



Professional Ethics for Accountants

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Overview and Importance of This Course

- Stay up-to-date on ever evolving ethics standards
- New era of ethics – violate any regulation, any accounting misstep, any maltreatment of the environment or employees, any misrepresentation – now Ethical Violations
- Anticipatory Ethics is the new paradigm
- Client violates any rule, regulation, makes any misrepresentation - considered an ETHICS violation
- Big fight – Transparency vs. Secrecy: See NOCLAR Section to follow and happening in the legal field with the explosion of the crime-fraud exception to the attorney/client privilege



Basic Themes of the Course

- Ethics – applying accepted morals to daily activities *that are right for the times*
- Where there is a reported metric – there should be an accountant playing a key role in developing the metric and ensuring its accuracy – including forward looking items
- Keep up with recent ethics decisions and investigations and delays in ethics interpretations by the AICPA due to Covid



Learning Objectives

- Identify Ethics Rules and Recent Changes to the AICPA Code of Conduct and International Organizations
- Learn How Sustainability Now Impacts Ethics Through the Sustainability Accounting Standards Board –



Learning Objectives (Con't)

- Learn How the Rules of Ethics are Merging With Government Regulations Globally – DIVERSITY is now a board issue and an ethics issue
- Learn About the Business Opportunities for CPA and Finance Professionals in the Field of Ethics
- Identify Ways to Improve the Ethical Practices of Companies and Organizations



Agenda – Unethical Meetings

- Learning objectives – just a fancy educator’s term for AGENDA
- Unethical NOT to have an agenda for a 20+ minute meeting that will lead to an important decision or evaluation (At Intel, unthinkable not to have a published agenda for a 20+ minute meeting)
- If you are not the leader, and cannot influence the agenda, which must be written, write an agenda for yourself



Opportunities for Accountants

- Great opportunities professionally to expand:
 - Your human capital, skills and knowledge in the field of ethics for accountants
 - Your reputation
 - Your business
 - Accounting's role in helping business serve society
 - <https://www2.deloitte.com/us/en/pages/audit/articles/financial-reporting-considerations-related-to-covid-19-and-an-economic-downturn.html>



New Era - Timeliness

- 120,000+ Complaints in 2021; Appx 70,000 in 2022 to SBA Hotline for Fraud and Misuse of PPP money – 800 pre-2020 was normal for SBA
- JP Morgan Chase/Wells Fargo announce that their employees in concert with its clients cheated the US government on PPP and will cooperate
- Fraud was way up during Covid – too early to tell for 2023 regarding Fraud
- More federal prosecutors at DOJ, SEC, IRS other agencies, DA offices



Polling Question # 1

The most important cause of the recent fraud increase in America is:

- a) Business Pressures
- b) Remote Workforce
- c) Cutting Back on Accounting Resources
- d) Lack of Government Oversight



Understand The Era

- Much tougher to project forward budgets, cash flow due to inflation, supply chain bottlenecks, although AI now helps
- Uncertainty requires more footnotes
- Asset impairment, write-offs, stranded assets, contract modifications – many now predictable and contract contingencies coming into reality



Current Ethics Challenges

- ERTC fraud may reach trillions (See: <https://www.financial-planning.com/news/a-2-trillion-fraud-with-employee-retention-credits-puts-financial-advisors-on-edge>)
- 1.8B fine for big banks, wall street firms on employees using private networks (e.g., WhatsApp, etc.) for communications required to be recorded and archived
- EY pays 100m fine for auditors cheating on ethics tests; KPMG paid 50m two years ago
- PPP fraud, potential 30 years in jail for head of accounting firm (See: <https://www.cpapracticeadvisor.com/2022/08/10/owner/69334/>)



Current Ethics Challenges (Con't)

- PWC – alleged misuse of confidential government tax plans to help secure major global clients – *Marketing ethics*
- May lose big Australian treasury contract; banned by Australia's pension fund and issue will be factor in future central bank contracts - <https://www.reuters.com/world/asia-pacific/australias-largest-pension-fund-freezes-work-with-auditor-pwc-2023-06-02/>



Recent Events

- Jan 2023 – Brazilian retailer Americanas SA – \$4B accounting scandal based on reverse-factoring, supply chain finance loose rules. See: <https://news.bloomberglaw.com/bankruptcy-law/a-4-billion-accounting-bombshell-exposes-supplier-finance-risks> – Now in Bankruptcy, auditor was PWC
- March 31, 2023 – SEC charges Mobile, Atlanta shipbuilder Austal USA/Austal Limited (Australian Firm) premature revenue recognition – going after three executives, future government contracts at stake. See: <https://www.sec.gov/news/press-release/2023-69>
- SAS 134-140 Audit Standards tightened. See: <https://www.mncpa.org/resources/publications/perspectives/october-2021/major-audit-standard-implementation-are-you-ready/>





Recent Events (Con't)

