



J.B. NAGAR CPE STUDY CIRCLE OF WIRC
OF ICAI

Ethics and You – Practical Issues



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Motto



Ya esa suptesu jagarti kamam kamam Puruso nirmimanah ।
Tadeva sukram tad brahma tadevamrtamucyate ।
Tasminlokah sritah sarve tadu natyeti Kascan । etad vai tat ॥

य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।
तदेव शुक्रं तद् ब्रह्म तदेवामृतमुच्यते ।
तस्मिंल्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ॥

That person who is awake in those that sleep, shaping desire after desire, that, indeed, is the pure. That is Brahman, that, indeed, is called the immortal. In it all the worlds rest and no one ever goes beyond it. This, verily, is that, kamam kamam : desire after desire, really objects of desire. Even dream objects like objects of walking consciousness are due to the Supreme Person. Even dream consciousness is a proof of the existence of the self.

No one ever goes beyond it : cf. Eckhart : 'On reaching God all progress ends

Introduction



- Ethics means moral values – accountability to one's conscience.
- Code of Ethics ('COE') is not only philosophical, but practical. Hence, the title – 'Code of Ethics' – Practical Issues'
- Eternal vigilance is the cost of independence.
- In the field of Ethics, one is either ethical or not ethical. There is no 'in between' stage.

Need of COE



Why we alone are subjected to such a rigorous code?

- To ensure credibility which is the foundation of our profession
- Society's expectations
- An outsider's perception - delays, mild punishment etc.

A shield rather than a burden

Source of COE.....



- Ethics are as old as human civilization
- Taittreeya Upanishad
 - Satyam Vada – Speak the truth
 - Dharmam Chara – Follow the rules of the religion (perform duty); and
 - Swadhyayan-Ma-Pramadah – Do not commit default in self-study (This is our CPE).
- COE is nothing but elaboration of these principles

Present Image



- Not assertive but too accommodative
- Credibility and respectability is diminishing
- An item in the checklist of a respectable organization –
“avoid bringing CA certificates as the same are often found unreliable”.

Common observations - lapses leading to Disciplinary proceedings



- Too much of 'good faith'.
- Weak documentation
 - Two important maxims to be remembered and followed:
 - ✦ Work should not only be done, but it should be seen that it is done.
And
 - ✦ Faintest of Ink is stronger than the strongest of memories.
- Lack of pro-activeness
- Obsession with tax considerations – principles of accounting and auditing are side-lined
- Lack of communication skills - inability to say 'No'

A couple of actual cases



- Absence of letter of appointment or reappointment – Good faith.
- Not obtaining of a copy of Board Resolution approving the accounts – Expert Advisory Committee’s opinion – Sec. 215 of Companies Act, 1956.
- Signing the balance sheet in good faith when only one director has signed.
- Two brothers and directors
- A CA certified the balance sheet of other CA firm – in the books there was a meager negative cash balance on one day.

Suggested Reading



- The Chartered Accountants Act, 1949 [as amended by the CAs (Amendment) Act, 2006]
- CA Regulations of 1988 (updated as on July 01, 2013)
- ICAI publication on 'Code of Ethics' (Eleventh edition January 2009)
- Chartered Accountants (Procedure of Investigations of Professional and other misconduct and conduct of cases) Rules, 2007 published in official Gazette of India dated February 28, 2007 ('Enquiry Rules')
- FAQs published by ICAI. (February 01, 2012)
- Appellate Authority (Procedure) Rules, 2011
- Manual for members
- ICAI Website for various pronouncements.
- ESB website; CA Ethics Plus – handy brochure issued by ESB.
- Speaking ppt. on Code of Ethics launched by ESB as an e-learning initiative

Two Schedules



First Schedule (internal to the profession)

Part	Particulars	No. of Clauses
I	Professional misconduct in relation to CAs in practice.	12
II	Misconduct in relation to members	2
III	Misconduct in relation to members in general	3
IV	Other Misconduct' in relation to all members generally	2

Second Schedule (Outsiders affected)

