

## Censuring a School Board Director

In order to save time and debate on the board referral form for censure, I share these observations and remarks. I wish to avoid airing our dirty linen in public as much as possible.

WDDSA does not have any recommended policies on censure of a school board director. Our GP-12 provides the framework, basis, and authority for the censure of a director. For process and procedural matters in our meetings, our GP-2 E5 provides that the most recent edition of *Robert's Rules of Order Newly Revised* applies unless superseded by board policy. The most recent edition is the twelfth edition published in 2020, which I will refer to as RONR.

The relevant portion of the Public Meetings Act is RCW 42.30.110(1)(f), which allows for an executive session "To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge".

In any judicial review of actions of the school board, the court will examine whether or not the board followed the law and its own policy. Therefore, we need to adhere to proper procedure, including the relevant provisions of RONR.

The Board Referral Form for Censure does not state specific charges of wrongdoing. This is intentional. RONR provides that disciplinary procedures are initiated by a motion to establish a committee to confidentially investigate and report back any recommended actions. In order to protect against unsubstantiated charges being made in a public meeting, the initial action "should avoid details as much as possible" (RONR 63:11).

The committees will investigate accusations and draft recommended actions. Because any committee of three or more board members requires public meetings, two separate committees, each consisting of two members, are created to work in parallel. The committees will report back to the board in executive session. The accused board member could insist that that meeting be held in public, in which case the preliminary work of the committees will have been already conducted in private. Any final action recommended in executive session would then be considered in a public meeting.

The accused may argue that they have not been provided with the specific charges against them. That is true. The investigating committee process is similar to that of a grand jury (RCW 10.27). The purpose is to investigate and identify appropriate charges to be brought. Grand jury proceedings are conducted strictly in secret and the accused has no right to informed or heard at that stage of the proceedings. Only when the charges are formally made will the accused will have an opportunity to provides a defense, either in executive session, or in a public meeting. (While RONR provides that the investigating committee may confer with the accused for any defense, this is not practical because three board members conferring triggers the need for a public meeting. Committee members may confer individually and privately with the accused.)

The accused may argue that accusations are a result of a group of employees ganging up on the accused. While that may be true, such overwhelming disapproval is a clear indication of a morale problem among the staff, and the cause of that morale problem should be investigated and dealt with. As Director Daily has so often said of public opinion, "Perception is reality."

The accused may argue that every board member has a right of free speech as an individual and is free to speak up against board actions. However, board members have a fiduciary responsibility to the organization to not actively work against it. There are consequences to free speech – if someone publicly criticizes me, I have a right to revoke my dinner invitation. Furthermore, if the accused has a free speech right to publicly disagree with the remainder of the board and recommend different action, the remainder of the board would also have a free speech right to publicly disagree with the accused with a resolution of censure and even request that the accused resign from the board.

Unless the board majority clearly, publicly, and formally disassociates itself with a fellow director’s actions, that fellow director’s actions will reflect badly on the entire board.

I anticipate that the investigating committees could report back three alternatives:

1. The committee could recommend that no further action be taken;
2. The committee could fail to agree upon a recommendation and submit no recommendation (in which case any member could submit a “minority report” with recommendations);
3. The committee could recommend adoption of a resolution of censure (with options chosen from the among the provisions in the resolved section), similar to:

Whereas, there is clear evidence that [the accused] has committed the following acts injurious to the South Kitsap School District and its Board of Directors:

1. ...;
2. ...;
3. ...; therefore,

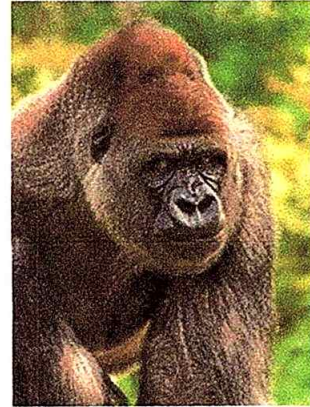
*Resolved*, That the Board of Directors of the South Kitsap School District formally and publicly censures [the accused], expressing its disapproval for such actions stated above and requests that [the accused]:

1. Publicly apologize for such actions;
2. Refrain from such actions in the future; and
3. Resign from the Board of Directors;

*Resolved*, That [the accused] is removed from all board committees and assignments, including the audit committee and as a board representative to meet with the Facilities Long-Range Planning Advisory Committee.

Adopted this \_\_\_ day of \_\_\_\_\_, 2021.

# Sanctioning rogue board members



In general, people who serve on nonprofit boards or in local government are peaceful and compliant. But every once in a while, you get a rogue board member. What can be done? We believe that it's important for boards to be prepared to sanction rogue members when necessary.

