

**AMERICAN INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS
DIVISION OF PROFESSIONAL ETHICS
PROFESSIONAL ETHICS EXECUTIVE COMMITTEE
OPEN MEETING MINUTES
MAY 13-14, 2015
MONTREAL, CANADA**

The Professional Ethics Executive Committee (Committee) held a duly called meeting on May 13-14, 2015. The meeting convened at 9:00 a.m. on May 13th and concluded at 4:05 p.m.

<p><u>Attendance:</u> Samuel L. Burke, Chair Carlos Barrera Tom Campbell* Richard David Robert E. Denham Jana Dupree Raymond Johnson Brian S. Lynch John Malahoski* Linda J. McAninch Andrew Mintzer</p>	<p>Jarold Mittleider Steven Reed Ray Roberts Michael Schmitz Lawrence I. Shapiro Laurie Tish Shelly Van Dyne</p> <p><u>Absent:</u> Greg Guin Edward Schultz</p>
<p><u>Staff:</u> Lisa Snyder, Director James Brackens, VP - Ethics & Practice Quality (January 28th only) Michael Buddendeck, General Counsel Jason Evans, Sr. Technical Manager Ellen Gorla, Sr. Manager*</p>	<p>Michele Craig, Technical Manager* Brandon Mercer, Technical Manager* April Sherman, Technical Manager* James West, Technical Manager* Shannon Ziemba, Technical Manager* Liese Faircloth, Technical Manager</p>
<p><u>Guests:</u> Al Pruskowski, Chair, Independence/Behavioral Standards Subcommittee Dan Dustin, VP State Board Relations, NASBA Nancy Miller, KPMG Anna Dourkourekas, GT Theresa Ahlstrom, KPMG Vincent DiBlanda, DT Catherine Allen, PwC* George Dietz, PwC* Edith Yaffe, E&Y* Eric Holbrook, GAO* Christie Pugnetti, GAO*</p> <p style="text-align: right;">*Via Phone</p>	

1. Definition of Client

Reorganized Task Force

Mr. Mintzer reported that at the January meeting it was decided to reorganize the Task Force to add members currently on the Committee and members with broader experience than just governmental. He explained that while he took over as Chair of the Task Force, to assist with

transition, Mr. Arvizu agreed to stay on for a short period. Mr. Lynch remained on the Task Force and Ms. McAninch and Messrs. David, Denham, Deitz, and Guin were added.

Client and Attest Client

Mr. Mintzer reported that the Task Force reviewed a spreadsheet which identified every instance that the term client and attest client appeared in the AICPA Code and found some instances where the term “client” was used but “attest client” was the more appropriate term. He explained that the Task Force also noted that in some cases, the term client appeared within the rules themselves and would therefore require a membership vote. The Task Force planned to explore if there were any alternative ways to address the issue other than a revision to the rules. Mr. Mintzer also reported that although additional discussion is necessary, the Task Force’s preliminary direction is that the definitions should be more precise with respect to how the Code refers to these entities as currently, the definition of an attest client reads as though it is a subset of the client definition.

Confidentiality and Records Requests

It was discussed that during the January meeting, the Committee took a straw poll whereby a majority of the Committee was in agreement that for nonattest services and agreed upon procedure engagements, the Confidential Client Information Rule should only extend to the entity that engages the member. However, a couple of members noted that although in theory the member should have a separate confidentiality agreement with the entity for which it is performing the services which outlines the member’s ethical responsibilities, they believe in practice this is not always done. As such, they recommend the Task Force consider the ramifications if there is no separate agreement and confidentiality is not addressed anywhere else. The Task Force was asked to develop a visual aid to accompany its recommendation.

It was noted that when the issue is one of client records, it would seem that the member should be required to return the records to the entity that furnished the records to the member. As such, the Task Force was asked to consider this issue if it decides that the term “client” should only include the engaging entity.

Attest Client

The Task Force was also asked to discuss if the definition of an “attest client” should include the engaging party, the responsible party, or both since under the attestation standards, members only need to be independent of the responsible party.