Part	Particulars	No. of Clauses
I	CAs in practice	10
II	Clauses relating to members generally	4
III	Residuary cases of 'Other Misconduct	1

Chapter V - Provisions relating to Misconduct



Section No	Scope
21	Disciplinary Directorate ('DD')
21A	Board of Discipline ('BOD') – First Schedule offences
21B	Disciplinary Committee ('DC') – Second Schedule offences
21C	Authority of BOD, DC and Director Discipline
22A	Appellate Authority ('AA') - to deal with offences under both the Schedules
22	Professional and other misconduct. Since it covers 'other misconduct' also, the scope is very wide

Important Pronouncements of ICAI



- Guidelines for advertisement for members in practice
- List of occupations which require general or specific permission (Appendix 9 of CA Regulations, 1988)
- Council General Guidelines, 2008
- Recommended self regulatory measures
- Guidelines for conversion of CA firms in to LLPs

Authority attached to the various documents issued by the Institute :



- **Statements** –The deviation from the statement should be adequately disclosed.
- **Accounting Standards and Auditing and Assurance Standards (AAS)** which are now known as **Standards on Auditing ('SA')**. These become mandatory from the dates notified by the Institute from time to time. Till then, the `statements' remain in force. Once an AS/SA becomes mandatory, the concerned statement or its relevant part stands withdrawn.
- **Guidance Notes** - These are recommendatory in nature. A member should ordinarily follow them except where he is satisfied that in the circumstances of the case, it may not be necessary to do so. He may also consider a suitable disclosure in this regard.

Disciplinary Mechanism-Authorities



Constitution of BOD

- An eminent person in the field of law to preside
- One member of the Council
- One nominee of the Central Government

Constitution of DC

- President or Vice – President
- 2 members of Council
- 2 nominees of the Central Government

Constitution of Appellate Authority

- Chairperson – Judge of High Court
- 2 ex-members of Council
- 2 nominees of Central Government

Important principles



- Misconduct proceedings - initiated on receiving a Complaint or information from any source. There can be *suo moto* action by the Council.
- Complainant need not come with clean hands. Council not concerned with the locus standi of Complainant.
- Withdrawal of complaint permitted only with permission of BOD / DC.
- Council has jurisdiction basically over an individual member; and not over firms; or on outsiders.

Important principles (contd.)



- Complaint filed beyond period of 7 years may not be entertained at the discretion of the Director Discipline if he is satisfied that it would be difficult obtain evidence on account of time lag or that it would be procedurally inconvenient.
- Even if Respondent compensates the complainant for any losses, it will not undo the misconduct.
- Even if nobody is aggrieved due a particular lapse / misconduct of the member, there can be disciplinary proceedings against the member.
- There is no time limit for disposal of complaint! Proceedings may continue for years together!

Broad procedure



- Complaint to be filed in Form I.
- Filing fee Rs.2,500/-
- Complaint forwarded to Respondent for his explanation.
- Written statement (21 days) extension not exceeding 30 days.
- Explanation forwarded to complainant for his rejoinder.
- Rejoinder (21 days extension not exceeding 30 days)
- After examining these three documents, DD may call for any information as he thinks necessary; and decide whether there is a 'prima facie' guilt under either of the schedules or 'other misconduct'.

Cntd....

Broad procedure (contd.)



- If no prima facie finding of 'guilt', the matter is closed with the concurrence of BOD / DC.
- If prima facie guilty, then BOD/DC depending upon the nature of offence conducts a detailed enquiry.
- BOD/DC to give report on its findings as to the guilt.
- One more hearing to decide the punishment.
- Orders then passed by BOD/DC are appealable to AA. Member of ICAI aggrieved by order of BOD/DC; or the DD may prefer an appeal.
- Appeal is to be filed within 90 days from the date of receipt of the order.
- Filing fee Rs.5,500/-

Persons authorised to represent



- Any other member of ICAI
- Any advocate
- Any member of ICSI or ICWA

Hearings before BOD / DC



Board of Discipline ('BOD')

- Quorum is 2. Follow summary procedure. Rules of natural justice to be followed.
- Adjournment not more than once. If 'guilty' – then one more opportunity of hearing before awarding punishment.

