



Report of the CCAR Ethics System Investigation

December 22, 2021

In April 2021, the CCAR engaged Alcalaw—a women-founded and led, trauma-informed law firm—to undertake an in-depth investigation of the CCAR ethics system. Their written report has now been finalized and, as promised, we are making it publicly available in its entirety.

The scope of the report is the CCAR ethics process itself. Alcalaw’s mandate was to provide findings and recommendations to enable changes and updates to the process, and consideration of possible revisions to the Ethics Code. The document is therefore a process-based report that examines the entirety of the CCAR ethics system.

The report is long and detailed, but we encourage you to read and review it in its entirety. In the coming days and weeks, we will have more information about where and how to submit questions and comments.

We recognize that for many, reading the report may be painful. That is what made this report so necessary and essential—we must re-examine our past in order to create a better future. While this may be hard on many different levels, it is the right thing to do.

The report shows that our system is not broken, but also that it does need repair and improvement. It can, *and must*, be better. In fact, the CCAR ethics process was designed to be continually updated and revised. These recommendations are what we need to move our system to its next chapter.

We also want to acknowledge that Alcalaw reviewed and received information about ethics matters that are not detailed or have been anonymized in the written report. Some are about rabbinic ethical misconduct that predates the development of our current ethics system and Code. These reports are particularly painful and disturbing, but are not reflected in the report because they are outside of its scope. Nevertheless, these matters are not outside the scope of our learning, our history, or our need for repair. All of the information shared by Alcalaw will be appropriately recognized in our learning and *t’shuvah* (repentance and repair) processes.

This report provides a blueprint for much of the work that is to come. There are important lessons here and a great deal of work ahead. Some changes can and will be implemented in the near future, while others will take time to fully and thoughtfully study and implement.

The report foregrounds certain context and realities that are important to understand. The CCAR does not choose our members, nor do we hire or supervise them. Yet we are the center of



Movement-wide concerns about the conduct of member rabbis. We therefore look forward to even greater coordination with our Movement partners as we work to create a shared set of norms and collaborations with the goal of ensuring a safe and sacred community. To reach our highest aspirations in the area of ethics, it is critical that we deepen the ways that we work together.

We are now moving into the process of implementing many of the recommendations listed in the report:

- Creating an institutional *t'shuvah* process that will include a reckoning with our past and repair.
- Implementing some of the concrete recommendations in the near future in order to help the current Ethics Committee do their work with better tools and better support.
- Bringing a set of nearer-term revisions of our Ethics Code to a special General Meeting of our membership in the next six months.
- Instructing the Ethics Task Force to take up the work begun by Alcalaw and create proposals for changes to the system in the next two years.

As we begin analyzing the recommendations and working on implementation and change-making, we commit to keeping you updated on our progress through regular status updates on our website.

In addition, in the days to come we will be announcing information about an online resource where you can ask questions about and share experiences related to the report.

We are deeply grateful to those who have courageously come forward to share the experiences reflected in the report. Your brave decision to speak with Alcalaw enables us to move forward with updating our ethics system to ensure that the CCAR and our communities remain safe and sacred.

Thank you.

Rabbi Lewis Kamrass, President
Rabbi Erica Asch, President Elect
Rabbi Ron Segal, Immediate Past President
Rabbi Hara Person, Chief Executive
Central Conference of American Rabbis



Alcalaw LLP

**Report of Investigation of the Central Conference
of American Rabbis Ethics Process**

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EXECUTIVE SUMMARY

I. INTRODUCTION

A. Overview of the CCAR Ethics Process

The Central Conference of American Rabbis (the “CCAR”), founded in 1889, is the rabbinic leadership organization for the Reform Movement. The CCAR is a membership organization made up of approximately 2,200 members that is operated by a small staff of full- and part-time employees. The operation of the CCAR is governed by the CCAR’s Constitution (the “Constitution”) and Bylaws (the “Bylaws”), which extend eligibility for membership in the CCAR to ordained rabbis with requisite qualifications¹ and “any regular and full-time professor at the Hebrew Union College-Jewish Institute of Religion” (“HUC-JIR”), even if not an ordained rabbi.²

In June 1991, at its annual convention (the “Convention”), the CCAR membership voted to adopt a newly created CCAR Code of Ethics (the “Code”), which outlined ethical guidelines for CCAR members and established the process by which the volunteer members of the ethics committee (the “EC”) should respond to allegations of Code violations by CCAR members (the “Ethics Process”).

Since its adoption in 1991, the Code has been revised sixteen times. The Ethics Process Review Committee (the “EPR”), which is distinct from the EC, is tasked with regularly reviewing the Code and proposing amendments that are presented to and voted on by the CCAR membership at the Convention. As outlined in the Code, the Ethics Process is complaint-driven, meaning that the EC responds only to written complaints of ethics violations by a CCAR member made by complainants, and does not, on its own, initiate investigations into misconduct. The Ethics Process has three central components: (1) the adjudication of ethics complaints; (2) the post-adjudication ethical t’shuvah rehabilitation and counseling (“TRaC”) process, a colleague-led mentoring process aimed at

¹ According to Article III of the Bylaws, any ordained rabbi who is “a graduate of a recognized rabbinical seminary, or the possessor of academic or other qualifications deemed equivalent thereto by the Board of Trustees, and who is or has been engaged solely in the work of like nature,” is eligible for membership.

² Bylaws Article III, Section 1.a-b.

rehabilitation and repentance; and (3) the appellate process, managed by the Board of Appeals (the “BOA”). The operation of the Ethics Process has long been treated as highly confidential to protect the privacy of complainants, witnesses and rabbis against whom complaints are lodged. Members found to have violated the Code face sanctions and may have the adjudication published in the CCAR newsletter, on the CCAR website or by email to CCAR membership.³

Despite its quasi-legal framework, the Ethics Process is an ecclesiastical one, premised on aspirational standards of conduct and grounded in religious principles. Allegations that a CCAR member has violated the Code are reviewed by colleagues who volunteer to maintain the operation of the Ethics Process. The reach of the EC is limited to rendering decisions about whether a CCAR member’s conduct violates the Code and, if it does, imposing a sanction. The most severe sanction the EC can impose is expulsion from the CCAR; the CCAR has no ability to “defrock” a rabbi.

B. Origin of the Current Ethics Process Review

During the most recent Convention in March 2021, Chief Executive Rabbi Hara Person (“PERSON”) announced the CCAR’s intention to “upgrade” the Code and the Ethics Process. PERSON reported that the CCAR had hired a part-time staff member to serve as the Senior Advisor for Ethics, and that, with the support of the CCAR Board and the EC, the conference would “embark on a thorough audit and assessment of our ethics system.”

Shortly after the Convention, the CCAR became aware of growing public discourse on social media related to allegations of sexual harassment and other unethical behavior by, among others, Rabbi Dr. Michael Cook (“COOK”), a HUC-JIR professor and former member of the CCAR who had recently died.⁴ Thereafter, on April 27, 2021, the leadership of Central Synagogue in New York City (“Central”) announced in a statement⁵ that a law firm hired by the synagogue had conducted an investigation into “allegations of sexually predatory behavior” by its former rabbi, Rabbi Sheldon

³ As outlined in Section VII.E.2 of the 2021 version of the Code, and discussed more fully below, sanctions can include reprimand, censure, suspension and expulsion.

⁴ COOK resigned his membership in the CCAR on April 26, 2001.

⁵ Available at:

<https://www.centralsynagogue.org/news/an-important-message-from-central-synagogue>.

Zimmerman (“ZIMMERMAN”), in the 1970s and 1980s, and found accounts reported to them by three women “credible.” The statement said that one of the women reported having had an “inappropriate relationship” with ZIMMERMAN that lasted “many years” and involved “sexual contact” that began when she was an “underage teenager.” Central’s statement referenced a 2000 CCAR Ethics Process that was triggered by an “ethics charge brought to the CCAR by one of the women,” which resulted in ZIMMERMAN’s suspension from the CCAR for a period of years and resignation as the President of HUC-JIR. Central’s statement noted that Central was “never informed by the CCAR of the events that led to Rabbi Zimmerman’s suspension.”

The evolving public discourse prompted the CCAR to accelerate and modify its approach to upgrading the ethics system, including by retaining Alcalaw LLP (“Alcalaw”) on April 12, 2021, to conduct a review of the Ethics Process. The CCAR created a committee of select members of the CCAR staff and Board of Trustees (the “Investigation Response Team”), which directed Alcalaw to conduct a neutral investigation of the Code and its handling of historical ethics complaints, including complaints against COOK and ZIMMERMAN, and to make recommendations about how to use the information learned from the investigation to improve the Ethics Process.⁶

During the pendency of Alcalaw’s investigation, on August 30, 2021, the CCAR announced the creation of the Task Force on Ethics to “help lead the change process that will ultimately lead to a new and updated ethics system,” by “creating recommendations that will go before the CCAR Board and, as required by [the CCAR’s] constitution and bylaws, to the CCAR membership as a whole.”⁷ The work of the Task Force on Ethics is ongoing.

⁶ The investigation into the CCAR’s Ethics Process coincided with investigations by HUC-JIR and the Union for Reform Judaism aimed generally at investigating allegations of sexual and other misconduct within the organizations. HUC-JIR released a report of its findings on November 9, 2021.

⁷ Available at:

<https://www.ccarnet.org/august-30-2021-from-rabbis-lewis-kamrass-and-hara-person-announcing-the-ccar-task-force-ethics/>

II. OVERVIEW OF THE INVESTIGATION

A. Scope and Methodology

Alcalaw conducted a review of the Ethics Process by studying its operation, reviewing materials maintained by the CCAR and interviewing a diverse sampling of past and present CCAR staff, past and present EC and BOA members, complainants, prospective complainants, lay leaders, congregants and CCAR members, including those who had been the subject of an ethics complaint. Alcalaw's review focused on the operation of the Code and the Ethics Process since its creation in 1991. Due to the breadth of cases and the time period covered, Alcalaw did not endeavor to conduct a comprehensive investigation of every case that was mentioned during an interview, nor did Alcalaw review every case that has come before the EC since the Code was created. Rather, Alcalaw sought to identify aspects of the Code and the Ethics Process that require evolution by reviewing the Code, examining select cases in depth and cataloging themes that were commonly reported during interviews, including the impact that the Ethics Process has had on various stakeholders at different points in time.

Alcalaw's objective was to examine the steps undertaken by the CCAR in response to the filing of a complaint alleging misconduct by a member, as well as factors that may have inhibited reporting. Alcalaw did not reexamine factual findings from prior ethics complaints to determine whether the findings reached by the EC at the time were correct or whether there was additional information that might have changed the outcome. Mindful that the Code and the Ethics Process have evolved over time, Alcalaw sought to examine how ethics complaints were handled in the context of the Code that was in place at the time, and the extent to which previously identified issues with the Ethics Process had already been addressed by more recent amendments to the Code.

Alcalaw received the full cooperation of the CCAR during the course of the investigation, which included the CCAR facilitating Alcalaw's access to any CCAR employee or member with whom Alcalaw wished to speak and affording Alcalaw access to all documentary evidence that could be located.⁸

⁸ Alcalaw's investigation of relevant materials was limited by the CCAR's historically inconsistent recordkeeping practices, which did not permit Alcalaw to obtain a copy of every iteration of the Code or every document or communication related to an ethics matter.

B. Interviews Conducted

On April 27, 2021, the CCAR announced by email to its membership and on its website that anyone who wanted to share information about the Ethics Process with Alcalaw could do so directly at ccar@alcalaw.com (the “Hotline”).⁹ In total, Alcalaw interviewed 140 people, which included current and former EC and BOA members, current and former CCAR staff, complainants, prospective complainants, congregational leadership, congregants and other CCAR members, including rabbis who were the subject of an ethics complaint.

C. Confidentiality and Anonymity

With limited exceptions, the lived experiences, opinions and observations reported to Alcalaw that have been incorporated into this report have been anonymized.¹⁰ While some of the people with whom Alcalaw spoke were content to have their accounts shared publicly, others requested that their identity or account be held in confidence.¹¹ In addition, some of the observations incorporated in the report come from Alcalaw’s review of prior ethics cases in which the parties, including complainants, rabbis who were the subject of complaints and, in some cases, witnesses, were promised confidentiality. In recognition of this, with limited exceptions, individual ethics matters are not discussed in detail or by name, including matters currently pending before the EC or in the TRaC process.¹² To the extent that an individual contacted the Hotline seeking to file a complaint alleging misconduct for the first

⁹ On August 27, 2021, the CCAR announced that the Hotline was closed. However, Alcalaw continued to receive intermittent communications to the Hotline through December 2021 from individuals who had not previously been aware of the Hotline or had been motivated to share their account after having read the report from HUC-JIR; Alcalaw met with additional individuals during this period.

¹⁰ The quotations contained in the report reflect the substance of statements made to Alcalaw.

¹¹ Alcalaw advised all interviewees that the information shared with Alcalaw would not be kept confidential in that, at a minimum, it would be shared with CCAR leadership. Alcalaw confirmed that all interviewees understood that Alcalaw would honor requests for anonymity and confidentiality to the extent possible but could not guarantee complete confidentiality or anonymity because where individuals discussed their role in a prior ethics matter, the context of their report alone could reveal their identity to those familiar with the matter.

¹² Alcalaw shared non-anonymized information with the Investigation Response Team regarding certain ethics matters.

time, Alcalaw directed the individual to the EC, which continued its operation during Alcalaw's investigation.

D. Material Reviewed

Alcalaw reviewed the following material:

- Constitution and Bylaws, as amended in 2018
- The Code, as amended in 2001, 2004, 2015, 2017, 2019 and 2021
- February 2001 CCAR Newsletter Volume 48, Number 6, which contained excerpts of the Code and other information
- BOA Rules, as amended in 2012
- The contents of more than 65 EC case files¹³
- Various material provided by interviewees
- PERSON's remarks at the 2021 Convention
- CCAR Ethics Updates and other information published on the CCAR Website
- Statement by Central Synagogue published on April 27, 2021
- Report by HUC-JIR published on November 9, 2021
- Public source reporting related to cases that garnered media attention

E. Community Participation in the Investigation

While prospective revisions to the Code have traditionally flowed from internal reviews conducted by the EPR (often with input from the EC), by undertaking this investigation and establishing the Hotline, the CCAR solicited input from a broad cross section of stakeholders in the community. Many of the community members with whom Alcalaw spoke emphasized how important it is for the CCAR to have a robust and reliable Ethics Process that reflects the traditions and values of Reform Judaism and promotes accountability in the rabbinate. Many CCAR members expressed

¹³ Alcalaw's ability to review historical EC case files maintained in hard copy was limited by the lack of a centralized storage system. In some instances, Alcalaw's request to review a historical ethics committee case file was unrealized because the CCAR reported that it was unable to locate the file; a few files were provided to Alcalaw but appeared to be incomplete. The CCAR now maintains its EC-related material electronically using a project management software, to which Alcalaw was given unfettered access.

appreciation for the CCAR's efforts to conduct an audit and assessment and for the colleagues who have generously volunteered their time to contribute to the Ethics Process. Alcalaw also heard from members of the EC, including the EC Chair and Chair-Elect, who welcomed the CCAR's decision to conduct a comprehensive review of the Code and the Ethics Process, and provided feedback about modifications that might be made.

III. HISTORICAL CONTEXT

The adoption of the Code by the membership of the CCAR in 1991 represented a significant commitment by the organization to hold its membership to high ethical standards and to provide a system for responding to ethics-related matters within its ranks. Alcalaw's investigation did not focus on the CCAR's handling of ethics-related matters before the creation of the Code, but information learned during the investigation suggested that in the decades that preceded its adoption, the CCAR's response to allegations of misconduct by CCAR members was ad hoc.¹⁴ In the 30 years since the Code was adopted, the CCAR has routinely looked for ways to modify and improve the Code and Ethics Process, a commitment reflected, in part, by the amendment of the Code sixteen times. Information learned during the investigation indicated that the volume of complaints has increased notably in recent years, causing increased demands on the EC. In 2021, the EC has issued five adjudicatory decisions, and there are currently 15 cases on the EC's active docket and 10 members in the TRaC process.

The report reviews historical ethics matters involving ZIMMERMAN and COOK.¹⁵ First, less than a decade after the Code was adopted, in June 2000, a complainant filed an ethics complaint against ZIMMERMAN, the then-President of HUC-JIR and a prominent leader in the Reform Movement, alleging that he had engaged in an inappropriate sexual relationship with her over a period

¹⁴ In particular, Alcalaw relayed to the Investigation Response Team reports it received related to the CCAR's handling of two ethics-related matters involving allegations of sexual misconduct by CCAR rabbis; one from the 1970s, the other from the 1980s. While the details of each matter are beyond the scope of this report, according to the individuals who shared information with Alcalaw, the respective rabbis' alleged misconduct and the CCAR's response to the same had a lasting negative impact.

¹⁵ Alcalaw shares information about these historical matters with the permission of the individuals who made the complaints.

of years, and that the sexual contact began while he was a rabbi and she was an underage teenage congregant at Central. Following an investigation by the EC, the EC voted to suspend ZIMMERMAN's CCAR membership for violating Section A.2 of the Code.¹⁶ Thereafter, members of CCAR leadership communicated about ZIMMERMAN's suspension with a member of HUC-JIR leadership, and reported - both in a letter to its membership and in public reporting - that ZIMMERMAN's suspension was based on his violation of Section A.2 of the Code, a provision that related to sexual conduct, but did not specify the nature of the allegations underlying his suspension, including that they involved sexual contact with an underage teenager. As discussed more fully below, a review of the CCAR's handling of the ZIMMERMAN matter indicated that the CCAR treated the Ethics Process as confidential. While the commitment to maintaining the confidentiality of the process allowed the complainant's identity to remain unknown, consistent with her request, it also allowed a misimpression to persist about the nature of the allegations underlying ZIMMERMAN's suspension, including that they involved sexual contact with an underage teenager. The lasting negative impact of the public misconception that persisted cannot easily be measured, especially as it relates to the complainant. The Code has since been amended to include a provision that allows the EC to specify when an ethics violation involves a minor and to identify with more specificity the nature of the sexual boundary violation.

