the applicant's request for admission into membership and shall establish the requirements for admission which shall include resolution of the Complaint through any of the means available under these Enforcement Procedures. The applicant may appeal any final action of the Chairperson to the NYFDA Executive Committee using the procedures set out in Section 10.

**16. Effective Date.** The NYSFDA Code of Ethics shall take effect on January 1, 2009 and shall apply to any firm that becomes a member of NYSFDA on or after that date.