

**PROFESSIONAL ETHICS COMMITTEE  
PROCEDURES MANUAL**

**AS OF AUGUST 11, 2010**

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NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS  
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# PROFESSIONAL ETHICS COMMITTEE PROCEDURES MANUAL

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## I. INTRODUCTION

One of the cornerstones of the profession of public accountancy is the high ethical standards of its members. While high standards are essential in achieving public trust and confidence, this trust can be maintained only if the public is confident that the profession can regulate itself and discipline those members who violate or ignore these standards.

As the first state society established in the United States, the New York State Society of Certified Public Accountants continues to play a leading role in the development and promotion of high ethical standards within the profession. The Society, through its Professional Ethics Committee, educates and provides guidance to its members on ethical behavior and standards, and ensures members' adherence thereto by disciplining those who violate or ignore the rules.

This manual provides a procedural guide on how the Professional Ethics Committee responds to ethics complaints involving Society members. The manual also describes in detail the procedures used by the Committee to discipline Society members for ethics violations. The policies and procedures contained herein are subject to revision and interpretation by the NYSSCPA Professional Ethics Committee.

## II. DEFINITIONS

For the purposes of this manual, the following term:

1. "AICPA" shall mean: the American Institute of Certified Public Accountants
2. "Assigned Member" shall mean: the committee member assigned to investigate or respond to an inquiry, a complaint or other disciplinary proceedings
3. "Board" shall mean: the Board of Directors of the NYSSCPA
4. "Bylaws" shall mean: the Bylaws of the Society
5. "Chair" shall mean: except when the term specifically refers to the assistant chair, the chairperson of the committee
6. "Code" shall mean: the Code of Professional Conduct of the NYSSCPA
7. "Committee" shall mean: the Professional Ethics Committee of the NYSSCPA
8. "CPE" shall mean: continuing professional education courses or programs
9. "JEEP" shall mean: the Joint Ethics Enforcement Program
10. "Member" shall mean: a member of the NYSSCPA
11. "Respondent" shall mean: the member who is the subject of a complaint, investigation, or disciplinary proceeding
12. "Society" or "NYSSCPA" shall mean: the New York State Society of Certified Public Accountants
13. "Staff" shall mean: employees of the Society assigned to work with the Committee

### **III. PROFESSIONAL ETHICS COMMITTEE**

#### **The Committee**

The Professional Ethics Committee (hereinafter, the “Committee”) is a standing committee within the Operations Division of the Society created under Article XI of the Bylaws of the NYSSCPA. Its authority and jurisdiction is defined in Article XII (Professional Conduct and Disciplinary Proceedings), of the Bylaws. The Bylaws prescribes certain duties, powers, responsibilities, and procedures of the Committee. All matters relating to investigations before the Committee are confidential, except as provided in Bylaw Article XII paragraphs 12 and 16.

#### **Committee Objectives**

The Committee educates and provides guidance to Society members on ethical behavior and standards, and ensures members’ adherence thereto by disciplining those who violate the Code of Professional Conduct (“the Code”). Such discipline could include remedial action that may include prescribing continuing professional education (CPE); admonishment; censure; suspension; or expulsion from membership. The concept behind prescribing CPE is remedial rather than punitive. If a member is censured, admonished, suspended or expelled, the Committee may publish the name of the member who is disciplined together with a factual summary of the case in an appropriate publication of the Society that is distributed to all members and in a Society press release that is made available to the media.

Specifically, the duties and responsibilities of the Committee include, but are not limited to:

- Consider and, if necessary, investigate complaints involving the professional conduct of members in matters of noncompliance with or violation of the Code, Bylaws, professional standards, or applicable state and federal laws and regulations.
  - Investigations are divided into two categories: technical and behavioral.
  - Technical cases relate to the performance of professional services (i.e. violations of technical accounting or auditing standards, independence and tax matters).
  - Behavioral cases relate to behavioral issues (i.e. acts discreditable to the profession, integrity and objectivity, conflicts of interest, disclosure of confidential client information, contingent fees, retention of client records, commissions and referral fees).

- Continually review the Code to ensure adequacy under current conditions and recommend appropriate changes to the Board of Directors.
- Propose interpretations of the Code for Board approval.
- Conduct educational activities for members on professional ethics.
- Provide comments and recommendations on ethics rules proposed by national or regulatory agencies.

### **Billing Disputes**

As a general rule, the Committee does not investigate complaints involving billing disputes (i.e., the fees or billing rates charged by a member or firm to a client for the rendering of professional services). However, if it is determined that a billing dispute involves separate allegations of professional misconduct (violation of the Code or Bylaws) the Committee would investigate the alleged misconduct without addressing the billing dispute.

### **Committee Structure**

The Committee is composed of volunteer members who come primarily from public accounting, industry and academia. The members have expertise in several areas of practice, including: generally accepted accounting principles, generally accepted auditing standards, government audits, public school audits, not-for-profit audits, SSARS reports, SEC practice, corporate and individual taxation, personal financial planning and litigation services. There is no limit on the number of members appointed to serve on the Committee.

There also is a requirement to have at least one member in industry and at least one member to be a public, non-CPA member. The public, non-CPA member has full participation and voting rights, but does not conduct investigations.

Committee members cannot serve at the same time with the New York State Board for Public Accountancy, the New York State Education Department's Office of Professional Discipline, the AICPA's Professional Ethics Executive Committee, the Society's Peer Review Committee, or the AICPA's Peer Review Board.

The Committee has one Chair, one Vice Chair and two assistant chairs. The Chair generally carries a two-year term. The role of the assistant chairs is to oversee the activities of active case investigations. The Chair may appoint a task force(s) to address a specific issue

that is of concern to the Committee. The current roster of Committee members is available on the Committee's section of the NYSSCPA's website.

Members serve until the end of the Society's fiscal year, or until appointment of a successor, whichever is later. Membership on the Committee is reviewed annually by the Chair and is subject to approval by the in-coming President. Committee members must also undergo a more formalized evaluation—written by the Chair. In order to continue serving, Committee members need to have received a positive evaluation once every three years.

Two members of the NYSSCPA staff consisting of an Assistant Counsel for Ethics and an Ethics Coordinator also support the Committee.

### **Working Groups**

Each member of the Committee is also a member of one of the Working Groups that addresses other responsibilities of the Committee, exclusive of actual case investigations. Each Working Group has a Leader who is responsible for the activities of the assigned task for that particular Working Group. For example, Working Groups are responsible for: 1) Reviewing and drafting responses to ethics rules and interpretations proposed by the AICPA and other appropriate regulatory agencies; 2) Updating the Professional Ethics Committee Procedures Manual; 3) Updating and maintaining the Committee portion of the Society's website; 4) Providing for member education on ethics; and 5) Reviewing and suggesting other undertakings to further the mission of the Committee, including recommendations to amend the Code.

### **Frequency and Conduct of Meetings**

The Committee generally meets bi-monthly, and conducts conference calls on months where no meetings are scheduled. The purpose of the conference calls is to discuss the status of particular cases and other matters of interest to the Committee. Additional meetings may be called by the Chair, as may be necessary. The executive session portion of the meetings, which are closed to the public due to confidentiality requirements are devoted to discussions of active case investigations and other enforcement matters. Each meeting has an open session where matters of interest to the Committee are discussed, including but not limited to reports from each Working Group Leader.

In addition, the Chair may appoint a special task force to undertake a specific project. The task force will terminate on the completion of its assignment.

#### **IV. JOINT ETHICS ENFORCEMENT PROGRAM**

The AICPA and each of the state societies have their own codes of professional conduct that their members are obligated to observe as a condition of membership. The provisions of the codes of many state societies are identical with, or similar to, the provisions of the AICPA Code. 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 established the Joint Ethics Enforcement Program (JEEP) in order to eliminate duplicate investigations and enforcement of a potential disciplinary matter by both the AICPA Professional Ethics Division and the ethics committee or committees of one or more participating state societies.

In order to participate in JEEP, the Society has entered into a JEEP agreement with the AICPA. The purpose of the agreement is to permit joint enforcement of their respective Codes of Professional Conduct with respect to a member of either or both the Society and the AICPA by means of a single investigation and, if warranted, a single settlement agreement or Joint Trial Board hearing. The JEEP agreement provides that investigations of potential disciplinary matters are to be conducted in accordance with JEEP procedures.

Under JEEP, the Committee will investigate a potential disciplinary matter involving the Society's members unless: (a) the Committee requests the AICPA Professional Ethics Division to conduct the investigation and the division agrees to do so; (b) the complaint or information involves matters that, under JEEP, the AICPA Professional Ethics Division has the right to conduct the investigation; or (c) the AICPA Professional Ethics Division has determined that the ethics committee of the state society failed to meet any of the criteria for a timely investigation.

In addition, the Committee may, at the request of the AICPA Professional Ethics Division, conduct an investigation involving one or more members of the AICPA who are not members of the Society. Similarly, the AICPA Professional Ethics Division may, at the request of the Committee, conduct an investigation involving one or more members of the Society who are not members of the AICPA.

Violation of Society rules that are not identical to the AICPA rules may have to be handled by the Committee outside of JEEP and without AICPA involvement. The following matters are not currently subject to JEEP procedures:

- (1) enforcement of rules against competitive bidding; and
- (2) enforcement of rules against contingent fees, solicitation or advertising, and commissions that are not identical to Rules 302, 502, and 503 of the AICPA Code of Professional Conduct.