Months after ZIMMERMAN's suspension, the CCAR received ethics complaints from two rabbis who alleged that COOK, their former professor at HUC-JIR, had engaged in behavior that

¹⁶ In 2000, Section A.2 of the Code read as follows:

As human beings we are tempted by yetzer hara, particularly in the areas of substance abuse and sexuality. However, our position as rabbis, teachers of moral standards, and models of moral behavior, demands of us adherence to an exemplary moral code. We must therefore not engage in exploitative practices which destroy our moral integrity. We are expected by others, and we expect of ourselves and each other, to be scrupulous in avoiding even the appearance of sexual misconduct, whether by taking advantage of our position with those weaker than ourselves or dependent upon us, or succumbing to the temptations of willing adults. Similarly, recognizing the consequences of addiction we have a responsibility to seek help for any need or tendency to abuse chemical substances.

violated Section A.2 of the Code. In a letter dated April 26, 2001, COOK resigned from the CCAR and provided multiple and varied reasons for doing so, none of which indicated an awareness of the ethics complaints. The complaints were dated before COOK's resignation letter but handwritten notations on the copies maintained by the CCAR indicated that they were not received by the CCAR until days after COOK had resigned his membership. By then, the CCAR had no influence over its former member, and no Ethics Process was ever commenced. The Code now provides that where an Ethics Process has been commenced and a rabbi elects to resign their membership from the CCAR, the rabbi is regarded as expelled.

IV. OVERVIEW OF THE REPORT

The purpose of this report is to synthesize information learned during the investigation to frame the ongoing discussion within the CCAR about how best to upgrade its Ethics Process. By way of overview, the report outlines myriad ways in which the Code and the Ethics Process could be upgraded and reimaged. None of the observations and recommendations set forth in the report should overshadow an overarching observation that flows from information gathered during the investigation: the current EC approaches its work thoughtfully, with a sense of solemnity and with careful attention to implementing the Ethics Process in a way that honors the language and spirit of the Code.

A. Section One: Overview of the Code and Observations About the Ethics Process

A discussion of Ethics Process reform must begin with a shared understanding of the text upon which it is based. The Code that gives the Ethics Process its shape is highly technical, and Alcalaw's investigation revealed that many CCAR members are unfamiliar with its current contours. Section One provides an overview of the Code that is informed by a review of its current iteration (the "2021 Code"), prior iterations of the Code and conversations with current and former EC members, BOA members and CCAR staff. Section One also includes observations about the Ethics Process that are informed by Alcalaw's review of ethics case material, as well as themes that were revealed during interviews. Each of these components provides a framework for the recommendations that follow. The following are summary overviews of the observations described more fully in Section One:

- The Interconnectedness of the Partner Organizations of the Reform Movement:
 - The CCAR's influence over a rabbi who engages in misconduct is limited.
 - The Reform Movement's ability to protect the community from abusive rabbinic conduct is compromised by lack of communication and collaboration between the CCAR, the URJ and HUC-JIR.
 - The community is requesting coordination between the partner organizations.
- The Code:
 - The CCAR has made significant efforts over the years to modernize and update the Code.
 - There is a lack of awareness about the Code in the Reform Movement.
 - The 2021 Code is poorly organized and contains internal inconsistencies.
 - Some ethical guidelines lack clarity.
- Administration of the EC:
 - The EC has made significant efforts to increase training and support for EC members.
 - The process for identifying prospective nominees for the EC could be more transparent.
 - Membership on the EC requires a significant commitment of time and energy.
 - The Ethics Process could be more efficient.
- Reporting an Ethics Complaint:
 - The EC's dual role of advising prospective complainants and adjudicating the subsequent complaint can raise questions about the appearance of impartiality.
 - The complaint-driven system may allow potential misconduct to go unexamined by the EC.
- Responding to, Investigating and Adjudicating an Ethics Complaint:
 - EC members are dedicated volunteers.
 - EC members perform too many roles.
 - The EC Chair is tasked with too many duties.
 - The 2021 Code does not establish a clear standard of proof for information gathering.
 - EC members are not professional investigators.
- Sanctions:
 - The 2021 Code does not provide clear guidance about the appropriate sanction for a given violation.

- Rules Regarding Confidentiality and Notification:
 - The 2021 Code contains an inconsistency regarding the notification requirements related to the sanction of censure.
 - The Code's provision regarding notification of pending matters could be clarified.
- T'shuvah and Rehabilitation Counseling and Reinstatement:
 - The t'shuvah process lacks structure, and its objectives are not clearly defined.
 - The TRaC process would benefit from clear timelines.
 - Assessing a rabbi's suitability for reinstatement is a challenging task for EC members, particularly when the matter involves sexual misconduct.
 - Restitution is not enforced as a condition of reinstatement.
- The Board of Appeals:
 - The appellate standard of review is confusing.
 - There is confusion about whether the BOA Rules permit additional fact-finding by the BOA.
 - There is confusion among EC and BOA members about who can file an appeal.

B. Section Two: Reported Impact of the Ethics Process

To gain greater clarity about the ways in which the Ethics Process works and where it could be improved, it is necessary to look beyond the written language of the Code and examine how people who participated in the Ethics Process experienced it. Alcalaw's investigation revealed that the Ethics Process has had a significant and often lasting impact on people. Section Two is intended to present a representative sampling of the impact of the Ethics Process, informed by interviews conducted by Alcalaw. The following are summary overviews of the reported impact described in Section Two:

- Impact on Complainants and Would-Be Complainants:
 - Some individuals reported a hesitancy to report because they could not do so anonymously.
 - Some CCAR members reported a hesitancy to report because of fear it would affect career prospects.
 - Some complainants reported concerns about rabbis managing the entire Ethics Process.
 - The Code could include more trauma-informed practices.
 - Complainants seek more transparency in the TRaC process.

- Impact as Reported by Rabbis Who Were the Subject of an Ethics Complaint:
 - Many rabbis reported feeling a lack of support from the CCAR during the Ethics Process.
 - The t’shuvah process is amorphous and can be protracted.
 - The psychological evaluation requirement imposes a heavy financial burden on sanctioned rabbis.
 - The confidentiality requirement can have negative consequences for rabbis.
- Impact as Reported by Congregational Lay Leaders:
 - Lack of notice of a rabbi’s prior ethics case has negatively impacted the perception of the CCAR in some congregations.
 - The confidentiality surrounding the Ethics Process impedes effective management of affected congregations.
 - Congregations harmed by a rabbi’s misconduct seek a t’shuvah process.
- Two Significant Amendments That Have Been Made to the Code:
 - The 2021 Code contains a provision that provides notice when an ethics violation involves a minor.
 - Rabbis who resign during the pendency of an Ethics Process are regarded as expelled.

C. Section Three: Recommendations

A critical component of Alcalaw’s mandate was to use the information learned during the investigation to identify possible changes to the Ethics Process aimed at ensuring a fair adjudication process and promoting safe communities. Alcalaw’s recommended updates to the Code and the Ethics Process were developed with an eye toward bolstering clarity, notice, efficiency, symmetry of process, impartiality, broader investment and collaboration across the Reform Movement, and, when possible, the emphasis of trauma-informed practices for the benefit of accused rabbis and complainants alike.¹⁷ Section Three details more fully the following recommendations:

- Engage in a t’shuvah process.
- Collaborate with partner organizations to expand the impact of the Ethics Process within the Reform Movement.
 - Collaborate with the URJ and HUC-JIR to adopt policies of reciprocity.

¹⁷ Trauma-informed practices involve the recognition of and attention to the presence of trauma.

- Collaborate with the URJ to bolster its support of congregations impacted by rabbi misconduct.
- Increase education about the Code and the Ethics Process.
- Implement additional measures designed to prevent and address inter-colleague conflict.
- Enhance recordkeeping.
 - The CCAR should ensure that the EC and BOA recordkeeping is digitized and organized.
- Expand Section VI of the 2021 Code related to violations involving minors.
 - Include specialized notification and sanction requirements for sexual boundary violations involving a minor.
 - Mandate that the EC Chair make certain notifications when potentially criminal conduct involving a minor is reported.
 - Explicitly prohibit boundary violations involving minors.
- Revise the rules and regulations that govern the Ethics Process.
 - Amend the Code to establish a clear standard of proof.
 - Amend the Code to provide greater notice.
 - Amend the Code to mandate expulsion for certain violations.
 - Revise the rules and regulations to eliminate redundancy and inconsistency.
 - Amend the Code to more clearly state when notifications will be made by the EC and Director of Rabbinic Career Services.
 - Amend the Code to create more predictable timelines in the process.
 - Amend the Code to advise parties about the impact of external legal proceedings.
- Expand opportunities for ethics violations to be reported.
 - Create a standardized complaint form.
 - Explore the option of allowing the EC to serve as proxy complainant in select matters.
 - Create a new system for fielding inquiries about the Ethics Process and intaking complaints.
 - Add a non-retaliation provision to the Code.
- Incorporate more trauma-informed practices into the Code.
- Require rabbis to make restitution whenever possible.
- Narrow the focus of the EC.
 - Adopt a more transparent process for nominating prospective EC members.

- Focus the role of the EC Chair.
- Remove the investigative function from the EC whenever possible.
- Continue and increase training to EC and BOA members.
- Create clearer sanctions:
 - Eliminate censure without publication.
 - Require publication of any sanction that includes any restriction of rabbinic function.
 - Amend the Code to more clearly state the impact of each sanction.
- Provide additional guidance for the t'shuvah process:
 - Identify the possible outcomes of the t'shuvah process in each case.
 - Create a curriculum for TRaC Team members to follow.
 - Examine the psychological evaluation process.
 - Do not indefinitely hold rabbis in the TRaC process.
 - Establish a process regarding the legacy of rabbis found to have engaged in unethical behavior.
- Clarify the role of the Board of Appeals:
 - The promulgation of the BOA rules should not be left to the BOA.
 - The BOA standard of review should be amended.
 - The BOA should not engage in additional fact-finding.

V. CONCLUSION

While the Code and the Ethics Process have evolved in significant and constructive ways over the years, there are modifications to the Code and the process that could be made to promote better clarity, notice, efficiency, symmetry of process, impartiality, broader investment and collaboration across the Reform Movement and, when possible, an emphasis on employing trauma-informed practices. Alcalaw acknowledges the CCAR for its earnest endeavor to conduct a neutral and thorough investigation of the Ethics Process and extends its gratitude for the invitation to perform this important work and for allowing Alcalaw unfettered access to relevant CCAR material. Alcalaw also expresses its gratitude to all of the members of the community who extended their time and energy to participate in this process.

THE REPORT

I. OVERVIEW OF THE CODE AND OBSERVATIONS ABOUT THE ETHICS PROCESS

Section One provides a detailed overview of the operation of the 2021 Code to provide a foundational understanding of the text that underlies the current Ethics Process. Section One also includes observations about various aspects of the Code and the Ethics Process based on information learned during Alcalaw’s investigation. The observations represent broader themes reported by multiple people.

A. The Interconnectedness of the Partner Organizations of the Reform Movement

1. Overview

The CCAR, HUC-JIR and the URJ are deeply interconnected organizations. CCAR members are involved in every aspect of the Reform Movement; they are professors at HUC-JIR, leadership at URJ and spiritual leaders in URJ-affiliated congregations and other organizations. Alcalaw heard repeatedly that significant crossover and long-standing personal connections exist between members in each organization, and yet collaboration and information sharing appear to be limited when it comes to addressing problematic unethical behavior.

2. Observations

a. The CCAR’s Influence Over a Rabbi Who Engages in Misconduct is Limited

The most stringent sanction the CCAR can impose for a violation of the Code is expulsion; the CCAR cannot “defrock” a rabbi. Once a rabbi is expelled from the CCAR, the CCAR no longer maintains authority to impose restrictions on that rabbi’s conduct. The rabbi remains an ordained rabbi with freedom to use the title rabbi and perform rabbinic or other functions in any congregation or organization that would permit the rabbi to do so. The 2021 Code prohibits CCAR members from “knowingly employ[ing] any person (directly or by consenting to the employment of such person by their congregation/organization) who has been expelled from the CCAR for breach of [the Code] and not reinstated.”¹⁸ This prohibition does not - and cannot - extend to lay leaders or other non-CCAR members not bound by the Code. Based on information learned during the investigation, the URJ has

¹⁸ 2021 Code Section VII.E.2.d.5.

dissuaded, but has no formal policy that prohibits, URJ-affiliated congregations from employing rabbis who have been suspended or expelled from the CCAR. Based on information learned during the investigation, the imposition of a sanction by the EC on a HUC-JIR employee has no correlated effect on their employment, and there appears to be no method by which to “defrock” a rabbi ordained by HUC-JIR who has been expelled from the CCAR.

b. The Reform Movement’s Ability to Protect the Community from Abusive Rabbinic Conduct is Compromised by Lack of Communication and Collaboration Between the CCAR, the URJ and HUC-JIR

Based on information learned during the investigation, there is an apparent perception within the Reform community that the existence of the Ethics Process should enable the CCAR to unilaterally maintain a safe and sacred rabbinate. This perception is misguided because the CCAR is limited in its ability to manage the behavior of CCAR members as it does not employ rabbis but is rather a voluntary member organization. In addition to its inability to “defrock” a rabbi, the CCAR lacks the ability to control congregational and organizational employment decisions about rabbis who have been sanctioned by the CCAR. In addition, in its current iteration, the Code does not permit the CCAR to get involved in ethics issues unless a complaint is filed, and thus relies on complainants, partner organizations and congregations to bring inappropriate conduct by CCAR members to its attention. The lack of coordination and, sometimes, communication between the partner entities creates gaps in accountability and permits the opportunity for unethical behavior to go unchecked.

c. The Community is Requesting Coordination Between the Partner Organizations

Alcalaw heard repeated calls for coordination between the CCAR, URJ and HUC-JIR. One CCAR member told Alcalaw, “there is an inter-movement problem, and everyone has been throwing up their hands and saying, ‘this is not my backyard,’” and “that is how you end up with a systemic problem.” Collaboration between the partner entities in the Reform Movement is critical, as no one entity can effectively create a culture of safety across the Reform Movement without partnership from the others.¹⁹

¹⁹ One CCAR member serving a congregation overseas requested that the CCAR coordinate with international organizations to ensure enforcement of the Code internationally.

B. The Code

1. Overview

a. CCAR Members Agree to be Bound by the Code

All members of the CCAR are bound by the ethical standards set forth in the Code and can be subject to sanction if found to have engaged in conduct that violates the Code, including expulsion from the CCAR.²⁰ The conclusion to the 2021 Code provides that:

As members of the CCAR, we pledge ourselves to be scrupulous in our adherence to the foregoing statement of rabbinic ethics, and to hold others and ourselves to the highest standards. At the same time, we feel called to heal brokenness and in all we do to seek to balance *midat hadin* (principle of justice) and *midat harachamim* (principle of compassion).

As stated on the CCAR website, members are required to affirm on an annual basis that they have read the Code and completed three hours of continuing rabbinic education during the preceding year; new members must complete two hours of ethics education during their first year of membership.²¹ The 2021 Code is publicly available on the CCAR website.²²

b. The Content of the 2021 Code

The 2021 Code includes in its introduction certain values to which CCAR members are expected to commit:

As rabbis, we are expected to abide by the highest moral values of our Jewish tradition: personal conscience and professional integrity, honorable social relationships, and the virtues of family life. As teachers and role models, we are called upon to exemplify the ideals we proclaim. Should we fail, we need to do *t'shuvah*, ask forgiveness, avoid repetition, and make restitution whenever possible.

The 2021 Code outlines with varying degrees of specificity how CCAR members are expected to conduct themselves in certain aspects of their personal and professional lives. Sections I through IV of the 2021 Code provide general ethical behavioral expectations for CCAR members in the following categories: (1) personal responsibility (including behavior in family, social and financial affairs,

²⁰ 2021 Code Introduction and Section VII.E.2.

²¹ Available at: <https://www.ccarnet.org/member-services/dues/>; see also Bylaws Article X, Section 2.c.

²² Available at: <https://www.ccarnet.org/about-us/ccar-ethics>.

intellectual honesty and rabbinic commitment); (2) rabbinic relationships (including relationships with rabbis in the same congregation and relationships with rabbis in different congregations); (3) confidentiality (including “holding sacred all information revealed within the provision of pastoral care,” with certain limitations); and (4) rabbinic services (including honoraria and communication of services).

Section V sets forth ethics guidelines related to sexual boundaries, including reference to two types of violations: (1) Type 1 violations, which are “less egregious” and “include but are not limited to inappropriate comments, jokes, verbal conduct, and visual conduct of a sexual nature.” (“Type 1 Violations”); and (2) Type 2 violations, which “include but are not limited to all forms of sexual harassment and intimidation, quid pro quo and requests for sexual favors, and any unwelcome physical contact or conduct” (“Type 2 Violations”). Section VI highlights the egregiousness of ethical violations related to the exploitation of minors. Section VII sets forth the procedures by which an allegation of unethical behavior by a CCAR member can be filed, investigated, adjudicated, sanctioned and appealed,²³ and Section VIII outlines the TRaC process.

c. Amendments to the Code

The Code is subject to regular review by the CCAR and has been modified sixteen times since it was first drafted in 1991. Proposed amendments to the Code must be presented at the Convention and are adopted only if approved by the CCAR membership according to the criteria outlined in the Constitution and Bylaws.²⁴

2. Observations

a. The CCAR has Made Significant Efforts Over the Years to Modernize and Update the Code

Based on information learned during the investigation, since its adoption in 1991, the CCAR has routinely sought to review the Ethics Process and identify ways to evolve the Code to reflect lessons learned from ethics cases and current best practices. For example, the 2021 Code reflects a detailed

²³ The BOA has additional rules, discussed more fully below.

²⁴ Constitution Article X, Sections 1-3.

inventory of conduct which would constitute a sexual boundary violation under the Code,²⁵ as well as the newly added Section VI, which emphasizes the particular “egregiousness” of ethical violations that involve minors.

b. There is a Lack of Awareness About the Code in the Reform Movement

The 2021 Code provides that “[a]ll appropriate URJ personnel, CCAR members, and URJ congregational presidents should be informed of CCAR ethics procedures and instructed in how to handle inquiries about complaints.”²⁶ In addition, based on information learned during the investigation, a concerted effort has been made in recent years to increase education related to the Code and the Ethics Process within the CCAR membership and HUC student body, including by the publication of articles on the CCAR website. However, information learned during the investigation indicated that, even within the CCAR membership, there is limited familiarity with specific provisions of the 2021 Code. Similarly, congregational leaders and congregants reported varying degrees of familiarity with the Ethics Process and the process by which one can file an ethics complaint. As a result, a number of people with whom Alcalaw spoke raised concerns about aspects of the Ethics Process that revealed a misunderstanding about how it currently operates.

c. The 2021 Code is Poorly Organized and Contains Internal Inconsistencies

The 2021 Code is poorly organized and internally inconsistent in some places. Certain aspects of the Ethics Process are addressed in the 2021 Code and, in some instances, also in the Constitution, Bylaws and BOA rules. This lack of organization inhibits systematic understanding of the Ethics Process by a plain reading of the 2021 Code. For example, Section IX of the 2021 Code contains “additional provisions concerning notification,” which supplement the notification provisions that are peppered throughout Section VII. Similarly, sexual misconduct is addressed in Section I.B and Section V. The rules governing the BOA are variously contained in Article VII of the Bylaws, Section VII of the Code and in the BOA’s own rules, which are discussed more fully below.