- March 2023 – EVOQUA Water Technologies, inflated recognition of revenue during IPO period \$8.5M settlement. See: <https://www.reuters.com/business/evoqua-water-pay-85-mln-settle-us-sec-accounting-fraud-charges-2023-03-13/>
- FASB to issue new standards on "Accounting for Exchange-Traded Digital Assets and Commodities"
- More Cryptocurrency fines that I could ever list
- Urgent talk to regulate AI as it explodes across the globe – Fastest take up of any technology in history – do not be left behind – EU Passes AI Regulation Act again taking leadership role with this technology as it has with Whistleblower Law, CryptoCurrency, ESG, Human Capital Reporting and many other areas



Ethical Violations - General

- Now include privacy – Facebook, Google – huge fines
- Sexual harassment – Discrimination – Violation of any state, federal law or regulation
- See next slide on Acts Discreditable Rule
- The era of the 5 billion dollar fine: Google, Facebook, and others will join this club
- Wells Fargo & Deutsche Bank continuing issues
- \$20 million tweets – Musk
- Goldman Sachs – Malaysia – Criminal charges
- McKinsey and failure to disclose conflicts – disgorgement of fees - 74m and climbing
- SOFA – The Epstein Money Rule by Herb Rubenstein – JP Morgan settlement of \$290M to Epstein victims
- DEI mis reporting of “success”



Ethics and Client Relations

- Pursuant to the Statements on Standards for Tax Services – CPAs must advise client of all penalties, interest, and adverse consequence if a taxing authority does not agree with the tax position a CPA has recommended
- Full disclosure of risks regarding tax positions is now rising to the level of an ethical violation for failure to comply
- How do you assess the risks associated with ethical violation being reported on the internet, especially when a coverup is charged?
- Err on the side of information client of something more than “worst case scenario,” warn them of “catastrophe potential” – would have helped VW, Wells Fargo
- When asked how much a fine could be, beware fines are and will continue to grow. Give a general range but state that this is no longer predictable



NOCLAR – AICPA/PCOAB Join The Rest of the World

- New NOCLAR Disclosure Reporting Rule by the AICPA goes into effect June 30, 2023
- Back in April 2016 – IESBA Creates new NOCLAR Standard – When a CPA sees a client (or if internal to an organization, the organization itself) do something that is noncompliant with approved ethics or accounting rules, **or any law or regulation**, the accountant has a duty:
 - Notify the client audit committee in writing and sooner the better
 - If you continue your relationship must monitor the situation (if possible)
 - If non-compliant person or entity does not come into compliance within a reasonable period of time, the accountant has a duty to report non-compliance to the auditor, audit committee or in some cases the appropriate governmental and/or licensing authority
- <https://www.journalofaccountancy.com/news/2022/mar/peec-issues-wide-range-ethics-guidance-cpas.html>
- PCOAB announces in June 2023 it has a proposal to adopt NOCLAR – Coming to a theatre near you – very quickly





More on NOCLAR

- The PEEC also adopted conforming changes to the interpretations “Ethical conflicts” for members in public practice and business (ET sec. 1.000.020 and 2.000.020, respectively).
- Official notice of the revisions will appear in the Journal of Accountancy online in June 2022. The new interpretations and revisions are effective June 30, 2023, and early implementation is allowed.
- NOCLAR includes:
 - Financial irregularities, fraud, deviations from GAAP, failure to report material information
 - ESG Reporting Errors and Environmental Accounting Fraud and Misrepresentation
 - Discrimination, Failure to pay women, minorities, LGBTQ equal pay for equal work
 - Sexual harassment which has financial implications to client
 - Any violation of state or federal law including whistleblower retaliation
 - Any violation of any state or federal regulation
 - NOCLAR covered activities will grow over time as the concept of “materiality” grows



More on NOCLAR

- **NEW INTERPRETATIONS AND RELATED REVISIONS: RESPONDING TO NONCOMPLIANCE WITH LAWS AND REGULATIONS**
- These new interpretations come under the ***Integrity and Objectivity Rule***. When effective, they will require all members ***who become aware of NOCLAR*** as described in the Applicability and Scope sections of the interpretations to ***take timely action(s)*** based on the member's particular circumstances. A brief summary of the requirements follows:
 - **MEMBERS IN PUBLIC PRACTICE**
 - The requirements for members in public practice vary based on whether or not a member performs a financial statement audit or review for a client.
 - When the **MEMBER PROVIDES AUDIT OR REVIEW SERVICES TO A CLIENT**, the requirements are as follows:



More on NOCLAR

- Upon becoming aware of **credible information** concerning an instance of NOCLAR (or suspected NOCLAR), the member should obtain an understanding of the matter.
- If the member **identifies or suspects that NOCLAR has occurred or is likely to occur**, he or she should discuss the matter with the appropriate level of management. When appropriate, the member should also discuss the matter with those charged with governance (governance board). In these discussions, the member should advise the parties to take appropriate and timely action.
- Later, the member should **evaluate the appropriateness of management's response** to the NOCLAR.
- The member should **consider whether to withdraw from the engagement** (if possible, under law or regulation), particularly if the client's management and/or governance board fail to respond appropriately to the NOCLAR.
- The member **should document relevant details about the NOCLAR** as described in the interpretation.
- SEE: <https://www.auditconduct.com/post/aicpa-issues-4-new-pronouncements>