## V. AUTOMATIC DISCIPLINE AND REINSTATEMENT

- A. Membership in the Society shall be suspended automatically without a hearing upon the conviction of any member in any court of the United States or any political subdivision of the United States for:
1. A crime defined as a felony under the law of the convicting jurisdiction;
  2. The willful failure to file any income tax return which the member, as an individual taxpayer, is required by law to file;
  3. The filing of a false or fraudulent income tax return on the member's or on a client's behalf; or
  4. The willful aiding in the preparation or presentation of a false and fraudulent income tax return of a client.
- B. The suspension automatically shall become an expulsion from membership if the conviction becomes final. The suspension shall automatically be vacated if a reversal of the conviction becomes final. A former member who was automatically expelled may apply for reinstatement pursuant to the provisions set forth in Section D of this Part.
- C. If any member's CPA license is suspended or revoked, or otherwise impaired by the political authority issuing said license, the suspension or revocation shall automatically effect, respectively, the suspension (for the same length of time) or the expulsion of such member from the Society.
- D. Reinstatement
1. A former member who was automatically expelled from membership, or who resigned or was expelled through a settlement agreement may be restored to membership pursuant to Article XII.15 of the Society's Bylaws. Such reinstatement is subject to approval by the Committee and the Society's Board of Directors.
  2. An applicant for reinstatement shall meet the following requirements:

- (i) A letter setting forth the applicant's reasons for requesting reinstatement must be sent by the former member to the Committee no sooner than two years after the effective date of the termination of membership.
- (ii) The applicant shall appear for a personal interview before a panel of three members of the Committee, comprising the Chair, an assistant chair, and one other member designated by the Chair. The Chair shall preside at the interview. Staff of the Committee may also be present during the interview. If extenuating circumstances prevent the applicant from appearing before the panel, such circumstances must be enumerated and submitted in writing to the Committee.
- (iii) The applicant must support his or her request for reinstatement with evidence of rehabilitation since the date of termination of membership, either at the time of the interview or in writing prior to the date of the interview. Letters of recommendation may also be submitted by the applicant.
- (iv) Within 30 days of the interview, the panel shall submit an interview report to the Committee. The panel may make a recommendation that reinstatement be approved, disapproved, or approved upon the condition that the member submits proof to the Committee of his or her completion of assigned continuing professional education courses within one year after the effective date of restoration to membership.
- (v) The panel's interview report shall be considered by the Committee in reaching a decision on whether to approve, approve with conditions, or disapprove an applicant for reinstatement.
- (vi) In all deliberations by the panel and the Committee, the guidelines in paragraph 3 hereof shall be considered.
- (vii) A request for reinstatement shall be approved, approved with conditions or disapproved, upon a majority vote of the Committee in executive session.

- (viii) The Committee shall send its determination of approval or approval with conditions, together with a summary of its deliberations, to the Board of Directors for its consideration.
  - (ix) A determination of disapproval by the Committee shall be final and shall be sent by the Chair of the Committee to the applicant by letter stating the effective date of such disapproval and shall inform the applicant of the right to reapply for reinstatement at any time after one year from the effective date of the Committee's disapproval. A copy of the Chair's letter of disapproval shall also be sent to the Board of Directors.
3. The following guidelines shall be considered by the panel and the Committee when deliberating a request for reinstatement:
- (i) Fundamental Questions

If the applicant were reinstated:

    - i. Would the public interest be better served?
    - ii. Would the profession be professionally strengthened?
    - iii. Would the Society be in a better position to prevent further acts discreditable to the profession?
    - iv. Would the applicant be a diligent professional?
    - v. Would the reputation and public image of the profession be damaged?
  - (ii) Evidentiary Questions
    - i. Review of the nature of the offense, if any, and any mitigating circumstances.
    - ii. Time lapse since the offense or resignation.
    - iii. Employment and professional development activities since the offense or resignation.
    - iv. Status of membership in other professional organizations, and other professional licenses.
    - v. Indications of professional rehabilitation.

- vi. Understanding of the applicant with respect to the seriousness of acts discreditable to the profession.
- vii. Applicant's attitude, whether conciliatory or hostile.
- viii. Likelihood of repetitive violations.
- ix. Quality of letters of reference submitted.

## **VI. INQUIRIES**

[Section deleted, effective June 15, 2005.]

## VII. COMPLAINTS

### A. Sources of Information

A potential disciplinary matter may come to the attention of the Committee as a result of:

- (1) a complaint; or
- (2) other information.

1. A “complaint” is a written communication that states, alleges, implies or suggests that a member or a firm with members has or may have violated one or more provisions of the Code or Bylaws. A complaint may be made by a member, a non-member or anonymously.
2. “Other information” is any information other than a complaint sent to or obtained by the Committee that alleges, implies or suggests that a member or a firm with members may have violated one or more provisions of the Code or Bylaws. Other information may be obtained from any source including, but not limited to, programs and activities of the AICPA and Society; federal, state, and local government agencies; newspaper articles; media reports; anonymous written “tips”; and, announced decisions of judicial and regulatory authorities (e.g., the Internal Revenue Service, Securities and Exchange Commission, Public Company Accounting Oversight Board, and the New York State Board of Regents).

### B. Receipt of Complaint or Other Information

1. Preliminary review.
  - a. Upon receipt of the complaint or other information, staff and the Chair perform a preliminary review of the complaint to determine if an investigation should be opened.
  - b. An investigation of a complaint or other information is not warranted if:
    - (i) Neither the Code or Bylaws applies to the subject matter.
    - (ii) The allegation, implication, or suggestion, even if true, would not be a violation of the Code or Bylaws.
    - (iii) The facts, circumstances and members to be investigated are identical to those of an ongoing or closed JEEP investigation.
    - (iv) None of the persons involved are members. Such complaint is deemed outside the jurisdiction of the Committee. Staff determines if the individual identified in

the complaint is a member to establish jurisdiction. The Committee may make findings only with respect to individual members, not firms. If the complaint or other information does not identify individuals in a firm, staff will attempt to obtain such names or by preparing a letter of inquiry addressed to the firm requesting the identity of those in the firm whose responsibilities or duties indicate that they were responsible for the subject matter of the investigation. (See subsection 3.)

- (v) An extraordinary length of time<sup>1</sup> has elapsed between the date(s) of the alleged conduct and the submission of the complaint, to the extent that the reliability of the evidence or the recollection of the facts and circumstances by the persons involved would be severely diminished or the rights of the respondent to a fair investigation would be severely impaired.

- c. The staff shall consult with the Chair, who shall make the preliminary decision on whether an investigation is warranted. If the Chair decides that an investigation shall not be opened, except upon grounds that none of the persons involved are members, the Chair shall report such decision to the Committee at the next meeting and request the Committee's concurrence. If the Committee concurs with the Chair's decision that an investigation is not warranted, the complaint shall be dismissed and the complainant shall be informed in writing of the dismissal and the reason(s) therefor.

- 2. Acknowledge complaint. a. Each complaint is acknowledged by staff in writing. The acknowledgement letter should:

- (i) acknowledge receipt of the complaint;
- (ii) request additional information as needed or state that the Committee will contact the complainant if further information is needed;
- (iii) state that an initial review and, if necessary, an investigation will be conducted in accordance with the procedures of the JEEP and the Society; and
- (iv) state that the procedures of the Society require that any investigation be conducted in a confidential manner and the results of the investigation and the name of the member will not be published except as set forth in the Section titled "Confidentiality";
- (v) state that NYSSCPA Bylaw Article XII.12(b) requires that Complainants in a case

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<sup>1</sup> Consideration should be given on a case by case basis to the length of time which has elapsed between the alleged conduct and the submission of a complaint. This consideration is solely in the discretion of the Chair, in consultation with Staff, and subject to review by the entire Committee.

- shall be informed if an investigation results in a finding of (1) no violation, or (2) a finding of no further action because no evidence of a violation was obtained;
- (vi) state that NYSSCPA Bylaw Article XII.16 requires disclosure of investigations and disciplinary actions to state and federal regulatory authorities at specific points in the investigation process including information provided by the complainant and the complainant's identity. Investigation statements, documents and other related materials, or copies thereof, will be turned over to regulatory authorities at their request.
- b. Staff shall assign a case number to all open cases. This case number must appear on all correspondence related to the case. Case numbers are in three parts. The first part indicates the violation category, the second part indicates the sequential order in which the investigation was opened, and the third part indicates the calendar year; i.e. T-1-03 or B-1-03.
- c. If the Chair determines that none of the persons involved in the complaint are members, the complaint is outside the jurisdiction of the Committee. In such event, the acknowledgment shall include a statement that the Committee does not have jurisdiction over the complaint and, to the extent possible, refer the complainant to the appropriate regulatory body.
- d. If the complaint fails to provide sufficient information to make a determination on whether an investigation is warranted, the acknowledgment may contain a request for additional information.
3. Firm Letter of Inquiry a. The Committee may make findings only with respect to individuals, not firms. When a complaint or other information identifies a firm, but not individuals, and staff was unable to obtain names from the complainant or other information, staff shall 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.
- b. A letter of inquiry should ordinarily be sent to the firm's highest 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.

c. A letter of inquiry should:

- (i) advise the firm that information has been received which contains allegations, implications, or suggestions that the Code or Bylaws may have been violated.
- (ii) state that an important objective of the Society is to promote and maintain high professional standards and that the Bylaws and Code contain provisions relating to the programs of self-regulation and set forth criteria members agree to observe, including the following paragraph from the code: “[A] member may be held responsible for the acts of all persons associated with him or her in the practice of public accounting whom the member has the authority or capacity to control.”
- (iii) inform the addressee of the role of the Committee and briefly describe the purpose of the inquiry;
- (iv) state that procedures of JEEP require that an investigation be conducted in a confidential manner, with certain exceptions. Should a violation occur, the procedures do permit under limited circumstances, for the publication of disciplinary actions and disclosure to complainants pursuant to the section titled “Confidentiality”.
- (v) state that NYSSCPA Bylaw Article XII.16, adopted July 21, 2003, requires the sharing of information regarding investigations and disciplinary actions. The Bylaw is to be quoted in the letter:

