



Professional Ethics Division  
JEEP Manual  
of Procedures

As of June 2019

Ethics enforcement

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# Chapter 1: Enforcement

## The AICPA, state societies, and ethics committees

- 1.1 The AICPA and the state and territorial professional associations and societies of CPAs (state societies) are private, voluntary membership organizations. One common objective of these organizations is to promote and maintain high professional standards of practice by their members. In furtherance of this objective, the bylaws and codes of conduct (codes) of the AICPA and the state societies set forth the criteria members are expected to observe as a condition of continued membership.<sup>1</sup> The bylaws and codes also describe how members who may have departed from the criteria for continued membership will be investigated, judged, and, if found to have violated the rules, sanctioned. See BL section 3.6.2.2, Professional Ethics Division,<sup>2</sup> and implementing resolution thereunder adopted by Council, the AICPA's governing body.
- 1.2 For example, BL section 7.3, *Disciplinary Action Without a Hearing*, sets forth the circumstances in which members of the AICPA and state societies with similar bylaw provisions may be disciplined without a hearing; these circumstances are described in more detail in chapter 2 of this manual. Furthermore, BL section 3.6.2.3, *Joint Trial Board*, establishes a joint trial board to adjudicate charges against members of the AICPA and state societies under their bylaws pursuant to BL section 7.4, "Disciplining of Member by Trial Board."
- 1.3 The bylaws of most state societies include a grant of similar powers by incorporating Joint Ethics Enforcement Program (JEEP) agreements.
- 1.4 BL section 3.6.2.2 establishes a professional ethics division and its executive committee as follows:

The executive committee of the professional ethics division...shall serve as the ethics committee of the Institute, and there shall be such other committees within the division as the board of directors shall authorize. The executive committee shall (1) subject to amendment, suspension, or revocation by the board of directors, adopt rules governing procedures consistent with these bylaws or actions of Council to investigate potential disciplinary matters involving members, (2) arrange for presentation of a case before the trial board where the committee finds prima facie evidence of infraction of these bylaws or of the Code of Professional Conduct, (3) interpret the Code of Professional Conduct, (4) propose amendments thereto, and (5) perform such related

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<sup>1</sup> See AICPA Professional Standards for the full text of the bylaws and implementing resolutions of the AICPA's governing body (Council) (BL secs. 100–900) or [www.aicpa.org](http://www.aicpa.org).

<sup>2</sup> You can find all bylaw sections referenced in this document in *AICPA Professional Standards*.

services as the Council may prescribe.

- 1.5 Most state societies have ethics committees. The responsibilities of a state society's ethics committee may not be identical to those of the AICPA Professional Ethics Division; however, the division and the state society committees have at least one responsibility in common: to jointly investigate potential disciplinary matters and arrange for the presentation of cases before the trial board when prima facie evidence of a violation of an applicable rule of conduct is found, or arrange for the matter to be settled by a settlement agreement, as discussed in this manual.

## Joint Ethics Enforcement Program

- 1.6 The AICPA and each of the state societies have respective codes of professional conduct that their members are obligated to observe as a condition of membership. The provisions of the codes of many state societies are identical with, or similar to, the provisions of the AICPA Code of Professional Conduct. Because of this identity and similarity, and because it is not uncommon for a CPA to be a member of the AICPA and one or more state societies, the AICPA and virtually all the state societies have joined together to create JEEP.
- 1.7 JEEP was created through agreements between the AICPA and individual state societies. A state society that has such an agreement currently in force is a participating state society.
- 1.8 The purpose of the JEEP agreement between the AICPA and a state society is to permit a single investigation of a joint member to enforce the respective codes and, if warranted, have a single settlement agreement or joint trial board hearing. JEEP also permits state societies to allow the AICPA to investigate state society members who are not also AICPA members.
- 1.9 To accomplish the purpose of JEEP, each participating state society should incorporate the substance of the following provision into its bylaws:

...(a) When a member of the [name] society, regardless of membership in the AICPA, shall be charged with violating these bylaws or any code of professional conduct promulgated hereunder, the said charge shall be initiated in accordance with the terms of the aforesaid agreement, the then operative rules of the joint trial board division and the then operative joint ethics enforcement procedures in effect by virtue of the agreement between the [name] society and the AICPA....

- 1.10 BL section 7.4 notes that if a member resides in a state in which the state society is a JEEP member, disciplinary hearings for that member will be conducted before a hearing panel of the joint trial board.
- 1.11 Although JEEP is a joint enforcement program, state societies and other interested parties should recognize the following:
- a. The codes of professional conduct that JEEP enforces can differ. When charges are brought against a CPA who is a member of the AICPA and one or more participating state societies, such charges must recognize any differences in the respective codes.
  - b. Enforcement of rules against competitive bidding is excluded from the JEEP process by all agreements between the AICPA and the participating state societies.
  - c. On advice of legal counsel and after consideration of the federal antitrust statutes, neither the joint trial board nor the AICPA Professional Ethics Division will participate in the enforcement of rules against contingent fees, solicitation or advertising, and commissions that are not identical to the "Contingent Fee Rule," "Advertising and Other Forms of Solicitation Rule," and "Commissions and Referral Fees Rule" (ET secs. 1.510.001, 1.600.001, and 1.520.001, respectively).

## This manual

- 1.12 The standard JEEP agreement between the AICPA and a state society provides that investigations of potential disciplinary matters are to be conducted in accordance with procedures explained in chapters 3, 4, and 5 of this manual.
- 1.13 BL section 3.6.2.2 provides that the Professional Ethics Executive Committee (PEEC) shall "subject to amendment, suspension, or revocation by the board of directors, adopt rules governing procedures consistent with these bylaws or actions of Council to investigate potential disciplinary matters involving members." Chapters 3, 4, and 5 of this manual constitute such "rules governing procedures" effective September 1994, unless subsequently amended, suspended, or revoked by the AICPA board of directors.
- 1.14 This manual should be used by members of ethics committees and their staff when investigating potential disciplinary matters, entering into settlement agreements, and presenting cases before the joint trial board.
- 1.15 The policies and procedures contained in this manual are subject to interpretation by PEEC. The manual may also be revised at any time.

## Definition

- 1.16 The term *ethics committee* refers to a committee that has the authority to conduct an investigation under the terms of JEEP. An ethics committee may be PEEC, a subcommittee or task force of the AICPA Professional Ethics Division, or the ethics committee of a participating state society or of a chapter of a participating state society.



# Chapter 2: Automatic discipline

## Disciplinary action without a hearing

2.1 BL sections 7.3.1, Criminal Conviction of Member, and 7.3.2, Other Disciplinary Action, read as follows:

7.3.1 Membership in the Institute shall be suspended without a hearing should there be filed with the secretary of the Institute a judgment of conviction imposed on any member for

7.3.1.1 A crime punishable by imprisonment for more than one year;

7.3.1.2 The willful failure to file any income tax return which he, as an individual taxpayer, is required by law to file;

7.3.1.3 The filing of a false or fraudulent income tax return on his or a client's behalf; or

7.3.1.4 The willful aiding in the preparation and presentation of a false and fraudulent income tax return of a client; and shall be terminated in like manner upon the similar filing of a final judgment of conviction; however, the Council shall provide for the consideration and disposition by the trial board, with or without hearing, of a timely written petition of any member that his membership should not be suspended or terminated pursuant to section 7.3.1.1, herein.

7.3.2.1 Membership in the Institute shall be suspended without a hearing should the member's certificate as a certified public accountant or license or permit to practice as such or to practice public accounting be suspended as a disciplinary measure; however, such suspension of membership shall terminate upon reinstatement of the certificate, license or permit. Membership in the Institute shall be terminated without a hearing should such certificate, license, or permit be revoked, withdrawn, surrendered, indefinitely suspended, or cancelled as a disciplinary measure or in connection therewith.

7.3.2.2 The professional ethics executive committee and the board of directors may jointly approve certain governmental agencies and other organizations whose disciplinary actions against a member will permit the Institute to take disciplinary action against that member without a hearing. To be eligible for approval, the governmental agency must be one which has the authority to prohibit a member from either practicing before it or serving as a director, officer or trustee of an entity. To be eligible for approval, an organization other than a governmental agency must be one which has been granted the authority by statute or regulation to regulate accountants. If such approved governmental agency or organization temporarily suspends, prohibits or restricts a member from practicing before it or another governmental agency, or from serving as a director, officer or trustee of any entity, the member's membership in the Institute shall

be suspended; however, such suspension of membership shall terminate upon such agency's or organization's termination of the suspension, prohibition or restriction. If such approved governmental agency or organization bars or permanently or indefinitely suspends, prohibits or restricts a member from practicing before it or another governmental agency, or from serving as a director, officer or trustee of any entity, the member's membership in the Institute shall be terminated.

7.3.2.3A member who has been subjected to any sanction as a disciplinary measure other than or in addition to those sanctions addressed above, by an authority covered in section 7.3.2.1 or section 7.3.2.2, may also be subjected to discipline by the Institute without a hearing pursuant to guidelines established by the professional ethics executive committee and approved by the Board of Directors.

7.3.2.4 Council shall permit the trial board, with or without a hearing, to consider a timely written petition by the professional ethics executive committee or the member that the member should not be disciplined pursuant to this section 7.3.2.

(Note: BL sections 7.3.2.2, 7.3.2.3, and amendments in 7.3.2.1 and 7.3.2.4 were approved by AICPA membership on October 18, 2003. Per BL section 7.7, Disciplinary Sections Not to Be Applied Retroactively, these sections shall not be applied retroactively and therefore can only be applied to offenses of wrongful conduct occurring after that date.)

- 2.2 The automatic disciplinary provisions under section 7.3.2 apply to disciplinary actions taken by certain governmental agencies and other organizations that have been specifically approved (based on established criteria) by PEEC and the AICPA board of directors.<sup>3</sup> They also apply to disciplinary actions taken by any state board of accountancy.
- 2.3 In accordance with section 7.3.2.3, PEEC has established automatic sanctioning guidelines the board of directors has approved. The guidelines are intended to be congruent with the disciplinary action taken by the approved disciplinary body. The AICPA will provide the sanctioning guidelines to participating state societies for use in applying a society's own automatic disciplinary provisions.
- 2.4 The bylaws of a number of participating state societies contain comparable automatic disciplinary provisions. If a participating state society's bylaws do not include provisions for automatic discipline, the state society should investigate the matter under normal JEEP procedures described in the following chapters.
- 2.5 In addition, if the respondent or PEEC petitions the trial board that the automatic discipline

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<sup>3</sup> PEEC and the AICPA board of directors have approved the SEC, the PCAOB, and the IRS Office of Professional Responsibility

provisions should not be applied (as provided for in BL section 7.3.2.4) and the trial board grants such request, the matter should be investigated under normal JEEP procedures described in the following chapters.