More on NOCLAR

- **OTHER MEMBERS IN PUBLIC PRACTICE (NOT PROVIDING FINANCIAL STATEMENT AUDITS OR REVIEWS)**
- Upon becoming aware of credible information concerning an instance of NOCLAR (or suspected NOCLAR), other members in public practice should obtain an understanding of the matter.
- If the member identifies or suspects that NOCLAR has occurred or is likely to occur, he or she should discuss the matter with the appropriate level of management. When appropriate and if the member has access, the member should also discuss the matter with those charged with governance (governance board). In these discussions the member should advise the parties to take appropriate and timely action.
- The member ***should communicate the NOCLAR to the client's auditor***, if within the same firm and consider whether to do so if the auditor is in the same network as the member. Otherwise, the interpretation precludes the member from disclosing the NOCLAR to the client's external auditor.
- The member is encouraged to document the relevant details of the matter as described in the interpretation.



More on NOCLAR

- **OTHER MEMBERS IN PUBLIC PRACTICE (NOT PROVIDING FINANCIAL STATEMENT AUDITS OR REVIEWS)**
- Upon becoming aware of credible information concerning an instance of NOCLAR (or suspected NOCLAR), other members in public practice should obtain an understanding of the matter.
- If the member identifies or suspects that NOCLAR has occurred or is likely to occur, he or she should discuss the matter with the appropriate level of management. When appropriate and if the member has access, the member should also discuss the matter with those charged with governance (governance board). In these discussions the member should advise the parties to take appropriate and timely action.
- The member should communicate the NOCLAR to the client's auditor, if within the same firm and consider whether to do so if the auditor is in the same network as the member. Otherwise, the interpretation precludes the member from disclosing the NOCLAR to the client's external auditor.
- The member is encouraged to document the relevant details of the matter as described in the interpretation.



More on NOCLAR

- The member should determine whether disclosure to the organization's auditor, if any, is appropriate and necessary.
- The member should evaluate the appropriateness of management's and the governance board's response to the NOCLAR.
- ***The member should determine whether to act further in the public interest (e.g., resign from the organization, inform the organization's parent company about the NOCLAR, or report the NOCLAR to an appropriate authority, if permitted by law and regulation).***
- The member is encouraged to document relevant details about the NOCLAR as described in the interpretation.



More on NOCLAR

- **OTHER MEMBERS IN BUSINESS (NON-SENIOR ROLE)**
- Upon becoming aware of credible information concerning an instance of NOCLAR (or suspected NOCLAR), a member who does not serve in a senior role in an organization should obtain an understanding of the matter.
- If the member identifies or suspects that NOCLAR has occurred or is likely to occur, he or she should discuss the matter with his or her immediate supervisor, if any, to determine how to address the NOCLAR. If the supervisor was involved with the NOCLAR, the member should discuss the matter with the next higher level of authority.
- The member should determine whether disclosure to the organization's auditor, if any, is appropriate and necessary.
- ***Further action by the member may include reporting the NOCLAR to an appropriate authority, if permitted by law and regulation.***
- The member is encouraged to document relevant details about the NOCLAR as described in the interpretation.



Academic Community Response to NOCLAR

- Very important reason IESBA passed new rule
- Will promote new academic research on impact of unethical behavior and financial results
- Will lead to publications that will increase public awareness and involvement
- Will promote transparency
- Will influence how accounting is taught
- Will promote study of how often and under what circumstances accountants actually report NOCLAR



Polling Question # 2

Regarding the new NOCLAR rule, how might it impact the way you practice accounting?

- a) This will have a significant impact
- b) This will have a moderate impact
- c) This will have little impact
- d) I am not sure



Whistleblower Developments

- Expect huge expansion of number of whistleblower cases, larger role for accountants
- New Supreme Court Ruling on “scienter” June 2023 – opens door for whistleblower cases:
<https://www.hklaw.com/en/insights/publications/2023/06/us-supreme-court-unanimously-rules-on-false-claims>
- Whistleblower SEC rules change:
<https://www.ballardspahr.com/Insights/Alerts-and-Articles/2022/09/SEC-Amends-Whistleblower-Program-Rules>



Whistleblower Payments

- On May 5, 2023 SEC announces record \$279M whistleblower payment. See: <https://www.cnbc.com/2023/05/05/sec-record-whistleblower-award.html> - Situation not described
- May 2023 – SEC awards whistleblower 12M
- IRS issues several whistleblower payments in 2022 in excess of \$100M
- Total 1.3 B in 2022 payments by SEC for 328 Awards See: <https://www.wiley.law/alert-SEC-Annual-Whistleblower-and-Enforcement-Reports-Signal-Continued-Aggressiveness-in-2023-and-Beyond>
- Many other agencies paying big bucks to whistleblowers
- Expect many more awards to whistleblowers
- Bill before Congress to provide for legal fees for whistleblowers in a broader array of situations