**Article XII. 16. Disclosure to Regulatory Authorities**—*The professional ethics committee shall inform the New York State Education Department and any other applicable state or federal regulatory agency (“Regulatory Authorities”) known to the committee of investigations involving professional conduct of a member or a partner or employee of the member’s firm as follows:*

- (a) after a request has been granted to a member to defer the investigation by the professional ethics committee;*
- (b) after a member fails to cooperate with the professional ethics committee in any investigation;*

- (c) *after a complaint has been referred to the Joint Trial Board under Article XII, paragraph.7 or the Society trial board under Article XII, paragraph 11;*
- (d) *after automatic actions under Article XII, paragraphs 2, 3, or 4;*
- (e) *after a settlement agreement has been entered into between the member and the professional ethics committee;*
- (f) *after a letter of required corrective action has been accepted; and*
- (g) *on any other occasion the professional ethics committee deems appropriate.*

*The professional ethics committee shall turn over to the Regulatory Authorities all statements, documents and other materials relating to the investigation, or copies thereof, requested by the Regulatory Authorities.*

- (vi) state that the Committee may, upon request, defer the 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 (e.g., a State Board of Accountancy, the New York State Education Department's Office of Professional Discipline, the New York State Board of Regents, U.S. Securities and Exchange Commission, Internal Revenue Service, Public Company Accounting Oversight Board); or (3) an appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency. State further that this investigation will be resumed at the conclusion of the proceeding, investigation, or appeal and that the firm will receive periodic inquiries from the Committee requesting information about the status of such proceeding, investigation, or appeal;
- (vii) request, if the investigation involves one or more engagements for a client, the names of the members responsible for the overall engagement and any other members, 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, partners or shareholders of the firm;
- (viii) request, if the matter being investigated does not involve an engagement, the names of members responsible for the conduct which is the subject of the complaint;

- (ix) request a response within 30 days of the date of the letter.
  
- d. If a response is not received to a letter of inquiry within 30 days, a follow-up letter of non-cooperation should be sent to the firm's representative where the inquiry was originally sent, by certified mail and regular mail, return receipt requested. The follow-up letter should describe or include a copy of the provisions of Rule 506 of the Code that imposes a duty to cooperate on a member. If the response is not received within 30 days of the follow-up request, the matter will be referred to the Committee for action due to failure to cooperate.

**C. Disclosure of Identity of Complainant to Respondent**

The identity of the complainant shall not be disclosed to a respondent (or a firm which is the subject of a complaint) or in a Letter of Inquiry to a firm unless necessary to the investigation; for example if a client alleges that a firm or member retained client's records in violation of Rule 501—Acts Discreditable, as described in Interpretation 501-1, "Response to requests by clients and former clients for records" it will be necessary to disclose the identity of the complainant.

**VIII. ALTERNATIVE PROCEDURES WHEN MEMBER HAS BEEN SANCTIONED BY A NYSSCPA APPROVED REGULATORY AGENCY; AND CONCURRENCE ON CASES RESULTING FROM LIMITED REVIEW BY AICPA PROFESSIONAL ETHICS DIVISION**

**A. Alternative Procedures**

1. When a member has been subject to regulatory enforcement proceedings by the Securities and Exchange Commission, the Public Company Accounting Oversight Board, the Internal Revenue Service or the New York State Education Department's Office of Professional Discipline which resulted in a sanction against the member by such regulatory agency, the Committee may, at its discretion, offer the member a letter of required corrective action (sometimes referred to as a RCA) or a settlement agreement to avoid a duplicate investigation by the Committee. An initial evaluation based on reading the public record shall be made, and, if necessary, other limited inquiries, upon which the Committee shall first determine that the member's conduct or alleged conduct could constitute a violation of the Code, and that the member either:
  - i. consented to the sanction by such regulatory agency, with no admission or denial of the charges by the agency; or
  - ii. was found guilty by such regulatory agency, whether by finding of fact or admission of guilt.
2. When a member has consented to a sanction by such regulatory agency, with no admission or denial of the charges, the Committee may, at its discretion, offer the member a letter of required corrective action or a settlement agreement to waive an investigation by the Committee and to consent to the sanction by the Committee, with no admission or denial to any charges brought before the Committee as a result of such sanction by the regulatory agency.
3. When a member has been found guilty and sanctioned by such regulatory agency, whether based upon the finding of fact or entry of an admission of guilt by the member in the agency's proceedings, the Committee may, at its discretion, offer the member a letter of required corrective action or a settlement agreement to waive an

investigation by the Committee, admit to the Committee's charges, and consent to the sanction by the Committee.

4. i. Before offering the member the option of accepting a letter of required corrective action or a settlement agreement from the Committee, the case shall first be assigned to an investigator to review all of the available information. The assigned member shall make the initial evaluation with respect to: (1) the applicability of alternative procedures under this section; (2) what section of the Code may have been violated; and (3) what sanction may be appropriate.
- ii. The assigned member shall present to the Committee in the form of a case summary, including but not limited to a description and/or copy of the regulatory enforcement proceeding, the justification for the application of alternative procedures in the case, a proposed letter of required corrective action or a non-negotiable settlement agreement, and the section of the Code which is alleged to have been violated (based upon the actual or alleged conduct which led to the imposition of a sanction by the regulatory agency). Such case summary should also include a statement of whether the respondent either:
  - (a) consented to the sanction by such regulatory agency, with no admission or denial of the charges by the agency; or
  - (b) was found guilty by such regulatory agency, whether by finding of fact or admission of guilt.
- iii. Once all of the information is presented and deliberated by the Committee, it shall decide if an offer of alternative procedures is to be made to the member. If an offer is to be made, the Committee shall also decide what Code section may have been violated and what sanction to offer the member. Such decision will be documented in the minutes of the Committee. Sanctions offered to the member are not subject to negotiations.
- iv. If the Committee concludes that an offer of alternative procedures is applicable, the assigned member shall contact the respondent in writing to determine whether he or she will accept the offer of alternative procedures and avoid a

duplicate investigation by the Committee. The letter should explain the alternative procedures under this section and the options available to the respondent. Such letter should include a description of the action taken by the approved regulatory agency, the section or sections of the Code that appear to be violated and the sanction being offered to the respondent, whether it be a letter of required corrective action or a settlement agreement and that the respondent is under no obligation to accept the letter of required corrective action or settlement offer. Such letter shall also inform the respondent that failure to respond to the letter within 30 days of the date of the letter will be deemed a rejection of the offer, unless a request for an extension of time is granted by the assigned member.

- v. If a reply to such letter has not been received within the stated 30-day period, the assigned member shall then attempt to personally contact the respondent by telephone to determine whether he or she will accept the offer of alternative procedures and avoid a duplicate investigation by the Committee. The assigned member should describe the alternative procedures to the respondent, inform the respondent that the Committee has the discretion to offer such alternative procedures, and that if a letter of required corrective action or settlement offer is made by the Committee, the respondent is under no obligation to accept it; however, if the respondent rejects the letter of required corrective action or settlement agreement, the respondent will be subject to a full investigation. The investigator should also explain to the respondent that if the settlement offer is rejected, the violations and stated sanctions as described in the letter may be more or less severe as a result of conducting a full investigation. If the assigned member is unsuccessful in contacting the respondent by telephone, the effort to make such contact shall be documented by the assigned member in a memorandum to the Committee.
5. If the respondent accepts the offer of alternative procedures under this section, the assigned member shall inform the Chair and the Ethics Coordinator. The previously approved letter of required corrective action or settlement agreement can then be finalized and sent to the member for signature as no further discussion by the Committee would be required. It is the Ethics Coordinator's responsibility to follow

through with the respondent to insure that all required signatures are received and that the respondent complies with any other requirements of the offer.

6. If the AICPA has not taken any action against this respondent relative to the subject matter, and the respondent is a member of the AICPA, the letter of required corrective action or settlement agreement shall first be sent to the AICPA for concurrence. If the AICPA does not concur, after discussion with the Chair, assistant chair and / or team leader as appropriate, the Committee may proceed to issue the letter of required corrective action or settlement agreement to the respondent without the AICPA's concurrence. In such case, the letter of required corrective action/settlement agreement shall be modified to indicate that such action is on behalf of the Society only. If the respondent signs the settlement agreement it shall be final, without further action or approval by the trial board.
7. If the AICPA has independently applied its automatic sanction provisions in the subject matter, the procedures set forth above shall be applied except that the Committee need not seek concurrence from AICPA for any letter of required corrective action or settlement agreement under sub-paragraph 6. AICPA automatic sanctions do not require member agreement. Under AICPA's automatic discipline procedures, the trial board, with or without a hearing, may consider a timely written petition from the member that the member should not be automatically disciplined by the AICPA pursuant to section 7.3.2 of such procedures.
8. If a respondent rejects the letter of required corrective action or settlement agreement offered under this section, the case will be restored to full investigation by the Committee and the assigned member shall proceed with the investigation. No adverse inference shall be drawn by the Committee or the assigned member if a respondent rejects a letter of required corrective action or settlement agreement.