- 2.6 The conduct of a member who is disciplined in accordance with BL sections 7.3.1 or 7.3.2 or a similar section of the bylaws of a participating state society is not usually investigated under JEEP. However, BL section 7.3.3, *Trial Board Disciplining Not Precluded*, reads as follows:

Application of the provisions of section 7.3.1 and section 7.3.2 shall not preclude the summoning of the member concerned to appear before a hearing panel of the trial board pursuant to section 7.4. This means that, at least insofar as AICPA membership is concerned, an ethics committee may investigate the conduct of a suspended member (but not a terminated member) and present a case before a hearing panel of the joint trial board.

### Exchange of information

- 2.7 When the automatic disciplinary provisions of the AICPA's bylaws are invoked against a member who is a member of the society, the AICPA will notify the state society. Likewise, when a state society becomes aware of a matter that involves the automatic disciplinary provisions of the AICPA bylaws that society should notify the AICPA Professional Ethics Division.

# Chapter 3: Investigations of potential disciplinary matters

## Functions of an ethics committee

- 3.1 The principal enforcement functions of an ethics committee<sup>4</sup> include investigating potential disciplinary matters involving members and finding no violation or, when finding prima facie evidence of a violation, requiring corrective action, taking disciplinary action (that is, by means of a settlement agreement), or arranging for presentation of a case before a hearing panel of the joint trial board.
- 3.2 A finding of prima facie evidence of a violation of a rule in a state's or the AICPA's code of professional conduct is a formal action of an ethics committee taken after it has reviewed and discussed the results of an investigation that has been conducted in accordance with JEEP procedures.<sup>5</sup>

## Allocation of investigations among ethics committees

- 3.3 One purpose of JEEP is to eliminate duplicate investigations of a potential disciplinary matter by the AICPA ethics division and the ethics committee or committees of one or more participating state societies. To this end, the ethics committee of a participating state society will investigate a potential disciplinary matter involving the society's members, unless (a) that committee has entered into an agreement with the AICPA to act as a concurring only party and have the AICPA ethics division conduct the investigation (referred to as "option 2 election"), (b) the AICPA ethics division has the right to conduct the investigation as discussed in paragraph 3.5, or (c) the AICPA ethics division chooses to enter and complete an investigation due to the lack of a timely investigation discussed in paragraph 3.9.
- 3.4 In addition, the ethics committee of a participating state society may, at the request of the AICPA ethics division, conduct an investigation involving one or more members of the AICPA who are not members of the state society. Similarly, the AICPA ethics division may, at the request of the society's ethics committee, conduct an investigation involving one or more members of the state society who are not members of the AICPA.
- 3.5 The AICPA ethics division will ordinarily refer a complaint or other information to the ethics committee of the appropriate participating state society for investigation in which

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<sup>4</sup> The word *committee* as hereinafter used includes an ethics committee of a state society, the ethics executive committee, subcommittee of the ethics division, or subgroup of any such bodies, as appropriate.

<sup>5</sup> See paragraph 3.15 for discussion of apparent prima facie evidence.

such state society has elected to conduct the investigation on behalf of both parties (referred to as “option 1 election”). However, the division has the right to conduct the investigation when it receives or obtains a complaint or other information

- a. that involves a matter of broad national or international interest.
- b. that arises from litigation or regulatory proceedings involving auditing, accounting, or independence issues.
- c. from a department, agency, regulatory commission, or other unit of the U.S. federal government.
- d. from the PCAOB.
- e. that appears to involve members of more than one participating state society.

3.6 If the ethics committee of a participating state society receives or obtains a complaint or other information that meets one or more of the criteria set forth in a–e of the preceding paragraph, it shall refer the complaint or other information to the AICPA ethics division for investigation, unless the AICPA and state society have agreed to have the state society perform the investigation. In addition, the ethics committee of a participating state society may request the AICPA ethics division to investigate any complaint or other information that has come to its attention. However, in cases in which the matter has been processed under the AICPA’s automatic disciplinary provisions (see chapter 2) and the state society’s bylaws do not include provisions for automatic discipline, the matter will be investigated by the state society even when the state society has made the option 2 election.

## Complaints and other information

3.7 A potential disciplinary matter may come to the attention of an ethics committee as a result of a complaint or other information. A complaint is a written communication to an ethics committee, a participating state society, or the AICPA that alleges, implies, or suggests that a member or a firm has or may have violated one or more provisions of an applicable code of professional conduct. A complaint may be made by a member, a nonmember, or someone who remains anonymous.

3.8 Other information is any information sent to or obtained by an ethics committee that alleges, implies, or suggests that a member or a firm may have violated one or more provisions of an applicable code of professional conduct. Other information may be obtained from any source whatsoever including, but not limited to, programs and activities of the AICPA and participating state societies; federal, state, and local government agencies; newspaper articles; media reports; information available in the public domain (that is, the Federal Audit Clearinghouse, Department of Labor EFAST system, and so on); anonymous written tips; and announced decisions of judicial and

regulatory authorities (for example, the SEC, PCAOB, and state boards of accountancy).

## Conduct of an investigation

### Timeliness

- 3.9 The following represents guidance for the AICPA and participating state CPA societies in performing a timely investigation and does not create any rights to the respondents to an investigation or a conclusion of an ethics investigation in any given time. A timely investigation occurs as follows:
- 3.10 Either the complaint or other information has, if required, been acknowledged within 90 days of receipt or the initial review determining whether to commence an investigation has been completed. If appropriate, an investigation has been initiated, with inquiries sent to the firm or an opening letter sent to a respondent if the respondent's identity is evident.
- 3.11 If an ethics committee fails to initiate its inquiry within 90 days after an AICPA member files a complaint against another AICPA member, the complainant has the right to have the complaint considered by the joint trial board. AICPA Council implementing resolution under BL section 7.4 grants this right.
- 3.12 Within 15 months of receipt of the complaint, or other information (exclusive of any time during which the investigation is deferred pending the completion of litigation), the investigation is completed, a finding is made, and the state society or the AICPA has requested the necessary concurrence.
- 3.13 If the ethics committee of a participating state society fails to meet any of the criteria for a timely investigation after the AICPA ethics division has referred a complaint or other information to the state society's ethics committee, the division may, if it chooses to and so notifies the state society, assume and complete the joint investigation if the ethics committee of. Likewise, if the AICPA ethics division fails to meet any of the criteria for a timely investigation after the ethics committee of a participating state society has referred a complaint or other information to the AICPA ethics division for investigation, the state society may, if it chooses to and so notifies the division, assume and complete the joint investigation.

### Full investigation

- 3.14 An investigation of a potential disciplinary matter must include the following steps (see paragraph 3.12 for discussion of a limited review investigation):
  - a. Identify the respondents in the AICPA's and the appropriate state society's membership records to maintain jurisdiction (paragraphs 3.17–3.20).
  - b. Assign a distinct alphabetic or numeric identification code to the investigation (paragraphs 3.21–3.22).

- c. Acknowledge receipt of the complaint or other information (paragraphs 3.23–3.24).
- d. Make an initial review of the complaint or other information within 90 days of receipt (paragraphs 3.25–3.31).
- e. If the complaint or other information alleges, implies, or suggests the possibility that unidentified members who are partners, shareholders, or employees of an accounting firm or who are employed by another entity may have violated a code of professional conduct, address a letter of inquiry to that firm or entity requesting the names of the respondents (that is, those members responsible for the performance of the engagement in question; paragraphs 3.32–3.34), and request if the firm or entity wishes to elect that the investigation be deferred due to related litigation (paragraph 3.40).
- f. Appoint and instruct an ad hoc investigator, if needed (paragraphs 3.48–3.53).
- g. Send an opening letter to each respondent as each becomes known (paragraphs 3.54–3.58).
- h. Gather and examine evidence (paragraphs 3.59–3.61).
- i. Offer an interview to each respondent and hold the interview if and when the offer is accepted (paragraphs 3.74–3.85; for limited review investigations, see paragraph 3.15).
- j. Prepare an investigation summary for consideration by the committee (paragraphs 3.86–3.87).
- k. Arrange for the committee to review and discuss the evidence obtained and make a finding.
- l. Obtain a committee decision regarding violation of the code of professional conduct.
- m. Obtain a committee decision regarding disciplinary or remedial action to be taken when any violation of a code of professional conduct exists.

### **Investigation based on a limited review**

3.15 In certain circumstances, it may be deemed appropriate to use a limited review process (limited review) in the investigation of potential disciplinary matters. JEEP developed the limited review to expedite the case investigation process when it is determined a similar result could be reached if a full investigation had been performed. Generally, a limited

review is for technical audit and accounting cases.

- 3.16 Under the limited review process, the committee considers and documents factors such as the respondent's current practice; the respondent's recent continuing professional education; how the firm or respondent responded to the allegations or the referring agency findings; any remedial actions taken as a result of such findings by the firm or the respondent; any pattern of noncompliance (including the results of previous cases and the firm's peer review); how the matter was resolved with the referring agency; whether any significant accounting or auditing issues were identified based on reviewing the auditor's report, financial statements, and possibly selected working papers; and whether the respondent is a threat to the public and profession. Selected working papers may be reviewed at the committee's discretion based on information contained in the other documents supplied by the respondent and in high risk areas.
- 3.17 A full investigation is appropriate in cases with complex issues, such as when the respondent disputes the findings of a referring agency or when a conclusion cannot be reached on the findings by reviewing the financial statements and correspondence provided by the respondent.
- 3.18 An interview offer as described in paragraph 3.11*i*. does not occur in a limited review and, therefore, the violations of the code of professional conduct as described in paragraph 3.11*–m* and the communication to the respondent will indicate that there is *apparent* prima facie evidence of violations. All other steps involved in a full investigation are similar in a limited review.
- 3.19 In a limited review, the respondent has the option to reject an offer of disciplinary (modified settlement agreement) or remedial action (modified letter of required corrective action). If the respondent chooses to reject the offer, the committee will perform a full investigation of the matter and the outcome could differ.

### Identification of respondents

- 3.20 A respondent in an ethics investigation is a member whom the ethics committee conducting an investigation has identified as potentially responsible for an alleged or implied violation of an applicable code of professional conduct. There may be more than one respondent in an investigation.
- 3.21 As soon as they are known, the names of respondents should be identified in some confidential manner in the appropriate membership records of the AICPA and participating state societies to prevent resignation and consequent loss of jurisdiction.
- 3.22 From the data in the complaint or obtained during the initial review, an ethics committee conducting an investigation identifies one or more members as the initial respondents. This designation does not imply that those members have violated an applicable code of professional conduct; it only means that, if prima facie evidence or apparent prima facie



evidence of a violation is found, the ethics committee may hold them responsible for the violation.

- 3.23 The initial designation of respondents is not conclusive. The committee may, as the investigation proceeds, designate additional members as respondents. However, once an opening letter is sent to a respondent, the investigation must proceed to a finding with respect to that respondent.

