

ETHICS FOR OHIO



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CHAPTER 1

ETHICS DEFINED

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Define ethics.
2. Differentiate between amoral and ethical values.
3. List and characterize two systems of ethics.
4. Differentiate between legal versus ethical codes.
5. Discuss the development of law and ethics.

Ethics is the “science of morals”. A moral is an accepted rule or standard of human behavior. The understanding of “accepted” is “accepted by society”, and accepted only insofar as the behavior in question being behavior that affects others in the society, even if only indirectly. The implication of this definition is therefore that private actions that have no impact on others are a matter for personal morality, which is not of business or organizational concern.

However, the distinction between personal morality and business morality may not always be so clearly defined. This is because individuals bring personal values to their jobs and to the real or perceived problems of moral choice that confront them at work. Moral choices sometimes must be made because of tensions within individuals, between individuals, or between individuals and what they believe to be the values that drive their organizations.

Furthermore, business organizations do not operate in a social vacuum. Because of the ways business organizations can and do affect the lives and livelihoods of society at large, some would argue that business organizations are kind of “moral agents” in society. Therefore managers and general public alike often wrestle with defining exactly what constitutes the ethical way of doing business, and what constitutes proper constraints on individual self-interests, and by whom shall these constraints be imposed.

A further complexity results from the fact that businesses are increasingly becoming global in nature. Different countries have or seem to have vastly different customs and values. Understanding and assessing whether and how these different cultural and ethical conflicts should be taken into account is often most difficult.

ATTITUDES TOWARD ETHICS

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| AMORAL: | Condone any actions that contribute to the corporate aim. Getting away with it is the key. No set of values other than greed. |
| LEGALISTIC: | Obey the letter of the law but not the spirit of it, |

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| | especially if it conflicts with profits. Ethics ignored until it becomes a problem |
| RESPONSIVE: | Take the view that there is something to gain from ethical behavior, Using ethics as a tool to attain corporate aim. |
| EMERGING: | Ethical values becoming part of the culture. Codes of ethics being action documents, and likely to contain statements reflecting core value, |
| ETHICAL: | Total ethical profile. Everything done is ethical, and the right thing always done by everyone. The ideal. |

In general, a key focus of ethics is the concept of integrity (or honesty). Integrity in broad terms will imply that no business-persons in the course of their business functions should be party to the falsification of any facts or information or make any statement which knowingly is misleading, false or deceptive in a material particular.

Another major focus of ethics is professional competence and due care, which implies that business professionals should always perform their functions in accordance with law and regulations. In other words, business transactions and professional functions should not be undertaken unless one possesses the required competence and technical skills.

A more controversial focus is the area of freedom from conflicts of interests. The preferred position of many is that one should always avoid concurrent involvement in any business, occupation or activity, which might result in the compromising of integrity, objectivity and independence of decision making.

ETHICAL SYSTEMS

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| Utilitarianism (teleological ethics) | The promotion that the best long-term interest of everyone concerned should be the moral standard: one should take those actions that lead to the greatest balance of good versus bad consequences |
| Deontology (Kantian ethics) | It deals with the concept of duty and the rightness of acts. It emphasizes maxims, duties, rules, and principles that are so important that they should be followed whatever the consequences. |

In defining law and ethics and their relationship to each other it is necessary to distinguish between moral and legal rights and duties. Morally, a person's rights consist of claims that he can

justly make to the conditions of well-being; his duties consist of what he can justly contribute to well being. Legal rights and duties - that is, claims and obligations enforceable at law - may or may not be fully in harmony with prevalent moral opinion systems in which law and ethics and religion are closely interwoven. The impact of moral opinion on law varies with the type of political structure and influence of public opinion.

In free societies the ultimate justification of law is that it serves moral ends. But the dependence of law on moral principles must not be taken to imply that there is a set of moral principles which can be laid down for guidance. However, most free societies are coming to be more or less consistent in principles that draw the line between law and morals. The task of ethics becomes two-fold: to bring out what is involved in the notion of a principle or norm of action and to recognize ideals that serve as agencies of guidance and control.