²⁵ 2021 Code Section V.

²⁶ 2021 Code Section VII.B.1.

There is also internal inconsistency in the 2021 Code. By way of example, Section VII.A outlines the intended “structure” of the Ethics Process and states with respect to information gathering teams (“IGT”):

To insure [sic] prompt and thorough responses to complaints, the EC *may* establish information gathering teams to conduct investigations. [emphasis added]

* * *

In reviewing all other complaints [i.e., those not related to sexual misconduct], the use and composition of fact gathering teams will be left to the discretion of the EC. There may be cases not involving sexual misconduct in which the EC decides to conduct the investigation itself without designating a [sic] information gathering team.

However, IGTs are also addressed in Section VII.C.3, which directs that the EC Chair “*shall*” establish an IGT for every matter unless “sufficient information already exists for the EC to proceed with adjudication” (emphasis added). The permissive language in Section VII.A that affords the EC discretion to investigate matters themselves is replaced by mandatory language in Section VII.C.3.

d. Some Ethical Guidelines Lack Clarity

The Code is intended to establish standards of behavior for CCAR members, but certain provisions of the Code fail to state clearly what conduct it prohibits. The lack of clarity makes it difficult for even the most well-intentioned rabbi to avoid running afoul of the Code and requires the EC to draw lines on a case-by-case basis, leaving the process vulnerable to claims of subjectivity and bias.

Consider, for example, the overlapping language regarding the propriety of romantic and sexual relationships between rabbis and their congregants that is found in Sections I.B and V of the 2021 Code. Section I.B states:

We are expected by others, and we expect of ourselves and each other, to be scrupulous in avoiding even the appearance of sexual misconduct, whether by taking advantage of our position with those weaker than ourselves or dependent upon us, or succumbing to the temptations of willing adults.

Section V of the 2021 Code states:

As rabbis vested with real and symbolic religious authority, we have the responsibility to recognize the power differential inherent in our rabbinic roles and the vulnerability

of those whom we teach, counsel, and serve. It is our obligation to maintain appropriate boundaries in all situations and settings.

Given the language in Section I.B regarding “willing adults,” the “appropriate boundaries” language in Section V could be read to mean that *any* sexual or romantic relationship between rabbi and congregant - even if between consenting adults - is unethical and subject to sanction. Based on information learned during the investigation, relationships between rabbis and congregants have not historically been treated as strictly prohibited, as there are currently CCAR members in good standing who married congregants. Further, it is not clear that the CCAR membership would intend to strictly prohibit consensual relationships between rabbis and congregants, as information learned during the investigation indicated that there is a recognition of how limiting such a prohibition would be to rabbis who serve in remote locations with small Jewish communities.

Alternatively, “appropriate boundaries” could be read only to prohibit the exploitation of the inherent power differential between a rabbi and a congregant, thereby entrusting CCAR and EC members to readily know the difference.

Concerns about the potential for inconsistent applications of the 2021 Code’s provision regarding the sanctity of committed relationships were also raised during the investigation. The relevant provision reads:

[R]abbis are expected to honor the sanctity and fidelity of committed relationships, their own and those of others. Any sexual activity that betrays those relationships or leads others to betray like relationships constitutes an ethical violation.²⁷

This provision appears designed to, at a minimum, prohibit any extramarital sexual activity, but does not define what constitutes a “betrayal” of a “committed relationship.” One CCAR member, who described the Code as “heteronormative,” posited that the Code fails to adequately account for colleagues having consensual, bisexual relationships outside their relationship; another member questioned the impropriety of engaging in a sexual relationship after a formal marital separation had been initiated.

²⁷ 2021 Code Section V.

In addition, the following provision related to “clandestine” relationships provides little practical guidance to a CCAR member:

Any personal relationship that the rabbi keeps clandestine (beyond the bounds of normal privacy), or which raises doubts for the rabbi regarding its ethical propriety ought to give the rabbi serious pause and propel the rabbi, at the very least, to seek moral counsel.²⁸

The phrase “clandestine (beyond the bounds of normal privacy)” is subjective, and a plain reading of the provision does not make clear whether engaging in such a relationship is a violation of the Code or is merely discouraged.

The CCAR’s commitment to protecting vulnerable members of the community is reflected in Section III, which requires rabbis to make certain notifications if they learn information in a confidential context that may indicate a risk of imminent harm to another person. However, the guidance is somewhat ambiguous. The 2021 Code states that if, in a pastoral care setting, a rabbi learns about the exploitation of vulnerable persons or imminent harm to any person, the rabbi must “follow the laws” of its locality with respect to whether to reveal the otherwise confidential information to “persons authorized to address the safety of the person at risk.”²⁹ The 2021 Code also states that based on a shared “religious conscience” it is “essential to report abuse of minors and incapacitated adults even when the state or province does not require the rabbi to do so,” and that the rabbi’s own “moral conscience” may direct a rabbi to report to “appropriate authorities” information “concerning one whose physical or psychological well-being is in danger.” Critically, the 2021 Code leaves undefined the terms “persons authorized to address the safety of the person at risk” and “appropriate authorities,” which affords a rabbi significant discretion but no clear guidance.

²⁸ 2021 Code Section V.

²⁹ 2021 Code Section III.

C. Administration of the EC

1. Overview

a. Selection of Committee Members

The Bylaws require that the EC include “at least one layperson” and state that EC members are to be “appointed by the President with the approval of the Board of Trustees” and “submitted to the Conference for ratification.”³⁰ Neither the Bylaws nor the 2021 Code establish any requisite qualifications or diversity of background for EC members. Information gathered during the investigation indicated that prospective EC members are identified through an informal nomination process involving members of CCAR leadership and the EC who take diversity into consideration. There is no provision in the 2021 Code or the Bylaws disqualifying a rabbi from serving on the EC if they have previously been the subject of an ethics case; however, in practice, an informal review is conducted to determine whether the nominee has previously been alleged or adjudicated to have engaged in unethical conduct. All members of the EC and BOA are voted on by membership at the Convention.

The term limits for EC members are not codified, but based on information gathered during the investigation, members typically serve for a five-year term. There are currently 14 EC members: thirteen CCAR members - two of whom serve as Chair and Chair-Elect - and one lay person. In addition, two members of the CCAR leadership serve on the EC in an ex-officio capacity - the Chief Executive of the CCAR and the Senior Advisor for Ethics. The current EC members are listed on the CCAR website.³¹

b. EC Members Receive Training

Based on information learned during the investigation, beginning in the 1990s, the EC has received intermittent training from subject matter experts, and, in recent years, the training opportunities offered to EC members have become more robust and formalized and extend to diverse subject matters. In addition, certain material has been created to aid EC members in their

³⁰ Bylaws Article VII, Section 1.

³¹ Available at: <https://www.ccarnet.org/ethics-committee/>.

management of the Ethics Process, including an IGT guide, a case manager guide and checklist and orientation material for new members. Current EC members described receiving an orientation with the EC Chair, on-the-job training and periodic training by specialists, including during an annual retreat. Several current EC members described training about various topics including restorative justice, investigations, reading psychological reports and interviewing techniques. Half of the current EC members reported that most of their learning occurred on the job. Nearly all of the current EC members expressed a desire for additional training.

c. Requirement for Efficiency in the Ethics Process

The 2021 Code states generally that “the EC should make a diligent effort to reach a decision in an expeditious manner,”³² but, with limited exceptions, does not prescribe a specific time limitation within which the EC should complete its work. Based on information learned during the investigation, it takes approximately six months on average for a case to move through the Ethics Process from the time the complaint is filed until the matter is adjudicated by the EC.

d. EC Recordkeeping

The investigation revealed that the EC’s recordkeeping practices have evolved over the years, and that, in some instances, ethics-related materials have not been effectively preserved. Hard copies of material from the EC have been housed in various places over the years, including in the homes of EC members at times. The EC’s current recordkeeping practices rely on a password-protected, web-based system that is accessible by invitation. Each EC case is identified by the rabbi’s initials. To the extent there is duplication, numbers are added to the initials.

2. Observations

a. The EC has Made Significant Efforts to Increase Training and Support for EC Members

The CCAR has demonstrated a commitment to enlisting the assistance of subject matter experts from outside the CCAR to educate and supplement the work of the EC, including by seeking out individuals with experience in law and psychology to serve on IGTs in cases that might require

³² 2021 Code Section VII.E.2.

specialized knowledge or skill. In addition, the EC has adopted the practice of assigning an EC member to serve as the case manager on each ethics matter to help disperse the workload of the committee more evenly and improve efficiency in the Ethics Process.

b. The Process for Identifying Prospective Nominees for the EC Could Be More Transparent

While the names of EC nominees are presented to and voted on by the CCAR membership at the Convention, the absence of a systematic and transparent process for identifying prospective nominees permits speculation about favoritism. Some members interviewed voiced concern that personal relationships might impact the nomination process. One CCAR member commented that there are “weird power dynamics behind the process.” One long-standing CCAR member shared her perception that “there is a cronyism in the CCAR” and there are “really fantastic people who never get picked for anything.” Information learned during the investigation indicated that the names of the current EC members are published on the CCAR website and the nomination process, while informal, is discerning and mindful of the need for diversity of gender, age, and professional experience. In light of these efforts to promote transparency and representation, the lack of awareness about the nomination process of prospective EC members risks unnecessarily compromising the public perception of the EC’s credibility.

c. Membership on the EC Requires a Significant Commitment of Time and Energy

Many of the EC members Alcalaw spoke to reported that they were honored to be asked to serve on the EC and that they took their responsibility as EC members seriously, and that it proved to be a significant commitment both personally and professionally. A rabbi who was recently the subject of an ethics complaint reported being asked to “please be patient” with delays in the process as the EC is an “overworked committee.” Along with the burden of managing the caseload, EC members also reported that the process can be emotionally taxing.

d. The Ethics Process Could Be More Efficient

The investigation and adjudication of allegations contained in an ethics complaint can involve a significant scope of work, work that is performed by volunteers, many of whom have other, full-time

employment. Complainants, rabbis who were the subject of an ethics complaint and some EC members reported that the Ethics Process can move slowly, and that inefficiency can create additional stress for everyone navigating an already difficult situation, particularly where the delay may affect a rabbi's livelihood.³³ The Code provides little guidance in this regard, as it generally does not designate timelines to guide the progression of an ethics complaint, or it directs that certain actions must be taken "promptly," a phrase that does not effectively manage the expectations of the parties about how quickly the matter may be resolved. Information learned during the investigation suggests that delays in the process can occur for reasons that include, among others, difficulty coordinating the schedules of volunteers and time spent recruiting, vetting and training volunteers to participate on an IGT.

D. Reporting an Ethics Complaint

1. Overview

a. Who May File an Ethics Complaint

The 2021 Code provides that "anyone with knowledge of misconduct, whether or not an alleged victim, may submit a complaint."³⁴ The 2021 Code allows complainants to file complaints regardless of when the alleged misconduct occurred: "[t]here is no limitation period barring a complainant from filing a complaint with the EC or preventing the EC from investigating such alleged violations."³⁵

b. How to File a Complaint

According to an article drafted by the current EC Chair and Chair-Elect and published on the CCAR website ("Ethics Process Part I Article"), the CCAR has adopted a "complaint-driven" Ethics Process, which means that the EC does not begin its process until the EC receives a formal complaint.³⁶ The EC cannot, on its own, initiate a complaint. To initiate an ethics inquiry, the complainant must

³³ In some instances, the reporting party recognized that some of the delays experienced during the past two years were attributable, at least in part, to complications related to the pandemic.

³⁴ 2021 Code Section VII.B.1.

³⁵ 2021 Code Section VII.E.2.h.

³⁶ Available at:

<https://www.ccarnet.org/about-us/ccar-ethics/ethics-process-part-i-when-the-ethics-committee-receives-a-complaint/>.

do so in writing to the EC Chair and include “the names of all parties involved, as well as specific details of the misconduct.”³⁷ In addition, members are allowed to self-report violations under the 2021 Code. Self-reports are treated as admissions and automatically trigger an investigation and adjudicative process.³⁸

c. The EC Informally Advises Persons Considering Filing Ethics Complaints

As outlined on the CCAR website, before filing a written complaint, a prospective complainant may first make inquiries about the Code and the reporting process by contacting the EC at Ethics@ccarnet.org. The 2021 Code directs EC members to respond to such questions “compassionately” but warns that the EC member “should not seek details or make judgments as to guilt or innocence.”³⁹ It further provides that EC members “should inform the complainant about the procedure for making a complaint” and authorizes them to offer counsel to the prospective complainant.

According to the Ethics Process Part I Article:

In most cases, potential complainants have reached out to the chair of the EC before submitting a formal complaint. During this contact with a potential complainant, the chair outlines the process; if the complainant is also an alleged victim, the chair seeks to understand the alleged victim’s support services.”

Based on information learned during the investigation, the contents of these advisory communications between prospective complainants and EC members, typically the EC Chair, are preserved and maintained by the EC Chair. These materials are informally called the “uncase file.”

d. Supportive Services

The 2021 Code establishes that, “[t]hroughout the entire process (information gathering, adjudicatory process, and, if relevant, the period of T’shuvah Rehabilitation Counseling),” one of the CCAR’s goals is to “provide support to the alleged victims, to the rabbi and the rabbi’s family, to the staff of the congregation, and to the congregation or constituency itself.”⁴⁰ The CCAR aspires to

³⁷ 2021 Code Section VII.B.1.

³⁸ 2021 Code Section VII.B.1.a.

³⁹ 2021 Code Section VII.B.1.

⁴⁰ 2021 Code Section VII.D.1.d.

provide support to the parties through “the offices of the Senior Advisor on Ethics, the Director of Rabbinic Career Services and in conjunction with the [URJ].”

The 2021 Code requires that various supportive services - including mentorship - be provided to a rabbi who is the subject of an ethics complaint.⁴¹ The 2021 Code similarly requires that the EC Chair inquire whether the complainant, and any other alleged victim(s), have adequate support services available to them.⁴² The 2021 Code does not specify what services may be available to complainants and/or victim(s), or family members of an accused rabbi, but does state that Section VII is intended to, among other things, “extend sensitivity and spiritual guidance through offering the opportunity for rabbinic referral to the complainants, as well as families of alleged perpetrators.”⁴³

2. Observations

a. The EC’s Dual Role of Advising Prospective Complainants and Adjudicating the Subsequent Complaint Can Raise Questions About the Appearance of Impartiality

The 2021 Code calls for EC members to serve as compassionate advisors to prospective complainants and impartial arbiters in the ethics case that follows. Impartiality of the EC is critical to preserving the integrity of the Ethics Process given the EC’s role as the fact-finding and adjudicative body. Under the current practice, a prospective complainant may share information with an EC member during a preliminary conversation that is not recorded in a subsequently filed written complaint, and therefore not shared with the accused rabbi. One rabbi, who was the subject of an ethics complaint, disapproved of the fact that the EC Chair “was in communication with the complainant before there was even an ethics process,” and that the rabbi was not privy to all of those communications. Requiring the EC to serve this dual role could unnecessarily compromise public perception, and that of an accused rabbi, about the integrity of the Ethics Process. In addition, it calls upon an EC member to put aside information learned while advising a complainant to ensure that it does not unfairly influence the adjudicatory process.

⁴¹ 2021 Code Section VII.C.2.

⁴² 2021 Code Section VII.C.1.

⁴³ 2021 Code Section V.

b. The Complaint-Driven System May Allow Potential Misconduct to Go Unexamined by the EC

The complaint-driven nature of the Ethics Process limits the EC's ability to investigate certain allegations or take action even when it becomes aware of possible misconduct by a CCAR member. The most significant avenue for the EC to learn of information that it cannot make use of is during exploratory conversations between would-be complainants and the EC Chair. The EC Chair's maintenance of the "uncase file" means that there is a repository of unofficial allegations of misconduct by CCAR members that never become the subject of a written complaint.⁴⁴ Simply put, this practice means that the EC may be aware of the possibility of serious misconduct but have no ability to investigate the matter or take action.

Alcalaw heard from a number of people who felt that the EC should have the authority to act as a proxy complainant to investigate allegations of misconduct. One CCAR member said, "the CCAR needs to be able to, on its own, start its own complaint . . . By the third time that they hear of misogyny, they should be able to say there is a pattern here we are going to investigate."

The investigation revealed that there have been occasions in which the EC has learned of the possibility of serious misconduct but may have been unable to take action because of the confines of the complaint-driven system. For instance, based on information learned during the investigation, in the late 1990s, the EC received a letter written by a CCAR member and addressed to the "CCAR Committee of Sexual Harassment," reporting the author's awareness of allegations by others that Rabbi Alfred Gottschalk ("GOTTSCHALK"), a former President and Chancellor of HUC-JIR and member of the CCAR who is now deceased, had engaged in sexual misconduct. In the letter, the CCAR member explained that, years earlier, two HUC-JIR students had reported to the CCAR member first-person accounts of alleged misconduct by GOTTSCHALK, and a third HUC-JIR student had relayed second-hand accounts of alleged misconduct by GOTTSCHALK. The CCAR member who sent the letter requested that the CCAR "begin an earnest investigation into allegations of sexual harassment of students of [HUC-JIR] by [GOTTSCHALK]."

⁴⁴ 2021 Code Section VII.B.1.

Alcalaw reviewed handwritten notes maintained in EC records along with the letter, which indicated that the drafter of the notes communicated with the CCAR member who wrote the letter, as well as two of the individuals referenced as potential sources of information in the letter, but, according to the notes, each was unwilling or unable to meaningfully substantiate the allegations. Alcalaw's investigation did not reveal additional evidence of further investigative steps taken by the EC. Nor did the investigation reveal evidence of any other ethics complaints having been filed with the EC naming GOTTSCHALK.

Amending the Code to permit the EC to initiate a complaint on its own would raise certain considerations, including how to ensure consistency in application and what safeguards must be in place to allow accused rabbis to adequately defend themselves. A critical issue would be the sufficiency of information available upon which to premise the complaint. In other words, it would prove nearly impossible for the EC to investigate, let alone adjudicate, a generalized complaint of misconduct. Should the CCAR wish to allow for the initiation of complaints by the EC, rules would need to be promulgated to ensure a fair and consistent approach. For instance, the CCAR could decide that the EC would be empowered to initiate its own complaint only for serious violations of the Code (a phrase that could be defined in the Code to include only a limited number of violation categories).