#### Identification code for investigations

- 3.24 The staff of the AICPA ethics division assigns a distinct alphabetic or numeric (or combination) identification code to each complaint and investigation that it conducts or refers to the ethics committee of a participating state society. This code is placed on all correspondence, internal communications, and documents obtained during the investigation.
- 3.25 The ethics committee of a participating state society should arrange for the assignment of a distinct alphabetic or numeric (or combination) identification code to each complaint and investigation that it conducts. The committee should also assign a code to investigations that it refers to the AICPA ethics division. The assigned code should be placed on all correspondence, internal communications, and documents obtained during the investigation.

#### Acknowledgment of a complaint or other information

- 3.26 Each complaint should be acknowledged in writing. An acknowledgment letter should ordinarily include the following:
- 3.27 Acknowledge receipt of the complaint or other information.
- 3.28 Request additional information as needed, or state that the committee will contact the complainant or supplier of the information if further information is needed.
- 3.29 State that an initial review and, if necessary, an investigation will be conducted in accordance with the procedures of JEEP and the (*named*) participating state society or societies.
- 3.30 State that the procedures of JEEP require that any investigation be conducted in a confidential manner, and that the name of the member will not be published unless the matter is presented to a hearing panel of the joint trial board and the panel finds one or more members guilty of violating the AICPA Code of Professional Conduct, or the investigation results in the issuance of a settlement agreement that includes admonishment or affects membership rights (suspension or expulsion).
- 3.31 State that the results of the investigation will be shared with the complainant on a confidential basis.

- 3.32 Indicate that information regarding the status and disposition of an investigation involving governmental agency referrals (for example, the U.S. Department of Health and Human Services or the Department of Labor) will be made available to the referring agency.
- 3.33 The identity of the complainant should not be disclosed to anyone unless necessary to the investigation; for example, if a client alleges that a firm or member retained the client's records in violation of the "Records Requests" interpretation (ET sec. 1.400.200) it will be necessary to disclose the identity of the complainant.

#### Initial review

- 3.34 An initial review should be made of each complaint or other information to determine whether further investigation is warranted. Further investigation is not warranted (that is, dismissal of the case is appropriate) if it is determined that any one of the following is true:
  - 3.35 No provision of a code of professional conduct applies to the subject matter of the complaint or other information.
  - 3.36 The allegation, implication, or suggestion contained in the complaint or other information does not constitute a violation of a code of professional conduct, even if found to be true.
  - 3.37 The facts, circumstances, and respondents to be investigated are identical with those of an existing or closed JEEP investigation.
  - 3.38 None of the persons involved are members of a participating state society or the AICPA.
  - 3.39 AICPA Council implementing resolution under BL section 7.4 grants the right to an AICPA member who files a complaint against an AICPA member to have that complaint considered by the joint trial board if an ethics committee dismisses the complaint under any of the preceding circumstances. If an ethics committee dismisses the complaint, that fact must be communicated to the complainant.
  - 3.40 As part of its initial review, an ethics committee or its designee may hold discussions with representatives of the firm involved, orally question one or more members, call for further information from any source (including the complainant or source of the other information), or take any appropriate related actions, or any combination of these.
  - 3.41 If the information comes to the committee's attention in the form of a newspaper article or media report, the committee will need additional information to conduct an initial review. Accordingly, a letter is issued to the firm or the potential respondent with a request for documents (for example, complaint in lawsuit and financial statements) that would be subjected to an initial review. A committee member and staff then conduct an initial review and determination whether to open an investigation.
  - 3.42 If a complaint or other information has been referred from another ethics committee, the

committee conducting the initial review will promptly advise the referring committee if the complaint is dismissed.

- 3.43 In the initial review, if discussions are held with representatives of the firm involved, those representatives should be advised in writing whether (a) the AICPA ethics division and the ethics committee of the participating state society agree that no further investigation will be undertaken or (b) an investigation will be conducted.
- 3.44 If no further investigation will be undertaken, the written communication to the firm's representatives should also advise them that the matter could be reopened if additional evidence becomes available. If an investigation is to be conducted and if a letter of inquiry is to be sent to the firm, a separate letter to the firm's representatives advising them that an investigation will be conducted may be unnecessary.

### Inquiry of a firm

- 3.45 An ethics committee may make findings only with respect to individual members. Findings may not be made with respect to firms. When a complaint or other information identifies a firm, but not members, the ethics committee conducting the investigation should send a *letter of inquiry* to the firm seeking the names of the individuals who are or were responsible for the subject matter of the investigation.
- 3.46 A letter of inquiry should ordinarily be sent to the firm's highest executive who is a member; this is usually its chief executive. However, if a firm has designated a partner, shareholder, or other person, such as legal counsel, to receive such letter, the letter may be sent to that designated person.
- 3.47 A letter of inquiry should ordinarily include the following:
  - 3.48 Notification that the ethics committee has received an allegation that the code of professional conduct may have been violated
  - 3.49 Brief description of the source of the allegation
  - 3.50 Statement that an important objective of the AICPA and state societies is to promote and maintain high professional standards and that the bylaws and code of professional conduct contain provisions relating to the programs of self-regulation and set forth criteria members agree to observe
  - 3.51 Description of the role of the ethics committees and the purpose of the investigation
  - 3.52 Notification that the JEEP manual describes the procedures, including the rights and obligations of the parties to the investigation.
  - 3.53 Offer of a copy of the manual and state that the signer will answer questions regarding the procedures.

- 3.54 Offer of an initial meeting or conference call with the firm’s representative to discuss the matter and notification that any materials related to this meeting or conference call may be subject to subpoena
- 3.55 Notification that the ethics committee will conduct the investigation in a confidential manner
- 3.56 Notification that that the procedures permit the committee to share the results of the investigation with the complainant (where one exists)
- 3.57 Notification that under certain circumstances disciplinary actions will be published
- 3.58 If the investigation involves one or more engagements for a client, a request for the names of the partner responsible for the overall engagement and any other partners, managers, or their equivalent responsible for the subject matter of the investigation; the state in which they reside and practice; and whether they are employees or partners (shareholders) of the firm. A response naming only the engagement partner would ordinarily not be acceptable.
- 3.59 If the matter being investigated does not involve an engagement, a request for the names of members responsible for the conduct that is the subject of the complaint.
- 3.60 A request that the firm retain and present on request the financial statements; working papers; litigation documents, if applicable; and all other information, correspondence, and memoranda that relate to the subject engagement. If the persons responsible for the engagement are no longer with the firm or do not have control of the documents previously specified, the firm should name a partner who is a member of the AICPA or state society and who has sufficient authority within the firm to assure the retention and presentation of the documents described to assume such responsibility. Include the statement that the failure to fulfill such responsibility would be considered a violation of the “Acts Discreditable Rule” (ET sec. 1.400.001) or a violation of BL section 7.4.6 (or similar provisions of the state society code or bylaws).
- 3.61 Statement of the following:

If you request it, the ethics committee will defer this investigation if we receive a written request accompanied by evidence that the issues and parties involved in the investigation are currently the subject of any of the following:

- A legal proceeding before a state or federal civil or criminal court
- A proceeding or investigation by a state or federal regulatory agency or other organization that has been

granted the authority by statute or regulation to regulate accountants (for example, a state board of accountancy, the SEC, or PCAOB)

- An appeal undertaken from a decision of a state or federal civil or criminal court or regulatory agency

This investigation will be resumed at the conclusion of the proceeding, investigation, or appeal. You will receive periodic inquiries from ethics division staff requesting information about the status of such proceeding, investigation, or appeal.

- 3.62 Notification that the firm may designate an individual to receive copies of correspondence relating to the investigation that is directed to its partners and professional employees, and to act on behalf of its partners and professional employees who may be designated by the committee as respondents unless a respondent advises the committee to the contrary.
- 3.63 Request for a response within 30 days of the date of the letter.

#### Noncooperation

- 3.64 If a substantive response is not received to a letter of inquiry within 30 days, a follow-up *letter of noncooperation* should be sent by certified mail with a return receipt requested and prepaid postage. The noncooperation letter should describe or include a copy of the provisions of BL section 7.4.6 and the (named) participating state society's bylaw or code of conduct provision that imposes upon a member a duty to cooperate. If substantive response is not received within 30 days of the follow-up request, the matter should be referred to the full committee for action due to failure to cooperate.
- 3.65 The ethics committee conducting the investigation of a referred complaint or other information shall send a copy of the letter of inquiry to the referring body (that is, participating state society or AICPA)

#### Other information: Media reports

- 3.66 When a committee receives information in the form of a newspaper article or other media report that alleges or suggests that a potential disciplinary matter exists and an individual is named in the article, a letter of inquiry should be sent to the firm or individual. The letter of inquiry should ordinarily include the following:
- 3.67 Statement that the committee has received a newspaper article or other media report that alleges or suggests a potential disciplinary matter.
- 3.68 Statement that the AICPA Professional Ethics Division or state CPA society ethics committee is authorized to investigate potential disciplinary matters and that the procedures call for an initial review to determine whether an investigation is warranted.

- 3.69 Request for appropriate documents (for example, complaint in lawsuit and financial statements to make such determination).
- 3.70 Statement that the procedures allow the firm or individual to request a meeting or conference call to discuss the matter.
- 3.71 Statement that any material provided may be subject to subpoena.
- 3.72 Notification that if a discussion of the matter is not requested or the information is not provided, an investigation will be initiated.
- 3.73 Request a response within 30 days of the date of the letter.
- 3.74 The material received should be reviewed in accordance with the provisions of the section of this manual titled "Initial Review," paragraphs 3.25–3.31.
- 3.75 If the ethics committee reviews the information received in response to the letter described in paragraph 3.35 of this manual and determines that no further investigation is needed, the committee will send a letter to the firm or individual stating the following:
  - a. The information submitted has been reviewed.
  - b. The ethics committee has concluded not to pursue the matter further.
  - c. The committee reserves the right to make further inquiries based on future developments.

#### **Deferral of an ethics investigation due to related litigation or regulatory proceeding**

- 3.76 An investigation by an ethics committee may unfairly prejudice the litigation position of a respondent when the issues are concurrently the subject of (a) a formal legal proceeding pending before a state or federal civil or criminal court, (b) a formal proceeding or investigation by a state or federal regulatory agency or other organization that has been granted the authority by statute or regulation to regulate accountants (for example, a state board of accountancy, the SEC, or PCAOB), or (c) a formal appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency. Accordingly, a letter of inquiry to a firm and an *opening letter* to a respondent must include the following paragraph:

The [name] committee will defer this investigation if we receive your written request to do so accompanied by evidence that the issues and parties involved in the investigation are currently the subject of (1) a legal proceeding before a state or federal civil or criminal court, (2) a proceeding or investigation by a state or federal regulatory agency or other organization that has been granted the authority by statute or regulation to regulate accountants (for example, a state board of accountancy, the SEC, or PCAOB), or (3) an appeal actually

undertaken from a decision of a state or federal civil or criminal court or regulatory agency. This investigation will be resumed at the conclusion of the proceeding, investigation, or appeal. You will receive periodic inquiries from ethics division staff requesting information about the status of such proceeding, investigation, or appeal.