**B. Concurrence on Cases Resulting from Limited Review by AICPA Professional Ethics Division**

A limited review by the AICPA Professional Ethics Division is conducted without a full investigation of a complaint upon referral or other information by a state or federal

regulatory agency, regarding a member who has not been sanctioned by such state or federal regulatory agency. Approval may be granted by the Committee on any request for concurrence on a decision in a limited review by the AICPA Professional Ethics Division to: (i) close the matter with no further action; (ii) close the matter with no further action, but to advise the member that the AICPA Professional Ethics Division will monitor his or her conduct; or (iii) to offer the member a modified letter of required corrective action in lieu of a full investigation. In the event concurrence is not granted, the Committee reserves the right to request additional information from the AICPA Professional Ethics Division, or conduct its own full investigation. Notwithstanding the aforementioned procedures, the member always retains the right to insist on a full investigation. This paragraph shall not apply when a member has been sanctioned by a NYSSCPA approved regulatory agency, as identified in paragraph A of this section.

## IX. INVESTIGATIONS

### A. Conduct of an Investigation

1. Initial review. a. An initial review of the complaint or other source of information shall be conducted by the chair in accordance with paragraph B.1 of Section VII before assigning a case. The assigned Committee member will discuss with the chair or an assistant chair the complaint if he/she does not agree that an investigation is warranted. The chair must agree with all decisions not to open a case.
  - b. As part of its initial review, staff, the appropriate assistant chair or his or her designee, who must be a member of the Committee, may contact, preferably in writing, the complainant or other source of information solely for the purpose of requesting any needed information to determine if a possible violation of the Code has occurred. In rare cases, upon prior consent of the Chair and Assistant Chair, discussions may be held with a possible respondent(s) or firm for any needed information relevant to the initial review.
  - c. If, as part of the initial review, discussions are held with a possible respondent(s) or the firm involved, staff will advise the individual(s) or firm in writing whether (i) no further investigation will be undertaken, or (ii) an investigation will be conducted. If no further investigation will be undertaken, the written communication to the individual(s) or firm should also advise them that the matter could be reopened if additional evidence becomes available. If an investigation is to be conducted and if an opening letter is to be sent to the individual(s) involved, a separate letter to the firm's representatives advising them that an investigation will be conducted may be unnecessary.
2. Opening letter. a. Upon completion of the initial review and establishing that an investigation is warranted, the assigned member, with the assistance of staff, shall draft an opening letter to the individual(s) involved (the "respondent(s)") and the staff will type and mail the letter via certified mail/return receipt requested and by regular mail within 30 days after the case is assigned.
  - b. The opening letter shall--

- (i) inform the respondent of the role of the Committee and describe the purpose of the investigation;
- (ii) ask the respondent whether he/she has any disciplinary action pending with the Securities and Exchange Commission, Internal Revenue Service, Public Company Accounting Oversight Board or other regulatory body;
- (iii) identify the alleged action or omission and the section of the Code, Bylaws, or state law or regulation that is the subject of the investigation;
- (iv) ask for a detailed description of the respondent's participation and involvement in the activities that are the subject of the investigation;
- (v) inform the respondent of the Professional Ethics Committee Procedures Manual which describes the procedures that will be followed in the investigation, including the rights and obligations of the parties to the investigation. Offer a copy of the manual and provide the name of the staff contact to request such copy;
- (vi) offer the respondent or the firm's representative a meeting/ conference call/interview to discuss the matter;
- (vii) state that procedures of JEEP require that an investigation be conducted in a confidential manner, with certain exceptions. Should a violation occur the procedures do permit, under limited circumstances, for the publication of disciplinary actions;
- (viii) state that NYSSCPA Bylaw Article XII.16, adopted July 21, 2003, requires the sharing of information regarding investigations and disciplinary actions. The bylaw is quoted in the letter:

**Article XII. 16. Disclosure to Regulatory Authorities**—*The professional ethics committee shall inform the New York State Education Department and any other applicable state or federal regulatory agency ("Regulatory Authorities") known to the committee of investigations involving professional conduct of a member or a partner or employee of the member's firm as follows:*

*(a) after a request has been granted to a member to defer the investigation by the professional ethics committee;*

- (b) after a member fails to cooperate with the professional ethics committee in any investigation;*
- (c) after a complaint has been referred to the Joint Trial Board under Article XII, paragraph.7 or the Society trial board under Article XII, paragraph 11;*
- (d) after automatic actions under Article XII, paragraphs 2, 3,*
- (e) or after a settlement agreement has been entered into between the member and the professional ethics committee;*
- (f) after a letter of required corrective action has been accepted; and*
- (g) on any other occasion the professional ethics committee deems appropriate.*

*The professional ethics committee shall turn over to the Regulatory Authorities all statements, documents and other materials relating to the investigation, or copies thereof, requested by the Regulatory Authorities.*

- (ix) state that any information related to this investigation may be subject to subpoena;
- (x) request that the respondent or the firm retain and present on request the financial statements, working papers, litigation documents, if applicable, and all other information, correspondence and memoranda which 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 licensee, who is a member and who does have sufficient authority within the firm to ensure 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 Code;
- (xi) state that the Committee may, upon 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 (e.g., a State Board of Accountancy, U.S. Securities and Exchange Commission); or (3) an appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency. State that NYSSCPA Bylaw Article XII.16 requires the Professional Ethics Committee to inform the State Education Department and any other applicable state or federal regulatory agency of an investigation after a request has been granted to a member to defer the investigation. All statements, documents and other related materials, or copies thereof, will be turned over to the regulatory authorities at their request. State further that this investigation will be resumed at the conclusion of the proceeding, investigation, or appeal and that the firm will receive periodic inquiries from the Committee requesting information about the status of such proceeding, investigation, or appeal;

- (xii) 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 owners and professional employees who may be designated by the Committee as respondent(s) unless a respondent advises the Committee to the contrary;
- (xiii) request a substantive response within 30 days of the date of receipted delivery of the letter unless an extension of time is granted.

- c. The assigned member, with assistance from staff, shall prepare the opening letter with the interrogatories to be included. The interrogatories should seek specific and detailed information concerning the allegations contained in the complaint. In addition, all technical standards opening letters should include a questionnaire that is designed to obtain information regarding the respondent's firm, his or her practice, the circumstances of the subject engagement and the personal circumstances of the respondent. This information will be helpful in determining the form of a settlement should one be offered to a respondent and the terms and conditions of such settlement offer. The questionnaire may not be appropriate for the investigation of independence, behavioral, or records retention complaints or the investigation of CPAs not in public practice. That determination should be made by the assigned member and staff.
- d. Committee members should get the appropriate assistant chair's approval of all opening letters.
- e. The opening letter and its envelope shall be marked confidential by staff upon mailing.

### 3. Ad Hoc Investigator

The chair may appoint an ad hoc investigator to assist the Committee in an investigation. An ad hoc investigator must be a member of the NYSSCPA or the AICPA but not a member of the Committee or its staff.

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 and deemed to be beyond the capabilities of the Committee members and staff.
- 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.
- d. A former Committee member is available to complete an investigation started when he/she was a member of the Committee.

An ad hoc investigator will be furnished with a copy of the Procedures Manual.

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.

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 Committee members and cannot vote on the disposition of an ethics investigation.

#### 4. Investigations

##### General parameters

- a. Investigations should be conducted to target completion in six months from receipt of documents/information from respondent.
- b. Oral communication with respondents is allowed; however, there is a strong preference for all communications with respondents to be in writing.
- c. All written correspondence should be typed and mailed by the staff using the Society's address. All such correspondence should be drafted by the staff or the assigned member, but ultimately approved by the assigned member. Correspondence related to an open case and received at the Society is forwarded to the assigned member and appropriate assistant chair immediately.
- d. All oral communications, other than for administrative matters, and informal meetings should be documented with a memo and forwarded to staff. Oral communications such as calls and informal meetings are distinguished from interviews which are formal and require transcripts.
- e. An interview is offered to all respondents in the opening letter. In instances where the assigned member determines that a violation is likely, a follow up letter should be sent to the respondent reiterating the offer of a formal interview.

#### 5. Gather and examine evidence.

- a. Evidence. (i) The purpose of an investigation is to determine if there is prima facie violation of the Code or the Bylaws. 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 or written interrogatories directed to the respondent, in testimony of members, in enforceable professional pronouncements and literature, etc.  
(ii) Staff and the assigned member are responsible for gathering evidence. This assignment may include drafting interrogatories and requests for documents,

reading and evaluating responses to interrogatories and requested 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 respondent.

- (iii) 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 the Committee's interrogatories and requests for documents.
- (iv) A firm frequently has possession of much of the evidence that is relevant in an investigation, particularly engagement working papers. If a firm refuses to furnish requested documents, such refusal should be referred to the Committee for action against the respondent due to failure to cooperate.
- (v) At no time during the course of an investigation should the Chair, any member of the Committee or staff, express any opinion to a respondent regarding the deliberations of the Committee and conclusion to be reached. All Committee procedures specific to an investigation remain confidential as well as conclusions reached by the Committee, except to the extent published as provided for in bylaw Article XII.12 or to regulatory agencies as provided for in Article XII.16.

b. Review of Engagement Working Papers. (i) If appropriate and necessary to the conduct of the investigation, staff and the assigned member should review the relevant engagement working papers. Engagement working papers should be examined after other available evidence has been obtained and examined, but before a formal interview or meetings are held with the respondent.

- (ii) Arrangements for reviewing engagement working papers should be made with the respondent or the firm that has legal title to them. Staff or the assigned member may request the firm or the respondent to send copies of the desired working papers to the NYSSCPA for review; however, the legal owner of such papers has the right to decline such a request and to require that the review be made in an office of the respondent or firm.