This is an unpleasant subject. However, all human organizations, even benign institutions like hospitals, schools and retirement communities, depend on power enforcement for their survival. If a member on your board is disrupting your work, we recommend you seek allies and take action. (Read this excellent article on [“The Outlier Syndrome in Governing Bodies”](#) for perspective on rogue board members.)

Note that this article applies only to members of boards and local government bodies, not to the ordinary members of a nonprofit organization. Professional organizations with ethics requirements for their members will have separate procedures. The article also does not apply to citizens giving public comment at meetings. [See our guidelines](#) on that topic.

## **ESTABLISH CLEAR GUIDELINES AND EXPECTATIONS**

The first and most important step is to establish clear guidelines and behavioral expectations. If you have adopted Robert's Rules of Order as your parliamentary authority, you have the basics in place. It can also be helpful to adopt more detailed discussion guidelines — [see our blog post here](#). When everybody knows what is expected and agrees on how your group will conduct its business, managing that business becomes much easier.

Just to remind, all persons present at a meeting have an obligation to obey the legitimate orders of the presiding officer (*Robert's Rules of Order Newly Revised, 11th edition, p. 645*).



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## YOUR RULES SHOULD INCLUDE THE POWER TO SANCTION

In drafting bylaws or procedural rules, it's easy to forget to mention sanctions. It's human nature to hope that everyone will be polite and act appropriately in all circumstances. Unfortunately that doesn't always happen. Including the power to sanction, and specific actions that may be taken, in your bylaws or procedural rules will make it easier to tackle the problem if it occurs.

### WHAT KINDS OF OFFENSES SHOULD BE SANCTIONED?

Given human ingenuity, there are many actions that could be subject to sanction. Here's a starter list:

- Failing to offer courtesy and respect, using insulting or foul language in discussion
- Failing to observe the rules of discussion: interrupting others, speaking out of turn, speaking beyond the established time limits
- Violating the confidentiality of executive session
- Failing to observe ethics guidelines
- Taking actions outside the meeting which are aimed at undermining a board decision

### WHAT SANCTIONS CAN BE IMPOSED?

Obviously sanctions should be considered only when there is an ongoing problem. Before embarking on the sanctions route, we recommend that a serious conversation be held with the offender, and that the individual be encouraged to change behavior without formal action by the board. Sometimes bringing the options to the offender's attention is enough to bring about change, or even resignation from office.

If that isn't effective, you may have to impose a sanction. [Craig Freshley wrote](#) that "ideal penalties inflict just the right amount of hurt in order to tilt the scales toward compliance." Options include:

- Verbal admonishment
- Letter of reprimand
- Formal motion of censure
- Removal from external or internal committees
- Being directed to leave the meeting at which the behavior occurs
- Removal from a nonprofit board if the board has the power to do this

Note that directing a member to leave the meeting at which the behavior occurs, [removing a director from a nonprofit board](#), and [removing the chair during a meeting](#) are all drastic steps. Consult with your attorney before doing this. We have more information in the linked blog posts.

### WHO CAN VOTE ON SANCTIONS?

Since misbehavior is a serious matter, it's best to require that a majority of the entire board (all directors in office) vote in favor. Check your state law and conflict of interest policy to determine whether the person who is the subject of the proposed sanction may vote on the motion, or not.

From the perspective of parliamentary procedure, Robert's Rules has a specific disciplinary process, described on pp. 643 to 669. If this process has been started, the member may not vote on their own case. Robert also says that if a member offends repeatedly during a meeting, to the extent that the presider has warned the offender three times and "named" the member, they may not vote (see p. 646). Robert says that in other circumstances, the member may vote on the motion proposing to sanction them.

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On a nonprofit board, even if you don't follow the formal disciplinary process, you may want to establish a special or select committee to consider the behavior and recommend action to the board. In a local government body, you will of course review state law and your options before moving ahead.

### **SAMPLE SCRIPT FOR OFFENSES DURING A MEETING**

**Member A:** *Member B has repeatedly violated our rules of procedure and persists in using insulting language towards his colleagues and the public. I move that Member B be issued a verbal admonishment and directed to cease his inappropriate behavior.*

**Member C:** *Second!*

**Chair:** *It has been moved and seconded that Member B be issued a verbal admonishment and directed to cease his inappropriate behavior. Is there any discussion?*

**Member A:** *This has just gone on too long! At every meeting Member B calls his colleagues "bozos" and describes the public as "the great unwashed." It's impossible to get any work done with all the high emotion around here.*

**Member B:** *You people are all too sensitive. I'm just using humor to lighten things up a bit. I think this motion is a bunch of malarkey.*

