

***JOINT ETHICS ENFORCEMENT PROGRAM
(JEEP)
MANUAL OF PROCEDURES***

December 2006

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Chapter 1

ETHICS ENFORCEMENT

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 of the AICPA and the state societies set forth the criteria that a member is expected to observe as a condition of continued membership.¹ These bylaws also describe how a member who may have departed from the criteria for continued membership will be investigated, judged and, if found guilty, sanctioned. See AICPA bylaws section 3.6.2.2 and implementing resolution thereunder adopted by Council, the AICPA's governing body.

1.2 For example, section 7.3 of the AICPA bylaws sets forth the circumstances in which membership in the Institute and state societies with similar bylaws provisions may be disciplined without a hearing; these circumstances are described in more detail in Chapter 2 of this manual. Furthermore, section 3.6.2.3 of the AICPA bylaws establishes a joint trial board to adjudicate charges against members of the Institute and state societies under their bylaws pursuant to bylaws section 7.4.

The bylaws of most state societies include a grant of similar powers by incorporating Joint Ethics Enforcement Program (JEEP) agreements.

1.3 The AICPA bylaws 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 services as the Council may prescribe.

Most state societies have ethics committees. The responsibilities of a state society's ethics committee may not be identical with those of the AICPA's Professional Ethics Division; however, the division and the state society committees have at least one responsibility in common, that is, 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 more fully discussed in this manual.

¹ See AICPA *Professional Standards* for the full text of the AICPA bylaws and implementing resolutions of the Council (AICPA, *Professional Standards*, vol. 2, BL secs. 100–900) or www.aicpa.org.

JOINT ETHICS ENFORCEMENT PROGRAM

1.4 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 their 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 both the AICPA and one or more state societies, the AICPA and virtually all of the state societies have joined together to create the Joint Ethics Enforcement Program (JEEP).

1.5 JEEP has been created by agreements between the AICPA and individual state societies. A state society that has such an agreement currently in force is a participating state society.

1.6 The purpose of the JEEP agreement between the AICPA and a state society is to permit joint enforcement of their respective codes of professional conduct with respect to a member of either or both by means of a single investigation and, if warranted, a single settlement agreement or joint trial board hearing.

1.7 To accomplish the purpose of JEEP, the substance of the following provision should be incorporated into the bylaws of each participating state society:

...(a) When a member of the [named] society, whether or not he or she is a member of the American Institute of Certified Public Accountants, 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 [named] society and the AICPA....

1.8 Section 7.4 of the AICPA bylaws ends with the following:

With respect to a member residing in a state in which the state society has entered into an agreement approved by the Institute's Board of Directors to deal with complaints against society members in cooperation with the professional ethics division, disciplinary hearings shall be conducted before a hearing panel of the joint trial board.

1.9 Although JEEP is a joint enforcement program, it should be recognized that:

- a. The codes of professional conduct enforced under JEEP can differ; when charges are made in relation to membership in the AICPA and one or more participating state societies, such charges must recognize any differences in their respective codes.
- b. Enforcement of rules against competitive bidding is excluded from the JEEP process by every one of the 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 Rules 302, 502, and 503 of the rules of the AICPA Code of Professional Conduct.

THIS MANUAL

1.10 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.

1.11 Section 3.6.2.2 of the AICPA bylaws provides that the Professional Ethics Executive Committee shall, among other things, “(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....” 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.

1.12 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.

1.13 The policies and procedures contained in this manual are subject to interpretation by the AICPA Professional Ethics Executive Committee. The manual may also be revised at any time.

DEFINITIONS

1.14 The term *ethics committee* means a committee that has the authority to conduct an investigation under the terms of JEEP. An ethics committee may be the AICPA Professional Ethics Executive Committee, 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 Sections 7.3.1 and 7.3.2 of the AICPA bylaws 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.

7.3.2.3 A 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: Bylaw 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 bylaw 7.7, 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 organization that have been specifically approved (based on established criteria) by the Professional Ethics Executive Committee (PEEC) and AICPA Board of Directors². They also apply to disciplinary actions taken by any state board of accountancy.

2.3 In accordance with section 7.3.2.3, the PEEC has established automatic sanctioning guidelines that have been approved by the Board of Directors. The guidelines are intended to be congruent with the disciplinary action taken by the approved disciplinary body. The sanctioning guidelines will be provided to participating state societies for use in applying the 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 matter should be investigated by the state society under normal JEEP procedures described in the following chapters.

2.5 In addition, if the respondent or AICPA professional ethics executive committee petitions the trial board that the automatic discipline provisions should not be applied (as provided for in 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 In connection with section 7.3.2, the AICPA Board of Directors adopted a resolution on November 4, 1977, that declared that when a member's only remaining (original or reciprocal) certificate or license to practice is suspended or revoked by a state board of accountancy for failure to comply with a mandatory continuing professional education (CPE) requirement, the automatic disciplinary provisions of the bylaws should result in automatic suspension or termination of AICPA membership unless the member is retired or disabled.

2.7 The conduct of a member who is disciplined in accordance with section 7.3.1 or section 7.3.2 of the AICPA bylaws or a similar section of the bylaws of a participating state society is not usually investigated under JEEP. However, section 7.3.3 of the AICPA bylaws reads as follows:

² The PEEC and Board of Directors have approved the Securities and Exchange Commission, the Public Company Accounting Oversight Board and the Internal Revenue Service – Office of Professional Responsibility.