- (iii) 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.
- (iv) An important aspect of reviewing working papers is verification, to the extent possible, of the responsibility of the respondent for the matters being investigated. The documentation prepared by the assigned member should indicate his or her conclusions in this regard. The assigned member should also be alert for others whose responsibilities or duties suggest that they should also be named as respondents. Although the primary purpose of reviewing working papers is to obtain evidence that is relevant to the issues being investigated, an assigned member is expected to be alert for evidence of other matters that could be violations of the Code. If the review of the working papers indicates potential additional evidence indicating additional persons who should be named as respondents in the case, the assigned member should refer to Section VII of the manual to determine whether an additional respondent(s) should be named in the investigation. If potential additional respondents have been identified, an Initial Review as provided for in Section A above will be initiated with respect to such respondents.

The opening letter to the respondent covers the possibility that additional violations of the Code might be uncovered in the course of the investigation.

- (v) The assigned member 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.
- c. Interviews of Respondents. (i) All respondents are offered an opportunity to request an interview in the opening letter. A personal interview often brings to light information that has not been presented in correspondence. The assigned member shall conduct

the interview with the assistance of staff. At least two representatives of the Committee, one of which should be the chair or assistant chair, and staff should be present as well as NYSSCPA assistant counsel for ethics.

- (ii) The meeting may:
    - (a) be conducted in person or by telephone;
    - (b) be conducted jointly with one or more other respondents in the same investigation;
    - (c) be conducted in conjunction with obtaining other evidence, for example, in conjunction with reviewing engagement working papers;
    - (d) include obtaining responses to the interrogatories. However, it is preferred that responses to interrogatories be received prior to the interview so as to facilitate the process.
  - (iii) The interview shall be recorded by means of a voice-recording device or by a stenographer.
  - (iv) The statement appended hereto as Appendix A shall be mailed to the respondent prior to the interview. The member conducting the interview shall ask the respondent if he or she is familiar with the document and if he or she has any questions.
  - (v) The respondent may be accompanied by legal counsel, by any individual he/she chooses, by a reasonable number of representatives of his or her firm, by the firm's legal counsel, or by any combination thereof.
- d. Conducting the Interview. (i) At the beginning of the interview, staff or a Committee member should address an opening statement to the respondent. The opening statement should--
- (a) identify those present;
  - (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 questions to the respondent which may be considered by the Committee in reaching findings;
  - (c) if applicable, advise the respondent that he or she may decline to respond

to the interrogatories but, if the respondent does decline, the Committee may subsequently pose such interrogatories in writing and the respondent will have an obligation under the appropriate Bylaws or Code 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 staff will prepare a transcript from the recording or stenographic record of the interview for confidential and exclusive use of the investigation. A draft copy of the transcript will be provided to the respondent with the opportunity to make any corrections, additions or deletions that the respondent deems appropriate;
  - (f) state that the transcript will be considered by the Committee in making its findings;
  - (g) describe the possible findings of the Committee under JEEP, i.e., 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 transcript of the interview will be presented to the panel; and
  - (i) ask the respondent if he or she has any questions about the purpose, conduct or potential consequences of the interview.
- (ii) As part of discussing the issues that are being investigated, the Committee member should identify for the respondent: (a) provisions of an applicable Code(s) 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.
- (iii) During the discussion of the issues the respondent should be encouraged 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 the respondent acknowledges that his or her conduct deviated from the provisions and requirements of professional standards.

- (iv) As part of describing the evidence that the Committee is obtaining or has obtained, the Committee representatives may: (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, engagement working papers, etc; (b) ask the respondent to clarify the Committee's 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.

e. Interview Report. (i) A transcript shall be prepared from the recording or stenographic record and be made available to the participants, including the respondent, for comments and corrections within 30 days of the interview. A written interview report of the important matters discussed with the respondent may be prepared even if a recording of the interview and transcript is available.

(ii) At a minimum, the written report should--

- (a) provide a brief summary of the facts of the case;
- (b) state the date and time of the interview and who was present;
- (c) affirm that an opening statement was made;
- (d) describe 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;
- (e) summarize significant comments made by the respondent about the issues and evidence in the case;
- (f) describe in reasonable detail any additional evidentiary matter that the respondent believes the Committee should obtain and examine; and
- (g) summarize significant interrogatories posed to the respondent and the responses thereto.

(iii) If considered appropriate by the Chair and the assigned member, or by the assistant chair and the assigned member, the staff will send a copy of the written interview report to the respondent after receiving approval of the report from the

Committee members who conducted the interview. In most cases, a copy of the transcript provided to the respondent will be sufficient.

6. Case summary. a. Prior to submitting the results of an investigation to the Committee for a finding, the staff and the assigned member shall prepare a written case summary.
- b. The purposes of the case summary are to: (i) assist the Committee in understanding the issues and the investigation performed; (ii) summarize the extent, nature and relevance of the evidence obtained; (iii) identify those provisions of the Code, Bylaws, or applicable laws and regulations that the evidence indicates may have been violated by one or more of the respondents; and (iv) summarize any other information or data that should be considered by the Committee.
- c. The case summary shall include the following elements:
1. Name of complainant(s) and respondent(s) and Firm, if applicable;
  2. Respondent's membership status (e.g. member of the AICPA or any other state society);
  3. Specifics of the complaint;
  4. Response to the complaint by the respondent;
  5. Evidence gathered;
  6. Any other information to be considered by the Committee;
  7. Identification of the sections of the Bylaws or applicable Code(s) violated (if applicable);
  8. The recommended resolution of the case by the assigned member;
  9. The appropriate draft letter (no violation, no further action, letter of required corrective action, or settlement agreement) shall be appended to the summary;
  10. If CPE is recommended, specific courses should be named. NYSSCPA staff will assist in identifying appropriate courses;
  11. If a suspension is recommended, the period of suspension should be specified;
  12. Indicate whether the respondent has any disciplinary action pending with the Securities and Exchange Commission, New York State Education Department's Office of Professional Discipline, Internal Revenue Service, Public Company Accounting Oversight Board or other regulatory body.

- d. The assigned member shall prepare the case summary, with staff assistance when requested, and send it to the chair and assistant chair for review and approval. The assigned member shall also prepare a draft closing letter for the chair. The complete file should also be sent to the assistant chair.
- e. The case summary should be prepared within 30 days after the completion of the investigation or finalization of the interview transcript (whichever is later) unless additional interrogatories surface as a result of the interview.
- f. Case summaries and case files to be presented to the Committee should be submitted 10 days prior to scheduled Committee meetings.

## **B. Unresponsive Respondent**

1. When a respondent does not respond to the opening letter, the following steps are taken:
  - a. Staff sends a letter of non-cooperation by certified mail/return receipt requested and regular mail and includes a copy of the opening letter. The letter shall inform the respondent that a non-cooperation charge has been referred to the Committee. The notice will direct the respondent to cooperate with the Committee and that failure to cooperate shall result in a referral to the trial board.
  - b. If there is still no response after 30 days, or the mail has been returned unclaimed, the staff shall attempt to locate or contact the respondent by telephone.
  - c. The staff should check the State Education Department's website to verify whether the respondent is listed as a CPA in New York.
  - d. Assuming that the respondent is listed as a CPA in New York and the staff is still unable to contact the respondent, an address check should be performed by contacting the State Board for Public Accountancy to confirm whether the member's address in the Society's membership database matches the address the State has on record.
2. a. If the staff is still unable to contact the respondent, or if the respondent was contacted but has not responded within the prescribed time, staff and the assigned member, with the concurrence of the assistant chair, should present the case to the Committee for a vote using the following motion:

Moved that (respondent) be referred to a hearing panel of the trial board for a violation of Rule 506 but that the referral be stayed pending the offer and acceptance of a settlement agreement to expel.

A certified letter should be sent to the respondent offering the respondent the opportunity to sign a settlement agreement to be expelled from the NYSSCPA in lieu of a direct referral to the trial board.

If the respondent agrees to the settlement agreement, the chair signs the settlement agreement and the staff transmits it to the AICPA (for joint members only) with pertinent documentation for signature.

If the respondent does not sign the settlement agreement, the matter is automatically turned over to the trial board by the Committee. In this latter case, no concurrence with the AICPA is required.

### **C. Investigations When there is Litigation or Regulatory Proceeding**

1. An investigation of issues that 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 agency (for example, the State Education Department or the Securities and Exchange Commission; or (c) a formal appeal actually undertaken from a decision of a state or federal civil or criminal court or regulatory agency, may unfairly prejudice the litigation position of a respondent.
2. A letter of inquiry and an opening letter shall include the following paragraph:

“The 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 (e.g., the State Education Department, U.S. Securities and Exchange Commission), 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 the Committee requesting information about the status of such proceeding, investigation, or appeal.”

“Please be advised that the new NYSSCPA Bylaw, Article XII. 16. requires the Professional Ethics Committee to inform the State Education Department and any other applicable state or federal regulatory agency of an investigation after a request has been granted to a member to defer the investigation by the Professional Ethics Committee. The Bylaw also requires the Professional Ethics Committee to turn over to the regulatory authorities all statements, documents and other related materials, or copies thereof, requested by the regulatory authorities.”