A number of consistent principles recognized in modern society are the individual, responsibility and equity. The end of law is to secure the greatest possible general individual self-assertion. In the Judeo-Christian ethic responsibility is a given: the best ordering of human society in which the individual may come to full manhood and satisfying existence. On the basis of equitable doctrine we can say confidently that morality is inseparable from the legal order; that right and wrong is part of the legal order.

HISTORICAL FOUNDATIONS OF LAW AND ETHICS

The great religions of the world gave birth to several concepts that evolved into structural precepts for society. A commonality of precepts evolved with the passing of tribal customs and tribal belief systems and the rise of the great religions of the world.

"The monotheistic idea of God unifies and coordinates the spiritual goods of the race. The unity of GOD involves the unity of all classes of men. This is a long step toward equality. The sense of sin became part and parcel of the common consciousness. It is a leveler and equalizer." For the good of the tribal society now becomes for the good of the individual. It must come to pass that a given society, if it is to retain the right to exist, must be continually extending the experience of its best things to men who were at one time outside, the pale of the best. The principle of individuality, once established, draws after it the principle of progress." "If it amounts to this, that wherever you find man, you find the eternal goods, and therefore the highest worth. The scale of market prices for the common man is forever disarranged by the discovery in him of something that is above price."

Two of the primary maxims in ethics are the utilitarian rule "Each man is to count for one, nobody for more than one". The second is Kant's--Always treat humanity, whether in yourself or another, as a person, and never as a thing."

"The only ground for counting every body as one, and nobody as more than one is the presence in all men of a something or other which possesses such value that existing social forms and

economic accumulations cannot bid against it."

"The social question is the moral question, first, because its ultimate root is a choice between divergent ideals of the state, that , between different ways of viewing and organizing the total human life in time and space; and secondly, because, as a consequence, the question concerning the worth of the labor turns into the question concerning the worth of the laborer". The history of conscience is the history of the individual where 'conscience' means knowing along with " ...nothing can be good for one man that is not law for all men."

CONCLUSIONS

In the historical development of law there are many different points of view. It is for this reason that the law is unable to accept without modification many of the results of ethical inquiry In the historical development of law there are many different points of view. It is for this reason that the law is unable to accept without modification many of the results of ethical inquiry. There are no properties of goodness and badness that states of affairs inherently possess, and no properties of rightness or wrongness that inhere in actions.

Value judgment in a broad sense compares contrasted ways of life; rationality, prudence and stability, (one of pleasure and happiness) versus the state of anxiety, confusion, inner turmoil and impulsive rashness. The first is a "good" way of life; the other is a "bad" way in terms of value. The best way of life involves the guidance of reason, and also the way of knowledge, of understanding, of relative freedom from error.

Moral responsibility rests solely on the attitude displayed in so-called "choice". The act of choosing is essentially a proper and stringent expression of the ethical. Whenever in a stricter sense there is a question of an either/or one can always be sure that the ethical is involved.

An ethic must first decide upon the kind of social effects which it desires to achieve and the kind which it desires to avoid. It must then decide, as far as our knowledge permits, what acts will promote the desired consequences; these acts it will praise, while those having a contrary tendency it will condemn. To the extent to which man has freedom, he needs a personal morality to guide his conduct. "Good and evil grow up together and are bound in an equilibrium that cannot be surrendered. The most we can do is try to tilt the equilibrium toward the good." The least we can do is be aware of our standards of conduct least "....the habit of being amoral should make the immoral come to seem right."

CHAPTER 2

KEY FEATURES OF AICPA ETHICS AND THE SARBANES-OXLEY ACT

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Briefly describe the six principles the AICPA' Code of Professional Conduct.
2. List the eleven rules the AICPA' Code of Professional Conduct.
3. List the key features of the Sarbanes-Oxley Act.
4. List consulting services prohibited by the Sarbanes-Oxley Act of 2002..