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

2.8 The AICPA will notify a participating state society when the automatic disciplinary provisions of the AICPA's bylaws are invoked against a member who is a member of the society. Each participating state society should notify the AICPA Professional Ethics Division when it becomes aware of a matter that involves the automatic disciplinary provisions of the AICPA bylaws.

Chapter 3

INVESTIGATIONS OF POTENTIAL DISCIPLINARY MATTERS

State societies that elect to act as concurring only parties in investigations refer all complaints to the AICPA Professional Ethics Division (see paragraph 3.7(f)).

3.1 The principal enforcement functions of an ethics committee include investigating potential disciplinary matters involving members and finding no violation or, when finding prima facie evidence of a violation, requiring corrective action 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 contained in the 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.

ALLOCATION OF INVESTIGATIONS AMONG ETHICS COMMITTEES

3.3 One purpose of JEEP is to eliminate duplicate investigations of a potential disciplinary matter by both 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 requests the AICPA ethics division to conduct the investigation and the division agrees to do so, (b) the AICPA ethics division has the right to conduct the investigation as discussed in paragraph 3.7, 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 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 society who are not members of the AICPA.

COMPLAINTS AND OTHER INFORMATION

3.5 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.

3.6 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; anonymous written "tips"; and

announced decisions of judicial and regulatory authorities (for example, the Securities and Exchange Commission (SEC) and state boards of accountancy).

ALLOCATION OF INVESTIGATIONS

3.7 The AICPA ethics division will ordinarily refer a complaint or other information to the ethics committee of the appropriate participating state society for investigation. 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, and/or independence issues.
- c.* From a department, agency, regulatory commission, or other unit of the U.S. federal government.
- d.* From the Public Company Accounting Oversight Board (“PCAOB”).
- e.* That appears to involve members of more than one participating state society.
- f.* From a JEEP participant that has elected to be a concurring only party to investigations (an Option 2 election).

3.8 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) through (f) 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 where 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.

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 is one in which:

- a.* Within 90 days of receipt of the complaint or other information:
 - (1) The complaint or other information has, if required, been acknowledged; or
 - (2) The initial review determining whether or not to commence an investigation has been completed; and

- (3) If appropriate, an investigation has been initiated, with inquiries sent to the firm or an opening letter sent to a respondent if his or her identity is evident.
- b.* AICPA Council implementing resolution under bylaws 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 fails to initiate its inquiry within 90 days.
- c.* 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 and a finding is made and the necessary concurrence has been sought.

3.10 When the AICPA ethics division has referred a complaint or other information to the ethics committee of a participating state society for investigation, the division may, if it chooses to and so notifies the participating state society, assume and complete the joint investigation if the ethics committee of the participating state society fails to meet any of the criteria for a timely investigation. When the ethics committee of a participating state society has referred a complaint or other information to the AICPA ethics division for investigation, the committee may, if it chooses to and so notifies the division, assume and complete the joint investigation if the division fails to meet any of the criteria for a timely investigation.

3.11 An investigation of a potential disciplinary matter must include the following steps:

- a.* Acknowledge receipt of the complaint or other information.
- b.* Make an initial review of the complaint or other information within 90 days of receipt.
- c.* Assign a distinct alphabetic and/or numeric identification code to the investigation.
- d.* 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 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), and requesting if the firm or entity wishes to elect that the investigation be deferred due to related litigation. See paragraphs 3.22 to 3.25 of this manual.
- e.* Send an opening letter to each respondent as he or she becomes known.
- f.* Identify the respondents in the AICPA's and the appropriate state society's membership records to maintain jurisdiction.
- g.* Appoint and instruct an ad hoc investigator, if needed.
- h.* Gather and examine evidence.
- i.* Offer an interview to each respondent and hold the interview if and when the offer is accepted.

- j. Prepare an investigation summary for consideration by the committee, subcommittee, or subgroup thereof.
- k. Arrange for the committee, subcommittee, or subgroup thereof to review and discuss the evidence obtained and make a finding.
- l. Committee decision regarding violation of the code of professional conduct.
- m. Committee decision regarding disciplinary or remedial action to be taken where violation(s) of the code of professional conduct exists.

The above steps, *including the interview offer*, must be observed in each investigation.

Acknowledgment of a Complaint or Other Information

3.12 Each complaint should be acknowledged in writing. An acknowledgment letter should ordinarily:

- a. Acknowledge receipt of the complaint or other information.
- b. Request additional information as needed or state that the committee will contact the complainant or supplier of the information if further information is needed.
- c. State that an initial review and, if necessary, an investigation will be conducted in accordance with the procedures of the AICPA JEEP and the (named) participating state society or societies.
- d. State that the procedures of JEEP require that any investigation be conducted in a confidential manner and 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 a settlement agreement that includes admonishment or affects membership rights (suspension or expulsion).
- e. State that the results of the investigation will be shared with the complainant on a confidential basis. (*see Form Letter 24 under Appendix C for a description of the information to be shared with the complainant*)
- f. Indicate that information regarding the status and disposition of an investigation involving governmental agency referrals (such as the SEC or the U.S. Department of Health and Human Services) will be made available to the referring agency.