3. 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, e.g., financial statements, workpapers, litigation documents, correspondence, 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 a 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 Code.
4.
  - a. The Committee may grant deferral of an investigation if: (i) the Committee determines that the parties and issues are the same as the pending and ongoing proceeding before a judicial or administrative tribunal; and (ii) that initiating an investigation now will interfere with the pending proceedings or the rights of the respondent.
  - b. During the period in which an investigation is deferred, staff should, at least once every six months, send written inquiries to the respondent and the person named by the firm related to the status of the pending proceeding. The name of the court or agency and the docket number of the case should also be obtained. A letter should be sent to request evidence that the proceeding that gave rise to the deferral is still active. In a situation where it appears that the matter is not active, the 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, staff should send a letter of non-cooperation due to failure to cooperate via certified mail/return receipt requested and regular mail. The investigation should be resumed promptly when the proceeding, investigation, or appeal is completed.

5. 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, the Committee may determine not to defer the ethics investigation.

## **X. CLOSING AN INVESTIGATION FILE**

[Section deleted, effective September 17, 2008.]

## **XI. DISPOSITION OF INVESTIGATION**

### **A. Finding**

1. At the conclusion of the investigation by the assigned member of the Committee, the case summary shall be presented by the assigned member to the Committee, along with supporting documents.
  
2. a. The Committee is responsible for evaluating the evidence obtained and making a finding with respect to each respondent. Each finding must be made pursuant to a majority vote in an executive session of a duly convened meeting of the Committee at which a quorum is present.
  
- b. At such a meeting, the Committee should review and discuss 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.
  
- c. The Committee may find:
  - (i) no prima facie evidence of a violation of the Code or Bylaw;
  - (ii) prima facie evidence of a violation of the Code or Bylaw; or
  - (iii) that the respondent has failed to cooperate with the Committee in the investigation.
  
- d. Findings involving an AICPA member are subject to the concurrence requirements set forth in subparagraph k of paragraph four of subsection C of this section.

### **B. Committee Action Upon Finding of No Violation or No Further Action**

1. a. If the Committee agrees to the finding of no violation, the finding shall be recorded in its minutes, and with the assigned member's authorization, staff shall send a no violation letter to the respondent closing the investigation. Staff will send a copy of the

letter to the appropriate assistant chair. If the respondent is also an AICPA member, a copy will be sent by staff to the AICPA for its files.

- b. If the investigation revealed no prima facie evidence of a violation because evidence could not be obtained, the Committee shall record the finding in its minutes, and with the assigned member's authorization, staff shall send a no further action letter to the respondent closing the investigation. Staff will send a copy of the no further action letter to the appropriate assistant chair. If the respondent is also an AICPA member, a copy will be sent by staff to the AICPA for its files.
- c. A closing letter, in the form of a no violation letter or a no further action letter, should state:
  - (i) the subject matter of the investigation;
  - (ii) for a no violation letter, that the Committee has found no prima facie evidence that the respondent violated the Code or Bylaws; and for a no further action letter, that no evidence was obtained by the Committee; and
  - (iii) 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.
- d. Complainants in a case shall be informed if an investigation results in a finding of: (1) no violation; or (2) a finding of no further action because no evidence of a violation was obtained.

### **C. Committee Action Upon Finding of Violation**

- 1. Committee Actions. a. If the Committee finds prima facie violation(s) of the Code or Bylaws, it must also decide, and record in its minutes, whether to:
  - (i) arrange to present a case before the Joint Trial Board charging the respondent with violating the applicable Code of Professional Conduct;
  - (ii) issue a letter of required corrective action with directives; or

- (iii) offer the opportunity of a settlement of the charges. (See Settlement of Ethics Charges, paragraph four of this subsection).
  - b. The Committee's decision with respect to the sanction to be taken against an AICPA member is subject to concurrence requirements of the AICPA and other JEEP participants in subparagraph k of paragraph four of subsection C of this section.
  - c. The Committee shall vote first on separate motions for each single finding of a violation, based upon prima facie evidence of each specified violation of the Code or Bylaw, and its minutes shall precisely define each Code or Bylaw violation, and record the rule of the Code or Bylaws 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.
  - d. The Committee must focus on the gravity of the violation in deciding its course of action when prima facie evidence of a violation of the Code or Bylaws is found. Respondents are expected to know the ethics rules and interpretations, and should be treated as if they do. The Committee shall vote separately on the sanction to be applied to each specified Code violation.
  - e. When a violation is found, the member is notified in writing and informed of his or her right to reject the Committee's letter of required corrective action or non-negotiable settlement agreement, which identifies the Committee's findings of violations and sanctions.
2. Referral to the Joint Trial Board. a. If the Committee concludes that a violation is of sufficient gravity to warrant formal disciplinary action, the Committee shall, after obtaining the required concurrences, report the matter to the secretary of the Joint Trial Board, who will summon the respondent to appear at a hearing of the Joint Trial Board.
- b. In considering whether to refer a respondent to the Joint Trial Board, the 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:

- (i) Harm to the public or the profession.
  - (ii) Disregard for standards.
  - (iii) Disregard for facts.
  - (iv) Subordination of professional judgment.
  - (v) Failure to act on findings of a prior quality control or peer review.
  - (vi) Repeated violations.
  - (vii) Reflection on the respondent's honesty.
- c. If the Committee agrees to refer a respondent to the Joint Trial Board, the Committee shall also make a recommendation on the action to be taken by the hearing panel of the Joint Trial Board. The hearing panel consists of five members of the Joint Trial Board who did not participate in prior proceedings in this case. The Committee must judge whether or not the respondent's conduct as related to the subject of the investigation is susceptible 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 Society and the AICPA.
- d. 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 a memorandum with the hearing panel which may include recommendations with respect to the findings and action the panel should take. Each ethics committee deciding to present a case to the Joint Trial Board must approve the ECA Memorandum at a regularly constituted meeting, the minutes of which reflect such approval. 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.
- e. When an ECA has decided to present a case to a hearing panel, it should, after obtaining the required concurrences, if applicable, notify each respondent in writing via certified mail/return receipt requested and regular mail. 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/her

possession or under his/her control that may be relevant to the issues that may be raised during the hearing. The respondent has no right to reject or challenge the Committee's decision to present a case to a hearing panel, but shall have all rights available under Trial Board Procedures to defend himself or herself before a hearing panel of the trial board.

- f. If the hearing panel of the Joint Trial Board finds the respondent guilty of one or more of the charges brought by the Committee, the panel may--
    - (i) expel the respondent from membership in the Society and/or the AICPA;
    - (ii) suspend the respondent from membership in the Society and/or the AICPA for a period of up to two years;
    - (iii) admonish or censure the respondent;
    - (iv) take such additional action as the hearing panel deems appropriate.
  - g. The Committee cannot appeal a "not guilty" decision of a hearing panel. A respondent has a right to request review of a hearing panel decision in accordance with the JEEP Trial Board Rules of Practice and Procedure. If a respondent is found guilty as charged by a hearing panel (and, if appealed, the decision of the hearing panel is affirmed, in whole or part), his or her name and a summary of the decision are published in a membership periodical as stated in the Bylaws.
3. Letter of Required Corrective Action. a. If the Committee concludes that a violation is not of sufficient gravity to warrant a formal trial board hearing, it may issue a letter of required corrective action to the respondent.
- b. The Committee may direct a respondent to successfully complete specified CPE courses within a specified time period, usually within six months to a year depending on the nature of the violation, availability of appropriate CPE courses and other factors when it issues a letter of required corrective action. The specified CPE courses may be in addition to mandatory CPE required by New York State. In deciding whether to direct the respondent to successfully complete courses and 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 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 address the deficiency.

- c. In the letter of required corrective action, the respondent should be advised that the failure to comply with the directives set forth in a Committee letter would constitute a violation of the Bylaws and/or Code, and in the event that the Committee revisits the case, or in the event that a subsequent complaint is brought against the respondent, the Committee will consider the respondent's failure to comply.
- d. Successful completion of the 8-hour self-study course titled, Professional Ethics: The AICPA Comprehensive Course (AICPA Product number 732312) requires a score of 90% or above. Respondents agree to select "COPE" (Certificate of Professional Ethics) for grading purposes when completing the registration form for the course.
- e. A letter of required corrective action may also direct the respondent to submit examples of his or her subsequent work for review by the Committee.
- f. If a respondent exercises his or her right to reject a letter of required corrective action, the Committee should decide whether to bring the matter to a hearing panel of the Joint Trial Board. If the Committee decides to bring the matter to a hearing panel, it should, after obtaining the required concurrences, if applicable, 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.
- g. It is the responsibility of the Committee when it issues the letter of required corrective action to: (i) establish the date by which the respondent must complete any specified CPE courses or other directives; and (ii) obtain evidence of the respondent's satisfactory completion of those courses or other 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, supported by Society staff, is responsible for monitoring member compliance with remedial requirements

imposed in a Letter of required corrective action issued by the Committee or Trial Board as a result of an ethics investigation. Society staff assigned to the Committee monitors the member's compliance with the required corrective action. Members that fail to complete the CPE specified by the Committee within the stated period of time are contacted by staff, and if necessary are referred back to the Committee for further action. Such action could result in a violation of Bylaw Article XII.9 "Failure to Cooperate" and referral to a hearing panel of the Trial Board, pending the offer and acceptance of a settlement agreement to expel.