E. Responding To, Investigating and Adjudicating an Ethics Complaint

1. Overview

a. Role of the EC Chair

The 2021 Code assigns extensive responsibility to the EC Chair, including training EC members, responding to inquiries, intaking cases, assigning case managers,⁴⁵ participating in adjudications, and presenting cases to the BOA when an appeal is filed. The EC has instituted certain changes in recent years to provide additional support to the EC Chair, including establishing the position of the Vice Chair and Chair-Elect, which also serves to promote continuity and provide a

⁴⁵ According to the Ethics Process Part I Article, "each case is assigned a case-manager from the committee to help shepherd the complaint through the process and to be available to the rabbi, the complainant, and potential victims and witnesses."

period of mentorship to the future EC Chair. The 2021 Code does not explain how the EC Chair is to be selected.

b. Initial Steps the EC Chair Must Take With Regard to Complainants and Victims

The 2021 Code provides that, upon receiving a written complaint, the EC chair must “promptly respond in writing to the complainant” outlining the process.⁴⁶ If the complainant is not also the alleged victim, the 2021 Code directs the EC Chair to provide a copy of the ethics complaint and information related to the investigation to the alleged victim(s).⁴⁷ The 2021 Code directs the EC chair to “inquire” whether the alleged victim(s) have “access to adequate support services.”⁴⁸

c. Initial Steps the EC Chair Must Take With Regard to Rabbis Accused of Ethics Violations

Once a complaint is filed, the 2021 Code provides that the EC Chair must “promptly” send the rabbi a copy of the complaint and information about the investigation and alert the rabbi of support programs available through the CCAR.⁴⁹ The EC Chair is directed to inform the rabbi that they have two weeks in which to file a response, which will be shared with the complainant and any alleged victim(s).⁵⁰

d. Proceed to Adjudication or Establish an Information-Gathering Team

The 2021 Code provides that the EC Chair will “promptly” establish an IGT in all cases except where the complaint and response provide enough information for the EC to proceed directly to adjudication.⁵¹ The 2021 Code also provides, albeit indirectly, that the EC must appoint an IGT in cases involving sexual misconduct.⁵² In cases not involving an IGT, the “EC will conduct information gathering.”⁵³ Information learned during the investigation revealed that, in practice, the EC currently votes as a committee on whether to appoint an IGT in a given case. The 2021 Code states that the

⁴⁶ 2021 Code Section VII.C.1.

⁴⁷ 2021 Code Section VII.C.2.

⁴⁸ 2021 Code Section VII.C.1.

⁴⁹ 2021 Code Section VII.C.2.

⁵⁰ 2021 Code Section VII.C.2.

⁵¹ 2021 Code Section VII.C.3.

⁵² 2021 Code Section VII.A.

⁵³ 2021 Code Section VII.D.2.

composition of the IGT is left to the discretion of the EC, except in cases involving allegations of sexual misconduct, which require that the IGT be composed of two rabbis, one of whom is a member of the EC, and a layperson.⁵⁴ While the 2021 Code does not outline any qualification requirements for prospective IGT members, it notes that attention “should be paid to gender balance” and that the EC should maintain a list of subject matter experts with whom the IGT can consult.⁵⁵

e. How the IGT Conducts Its Work

The 2021 Code provides some guidance to the IGT about how to conduct its work, stating that it must meet separately with the rabbi, alleged victim(s) and complainant, and that it may, in “its discretion,” meet with “additional knowledgeable parties” and request information “relevant to the Complaint and the Response.”⁵⁶ The information can include “print or electronic documents, reports, telephone records, computer data, financial data and records, or any other tangible or intangible information.”⁵⁷ The IGT must keep “careful record of all meetings and materials, and log all telephone calls.”⁵⁸ The 2021 Code does not establish a standard of proof that the IGT must adopt.

While the 2021 Code gives the EC discretion to impose a reprimand if a rabbi fails to cooperate with the EC,⁵⁹ the IGT does not have the ability to compel a potential witness to sit down for an interview or produce other material.

f. IGT Report

The 2021 Code instructs the IGT, “[a]s soon as possible after concluding the investigation,” to prepare a written report (the “IGT Report”) in which it recommends to the EC Chair: (1) a unanimous finding that there is sufficient information to proceed to the adjudicatory process; (2) a unanimous finding that there is not sufficient information to proceed to the adjudicatory process; or (3) a split finding, in which case the EC will determine whether to proceed to the adjudicatory

⁵⁴ 2021 Code Section VII.A.

⁵⁵ 2021 Code Section VII.A.

⁵⁶ 2021 Code Section VII.D.1.a.

⁵⁷ 2021 Code Section VII.D.1.a.

⁵⁸ 2021 Code Section VII.D.1.c.

⁵⁹ 2021 Code Section VII.E.2.f.3.

process.⁶⁰ The 2021 Code directs that the IGT Report must be given to the accused rabbi, the complainant and any alleged victim(s), all of whom are given two weeks to respond in writing.⁶¹ The EC Chair is directed to provide copies of the report and responses to EC members within two weeks of receiving the responses “if possible.”⁶²

g. Deliberations by the EC

The 2021 Code contemplates that the EC will hold deliberations before voting on a final decision regardless of whether an IGT was established.⁶³ Before the EC begins its deliberations, the rabbi and the complainant may request an opportunity to be heard by the EC, and the EC is to afford them the opportunity to do so separately from one another, either in person or remotely.⁶⁴ Both the rabbi and complainant must be informed if the other party asks to meet with the EC.⁶⁵ The EC may request that the IGT gather more information before rendering a decision.⁶⁶ Information gathered during the investigation suggested that the current EC has a positive and constructive dynamic during its deliberative process.

h. Decision Rendered by the EC

The 2021 Code provides that the EC should make a diligent effort to reach a decision in an expeditious manner.⁶⁷ Once the EC has reviewed the conclusions of the IGT, the “responses and presentations” of the respective parties, and reached a judgment, the EC Chair is directed to inform all parties about the EC’s decision and the appellate process.⁶⁸ Decisions are to be “carefully drafted citing the correct sections of the Code of Ethics” and clearly set forth “the rationale upon which the decision is based.”⁶⁹ The 2021 Code directs the EC to “keep a record of all aspects of the case including

⁶⁰ 2021 Code Section VII.D.1.e.

⁶¹ 2021 Code Section VII.D.1.f.1.

⁶² 2021 Code Section VII.D.1.f.1.

⁶³ 2021 Code Sections VII.D.1.f.2., VII.D.2.

⁶⁴ 2021 Code Section VII.D.1.f.2.

⁶⁵ 2021 Code Section VII.D.1.f.2.

⁶⁶ 2021 Code Section VII.D.1.f.3.

⁶⁷ 2021 Code Section VII.E.2.

⁶⁸ 2021 Code Section VII.D.1.f.3.

⁶⁹ 2021 Code Section VII.E.2.

correspondence, pleadings, etc.” and that the decision be signed by the EC Chair and include “the date of the vote, the vote count, and the members of the EC who participated in the vote.”⁷⁰

2. Observations

a. EC Members are Dedicated Volunteers

Information learned during the investigation revealed that the volunteer members of the EC embrace their committee responsibilities with a fervent commitment to honoring the aspirational goals of the Code and the Ethics Process and devote a significant amount of time and careful consideration to the cases they adjudicate.

b. EC Members Perform Too Many Roles

Members of the EC are called upon to, among other things, serve as intake advisors, case managers, investigators and adjudicators, and many reported feeling ill-equipped to perform all of these roles. One former EC member lamented, “[w]e are the DA, the defense attorney, and the judge and the jury.”

c. The EC Chair is Tasked With Too Many Duties

Based on information gathered during the investigation, the Ethics Process relies heavily on the EC Chair to keep the Ethics Process running smoothly and affords the EC Chair considerable discretionary power. Concentrating this breadth of responsibility and discretion with the EC Chair risks myriad issues including inefficiency, as well as potential inconsistency from the tenure of one EC Chair to the next.

The centralization of responsibility and discretion with the EC Chair also leaves the Ethics Process vulnerable when trying to resolve conflicts of interest that may arise. Information learned during the investigation indicated that when an EC member has a conflict of interest in a given matter, the person is expected to recuse themselves from the substantive adjudication of the case. Given that the EC Chair has the most institutional knowledge about the Ethics Process, when questions arise, EC members lean heavily on the EC Chair for guidance. The investigation revealed that, in at least one

⁷⁰ 2021 Code Section VII.E.2.

instance in which the EC Chair had a conflict, the EC Chair was recused and refrained from voting but complete recusal from administering the process proved impractical.

d. The 2021 Code Does Not Establish a Clear Standard of Proof for Information Gathering

Under the 2021 Code, the IGT is charged with determining whether there is “sufficient information to proceed to the adjudicatory process,” but it does not set forth a standard by which that determination should be made.⁷¹ In other words, what constitutes “sufficient information”? The lack of a clear standard creates opportunity for incongruous adjudications, particularly over time as the membership of the EC changes.

e. EC Members Are Not Professional Investigators

As previously stated, information gathered during the investigation, and certain provisions of the 2021 Code, indicated an awareness in recent years of the need for EC members to receive training and support from subject matter experts, including lawyers and therapists, in the investigation of sensitive matters. Nonetheless, a number of CCAR members, including members of the EC, expressed the opinion that the investigatory function of the EC would be better left to professionals.

The need for investigative expertise is particularly acute when a rabbi has been accused of unethical behavior involving a minor. For example, based on information gathered during the investigation, in one case, the IGT concluded, without the benefit of first-hand information from any minor, that certain behavior by a rabbi involving minors did not constitute evidence of “grooming.”⁷² A decision about whether certain behavior constitutes “grooming” should not be one that the IGT makes, as it requires subject matter expertise to understand the nuance involved in identifying the motivation behind certain behavior which may appear to a lay person as innocuous or merely

⁷¹ 2021 Code Section VII.D.1.e.

⁷² Grooming is a process by which an offender builds a relationship and emotional connection with a minor that breaks down appropriate boundaries and creates both trust and reliance on the offender, allowing the offender to potentially manipulate and abuse a child while ensuring the secrecy of the abuse.

inappropriate.⁷³ Having volunteer members of an IGT who lack expertise in investigating potential child abuse assess whether an individual is grooming a child is ill-advised, as an incorrect decision could have significant consequences. Moreover, having lay investigators determine the sufficiency of investigative steps or the manner in which interviews with minors might be conducted in furtherance of this determination is not the optimal practice for an issue of such sensitivity.

F. Sanctions

1. Overview

The 2021 Code provides that once the investigatory process is completed, the EC may either dismiss the complaint,⁷⁴ or, with the approval of two-thirds of the voting members of the EC, impose a sanction deemed appropriate based on the “severity of the violation and other attendant circumstances.”⁷⁵

a. Reprimand

The sanction of reprimand is imposed when a rabbi’s violation of the 2021 Code is deemed “minor” and consists of an admonishment that is communicated to the rabbi.⁷⁶ A reprimand is not published. The EC may require the rabbi to participate in “mentoring and/or therapeutic counseling.”

b. Censure

The sanction of censure is imposed when a rabbi’s violation of the 2021 Code is “more serious than those giving rise to reprimand, but not sufficient to require suspension.”⁷⁷ The EC is directed to impose certain “conditions or restrictions” the EC “may deem appropriate to protect those whom we

⁷³ Given the mandate of Alcalaw’s investigation, which did not include reinvestigation of underlying conduct at issue in any given case, there was insufficient evidence gathered to support a finding one way or another if the behavior in any case examined was grooming.

⁷⁴ If the allegations in a given complaint are found to be “without validity,” Section X of the 2021 Code recommends that the EC “make every possible effort to restore the rabbi’s good name and stature,” and directs the EC to take additional measures on the rabbi’s behalf if the EC finds the filing of the unfounded complaint to be “mischievous, malicious or vindictive.”

⁷⁵ 2021 Code Section VII.E.1-2. The suspension or expulsion of a rabbi also requires that a minimum quorum of six regular, voting EC members be present at the time of the vote.

⁷⁶ 2021 Code Section VII.E.2.a.

⁷⁷ 2021 Code Section VII.E.2.b.1.

serve, to prevent recurrence of the violation, and/or to foster rehabilitation of the rabbi.”⁷⁸ The conditions can include a “psychological evaluation, therapy, t’shuvah-rehabilitation counseling and some restriction of rabbinic functions.”⁷⁹ The EC can also elect to publish the rabbi’s censure in the CCAR newsletter, website or member email (“Censure With Publication”), or not (“Censure Without Publication”).⁸⁰ If a censured rabbi fails to satisfy the requirements set by the EC, or the EC determines that the requirements are proving ineffective, the EC may elect to remove the rabbi from all rabbinic functions, or suspend or expel the rabbi.⁸¹

c. Suspension

The sanction of suspension is imposed when a rabbi’s violation of the 2021 Code “causes significant harm to the victim(s) or institutions involved” and/or “fails to recognize the wrongfulness of the rabbi’s actions and to take responsibility for those actions.”⁸² A rabbi whose membership in the CCAR has been suspended due to an ethics violation is directed not to perform rabbinic functions unless approved by the EC or until the suspension is lifted. The sanction of suspension can also apply when a rabbi fails to cooperate in the Ethics Process, or fails to comply with conditions imposed in connection with an earlier censure. If a suspended rabbi fails to comply with the conditions set by the EC at the time of suspension, the EC may move to expel the rabbi.⁸³

d. Expulsion

The sanction of expulsion is reserved for a rabbi whose violation of the 2021 Code is among the “gravest offenses,” or for a rabbi who commits “repeated violations.”⁸⁴ Expulsion is automatically imposed when a rabbi against whom an ethics complaint has been filed “resigns from the CCAR during the process of information gathering but prior to the adjudicatory process.”⁸⁵ A rabbi may be

⁷⁸ 2021 Code Section VII.E.2.b.3.

⁷⁹ 2021 Code Section VII.E.2.b.3.

⁸⁰ 2021 Code Section VII.E.2.b.3.

⁸¹ 2021 Code Section VII.F.3.

⁸² 2021 Code Section VII.E.2.c.

⁸³ 2021 Code Section VII.F.3.

⁸⁴ 2021 Code Section VII.E.2.d.

⁸⁵ 2021 Code Section VII.F.2.

expelled for failing to comply with conditions imposed in connection with an earlier suspension. The decision to expel a CCAR member is referred to the BOA, who must affirm the decision with a minimum of four concurring votes.⁸⁶ In practice, where a rabbi is subject to automatic expulsion for failure to cooperate, the matter is not referred to the BOA.

2. Observations

a. The 2021 Code Does Not Provide Clear Guidance About the Appropriate Sanction for a Given Violation

While the 2021 Code provides guidance as to the circumstances under which certain sanctions should be imposed, it affords the EC complete discretion in how to apply the guidance. Several members of the EC reported that the establishment of an objective standard for determining which sanction should be applied would be constructive. The difficulty in determining, for example, when censure is appropriate is compounded by the broad range of conditions the EC may impose, which can include restricting a rabbi from performing rabbinic functions and publicly announcing the censure.

G. Rules Regarding Confidentiality and Notification

1. Overview

a. The Ethics Process is Confidential

Information learned during the investigation indicated that the Ethics Process has historically been treated as highly confidential in that EC members are advised that they may not share any information about an ethics matter outside of the EC. The Code has been amended to provide greater transparency to congregations and the public when certain sanctions are imposed on CCAR members. The 2021 Code contains provisions that reflect an effort to balance the CCAR's interest in protecting CCAR members from unwarranted reputational harm (consider Section X regarding "Unfounded Allegations") and protecting the broader community from misconduct by rabbis (consider the notification requirements in Sections VII and IX).

⁸⁶ 2021 Code Section VII.E.2.d.2.

b. The EC Chair May Notify a Rabbi's Employer that an Ethics Complaint has been Filed Under Limited Circumstances

The 2021 Code authorizes the EC Chair to notify the rabbi's supervisor or the congregational president that the rabbi has been accused of an ethics violation in certain circumstances: (1) if the allegations relate to conduct that may pose "immediate harm to the congregation or other entity served by the rabbi"; or (2) if the EC Chair believes the rabbi to be a "serious danger to others."⁸⁷ The 2021 Code does not define what constitutes "immediate harm," or "serious danger," ostensibly leaving this initial determination squarely in the discretion of the EC Chair; however, the 2021 Code requires the EC Chair to consult with specified parties within the EC and the CCAR leadership before making any such notification. The 2021 Code further provides that the EC Chair may, after consulting the EC and the CCAR Chief Executive, "urge that the rabbi be removed from rabbinic function prior to the investigation."⁸⁸ Information learned during the investigation indicated that the EC's current practice is to designate an accused rabbi's employer an "alleged victim" and to share the complaint with the employer pursuant to Section VII.C.2 of the 2021 Code.

c. The EC Chair May Notify the Director of Rabbinic Career Services of a Pending Ethics Complaint Under Limited Circumstances

The 2021 Code provides that when the allegation lodged against a rabbi constitutes a "serious accusation" - a term that is undefined in the 2021 Code - the EC Chair will notify the CCAR Director of Rabbinic Career Services.⁸⁹ The 2021 Code authorizes the EC to recommend the suspension of placement services for the rabbi in cases where a "serious accusation" has been made, but could go further to explicitly require the EC to make such a recommendation, and require the CCAR Director of Rabbinic Career Services to honor it if made. Separately, the 2021 Code provides that the EC Chair "should" notify the CCAR Director of Rabbinic Career Services that a complaint is pending against a rabbi "[i]n cases in which there might be a danger to individuals or the community when the

⁸⁷ 2021 Code Section VII.C.4.

⁸⁸ 2021 Code Section VII.C.4.

⁸⁹ 2021 Code Section VII.C.5.

complaint is formally made.”⁹⁰ The 2021 Code does not provide guidance about how the CCAR Director of Rabbinic Career Services should respond to any such notification.

d. The EC Chair Must Make Certain Notifications When a Rabbi is Adjudicated and Sanctioned

The 2021 Code provides that if the EC votes to suspend or expel a member, the EC must notify the CCAR Director of Rabbinic Career Services, who is directed to place the notification in the rabbi’s “permanent file.”⁹¹ Section IX of the 2021 Code specifies that the following details must be “communicated in writing” to the Director of Rabbinic Career Services: (1) the date that the rabbi was censured, suspended or expelled; (2) the nature of the violation, including whether it involved minors; (3) details regarding the t’shuvah rehabilitation process; and (4) the status of the rabbi’s eligibility for placement. The 2021 Code further provides that, in the event a rabbi is suspended or expelled, the EC must notify the president of the rabbi’s congregation or supervisor or employer.⁹²

Publication of the sanction is required when the rabbi is subject to a Censure With Publication, suspension or expulsion, and may be satisfied by including the fact of the sanction in the CCAR newsletter, on the CCAR website or by email to CCAR membership.⁹³ The CCAR is required, under the 2021 Code, to “carefully maintain” a section of the publicly accessible website related to ethical violations of its members.⁹⁴ In compliance with the 2021 Code, the CCAR website currently lists the names of rabbis who have been Censured With Publication, suspended or expelled, and the provision(s) of the Code each was found to have violated. The CCAR website goes further to state:

While the CCAR does not have the power to “defrock” or remove someone’s rabbinic title or status, we believe that an expelled person is unfit to serve as a rabbi under the Ethics Code of the CCAR.⁹⁵

⁹⁰ 2021 Code Section VII.E.2.