3.13 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 Rule 501, as described in Interpretation No. 501-1, "Retention of Client Records," of ET section 501, *Acts Discreditable* (AICPA, *Professional Standards*, vol. 2, ET sec. 501.02), it will be necessary to disclose the identity of the complainant.

Initial Review

3.14 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 is appropriate) if it is determined that any one of the following were true:

- a.* No provision of a code of professional conduct applies to the subject matter of the complaint or other information.
- b.* The allegation, implication, or suggestion contained in the complaint or other information would not constitute a violation of a code of professional conduct even if it were found to be true.
- c.* The facts, circumstances, and respondents to be investigated are identical with those of an existing or closed JEEP investigation.
- d.* None of the persons involved are members of a participating state society or the AICPA.

3.15 AICPA Council implementing resolution under bylaw 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 above circumstances. If an ethics committee dismisses the complaint, that fact must be communicated to the complainant.

3.16 A decision that no further investigation need be conducted may be made by the full ethics committee, by individuals or subgroups designated by the committee, or through its operating procedures.

3.17 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 whatsoever (including the complainant or source of the other information), and/or take any appropriate related actions, or any combination of these. If the information comes to the committee's attention in the form of a newspaper article or media report, additional information is needed to enable the committee 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 member and staff then conduct an initial review and make a determination whether to open an investigation.

3.18 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.

3.19 If, as part of the initial review, 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. 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.

Identification Code for Investigations

3.20 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.

3.21 The ethics committee of a participating state society should arrange for the assignment of a distinct alphabetic and/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.

Inquiry of a Firm

3.22 An ethics committee may make findings only with respect to individual members, not firms. When a complaint or other information identifies a firm, but not members, the ethics committee conducting the investigation should arrange to send a letter of inquiry to the firm seeking the names of those individual members whose responsibilities or duties indicate that they were responsible for the subject matter of the investigation.

3.23 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.

3.24 A letter of inquiry should ordinarily:

- a.* Advise the firm that information has been received that contains allegations that the code of professional conduct may have been violated. The source of the information should be briefly described.
- b.* State 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.
- c.* Inform the addressee of the role of the ethics committees and briefly describe the purpose of the investigation.
- d.* Advise that the JEEP manual describes the procedures, including the rights and obligations of the parties to the investigation. Offer a copy of the manual and state that the signer will answer questions regarding the procedures.
- e.* Offer the firm's representative an initial meeting or conference call to discuss the matter but advise that any materials related to this meeting or conference call may be subject to subpoena.
- f.* Advise that the investigation will be conducted in a confidential manner, but that the procedures do permit for the results of the investigation to be shared with the complainant (where one exists), and under certain circumstances, the publication of disciplinary actions.

- g. Request, if the investigation involves one or more engagements for a client, 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/or practice, and whether they are or are not employees or partners (shareholders) of the firm. A response naming only the engagement partner would ordinarily not be acceptable.
- h. Request, if the matter being investigated does not involve an engagement, the names of members responsible for the conduct that is the subject of the complaint.
- i. 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(s). If the persons responsible for the engagement(s) are no longer with the firm or do not have control of the above specified documents, the firm should name a partner who is a member of the AICPA and/or state society and who does have sufficient authority within the firm to assure the retention and presentation of the documents described above, to assume such responsibility. Include the statement that the failure to fulfill such responsibility would be considered a violation of Rule 501 – *Acts Discreditable*, of the AICPA Code of Professional Conduct (or similar provisions of the state society code or bylaws).
- j. State: “The division will, if you so request, defer this investigation provided it receives a 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 U.S. Securities and Exchange Commission, or Public Company Accounting Oversight Board), and/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.”
- k. Advise the firm that it may designate an individual to (1) receive copies of correspondence relating to the investigation that is directed to its partners and professional employees and (2) act on behalf of its partners and professional employees who may be designated by the committee as respondent(s) unless a respondent advises the committee to the contrary.
- l. Request a response within 30 days of the date of the letter.

3.25 An ethics committee conducting the investigation of a referred complaint or other information shall send a copy of a letter of inquiry to the referring body (participating state society or AICPA). 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, return receipt requested and postage prepaid. The follow-up request should describe or include a copy of the provisions of the bylaw section 7.4.6 of the AICPA and the (named) participating state society’s bylaw or code of conduct provision that impose a duty to cooperate on a member. 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.

Other Information: Media Reports

3.26 When information in the form of a newspaper article or other media report alleges or suggests that a potential disciplinary matter exists, a letter of inquiry should be sent to the firm or individual, if an individual is named in the article. The letter of inquiry should ordinarily:

- a. State that information in the form of a newspaper article or other media report that alleges a potential disciplinary matter has been received.
- b. State 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; and request appropriate documents (for example, complaint in lawsuit and financial statements to make such determination).
- c. State that the procedures provide that the firm or individual may request a meeting or conference call to discuss the matter.
- d. State that any material provided may be subject to subpoena.
- e. Advise that if a discussion of the matter is not requested or the information is not provided, an investigation will be initiated.
- f. Request a response within 30 days of the date of the letter.

The material received should be reviewed in accordance with the provisions of the section of this manual titled "Initial Review," paragraphs 3.14 through 3.19.