Disciplinary Committee ('DC')

- Quorum 3 (of which atleast one is a Govt. nominee).
- Witnesses can be called.
- Rules of natural justice to be followed.
- Adjournment not more than once. Inability of representative shall not be a valid ground.
- If guilty, one more opportunity to the Respondent before awarding punishment.

Punishment



Punishment may be any one or more of the following –

For First Schedule (by Board of Discipline)

- Reprimand
- Suspension upto 3 months
- Fine upto rupees one lakh.

For Second Schedule (by Disciplinary Committee)

- Reprimand
- Suspension for any period or permanently
- Fine upto rupees five lakhs.

Now, there is no need to refer the case to High Court.

Indirect punishment



- Disqualification from allotment of audits from RBI, other banks, C & AG and other Government Bodies (these are the restrictions of the respective Govt. bodies).
- Eligibility to train articles is lost.
- A stigma. Almost invariably, the process itself is more torturous and painful than the punishment itself.

Complainants



Who complains?

- Users of our services – viz. Clients, Financial Institutions, Banks, Lenders, Investors, Regulatory Authorities are the complainants.
- Staff members, articled trainees, co-professionals, total strangers, members against their own partners.
- Complaints may be filed out of ego clashes, rivalry or as an arm twisting measure.
- Existence of professional black mailer

Other exposures / vulnerability



- Police - criminal complaint. This often results into arrest and police custody.
- Press, for defamation
- Consumer Forum

‘Peer Review’ could be a good preventive step. It should be taken and implemented in its proper spirit by our members in their own self interest

Arbitration



There is one welcome development. For resolving the disputes or grievances among the members inter-se; or between articled trainees and members, ICAI is planning to introduce the concept of arbitration. It is expected to lessen the hardship, shorten the time and reduce the expenditure. At the same time, it could be more effective.



Clauses of both the Schedules

First Schedule



Part I

Clause no.	A member in practice would be guilty of misconduct if he:
(1)	Allows any person to practice in his name except his partner and employee who is also a chartered accountant
(2)	Pays any share, commission or brokerage to person other than member of Institute or his partner or retired partner
(3)	Accepts profits from a person who is not a member of Institute
(4)	Enters into partnership with person who is not member of Institute
(5)	Secures work from person who is not his employee or partner.
(6)	Solicits work by circular, advertisement, personal interview etc. (except to the extent allowed)
(7)	Advertises his professional services (except to the extent allowed)
(8)	Accepts audit work without first communicating with the previous auditor in writing

First Schedule (Contd.)



Part I (contd.)

Clause no.	A member in practice would be guilty of misconduct if he:
(9)	Accepts audit work without first ascertaining that requirements of section 225 of the Companies Act, 1956 (now section 140 of the Companies Act, 2013) are complied with.
(10)	Accepts professional assignment where fees are based on percentage of profits or are contingent upon the findings or results.
(11)	Engages in any other business or occupation (barring few exceptions)
(12)	Allows a person who is not his partner or any other person who is not a member of the Institute to sign on his behalf any balance sheet, profit and loss account, report or financial statements

First Schedule (Contd.)



Part II – Members in service

Clause no.	A member (other than member in practice) would be guilty of misconduct if he:
(1)	Undertakes to share his emoluments of employment
(2)	Accepts any part of fees, profits or gains from any lawyer, CA, broker engaged by the company, customer as commission or gratification

First Schedule (Contd.)



Part III – Members generally

Clause no.	A member (whether in practice or not) would be guilty of misconduct if he:
(1)	Not being a fellow, acts as a fellow
(2)	Does not supply information called for by the Institute, Council, its Committees, Director (Discipline), BOD, DC etc.
(3)	Gives information knowing it to be false while inviting professional work, responding to tenders, enquiries or publishing write up.