2. Entities Included in State and Local Government Financial Statements

Ms. Miller explained that the Task Force does not believe that the GAAP concepts of control and significant influence will work in the GASB environment and that instead the Task Force believed the GASB concepts, such as accountability, should be used. The Committee was supportive of this approach but asked for the Task Force to develop a training session for the Committee so that all members of the committee better understand the state and local environment and related terminology.

3. Maintaining or Hosting Client Data

Ms. VanDyne explained that the Task Force recommends that the Task Force’s charge be streamlined to allow the Task Force to recommend any updates necessary to the nonattest services subtopic in light of current information technology service offerings by members. The Committee approved the streamlined charge.

Ms. VanDyne went on to explain that much of the Task Force's discussions so far were related to cloud services and hosting services. She explained that the Task Force does not believe that providing nonattest services through the cloud in itself would impair independence rather, it is dependent upon whether or not the nonattest services provided impair independence (i.e., the technology does not change the substance of the service). She further explained that the service that the Task Force believes may impact independence is when a member is providing hosting services because when providing such services the member will likely be holding onto the client's data or records.

The Committee requested that Staff explore possible training for the Committee to better understand cloud services and hosting services and also requested Staff draft a FAQ that would provide independence guidance when providing bookkeeping services through the cloud.

4. Codification

Ms. Gorla explained that the Task Force would appreciate the Committee's feedback on the toolkit it developed to assist members in public practice with implementing the conceptual framework approach. The Committee recommended that Staff work with legal counsel to ensure the language used in the "Notice to Readers" adequately protects members. It was noted that the toolkit would be a valuable resource to those members who do not have similar tools and resources in their firms and that the number of examples seemed adequate. The Committee was asked to review the document once more and to communicate to Staff any other thoughts by May 22nd.

5. AICPA Codification/State Board Rules Review Task Force

Mr. Johnson reported that the Task Force had compared the AICPA Code to the rules of twelve state boards of accountancy to identify significant differences. It was noted that these states combined represented 54% of all active licensees and 57% of all persons regulated by state boards. He explained that the Task Force focused on state board rules that were more restrictive than the AICPA rules and considered an issue to be a significant difference if it was noted in five or more of the twelve sampled states.

Mr. Johnson explained that the significant differences identified related to commissions and contingent fees. Specifically, the AICPA Code does not require written disclosure for permitted commissions whereas many of the state boards' rules do require written disclosure. Another difference identified was that the Code does not scope in all attest engagements for purposes of the commissions and contingent fees rules but rather, only extends the prohibitions to certain attest engagements. Mr. Johnson explained that due to the new UAA definition of attest which scopes in all attestation engagements, state boards who will adopt the UAA definition of attest may be more restrictive with regard to these rules. He also noted that another significant difference identified by the Task Force related to "records requests" and that the Task Force needed to perform additional research before it would be ready to bring a recommendation to the Committee.

The Committee agreed that a task force should be appointed to explore the possibility of expanding the commissions and contingent fees rules to all attest clients as well as requiring written disclosure of permitted commissions. Mr. Buddendeck recommended that a member from the General Counsel's office serve as an observer to the task force.

Ms. Snyder noted that there were a number of other issues involving the commissions and contingent fees rules that the Committee had identified in prior years that might warrant revision. She explained that while such issues would not be the primary objective of the task force, the task force would bring any such matters to the Committee's attention for further consideration.

6. Transfer and Return of Client Files

At the PEEC's May 2015 meeting, Ms. Snyder presented an issue regarding the retention, transfer and disposal of client files when a member sells, transfers or discontinues his or her practice. She explained that with the assistance of the Planning Subgroup, she had drafted proposed guidance in the form of a revised interpretation and new interpretation for the Committee's consideration.

Ms. Snyder proposed that a new paragraph be added to the *Disclosing Client Information in Connection With a Review of the Member's Practice* Interpretation [1.700.050] that would require client confidentiality when a member obtains client files as the result of acquiring a member's practice and therefore not limit the guidance to only the review of a practice. The Committee was in support of the proposed revision.