- 3.77 The letter of inquiry to the firm and the opening letter should also state that if the persons responsible for the engagement under investigation are no longer with the firm or no longer have control over the documents necessary to the investigation (for example, financial statements, working papers, litigation documents, correspondence, or memoranda), the firm should designate a partner of the firm to assume responsibility for preservation and presentation of the previously described documents. The designated partner should be an AICPA or state society member and must have sufficient authority within the firm to assure the retention and presentation of the described documents. That partner's failure to fulfill this responsibility will be considered a violation of the "Acts Discreditable Rule" (ET sec. 1.400.001) or a violation of BL section 7.4.6 (or similar provisions of the state CPA society code or bylaws).
- 3.78 In certain unusual situations, the ethics committee may grant litigation deferral if appropriate under all the circumstances and if the firm or respondent presents evidence of the litigation to the committee. Examples of such situations are when the threat of litigation is present or when an accounting firm has prevailed in defense of a complaint against it but continues in the litigation as a counterclaimant or other third-party plaintiff.
- 3.79 If the documentation submitted by the firm or respondent does not support the claim that the issues under investigation are the same as those involved in the litigation or proceeding, the committee should not grant deferral of the ethics investigation.
- 3.80 During the deferral period of an investigation, the committee conducting the investigation should send written inquiries every six months requesting information about the status of the proceeding, investigation, or appeal. The committee should send the inquiries to the respondents or the person named by the firm to preserve and present documents related to the investigation (or both).
- 3.81 The committee should also obtain the name of the court, other authority, or agency and the docket number of the case. After a five-year deferral period, the committee should modify the inquiry letter to request evidence that the matter that gave rise to the deferral is being actively pursued. If it appears that the matter is not being actively pursued, an ethics committee may consider removing an investigation from deferral status.
- 3.82 If a satisfactory response is not received within 30 days of the date of such an inquiry, the committee should send a letter of noncooperation via certified mail with a return receipt requested.

3.83 The investigation should be resumed promptly when the proceeding, investigation, or appeal is completed.

#### Ad hoc investigators

3.84 The operating procedures of an ethics committee may provide for the appointment of an ad hoc investigator to assist the committee in an investigation. An ad hoc investigator may be a member of the AICPA or of a participating state society.

3.85 An ad hoc investigator may be appointed to assist in an investigation when one or more of the following conditions are present in that investigation:

- a. The issues are complex.
- b. The committee and its staff do not include one or more persons with adequate training or experience to investigate the unique or specialized issues involved.
- c. It appears that a large amount of evidence must be gathered and examined.

3.86 An ad hoc investigator may also be appointed to assist with an investigation when the AICPA or participating state society needs additional resources.

3.87 An ad hoc investigator should ordinarily be given written guidelines or instructions prepared by the committee's staff or one or more members of the committee. The usual duties of an ad hoc investigator are to

- a. gather and examine evidence.
- b. develop interrogatories and requests of relevant documents.
- c. identify additional respondents.
- d. make recommendations to the committee that will assist it in making findings.

3.88 Subject to the provisions of the committee's operating procedures, an ad hoc investigator may

- a. attend portions of committee meetings at which the investigation is discussed and participate in the discussion.
- b. have access to confidential material relating to the investigation.
- c. report to the committee in writing or in person.



- 3.89 Ad hoc investigators cannot vote on the disposition of an ethics investigation unless they are also ethics committee members.

### Opening letter

- 3.90 Each respondent must be sent an opening letter. An opening letter should be sent to the respondent's last-known address in the membership records of the AICPA or the participating state society. The letter should do the following:
- a. Advise the respondent that the committee has received information with allegations that the code of professional conduct may have been violated. The letter should briefly describe the source of the information and the nature of the alleged violations.
  - b. State that an important objective of the AICPA and state societies is to promote and maintain high professional standards and to that end, the bylaws and code of professional conduct contain provisions relating to the programs of self-regulation and set forth criteria members agree to observe.
  - c. Inform the respondent of the role of the ethics committees and briefly describe the purpose of the investigation.
  - d. Advise the respondent that the JEEP manual describes the procedures, including the rights and obligations of the parties to the investigation.
  - e. Offer a copy of the manual and state that the signer will answer questions regarding the procedures.
  - f. Cite the rules of conduct of the AICPA and state society (if different, cite all applicable rules) that are involved in the investigation. State that if there is insufficient evidence to support the allegations, the investigation will be closed and the respondent will be notified. If there is sufficient evidence to support the allegations and the committees determine that a violation of the code of professional conduct has occurred, disciplinary action may be taken. (If the investigation identifies additional rules related to the matter, the respondent should be sent a notification letter outlining these additional rules.)
  - g. Advise the respondent that the committee will conduct the investigation in a confidential manner, but that the procedures do permit, under certain circumstances, the publication of disciplinary actions. In addition, state that the committee may contact any person or entity that it reasonably believes may have information relevant to the investigation. If the case has been referred by certain federal or state regulatory agencies, advise that the procedures also provide for confidential exchange of information

regarding disciplinary action between the AICPA or state society and the federal or state regulatory agencies having disciplinary responsibilities. The respondent should also be advised that the results of the investigation will be shared with the complainant (when one exists).

*h.* Contain the following statement:

The committee will defer this investigation if we receive your written request to do so accompanied by evidence that the issues and parties involved in the investigation are currently the subject of (1) a legal proceeding before a state or federal civil or criminal court, (2) a proceeding or investigation by a state or federal regulatory agency or other organization that has been granted the authority by statute or regulation to regulate accountants (for example, a state board of accountancy, the SEC, or PCAOB), or (3) an appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency.

*i.* If the respondent is still with the firm and if the investigation is deferred, state that the respondent is responsible for retention and presentation on request of the financial statements; working papers; litigation documents; and all other information, correspondence, and memoranda that relate to the engagements that are the subject of this investigation. Failure to fulfill this responsibility will be considered a violation of the "Acts Discreditable Rule" (ET sec. 1.400.001) or a violation of BL section 7.4.6 (or similar provision of the state CPA society code or bylaws. (Note: If all respondents are no longer with the firm, the firm must appoint a member of the AICPA or state society to assume this responsibility. See paragraph 3.34 of this manual.)

*j.* Describe any arrangements made with the respondent's firm concerning a designated correspondent and state that the committee will assume such arrangements are acceptable unless otherwise notified.

*k.* Request documents or responses to interrogatories as set forth in paragraph 3.55 of this manual.

*l.* Identify the peer review standards that require a firm to inform its peer reviewer of the investigation, request confirmation that the respondent has made all applicable peer review notifications, and confirm that the respondent has provided a copy of the opening letter and its attachments to the individual responsible for coordinating the firm's peer review. If the respondent is a peer reviewer, describe the peer review requirement for

notifying the relevant administering entity of the investigation and request confirmation of the investigation notification.

- m.* In technical standards cases, request consent to obtain information on the firm's peer review from the AICPA Peer Review Division. Inform the respondent that such information may include the type of engagements in the last peer review and, if they were not performed in accordance with professional standards, information included on the firm's latest peer review background form, and peer review commencement and exit conference dates. Request consent from respondent to share details on any violations of professional standards identified as a result of the investigation with the AICPA's Peer Review Division. Inform the respondent such consent is not required.
- n.* State that the bylaws or codes of professional conduct of the AICPA and the (named) state CPA society require that the respondent cooperate with the investigation and that responses to the request for information are due within 30 days.
- o.* Advise the respondent that there may be additional questions or a request to provide copies of, or access to, additional documents (or both).
- p.* Identify the role of the individual signing the letter. State that the respondent will receive correspondence from the signer during the investigation. State that questions regarding procedures and correspondence should be directed to the signer and provide a telephone number and email address.

3.91 Thank the respondent for anticipated cooperation in this investigation.

3.92 An opening letter should include specific interrogatories about the issues being investigated or a request for relevant documents (for example, accountant's reports and the accompanying financial statements, engagement working papers, correspondence with the referring agency, and relevant court or regulatory agency documents [both interrogatories and a request for documents could be included]). The letter should also include a request for information regarding the firm, the engagement and the respondent. (Form A of the JEEP standard letters is attached to the opening letter to compile this information.)

3.93 If a substantive response to the interrogatories or request for documents is not received within 30 days, the committee should send by certified mail with return receipt requested a letter of noncooperation. This letter should describe the provisions of BL section 7.4.6 and the (named) participating state society's related bylaws or code of conduct provision that impose on a member the duty to cooperate. If a substantive

response is not received within 30 days of the letter of noncooperation, the matter should be acted upon for the failure to cooperate. (See paragraph 4.48, which discusses failure to cooperate.)

- 3.94 Ordinarily, the interrogatories and requests for documents included in an opening letter are limited to what the committee or its designee can reasonably conclude it will need to complete the task of identifying respondents and gathering evidence. The opening letter should advise the respondent that additional interrogatories or documents may be requested.
- 3.95 A participating state society should send copies of all opening letters to the AICPA ethics division. Likewise, the AICPA should send copies of all opening letters to the participating state society or societies of which the respondent is known to be a member.

### Evidence

- 3.96 The purpose of an ethics investigation is to determine if there is evidence of a violation of the code of professional conduct. Evidence may be found in the complaint or other information that triggered the investigation, in copies of reports and accompanying financial statements, in depositions and court transcripts, in engagement working papers, in responses to oral and written interrogatories directed to a respondent, in testimony of members, in enforceable professional pronouncements and literature, and in correspondence and other documents relevant to the ethics investigation. A full investigation results in *prima facie*<sup>6</sup> evidence of a violation and includes an interview offer with the respondent. A limited review as discussed in paragraph 3.12 will result in apparent *prima facie* evidence of a violation.
- 3.97 Ordinarily, an ethics committee assigns responsibility for gathering and examining evidence to one of its members, staff, or an ad hoc investigator. This assignment may include responsibility for drafting interrogatories and requests for documents, reading and evaluating responses to interrogatories and requests for documents, developing and executing a plan for gathering and examining additional evidence if required, reviewing engagement working papers if required, and participating in interviews with the respondents.
- 3.98 At no time during the course of gathering and examining evidence should any committee member, staff member, or the ad hoc investigator express any opinion to a respondent or complainant regarding the possible ultimate findings of the committee.

### Review of engagement working papers

- 3.99 If the issues in an investigation involve professional general or technical standards, it will ordinarily be necessary for the assigned member, staff, or ad hoc investigator to review

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<sup>6</sup> *Prima facie* means at first sight, on the first appearance, on the face of it (Black's Law Dictionary).

the relevant engagement working papers.