3.27 If, after initial review of the information received in response to the letter described in paragraph 3.26 of this manual, the ethics committee determines that no further investigation need be conducted, a letter should be sent to the firm or individual. The letter should state that the information submitted has been reviewed, that the ethics committee has concluded not to pursue the matter further, and that the right to make further inquiries based on future developments is reserved.

Identification of Respondents

3.28 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.

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

3.30 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.

Deferral of an Ethics Investigation Due to Related Litigation or Regulatory Proceeding

3.31 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 Public Company Accounting Oversight Board), and/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 [named] committee will, if you so request, defer this investigation provided it receives a 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 U.S. Securities and Exchange Commission or Public Company Accounting Oversight Board), and/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.

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 above described documents. The designated partner should be an AICPA and/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 Rule 501 – *Acts Discreditable*, of the AICPA's Code of Professional Conduct and/or a violation of AICPA bylaw 7.4.6 (and/or similar provisions of the state CPA society code or bylaws).

3.32 In certain unusual situations (for example, where the threat of litigation is present or where 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), litigation deferral may be granted if appropriate under all the circumstances involved and if evidence is presented to the ethics committee regarding the existence of the litigation.

3.33 If the documentation submitted by the firm or respondent does not support his or her claim that the issues under investigation are the same as those involved in the litigation or proceeding, deferral of the ethics investigation should not be granted.

3.34 During the period in which an investigation is deferred, the committee conducting the investigation should at least every six months send written inquiries to the respondents and/or the person named by the firm to preserve and present documents related to the investigation requesting information about the status of the proceeding, investigation, or appeal. The name of the court, other authority, or agency and the docket number of the case should also be obtained. After the investigation has been deferred for five years, the written inquiry letter should be modified to request evidence that the matter

that gave rise to the deferral is being actively pursued. In a situation in which it appears that the matter is not being actively pursued, an ethics committee may consider removing an investigation from deferral status. If a satisfactory response is not received within 30 days of the date of such an inquiry, a letter of noncooperation due to failure to cooperate should be sent certified mail, return receipt requested. The investigation should be resumed promptly when the proceeding, investigation, and/or appeal is completed.

Opening Letters

3.35 Each respondent must be sent an opening letter. An opening letter should be sent to the respondent at his or her last-known address shown on the membership records of the AICPA or the participating state society. An opening letter should:

- a. Advise the respondent that information has been received that contains allegations that the code of professional conduct may have been violated. The source of the information should be briefly described.
- b. State 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.
- 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. Offer a copy of the manual and state that the signer will answer questions regarding the procedures.
- e. 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.
- f. Advise the respondent that the investigation will be conducted 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 agencies or is an SEC matter, advise that the procedures also provide for exchange of disciplinary action on a confidential basis between the AICPA or state society and the federal and/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 (where one exists).
- g. State: "The division will, if you so request, defer this investigation provided it receives a 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 U.S. Securities and Exchange Commission or Public Company Accounting Oversight Board), and/or (3) an appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency.”

- h.* If the respondent is still with the firm, state that, if the investigation is deferred, he or she 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 Rule 501 – *Acts Discreditable*, of the AICPA and the (state CPA society) codes of professional conduct. (Note: If all respondents are no longer with the firm, the firm must appoint a member of the AICPA and/or state society to assume this responsibility. See paragraph 3.31 of this manual.)
- i.* 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.
- j.* Contain a request for documents or responses to interrogatories as set forth in paragraph 3.36 of this manual.
- k.* 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.
- l.* Advise the respondent that there may be additional questions and/or a request to provide copies of or access to additional documents.
- m.* 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.
- n.* Thank the respondent for his or her anticipated cooperation in this investigation.

3.36 An opening letter should include either:

- a.* Specific interrogatories about the issues being investigated; or
- b.* A request for relevant documents (for example, accountant’s reports and the accompanying financial statements, engagement working papers, and relevant court or regulatory agency documents [both interrogatories and a request for documents could be included]); and
- c.* A request for information regarding the firm, the engagement and the respondent.

3.37 If a substantive response to the interrogatories and/or request for documents is not received within 30 days, a follow-up request, known as a letter of noncooperation, should be sent by certified mail, return receipt requested. This letter should describe the provisions of the AICPA’s bylaw 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.

3.38 Ordinarily, the interrogatories and requests for documents included in an opening letter are limited to what the committee or its designee can reasonably conclude will be needed 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.

3.39 A copy of all opening letters sent by the ethics committee of a participating state society should be sent to the AICPA ethics division. A copy of each opening letter sent by the AICPA ethics division should be sent to the participating state society or societies of which the respondent is known to be a member.

3.40 As soon as 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.

Ad Hoc Investigator

3.41 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 must be a member of the AICPA and/or of a participating state society but not a member of the ethics committee or its staff.

3.42 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.

An ad hoc investigator should ordinarily be furnished with written guidelines or instructions prepared by the committee's staff or one or more members of the committee.

3.43 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.

3.44 An ad hoc investigator may, subject to the provisions of the committee's operating procedures:

- 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.

Ad hoc investigators are not ethics committee members and cannot vote on the disposition of an ethics investigation.

Evidence

3.45 The purpose of an ethics investigation is to determine if there is prima facie evidence of a violation of a 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/or 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.

3.46 Ordinarily, an ethics committee assigns responsibility for gathering and examining evidence to one of its members, staff, and/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.