This chapter presents a condensed summary of the AICPA Code of Conduct. The second section outlines the key features of the SOX. The final section addresses some of the consulting services prohibited by the Sarbanes-Oxley (SOX) Act of 2002.

AICPA's CODE OF PROFESSIONAL CONDUCT

It consists of two sections: Principles and Rules. The six principles, which provide the framework for the rules, are goal-oriented and aspirational but nonbinding.

Synopses of the Six Principles

1. *Responsibilities.* Members should exercise sensitive professional and moral judgments when carrying out their professional responsibilities. Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism. A distinguishing mark of a profession is acceptance of its responsibility to the public.
2. *The Public Interest.* Members should act to benefit the public interest, honor the public trust, and demonstrate commitment to professionalism. The AICPA adopted the ethical standards because a distinguishing mark of a profession is an acceptance of responsibility to the public.
3. *Integrity.* Members should perform all professional responsibilities with the highest sense of integrity to maintain public confidence.
4. *Objectivity and Independence.* A member should maintain objectivity and be free of conflicts of interest. A member in public practice should be independent in fact and appearance when providing attestation services. Objectivity is a state of mind, a quality that lends itself to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest,

and free of conflicts of interest.

5. *Due Care.* A member should follow the profession's technical and ethical standards, strive for improved competence and quality services, and discharge professional responsibility to the best of the member's ability. Members must adequately plan and supervise any activity for which they are responsible.
6. *Scope and Nature of Services.* A member in public practice should follow the Principles of the *Code of Professional Conduct* in determining the nature and scope of services.

Synopses of the Eleven Rules

Rule 101 — Independence. A member in public practice should be independent when performing professional services as required by standards-setting bodies.

- (1) In this context, rules of the state boards of accountancy, state CPA societies, the Independence Standards Board, the SEC, the General Accounting Office, and other bodies may be relevant.
- (2) Relevant AICPA standards-setting bodies are the Auditing Standards Board (ASB), Accounting and Review Services Committee, and Management Consulting Services Executive Committee. The foregoing bodies are all authorized to promulgate attestation standards.
- (3) The ASB issues Statements on Auditing Standards. Thus, SAS 1 is consistent with the requirement for auditors to maintain independence in mental attitude. To inspire public confidence, an auditor must not only be independent (intellectually honest) but also be recognized as independent (free of any obligation to, or interest in, the client).
- (4) The fourth general attestation standard likewise requires practitioners to maintain an independence in mental attitude when performing attest engagements.
- (5) Under Statements on Standards for Accounting and Review Services, an accountant may not report on a review of the financial statements of a nonpublic entity if (s)he is not independent.
- (6) According to the AICPA's Statements on Standards for Attestation Engagements, a practitioner must also be independent to examine or apply agreed-upon procedures to prospective financial statements.
- (7) SEC independence regulations were revised in accordance with the Sarbanes-Oxley Act of 2002.

- (a) Audit committees must preapprove the services performed by accountants (permissible nonaudit services and all audit, review, and attest engagements). Approval must be either explicit or in accordance with detailed policies and procedures. If approval is by the latter, the audit committee must be informed, and no delegation of its authority to management is allowed. However, preapproval is not needed for nonaudit services representing less than 5% of the annual amount paid to the accountant if (1) the services were not recognized as nonaudit at the time of the engagement, and (2) the audit committee approves prior to completion of the audit.
- (b) An issuer must disclose in its proxy statement or annual filing fees paid to the accountant segregated into four categories: (1) audit, (2) audit-related, (3) tax, and (4) all other. The disclosure is for the two most recent years and must describe the services in (2)-(4).
- (c) The lead and concurring (reviewing) audit partners must rotate every 5 years, with a 5-year time-out period. Other audit partners must rotate every 7 years, with a 2-year time-out.
- (d) An accountant is not independent if, during the audit and the period of the professional engagement, any audit partner (excluding specialty partners such as tax partners) earns or receives compensation for selling services (excluding audit, review, or attest services) to the audit client.
- (e) Conflicts of interest. An accounting firm is not independent with respect to an audit client if a former partner, principal, shareholder, or professional employee accepts employment with a client if (s)he has a continuing financial interest in the firm or is in a position to influence the firm's operations or financial policies. Moreover, an accounting firm is not independent if a CEO, CFO, controller, or person in an equivalent position for an issuer was employed by that firm and participated in any capacity in the audit of that issuer during the year before the beginning of the audit.
- (f) Communications with the audit committee by the accounting firm must include (1) all critical accounting policies and practices; (2) all material alternative accounting policies and practices within GAAP that were discussed with management; and (3) other material written communications with management, such as management representations and schedules of unadjusted audit differences. These communications must be prior to filing the audit report with the SEC.