- 3.100 Ordinarily, engagement working papers are examined after other available evidence has been obtained and examined, but before interviews are held with the respondents in the case of a full investigation.
- 3.101 The nature and extent of a working paper review should be reasonably related to the issues involved in the investigation. Depending on these issues, the review might include, for example
  - 3.102 all or selected portions of the working papers for the engagement being investigated or
  - 3.103 selected portions of the working papers for an engagement related to the engagement being investigated.
- 3.104 Arrangements for reviewing engagement working papers should be made with the respondents or the firm that has the legal title to them. The committee may request the firm or the respondents to send copies of the desired working papers to the committee's office for review, or the working papers should be made available for review at a location convenient to the ethics committee or its representatives. A respondent can provide copies of printed working papers or electronic media on disk, on a flash drive, or on a password protected portal to the respondent's server. If the firm is using proprietary software, the respondent may submit a laptop loaded with the software and the working paper data file, which will be returned to the respondent upon completion of the subject investigation. This wording can be included in the opening letter with a reminder not to send original working papers.
- 3.105 Although the primary purpose of reviewing working papers is to obtain evidence relevant to the issues being investigated, a reviewer is expected to be alert for evidence of other matters that could be violations of a code of professional conduct. This is consistent with the general rule that an ethics committee need not limit its investigation to the matters specified in the complaint or other information that resulted in the investigation.
- 3.106 A working paper reviewer should prepare or obtain the documentation that will be useful to the committee in making findings and, if the matter is presented to a hearing panel of the joint trial board, can be introduced as evidence in the hearing.
- 3.107 Verification, to the extent possible, of the responsibility of the respondents for the matters being investigated is an important aspect of reviewing working papers. The documentation prepared by the reviewer should indicate his or her conclusions in this regard. The reviewer should also be alert for others whose responsibilities or duties suggest that they should also be named as respondents.

### Access to a firm's files

- 3.108 A firm frequently has legal title to much of the evidence that is relevant in an investigation, particularly engagement working papers.
- 3.109 Ordinarily, a firm readily grants access to relevant engagement working papers and furnishes other requested documents needed in an ethics investigation. However, if a firm refuses access to relevant engagement working papers or otherwise refuses to furnish requested documents, such refusal should be referred to the full committee for action against members due to failure to cooperate as provided under BL section 7.4.6 and related provisions of the bylaws or codes of conduct of state CPA societies. Usually, noncooperation of a respondent results in a trial board referral.
- 3.110 The IRC requires that tax return information be kept confidential. When an ethics committee is conducting an investigation of a tax matter and a tax return or portion thereof is a document necessary to that investigation, the taxpayer who signed that return must grant permission in writing before the return is transmitted to the ethics committee. The person seeking such permission should, in appropriate circumstances, be the complainant, respondent, or ethics committee member (or staff) conducting the investigation.

### Additional interrogatories and requests

- 3.111 An opening letter should include relevant questions about the issues being investigated and a request for relevant documents. The responses to these initial questions and the examination of the documents and other pertinent evidence may suggest additional questions (and additional documents may be requested). If the respondent agrees to an interview (see paragraph 3.74 of this manual), the additional questions and requests may be posed as part of that interview. If, however, a respondent declines the offer of an interview or declines to respond orally to questions posed during the interview or requests for documents, the additional interrogatories and requests should be included in a letter to the respondent.
- 3.112 The letter should request a substantive response within 30 days. If the ethics committee does not receive a substantive response within 30 days, a follow-up request in a letter of noncooperation should be sent by certified mail with a return receipt requested and prepaid postage. This letter should describe the provisions of BL section 7.4.6 and the named participating state CPA society's bylaws or code of conduct provision that imposes a duty to cooperate on a member. If the committee does not receive a substantive response within 30 days of the follow-up request, the matter should be acted upon for failure to cooperate, usually by referral to the trial board division for a hearing.

### Interview with respondents

- 3.113 If the ethics committee is performing a full investigation or the respondent has rejected the directive under a limited review, the committee must send a written offer to the respondent of an opportunity to meet or have a telephone interview to discuss the issues

in the investigation and offer any evidence that the respondent believes the committee should consider in making a finding. The respondent should be given at least 15 days to accept or reject the interview offer. (See paragraph 3.12 for discussion of limited review.)

- 3.114 Interviews are usually informal. The committee should be represented by at least two persons, one of whom is a member of the committee; other representatives may include the ad hoc investigator, members of the committee's staff, and the staff legal counsel of the committee of a participating state society's or the AICPA ethics division. The committee's representatives should be knowledgeable of the issues involved in the investigation and of the evidence obtained to date. The respondent or the respondent's representative must be present at the meeting and may be accompanied by legal counsel and a reasonable number of representatives of the respondent's firm or the firm's legal counsel.
- 3.115 The location, date, and time for an interview should be agreed on by the committee's representatives and the respondent. The location is at the convenience of the ethics committee or its representatives. The interview may
- a. be conducted in person or by telephone.
  - b. be recorded by means of a voice recording device, with the respondent's approval.
  - c. be recorded by a court reporter (at the respondent's expense).
  - d. be conducted in conjunction with obtaining other evidence (for example, in conjunction with reviewing engagement working papers).
  - e. obtain responses to interrogatories.
  - f. be conducted jointly with one or more other respondents in the same investigation.
- 3.116 At the beginning of the interview, a representative of the committee should address an opening statement to the respondent. The opening statement also may be included as an attachment to the written interview. The opening statement should
- a. identify the official representative of the committee.
  - b. state the purposes of the meeting; that is, discuss what the committee is investigating
  - c. describe the evidence that has been or is being obtained:
    - i. afford the respondent an opportunity to offer additional evidence

- ii. if applicable, pose interrogatories to the respondent that may be considered by the committee in reaching findings adverse to the respondent.
- d. If applicable, advise that the respondent may decline to respond to the interrogatories. However, if the respondent declines, the committee may subsequently pose such interrogatories in writing and the respondent must make substantive responses, according to the appropriate bylaws or code of conduct.
- e. Advise the respondent that the committee has formed no conclusions about the issues in the investigation and that the committee representatives cannot and will not express any opinion regarding the committee's ultimate findings.
- f. State that the committee's representatives will prepare a written summary of the interview for the confidential and exclusive use of members of the committee and others who have access to the committee's confidential files and that a copy of the summary will be sent to the respondent for review and comment.
- g. State that the interview summary, together with the respondent's comments, will be considered by the committee in making its findings.
- h. Describe the possible findings of the committee under JEEP (that is, no violation, letter of required corrective action with directives, offer of a settlement agreement, and trial board referral).
- i. State that if the matter is brought before a hearing panel of the joint trial board, the summary of the interview and the respondent's comments will be presented to the panel.
- j. Ask the respondent whether there are any questions about the purpose, conduct, or potential consequences of the interview.

3.117 Following the opening statement and the responses to any questions that the respondent may have about the purpose, conduct, or potential consequences of the interview, the committee's representatives may wish to request that the respondent (a) acknowledge membership in the AICPA or in the named participating state society or societies and (b) describe CPA certification status or permit to practice, issuing states, the dates of issuance, and recently completed CPE.

3.118 As part of a discussion of the issues being investigated, the committee's representatives should identify for the respondent (a) provisions of an applicable code of professional conduct that appear to be relevant to the issues and (b) any relevant requirements of



professional technical or behavioral standards in effect at the time of the events being investigated that members must observe as a consequence of those provisions.

3.119 It is ordinarily useful during the discussion of the issues to encourage the respondent to do all of the following:

- a. Suggest other relevant provisions or requirements of professional standards.
- b. Explain the respondent's understanding of the relevant provisions and requirements of professional standards.
- c. Explain the respondent's conduct in terms of the relevant provisions and requirements of professional standards.
- d. Suggest mitigating circumstances if the respondent acknowledges conduct deviated from the provisions and requirements of professional standards.

3.120 As part of describing the evidence that the committee is obtaining or has obtained, the committee representatives may, depending on the circumstances, ask the respondent to

- a. describe the respondent's position in relation to apparently pertinent parts of reports and accompanying financial statements, depositions and court transcripts, and engagement working papers
- b. clarify the respondent's understanding of evidence that has been or is being obtained
- c. provide the respondent's views on the relevancy of the evidence that has been or is being obtained to the issues being investigated.

3.121 As soon as possible after the interview, one of the committee's representatives should draft a written summary of the interview and circulate it for comments and corrections to those who participated in the interview. The written report should be a factual but not necessarily verbatim summary of the important matters discussed with the respondent and should be prepared even if a transcript or voice recording of the interview is available.

3.122 At a minimum, the written report should ordinarily

- a. state the date and time of the interview and who was present.
- b. affirm that an opening statement was made.
- c. summarize the facts of the case, what the committee's representatives told the respondent about the issues being investigated, and the relevant

evidence that the committee has obtained or is obtaining.

- d. summarize significant comments made by the respondent and the respondent's representatives about the issues and evidence in the case.
- e. identify in reasonable detail any additional evidential matter that the respondent believes the committee should obtain and examine.
- f. Summarize significant interrogatories posed to the respondent and the respondent's responses.

3.123 The committee's representatives may, in addition to their written report, respond orally to questions about the interview that are asked by committee members and others who have access to the committee's confidential files. No written record of such questions and the responses thereto need be made.

3.124 The written report should be sent to the respondent with a request for comment within a reasonable time period (for example, 15 days). If no comments are received within that time, the investigating committee will assume that the respondent has no further comments and will approve the interview summary as written.

### Investigation summary

3.125 Before the results of an investigation are submitted to the ethics committee for a finding, those who are knowledgeable of the issues and evidence in the investigation<sup>7</sup> should prepare a written summary for the confidential and exclusive use of members of the committee and others who have access to the committee's confidential files and evidence in the investigation.

3.126 The purposes of the confidential written investigation summary are to (a) assist the committee in understanding the issues, (b) summarize the extent, nature, and relevance of the evidence obtained, (c) identify those provisions of one or more applicable codes of professional conduct that the evidence suggests may have been violated by one or more of the respondents, and (d) summarize any other information or data that should be considered by the committee. An investigation summary should also include recommendations on appropriate findings. Such recommendations are not binding on the committee.

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<sup>7</sup> One or more committee members or other persons; for example, the ad hoc investigator or a member of the committee's or participating state society's staff.

## General rules

3.127 The following general rules are applicable to all ethics investigations.

### Scope of an Investigation

3.128 The scope of an ethics investigation is not limited to the allegations or implications included in the complaint or other information that gave rise to the investigation. Furthermore, an attempted withdrawal of a complaint by the complainant does not affect an ethics committee's authority to investigate the allegations made in the complaint or any other issue the committee decides should be addressed.

### Confidentiality

3.129 Investigations of potential disciplinary matters are to be conducted in a confidential manner. The following should be observed:

- a. Access to confidential material and attendance at portions of meetings at which such material is discussed should be limited on a need-to-know basis to duly appointed members of committees and task forces of the AICPA ethics division, the division's staff, duly appointed members of ethics committees of participating state societies and/or chapters thereof, the staffs of participating state societies and/or chapters thereof, ad hoc investigators, and officers and directors of the AICPA and of participating state societies and/or chapters thereof on a need- to-know basis.
- b. Confidential material includes the names of complainants and written material relating to the substance of investigations. Confidential material could also include material that may constitute trade secrets or proprietary information of the individual or firm producing such material, disclosure of which may be harmful to the producing party. Accordingly, members agreeing to serve on the ethics committees and the staff of the ethics committee are bound to keep all such material confidential and not to use or disclose any such trade secrets or proprietary information to any party other than as specified in paragraph 3.90a of this manual.
- c. Files relating to investigations that are maintained or held by an individual member of an ethics committee or an ad hoc investigator should be segregated from other files in that individual's office, destroyed as investigations are closed, and transferred to a successor for investigations remaining open when the individual's term on the committee ends.
- d. All correspondence relating to an investigation shall be marked "Personal and Confidential" on the letter and the envelope.