Part IV – Other misconduct

Clause no.	A member (whether in practice or not) would be guilty of misconduct if he:
(1)	Is held guilty by any civil or criminal court which is punishable with imprisonment not exceeding 6 months.
(2)	Brings disrepute to the profession

Second Schedule



Part I

Clause no.	A member in practice would be guilty of misconduct if he:
(1)	Discloses information acquired in the course of professional engagement to any person other than his client.
(2)	Certifies any report of financial statements unless the examination has been done by him or his partner or employee or by any other CA in practice
(3)	Gives an impression that he vouches for the accuracy of the forecast.
(4)	Expresses his opinion on financial statements of any business in which he, his firm or partner has a substantial interest.
(5)	Fails to disclose a material fact which is not disclosed in the financial statement but the disclosure of which is necessary.
(6)	Fails to report a material misstatement

Second Schedule (Contd.)



Part I (Contd.)

Clause no.	A member in practice would be guilty of misconduct if he:
(7)	Does not exercise due diligence or is grossly negligent.
(8)	Fails to obtain sufficient information which is necessary for expression of opinion.
(9)	Fails to invite attention to any material departure from generally accepted audit procedures.
(10)	Fails to keep moneys of client other than money meant to be expended in a separate banking account.

Second Schedule (Contd.)



Part II:

Clause no.	A member (whether in practice or not)would be guilty of misconduct if he:
(1)	Contravenes any provisions of this Act or regulations etc.
(2)	Being an employee of company, firm or any other person discloses confidential information
(3)	Includes in any document to be submitted to the Institute, Council, its Committees etc. any information knowing it to be false.
(4)	Defalcates or embezzles moneys

Part III :

A member whether in practice or not would be guilty of misconduct if he is held guilty by any civil or criminal court for an offence which is punishable with imprisonment exceeding six months.

Audit of a cooperative society - issues faced



- Auditors pressurized to give favourable grade inspite of there being many adverse comments.
- In case of frauds or serious irregularities, the auditor himself is required to file a police complaint.
- SA 700 (previously AS 28).
- Emotional blackmailing.

Advertisement and solicitation

(Clause 6 of Part I of the First Schedule)



Circulation of letter to small group of clients for soliciting work or to persons who are likely to require services of a Chartered Accountant	Prohibited
Announcement in newspaper for changes in constitution of partnership or address etc.	Permitted. Should be limited to a bare statement of facts
Advertisement for soliciting clients under box numbers in the news paper	Prohibited
Application for empanelment for allotment of audit	Permitted. But cannot make roving enquiries as to whether such panel is maintained

Advertisement and solicitation (Contd.)



Tenders	Responding to tenders permitted
Publication of books or articles	Permitted. Association with any firm of CAs should not be mentioned.
Issue of greeting cards or invitations:	Permitted. Can be sent to clients, relatives and friends. Designation 'Chartered Accountant' and name of the firm is permitted. Any other professional designation, status and qualifications etc. is not permitted.
Classified advertisement in the Journal / Newsletter of the Institute	Permitted. But only in the Journal or Newsletter of the Institute

Advertisement and solicitation (Contd.)



Giving public interviews	Permitted. Name of the firm should not be mentioned.
Photographs	Permitted. Provided no payment is made for such publication. No reference to the name of the firm.
Sign board for office	Permitted. Use of glow signs or lights should be avoided.

Write ups



- Limited advertisement through write up now allowed
- Guidelines dated 14th May, 2008 - a “write up” is the writing of particulars setting out services rendered by the Members issued, circulated or published by way of **print or electronic mode or otherwise including in newspapers, journals, magazines and websites (in Push as well in Pull mode) in accordance with the Guidelines.**
- The write-up should not include the names of the clients (both past and present).
- The write-up should not contain any information about achievements / awards or any other position held.
- It is mandatory to mention the membership number and firm registration number with Institute.

Communication with previous auditor

Clause 8 of Part I of the First Schedule)



- Communication - before accepting the audit and not merely before signing the report
- RPAD - advisable so as to create fool-proof evidence
- Where there is no reply from the outgoing auditor, audit can be accepted after reasonable period has elapsed. Actual NOC is not a precondition
- Where undisputed audit fee of outgoing auditor are outstanding – accepting audit assignment itself is a misconduct
- Applies to all kinds of audits – statutory audit, tax audit, internal audit, concurrent audit, VAT audit and audit of Govt. entities etc.
- Previous auditor means the immediately preceding auditor. Where there was no audit in a particular year, previous auditor would mean auditor of the year when the audit was last done.