3.47 *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 regarding what the ultimate findings of the committee will be.

Review of Engagement Working Papers

3.48 If the issues involved in an investigation involve professional general or technical standards, it will ordinarily be necessary for the assigned member, staff, and/or ad hoc investigator to review the relevant engagement working papers.

3.49 Ordinarily, engagement working papers are examined after other available evidence has been obtained and examined, but before interviews are held with the respondents.

3.50 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:

- a. All or selected portions of the working papers for the engagement being investigated.
- b. Selected portions of the working papers for an engagement related to the engagement being investigated.

3.51 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.

3.52 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.

3.53 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.

3.54 An important aspect of reviewing working papers is verification, to the extent possible, of the responsibility of the respondents for the matters being investigated. 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

3.55 A firm frequently has legal title to much of the evidence that is relevant in an investigation, particularly engagement working papers.

3.56 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 AICPA bylaw 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.

3.57 The Internal Revenue Code requires that tax return information be kept confidential. When an ethics committee is conducting an investigation involving a tax matter and a tax return or portion thereof is a document necessary to that investigation, permission should be sought and received from the taxpayer(s) who signed that return before it 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

3.58 An opening letter should include relevant questions about the issues being investigated and/or 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 3.59 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. The letter should request a substantive response within 30 days. If a substantive response is not received within 30 days, a follow-up request in a letter of noncooperation should be sent by certified mail, return receipt requested and postage prepaid. This letter should describe the provisions of AICPA bylaw 7.4.6

and the (named) participating state CPA society's bylaws or code of conduct provision that impose a duty to cooperate on a member. If a substantive response is not received 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

3.59 Unless it is clear from the evidence obtained that the ethics committee will *not* find prima facie evidence that a respondent has violated a code of professional conduct, the respondent *must be offered* an opportunity to meet or have a telephone interview with representatives of the committee to discuss the issues in the investigation and offer any evidence that he or she believes the committee should consider in making a finding. The offer of an interview should be communicated to the respondent in writing. The respondent should be given at least 15 days to accept or reject the interview offer.

3.60 An interview is ordinarily conducted on an informal basis. The committee should be represented by at least two persons, one of whom is a member of the committee; other committee representatives may include the ad hoc investigator, members of the committee's staff, and/or the committee or a participating state society's or the AICPA ethics division staff's legal counsel. The committee's representatives should be knowledgeable of the issues involved in the investigation and of the evidence obtained to date. The respondent or his or her representative must be present at the meeting and may be accompanied by legal counsel and a reasonable number of representatives of his or her firm and/or the firm's legal counsel.

3.61 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. Include obtaining responses to the interrogatories.
- f. Be conducted jointly with one or more other respondents in the same investigation.

3.62 At the beginning of the interview, a representative of the committee should address an opening statement to the respondent. Or, the opening statement 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, to discuss what the committee is investigating, to describe the evidence that has been or is being obtained, to afford the respondent an opportunity to offer additional evidence, and, if applicable, to pose interrogatories to the

respondent that may be considered by the committee in reaching findings adverse to the respondent).

- c. If applicable, advise the respondent that he or she may decline to respond to the interrogatories but, if he or she does decline, the committee may subsequently pose such interrogatories in writing and the respondent will have an obligation under the appropriate bylaws or code of conduct to make substantive responses.
- d. Advise the respondent that the committee has formed no conclusions with respect to the issues in the investigation and that the committee representatives cannot and will not express any opinion regarding the committee's ultimate findings.
- e. 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 his or her review and comment.
- f. State that the interview summary, together with respondent's comments, will be considered by the committee in making its findings.
- g. 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).
- h. State that if the matter is brought before a hearing panel of the joint trial board, the summary of the interview, together with the respondent's comments, will be presented to the panel.
- i. Ask the respondent whether he or she has any questions about the purpose, conduct, or potential consequences of the interview.

3.63 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 the respondent to (a) acknowledge his or her membership in the AICPA and/or in the (named) participating state society or societies and (b) describe the status of his or her CPA certificate(s) and/or permit(s) to practice, issuing state(s), the date(s) of issuance, and recently completed continuing professional education.

3.64 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.

3.65 It is ordinarily useful during the discussion of the issues to encourage the respondent to (a) suggest other relevant provisions or requirements of professional standards, (b) explain his or her understanding of the relevant provisions and requirements of professional standards, (c) explain his or her conduct in terms of the relevant provisions and requirements of professional standards, and (d) suggest mitigating circumstances when he or she acknowledges that his or her conduct deviated from the provisions and requirements of professional standards.

3.66 As part of describing the evidence that the committee is obtaining or has obtained, the committee representatives may, depending on the circumstances, (a) ask the respondent to describe his or her position in relation to apparently pertinent parts of reports and accompanying financial statements, depositions and court transcripts, and engagement working papers; (b) ask the respondent to clarify his or her understanding of evidence that has been or is being obtained; and (c) seek the respondent's views on the relevancy of the evidence that has been, or is being, obtained to the issues being investigated.

3.67 As soon as possible after the interview, one of the committee's representatives should draft a written summary of the interview and circulate the draft to those who participated in the interview, *including the respondent(s)*, for comments and corrections. 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.

3.68 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 and 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 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 his or her responses thereto.