Rule 102 — *Integrity and Objectivity.* A member shall maintain objectivity and integrity, be free

of conflicts of interest, not knowingly misrepresent facts, and not subordinate his/her judgment to others when performing professional services.

Rule 201 — *General Standards*. A member shall comply with the following:

- (1) Undertake only those services that the member can reasonably expect to complete with professional competence.
- (2) Exercise due professional care when performing professional services.
- (3) Adequately plan and supervise performance of professional services.
- (4) Obtain sufficient relevant data to provide a reasonable basis for conclusions in relation to any professional service.
 - (a) Proficiency. Auditors must have adequate technical training and proficiency. According to SAS 1, both education and experience, as well as proper supervision, are necessary. Objectivity and independent judgment are necessary in the preparation of the audit opinion. An auditor must have experience and seasoned judgment to accept final responsibility for an audit opinion.
 - (b) Due professional care must be exercised in the planning and performance of the audit and the preparation of the report. According to SAS 1, an auditor should have the degree of skill commonly possessed by other auditors and must exercise it with reasonable care and diligence. An auditor should also exercise professional skepticism. The exercise of due professional care allows the auditor to obtain reasonable assurance. Absolute assurance is impracticable due to characteristics of fraud such as concealment by collusion, withheld or falsified documentation, or management override of controls.

Rule 202 — *Compliance with Standards*. A member who performs professional services must comply with promulgated standards.

Rule 203 — *Accounting Principles*. A member shall not express an opinion or make an affirmative statement about conformity with GAAP or state that (s)he is not aware of any material modifications that should be made to achieve conformity with GAAP, given any departure from an accounting principle promulgated by bodies designated by the AICPA Council to establish such principles that has a material effect on the financial statements or data taken as a whole. However, if the member can demonstrate that, due to unusual circumstances, the financial statements or data would have been misleading without a departure from GAAP, the member can comply with the rule by describing the departure, its approximate effects, if practicable, and the reasons compliance with the principle would be misleading.

Rule 301 — Confidential Client Information. A member in public practice cannot disclose confidential client information without the client's consent. However, this Rule does not affect a CPA's obligations

- (1) To comply with a validly issued and enforceable subpoena or summons or with applicable laws and regulations
- (2) To discharge his/her professional obligations properly under Conduct Rules 202 and 203
- (3) To cooperate in a review of the CPA's professional practice under AICPA or state CPA society or board of accountancy authorization
- (4) To initiate a complaint with or respond to any inquiry made by the professional ethics division, trial board of the AICPA, or an investigative or disciplinary body of a state society or board of accountancy

Rule 302 — Contingent Fees. A contingent fee is established as part of an agreement under which the amount of the fee is dependent upon the finding or result.

- (1) The receipt of contingent fees by a member is prohibited when the member performs an audit, a review, a compilation when the report will be used by third parties and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.
- (2) A contingent fee is not permitted for preparing an original or amended tax return or claim.
- (3) Fees are not deemed to be contingent if fixed by courts or other public authorities, or in tax matters, if they are based on the results of judicial proceedings or the findings of governmental agencies.

Rule 501 — Acts Discreditable. A member shall not commit an act that is discreditable to the profession. Withholding as a result of nonpayment of fees for a completed engagement certain information contained in the client's books would not be considered such an act. The member's duty to return client records is absolute. However, the duty to return other information not related to the client's books and records is not absolute. Although the client's financial information may be incomplete as a result, if fees for a completed engagement have not been paid, such other information may be withheld. Thus, the duty to return is conditional upon payment of fees with respect to information such as adjusting, closing, combining, or consolidating entries and information normally found in books of original entry and general or subsidiary ledgers.