Engaging in any other profession or occupation (Clause 11 of Part I of First Schedule)



- See Appendix 10 to the Regulations (1988)
 - ✦ Part A– general permission
 - ✦ Part B – specific permission
- Members are permitted to become sleeping partner in a family run business.
- He can also be a karta of an HUF, but should not be actively engaged in the carrying on of the activities.
- Members are permitted to be an ordinary / simple director in a company or promoter of a company (Director Simplicitor).
- Members engaged in other business or occupation - not allowed to perform attest function and train articles barring a few **exceptions (like teaching assignments not exceeding 25 hours)**.

Sharing of fees or partnership with a non-member



- See Regulations 53A and 53B of CA Regulations.
- Partnership with sister-professionals like CS, CWA, lawyers allowed (subject to certain conditions).
- Sharing of fees with other professionals like CS, CWA, Actuary, B.E., B.Tech, Architect, Lawyer and MBA allowed.

Lack of due diligence or a case of gross negligence



- Clause (7) of Part I of the Second Schedule)
- The scope is enlarged by Amendment. It not only mentions 'gross negligence'; but also now covers 'lack of due diligence'.

Council General Guidelines, 2008



The Guidelines pertain to –

- Conduct of a member being an employee.
- Prohibition of appointment of member as cost auditor.
- Prohibition on expressing an opinion on financial statements of a relative.
- Maintenance of books of account by Members.
- Ceiling on tax audit assignments (Max. 60 nos. other than clause (c) of Sec. 44AB of I.T. Act, 1961).
- Appointment of an auditor where undisputed audit fees of previous auditor are unpaid.

Council General Guidelines, 2008 (contd.)



- Maximum number of audit assignments under Companies Act, 2013 that can be held by a member shall be 30 nos. despite the ceiling / liberties specified in Companies Act. Members are required to maintain a register of audits done.
- Ceiling on fees for other assignments of the same client whose statutory audit is done by a member.
- Not to accept audit where member is indebted for more than Rs.10,000/-
- Directions on unjustified removal of auditors.

Other recommended self-regulatory measures



- Branch audit and joint audit vis-à-vis no. of partners.
- Ratio between qualified and unqualified staff.
- Disclosure of interest by auditors in other firms.
- Ceiling on the fees. Interestingly the clause relating to undercutting of fees is being deleted.
- Know Your Client Norms

ESB Brochure



Some interesting FAQs from the brochure:

- **“53. Whether a statutory auditor can accept the system audit of same entity?**
Yes, the statutory auditor can accept the assignment of a system audit of the same entity, provided it did not involve any scrutiny/review of financial data and information.
- **66. Can a Concurrent Auditor of a Bank also undertake the assignment of quarterly review of the same bank?**
No, the Concurrent audit and the Assignment of quarterly review of the same entity cannot be taken simultaneously as the concurrent audit is a kind of internal audit and the quarterly review is a kind of statutory audit. It is prohibited in terms of the ‘Guidance Note of Independence of Auditors’.
- **67. Can a member act as an Insurance Agent and arrange business for Insurance Company?**
No, members are permitted to render Insurance Financial Advisory services. It is not permissible to the members to do any kind of marketing and business procurement for any insurance company. There services should remain limited to professional services in the form of advisory and consultancy services”.

Other misconduct



- Section 22 covers items of misconduct specified in the Schedules and also “other misconduct”. The Council is empowered to take action in such cases with a view to upholding the overall image of the members in the society. Thus, **a person’s conduct may be unbecoming of a professional, even as a human being.**
- Without prejudice to the generality of the coverage of ‘Other Misconduct’, now, both the Schedules contain separate parts specifying ‘Other Misconduct’. These parts cover mostly offences of civil or criminal nature or any act that would bring disrepute to the Institute.



Thank you