⁹¹ 2021 Code Sections VII.E.2.c.4 and VII.E.2.d.3.

⁹² 2021 Code Sections VII.E.2.c.4 and VII.E.2.d.3.

⁹³ 2021 Code Sections VII.E.2.b.4, VII.E.2.c.4 and VII.E.2.d.3.

⁹⁴ 2021 Code Section VII.E.2.g.

⁹⁵ Available at: <https://www.ccarnet.org/ccar-expelled-rabbis/>

e. The Director of Rabbinic Career Services Must Make Certain Notifications Regarding a Rabbi's Prior Ethics Adjudications

The 2021 Code provides that “[w]hen a congregational pulpit selection committee or other prospective employer decides to invite a candidate eligible for placement for an interview,” the Director of Rabbinic Career Services must notify the prospective employer in writing of the information regarding relevant ethics adjudications against the rabbi that was provided to the Director of Rabbinic Career Services by the EC, and provide copies of the notice to the rabbi.⁹⁶ In practice, where such a notification is going to be made, the Director of Rabbinic Career Services affords the rabbi an opportunity to notify the prospective employer first, and then follows with an official notice to the search committee. If a prospective employer seeks additional information, the prospective employer will be directed to ask the rabbi to provide written authorization for the EC Chair to release the information.⁹⁷

The 2021 Code provides that the CCAR need not provide notice to prospective employers when a “single non-criminal infraction” is involved and “an extended period of time” has passed.⁹⁸ The decision not to provide notice in that circumstance must be made in consultation with the EC Chair, the Chief Executive of the CCAR and legal counsel.⁹⁹

f. Congregational Leaders are Asked to Exercise “Discretion” When Seeking to Share Information Related to an Ethics Matter

Based on information learned during the investigation, the current practice of the EC is to remind congregational leaders who receive information from the EC about a relevant ethics case that the Ethics Process is confidential and to request that they exercise “discretion” about how the information is shared.

⁹⁶ 2021 Code Section IX.C.

⁹⁷ 2021 Code Section IX.C.

⁹⁸ 2021 Code Section IX.D.

⁹⁹ 2021 Code Section IX.D.

2. Observations

a. The 2021 Code Contains an Inconsistency Regarding the Notification Requirements Related to the Sanction of Censure

The 2021 Code explicitly states that the EC must provide written notice to the Director of Rabbinic Career Services where a rabbi has been suspended or expelled but does not explicitly direct the EC to do so where a rabbi has been reprimanded or censured. However, Section IX.A, which specifies the information that the EC must include in any written notice to the Director of Rabbinic Career Services, includes the “fact that the person was *censured*, suspended or expelled on a particular date” (emphasis added). In this way, Section IX.A seems to contemplate that the EC would provide notice to the Director of Rabbinic Career Services where a censure is imposed. The fact that the 2021 Code does not direct the EC to alert the Director of Rabbinic Career Services where censure is imposed is also incompatible with the fact that the EC may elect to make the sanction public by imposing Censure With Publication. Information learned during the investigation indicated that in one case adjudicated in 2020 where Censure Without Publication was imposed, the EC advised the rabbi that it would provide notice to the Director of Career Rabbinic Services; in another case adjudicated in 2018 where Censure Without Publication was imposed, the EC did not advise the rabbi of the same.

b. The Code’s Provision Regarding Notification of Pending Matters Could be Clarified

The 2021 Code affords the EC Chair discretion to decide when to notify an employer and the Director of Rabbinic Career Services that an ethics complaint is pending against a rabbi but does not define the seemingly overlapping terms that should guide the decision: “immediate harm to the congregation or other entity served by the rabbi,” “serious danger to others,” and “serious accusation.”¹⁰⁰ The EC’s practice of designating an accused rabbi’s employer an “alleged victim” and sharing the complaint with the employer pursuant to Section VII.C.2 should be codified to promote consistency and predictability.

¹⁰⁰ 2021 Code Section VII.C.4.

H. T'shuvah and Rehabilitation Counseling and Reinstatement

1. Overview

a. Mandate of the T'shuvah Team

Section VIII of the 2021 Code provides for the establishment of a t'shuvah rehabilitation counseling team ("TRaC Team"), whose goal is to "supervise, guide and monitor the rabbi toward *t'shuvah* rehabilitation." A separate TRaC Team is selected for each matter, and the 2021 Code states that the TRaC Team must be "composed of at least two, ideally three colleagues" appointed by the EC Chair. The EC is charged with providing an "orientation" to the TRaC Team. The 2021 Code is silent about what the orientation should consist of or how the EC Chair should use discretion in selecting colleagues for the TRaC Team.

Section VIII defines the role of the "t'shuvah rehabilitation counselor" or TRaC Team member (hereinafter, "counselor"). The 2021 Code notes that the counselor is "not to be an advocate for the rabbi," and that it is "important" that the counselor "maintain appropriate objectivity and confidentiality." According to the 2021 Code, counselors are expected to meet with the rabbi "at least every three months," and "remain in continuous contact with the Chair of the EC and submit written reports following each session with the rabbi." A counselor's meetings with a rabbi "should lead to an awareness of the reality of what [the rabbi] has done and its impact on others. Awareness of the rabbi as an ethical role model and as one who must exemplify holiness should be emphasized."

Section VIII provides that counselors are also "responsible for helping the rabbi meet the requirements for reinstatement" and that reinstatement should "be encouraged and guided by the EC."¹⁰¹ The 2021 Code emphasizes - both in Section V (Ethics Guidelines Concerning Sexual Boundaries) and Section VII (Powers and Procedures for Adjudicating Ethical Violations) the principle that while t'shuvah and "repentance" are always possible, reinstatement to the "sacred work of the rabbinate" is not always possible.¹⁰² The 2021 Code directs that the "primary concern must be the safety of the individuals and communities we serve," and the possibility of reinstatement "must be

¹⁰¹ 2021 Code Section VII.E.2.e.3.

¹⁰² 2021 Code Sections V and VII.E.2.e.2.

considered in a context where the well-being of those who come to us for guidance and teaching is paramount.”¹⁰³

b. Eligibility for Reinstatement

In order to be eligible for reinstatement, the 2021 Code requires that a rabbi demonstrate a “fundamental change in behavior and understanding,”¹⁰⁴ and fulfill the following requirements, among others:¹⁰⁵

- Unequivocal acknowledgment of responsibility for harm done to victim(s), the congregation or institution and the honor of the rabbinate, with specific violations and actions acknowledged;
- An acceptable expression of remorse to those who have been harmed;
- Resolve never to repeat any offense of this nature;
- The making of restitution which may include expenses incurred by the victim(s) and/or other appropriate actions as mandated by the EC;
- An appropriate course of therapy or remediation by a specialized professional approved by the EC. When a colleague is suspended, and sometimes when censured, there is both an intake and final evaluation by a qualified professional, other than the rabbi’s own therapist, chosen by the EC. Both evaluations are made available to the rabbi if he/she requests. A summary of the evaluation is sent to the EC. The rabbi is financially responsible for these evaluations.

A rabbi’s reinstatement must be recommended by at least two counselors, supported by positive assessments by professionals and approved by at least two-thirds of the EC.¹⁰⁶

c. Notifications Related to Reinstatement

The 2021 Code directs that the EC must provide written notice to the rabbi once sanctions have been lifted.¹⁰⁷ Written notice of a rabbi’s reinstatement must also be provided to the Director of Rabbinic Career Services, who, along with the EC Chair and Chief Executive of the CCAR, must

¹⁰³ 2021 Code Section VII.E.2.e.1.

¹⁰⁴ 2021 Code Section VII.E.2.e.3.

¹⁰⁵ 2021 Code Section VII.E.2.e.4.

¹⁰⁶ 2021 Code Section VII.E.2.e.5.

¹⁰⁷ 2021 Code Section VII.E.2.e.5.

maintain copies of the written notification in their files.¹⁰⁸ Notification of the rabbi's reinstatement may also be made to the CCAR membership, if the rabbi provides consent.¹⁰⁹ The 2021 Code does not contain a provision requiring notification of reinstatement to the complainant or victim(s).

2. Observations

a. The T'shuvah Process Lacks Structure, and Its Objectives Are Not Clearly Defined

The 2021 Code identifies “t’shuvah rehabilitation” as the goal of the t’shuvah process, but provides only limited instruction to counselors about how to properly “supervise, guide and monitor the rabbi” toward that goal.¹¹⁰ While a TRaC Team guide has been used in recent years to provide a general overview of the counselor’s role, information learned during the investigation indicated that the process and the TRaC Teams could benefit from developing a clearer picture of what “t’shuvah rehabilitation” looks like and how it is best achieved. Alcalaw heard multiple reports from counselors about a lack of guidance related to how the process should be structured. Several counselors expressed the need for a manual to guide the process, including one who reported: “[The EC] told me, we don’t have a manual, but we use Maimonides . . . my first thought was, I am not qualified for this job.” Another former counselor stated, “It would have been good to have metrics . . . but what are the metrics for somebody’s soul repair?”

Information learned during the investigation revealed that TRaC Teams have often asked rabbis to write one or more letters of apology in order to satisfy the requirement that the rabbi make “an acceptable expression of remorse to those who have been harmed” in order to be eligible for reinstatement. The current practice of the EC is to ask the intended recipient of the apology letter whether they wish to receive it and to honor their request. Ultimately, however, it is the counselors or EC members who determine the sincerity and sufficiency of the apology offered. A number of the people with whom Alcalaw spoke expressed misgivings about this practice, including some complainants, both historical and recent, who expressed discomfort with the idea that the EC could deem an apology sufficient even if the complainant or victim did not. In addition, there might be cases

¹⁰⁸ 2021 Code Section IX.B.

¹⁰⁹ 2021 Code Sections VII.E.2.c.5 and VII.E.2.d.3.

¹¹⁰ 2021 Code Section VIII.

in which the idea of a CCAR-mandated apology letter might be harmful to a victim, who might not share the CCAR's view on t'shuvah and might perceive such a letter as wholly insufficient to address the harm caused by the rabbi.

b. The TRaC Process Would Benefit from Clear Timelines

The 2021 Code provides no timeline for completing the t'shuvah process. The lack of guidelines, coupled with ambiguity regarding how to assess when a rabbi has met the objectives, can cause the TRaC process to be protracted. In practice, TRaC Teams are typically asked to anticipate an 18-month commitment, but the process can extend beyond that period. Several former counselors reported their understanding that reinstatement was expected for a rabbi who complied with the conditions set. Counselors who have served on TRaC Teams more recently expressed an understanding that reinstatement will not always be appropriate.

Information learned during the investigation indicated that in some cases the TRaC process is extended because there is not a good method by which to bring an end to the process where a rabbi is not a good candidate for reinstatement but has otherwise complied with the conditions set. One concern raised was that expelling a rabbi from the CCAR is not the same as defrocking the rabbi, which means that the rabbi could still perform rabbinic functions in the larger Jewish community. This concern has resulted in a reluctance to expel rabbis even when reinstatement is unlikely because the opportunity to mentor - and restrict the rabbinic functioning of - the rabbi would be lost. Information learned during the investigation indicated that some rabbis have elected to resign from the CCAR rather than continue participating in a protracted t'shuvah process.

c. Assessing a Rabbi's Suitability for Reinstatement is a Challenging Task for EC Members, Particularly When the Matter Involves Sexual Misconduct

The 2021 Code tasks counselors with helping the rabbi "meet the requirements for reinstatement."¹¹¹ It further provides that "the safety of the individuals and communities we serve" must be the primary concern when considering the reinstatement of a rabbi whose breach of the Code is "serious." Information learned during the investigation indicated that counselors and EC members

¹¹¹ 2021 Code Section VIII.

are not asked to make determinations about if or when reinstatement may be appropriate in a vacuum. Rather, in recognition of the need for input from experts, the 2021 Code requires that a rabbi undergo one or more psychological evaluations following adjudication and receive a “positive assessment” in order to be eligible for reinstatement.¹¹² Under the EC’s current practice, the rabbi is asked to submit for an evaluation at the beginning of the TRaC process, and then again later when being considered for reinstatement; the results of each evaluation are shared with and considered by the EC when making determinations regarding reinstatement.

While the practice of requiring the rabbi to undergo a psychological evaluation may afford the EC important information from a subject matter expert about the rabbi’s psychological state, it still requires the TRaC team and the EC to assess the rabbi’s conduct holistically to determine if reinstatement is appropriate. This process requires that EC members have a baseline understanding about how to select the appropriate psychologist to conduct an assessment and how to interpret assessments. Several CCAR members expressed their concerns about rabbis being asked to assess whether a rabbi who has committed a sexual boundaries violation is “safe” to return to the rabbinate. One CCAR member, who twice served as a counselor, strongly objected to counselors being expected to assess whether a rabbi is “safe” to return to the rabbinate, noting that “[a]nybody referring to another person as being safe is a fiction that no one can attest to.” Another CCAR member who served as a counselor reported: “I don’t think any rabbi is qualified to work with a sexual predator without proper training. We are not trained to do this.”

d. Restitution is Not Enforced as a Condition of Reinstatement

While the 2021 Code identifies “making restitution” as a condition that a rabbi must meet in order to be eligible for reinstatement,¹¹³ information learned during the investigation revealed that it is rarely, if ever, enforced. Several complainants commented disapprovingly about the CCAR’s failure to require a rabbi seeking reinstatement to make restitution.

¹¹² 2021 Code Section VII.E.2.e.4-5.

¹¹³ 2021 Code Section E.2.e.4.d.

I. The Board of Appeals

1. Overview

a. Composition of the BOA

The BOA reviews decisions made by the EC, and its decisions stand “without further appeal.”¹¹⁴ According to information gathered during the investigation, the BOA was established in approximately 2007, before which appeals to decisions of the EC were made to the Board of Trustees. The Bylaws provide that the BOA “shall be composed of four rabbis and a layperson, and two alternates (one rabbi and one layperson).”¹¹⁵ The BOA Rules provide for a recusal process when conflicts of interest arise.¹¹⁶

BOA members serve for a term of five years and are “appointed by the President with the approval of the Board of Trustees” and “submitted to the Conference for ratification.”¹¹⁷ The Bylaws state that BOA nominees “should not have been either complainants or respondents in any CCAR ethics case in the previous ten (10) years nor should they have served on the Ethics Committee in the previous five (5) years.”¹¹⁸ The investigation revealed that members of the BOA have served for longer than the intended five-year term. One former BOA member, whose term exceeded five years, suggested that two- or four-year terms may be appropriate.

b. BOA Member Training

Based on information gathered during the investigation, the BOA receives significantly less training than the EC. A current BOA member reported that more training is needed.

¹¹⁴ Constitution Article V, Section 2.

¹¹⁵ Bylaws Article VII, Section 2.a.

¹¹⁶ According to the BOA Rules, both the Appellant and the EC Chair can raise an objection to “any particular member(s) of the BOA consider[ing] the appeal,” and recusal decisions are made in accordance with Article VII of the Bylaws.

¹¹⁷ Bylaws Article VII, Sections 2 and 2.a.

¹¹⁸ Bylaws Article VII, Section 2.a.

c. BOA Rules

The Bylaws empower the BOA to create its own rules and procedures so long as the rules do not “conflict with the CCAR Constitution and Bylaws and the Code of Ethics.”¹¹⁹ According to a member of the first BOA, the first BOA “created [its] own rules” called the Rules and Procedures of the BOA (the “BOA Rules”). The BOA Rules, which are not publicly available, provide that they “may be amended from time to time by a unanimous vote of the members of the BOA” and that, in the event of a conflict of rules, at least with respect to hearings before the BOA, the relevant provisions of the Constitution, Bylaws and Code prevail.

The Bylaws give the BOA broad discretion regarding its procedures, but provide that it should review “the appeal by the colleague and the response from the Ethics Committee” and may “schedule a hearing, meet by telephone with the appellant and the chair of the Ethics Committee, or reach its decision based on the documents submitted.”¹²⁰

d. Standard of Review

The BOA Rules adopt the standard set in the Bylaws, which states that the BOA’s review should “proceed with a presumption of correctness” regarding the EC’s decision.¹²¹ The BOA is therefore not to “engage in a new full hearing,” but:

[D]ecide if there was any prejudicial abuse of discretion by determining if the procedure was substantially fair and conformed to [the] CCAR Code of Ethics as well as whether the decision was reasonably supported by the evidence.

The same standard is included in the 2021 Code, but, without explanation, is cited only with respect to the appeal of a reprimand.¹²²

¹¹⁹ Bylaws Article VII, Section 2.d.

¹²⁰ Bylaws Article VII, Section 2.d.

¹²¹ Bylaws Article VII, Section 2.e.

¹²² 2021 Code Section VII.E.2.a.

e. Who Can File an Appeal

The 2021 Code provides that a rabbi may appeal any sanction imposed by the EC.¹²³ If censure is imposed, the 2021 Code gives the rabbi the right to appeal the sanction,¹²⁴ or, more narrowly, the EC's decision to preclude the rabbi from performing rabbinic functions and/or the publication of the censure.¹²⁵ Regardless of the scope of the censure-related appeal, the 2021 Code gives the sanctioned rabbi, the complainant and the alleged victim(s) the opportunity to appear before the BOA.¹²⁶ Notably, the 2021 Code does not extend the parties the same opportunity to appear when a suspension or expulsion is imposed.¹²⁷ The BOA can override any decision by the EC to allow the rabbi to engage in "rabbinic employment with restrictions" while removed from rabbinic function more generally.¹²⁸

If a suspension is imposed, the 2021 Code states that the BOA "may uphold the suspension, levy lesser penalties, or may reject the imposition of suspension without imposing any sanctions."¹²⁹ The 2021 Code further states that the default consequence of a suspension is that the rabbi "may not seek or accept rabbinic employment or engage in the practice of the rabbinate in any institution," but provides that the BOA may direct otherwise.¹³⁰ If the EC permits a suspended rabbi to engage in rabbinic employment "with restrictions," the BOA may direct otherwise.¹³¹

¹²³ 2021 Code Sections VII.E.2.a, VII.E.2.b.3, VII.E.2.c.3 and VII.E.2.d.2.