Whistleblower Developments

- Laws in 49 States, 55 Federal Agencies authorized/mandated to pay whistleblowers 10 to 30% of agency recovery
- False Claims Act (cheating government) over 2B in recoveries due with millions paid by DOJ to whistleblowers in 2022. See: <https://www.justice.gov/opa/pr/false-claims-act-settlements-and-judgments-exceed-2-billion-fiscal-year-2022>
- Accountants make great whistleblowers as Thomson Reuters reported back in 2007 – not news here. <https://www.reuters.com/article/us-fraud-survey/whistleblowers-still-best-at-finding-fraud-survey-idUSN1643696820071016>
- Former CEO of Visiting Nursing Association of New York gets 16m for turning in organization – did not know about false billing until he decided to depart...



Whistleblower Developments (Con't)

- New book by Steven Kohn: *Rules for Whistleblowers: A Handbook for Doing What's Right – 2023*
- The [Dodd-Frank SEC Whistleblower Program](#), 15 U.S.C. § 78U-6, provides substantial monetary rewards to whistleblowers who voluntarily provide original information to the SEC where such information results in a successful enforcement action with monetary sanctions exceeding \$1 million.



Whistleblower Paradigm

- Demonization of those who are truth tellers will subside as people get behind them
- Company vs. Whistleblower – now the whistleblower will be the home “team”
- Courage to speak the truth valued by PwC with its “Speak Up Program” since 2013
- FDA Baby Formula Whistleblower – 34 page report took 4 months to get to the chief federal officer in the FDA - Disgrace and baby deaths followed, agency “explanations” – nonsensical



Polling Question # 3

The accounting profession has a unique relationship with whistleblowers because:

- a) Most issues deal with financial matters
- b) Accountants can be whistleblowers
- c) PwC promotes “Speak Up Programs”
- d) All of the above



Recent Changes to Ethics Rules

Identify Ethics Rules and Recent Changes to the AICPA Code of Conduct and International Organizations:

- Ongoing "Convergence Projects with IESBA" including NOCLAR Rules to go into effect on 6/30/23.
- New "Pressure to Breach The Rules" interpretation approved
- New "Knowing Misrepresentations in the Preparation of Information" interpretation approved
- Covered members includes "immediate family members"
- Information System Services Rules –effective date moved to 1/1/23 was 1/1/21
- State and Local Government Client Affiliates, to take effect for Fiscal Years beginning after Dec. 15, 2020, moved to Dec 15, 2021



Recent Changes to Ethics Rules (Con't)

- Staff Augmentation – effective Nov 2021 – Loan staff to client
 - No longer than 30 days
 - Not repeatable
 - Due to unexpected circumstances
 - Not otherwise easy for client to get staff
 - Augmented staff does not participate or in in position to influence attest engagement
- Independence threats would not be at an acceptable level unless all of the above criteria are met
- Excellent rule and path to expanding your business



Future Area of Enforcement Actions

- Cybersecurity – beware of new Russian, North Korean and Chinese hacking of US government financial, security agencies and companies
- SEC: August 31, 2021 – SEC announces three enforcement actions against eight entities for deficient cybersecurity procedures
<https://www.sec.gov/news/press-release/2021-169>
- Office of Pandemic Fraud, DOJ
- 150 new crypto lawyers in DOJ
- Big push against financial crimes



Future Area of Enforcement Actions

- May 2022 - SEC fines BNY Mellon for ESG misstatements/omissions 1.5m
<https://www.sec.gov/news/press-release/2022-86>
- March 2020 SEC Division of Enforcement created the “Climate and ESG Task Force.”
- May 2022 SEC adds 20 staff to Crypto Assets and Cyber Unit in Division of Enforcement, will go up to 50 people soon



More Future Changes

- IFAC endorses creating international sustainability standards board and SASB Standards Board prepares for transition to ISSB – Value Reporting Foundation
- GRI calls for mandatory sustainability reporting
- March 2022 DOJ adds Director of Covid 19 Fraud Enforcement
- Blockchain technology – status of forthcoming rules – what do you know about Blockchain – duty to know/use; How can you help clients?



Cryptocurrency – Digital Assets

- FASB to issue new standards on “Accounting for Exchange-Traded Digital Assets and Commodities” – as stated during its recent May 11, 2022 meeting
<https://www.fasb.org/document/blob?fileName=BMHO20220511.pdf>
- Super volatile market with valuations now very high
- JP Morgan discusses 600B demand in near term for Bitcoin/Cryptocurrency
- Are you competent in this area? At least keep up with the news and key players; Ethical duty to be competent
- <https://www.pwc.com/us/en/industries/financial-services/fintech/bitcoin-blockchain-cryptocurrency.html>



Failure to Include Material Info Leads to Enforcement Action

- AICPA 107 Enforcement Actions in 2021 and 2022 to date:
<https://us.aicpa.org/forthepublic/disciplinaryactions/2021>
<https://us.aicpa.org/forthepublic/disciplinaryactions/2022>
- Misconduct and material misrepresentations by GT Advanced Technologies Inc. (“GT”) in connection the company’s second quarter orms 10-Q for 2014 concerning a supply contract and debt agreement that GT entered into with Apple, Inc. \$538 million dollar matter, failure to perform not promptly reflected – ruling – May 2019 - Ethical failure by OMISSION equals a key victory for transparency over secrecy



Other Recent Enforcement Actions of Interest

- Source of information on SEC actions:
<https://www.sec.gov/divisions/enforce/friactions.shtml>
- Deloitte Japan violation of independence rules between CPA and client
<https://www.sec.gov/litigation/admin/2019/34-85115.pdf> - Respondent CPA is denied the privilege of appearing or practicing before the Commission as an accountant.