- e. Should the media inquire about a particular matter, the following is the suggested response:

It is generally our policy to investigate potential disciplinary matters involving members. These investigations are conducted in a confidential manner, and the results are not published unless the matter is presented to the trial board and the trial board finds one or more members guilty of violating the code of professional conduct or the committee enters into a settlement agreement with the member that results in his or her admonishment, suspension, or expulsion from membership. Such guilty findings or a summary of the terms of a settlement agreement are published by the AICPA (and state society). Accordingly, we will neither confirm nor deny the existence of a specific ethics investigation.

- f. The duly constituted disciplinary bodies of JEEP member state societies exchange disciplinary information on a confidential basis with the AICPA Professional Ethics Division, other member state societies, and other agencies with disciplinary responsibilities.
- g. Complainants will be informed of the results of the investigation and if the results are published, the complainant will be referred to the publication.
- h. The committee may contact any person or entity that it reasonably believes may have information relevant to the investigation; however, investigators should use discretion in determining the extent of information disclosed and inquiry should be limited to what is deemed necessary in order to obtain the information from such person or entity. In addition, the respondent should be given the opportunity to respond to any information obtained from such person or entity.
- i. In the event the AICPA or a state society receives a subpoena to produce documents as part of an ethics investigation, it is the AICPA's policy to notify the producing party of the subpoena and provide reasonable assistance to the producing party to help protect its trade secrets and proprietary information.

# Chapter 4 Disposition of investigations

## Committee evaluation and findings

- 4.1 An ethics committee that conducts an investigation is responsible for evaluating the evidence obtained and making a separate finding with respect to each respondent to whom an opening letter was sent.
- 4.2 The committee may confer on findings at in person meetings or via conference call, email, or other electronic communication. The committee should review and discuss the issues in the investigation, the evidence obtained, the report of the interview with the respondent (when applicable), the investigation summary, and any other relevant material. If the committee concludes that no further investigative procedures need be undertaken, it should make such a finding.
- 4.3 If there is more than one respondent in an investigation, the committee may conclude that no further investigative procedures need be undertaken with respect to one or more of such respondents but may decide to obtain additional evidence with respect to the other respondents. In such a situation, the committee ordinarily will defer making any findings until it has obtained and considered the additional evidence. There are situations, however, in which the committee may conclude that it is appropriate to make immediate findings with respect to those respondents for whom no additional evidence will be obtained.
- 4.4 A finding is a formal evaluation of the evidence obtained during the investigation.

An ethics committee may find the following:

- a. No prima facie evidence of a violation of an applicable code of professional conduct.
  - b. Prima facie evidence of a violation of an applicable code of professional conduct.
  - c. Apparent prima facie evidence of a violation of an applicable code of professional conduct. (See paragraph 3.12 for discussion on limited review)
  - d. Failure of the respondent to cooperate with the committee in the investigation.
- 4.5 Findings (a) and (b) are, of course, mutually exclusive alternatives. Findings (a) and (d) are also mutually exclusive, but a committee may find both evidence of infraction of an applicable code of professional conduct by a respondent (findings (b) or (c)) and, if the

facts warrant it, that the respondent has failed to cooperate in the investigation (finding (d)).

- 4.6 Findings are subject to the approval requirements later described and, if a finding is to be joint, the concurrence requirements.

### No prima facie evidence of a violation of a code of professional conduct

- 4.7 If an ethics committee finds no prima facie evidence of a violation of an applicable code of professional conduct by a respondent, it should record the finding in its minutes and send a “no violation” letter to the respondent, closing the investigation. As described in paragraph 4.7 of this manual, there may be circumstances in which it is appropriate for the ethics committee to issue a “no further action” letter to the respondent. In either case, a copy of the letter should be sent to every appropriate JEEP participant.
- 4.8 A closing letter should state the following when no prima facie evidence of a violation of a code of professional conduct has been found:
- a. The subject matter of the investigation
  - b. That the (named) committee has found no prima facie evidence that the respondent violated the (named) codes of professional conduct
  - c. That the committee has decided to close the investigation with respect to the respondent, but the procedures under which investigations are conducted require that it be reopened if new information becomes available that warrants such action
- 4.9 An attempted investigation may reveal no prima facie evidence of a violation of the code of professional conduct because evidence cannot be obtained. When this happens, or if the committee decides in its discretion that it will no longer pursue the investigation, then the committee should close the investigation. This finding should be recorded in the committee’s minutes and a closing letter should be sent to each respondent. This closing letter should state all of the following:
- a. The subject matter of the investigation
  - b. That the committee has decided to close the investigation and take no further action, but reserves the right to reopen if additional evidence warranting such action is brought to its attention
  - c. The reasons for closing the investigation, if the committee considers it appropriate in the circumstances

## Prima facie or apparent prima facie evidence of a violation of a code of professional conduct

- 4.10 An important responsibility of an ethics committee that finds prima facie evidence of a violation or apparent prima facie evidence of a violation of a code of professional conduct is to define precisely and record in its minutes the rule of conduct that the respondent has violated and any interpretations, rulings, or provisions of enforceable professional literature on which the finding is based. In addition, the committee should formulate and record in its minutes a statement of the respondent's conduct that constituted the violation.
- 4.11 The ethics committee that finds prima facie or an apparent prima facie evidence of a violation of a code of professional conduct must consider the gravity of the violation. The committee must decide, and record in its minutes, whether to
- a. arrange to present a case before a hearing panel of the joint trial board charging the respondent with violating an applicable code of professional conduct, as discussed in paragraphs 4.13– 4.22.
  - b. issue a letter of required corrective action with directives, as discussed in paragraphs 4.23– 4.34).
  - c. offer the opportunity of a settlement of the charges (see "Settlement of Ethics Charges," paragraphs 4.35–4.43).
- 4.12 In determining the appropriate action and sanctions, the committee should refer to the relevant sanctioning guidelines. The committee's decision about the action it will take is subject to the approval and concurrence requirements of the JEEP participants in the investigation, as specified in the section "Concurrences."

## Referral of respondents to the joint trial board

- 4.13 If an ethics committee concludes that a violation is of sufficient gravity to warrant formal disciplinary action, it shall obtain the required concurrences and then report the matter to the secretary of the joint trial board division, who will summon the respondent to appear at a hearing of the joint trial board.
- 4.14 In considering whether to refer a respondent to the joint trial board, the ethics committee may be guided by one or more of the following conditions, or any other conditions that may arise during the investigation:
- a. Harm to the public or the profession
  - b. Disregard for standards
  - c. Disregard for facts
  - d. Subordination of professional judgment

- e. Failure to act on findings of a prior quality control or peer review
  - f. Repeated violations
  - g. Reflection on the respondent's honesty
- 4.15 When a committee agrees to refer a respondent to the trial board, it should make a recommendation about the action to be taken by the panel. The committee must judge whether the respondent's conduct as related to the subject of the investigation is likely to change through rehabilitation. If the committee decides that rehabilitation is not the correct course of action, the appropriate recommendation is expulsion from membership in the AICPA or state society, or both.
- 4.16 If the hearing panel of the joint trial board finds the respondent guilty of one or more of the charges brought by the ethics committee, the panel may do any of the following:
- a. Expel the respondent from membership in the AICPA or the participating state society, or both.
  - b. Suspend the respondent from membership in the AICPA or the participating state society, or both, for a period ranging from one day to two years.
  - c. Admonish the respondent.
  - d. Take such additional action as the hearing panel deems appropriate (for example, direct the respondent to complete specific CPE courses, direct the respondent to submit a work product for review or require a pre-issuance review of engagements, or direct the respondent to no longer perform peer reviews for a specified period of time).
- 4.17 An ethics committee cannot appeal a hearing panel's decision of *not guilty*. A respondent has a right to appeal a decision of guilty.
- 4.18 If a respondent is found guilty by a hearing panel (and, if appealed, the decision of the hearing panel is affirmed), the decision will be published and such publications shall be provided to the appropriate state boards of accountancy.
- 4.19 An ethics committee that decides to present a case to a hearing panel is known as the ethics charging authority (ECA). An ECA must file with the hearing panel a memorandum that includes recommendations about the findings and action the panel should take.
- 4.20 Each ethics committee deciding to present a case to the joint trial board should adopt appropriate procedures for the approval of such a memorandum. Unless legal counsel is employed for the purpose, a member of the committee or of its staff should be



designated to prepare and distribute the memorandum and supporting material in accordance with the Rules of Procedure and Practice of the joint trial board and to present the case to the hearing panel. Committee members and others may be called as witnesses in the hearing.

- 4.21 When an ECA has decided to present a case to a trial panel, it should obtaining the required approvals and concurrences and then notify each respondent in writing.
- 4.22 The notification should
- a. advise the respondent that of a summons to a hearing by the secretary of the joint trial board.
  - b. urge the respondent to retain any records in the respondent's possession or under the respondent's control that may be relevant to the issues that may be raised during the hearing.

### Letter of required corrective action

- 4.23 If an ethics committee concludes that a violation is not of sufficient gravity to warrant a formal trial board hearing or the issuance of a settlement agreement, it may, after obtaining the required approvals and concurrence, issue a *letter of required corrective action* to the respondent.
- 4.24 An ethics committee may direct a respondent to successfully complete specified CPE courses when it issues a letter of required corrective action. In selecting courses to be completed, the committee should focus on what the evidence obtained during the investigation suggests are the causes of the violation and not on the gravity of the violation. If a respondent's deficient knowledge of some subject was a cause of his or her conduct, the committee should direct the respondent to complete those CPE courses that could cure the deficiency.
- 4.25 Successful completion of the self-study course, *Professional Ethics: The AICPA's Comprehensive Course*, requires a score of 90 or above. The letter of required corrective action should advise respondents of this.
- 4.26 A letter of required corrective action may also direct the respondent to submit to the ethics committee examples of subsequent work for review, as well as requiring a pre-issuance review of engagements. The CPA that the firm selects to perform this review must be approved by the committee that issued the letter of required corrective action. The committee should determine that the selected reviewer is qualified to perform the review and is a licensed CPA.
- 4.27 If a respondent exercises the right to reject a letter of required corrective action, the ethics committee should decide whether to bring the matter to a hearing panel of the joint trial

board. If the committee decides to bring the matter to a hearing panel, it should obtain the required approvals and concurrences and then arrange to present the case. A recommendation of the disciplinary action (that is, admonishment, suspension, expulsion) should be obtained from the PEEC.