¹²⁴ 2021 Code Section VII.E.2.b.6.

¹²⁵ 2021 Code Section VII.E.2.b.5 [N.B.: The provision contains a typographical error: "The rabbi shall have the right to appeal to the BOA the decision of the EC [] from all rabbinic functions and/or publish notice of censure in the CCAR newsletter, CCAR website, or CCAR member email."]

¹²⁶ 2021 Code Section VII.E.2.b.5.

¹²⁷ 2021 Code Section VII.E.2.b.5-6.

¹²⁸ 2021 Code Section VII.E.2.b.7.

¹²⁹ 2021 Code Section VII.E.2.c.3.

¹³⁰ 2021 Code Section VII.E.2.c.5 includes the following institutions in the prohibition: "congregations affiliated with the URJ or the World Union for Progressive Judaism, or in institutions associated with the Reform Movement, including but not limited to the URJ, the Hebrew Union College-Jewish Institute of Religion, the Skirball Cultural Center, the Religious Action Center, and the Israel Religious Action Center."

¹³¹ 2021 Code Section VII.E.2.c.6.

If expulsion is imposed, the 2021 Code provides that the BOA may review the decision on referral from the EC or appeal by the sanctioned rabbi.¹³² The BOA may “dismiss the charge, or impose a lesser sanction including suspension in accordance with the procedures outlined above, or impose expulsion from the CCAR.”

Neither the 2021 Code nor the BOA Rules afford a complainant the right to appeal an adjudication by the EC to the BOA. However, the 2021 Code does provide that “[i]f the EC dismisses the complaint, the complainant or alleged victim(s) may appeal to the EC.”¹³³

f. Appellate Procedure

The BOA Rules provide that within 30 days after the EC renders a decision, the rabbi (called the “Appellant”) may appeal by written notification to the BOA Chair and the EC “briefly stating the basis for appeal” (called the “Notification of Appeal”). The investigation revealed that most cases decided by the EC have not been appealed. The BOA Rules state that the Appellant then has 30 days to submit to the BOA and the EC copies of their “statement in support of appeal” (the “Appellant’s Statement”), which should include their arguments and “all relevant documents in the record before the EC.”

The BOA rules provide that within ten days after receiving the Notification of Appeal, the EC Chair must provide the BOA with the EC decision, Appellant’s name and prior and present places of employment. After receiving the Appellant’s Statement, the EC has 30 days to respond by providing the BOA and the Appellant with the “EC’s statement in opposition to the appeal” (the “EC’s Statement”), which shall include the EC’s arguments and all relevant documents.

The BOA Rules afford the BOA 30 days after receiving the EC’s Statement to schedule a hearing, which must be held within 60 days.

g. The Hearing

The Bylaws provide that the BOA may determine the time and place of the hearing, and that at least four members of the BOA must be present for the BOA to convene.¹³⁴ The BOA Rules state that,

¹³² 2021 Code Section VII.E.2.d.2.

¹³³ 2021 Code Sections VII.E.1.

¹³⁴ Bylaws Article VII, Sections 2.b and Section 2.d.

during the hearing, the Appellant presents its case first, followed by the EC. The 2021 Code provides that in matters involving censure, the complainant and alleged victim(s) may also present their case.¹³⁵ The parties may be advised by an attorney during the hearing, but attorneys may not participate in the hearing or address the BOA. Each party is afforded no more than thirty minutes to present its case and answer questions from the BOA, but the BOA can extend the time in its “sole discretion.”

The BOA Rules state that the BOA can also, in its “sole discretion,” request that a material witness appear at the hearing and answer questions from the BOA. According to its rules, the BOA may similarly request “additional written information or documents from any party,” which are shared with the other party.

h. The BOA Decision

The BOA Rules provide that the BOA must issue its decision in writing within 30 days of the close of the hearing, which may occur after the presentations of the parties following the receipt of information requested by the BOA. The Bylaws provide that “[a]ll decisions short of expulsion require a minimum vote of at least three members,” while cases involving expulsion require “a vote of four of the five” BOA members.¹³⁶ With regard to BOA recordkeeping, one former BOA member said that they were always asked to destroy the basic material that had been provided to them once a decision had been made.

2. Observations

a. The Appellate Standard of Review is Confusing

The BOA Rules incorporate several legal standards, including “abuse of discretion,” whether the “procedure was substantially fair” and whether the “decision was reasonably supported by the evidence.” In this way, the BOA Rules are confusing, and ask rabbis and other non-lawyers to apply complicated legal standards. The “abuse of discretion” standard is generally understood in American jurisprudence to call for a narrow review by an appellate judge. Under an “abuse of discretion” standard, an appellate judge is asked not whether they would have made the same decision as the lower

¹³⁵ 2021 Code Section VII.E.2.b.5. Notably, the same language is not incorporated in the provisions of the 2021 Code that pertain to suspension and expulsion.

¹³⁶ Bylaws Article VII, Section 2.b.

court, but whether the lower court’s decision falls within the range of decisions that could reasonably have been reached under the circumstances. While members of the BOA with whom Alcalaw spoke consistently reported their understanding that their inquiry should be focused on whether the underlying process was “fair,” information learned during the investigation indicated that their review was at times more far-reaching than an “abuse of discretion” review.

b. There is Confusion About Whether the BOA Rules Permit Additional Fact-Finding by the BOA

The BOA Rules are internally inconsistent about whether the BOA may supplement the record before the EC by engaging in fact-finding, a practice that is antithetical to traditional appellate review. While the BOA Rules state that in reviewing a decision by the EC, the BOA “is not to engage in a new full hearing,” the BOA Rules also state:

In its sole discretion, the BOA may request any person who offered substantial evidence material to the EC’s decision in the matter to appear at the hearing in order to respond to any questions the BOA deems necessary to reaching its decision. The BOA may request additional written information or documents from any party, in which event the responding party shall provide copies to the other party.

On its face, this provision authorizes the BOA to develop a new record upon which to base its decision and reflects a departure from traditional appellate review, which asks an appellate court to consider only the record upon which the lower court’s decision was based. In American jurisprudence, where an appellate court believes that a more fulsome record is required, the matter is remanded to the lower court to develop the record in the first instance.

c. There is Confusion Among EC and BOA Members About Who Can File an Appeal

The investigation revealed that there is confusion among BOA members about who can file an appeal. While the BOA Rules and 2021 Code appear to be clear that generally a complainant cannot file an appeal, members of the BOA were not clear on whether complainants are permitted to file an appeal. One member said that the BOA takes appeals “even if it comes from a [complainant].” Another BOA member said that the victim had the right to appeal when censure was being sought but not when suspension was being sought, which “doesn’t seem fair.”

II. REPORTED IMPACT OF THE ETHICS PROCESS

With the adoption of the Code in 1991, the CCAR established an intentional and formal system by which to hold its membership accountable to a high ethical standard. Information learned during the investigation indicated that the Code supplanted an ad hoc approach to responding to allegations of misconduct by CCAR members, and since the birth of the Ethics Process in 1991, the volunteers of the EC have adjudicated dozens of cases under the leadership of various EC Chairs and the guidance of an ever-evolving Code. This section explores the impact of the Ethics Process over the years as reported by those interviewed by Alcalaw, and includes the perspectives of complainants, prospective complainants, congregational leaders and rabbis accused of having committed ethics violations. While these accounts span many years and reflect the impact of various iterations of the Code and the Ethics Process, in many instances, the impressions left on the parties have lingered despite changes to the Code. The opportunity to learn from the lived experiences reflected in this collection of voices is a valuable resource to the CCAR as it looks to further evolve its Ethics Process.

A. Impact on Complainants and Would-Be Complainants

1. Some Individuals Reported a Hesitancy to Report Because They Could Not Do So Anonymously

The 2021 Code does not allow for the anonymous reporting of allegations of unethical behavior by a CCAR member in that it requires that a written complaint naming all relevant parties be filed and shared with the rabbi.¹³⁷ Alcalaw heard from a number of people who expressed concerns that the Ethics Process does not provide such an option, particularly because written complaints are shared with the rabbis they accuse. One individual, who was the complainant in an ethics matter, described her experience when the complaint was shared with the rabbi: “They sent the complaint to the rabbi” and “I was very scared.”

A CCAR member expressed dismay that she was denied the ability to report the misconduct of a rabbi anonymously stating, “it is hard to feel cared for by my own organization that I pay dues to, that I still don’t have a path forward to make a report.” Another CCAR member who considered

¹³⁷ 2021 Code Sections VII.B.1 and VII.B.1.b.

filing an ethics complaint reported: “I wish there would have been a way for me to feel comfortable sharing . . . in a confidential way,” noting that it “didn’t feel safe or right” that everything would be shared with the rabbi. Another CCAR member reported that he was encouraged by a leader of the CCAR to file an ethics complaint against the rabbi emeritus of his congregation but would only have been willing to do so anonymously because of potential “ramifications that could be harmful to me and my family,” noting that he did not trust that “there would be support.”

2. Some CCAR Members Reported a Hesitancy to Report Because of Fear It Would Affect Career Prospects

A theme commonly reported was that rabbis who had been subjected to, or had knowledge of, misconduct by CCAR members elected not to report it to the EC because they believed the personal cost would be too high. Alcalaw heard from a number of members who reported having had difficulty navigating contentious or even toxic dynamics between associate and senior rabbis or senior rabbis and rabbis emeritus, but did not see the Ethics Process as a viable option for resolving the conflict, because they feared retaliation by the offending rabbi, negative gossip that would impact future job opportunities or because the EC did not provide the proper forum.

Information learned during the investigation indicated that female rabbis in particular have felt disincentivized from raising complaints about discriminatory and hostile work environments as they feared it would limit future career opportunities. One CCAR member, who reported that she declined to file an ethics complaint against a prominent member of the Reform Movement explained that she perceived the CCAR membership as an “old boys club” that was “not going to hire an outspoken female.” Another CCAR member reported that she declined to file an ethics complaint because she believed it would harm her chances of finding employment in a different congregation. The member shared her perception that similar concerns persist:

[T]here is still an old boys network and no matter how good the ethics process may be, I believe - and women understand - that there are placement ramifications if you bring an ethics complaint against a senior rabbi. All those rabbis talk to each other and then it becomes a difficult and unsettling thing.

Others reported similar concerns. For instance, one CCAR member reported having confronted a rabbi who had sexually harassed her, and that he responded with a veiled threat: “You wouldn’t want to make an ethics complaint because you want to be able to work as a CCAR rabbi.” Another CCAR member described a conflict with an emeritus rabbi which he was “quite sure was a flagrant violation of the CCAR ethics code,” but reported that he did not file an ethics complaint because he came to understand through conversations with colleagues that the EC didn’t have “any leverage” and that it “won’t go anywhere” and “you will look like someone who makes trouble.” Yet another CCAR member, who reported to be speaking on behalf of a group of colleagues, shared that a belief persists that filing an ethics complaint against “senior rabbis using, abusing, channeling their power in harmful ways towards subordinate colleagues” was futile. The rabbi reported that colleagues who had raised such concerns had been discouraged by responsive comments from other CCAR members like “having a boss be a jerk is difficult but not an ethics violation.” The CCAR member further reported that while many people had similar, “horrible” experiences, she believed that they “seem[ed] to be beyond the ethics code’s power.”

3. Some Complainants Reported Concern About Rabbis Managing the Entire Ethics Process

Alcalaw heard reports from complainants about discomfort at the entire ethics process being managed by rabbis. One CCAR member said, “I don’t think victims feel safe coming to a room full of rabbis who in their minds represent the person who abused them. It’s like trying to report police abuse to a police officer.” The CCAR member said, “I wanted us to behave as rabbis, not pseudo-lawyers or judges.”

Others pointed to the close connections between rabbis as potentially counterproductive to the effective operation of the process. One CCAR member said that the “difficulty of a process like this being administered in-house by volunteers when they’re our friends and colleagues . . . when it comes to holding people to account for ethical conduct, it’s not easily done.” The CCAR member said, “Sometimes we let things slide with colleagues that we might not with an underling.” Another CCAR member said, “I don’t know how to do this work when everyone was bunkmates in camp” and

called for the appointment of an “outside professional.” A congregational leader stated, “At our synagogue, we have a lot of cynicism about the CCAR. It is thought of as a union for rabbis. I think it is a totally flawed process because it is a union policing its own people.” A CCAR member said it seemed to him that the CCAR had a “good old boys network and if you had the right creds, contacts, were thought especially well of, then your experience would be better,” which would include “leniency on ethical issues.”

4. The Code Could Include More Trauma-Informed Practices

Almost universally, complainants reported that participating in the Ethics Process was stressful, emotional and taxing. The management of the complainant or victim experience has largely been left to the individual skill and experience of the volunteer EC members. Reportedly, many were conscious of the need for trauma-informed practices and handled this aspect of their work well; others, less so. Alcalaw repeatedly heard reports from complainants that aspects of the process could be more sensitive to the emotional needs of the complainants, particularly with regard to managing a complainant’s expectations surrounding the sharing of information, timelines and possible outcomes.

By way of example, several complainants described being unpleasantly surprised by the receipt of the IGT report without warning. One complainant, who had a generally good experience with the Ethics Process, criticized the EC for the way the report was delivered, stating that they “threw a bomb” when emailing the report with no warning: “it’s almost like they are blind to what they are giving you.” The complainant noted that the IGT report contained statements about the complainant made by the accused rabbi that were harmful, and noted that the communication from the EC about the report could have been better handled. Another complainant reported a similar experience and said, “They should not deliver [the IGT report] without warning.”

5. Complainants Seek More Transparency in the TRaC Process

The 2021 Code does not provide for information to be shared with a complainant or victim regarding a rabbi’s progression through the TRaC process and timeline for possible reinstatement. Concerns about the historical practice of not informing victims were raised by several people. Alcalaw heard from several complainants who expressed significant anxiety about their lack of insight into

whether and when the rabbi could be reinstated. One complainant gave voice to the anxiety associated with not knowing when, and if, an adjudicated rabbi's t'shuvah process would come to an end and said that she could not "move on" while the rabbi was still in the t'shuvah process.

B. Impact as Reported by Rabbis Who Were the Subject of an Ethics Complaint

1. Many Rabbis Reported Feeling a Lack of Support from the CCAR During the Ethics Process

The majority of the rabbis with whom Alcalaw spoke - including several who self-reported a violation and others for whom the allegations proved to be unfounded - reported feeling that the CCAR did not provide sufficient support to them during the Ethics Process. One rabbi, whose case was investigated and then dismissed, reported that he "appreciate[d] the ethics process," but felt that it was "so weighted against the rabbi," and left him feeling "alone and adrift." Another rabbi who was the subject of an ethics complaint reported feeling "really dropped by the CCAR" during the process. Yet another reported feeling "unsupported" from the beginning. Another rabbi who was found not to have committed any ethics violation by the EC emphasized the importance of assigning an advocate to each accused rabbi, noting "I didn't feel that my rabbinic organization had any support of me, I felt it was the CCAR against me." In an effort to address this issue in recent years, mentors are now available to consult with accused rabbis during the pendency of the Ethics Process.

2. The T'shuvah Process is Amorphous and Can Be Protracted

Most of the sanctioned rabbis with whom Alcalaw spoke reported having generally positive impressions of their t'shuvah counselors, but some were critical of what they perceived as a lack of clarity and organization surrounding the process and objectives. One member reported that the TRaC Team "was somewhat disorganized" and "didn't have a plan from start to finish," but declined to "blame them because I don't think they got a lot of direction." Yet another member reported, "It wasn't clear what the goal was."

3. The Psychological Evaluation Requirement Imposes a Heavy Financial Burden on Sanctioned Rabbis

As outlined in the 2021 Code, sanctioned rabbis are required to submit for one or more psychological evaluations by a specialized professional chosen by the EC as a condition of the

post-adjudication process.¹³⁸ In practice, there are a very limited number of specialized professionals approved by the CCAR, and rabbis are required to cover the cost of the evaluation and any related travel expenses, which typically amounts to several thousands of dollars. Most of the rabbis interviewed reported that this requirement posed an unduly heavy burden. One rabbi reported that the evaluation cost \$4,000, plus the cost of traveling to and spending a night in New York City. The rabbi shared her belief that “it was a good assessment and process,” but the exorbitant cost made it feel like paying a “fine.” Another rabbi said that the evaluation cost \$7,500, which included travel. One EC alumni perceived this as unfair: “[w]e’re talking to people with no job, just fired, no income, primary breadwinner and they have to spend thousands of dollars to fly to one city with one person.” Based on information learned during the investigation, the CCAR has offered some rabbis financial support when the cost of the psychological evaluations has caused a hardship.

4. The Confidentiality Requirement Can Have Negative Consequences for Rabbis

Several rabbis who were the subject of an ethics complaint reported that the Ethics Process was not truly confidential in that non-rabbi complainants or lay leaders could disclose information from the Ethics Process without consequence, while the rabbi was prohibited from doing the same. In at least two ethics cases reviewed by Alcalaw, a party to the case shared information from the Ethics Process with the press, and news articles about the matter were published; in one case the sanction imposed was not otherwise subject to publication.

C. Impact as Reported by Congregational Lay Leaders

1. Lack of Notice of a Rabbi’s Prior Ethics Case Has Negatively Impacted the Perception of the CCAR in Some Congregations

Alcalaw spoke with representatives of several congregations whose rabbis were the subject of an Ethics Process, who reported having learned after-the-fact that the rabbi had been the subject of prior allegations of unethical behavior that were not disclosed to the congregation. Based on information learned during the investigation, in each instance considered, the lack of notification did not constitute a departure from the notification provisions of the Code, either because the earlier allegations were

¹³⁸ 2021 Code Section VII.E.2.e.4.f.

dismissed, or resulted in a sanction that did not trigger notification requirements. The congregational representatives reported that the revelation damaged their perception of the CCAR and fostered a desire to see greater transparency in the search process to permit congregations to make informed employment decisions.

In one illustrative case, lay leaders of a congregation reported that they had never been informed by the CCAR that the rabbi they hired had been the subject of a reprimand and undergone a t'shuvah process while serving a previous congregation. The lay leaders further reported that when the EC voted to impose upon the rabbi a sanction of Censure Without Publication based on newly alleged conduct committed while serving their congregation, they first learned about it from a third-party, and only later from the EC. Notably, the Code does not require the EC to notify employers or prospective employers when a rabbi has been the subject of a reprimand. Nonetheless, the lay leaders explained that because they had not been informed that the candidate rabbi had a prior ethics violation during the search process, they assumed that none existed, and the candidate rabbi hadn't reported otherwise. The lay leaders said these experiences led to a "loss of trust" in the CCAR. The lay leaders further shared:

We do not agree that reprimand and censure should be confidential from a synagogue board, so that we can be proactive and not reactive. These things never stay in the dark. For there to be a sacred partnership, it starts with the hiring process. The CCAR acts like a search firm and there needs to be more transparency. We aren't free to hire any rabbi; we have to use the CCAR process.