- h. The Committee shall, after obtaining the required concurrences, if applicable, send the letter to the respondent via certified mail/return receipt requested and regular mail advising the respondent of the Committee's action. The letter shall:
- (i) state the subject matter of the investigation;
  - (ii) state that the Committee found prima facie evidence that the respondent violated one or more cited rules of the Code or Bylaws;
  - (iii) to the extent applicable, cite the interpretations, rulings and/or provisions of enforceable professional literature which the findings stated in clause (ii) are based;
  - (iv) summarize (to the extent that it is not obvious from the cited rules of conduct, interpretations, or rulings) the respondent's conduct that constituted the violation;
  - (v) state that, after considering the gravity of the violation, the Committee has decided to issue a letter of required corrective action specifying certain directives, such as, to successfully complete the CPE courses listed in the letter by a specified date, subsequent submission of reports and work papers for review, and affirmative agreement to cease activity that caused the violation to occur;
  - (vi) state whether the letter constitutes the joint letter of required corrective action of the Committee and the AICPA Professional Ethics Division and the Committees' directives if concurrence was granted;
  - (vii) advise the respondent of his or her right to reject the letter of required corrective action and directives;
  - (viii) state what may happen if the respondent rejects the letter of required corrective action;

- (ix) State that there will be no publication of this letter by the Society or the AICPA; however, NYSSCPA Bylaw Article XII.16 states:

*The professional ethics committee shall inform the New York State Education Department and any other applicable state or federal regulatory agency ("Regulatory Authorities") known to the committee of investigations involving professional conduct of a member or a partner or employee of the member's firm as follows:...(f) after a letter of required corrective action has been accepted...The professional ethics committee shall turn over to the Regulatory Authorities all statements, documents and other materials relating to the investigation, or copies thereof, requested by the Regulatory Authorities.*

- (x) advise the respondent that failure to comply with the directives in the letter constitutes a violation of the Bylaws or the Code.
- i. The Committee 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, waive the submission of examples of the respondent's future work, etc.) but only after obtaining the concurrences required to issue the original letter.
- j. If a respondent fails to comply with a directive of the Committee, the Committee should proceed under the Bylaws or the Code applicable to a member's noncompliance with the directives.
4. Settlement of Ethics Charges. a. As a participating member of JEEP, the Society is authorized to offer a respondent the opportunity to settle charges arising from the investigation.
- b. Settlement offers to a member must be approved by the Committee, the AICPA's Professional Ethics Division and the Trial Board Division. Settlements affecting membership rights for Society-only members need only be approved by the Committee.

- c. In deciding whether to offer a settlement the following criteria (not all inclusive) should be considered:
  - (i) The severity of the finding.
  - (ii) The respondent's personal circumstances.
  - (iii) The respondent has expressed a wish to settle the matter.
  
- d. The criteria for proposing settlement terms that affect membership rights (i.e. suspension or expulsion or an admonishment or censure), are the same as for Trial Board referral. (See subparagraph b of paragraph two of this subsection.)
  
- e.
  - (i) If it is decided by the assigned member and staff that an offer of settlement be made to the respondent(s) that will affect the respondent(s) membership rights (e.g., suspension or, expulsion) or will include any admonishment or censure, approval of the offer must be obtained from the Committee. 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.
  
  - (ii) Settlement offers are not negotiable. If a member rejects the settlement offer, the case will be referred to the Joint Trial Board for a hearing.
  
- f.
  - (i) When voting on whether to offer a respondent an opportunity to settle an ethics case, the motion to be voted should be:

"Move to refer the respondent to the Joint Trial Board for a hearing but stay the referral pending the respondent's agreement to accept a settlement."
  
  - (ii) If this motion is made and passed and if a respondent rejects the settlement agreement the matter need not be considered again by the Committee before a Joint Trial Board referral is made.

- g. In the case of a settlement agreement between a member and the Committee that provides for admonishment, censure, suspension or termination of membership, the matter shall be referred to the Joint Trial Board or to the Society's trial board (when the Joint Trial Board is ineligible to act) which, upon finding the member has waived his or her rights to a trial board hearing, shall recognize such settlement agreement.
  
- h. Upon approval of a settlement offer by the respondent(s), the Committee and the AICPA, if applicable, 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 of the respondent's name, and a factual summary of the case in accordance with Society Bylaw Article XII.12 ( AICPA publication shall be in accordance with AICPA Bylaws). In addition, NYSSCPA Bylaws Article XII.16 requires the Committee to inform the New York State Education Department and any other applicable state or federal regulatory agency known to the Committee of the settlement agreement and to turn over to the regulatory authorities all information requested by the regulatory authorities.
  
- i. Preissuance Review.
  - a. A decision to impose a preissuance review requirement may be made by the Committee as part of the settlement agreement when in its judgment the results of an ethics investigation warrant such a requirement.
  
  - b. The imposition of a preissuance review requirement shall read as follows:

The respondent agrees to hire an outside party, acceptable to the 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 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 \_\_\_\_\_. Respondent agrees to have this preissuance review performed at {his or her} expense.

- j. The Committee, supported by Society staff, is responsible for monitoring member compliance with remedial requirements imposed in a settlement agreement issued by the Committee or Trial Board as a result of an ethics investigation. Society staff assigned to the Committee monitors the member's compliance with the settlement agreement. Members that fail to complete the CPE specified by the Committee within the stated period of time are contacted by staff, and if necessary are referred back to the Committee for further action. Such action could result in a violation of Bylaw Article XII.9 "Failure to Cooperate" and referral to a hearing panel of the Trial Board, pending the offer and acceptance of a settlement agreement to expel.
  - k. Concurrence. In situations where the respondent is both a member of the AICPA and the Society, concurrence with the settlement terms shall be obtained from the AICPA together with appropriate documentation. Concurrence shall also be obtained from the other JEEP participants, if applicable, and in those instances specifically required in this manual.
5. Publication of Disciplinary Action. a. The names of members who are disciplined after a trial board hearing or by settlement agreement recognized by the Joint Trial Board or Society trial board under paragraph 14 of this Article and of those who are automatically disciplined by the Society shall be published together with a factual summary of the case in: (1) an appropriate publication of the Society which is mailed to all members; and (2) a Society press release which is made available to the media.
- b. If the results of an investigation are published in a Society publication pursuant to subparagraph (a) of this paragraph, the complainants in such case shall be notified of the results of the investigation.

## XII. CONFIDENTIALITY

A. All complaints and investigations are handled in a confidential manner subject to the following exceptions:

1. Effective October 5, 2007, Article XII.12 of the Bylaws was amended regarding disclosure of certain results of an investigation to the complainant, Society members and the public. The Committee shall disclose the following information to the respective complainant(s) in an ethics case opened on or after October 5, 2007 (determined by actual date of opening letter sent to respondent):

- (i) a finding of no violation
- (ii) a finding of no further action because no prima facie evidence of a violation was obtained
- (iii) any results of an investigation that are published in a Society publication where the respondent was disciplined after a trial board hearing, or by settlement agreement recognized by the Joint Trial Board or Society trial board, or was automatically disciplined.

2. Pursuant to Bylaw Article XII.12, the Committee shall publish any automatic discipline, any discipline after a Joint Trial Board or Society trial board hearing, or settlement agreement recognized by those bodies, including the name of the member together with a factual summary of the case. Such publication shall be in an appropriate publication of the Society which is mailed to all members and in a Society press release that is made available to the media.

3. The Committee shall comply with valid and enforceable subpoenas as required by law. The Committee reserves the right to challenge, or otherwise limit the scope of, any and all subpoenas served upon the Committee as permitted by law.

B. Identity of Complainant

The identity of the complainant shall not be disclosed to a respondent (or firm of the respondent) unless necessary to the investigation. For example, if a client alleges that a

firm or member retained client's records in violation of Rule 501—Acts Discreditable, as described in Interpretation 501-1, "Response to requests by clients and former clients for records" of the Code, it will be necessary to disclose the identity of the complainant.

- C. The following list is not all-inclusive but indicates some of the documents that are considered confidential by the Society:
1. Complaints of professional misconduct;
  2. Materials pertaining to investigations;
  3. Drafts of proposed pronouncements, including Rules of Conduct and Interpretations, until approved for exposure;
  4. Open session minutes and agendas will be posted on the NYSSCPA's website. However, all discussions of investigations will be conducted in executive session. Separate minutes of executive sessions are maintained by the staff and copies provided to members of the Committee; however, they will not be posted to the Society's website and are confidential;
  5. All Committee correspondence, written, electronic, or otherwise; and
  6. Any materials received regarding cases that are ultimately not opened.
- D. 1. The Committee files are confidential and are maintained in a separate and secure file by the NYSSCPA. Committee members should also maintain their PEC files separately from other NYSSCPA files.<sup>2</sup> Each member assigned to conduct an investigation shall turn over to staff all investigative files and documents when the investigation is closed. Should the member not be able to return the files, such files shall be destroyed by the member.
2. If a Committee member wishes to consult with someone outside the Committee who has specific expertise, before doing so, he or she should discuss this with and obtain the approval of the PEC chair. He or she must in no way divulge the identity of the parties involved in the matter to the expert consulted.

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<sup>2</sup> The PEC utilizes a secure website to provide additional protection that PEC files remain confidential. Additionally, all PEC members are required to adhere to formal security procedures regarding on-line access to confidential materials.

E. Article XII.16 of the Bylaws states:

**Disclosure to Regulatory Authorities**—*The professional ethics committee shall inform the New York State Education Department and any other applicable state or federal regulatory agency (“Regulatory Authorities”) known to the committee of investigations involving professional conduct of a member or a partner or employee of the member’s firm as follows:*

- (a) after a request has been granted to a member to defer the investigation by the professional ethics committee;*
- (b) after a member fails to cooperate with the professional ethics committee in any investigation;*
- (c) after a complaint has been referred to the Joint Trial Board under Article XII, paragraph.7 or the Society trial board under Article XII, paragraph 11;*
- (d) after automatic actions under Article XII, paragraphs 2, 3, or 4;*
- (e) after a settlement agreement has been entered into between the member and the professional ethics committee;*
- (f) after a letter of required corrective action has been accepted; and*
- (g) on any other occasion the professional ethics committee deems appropriate.*

*The professional ethics committee shall turn over to the Regulatory Authorities all statements, documents and other materials relating to the investigation, or copies thereof, requested by the Regulatory Authorities.*

F. The Committee shall neither confirm nor deny the existence of any pending ethics investigation to the complainant or any other person, other than a respondent. Any disclosure of the results of a completed investigation by the Committee or staff shall be strictly in accordance with the provision of this section.