Other Recent Enforcement Actions of Interest

- January 2022 Meta (Facebook) hires its first ever chief compliance officer
- 2022 SEC announces 760 enforcement actions, up 9%:
- 13 SEC Actions already in Jan 2023 in crypto alone: projecting a 25% increase over 2022
- Will be enforcement actions regarding Silicon Valley Bank which did not even have a Chief Risk Officer (CRO) from time in 2021 when their CRO left
- June 2023 - SEC dismissing 42 Enforcement Actions after finding staff had access to material that was only for Commission officials ruling on cases due to internal breach for handling data:
<https://www.reuters.com/world/us/us-sec-dismiss-roughly-40-enforcement-cases-after-internal-data-mishap-2023-06-02/>
- May 2023 - SEC Division of Enforcement Director Gurbir Grewal discussed at a securities enforcement conference the importance of cooperation, self-reporting, and self-policing for the SEC-regulated entities. See: <https://www.jdsupra.com/legalnews/securities-enforcement-forum-west-2023-3409938/>



Ongoing Investigations

- JP Morgan – PPP Fraud Admitted and now investigated
- Wells Fargo – PPP Fraud, another \$250m penalty plus a cease desist provision in failure to create an effective home lending loss mitigation program – Sept, 2021
- Not an Advertisement: The Employment Law Group Banner: **Our Law Firm Can Help You to Report Paycheck Protection Program (PPP) Fraud**
- Search warrants being issued – Does the “knowing” accountant have a duty to warn client? Yes and under NOCLAR, someday soon, report client



Ongoing Investigations (Con't)

- Revolution Lighting – Misreporting Revenue – Settled in September 2020 on the day the investigation was announced
- Investigations do not “close” – new rule – SEC in announcement says: *The SEC’s investigation is ongoing.*
<https://www.sec.gov/news/press-release/2020-221>
- GE 200m fine and continuing – Accounting misrepresentations Q4 2020 includes “goodwill charge” – 22B “non-cash charge”



3 minute break





Enforcement Actions

- Credit Suisse to pay \$275 to UK and US in joint enforcement action related to Mozambique Bond offerings and now Credit Suisse is out of business – All CS bond holders lost everything
- Many recent Enforcement Actions by the AICPA in resulted in termination of the member. Know what is currently being investigated
- Anticipatory Ethics – Know Where The Rules Are Going



Enforcement Actions (Con't)

- EY Audit division under investigation now for Wirecard Collapse, Dubai gold company, and NMC Health – suggesting that prosecutors believe behind every unforeseen collapse is an accountant helping management produce fraudulent reports –
- EY ordered to pay 11m to whistleblower by British court and found to have participated in accounting misconduct reaching its senior ranks – Global Image is now at stake



Best Practice - Accountants

- <https://rsmus.com/what-we-do/services/financial-advisory/forensic-accounting-and-fraud-investigations/be-proactive-a-guide-to-internal-fraud-investigations.html>
- Prosecutor's View – Behind every financial misrepresentation is an accountant who helped it happen -



Acts Discreditable Rule

- AICPA Rule 501 – Now applies to any discrimination in violation of state, local or federal laws or harassment
- Beware, plaintiffs' attorneys, and I used to be one, will pick up on this and use it as leverage to get a large settlement in a discrimination or harassment case against an accounting firm or accountant
- Scope of this rule is huge: See - <https://www.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014december15contentasof2014june23codeofconduct.pdf>, 1.400, page 105



Acts Discreditable Rule (Con't)

- A member shall not commit an act discreditable to the profession.
- Old rule, 2015, but gets new teeth every day. Now includes “disclosure of confidential client information.” Hacking = violation? Is there a “reasonable safeguards defense?” What was reasonable yesterday may not be today.
- Consider unequal pay for men, women, minorities – duty in 1950, today illegal
- YOUR SHIELD – USE IT OR ????



Future Agenda of PEEC of the AICPA

- See:
<https://www.aicpa.org/content/dam/aicpa/interestareas/professionalethics/community/downloadabledocuments/peec-three-year-agenda.pdf>
- Great future look as to where ethics issues are headed
- You can participate by phone or become more involved at national PEEC level or your state level Ethics Committee of the State Chapter
- PEEC minutes are available at:
<https://www.aicpa.org/interestareas/professionalethics/community/meetinginfo.html>



When New Rules Become Effective by the AICPA

- Draft rule is presented and Exposure Period is Set for “review and comment”
- After Exposure Period is Complete
- Comments analyzed and possibly incorporated
- Proposed rule will be released with a date to be effective
- Becomes effective on the last day of the month after publication in the ***Journal of Accountancy***
- Unless a different date is stated in the release



Polling Question # 4

When does an interpretation from the AICPA's Professional Ethics Executive Committee become effective?