3.69 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.

3.70 The written report should be sent to the respondent with a request that he or she 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 approves the interview summary, as written.

Investigation Summary

3.71 Before submitting the results of an investigation to a full ethics committee for a finding, a written summary of the investigation should be prepared for the confidential and exclusive use of members of the committee and others who have access to the committee's confidential files. This summary should be prepared by 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) who are knowledgeable of the issues and evidence in the investigation.

3.72 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 with respect to appropriate findings; such recommendations are not binding on the committee.

GENERAL RULES

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

Scope of an Investigation

3.74 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(s) the committee decides are involved.

Confidentiality

3.75 Investigations of potential disciplinary matters are to be conducted in a confidential manner. This means:

- 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, subcommittees, subgroups, 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 3.75(a) 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, discretion should be used in determining the extent of information disclosed and 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 a subpoena is received by the AICPA or a state society for documents produced to it as part of an ethics investigation, it is our policy to notify the producing party of the subpoena and provide reasonable assistance to the producing party to help protect its trade secrets and propriety information.

Chapter 4

DISPOSITION OF INVESTIGATIONS

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 Each finding must be made at a committee meeting duly conducted in person or by telephone conference call. At such a meeting, the committee should review and discuss the issues in the investigation, the evidence obtained, the report of the interview with the respondent, the investigation summary, and any other relevant material. If the committee concludes that no further investigative procedures need be undertaken, it should make 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 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:

- 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. That the respondent has failed to cooperate with the committee in the investigation.

Findings (a) and (b) are, of course, mutually exclusive alternatives. Findings (a) and (c) are also mutually exclusive, but a committee may find both prima facie evidence of infraction of an applicable code of professional conduct by a respondent (finding (b) above) and, if the facts warrant it, that the respondent has failed to cooperate in the investigation (finding (c) above).

4.5 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

4.6 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 4.8 of this manual, there may be circumstances where 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.

4.7 A closing letter, when no prima facie evidence of a violation of a code of professional conduct has been found, should state:

- 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.

4.8 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 the investigation should no longer be pursued, then the committee should close the investigation. Such a 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. If the committee considers it appropriate in the circumstances, the reasons for closing the investigation

PRIMA FACIE EVIDENCE OF A VIOLATION OF A CODE OF PROFESSIONAL CONDUCT

4.9 An important responsibility of an ethics committee that finds 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, and/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.

4.10 The ethics committee that finds 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.
- b. Issue a letter of required corrective action with directives.
- c. Offer the opportunity of a settlement of the charges (see the section of this manual titled "Settlement of Ethics Charges," paragraphs 4.26 through 4.31).

The committee's decision about the action to be taken is subject to the approval and concurrence requirements of the JEEP participants in the investigation as specified in paragraphs 4.58 and 4.59 of this manual.

REFERRAL OF RESPONDENT(S) TO THE JOINT TRIAL BOARD

4.11 If an ethics committee concludes that a violation is of sufficient gravity to warrant formal disciplinary action, it shall, after obtaining the required concurrences, 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.

4.12 In considering whether to refer a respondent to the trial board, the ethics committee may be guided by the existence, as revealed in the investigation, of one or more of the following conditions, which are not all-inclusive:

- 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

4.13 If a committee agrees to refer a respondent to the trial board, a recommendation should be made 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 it is decided that rehabilitation is not the correct course of action, the appropriate recommendation is expulsion from membership in the AICPA and/or state society.

4.14 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:

- a.* Expel the respondent from membership in the AICPA and/or the participating state society; or
- b.* Suspend the respondent from membership in the AICPA and/or the participating state society for a period ranging from one day to two years; or
- c.* Admonish the respondent; and
- d.* Take such additional action as the hearing panel deems appropriate (for example, direct the respondent to complete specific continuing professional education courses, direct the respondent to submit a work product for review or require a preissuance review of engagements, or direct the respondent to no longer perform peer reviews for a specified period of time).

4.15 An ethics committee cannot appeal a decision of not guilty of a hearing panel. A respondent has a right of appeal of a decision of guilty.

4.16 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.

4.17 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. Each ethics committee deciding to present a case to the joint trial board should adopt appropriate procedures for the approval of such 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 Division and to present the case to the hearing panel. Committee members and others may be called as witnesses in the hearing.

4.18 When an ECA has decided to present a case to a trial panel, it should, *after obtaining the required approvals and concurrences*, notify each respondent in writing. The notification should (a) advise the respondent that he or she will be summoned to a hearing by the secretary of the Joint Trial Board and (b) urge him or her to retain any records in his or her possession or under his or her control that may be relevant to the issues that may be raised during the hearing.

LETTER OF REQUIRED CORRECTIVE ACTION

4.19 If an ethics committee concludes that a violation is not of sufficient gravity to warrant a formal trial board hearing, it may, *after obtaining the required approvals and concurrence*, issue a letter of required corrective action to the respondent.

4.20 An ethics committee may direct a respondent to successfully complete specified continuing professional education (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.

Successful completion of the eleven-hour self-study course, *Professional Ethics: The AICPA's Comprehensive Course*, requires a score of 90 or above. Respondents should be so advised in the letter of required corrective action.