Ms. Snyder next reviewed the proposed new interpretation under the *Acts Discreditable* Rule with the Committee that addresses a member's responsibilities when selling or transferring their practice to a successor firm, or discontinuing their practice. She explained that the guidance would require a member who sells or transfers their practice to expend best efforts to contact each client and either obtain their consent to transfer the files or make arrangements to return the client's records. Only those records required to be returned to the client under the *Records Requests* Interpretation would be required to be returned. She noted that the member would be able to presume that the client consents to the transfer of files if the client does not take any action within ninety days of sending the notice.

With regard to the situation where a member discontinues his or her practice (but does not sell or transfer the practice to a successor firm), Ms. Snyder explained that the proposed guidance would require that the member expend best efforts to notify each client and make arrangements to return any records that the member is required to provide to the client as set forth in the *Records Requests Interpretation*. In cases where the member is unable to contact the client, the guidance would require that the member retain the client files in a confidential manner and in accordance with the firm's record retention policy and applicable legal or regulatory requirements.

The Committee discussed whether it was appropriate to require the member to retain client files in accordance with the firm's record retention policy and legal/regulatory requirements in cases where the member is unable to contact the client. At least one committee member believed that the member should only have to retain the files the longer of the legal/regulatory requirement or ninety days. Other committee members questioned whether the member should be required to have an understanding with clients regarding their files and the period of time the member will retain them if the practice is discontinued. The Committee did not reach a consensus on this issue.

Ms. Snyder also reviewed the proposed guidance addressing the responsibilities of a member who acquires a practice which would require the member to be satisfied that all clients of the predecessor firm have been notified of the acquisition and have consented to the member's

continuation of professional services and retention of client files. In cases where a client has not provided such consent (or the member is uncertain as to whether a client has provided consent to the predecessor firm), the guidance would require the member to expend best efforts to contact the client.

The Committee discussed whether a member who is acquiring a firm would typically accept any client files from the predecessor firm and at least one member noted that his firm would not accept any client files from the predecessor firm in the case of an acquisition. It was noted that the Interpretation should not imply that a member must accept client files during an acquisition or merger. It was also suggested that the guidance clarify that a member who acquires a practice should be satisfied that all clients subject to the acquisition have consented to the member's retention of any client files the successor firm retains. One Committee member questioned whether the guidance should clarify what is intended by the term "best efforts." Ms. Snyder noted that this term is also used within the AICPA affiliates interpretation.

The Committee agreed to form a task force to further consider these issues.

7. IESBA Update

Ms. Snyder provided an update of the IESBA's April 2015 meeting in New York. She provided an overview of the following items.

Responding to Non-Compliance with Laws and Regulations

On May 6, 2015, the IESBA unanimously approved for exposure revised proposals regarding a professional accountant's response to identified or suspected non-compliance with laws and regulations (NOCLAR). The revised proposals set out a new framework to guide auditors, other professional accountants in public practice, and professional accountants in business in deciding how to respond when they come across an act or suspected act of NOCLAR. Ms. Snyder noted that a task force of PEEC will be drafting a comment letter on the proposals for the Committee's consideration.

Long Association of Personnel with an Audit or Assurance Client

The IESBA completed its consideration of significant comments received on the Exposure Draft, *Proposed Changes to Certain Provisions of the Code Addressing the Long Association of Personnel with an Audit or Assurance Client*. She noted that there were a number of issues that were still pending, including, whether the existence of different regulatory safeguards set at the jurisdictional level might provide an alternative to elements of the rotation requirements for audits of public interest entities (PIEs) in the Code, and the approach to the cooling-off period for the engagement quality control reviewer on PIE audits. She noted the IESBA will continue its deliberation of the issues at its June-July 2015 meeting.