### XIII. CONFLICT OF INTEREST

#### A. Recusal

1. A member of the Committee is considered to have a conflict of interest and must recuse<sup>3</sup> himself/herself from participation in the investigation and the resulting findings and decisions if he or she:
  - (i) is associated<sup>4</sup> in the practice of public accounting with the complainant or respondent , or his or her representative(s);
  - (ii) has a client relationship, with the complainant or respondent, or his or her representative(s);
  - (iii) has a client relationship with the person or entity furnishing the other information that gave rise to the investigation;
  - (iv) is associated in the practice of public accounting with the firm or firms identified in the complaint or other information;
  - (v) does not qualify as a covered person as defined by the Code but instead is a partner or an employee of the firm;
  - (vi) participated in a peer review of the respondent's firm, or has otherwise dealt with the respondent's firm while serving as a member of the Society's Peer Review Committee;
  - (vii) was a former member, employee, representative or consultant of the State Board for Public Accountancy, Office of Professional Discipline, or the AICPA's PEEC with respect to such entity's investigation of a member or his/her firm which is the subject of an investigation by the Committee.

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<sup>3</sup>A recused 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 recused member shall not receive copies of any correspondence, memoranda, or reports pertaining to the investigation. Similarly any case information that is posted electronically should not be accessed by the recused member. As discussed in this section, members are sometimes privy to information that might present a conflict of interest. Due to the nature of the mission given the Committee, members are relied on to recuse themselves and fulfill their responsibilities under an honor system that requires a high level of individual character and integrity.

<sup>4</sup> e.g. If a Committee member is engaged in the practice of public accounting as defined in the NYSSCPA Code of Conduct and relevant state laws and regulations, or was previously engaged in the practice of public accounting, with either complainant or respondent where a professional relationship existed or was created by virtue of said engagement. All possible professional affiliations should be considered by the committee member contemplating recusal.

2. A member of the Committee may have other relationships, for example personal or family relationships with the respondent or complainant, or a relationship with other persons involved in or related to the ethics investigation. If such a relationship exists the Committee member should recuse himself/herself. Where the Committee member has not made the decision to recuse himself/herself, that relationship must be reported to the Chair of the Committee, who has final authority as to whether that member should or should not recuse himself or herself from any participation in the investigation.

## **B. Conflicts Prohibiting Membership on Professional Ethics Committee**

1. No member of the Committee shall concurrently serve as a member or employee of the New York State Board for Public Accountancy or the Office of Professional Discipline.
2. No member of the Committee shall concurrently serve on the Society's Peer Review Committee.
3. No member of the Committee shall concurrently serve as a member of the AICPA's Professional Ethics Executive Committee.

## **C. Mandatory Leave of Absence**

1. Any member of the Committee who is the subject of an investigation by the Committee or the AICPA Professional Ethics Division shall be required to take a leave of absence<sup>5</sup> from the Committee during the pendency of such investigation. A leave of absence would also be required if the Committee member is:
  - On the engagement team;<sup>6</sup>
  - in the chain of command over the engagement team;<sup>7</sup>
  - a partner or manager who has provided ten or more hours of services to the client.
2. Any member of the Committee who is the complainant in an investigation by the Committee or the AICPA Professional Ethics Division and is involved in the subject matter of the

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<sup>5</sup> A leave of absence is defined as a temporary removal from all Committee activities for the duration of the investigation, including discussions, appeals and closing.

<sup>6</sup> *Engagement team* means all partners, principals, shareholders, and professional employees participating in a professional service engagement of that client, including those conducting concurring and second partner reviews and all persons who consult with the engagement team regarding industry specific or technical issues, transactions, or events.

<sup>7</sup> *Chain of command* includes persons who are in a position to influence the engagement, including those who (1) supervise or have direct contact management responsibility for the engagement; (2) evaluate the performance or recommend compensation of the audit engagement partner; or (3) provide quality control or other oversight over the audit.

complaint shall be required to take a leave of absence from the Committee during the pendency of such investigation.

3. The Chair shall notify the members of the PEC during Executive Session that such member is on a leave of absence from the Committee.

**D. Ban on Representation by Committee Member**

A member of the Committee shall not represent any person who is currently under investigation by the Committee, or who as a result of an investigation by the Committee, is being monitored by the Committee for compliance with any terms or conditions established as a consequence of such investigation. Representation by a Committee member of a person being monitored by the Committee would include (1) the production of formal or informal documents, (2) the dissemination of oral advice, and (3) any discussion with Committee personnel on behalf of the monitored person.

**E. Respondent's Right to Assert a Conflict of Interest**

At any time before the Committee makes its findings and decisions in any investigation, a respondent shall have the right to assert, in writing to the Chair of the Committee, that a member of the Committee, or an assigned investigator has a conflict of interest or the appearance of a conflict of interest, together with a submission of a statement of reasons and the basis for such assertion. The Committee shall determine whether the facts underlining such assertion would impair the respondent's rights to due process in the Committee's investigation, and if so, the Committee shall decide whether that member should or should not recuse himself or herself from any further participation in the investigation and Committee's decision-making thereon.

#### XIV. FILE RETENTION POLICY

<u>Record</u>	<u>Retention Period</u>
Meeting Agendas & Exhibits	Indefinite
Minutes of Meetings	Indefinite
Administrative Files	Indefinite
Written Inquiries and Responses	10 years
Closed Investigation Files	
No Violation	1 year
No Further Action	1 year
Required Corrective Action	5 years
Suspensions	10 years
Expulsions	Permanent

If there are multiple cases on a member, they should not be destroyed until all cases are closed (includes no violations).

## **APPENDIX A (Interview Statement)**

The purposes of this interview are to:

- (a) give you an opportunity to discuss the issues the Committee is investigating in connection with the matter described in correspondence you have received;
- (b) review the evidence the Committee has obtained to date;
- (c) give you an opportunity to offer any additional evidence that you believe the Committee should consider in its deliberations.

During this interview, you may offer any information you wish and we expect to pose questions to you about the matter we are investigating. You may decline to answer such questions at this time. If you do decline to answer one or more of these questions, the Committee may decide to submit those questions to you in writing after this interview. Under your membership agreement with the NYSSCPA and AICPA you are obligated by the Bylaws to respond fully and promptly to written questions and requests for relevant documents. A lack of substantive response may result in disciplinary action being taken against you.

The Committee has not yet formed any conclusions about the issues in this investigation. Therefore, we cannot express any opinions at this meeting about the Committee's ultimate findings. We will send you a copy of the written report of this interview. You may review that report and revise it as you wish. A copy of the original and revised report will be considered by the Committee. To facilitate the transcription of the summary the proceeding may be tape recorded, unless you request otherwise.

When the matter is presented to the Committee, it will decide whether required investigation procedures have been observed and whether the evidence regarding the issues in the matter is sufficient for a decision to be made. If no procedural or evidentiary question is raised, the investigation is considered complete.

After completing its investigation, the Committee will decide whether it has found evidence that you committed a prima facie violation of the Codes of Conduct of the NYSSCPA and AICPA.

If no such evidence is found, the Committee will close its investigation and issue a letter to you to that effect.

If such evidence is found, the Committee will conclude the investigation in one of the following ways after receiving concurrence from the AICPA regarding findings and results of the investigation:

- (1) Issue a letter of required corrective action to you which would direct you to complete a prescribed course of action. Such a letter is confidential.
- (2) Refer the case to the trial board for a hearing on the issues. If the hearing results in a finding that you are guilty of violating the Codes of Professional Conduct of the NYSSCPA and/or the AICPA, the hearing panel may admonish you or may suspend or expel you from membership in those organizations. Under the Bylaws of the NYSSCPA and the AICPA, a guilty finding requires that your name and a summary of the hearing panel's findings be published.
- (3) Offer you the opportunity to enter into an agreement in settlement of any charges made against you as a result of this investigation. The offer of a settlement is discretionary. The terms of the settlement may include requirements to complete specified CPE courses, submit to preissuance review and/or accelerated peer review. The agreement may also include a requirement that membership in the NYSSCPA or AICPA be suspended or terminated and that the terms of the agreement including the member's name be published.
- (4) Society Bylaw Article XII.16 states:

**Disclosure to Regulatory Authorities**—*The professional ethics committee shall inform the New York State Education Department and any other applicable state or federal regulatory agency (“Regulatory Authorities”) known to the committee of investigations involving professional conduct of a member or a partner or employee of the member’s firm as follows:*

- (a) *after a request has been granted to a member to defer the investigation by the professional ethics committee;*

- (b) after a member fails to cooperate with the professional ethics committee in any investigation;*
- (c) after a complaint has been referred to the Joint Trial Board under Article XII, paragraph.7 or the Society trial board under Article XII, paragraph 11;*
- (d) after automatic actions under Article XII, paragraphs 2, 3, or 4;*
- (e) after a settlement agreement has been entered into between the member and the professional ethics committee;*
- (f) after a letter of required corrective action has been accepted; and*
- (g) on any other occasion the professional ethics committee deems appropriate.*

*The professional ethics committee shall turn over to the Regulatory Authorities all statements, documents and other materials relating to the investigation, or copies thereof, requested by the Regulatory Authorities.*