A letter of required corrective action may also direct the respondent to submit examples of his or her subsequent work for review by the ethics committee or may require a preissuance review of engagements. The CPA that is selected to perform this review must be approved by the committee that issued the letter of required corrective action. The committee should determine that the reviewer selected is qualified to perform the review and is a licensed CPA.

4.21 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 trial board. If the committee decides to bring the matter to a hearing panel, it should, *after obtaining the required approvals and concurrences*, arrange to present the case. If the committee decides not to bring the matter to a

hearing panel, a letter should be sent to the respondent advising him or her 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.

4.22 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.

4.23 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, return receipt requested, and:

- a. Should state the subject matter of the investigation.
- b. Should state that the committee found prima facie evidence that the respondent violated one or more cited rules of an applicable code of professional conduct.
- c. Should, to the extent applicable, cite the interpretations, rulings, and/or provisions of enforceable professional literature on which the findings stated in 4.23(b) are based.
- d. Should summarize (to the extent that it is not obvious from the cited rules of conduct, interpretations, rulings, and/or provisions of enforceable literature) the respondent's conduct that constituted the violation.
- e. Should 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 and/or submit specified future work for review by the committee). The directives may include CPE, subsequent submission of reports and working papers for review, preissuance review of engagements, agreement not to perform peer reviews for a specific time, accelerated peer review, and affirmative agreement to cease activity that caused the violation to occur. There is no publication of the letter of required corrective action.
- f. Should state that the letter constitutes the joint letter of required corrective action of the committee and concurring committee, and the committees' directives if concurrence was granted.
- g. *Must* advise the respondent of his or her right to reject the letter of required corrective action and directives.
- h. Should state what may happen if the respondent does reject the letter of required corrective action.
- i. Should state that the letter is confidential and that there will be no publication of the letter; however, if appropriate, the results of the investigation will be shared with the state/federal government agency that filed the complaint. In addition, the letter should advise the

respondent that the results of the investigation will be shared with the complainant (where one exists).

- j.* Should state that copies of the letter will be retained in the confidential files of the AICPA and the state society.
- k.* Should advise the respondent that failure to comply with the directives in the letter constitutes a violation of AICPA bylaw 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.

4.24 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.

4.25 If a respondent fails to comply with a directive of the committee, the committee should proceed under AICPA bylaw 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

4.26 AICPA Council resolution under bylaws section 3.6.2.2 authorizes the professional ethics executive committee to offer a respondent(s) 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.

Settlements must be approved by the AICPA's Professional Ethics Executive Committee and/or the ethics committee of a JEEP-member state CPA society and the trial board division (see paragraph 4.58(c) of this manual).

4.27 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.

4.28 If it is decided by the investigating member and staff that an offer of settlement be made to the respondent(s), approval of the offer must be obtained from the appropriate subcommittee and then the ethics executive committee if an AICPA investigation, or state society ethics committee if a society investigation. 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. After obtaining the required signatures of approval and concurrence, the committee should inform the respondent in writing of the settlement offer terms and conditions. Settlement offers are not negotiable. If a member rejects the settlement offer, the case will be referred to the trial board for a hearing.

4.29 When voting on whether to offer a respondent an opportunity to settle an ethics case, the motion to be voted should be moved to refer the respondent to the trial board for a hearing but 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 a trial board referral is made.

4.30 Upon approval of a settlement agreement by the respondent(s), the state society ethics committee, and the AICPA executive committee, the settlement agreement should be submitted to the Trial Board Division, which, upon a finding that the respondent(s) has waived his or her rights to a hearing under AICPA bylaw section 7.4, shall approve the settlement and authorize publication in accordance with AICPA bylaws section 7.6 and related Council resolutions and the bylaws and/or code of conduct of each JEEP-member state society.

4.31 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 and/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 other JEEP-member organization. If the member decides to reject the settlement offer, the matter would be subject to full investigation in accordance with JEEP.

SHARING OF SETTLEMENT AGREEMENT WITH PEER REVIEW ADMINISTERING ENTITY

4.32 Where the findings in the settlement agreement 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 either the AICPA Peer Review Program or Center for Public Company Audit Firms Peer Review Program, the settlement agreement should include a directive that the committee will forward a copy of the agreement to the administering entity responsible for supervision of the firm's peer review.

4.33 The AICPA's ethics division (through the AICPA peer review division) will facilitate the distribution of the settlement agreement to the AICPA or Center Peer Review Program's peer review administering entity. Where the investigating committee is the state society, the society should ensure that a copy of the signed settlement agreement is forwarded to the AICPA ethics division.

PREISSUANCE REVIEWS

4.34 A decision to impose a preissuance review requirement may be made by an ethics committee when, in its judgment, the results of an ethics investigation warrant such a requirement.

4.35 The imposition of a preissuance review requirement would ordinarily read as follows:

The [*respondent*] agrees to hire an outside party, acceptable to the [*name of ethics committee*] to perform a preissuance review of the reports, financial statements, and working papers on all audit, review, and compilation engagements, and permit the outside party to report quarterly to the [*name of ethics committee*] on the [*respondent's*] progress in complying with [*his or her*] agreement as stated herein to comply with professional standards. The first report for the quarter ending is due by [*date*]. [*Respondent*] agrees to have this preissuance review performed at [*his or her*] expense.

4.36 The reviewer's report should list the engagement(s) reviewed and the findings of the reviewer with respect to the respondent's compliance with professional standards in the performance of the reviewed engagement(s).