- a) End of the month after publication
- b) End of the calendar year
- c) Upon publication in Journal of Accountancy



Contingent Fees

- 1.500 in the Standards
- Allowed in certain circumstances, but not when the CPA or firm also performs audit or other attest functions
- Not allowed in preparing original or amended tax return or claim for a tax refund (except in specified circumstances – see: Interpretation 302 – 1)
- <https://www.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014december15contentasof2014june23codeofconduct.pdf>
- Many areas where a contingent fee is appropriate and this could be a new line of business, and profit, for accountants and accounting firms.



Contingent Fees (Con't)

- Allowed when representing client when revenue agent is examining client's tax return
- Allowed when filing an amended tax return claiming refund based on test case involving a different taxpayer or when the refund exceeds the threshold for review of the Joint Committee on Taxation or state taxing authority



Contingent Fees (Con't)

- Requesting a refund when the federal or state authorities improperly assessed interest or penalties
- Request for reduction in property tax assessment
- Representing a client when requesting a private letter ruling or influencing the drafting of a regulation or statute
- **WHEN THERE IS A CONTROVERSY WITH AN OUTCOME IN SOME DOUBT – HRR**



Polling Question # 5

Contingency fees are allowed under the AICPA rules when:

- a) Client agrees to percentage payment
- b) There is some risk or lack of certainty in the final outcome
- c) When combined with reduced hourly rate
- d) All of the above



Referral Fees – Ethical Issues

- Rule 503 - Again different from the legal profession –
- Allowed between CPA's if disclosed to the client
- No limits in the Code on amount of referral fees
- No limits seen in the Code as to type of referral fees, cash, in-kind, all seem to be allowed
- But, can be abused. Lawyer diverted cases to another firm, cost his law firm 3.4m in fees and he got 40% of the loot without client or firm knowing about it. Got disbarred and 3.4m in restitution. No accountant would do that, right?



Polling Question # 6

The AICPA Code of Conduct allows for the payment or receipt of referral fees by CPAs whenever the referral fee is:

- a) Agreed to by the Client in a signed writing
- b) Notice is given to the Client in writing by CPA receiving
- c) Notice is given to the Client in writing by CPA paying
- d) All of the above



International Ethics Standards Board for Accountants

- International Ethics Standards Board for Accountants (***IESBA***)
- Part of the International Federation of Accountants
- Why learn about new international standards – Convergence Projects with the AICPA, that's why – AICPA 5 years behind IESBA
- Globalization



IESBA Issues Completely Revised Code of Ethics –

- Effective in 2022
- Voluntary Code for US Accountants, but could be the future
- Organization works closely with AICPA
- Streamlined, easier to navigate, still 200 pages
- https://www.ifac.org/system/files/publications/files/Final-Pronouncement-The-Restructured-Code_0.pdf
- Great material for future articles, speeches



How Sustainability (ESG) Now Impacts Accounting Ethics

- How Sustainability (ESG) Now Impacts Ethics Through the Sustainability Accounting Standards Board and now the International Sustainability Standards Board/Value Reporting Foundation which moved to Canary Wharf, London from Manhattan signaling loss of US leadership. See: <https://www.ifrs.org/groups/international-sustainability-standards-board/>
- For more information see the Sustainability Accounting Management and Policy Journal or to publish in this journal - <https://www.emeraldgrouppublishing.com/journal/sampj?id=sampj>
- Carbon footprint of company and supply chain



How Sustainability (ESG) Now Impacts

Accounting Ethics (Con't)

- Human Capital Financial Reporting per ISO 30414 – not just environmental numbers, plus governance, employee-centric numbers
- New Credential – *Fundamentals of Sustainability Accounting*, online - exams offered three times a year, in two-month blocks – >3,000 people have registered
- Certainly, political pushback, but it neither be effective nor be around in five years.
- KPMG announces 1.5B investment in ESG in 2023
- Fines going up for ESG reporting misstatements, omissions



Sustainability and Ethics

- Excess pollution, financial irregularities, violations of regulations are now considered ethical violations by many
- Today there is the Sustainability Accounting Standards Board (SASB) a 501 (C)(3) organization- new name - ISSB
<http://www.sasb.org/standards/using-sasb-standards/>
- Amount of fines paid and regulatory citations incurred by companies going up, in many circumstances



SASB/ISSB

- Develop and disseminate sustainability (ESG) accounting standards
- Assist corporations “disclose material, decision-useful information to investors”
- https://fsa.sasb.org/?utm_source=hs_email&utm_medium=email&utm_content=85603467&hsenc=p2ANqtz-8WBtZEprtTX8BiqDtwKEeZlgAyJjhyDQlaiPF9Vu-WU6bLuD4F9GhWYChnx9Kai1BZ1aqplw81w4c2av-x47uttlihsg&_hsmi=85603809