- 4.28 If the committee decides not to bring the matter to a hearing panel, it should send a letter to the respondent advising that no further action will be taken. In that event, the letter of required corrective action and the respondent's rejection are retained in the confidential file.
- 4.29 If a respondent exercises the right to reject a letter of required corrective action offered under a limited review, the committee will perform a full investigation. (See paragraph 3.12 for discussion of limited review.)
- 4.30 It is the responsibility of the ethics committee that issues the letter of required corrective action to (a) establish the date by which the respondent must complete any specified CPE courses or other directives and (b) obtain evidence of the respondent's satisfactory completion of those courses or directives. Similarly, the committee is responsible for obtaining and reviewing any examples of the respondent's future work that it directs the respondent to submit. The committee is also responsible for maintaining appropriate records and following up on the respondent's compliance.
- 4.31 The ethics committee that issues a letter of required corrective action should, after obtaining required approvals and concurrences, send the letter to the respondent advising the respondent of the committee's action. The letter should be sent certified mail, with a return receipt requested, and should accomplish the following:
- a. State the subject matter of the investigation.
  - b. State that the committee found prima facie evidence or apparent prima facie evidence that the respondent violated one or more cited rules of an applicable code of professional conduct.
  - c. To the extent applicable, cite the interpretations, rulings, or provisions of enforceable professional literature on which the findings stated in item *b* of this list are based.
  - d. Summarize (to the extent that it is not obvious from the cited rules of conduct, interpretations, rulings, or provisions of enforceable literature) the respondent's conduct that constituted the violation.
  - e. State that after considering the gravity of the violation, the committee has decided to issue a letter of required corrective action specifying certain directives (for example, to successfully complete the CPE courses listed in the letter by a specified date or submit specified future work for review by

the committee). The directives may include the following:

- i. CPE
  - ii. Subsequent submission of reports and working papers for review
  - iii. Pre-issuance review of engagements
  - iv. Agreement not to perform peer reviews for a period of time
  - v. Restriction from serving on an ethics or peer review committee of the AICPA and the state societies for a period of time
  - vi. Restriction from teaching continuing professional education courses for the AICPA or the state societies in areas specified for a period of time
  - vii. Requirement to provide evidence that the firm has notified the firm's managing partner and peer review contact of the results of the investigation
  - viii. Requirement to join one of the AICPA audit quality centers
  - ix. Accelerated peer review
  - x. Agreement to cease activity that caused the violation to occur
- f.* State that the letter is a joint statement of required corrective action of the committee and concurring committee and the committees' directives if concurrence was granted.
- g.* State that the directives called for in letters of required corrective action are remedial measures prescribed by the committee to address the deficiencies cited and do not constitute disciplinary actions.
- h.* Advise the respondent of the right to reject the letter of required corrective action and directives.
- i.* State what may happen if the respondent does reject the letter of required corrective action.
- j.* State that the letter is confidential and will not be published; however, the letter will be provided to the AICPA's Peer Review Division staff, the respondent's peer review administering entities and the firm's peer reviewer, and, if appropriate, the results of the investigation will be shared with the state or federal government agency that filed the complaint or

with the complainant (when one exists).

- k. State that copies of the letter will be retained in the confidential files of the AICPA and the state society.
- l. Advise the respondent that failure to comply with the directives in the letter constitutes a violation of BL section 7.4.6 and applicable provisions of the state societies' bylaws or codes of conduct applicable to a member's noncompliance with ethics committee directives.
- m. Must require the respondent's signature with the following language:
  - i. For a limited review: I, [*respondent's name*], hereby waive my rights to a full investigation of this matter in accordance with the JEEP Manual of Procedures and agree to the terms of this letter of required corrective action.
  - ii. For a full investigation: I, [*respondent's name*], agree to the terms of this letter of required corrective action.

4.32 Letters of required corrective action are not published.

4.33 An ethics committee that issues a letter of required corrective action may later amend the terms thereof (for example, waive the completion of certain or all specified CPE courses, extend the time for the completion of specified CPE courses, or waive the submission of examples of the respondent's future work), but only after obtaining the approvals and concurrences required to issue the original letter.

4.34 If a respondent fails to comply with a directive of the committee, the committee should proceed under BL section 7.4.6 and applicable provisions of the state societies' bylaws or codes of conduct applicable to a member's noncompliance with ethics committee directives.

### Settlement of ethics charges

4.35 AICPA Council resolution under BL section 3.6.2.2 authorizes PEEC to offer a respondent in an ethics investigation the opportunity to settle charges arising from the investigation under such terms and conditions as provided in the resolution and as the executive committee deems appropriate in a particular case. Similar authority is required for JEEP-participating state societies to enter into settlement agreements with respondents.

4.36 An offer to settle charges is done through a settlement agreement and will always include admonishment, suspension, or expulsion, as well any other actions the committee believes to be appropriate. The terms of the settlement agreement are published by the AICPA and state society. Settlements must be approved by PEEC or the ethics committee of a JEEP-member state CPA society and the trial board division (see paragraph 4.74c).

- 4.37 If the investigating member and staff decide to make an offer of settlement to the respondent, approval of the offer must be obtained from the appropriate subcommittee and then PEEC (if an AICPA investigation) or state society ethics committee (if a society investigation).
- 4.38 In addition, in joint member situations, concurrence with the settlement terms should be obtained from the JEEP-member organization that did not investigate the matter.
- 4.39 After obtaining the required signatures of approval and concurrence, the committee should inform the respondent in writing of the settlement offer terms and conditions.
- 4.40 Settlement offers are not negotiable. If a member rejects the settlement offer resulting from a full investigation, the case will be referred to the joint trial board for a hearing. If a member rejects the settlement offer resulting from a limited review, the committee will perform a full investigation.
- 4.41 When voting on whether to offer a respondent an opportunity to settle an ethics case, the motion should be made to refer the respondent to the trial board for a hearing but to stay the referral pending the respondent's agreement to accept a settlement. If this motion is made and passed, and if a respondent rejects the settlement agreement, the matter need not be considered again by the ethics committee before making a trial board referral.
- 4.42 Upon approval of a settlement agreement by the respondent, the state society ethics committee, and the PEEC, the settlement agreement should be submitted to the trial board division. Upon a finding that the respondent has waived the right to a hearing under BL section 7.4, the trial board division shall approve the settlement and authorize publication in accordance with BL section 7.6, *Publication of Disciplinary Action*, related Council resolutions, and the bylaws or code of conduct of each JEEP-member state society.
- 4.43 On occasion, a respondent may request, or the committee may decide it is in its best interest, to settle an ethics matter in-lieu of a full investigation under JEEP. In order to expedite such matters, the committee may wish to implement procedures so that the committee chair or appropriate subgroup has the authority to approve the issuance of a settlement agreement with terms that they deem appropriate given the circumstances, including publication of the matter. In joint member situations, concurrence with the settlement terms should be obtained from the concurring committee. If the member decides to reject the settlement offer, the matter would be subject to full investigation in accordance with JEEP.

### Sharing decisions with peer review administering entity

- 4.44 In some circumstances, the settlement agreement or letter of required corrective action should include a directive or provision that the committee will forward a copy of the agreement to the administering entity responsible for supervision of the firm's peer review.

This will occur when the findings involve deficiencies in a compilation or attest engagement or other matter that could indicate deficiencies in the design of, or compliance with, the firm's quality control policies and procedures, and the respondent's firm is enrolled in the AICPA peer review program, the state society peer review program, or the New England peer review program.

- 4.45 The AICPA Professional Ethics Division (through the AICPA Peer Review Division) will facilitate the distribution of the settlement agreement or the letter of required corrective action to the AICPA or peer review administering entity. When the investigating committee is the state society, the society should ensure that a copy of the signed settlement agreement or letter of required corrective action is forwarded to the AICPA ethics division.

### Pre-issuance reviews

- 4.46 A decision to impose a pre-issuance review requirement may be made by an ethics committee when, in its judgment, the results of an ethics investigation warrant such a requirement.
- 4.47 The JEEP sample letters contain the specific language to be used when a pre-issuance review requirement is determined to be appropriate.
- 4.48 The reviewer's report should list the engagements reviewed and the findings of the reviewer with respect to the respondent's compliance with professional standards in the performance of the reviewed engagements.

### Failure to cooperate

- 4.49 The conditions of AICPA membership obligate members to cooperate with an ethics committee in any disciplinary investigation of the member, partner, or employee of the member's firm. The investigating committee will send interrogatories or a request for documents by certified mail, postage prepaid, to the member at the member's last-known address as shown on the membership records of the AICPA. Within 30 days of the postal date, the member must make a substantive response. The bylaws or code of conduct of most of the participating state societies impose a similar obligation on their respective members.
- 4.50 If the certified noncooperation letter is returned unclaimed before the committee refers a respondent to a hearing panel of the trial board, the committee should consider whether it should make additional efforts to locate the respondent. For example, an address may be sought from the state board of accountancy. Such efforts must be documented in the memorandum resented to the hearing panel.
- 4.51 A member of the AICPA is also required to comply with the educational and remedial or corrective action the ethics committee determines necessary.
- 4.52 A member's obligation to respond to an ethics committee's interrogatories does not

extend to oral questions. If a member gives an oral answer to an oral interrogatory, a written summary of the question and answer should be recorded. A member may, however, require that a committee's interrogatories be in writing and may choose to respond only in writing.

- 4.53 Similarly, an ethics committee may pose written interrogatories to a member yet choose to accept an oral response. If an oral response to a written interrogatory is allowed, a written summary of the answer should be recorded. If oral questions do not elicit oral responses, the question should be submitted to the respondent in writing. If no response is made, a noncooperation charge should be brought.
- 4.54 A member's obligation to furnish documents extends to engagement working papers, engagement reports, and other firm files. The member can discharge the obligation by furnishing readable copies of the requested material. A member may require that a committee's request for documents be in writing.
- 4.55 In forming interrogatories and requests for documents, an ethics committee should be aware that the "Confidential Client Information Rule" (ET sec. 1.700.001) reads, in part, as follows:

A member in public practice shall not disclose any confidential client information without the specific consent of the client.

This rule shall not be construed...(4) to preclude a member from...responding to any inquiry made by the professional ethics division or trial board of the Institute or a duly constituted investigative or disciplinary body of a state CPA society...Members of the bodies identified in (4) above...shall not use to their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict members' exchange of information in connection with the investigative or disciplinary proceedings....

A similar rule may be included in the code of professional conduct of a participating state society.

- 4.56 A member's obligation to respond to interrogatories and furnish documents does not extend to classified information under federal law or regulations or to documents that are subject to an attorney, client, or other privilege.
- 4.57 A member need not furnish information or documents if doing so would violate a federal or state law or regulation; however, a member must make reasonable and good faith efforts to obtain any consents or permits that may be required under the provisions of a law or regulation to permit him or her to respond to an ethics committee's interrogatories and requests for documents.

