



Got Ethics in TSCPA? The Professional Ethics Committee and its Role

JS is a licensed CPA in Texas. He is also a member of the Texas Society of CPAs (TSCPA) and the American Institute of CPAs (AICPA). JS owns his own practice and does primarily tax work for his clients. JS has been successful in his practice for 20 years and has never had any problems with his tax clients. However, JS is now having some problems with a client, MT.

The relationship is strained at best. Because the relationship is not the best, JS has not returned calls or e-mails to his client. In addition, MT owes JS for the past year's work, but MT has refused to pay the fee because she feels that the bill was too high and the fees outrageous. MT is considering firing JS as her CPA and has requested by e-mail and voice mail that JS send her copies of her tax returns, as well as the journals and ledgers that JS created in the preparation of the tax returns. Because MT has not paid for previous services, JS feels that he does not have to return her calls. As a result, MT files a complaint with TSCPA accusing JS of not returning her documents or her calls. The complaint goes to the Professional Ethics Committee of TSCPA.

The above scenario is one that is not uncommon for many members of TSCPA. Certainly, most Texas CPAs know – as a result of the required ethics continuing professional education (CPE) that all licensees must complete as a part of licensing – that complaints can be lodged with the Texas State Board of Public Accountancy (State Board). However, many TSCPA members are not aware that TSCPA has its own Professional Ethics Committee (PEC). Therefore, when a complaint against a TSCPA member is filed with TSCPA, members are often surprised when they receive a letter from PEC notifying them that they have been accused of violating the Texas Code of Professional Conduct. (This code consists of both the State Board Rules of Professional Conduct and the AICPA Code of Professional Conduct, whichever, in its judgment, is more restrictive.) Members are doubly surprised by the letter if they have already dealt with the State Board on the same complaint. Because many members of TSCPA are not aware of the existence and function of PEC, this article is intended to provide members with a brief description of the committee and how it functions.

THE PROFESSIONAL ETHICS COMMITTEE

The PEC is made up of 20 active TSCPA members who serve in a voluntary capacity. They come from very diverse backgrounds. The committee consists primarily of practitioners who work in different areas of accounting, including auditing, tax, consulting, and personal financial planning. In addition, there are members from education and different areas of industry, including banking, government and law. Having members from various areas of expertise is necessary for the committee to do its work in that audit members handle cases involving audits, tax members handle cases involving taxes, and so on. So, with this in mind, exactly how does PEC function?

A COMPLAINT IS MADE

Like the Enforcement Division of the State Board, before PEC can do anything, a complaint has to be filed against a member. The complaints come from a variety of sources. Most complaints come from dissatisfied clients, such as MT above, who feel that his/her CPA has not provided satisfactory services. Other sources include governmental agencies, such as the Internal Revenue Service (IRS) or the State Board, employers or the media. Every complaint made against a TSCPA member is taken very seriously.

The first step is to determine if there is jurisdiction. If a complaint is made against a CPA who is not a member of TSCPA or AICPA, then no further action can be taken by PEC. If the CPA is a member of AICPA but not TSCPA, again PEC takes no action. However, if it is determined that the CPA is a TSCPA member, the process begins. In addition, if the CPA is also an AICPA member, PEC works with AICPA on the complaint through a program called the Joint Ethics Enforcement Program (JEEP). The purpose of JEEP is to prevent duplication of efforts by both organizations.

Once it has been determined that PEC has jurisdiction of the Texas CPA against whom a complaint has been made, a case number is assigned by the TSCPA staff liaison. The cases are held until PEC meets, usually four times a year. Prior to each meeting, the new complaints are made available to all members for preparation. At each meeting, every new complaint is discussed by the committee to determine whether to open an investigation against the Texas CPA based on the allegations and any supporting evidence provided. Keep in mind that at this point, all the committee members know is the information that has been provided by the complainant. No contact with the member will have been made prior to the meeting.

After the complaint has been discussed by the committee, one of two decisions will be made by a majority vote of the committee

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members. If PEC determines that there does not appear to be a violation of the Texas ethics rules or AICPA rules, it will vote not to open an investigation. The CPA will not be notified of this decision. The CPA will be notified of a complaint *only* if PEC votes to open an investigation.

However, if upon preliminary review there appears to be a possible violation by the member, PEC will vote to open an investigation and cite the rules of conduct that are involved in the investigation. The AICPA rules will be used if the TSCPA member is also a member of

AICPA under the JEEP agreement, as noted above. Once the case is opened, the chair assigns a primary handler and a secondary handler. The primary handler has the responsibility of investigating the case, while the secondary handler supports and assists the primary handler as needed. An opening letter is sent to the member as a formal notification that he/she has been accused by a complainant of violating certain ethics rules. The opening letter will cite which Texas and AICPA rules are being investigated. In addition to the notification to the member that an investigation has commenced, the member will be asked specific questions relating to the information that the committee has received and asked to provide any documents that pertain to the case, such as work papers or tax returns, by a given date. Ideally, PEC wants to complete the investigation and settle the case as soon as possible.

Investigation. Once the investigation is completed, the primary handler notifies the staff liaison. If there is *prima facie* evidence

of a violation, the member is then offered the opportunity for an interview with representatives of the committee. The interview can be in person in front of committee members or by telephone. This interview allows the member to be able to state his/her case before the committee. This interview is not mandatory, but allows the member to state his/her case. If the member does not respond to the interview request or declines the interview opportunity, the investigation proceeds.

Completion of the investigation. The primary handler will then present the case before PEC. Usually, the handler will prepare and present a brief written summary of the facts of the case, the results of the investigation, and will make a recommendation to PEC about the resolution of the case. If the handler feels that there were no violations, a recommendation to close the case will be made. If the handler feels that the member did indeed violate the ethics rules, PEC will vote first on the violations and second on recommended appropriate discipline for the violations. A majority vote is necessary for the handler's recommendations to be accepted.