**Member D:** *Well, I agree with the motion. I'm sick and tired of all this nonsense.*

**Chair:** *Is there any further discussion? [pause] Hearing none, we'll take the vote. All those in favor of the motion to issue a verbal admonishment to Member B and direct him to cease his inappropriate behavior, please say "aye."*

**Members A, C, D and Chair:** *Aye!*

**Chair:** *All those opposed, please say "no."*

**Member B:** *No!*

**Chair:** *The ayes have it and the motion passes. Member B, you are hereby admonished for your inappropriate and disruptive use of language during our meetings. Kindly cease such actions immediately and abide by our guidelines.*

**Member B:** *Well, I have a lot more to say about that, Chair.*

**Chair interrupts:** *The motion has been approved and no further discussion is in order. The next business in order is...*

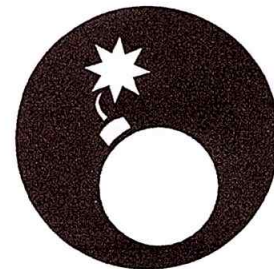
**Sanctioning rogue board members.**

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P.O. Box 77553, Seattle, WA 98177  
TEL 206.542.8422 | EMAIL [info@jurassicparliament.com](mailto:info@jurassicparliament.com)  
[www.jurassicparliament.com](http://www.jurassicparliament.com)

# Lost the vote? Don't sabotage the council's action



We've had inquiries recently about elected officials who lost a vote, and then actively worked against the outcome. This amounts to trying to sabotage the council. It is wrong, wrong, wrong.

## THE MAJORITY RULES

General Henry Martyn Robert, the original author of *Robert's Rules of Order*, expresses it this way:

*The great lesson for democracies to learn is for the majority to give to the minority a full, free opportunity to present their side of the case, and then for the minority, having failed to win a majority to their views, gracefully to submit and to recognize the action as that of the entire organization, and cheerfully to assist in carrying it out, until they can secure its repeal.*

—Quoted in *Robert's Rules of Order Newly Revised*, 12th edition, p. xlvii

This is a fundamental principle of our system of government. It is embedded in our common law heritage, and our entire society. Government and its administration cannot function optimally, cannot best serve the citizens, and cannot advance, if the very people who are elected to serve choose to pursue their own private views against the decision of the body they belong to. When elected officials “go rogue” and work against their organization's action, they are violating their fiduciary duties of loyalty and obedience. Even more, they are assaulting the foundation of our democracy.

For these reasons, we consistently tell officials: If you lost the vote, you have an obligation to accept the vote as the decision of your body. Your agreement to serve as a public official carries with it the duty to support the fundamental principle of our system of government. You may express your disagreement in public (see our article [Criticizing a board decision in public](#)). However, you should not take a single step to undermine the decision, because that would harm the organization which you have a duty to serve.



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### IS SOMEBODY TRYING TO SABOTAGE YOUR COUNCIL?

If you are dealing with such a situation, we recommend getting advice from your attorney about the law in your state. Review your bylaws and this quotation from *Robert's Rules of Order*:

*An organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes.*

—*Robert's Rules of Order Newly Revised, 12th edition, 61:1*

Once you are armed with the law and the rules, discuss the matter with the independent-minded member in private (if the sunshine laws in your state allow two members to have a private conversation). They may need help understanding the issue. Explain what is wrong with their attempt at sabotage, and show the importance of allowing the body's action to stand. If that doesn't work, it may be necessary to bring it up at a public meeting of your council or board. And if public shaming fails to have any effect, you may have to sanction the member (see our article, [Sanctioning rogue board members](#)).

### BEING ELECTED LIMITS ACTIONS YOU MAY TAKE

American individualism is a great thing, but when you accept election to a local governmental body, you give up some of your First Amendment rights and some of your freedom of action. You agree to put the welfare of the organization above your own interest. You agree to compromise. You agree to follow the rules your body has adopted. And you agree that the entire body chooses its course of action, not any one self-interested individual. It ain't easy! But it's the American way.

### EXAMPLES OF ATTEMPTS TO SABOTAGE

Here are instances I have encountered of attempted sabotage:

- A planning commissioner publishes letters opposing the decisions of the commission and complaining about the members.
- A city council takes a position on the status of the wetlands in response to a request from the state department of ecology. Three minority members send a letter to the department saying that they disagree with the city's position.
- The school board has approved a large bond issue. A member who disagrees publishes an Op-Ed in the local newspaper urging citizens to vote against the bond.

Have you had to deal with attempted sabotage? [Let us know!](#)

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P.O. Box 77553, Seattle, WA 98177

TEL 206.542.8422 | EMAIL [info@jurassicparliament.com](mailto:info@jurassicparliament.com)

[www.jurassicparliament.com](http://www.jurassicparliament.com)