2. The Confidentiality Surrounding the Ethics Process Impedes Effective Management of Affected Congregations

Information learned during the investigation highlighted the divergent yet interconnected roles that the EC and congregational leadership play when a congregational rabbi has been accused of, or found to have engaged in, unethical behavior, and the need for greater collaboration between the CCAR and the URJ to establish clear protocols for information sharing with congregations about ethics complaints. Some congregational representatives reported that the confidentiality surrounding the Ethics Process has had financial implications for their congregations, as they negotiated or honored

contracts with a rabbi who was, unbeknownst to them at the time, the subject of an ongoing Ethics Process that later led to the imposition of a sanction.

In addition, the filing of an ethics complaint may trigger the need for congregational leadership to determine whether the conduct at issue warrants suspension or termination of the rabbi's employment. The investigation revealed that, in some instances, the confidentiality surrounding the Ethics Process has created complications for the leadership of the affected congregations in this regard.

By way of example, in one instance, the EC voted to suspend a congregational rabbi following an ethics adjudication. As a result, the Board of the synagogue - who knew the details of the rabbi's violation - voted to terminate the rabbi's contract. Thereafter, the question of termination was put to the congregation. The lay leadership reported feeling hamstrung in their ability to share the EC's factual findings with the congregation. Several parties affiliated with the congregation sought support from the URJ, which prepared a letter to share with the congregation that stated in part:

As for membership status in the URJ for a congregation that chooses to have an ongoing relationship with a suspended or expelled CCAR rabbi, there is no current policy on this because it is unprecedented. No congregation has chosen to do this. We would not accept the application of a new congregation whose Rabbi was suspended or who continued to recognize that Rabbi in its letterhead.

* * *

We hope and pray the congregation will follow the Board's impressive leadership and send a clear message that it will not accept anything other than a commitment to the highest ethical standards.

The codification of this unwritten expectation would provide helpful guidance to congregations responding to an ethics-related crisis.

Some collaboration between the CCAR and the URJ has already occurred. The entities jointly created the North American Commission on Rabbinic-Congregational Relationships ("NCRCR"), a commission which has as its mission to "advise, support and nurture healthy relationships among lay leadership and rabbis."¹³⁹ In addition, the URJ employs two directors of consulting and transition management, who are responsible for, among other things, interfacing with the EC about ethics matters and providing direct support to congregations facing crises involving

¹³⁹ Available at: <https://ravblog.ccarnet.org/2020/11/ncrcr-review-process/>

ethics-related issues. While the investigation revealed that there is some collaboration between these URJ employees and the CCAR, the investigation also revealed that the support available to congregational leadership seeking to navigate the turmoil that may result when a CCAR rabbi becomes the subject of an ethics complaint is limited by the lack of resources and well-established policies and protocols between the partner organizations.

3. Congregations Harmed by a Rabbi's Misconduct Seek a T'shuvah Process

Several congregational representatives reported that the imposition of sanctions against their congregational rabbi created hurt and unrest among the congregation that was not addressed by the rabbi during the t'shuvah process:

Our congregation was left traumatized by the conduct of our rabbi and has never experienced an act of t'shuvah from [our rabbi], despite his years of involvement with the CCAR panel that was charged with leading his t'shuvah process.

For a sanctioned rabbi to engage in a t'shuvah process with his former congregation, transparency about the violation would be necessary. The successor to a rabbi who was the subject of an Ethics Process shared his perspective that the confidentiality of the Ethics Process prevented congregational healing:

We understand that healing requires truth and, at the very least, the members of an aggrieved and hurt congregation need to know the truth. Both speedy deliberation and open conversation are denied the congregation.

D. Two Significant Amendments That Have Been Made to the Code

1. The 2021 Code Contains a Provision That Provides Notice When an Ethics Violation Involves a Minor

Section VI of the 2021 Code provides that “any violation of Section V [Ethics Guidelines Concerning Sexual Boundaries] or any section of this Code of Ethics that involves minors is considered to be especially egregious.” This provision, which was added to the Code in 2021, allows for notice to be provided when a rabbi is sanctioned for a sexual boundary violation involving a minor.¹⁴⁰ By way of

¹⁴⁰ In addition, the concept of distinguishing between Type 1 Violations and Type 2 Violations was added to Section V in 2021, providing an avenue to give the public more particularized notice about the type of conduct at issue.

historical example, no such provision existed in the Code in 2000 when ZIMMERMAN was suspended from the CCAR. Based on information gathered during the investigation, while the CCAR made public at the time that ZIMMERMAN was adjudicated to have violated Section A.2 of the Code, a provision related in part to sexual conduct, the CCAR did not communicate details about the nature of the allegations underlying ZIMMERMAN's suspension, including that they involved an underage teenager.

a. Overview of the Zimmerman Ethics Process

In 2000, ZIMMERMAN was the President of HUC-JIR, a past-President of the CCAR, a former Senior Rabbi at Central and a prominent figure in the Reform Movement.¹⁴¹ Information learned during the investigation supports the following procedural and factual overview:

In June 2000, a woman (the "Complainant") filed a written complaint with the EC alleging that ZIMMERMAN had engaged in an inappropriate sexual relationship with the Complainant over a period of years, and that the sexual contact began while he was a rabbi and she was an underage teenage congregant at Central.¹⁴² Following receipt of the written complaint, the CCAR initiated an Ethics Process, and a three-person IGT (then called an Investigative Panel) conducted an investigation, which included, among other things, interviews with the Complainant and ZIMMERMAN.¹⁴³ Based on the information gathered during the IGT's investigation, including its finding that the Complainant was "extremely credible," the EC voted to suspend ZIMMERMAN from the CCAR for at least two years with certain conditions, which included therapeutic components and a prohibition on performing rabbinic functions. The EC Chair informed ZIMMERMAN of the EC's decision in a letter dated November 20, 2000.

¹⁴¹ On January 1, 1997, HUC-JIR published a comprehensive accounting of ZIMMERMAN's career in an article published on January 1, 1997 announcing his inauguration as the seventh president, available at:

<http://huc.edu/news/1997/01/01/rabbi-sheldon-zimmerman-inaugurated-7th-president-huc-jir>.

¹⁴² Given the mandate of its investigation, Alcalaw did not conduct an investigation into the underlying conduct alleged in the complaint against ZIMMERMAN.

¹⁴³ Documents reviewed by Alcalaw indicated that the EC Chair spoke with a second person who alleged that ZIMMERMAN had engaged in an inappropriate sexual relationship with her. ZIMMERMAN declined an invitation to speak with Alcalaw.

Information learned during the investigation indicated that both the EC Chair and members of the CCAR leadership communicated with the Chair of the HUC-JIR Board of Governors in the days after the EC voted to suspend ZIMMERMAN and before ZIMMERMAN resigned as President of HUC-JIR.¹⁴⁴ On November 29, 2000, members of the CCAR leadership engaged in a conversation with the Chair of the HUC-JIR Board of Governors and ZIMMERMAN's attorney, during which ZIMMERMAN's suspension was discussed (the "November 29 Meeting"). In a December 1, 2000 letter from ZIMMERMAN's attorney to the CCAR, which included a letter from ZIMMERMAN consenting to his suspension from the CCAR and agreeing to comply with conditions set by the EC, ZIMMERMAN's attorney recounted the details of the November 29, 2000 Meeting and requested that the CCAR not disclose the details of ZIMMERMAN's conduct to the CCAR Board of Trustees or the public beyond stating that it involved allegations of sexual misconduct in violation of Section A.2 of the Code. While there was insufficient evidence gathered during the investigation to determine the full scope of information regarding ZIMMERMAN's conduct that was shared with the CCAR Board of Trustees, on December 4, 2000, the CCAR Board of Trustees voted to approve ZIMMERMAN's suspension as recommended by the EC.

b. HUC-JIR's Communication About Zimmerman's Suspension

ZIMMERMAN resigned his role as President of HUC-JIR in a letter to the Board of Governors of HUC-JIR dated December 4, 2000, in which he stated that the CCAR had "conducted an ethics inquiry into matters connected to personal relationships of mine that existed before I became President of [HUC-JIR]" and "determined that I should be suspended." HUC-JIR reported ZIMMERMAN's resignation that same day in a letter from its Board of Governors that offered the following explanation:

The events at issue in the Central Conference's action relate to personal relationships of Rabbi Zimmerman's that existed prior to his tenure as president of the College-Institute. Inasmuch as the parties involved have a right to their privacy, further comment by the College-Institute is inappropriate.

¹⁴⁴ The investigation did not reveal evidence of the CCAR leadership having specifically relayed information regarding ZIMMERMAN's suspension to the leadership at Central, except insofar as the Chair of the Board of Governors at HUC-JIR was a Trustee at Central at the time.

c. CCAR's Communication About Zimmerman's Suspension to Membership

News of ZIMMERMAN's suspension was communicated to the CCAR membership in a letter from the CCAR leadership dated December 5, 2000. The letter stated that ZIMMERMAN had been suspended for "violation of Section A(2) of the CCAR's Code of Ethics." The letter did not specify the exact nature of the allegations against ZIMMERMAN, including that they involved sexual contact with an underage teenager, noting "[i]t is the practice of the CCAR not to comment on specific ethics cases" and urging its membership to "respect this policy."

d. Media Reports About the Adjudication

ZIMMERMAN's suspension became a matter of national news. An article published in the New York Times ("NYT") on December 7, 2000, citing information learned from the CCAR and HUC-JIR, reported that ZIMMERMAN had "resigned from his job after being suspended by the movement's rabbinic organization for having entered into 'personal relationships' in the past that the organization said violated its ethical code."¹⁴⁵ According to the NYT article, the CCAR acknowledged that the ethical violations that led to ZIMMERMAN's suspension fell within the portion of the code that dealt with sexual conduct, but declined to provide any further details:

Rabbi Paul J. Menitoff, the conference's executive vice president, said its board approved the penalty on Monday, based on a recommendation by its ethics committee, which looks into complaints about the conference's 1,700 members.

Rabbi Menitoff said that conference rules prevented him from discussing the case but that the board decided Rabbi Zimmerman had violated a part of the ethics code, paragraph 2A, which deals with sexual conduct.

The NYT article further quoted the Executive Vice President as having said that the decision to suspend ZIMMERMAN was "very difficult and painful for everyone involved," but that it had been arrived at by following "the same process that we'd follow with any rabbi in the conference in similar circumstances."

¹⁴⁵ Available at:

<https://www.nytimes.com/2000/12/07/us/suspended-rabbi-quits-seminary-presidency.html>

e. Public Discourse Regarding ZIMMERMAN's Suspension

Given ZIMMERMAN's prominence in the Reform Movement at the time of his suspension from the CCAR, the CCAR's handling of the ZIMMERMAN matter was not without controversy. Materials reviewed by Alcalaw, including public reporting, material in CCAR files and interviews with those involved in the Ethics Process, indicated that some within the Reform Movement felt that the suspension should not have been made public. Others reported having seen ZIMMERMAN's suspension as a strong statement of the CCAR's commitment to not tolerating misconduct, regardless of the prominence of the person accused. Some of the CCAR members involved in the Ethics Process who had knowledge of the scope of the allegations against ZIMMERMAN commented to Alcalaw about what they perceived as a public misconception about the conduct at issue, and lamented that the fealty to maintaining the confidentiality of the process prevented them from being able to correct the narrative.

f. ZIMMERMAN's T'shuvah and Reinstatement

Following his suspension, ZIMMERMAN was assigned a t'shuvah mentoring team and underwent a t'shuvah process. Within months of ZIMMERMAN's suspension, in April 2001, public reporting revealed that ZIMMERMAN had been hired to serve as the Executive Vice President of Birthright Israel USA, Inc. The CCAR ultimately extended the term of ZIMMERMAN's suspension beyond the two years originally imposed to a period of more than four years. In January 2005, the CCAR determined that ZIMMERMAN had satisfied the conditions set for his t'shuvah process, and he was reinstated to full membership in the CCAR. Following his reinstatement to the CCAR, ZIMMERMAN served as a congregational rabbi and a counselor on a TRaC Team.

g. Impact as Reported by the Complainant

The Complainant reported to Alcalaw that the CCAR's failure to publicly refute the "myth" that ZIMMERMAN's transgression was an affair with an adult had a harmful impact. The Complainant noted that the CCAR could have said more about the seriousness of ZIMMERMAN's conduct without breaching the promise of confidentiality, but instead "[t]hey used the confidentiality of the process to prevent the world from knowing that he was a predator." The Complainant raised

this incongruity in a letter to the EC Chair six weeks after ZIMMERMAN's suspension was imposed, in which she expressed gratitude that her anonymity and privacy had been preserved, but misgivings that the public did not have a sense of the underlying circumstances.

The Complainant's account and materials reviewed by Alcalaw indicated that both prior to and following ZIMMERMAN's reinstatement to the CCAR, the Complainant communicated to the CCAR in writing her belief that ZIMMERMAN should be expelled from the CCAR for his conduct. The Complainant renewed her call for expulsion in a letter sent to the CCAR during the pendency of Alcalaw's investigation, citing, among other things, her belief that ZIMMERMAN had "not done *t'shuvah* or provided restitution," and expressing her disapproval that, at the time of his reinstatement, "the CCAR accepted [ZIMMERMAN's] claim of partial responsibility" thereby implying that, as a victim, she too bore responsibility.

The lasting negative impact of the public misconception that persisted cannot easily be measured, especially as it relates to the Complainant, who reported to Alcalaw, "it forced me to continue to keep what happened to me a secret because I feared public shaming" and "it completely alienated me from the Reform Movement."

2. Rabbis Who Resign During the Pendency of an Ethics Process Are Regarded as Expelled

The 2021 Code provides that if a rabbi resigns from the CCAR after an ethics complaint has been filed against them but before the matter has been adjudicated, the rabbi will be "regarded as expelled,"¹⁴⁶ a designation that triggers publication on the CCAR website. This provision was added to the Code to deny rabbis the ability to escape the scrutiny of the EC by resigning. This was not always the case.

By way of historical example, no such provision existed in the Code in 2001 when COOK resigned. Based on a review of relevant case material and related interviews, Alcalaw's investigation revealed that COOK's resignation from the CCAR on April 26, 2001, coincided with the filing of complaints by two female rabbis - both former students of COOK at HUC-JIR - who each alleged that

¹⁴⁶ 2021 Code Section VII.E.2.f.2.

COOK had engaged in behavior that violated Section A.2 of the Code in his role as a professor. Each of the signed complaints was dated April 25, 2001. COOK resigned his membership from the CCAR in a letter to CCAR leadership dated April 26, 2001. In the letter, COOK outlined numerous and varied reasons for his resignation, none of which indicated an awareness of the impending Ethics Process. A review of handwritten notations on the complaints maintained by the CCAR indicated that the EC received the complaints, at least one of which was reported to have been sent by mail, within a matter of days after COOK resigned. COOK's resignation meant that the CCAR no longer exercised any authority over COOK.

III. RECOMMENDATIONS

The CCAR has continually looked for ways to evolve its Ethics Process, including through the long-standing work of the EPR and, most recently, the undertaking of this investigation and the creation of the Task Force on Ethics. In this section, Alcalaw identifies additional ways that the CCAR might evolve its Ethics Process to promote better clarity, notice, efficiency, symmetry of process, impartiality, broader investment and collaboration across the Reform Movement, and, when possible, an emphasis on employing trauma-informed practices for the benefit of accused rabbis and complainants alike.

A. Engage in a T'shuvah Process

While Alcalaw's investigation was ongoing, PERSON made a public statement encouraging community members to contact Alcalaw and expressing an understanding that engaging in t'shuvah would be a component of bringing about healing.¹⁴⁷ Alcalaw heard from individuals impacted by the CCAR's response to complaints of unethical conduct by rabbis over several decades, and some reported feeling harmed by aspects of the process. In recognition of instances in which individuals reported feeling negatively impacted by the CCAR's handling of an ethics complaint, including matters reported by Alcalaw to the Investigation Response Team that predate the creation of the Code, the CCAR should undergo a process of t'shuvah, which might include a reaffirmation of the commitment to use the lessons learned from the personal accounts shared during this investigation to further evolve the Code.

B. Collaborate with Partner Organizations to Expand the Impact of the Ethics Process Within the Reform Movement

1. Collaborate with the URJ and HUC-JIR to Adopt Policies of Reciprocity

The CCAR should seek to partner with the URJ to establish a policy or system by which the URJ requires all affiliated congregations to honor an adjudication by the EC that includes a restriction of rabbinic duties. In turn, the entities should explore the possibility of establishing a system by which

¹⁴⁷ Available at: <https://www.ccarnet.org/ccar-ethics-update-rabbi-hara-person-august-4-2021/>

the URJ could apprise the EC if a CCAR member has been disciplined or terminated from a congregation due to unethical behavior.

The CCAR should similarly seek to partner with HUC-JIR to establish a policy or system by which any HUC-JIR employee (who is also a CCAR member) who is suspended or expelled from the CCAR due to ethics violations risks an adverse employment action by HUC-JIR. In turn, the entities should explore the possibility of establishing a system by which HUC-JIR could apprise the CCAR if a CCAR member has been disciplined or terminated from employment with HUC-JIR due to unethical behavior. The CCAR should support HUC-JIR in exploring the possibility of establishing a process by which a rabbi who has been expelled from the CCAR for committing one or more egregious ethics violations may be defrocked.

2. Collaborate with the URJ to Bolster Its Support of Congregations Impacted by Rabbi Misconduct

Recognizing the challenges that congregational leadership faces after learning that a rabbi in the congregation's employ has been accused of misconduct, the CCAR should explore opportunities to expand its partnership with the URJ. This could include, among other things, creating clear protocols related to the sharing of EC-related information within a congregation and establishing a process by which rabbis in the TRaC process can engage in t'shuvah to repair harm done to the congregations in which they served.