FAILURE TO COOPERATE

4.37 A member of the AICPA is obligated by the conditions of his or her membership to cooperate with an ethics committee in any disciplinary investigation of the member or partner or employee of his or her firm by making a substantive response to interrogatories or a request for documents within 30 days of their posting by certified mail, postage prepaid, to the member at the member's last-known address as shown on the membership records of the AICPA. The bylaws or code of conduct of most of the participating state societies impose a similar obligation on their respective members.

4.38 If, before referring a respondent to a hearing panel of the trial board with a charge of noncooperation, the certified noncooperation letter sent by the participating state society or AICPA to the respondent has been returned unclaimed, the committee should consider whether additional efforts should be made to locate the respondent. For example, an address may be sought from the state board of accountancy. These efforts are then documented in the memorandum presented to the hearing panel.

4.39 A member of the AICPA is also required to comply with the educational and remedial or corrective action determined to be necessary by the ethics committee.

4.40 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, but not necessarily verbatim, record of the question and answer should be made. A member may, however, require that a committee's interrogatories be in writing and may choose to respond only in writing. 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, but not necessarily verbatim, record of the answer should be made. 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.

4.41 A member's obligation to furnish documents extends to engagement working papers, engagement reports, and other firm files. The obligation can be discharged by furnishing readable copies of the requested material. A member may require that a committee's request for documents be in writing.

4.42 In forming interrogatories and requests for documents, an ethics committee should be aware that Rule 301 – Confidential Client Information, of the of the AICPA Code of Professional Conduct 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 such groups 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.

4.43 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.

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.

4.44 A member who refuses to honor his or her obligation to make a substantive response to an ethics committee's written interrogatories and/or requests for documents is said to have "failed to cooperate" with the committee in its investigation.

4.45 If an ethics committee decides that a member has failed to cooperate in an investigation that it is conducting, 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 section 7.4.6 of the AICPA bylaws and/or a provision of the bylaws or code of conduct of the appropriate participating state society.
- b. Violating Rule 501 – *Acts Discreditable*, of the AICPA Code of Professional Conduct and/or a similar rule contained 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.

Before proceeding to a trial board hearing, the ethics committee may offer the respondent a settlement agreement calling for expulsion with publication (see Form Letter 21).

4.46 The process for presenting a case of "failing to cooperate" before a hearing panel is the same as that described previously. However, the panel may, in effect, 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.

4.47 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

4.48 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 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

4.49 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 the Institute's Professional Ethics Executive Committee 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.

4.50 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 decision 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).

4.51 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

4.52 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. 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.

4.53 Concurrence must be sought for the following:

- a.* A finding of prima facie evidence of a violation of an applicable code of professional conduct.
- b.* The decision with respect to what action (that is, 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 terms therein is to be taken when prima facie evidence of a violation is found.

4.54 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.

4.55 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, 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 of this file should be retained by the committee that seeks concurrence.

4.56 An ethics committee that is requested to concur in a finding and any consequent 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.

4.57 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.

4.58 If the concurring committee concurs, the requesting committee should proceed as follows:

- a. *Trial board referrals*—Notify the respondent(s) 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 respondent will be notified by the joint trial board 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 where 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)*—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 he or she has complied with the directives in the letter.
- c. *Settlement agreements*—*Settlement agreements are nonnegotiable.* The investigating committee (requesting committee), after concluding that a settlement be offered to the respondent, shall prepare the agreement. That agreement is first sent to the concurring committee together with the investigation file (see paragraph 4.54 of this manual). 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.

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.

The settlement agreement signed by the requesting and concurring committee is then mailed to the respondent by certified mail, return receipt requested, with copies of all signature pages. Originals are retained by the investigating committee.

The settlement agreement signed by the respondent is then 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.

The investigating (requesting) committee may prepare a news item for publication. The chair of the Trial Board Division must approve the news item.

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

A DECISION TO NOT CONCUR

4.59 If the concurring committee decides not to concur, it should communicate that decision and the reasons therefor to the requesting committee as promptly as possible. As soon as practical 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 the obtaining of any required approvals.

TIMELINESS OF CONCURRENCE

4.60 If a concurring committee does not act on a request within 90 days of the receipt of the request, the requesting committee may, if it chooses to do so and so notifies the concurring committee, proceed with its finding and decisions, *but only in its own name and then only with respect to the respondent's membership in its organization*. Similarly, the concurring committee may, if it chooses to do so and keeps the requesting committee informed of its actions, extend the investigation if it considers that necessary; make an independent finding; make any necessary decisions as a result of its finding; and proceed with its finding and decisions in its own name and with respect to membership in its organization.

4.61 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, and/or any respondent in the investigation.

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.

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.

5.2 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

5.3 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.

STATISTICAL REPORTS

5.4 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.

An annual report on the ethics division's activity is published in the *CPA Letter*. These reports include concurrence requests from the societies that have been acted upon by the ethics division.

COOPERATION WITH STATE BOARDS OF ACCOUNTANCY

5.5 An ethics committee may conduct an investigation in cooperation with a state board of accountancy provided the respondent(s) in the investigation has given the ethics committee written permission to investigate the matter and to send a copy of the investigation file to the particular state board.

5.6 Where 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).