Structure of the Code

The IESBA considered significant comments received on the Consultation Paper, *Improving the Structure of the Code of Ethics for Professional Accountants*, and related Task Force recommendations. The IESBA agreed to a proposed approach to restructuring the Code, subject to reconsideration of the titles of certain components within the new structure. The IESBA will consider a first draft of certain restructured sections of the Code at its June-July 2015 meeting.

Ms. Snyder also provided a brief overview of the IESBA's project to review safeguards within the Code and the progress of the Part C Task Force with regard to guidance on "inducements."

8. PEEC Planning Subgroup

Ms. Snyder noted that the Planning Subgroup had reached out to potential stakeholders to obtain feedback on any emerging issues that the Committee may wish to consider for its three-year project agenda. She stated that at this time, there were no issues raised by such stakeholders for the Committee to consider.

9. Nonattest Services Frequently Asked Questions

Ms. Gorla reported that the Nonattest Services Standing Task Force assisted Staff with updating the Nonattest Services FAQ document for the Codification. Ms. Gorla explained that the Task Force believes it is best to update these FAQs in a two phased approach. In the first phase, the Task Force made revisions not only for the Codification but for the recent changes made to the nonattest services interpretations such as replacing “management functions” with “management responsibilities”. She explained that the Task Force also made sure that the questions were more in line with the answers given, improved the formatting, incorporated a table of contents and dated the document. The Committee did not have any comments on the revised document.

Ms. Gorla explained that while reviewing the FAQ document a significant number of questions were identified that the Task Force plans to discuss in greater detail during the second phase of the update.

10. Electronic Records

Ms. Gorla explained that the division was asked to clarify if the tax data file is considered a “member-prepared record” under the *Records Requests* Interpretation that would need to be provided to the client so that the client’s records would be complete or a member’s “working paper” that need not be provided.

One member believed that the answer would depend on what the client retained the member to do while another member noted that she believed the tax data file would be considered the member’s working paper because there is often other information such as diagnostic information in the file. Another member suggested that it might be possible that only some of the information in the data file could contain member-prepared information. Staff was asked to research this matter further and directed to draft a FAQ for the July meeting.

11. Proposed Non-Enforcement Policy for Members who Perform Certain PCAOB Audits

(Moved From Closed Agenda)

Ms. Snyder requested that the Committee consider adopting a non-enforcement policy with regard to a member who performs an audit using only PCAOB auditing standards for an entity, other than an issuer or SEC-registered broker dealer, and fails to also apply and report under generally accepted auditing standards (GAAS). She noted that the non-enforcement policy would only apply in cases where such an audit client is required by law or regulation to have an audit performed under PCAOB audit standards.

Ms. Snyder explained that recently, there have been some regulators, such as the Commodities Future Trading Commission (CFTC), that now require audits of certain entities to be conducted under PCAOB audit standards. Due to the fact that the audits of these entities are not covered by the Sarbanes-Oxley Act (SOX), a member would not be in compliance with standards under the AICPA Code if the member performed the audit only using PCAOB

auditing standards since AICPA Council does not recognize the PCAOB as having jurisdiction over entities not covered by SOX.

Ms. Snyder noted that the Auditing Standards Board will be discussing a narrow amendment to AU-C 700, *Forming an Opinion and Reporting on Financial Statements*, at its May meeting to provide clearer guidance on how an auditor should report when an entity's audit does not fall under the PCAOB's authority (per the Council Resolution) but the audit has been performed in accordance with GAAS and PCAOB auditing standards and expects to issue a final standard before the end of calendar-year 2015.

It was moved, seconded and unanimously agreed to adopt the following non-enforcement policy on the Division's Website:

The Professional Ethics Executive Committee (PEEC) has agreed that it will not take enforcement action against a member or member's firm ("member") who performs an audit using PCAOB auditing standards for an entity, other than an issuer or SEC-registered broker dealer, and fails to also apply and report under generally accepted auditing standards (GAAS) provided such entity is required by law or regulation to have an audit performed under PCAOB auditing standards. This non-enforcement policy will be in effect for audits covering periods ended or ending on or before December 31, 2015. After such periods, members will be expected to also comply with GAAS when performing audits of such entities.