C. Increase Education About the Code and the Ethics Process

The investigation revealed a general lack of familiarity with the Code and the Ethics Process despite additional efforts that have been made in recent years to drive education among CCAR membership and the HUC student body. Continuing to increase awareness about conduct that is prohibited by the Code and the rules that guide the Ethics Process could serve to deter unethical behavior among the membership and promote consistency in the implementation of the Ethics Process. The CCAR should supplement the educational efforts already in place to increase familiarity with the 2021 Code among its membership and the larger Reform community. Such efforts could include the following, among other things:

- Education of CCAR members:
 - Continuing to require CCAR members to affirm on an annual basis that they have read the Code and extending beyond the first year of membership the requirement that a portion of the requisite continuing rabbinic education hours be ethics-related;
 - Requiring CCAR members to affirm on an annual basis that they have not, in the preceding year, been arrested, fired or subject to any disciplinary action by their employer for conduct that might constitute a violation of the Code; and
 - Engaging the EC Chair, or another CCAR member, to spearhead the publishing of advisory ethics opinions using fictionalized fact patterns reflecting scenarios that have come before the EC.
- Education of the public:
 - Creating a streamlined information sheet with an easy-to-read summary of the Ethics Process and step-by-step guide for anyone wishing to file a complaint.
- Education in collaboration with HUC-JIR:
 - Collaborating with HUC-JIR to increase awareness among students about the Code and the Ethics Process, including by requesting that HUC-JIR require students to study and affirm their familiarity with the Code prior to ordination.
- Education in collaboration with the URJ:
 - Collaborating with the URJ to increase awareness among lay leaders and congregants about the Code and the Ethics Process, including by providing updated copies of the Code to all URJ-affiliated congregations and encouraging them to post information about the Code in a prominent place within the synagogue.

D. Implement Additional Measures Designed to Prevent and Address Inter-Colleague Conflict

In an effort to prevent or constructively address conflict between associate and senior rabbis, and senior and emeritus rabbis that may or may not give rise to an ethics complaint, the CCAR should explore opportunities for CCAR members to receive support and training related to navigating critical points of transition in their careers, as well as maintaining proper boundaries in the face of power differentials.

In recognition of the fact that members facing interpersonal conflicts with a colleague may not wish to file a formal ethics complaint, the CCAR should explore the possibility of providing an alternative path for navigating conflicts of this nature, perhaps through an informal mediation or guided conversation process. The CCAR could consider this process in collaboration with the URJ, perhaps as an expansion of NCRCR. Should the CCAR elect to develop such a process, the question

of whether to resolve a conflict through mediation should be left to the complainant, and alleged violations of Section V or VI of the Code should not be eligible.

E. Enhance Recordkeeping

1. The CCAR Should Ensure that the EC and BOA Recordkeeping is Digitized and Organized

The CCAR should augment its current system of recordkeeping by (1) creating a docketing system that uses numbers, instead of rabbis' initials; and (2) ensuring that EC and BOA members keep all material generated as a result of their work, including emails, in a digital format on the system used by the EC in an organized and chronological manner.

F. Expand Section VI of the Code Related to Violations Involving Minors

1. Include Specialized Notification and Sanction Requirements for Sexual Boundary Violations Involving a Minor

The CCAR should give greater weight to Section VI's declaration that violations involving minors are "considered to be especially egregious" by establishing bright line rules related to the notification requirements and sanctions that will apply in cases where a rabbi is alleged to have committed a sexual boundary violation of a minor. These may include, but not be limited to, the following: (1) eliminate the discretionary standard that currently guides when notification is made to congregational leaders that an ethics violation involving a minor has been alleged; (2) narrow the sanction(s) that may be imposed to reflect the "especially egregious" nature of the offense and, at a minimum, mandate expulsion for any Type 2 Violation involving a minor; (3) advise prospective employers of any prior ethics violations involving minors indefinitely; and (4) publish a rabbi's prior adjudication for a sexual boundary offense involving a minor on the CCAR website indefinitely.

2. Mandate that the EC Chair Make Certain Notifications When Potentially Criminal Conduct Involving a Minor is Reported

The Code should include a provision that mandates the EC Chair to promptly make the following notifications if an allegation of potentially criminal conduct by a CCAR member involving a minor is reported: (1) report the critical information to law enforcement in the jurisdiction where the misconduct is alleged to have occurred; (2) notify the leadership of the synagogue where the rabbi is

employed; and (3) ensure notification to the parent(s) or guardian(s) of the minor. Codifying these expectations will help to ensure consistency in response among EC Chairs whose obligations as mandatory reporters may otherwise vary depending on the state in which they live or work.

3. Explicitly Prohibit Boundary Violations Involving Minors

The CCAR should amend Section VI of Code to make clear that boundary violations involving minors, including grooming behavior, constitute a violation of the Code.

G. Revise the Rules and Regulations that Govern the Ethics Process

1. Amend the Code to Establish a Clear Standard of Proof

The CCAR should adopt and codify a clear standard of proof for all fact-finding determinations by an IGT. The standard of proof typically adopted in this context is a preponderance of the evidence standard.

2. Amend the Code to Provide Greater Notice

In the context of a religious membership organization like the CCAR, the determination of what rises to the level of an ethics violation necessarily touches on both religious values and ethical sensibility. Consistent with the ethos of the organization, the CCAR should amend the Code in a way that more concretely advises its membership of the behaviors it expects of them in various aspects of their personal and professional lives. Careful attention should be given to providing clear notice regarding the ethical guidelines CCAR members are expected to follow in the following areas, which have been the subject of complaints before the EC: (1) consensual adult relationships between rabbis and congregants; and (2) sexual activity outside of a committed relationship with partner consent.

3. Amend the Code to Mandate Expulsion for Certain Violations

Consistent with the ethos of the organization, the CCAR should amend the Code to identify any violations for which expulsion from the CCAR is warranted and add a provision to the Code stating a bright line rule.

4. Revise the Rules and Regulations to Eliminate Redundancy and Inconsistency

The CCAR should revise the 2021 Code to eliminate redundancy and inconsistency, and to promote clarity and readability. More broadly, the CCAR should review and conform the 2021 Code,

the Constitution, the Bylaws and the BOA Rules to remove redundancy and inconsistency across the various documents, correct typographical errors, and to ensure uniformity across all provisions.

5. Amend the Code to More Clearly State When Notifications Will Be Made by the EC and Director of Rabbinic Career Services

To better inform complainants, accused and sanctioned CCAR members and congregational lay leaders about when and to whom information regarding pending and adjudicated ethics matters will be shared, the CCAR should revise the Code provisions related to notifications to provide clearer notice. This could include, among other things: (1) codifying the EC's current practice of treating an accused rabbi's employer as an "alleged victim" and providing the employer with a copy of the complaint and other relevant material pursuant to Section VII.C.2; and (2) stating clearly with respect to each sanction (including reprimand) whether the Director of Career Rabbinic Services is required to provide notice to prospective employers.

6. Amend the Code to Create More Predictable Timelines in the Process

In an effort to better manage the expectations of the parties, the Code should be amended to include more predictable timelines, which could include, at a minimum, where the word "promptly" appears in the Code, replacing it with a more precise period of time. Where delays in the process become unavoidable, the Code should afford the EC flexibility, but require notification of the same to the parties.

7. Amend the Code to Advise Parties About the Impact of External Legal Proceedings

In order to provide all parties greater clarity about the possible impact that pursuing an external legal process may have on a related Ethics Process, the CCAR should modify the language in Section VII.E.2.f.1 of the 2021 Code to more clearly apprise the parties that the Ethics Process will be suspended during the pendency of a criminal investigation, prosecution or civil litigation.

H. Expand Opportunities for Ethics Violations to Be Reported

1. Create a Standardized Complaint Form

The CCAR should create a standardized complaint form that would be used for intake, provided as a template to complainants and be publicly available on the CCAR website. This form

would ensure that the alleged conduct is tethered to a specific provision of the Code, which would permit complainants to more easily understand conduct that rises to the level of an ethics violation and provide rabbis accused of ethics violations with more precise notice.

2. Explore the Option of Allowing the EC to Serve as Proxy Complainant in Select Matters

The Code does not currently provide a method by which the EC could examine whether a CCAR member has violated the Code without a formal, written complaint by a named complainant first being filed. To expand opportunities for ethics violations to be reported, the CCAR should explore the possibility of establishing a process by which the EC could initiate an investigation when it learns information - either in an anonymized complaint or through public reporting, for example - that is sufficiently particularized to indicate that a CCAR member may have engaged in an ethics violation. In exploring this possibility, the CCAR should be mindful of the need to adopt a consistent standard to guide the EC about when to elect to undertake further examination of such information. For example, the CCAR could limit the EC's ability to examine such information if it pertains to a limited category of serious ethics violations, such as sexual misconduct or physical violence, and even then only if a majority of EC members agree that the information is sufficiently particularized to possess indicia of reliability.

3. Create a New System for Fielding Inquiries About the Ethics Process and Intaking Complaints

In recognition of the fact that people identified factors that have historically inhibited reporting and the difficulties associated with the EC serving a dual role as advisor and adjudicator, the CCAR should reimagine the first point of contact for individuals who may wish to seek guidance from the CCAR regarding a potential ethics violation. The first point of contact could be an ombudsperson, a CCAR staff member or a volunteer, but should be a neutral third-party (*i.e.*, not a member of the EC), and would ideally be familiar with the Jewish laws and values that underpin the Ethics Process and employ trauma-informed practices. In conceiving of this new system, the CCAR should strive to make reporting allegations of misconduct more accessible, including by affording an opportunity for anonymous reporting, while also advising prospective complainants that providing

limited information or anonymizing their report may limit the EC's ability to effectively investigate or take action against the rabbi who is alleged to have committed the ethics violation at issue.

Among other things, the first point of contact could (1) provide an impartial and confidential forum in which prospective complainants and rabbis considering self-reporting could ask questions regarding the Code and the Ethics Process; (2) apprise callers of all available courses of action, which, depending on the nature of the allegation, may include (a) seeking an informal resolution through mediation, (b) filing a formal ethics complaint with the EC, (c) reporting any criminal conduct to law enforcement, or (d) reporting any misconduct to the CCAR member's employer so that corrective employment action may be taken; (3) inquire about the caller's need for supportive services and refer the caller to any relevant services available through the CCAR or the CCAR's partner organizations; and (4) when applicable, facilitate the intaking of a formal ethics complaint that would then be forwarded to the EC for adjudication.

4. Add a Non-Retaliation Provision to the Code

The CCAR should explicitly prohibit retaliation by a CCAR member against any person who files an ethics complaint or participates in the Ethics Process as a witness or otherwise, and specify that doing so would constitute a violation of the Code.

I. Incorporate More Trauma-Informed Practices into the Code

In recognition of the fact that the Ethics Process can be emotionally taxing for the parties, in upgrading the Ethics Process, the CCAR should seek to build trauma-informed practices into the process wherever possible. One important way to do this is to, wherever possible, provide accused rabbis and complainants with clear sightlines as to the estimated timeline along which the process will proceed, the possible outcomes and with whom their information will be shared. The CCAR could also add a provision to the Code directing the EC to notify complainants and victims when a sanctioned CCAR member is eligible for reinstatement.

J. Require Rabbis to Make Restitution Whenever Possible

As a component of the t'shuvah process, and as contemplated in the 2021 Code, the CCAR should endeavor to require sanctioned rabbis to provide restitution where applicable.

K. Narrow the Focus of the EC

1. Adopt a More Transparent Process for Nominating Prospective EC Members

The CCAR should create a more transparent process for nominating prospective EC members to avoid any appearance of favoritism or bias and to ensure diversity in candidates.

2. Focus the Role of the EC Chair

To make the workload of the EC Chair more manageable and to protect the efficiency, impartiality and sustainability of the Ethics Process, the CCAR should reimagine the role of the EC Chair. Beyond continuing to actively participate in the adjudication of cases, the position should focus primarily on assigning case managers, serving as signatory on all EC adjudications, and ensuring that the EC operates efficiently and in conformity with the Code; the EC chair should no longer manage intake. To realize this change, it may be necessary to expand the roles of the Senior Advisor for Ethics and the case managers to ensure that duties primarily handled by the EC Chair are distributed more broadly. In addition, the CCAR could continue to promote the work already performed by the EC Chair to increase educational opportunities within its membership including by, among other things, having the EC Chair publish advisory ethics opinions based on hypothetical factual scenarios.

3. Remove the Investigative Function from the EC Whenever Possible

Ideally, the primary function of the EC would be limited to what it is uniquely positioned to do, which is to determine through an ecclesiastical lens (1) whether certain conduct by a rabbi, as established by a neutral factfinder, violates the Code; and (2) if so, the appropriate sanction. To accomplish this, the CCAR should examine ways to outsource some or all of the investigative function currently performed by the EC to trained investigators who could be tasked with investigating allegations of unethical conduct, and drafting a report detailing factual findings. This could be accomplished by, among other things, hiring one or more internal investigators or hiring an external investigative firm.

To the extent that outsourcing the investigative function proves cost prohibitive, the CCAR should consider, at a minimum, having one or more individuals with trauma-informed training and specialized experience investigate any allegations of sexual misconduct, given the particular sensitivities

at issue. To the extent that volunteers continue to perform an investigatory function, the CCAR should provide continuing and expanded education related to conducting investigations, including interviewing techniques, report writing, implicit bias and assessing credibility, among other things.

4. Continue and Increase Training to EC and BOA Members

The CCAR should continue and expand upon the educational opportunities provided to members of the EC, and offer the same opportunities to members of the BOA. Relevant trainings could include, among other topics, (1) the effects of trauma, including delayed disclosures; (2) power differentials; (3) emotional abuse and gaslighting; (4) child sex abuse, including grooming behavior, healthy boundaries and the nexus between the two; (5) warning signs of abuse; (6) understanding physical abuse and domestic violence; (7) sexual harassment; (8) discrimination; and (9) implicit bias.

L. Create Clearer Sanctions

1. Eliminate Censure Without Publication

The CCAR should eliminate the discretion of the EC to impose a sanction of censure but not publicize it to the CCAR in its newsletter, website or member email. Violations that do not rise to the level of public censure should fall under the sanction of reprimand.

2. Require Publication of Any Sanction that Includes Any Restriction of Rabbinic Function

Insofar as the ability to impose a sanction of censure that is not made public persists, the CCAR should eliminate the EC's ability to impose "some restriction of rabbinic function" as a condition of censure. Any violation that the EC deems warrants "some restriction of rabbinic function" should require publication.

3. Amend the Code to More Clearly State the Impact of Each Sanction

The CCAR should create greater transparency regarding the consequences for each sanction by systematically stating whether each triggers (1) notification to the rabbi's employer and prospective employers; (2) notification to the Director of Rabbinic Career Services; (3) publication in the CCAR's newsletter, website or member email; and (4) any restriction on the rabbi's ability to perform rabbinic

functions. In doing so, the CCAR should pay particular attention to avoiding overlap between the conditions that may be imposed for various sanctions.

M. Provide Additional Guidance for the T'shuvah Process

1. Identify Possible Outcomes of the T'shuvah Process in Each Case

The operation of the t'shuvah process is challenged at times because it strives to achieve two potentially divergent goals: spiritual growth and eligibility for reinstatement. To address this tension, the EC should more clearly identify at the outset of the t'shuvah process the specific objectives for a given rabbi. This will allow the TRaC Team to tailor their process to achieving those objectives, and afford the rabbi notice about what the possible outcomes of the process may be.

2. Create a Curriculum for TRaC Team Members to Follow

Consistent with the ethos of the organization, the CCAR should devise a general curriculum for the t'shuvah process that each TRaC Team could customize as appropriate to more pointedly address the issues in a given case. The use of a curriculum would promote consistency across cases, provide a process for TRaC Team members to follow, and more clearly identify the objectives that the rabbi who is the subject of the process should hope to meet. In particular, TRaC Teams should consider whether a mandated apology letter is appropriate on a case-by-case basis, taking into consideration the sincerity of the rabbi and whether the communication would be welcomed by the complainant or congregation.

3. Examine the Psychological Evaluation Process

Given the significant financial burden imposed on a sanctioned rabbi who might be facing the loss of employment as a result of a violation of the Code, the CCAR should consider broadening the universe of therapists used to evaluate sanctioned rabbis regionally, and whether the evaluation could be conducted virtually without compromising the integrity of the process.

4. Do Not Indefinitely Hold Rabbis in the TRaC Process

The CCAR should establish predetermined benchmarks at which the EC will assess a rabbi's continued eligibility for reinstatement to better manage the professional and personal expectations of the sanctioned rabbi and the related impact on any complainants. If, during the course of the t'shuvah

process, the TRaC Team and EC determine that the rabbi is no longer eligible for reinstatement, the rabbi and complainant should be so advised.

5. Establish a Process Regarding the Legacy of Rabbis Found to Have Engaged in Unethical Behavior

Establish a process by which to determine how a given CCAR member's legacy should be treated within the CCAR if the rabbi has been found to have engaged in unethical behavior that rises to a certain level of seriousness. This should include, but not be limited to, whether a rabbi should be allowed to be honored along with their classmates after reaching 50 years in the rabbinate.

N. Clarify the Role of the Board of Appeals

1. The Promulgation of the BOA Rules Should Not Be Left to the BOA

The creation and amendment of the BOA Rules should not be left to the four rabbis and one lay person selected to serve on the BOA because such a structure concentrates unnecessary power over the reversal of EC decisions in the hands of a few volunteers. Rather, the BOA Rules should be amended in the same manner as the Code to, among other things, promote consistency between the Code and the BOA Rules. Given that the BOA has the final say on EC decisions, having rules that have been created with consensus and are consistent with other ethics rules is critical. Like the Bylaws and the 2021 Code, the BOA Rules should be available to the public to promote transparency.

2. The BOA Standard of Review Should Be Amended

The BOA standard of review should be revised to provide clearer guidance to the BOA members, typically non-lawyers, about the intended scope of their review. The standard of review should more clearly state that the EC's determinations should be afforded great deference, as they are the body most steeped in the facts and best-positioned to assess the credibility of the parties. The BOA should review sanction determinations for reasonableness and reverse an EC decision only in an exceptional case where the EC's decision was not within the range of reasonable decisions.

3. The BOA Should Not Engage in Additional Fact-Finding

The BOA should not engage in additional fact-finding, but rely solely on the factual record developed by the EC and any arguments presented to the BOA by the parties when assessing the reasonableness of the EC's decision. To the extent that the BOA identifies a factual deficiency in the record, the case should be returned to the EC for further action.

IV. CONCLUSION

While the Code and the Ethics Process have evolved in significant and constructive ways over the years, there are modifications to the Code and the process that could be made to promote better clarity, notice, efficiency, symmetry of process, impartiality, broader investment and collaboration across the Reform Movement and, when possible, an emphasis on employing trauma-informed practices. Alcalaw recommends that the CCAR consider the observations and recommendations detailed in this report to inform its ongoing efforts to upgrade the Ethics Process.