- Human capital metrics – Amount of training per employee, total cost per employee, employee engagement scores, turnover rates (talent retention), benchmarking data compared to competitors for employee survey data; TAILINGS ACCOUNTING/ISO 30414
- Transparency metrics such as the ratio of CEO pay to typical worker pay – source of new tax in Portland, Oregon
- Open Standards Setting Meetings – Like PEEC – you can listen in...
- “Tailings” – Life Cycle Accounting for Extractives



Polling Question # 7

Sustainability (ESG) has become an important source of new business for accountants because:

- a) Correlated with future performance
- b) Measurement getting better
- c) Federal laws require ESG reporting
- d) All of the above



Rules of Ethics Expanding

- Penalties for willful violations soaring over the past five years and expected to continue to climb globally and in the US
- Privacy violations skyrocketing by Apple, Google, META, GoodRX
- NOCLAR provisions are wide ranging and will nab accountants who do not report clients or organizations they know are noncompliant (penalties to be determined going forward)
- Ethics, for many, merging With Government Regulations Globally – violate reg = unethical in eyes of many consumers
- Better ethics ratings for companies
- Correlations shown between ethics ratings and stock prices and profits compared to others in same section with lower ratings



Regulations, Ethics and Business

- Tighter regulatory environment is contributing to companies being unethical to fake that they are complying with new regulations
- Classic example, Volkswagen (VW), with its defeat software regarding emissions levels – Toyota, recently fined and others cheat on Emissions and MPG; DAIMLER 2.8B
- VW CEO admits knowing about cheating in German Court after decades of saying he did not know
- REGULATION AVOIDANCE THROUGH UNETHICAL PRACTICES
- VW Set aside about \$10 billion, but this proved to be a \$60 billion+ problem and regulatory/criminal actions still ongoing against VW – delayed investments in EV



Ethical Duty for Cybersecurity

- Duty to protect client confidentiality as discussed previously
- Legal standard – “prevailing standard of care” which changes every few months; so annual review of computer security issues essential for accountants;
- Ethical standard – do what you can reasonably to do to prevent being hacked and having your client’s data spilled all over the internet; Always look for Red Flags
- SEC requires in 10-Q Item 1A or item 1 or 7 disclosure location – disclosure of known, or should be known, cybersecurity risks and penalties are now real
- WHAT TO DO: HIRE EXPERT: READ:
<https://umbrella.cisco.com/info/cybersecurity-threat-trends-report>



Ethical Duty for Cybersecurity (Con't)

- International Federation of Accountants' excellent 2021 PowerPoint
- https://www.ifac.org/_flysystem/azure-private/uploads/IESBA/Information-Security-and-the-Profession-Calderon.pdf
- Only 5% of companies are properly protected; remote working increases risk
- 95% of cybersecurity breaches are caused by human error
- No duty of accountant to advise client in this area, UNLESS THEY SEE LACK OF PROTECTION FOR FINANCIAL DATA? MIGHT BE AN OPEN QUESTION, but if contract between accounting firm and company is broadly written, there might be both a legal and ethical duty to point this out under NOCLAR
- In-house accountant, employee, likely an ethical duty if accountant sees cybersecurity problems or significant risks – write the memo, take action
- Cost of breach of data, average 3.86 per IFAC
- Cybersecurity, Privacy and Ransomware Insurance – always a good idea, but getting harder and harder to buy





Ethical Duty for Cybersecurity (Con't)

- AICPA Cybersecurity Resource and Risk Management Framework: <https://us.aicpa.org/interestareas/frc/assuranceadvisoryservices/cyber-security-resource-center> and <https://us.aicpa.org/interestareas/privatecompaniespracticesection/qualityservicesdelivery/exploring-cybersecurity>
- SEC to issue new cybersecurity guidelines in 2023. See: <https://www.sec.gov/news/press-release/2023-52>
- In 2022 many SEC actions against Banks for violation of SEC's Identity Theft Red Flags Rule (Regulation S-ID).
- Accounting firms are getting hacked with some regularity: See: <https://www.theaccessgroup.com/en-sg/blog/act-cybersecurity-concerns-accounting-sg/>
- Huge financial, reputational losses for accounting firms and accountants if hacked: See: <https://www.theaccessgroup.com/en-sg/blog/act-cybersecurity-concerns-accounting-sg/>
- AICPA weighs in: <https://www.aicpa-cima.com/news/article/q-and-a-2-cyberattacks-cpa-firms-should-fear>
- Accounting Today - <https://www.accountingtoday.com/opinion/the-importance-of-cybersecurity-in-the-accounting-profession>



Punishment

- Expulsion from the AICPA is an option
- Even admonishment will be publicized by your State organization
- Corrective Action
- Subsequent Monitoring
- Fines are increasing
- Manafort trial put him and the accounting profession on trial



How to Grow Your Business or Influence

Many Business Opportunities for CPA and Finance Professionals in the Field of Ethics

Many Ways to Improve the Ethical Practices of Companies and Organizations

- Participate in professional committees dealing with ethics
- Recommending future changes to ethics rules
- Be a guest lecturer at a college, grad school in ethics for accountants – how to do this?