Determining corrective action. In setting the recommended discipline for a member, the seriousness of the violation will determine how much and what kind of discipline will be recommended. The PEC wants the discipline that is recommended to be rehabilitative, not punitive. The idea is that the member will become a better and more productive CPA and will not repeat the violations. The PEC believes, along with the State Board, that strong ethical conduct by Texas CPAs is a must. Therefore, any recommended discipline has that goal in mind. Some of these corrective actions include reprimands or the need for pre-issuance reviews. The scope of the corrective action will depend on the seriousness of the violation and whether the actions are covered by the JEEP agreement.

If the member is also a member of AICPA, the JEEP agreement provides guidelines as to the recommended actions by PEC. Normally, the discipline consists of recommended CPE that will address the source of the violation. For example, if the violation involves tax issues, then tax CPE courses will be recommended. If the violation involves compilations and reviews, then CPE for compilations and reviews will be designated, and so on. If the violation is serious, specific courses might be dictated. The number of CPE courses and hours will depend on the violation. Again, the more serious the violation, the more CPE courses will be recommended.

Once PEC makes its decision, cases with joint memberships are sent to the AICPA Professional Ethics Division for concurrence. When a member is also a member of AICPA, sometimes AICPA

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does the primary investigation. Once AICPA completes its investigation, it sends its recommendations for action to TSCPA's PEC. The PEC reads through the AICPA findings and will vote on whether or not to concur. While most of the time PEC will concur with AICPA, PEC is not obligated to do so and has often not concurred with AICPA. Similarly, AICPA is not obligated to concur with PEC decisions.

Sometimes, the member's violation is so serious that corrective action by CPE would be insufficient. This situation might occur if the member has committed fraud or a felony. In that case, membership in TSCPA might come into question. However, PEC cannot take action to suspend or revoke membership in TSCPA. All PEC can do is to recommend that either suspension or expulsion from TSCPA is warranted. The recommendation for suspension or expulsion from TSCPA is forwarded to the TSCPA Executive Board. The Executive Board will review the facts of the case and make the final decision regarding membership. If loss of membership is decided by the Executive Board, it will be published. These include expulsion from TSCPA or suspension of membership privileges.

WHAT IF THE COMPLAINT IS THE SAME AS ONE WITH THE STATE BOARD?

It is not uncommon for members to have dealt with TSCPA and the Enforcement Division of the State Board regarding the same incident. In those situations, the Texas CPA who has been found in violation of the Texas rules by the State Board will often enter into an agreed consent order (ACO) with the State Board. The ACO will dictate the discipline that the State Board has designated for the Texas CPA.

This discipline runs the gamut from CPE to revocation of the Texas CPA's license. In such situations, if the CPA is also a member of TSCPA and AICPA, that member is subject to discipline by both organizations. The fact that the member has signed an ACO with the State Board does not mean TSCPA and AICPA are bound by the findings of the State Board. If PEC agrees with the actions of the State Board, PEC tries to avoid duplicating those actions. The PEC does not want a member to be subject to "double jeopardy" if discipline actions would be the same. However, as previously mentioned, PEC is not bound by State Board actions. If PEC determines that further investigation is warranted, then a case can be opened and may result in recommendations from PEC that differ from the State Board's.

WHAT HAPPENS TO JS?

So, what would probably happen to JS, our CPA in the scenario? Given the information that would come from the client, the committee would open a case against JS citing the rules that involve acts discreditable and return of client

documents. If upon investigation, it is determined that JS has indeed refused to return calls to the client, JS is violating the acts discreditable rules. One provision of the acts discreditable rule states that a CPA should communicate with the client on a timely basis if the client is requesting such communication. It doesn't matter that the relationship with this client is strained. JS should return the calls and e-mails to this client.

In addition, JS's refusal to return client documents when requested is a violation of the rule involving work papers. This rule states that if a client requests return of client documents, such documents must be returned. These documents include journals and ledgers that the CPA has prepared on behalf of the client. The rule also includes the return of tax returns and tax return work product to the client, if the tax return is requested by the client, such as copies of the client's tax returns. The fact that the client still owes JS payment for work previously performed does not allow the CPA to withhold the client documents when such documents have been requested.

The primary handler would perform the investigation once the case against JS is opened by PEC. Then when the investigation is completed, JS would be offered a chance for an interview. Once the interview with JS is completed or JS refuses the interview, the findings will be presented to the full committee at its next meeting. In this case, the handler would recommend that JS is in violation of the rules. The committee will either accept or reject the recommendation, after discussion of the case by committee members. If the committee votes to accept the recommendation of the handler, appropriate discipline will be recommended and voted on by the committee.

Finally, a letter of the findings and discipline recommendations will be sent to JS. If CPE is recommended, JS will have a time period given to him in which he must complete the recommended CPE and show completion. If JS fails to complete the CPE within the time period given, the committee could recommend to the TSCPA Executive Board that JS's membership in TSCPA be considered for termination.

BECOMING BETTER CPAS

Hopefully, this article allows members to understand the role of PEC. The PEC does not want members to think that we are looking for ways to punish Texas CPAs for violating ethics rules. Rather, this committee exists to help members become better CPAs.

We hope that whenever a member is faced with a potential ethical dilemma and uncertain what to do, that member will contact the committee. We will offer our opinion on how we see the situation. However, members should understand that any opinions given by committee members are the opinions of the committee members and not representative of TSCPA, AICPA or the State Board. We look forward to serving you. ■