- 4.58 A member who refuses to honor the member's obligation to make a substantive response to an ethics committee's written interrogatories and requests for documents is said to have failed to cooperate with the committee in its investigation.
- 4.59 If an ethics committee decides that a member has failed to cooperate in an investigation, it may, after obtaining the required approvals and concurrences, charge the member before a hearing panel of the joint trial board with one or more of the following, as appropriate:
- a. Violating BL section 7.4.6 or a similar provision of the bylaws or code of conduct of the appropriate participating state society
  - b. Violating the "Acts Discreditable Rule" (ET secs. 1.400.001, 2.400.001 and 3.400.001) or a similar rule in the code of professional conduct of the appropriate participating state society if the evidence assembled to that point in the investigation constitutes prima facie evidence of such violation
- 4.60 Before proceeding to a trial board hearing, the ethics committee may offer the respondent a settlement agreement calling for expulsion with publication.
- 4.61 The process for presenting a case of failing to cooperate before a hearing panel is the same as that previously described. However, the panel may order a member to cooperate and, if the member does so, impose no further discipline. In such a situation, the committee's investigation shall be resumed.
- 4.62 There are situations in which an ethics committee finds prima facie evidence that a respondent who has failed to cooperate in the investigation has violated a code of professional conduct. In the absence of unusual mitigating circumstances, this type of situation should be referred to a hearing panel even if the gravity of the violation may not, by itself, warrant such referral.

## General considerations

- 4.63 In deciding whether the gravity of a violation warrants the presentation of a case before a hearing panel of the joint trial board, or the issuance of a settlement agreement or letter of required corrective action, an ethics committee may, if it concludes that the respondent's conduct represents a continuation of a course of violation of a code of professional conduct, consider the cumulative effect of the respondent's conduct to date. For example, a respondent who has previously been charged with violations may be brought before the trial board in a subsequent case for the totality of his or her violations.

## Approvals

- 4.64 The bylaws or operating procedures that govern an ethics committee's activities may require that the committee's findings and decisions about a respondent be approved by a higher-echelon committee or body. For example, the bylaws of the AICPA are such that



PEEC must approve a decision of a subcommittee or task force of the AICPA Professional Ethics Division that a case against a respondent be presented before a hearing panel of the trial board.

- 4.65 Similarly, the bylaws or operating procedures that govern the activities of an ethics committee of a participating state society may, for example, require that findings and decisions of, say, a chapter ethics committee be approved by a state society's ethics committee, or that findings and decisions of the state society's ethics committee be approved by the society's governing body (for example, its board of directors).
- 4.66 All required approvals must be obtained before concurrence is sought. The time required to obtain approvals is included in the 15 months of a timely investigation.

### Concurrences

- 4.67 An important objective of JEEP is that, in joint-member investigations, the AICPA ethics division and a participating state society's ethics committee should make joint and uniform findings and decisions with respect to a respondent who is a member of both organizations. To achieve this objective, the approved findings and decisions of the ethics committee of a state society with respect to a joint member must be submitted to the AICPA ethics division for concurrence. Similarly, the approved findings and decisions of the AICPA ethics division with respect to a joint member must be submitted to the society's ethics committee for concurrence.
- 4.68 Concurrence need not be sought for a dismissal of a complaint, a decision to take no further action, or a finding of no prima facie evidence of a violation of an applicable code of professional conduct.
- 4.69 Concurrence must be sought for the following:
- a. A finding of prima facie evidence or apparent prima facie evidence of a violation of an applicable code of professional conduct
  - b. The decision about what action (that is, whether to present a case before a hearing panel of the trial board, issue a letter of required corrective action and the directives therein, or offer a settlement agreement) and the corresponding terms is to be taken when prima facie evidence of a violation is found
- 4.70 The request for concurrence must be in writing and must describe in reasonable detail the finding and resulting decisions of the investigating committee with respect to the respondent.

- 4.72 A request for concurrence should be accompanied by a copy of a file that should include the following:
- a. A draft of a proposed letter of required corrective action or settlement agreement, unless concurrence is being sought to present a case before the trial board (in that case, a copy of the trial board memorandum should be included)
  - b. An extract of the minutes of the ethics committee that records the finding and any resulting decisions
  - c. The investigation summary
  - d. The summary of the interview with the respondent, where applicable, along with the respondent's comments on the summary or documentation that clearly shows that an interview was offered but declined by the respondent
  - e. Evidentiary matter considered by the committee
  - f. A copy of the opening letter
  - g. A copy of the letter of inquiry to the firm, if one was sent, and a copy of the response thereto
  - h. Copies of the financial statements and reports at issue
  - i. Copies of other correspondence relative to the investigation

The original version of this file should be retained by the committee that seeks concurrence.

- 4.73 An ethics committee that is requested to concur in a finding and any related decisions of another committee should process the request in accordance with its operating procedures and obtain any higher- echelon approvals required by those procedures or by the bylaws of its parent organization.
- 4.74 A concurring committee should decide whether it will or will not concur, obtain any required approvals of that decision, and communicate the approved decision in writing to the requesting committee within 90 days of receipt of the request.
- 4.75 If the concurring committee concurs, the requesting committee should proceed as follows:
- a. *Trial board referrals.* Notify the respondent that as a result of the investigation, the AICPA's ethics division and the (named) state society have decided to refer this matter to the joint trial board for a hearing. The joint trial board will notify the

respondent of the date, time, and place of the hearing in due course, but no earlier than 90 days from the date of this letter.

The AICPA's ethics division assumes responsibility under JEEP for the preparation of the ECA's memorandum to the trial board panel conducting the hearing. In the case when the respondent is a member of the state society only, the ethics division will send the memorandum to the state society for its review and, after receiving the society's approval, will coordinate the scheduling of the hearing and the mailing of the summons notifying the respondent of the date, time, and place of the hearing. The society will be kept informed.

- b. *Letter of required corrective action (RCA), including those issued under a limited review (modified letter of required corrective action).* The requesting committee shall issue the RCA, including directives with the terms agreed to by it and the concurring committee. A copy of the RCA letter as sent to the respondent should be sent to the concurring committee. The committee issuing the letter is responsible for following up with the respondent to determine whether the respondent has complied with the directives in the letter.
- c. *Settlement agreements.* Settlement agreements are nonnegotiable, including those issued under a limited review (modified settlement agreements). The investigating committee (requesting committee), after concluding that a settlement be offered to the respondent, shall prepare the agreement. That agreement is sent to the concurring committee with the investigation file (see paragraph 4.67). If concurrence is granted, the ethics committee chair or designee should sign the agreement where indicated and send it back to the requesting (investigating) committee. If more than one state society is involved, the concurrence request with a copy of the settlement agreement, the investigation file, and copies of the signature page of the agreement should be sent to each state society.
  - i. When concurrence is granted, the settlement agreement (including signature pages) should be sent back to the requesting committee for signing by its chair or designee. The chair signs the same signature page or a separate signature page, as appropriate.
  - ii. The settlement agreement signed by the requesting and concurring committee is mailed to the respondent by certified mail with a return receipt requested and copies of all signature pages. Originals are retained by the investigating committee.
  - iii. The settlement agreement signed by the respondent is sent to the chair of the joint trial board for signature. The chair or his or her designee, after reviewing the agreement to determine if it is in good form, will sign the

agreement and return it to the requesting (investigating) committee.

- iv. The requesting investigating committee may prepare a news item for publication. The chair of the trial board division must approve the news item.

4.76 The requesting investigating committee is responsible for determining whether the respondent has complied with the terms of the agreement.

### A decision not to concur

4.77 If the concurring committee decides not to concur, it should communicate that decision and reasoning to the requesting committee as promptly as possible. After receipt of such a communication, the chair or other designated representatives of the requesting committee should initiate discussions with the chair or other designated representatives of the concurring committee to attempt to resolve the conflict. If an agreement is reached, it should be submitted to each committee for ratification and to obtain any required approvals.

### Timeliness or absence of concurrence

4.78 If a concurring committee does not act on a request within 90 days of the receipt of the request, the requesting committee may notify the concurring committee and proceed with its finding and decisions, but only in its own name and with respect to the respondent's membership in its organization. Similarly, the concurring committee may keep the requesting committee informed of its actions and extend the investigation if it considers that necessary, makes an independent finding, makes any necessary decisions as a result of its finding, and proceeds with its finding and decisions in its own name and with respect to membership in its organization.

4.79 The time required for concurrence is not part of the 15 months cited previously with respect to the timeliness of investigations.

# Chapter 5: Administrative and other matters

## Conflicts of interest – Participation in investigations

- 5.1 A member of an ethics committee or subcommittee that conducts an investigation, or is requested to approve or concur with the findings and decisions of another ethics committee, is considered to have a conflict of interest and must disqualify himself or herself from participation in the investigation and the resulting findings and decisions if he or she is associated in the practice of public accounting, or has a client relationship, with the complainant (or the person or entity furnishing the other information that gave rise to the investigation), the firm or firms identified in the complaint or other information, or any respondent in the investigation.
- 5.2 A member of an ethics committee or subcommittee may have other relationships with persons involved in or related to the ethics investigation. If such a relationship exists, the ethics committee member may disqualify himself or herself. Alternatively, that relationship must be reported to members of the ethics committee and a decision must be made whether that member should or should not disqualify himself or herself from any participation in the investigation.
- 5.3 Examples of relationships that must be reported to the ethics committee include performance of litigation support engagement for or against the respondent or complainant (or their respective firms) in the ethics investigation, personal or family relationships with the respondent or complainant, and peer review engagements with the respondent or complainant's firm.
- 5.4 A disqualified member should not attend those portions of committee meetings in which the investigation is discussed and findings and decisions are made. The minutes of such meetings should record the member's absence. A disqualified member shall not receive copies of any correspondence, memoranda, or reports pertaining to the investigation.

## Retention of files

- 5.5 A copy of the investigation should be retained in the confidential files of the requesting committee and the concurring committee depending upon the conclusion reached in accordance with the established retention policy.

## Status reports

- 5.6 The AICPA ethics division and the ethics committee of each participating state society are expected to maintain their files so they can provide each other periodic information on the status of ethics investigations. Participating state societies should send the AICPA ethics division copies of opening letters initiating ethics investigations, letters of required

corrective action concluding investigations, letters of no violation issued after the conduct of investigations, letters dismissing complaints, and settlement agreements.

- 5.7 An annual report on the ethics division's activity is published at AICPA.org. These reports include concurrence requests from the societies that have been acted upon by the ethics division.

### Cooperation with state boards of accountancy

- 5.8 An ethics committee may conduct an investigation in cooperation with a state board of accountancy, provided the respondents in the investigation have given the ethics committee written permission to investigate the matter and to send a copy of the investigation file to the particular state board.
- 5.9 When a state CPA society's bylaws allow for the sharing of disciplinary information with the state board of accountancy (or other regulatory body) and the society's members have voted to approve such bylaws, the sharing of information with the state board (or other regulatory body) is permitted without the specific consent of the respondent. However, the respondent should be advised that the information is being provided to the state board of accountancy (or other regulatory body).

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