Ways to Improve Reputation

- Accountants will find a competitive advantage by building their own reputation for being an ‘ethics’ expert
- Write articles, give speeches to external groups
- Internal seminars and internal newsletters, communications



Six Steps To Improve Your Clients' Ethical Compliance

- Step 1. Create or reinforce the position of Chief Ethics Officer, with clear duties, power, budget, direct reports, responsibilities, significant compensation package, clear reporting systems
 - Provide adequate staff
 - High profile communication

CAN BE COMPROMISED EASILY



Step 2 - Improve Your Clients' Ethical Compliance

- Step 2. Set ethical standards, policies and guidelines for your organization
 - For example, write your own code of conduct or update the code of conduct your organization has, provide ethical compliance training, and revise the code of conduct periodically to expand its reach
 - Manage the ethics conversation in your organization



Step 3 - Improve Your Clients' Ethical Compliance

- Step 3. Develop an “ethics hotline” where people can report ethical concerns anonymously.
 - Beware of recent Murray Energy company fine of \$150,000 after it did this
 - Must support the activity once you have done it
 - Clear reports, auditable data, changes in organization documented, anonymity guaranteed



Example of Ethics Hotline

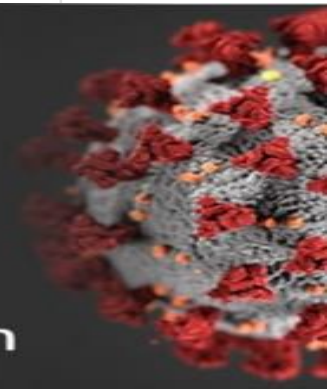
- <https://forms.theiline.co.uk/crimestoppers-covid-fraud-hotline>
- <https://www.shrm.org/resourcesandtools/tools-and-samples/hr-qa/pages/whywouldanemployerwanttohaveawhistleblowerorethics hotline.aspx>

REPORT COVID-19 FRAUD

Contact the National Center for
Disaster Fraud Hotline:

866-720-5721 or

Justice.gov/DisasterComplaintForm





Step 4 - Improve Your Clients' Ethical Compliance

- Step 4. Develop an array (current listing) of ethical threats and challenges that your organization is facing and is expected to face.
 - Update this list periodically
 - Use this list to predict where our ethical challenges will come from in the future
 - New threat: Epstein Money – Every fundraising program must have a **SOFA**.
 - Former Development Director of the Autism Society of Colorado



- **SOURCE OF FUNDS ANALYSIS** – Accountants must create a process, internal control, to vet, investigate the actual source of all money above some threshold (to be set by each client based on the accountant's input, that is being donated. This investigation leads to a report and an approval process by members of the board or executives in the organization not in the development office.
- **Note:** Essential service: It is very painful for a client to give back money already budgeted, or worse yet, already spent. Avoids awful publicity and infighting.



Step 5 - Improve Your Client's Ethical Compliance; Your Reputation

- Step 5. Set ethical standards for your sector or industry.
 - Write about, speak about, publish and be on panels when you attend conferences
 - Take a thought leadership and practice leadership role in setting high ethical compliance standards



Step 6 To Improve Your Clients' Ethical Compliance and Your Business

- Step 6. Develop measures of ethical behavior and rewards for very ethical behavior, publicize it, and provide negative reinforcements (penalties) personally to individuals and groups for their failure to be ethically compliant.
 - There must be a zero-tolerance policy towards failures to be ethically compliant.
 - Create swift adjudication system that is fair



Polling Question #8

One way an accountant can help a client improve their level of ethical compliance is:

- a. Help establish the Chief Ethics Office
- b. Create a hotline for complaints
- c. Develop a detailed set of whistleblower policies
- d. All of the above



Conclusion

- Ethics seen as “good to do” now becoming the minimum standard of behavior
- Social media exposes ethical violations
- Customers will be making decisions based on ethics ratings of companies
- Ethics is a commitment, more than a behavior or group of behaviors
- Managerial integrity = Leadership



Conclusion (Con't)

- Great opportunity for CPAs
- Build your reputation for ethics expertise
- Assist your own firm and your clients in becoming more ethically compliant and ethically exceptional
- This will boost business and improve the profession
- Get ready for the Post-Post Ethics Period



Conclusion (Con't)

- Not only know the Code of Conduct, but also know:
- Examples of recent ethics violations, scope of penalties, how the violator was caught, pending investigations
- Sources of pressures on companies to not be ethically compliant
- Anticipatory ethics or predictive ethics is a source of competitive advantage for CPAs going forward
- The role and activities of the Professional Ethics Executive Committee of the AICPA
- Potential lucrative use of role of contingent fees
- Tell clients you can't do "X" because of the "Acts Discreditable Rule"



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