Rule 502 — Advertising and Other Forms of Solicitation. A member in public practice shall not

seek to obtain clients by advertising or other forms of solicitation done in a false, misleading, or deceptive manner. Solicitation through coercion, overreaching, or harassing conduct is prohibited.

Rule 503 — *Commissions and Referral Fees.* A member in public practice shall not accept a commission for recommending or referring to a client any product or service, or for recommending or referring any product or service to be supplied by a client, if the member performs for that client an audit, a review, a compilation when a third party will use the financial statement and the report does not disclose the CPA's lack of independence, or an examination of prospective financial information.

- (1) Permitted commissions must be disclosed to any person or entity to whom the member recommends a product or service.
- (2) A member who accepts a referral fee for recommending services of a CPA or who pays a referral fee to obtain a client must disclose the arrangement to the client. A referral fee is compensation for recommending or referring any service of a CPA to any person. Referral fees are not considered commissions.

Rule 505 — *Form of Organization and Name.* A member may practice public accounting only in a form of organization allowed by law or regulation that conforms with resolutions of the AICPA Council.

- 1) The firm name must not be misleading.
- 2) Names of past owners may be included in the name of the successor organization.
- 3) A firm cannot designate itself as "members of the AICPA" unless all CPA owners are members.

Note: Common law does not recognize privileged communication between a CPA and client. In some states and in some federal tax matters, however, the auditor may be protected by a privilege created by statute.

THE SARBANES-OXLEY ACT OF 2002
(www.whitehouse.gov/infocus/corporateresponsibility/)

President George W. Bush signed the Sarbanes-Oxley Act of 2002 (Public Law 107-204) on Tuesday, July 30, 2002. Congress presented the act to the president on July 26, 2002, after passage in the Senate by a 99-0 vote and in the House by a 423-3 margin. The law directly impacts the following groups:

1. CPAs and CPA firms auditing public companies;
2. Publicly traded companies, their employees, officers, and owners—including holders of more than 10 percent of the outstanding common shares. This category would include CPAs employed by publicly traded companies as chief financial officers (CFOs) or in the finance department;
3. Attorneys who work for or have as clients publicly traded companies; and
4. Brokers, dealers, investment bankers and financial analysts who work for these companies.

The Act changes how publicly traded companies are audited, and reshapes the financial reporting system. This Act adopts tough new provisions to deter and punish corporate and accounting fraud and corruption, ensures justice for wrongdoers, and protects the interests of workers and shareholders.

This law improves the quality and transparency of financial reporting, independent audits, and accounting services for public companies. It also:

- Creates a Public Company Accounting Oversight Board (www.pcaobus.org) to enforce professional standards, ethics, and competence for the accounting profession;
- Strengthens the independence of firms that audit public companies;
- Increases corporate responsibility and the usefulness of corporate financial disclosure;
- Increases penalties for corporate wrongdoing;
- Protects the objectivity and independence of securities analysts; and
- Increases Securities and Exchange Commission resources.

Under this law, CEOs and chief financial officers must personally vouch for the truth and fairness of their company's disclosures. And those financial disclosures will be broader and better than ever before.

Corporate officials will play by the same rules as their employees. In the periods when workers are prevented from buying and selling company stock in their pensions or 401 (k)s, corporate officials will also be banned from any buying or selling.

Corporate misdeeds will be found and punished. This law authorizes new funding for investigators and technology at the SEC to uncover wrongdoing. The SEC will now have the administrative authority to bar dishonest directors and officers from ever again serving in positions of corporate responsibility. The penalties for obstructing justice and shredding documents are greatly increased.

CONSULTING SERVICES PROHIBITED BY THE SARBANES-OXLEY ACT

Title II of the Sarbanes-Oxley Act of 2002 prohibits most “consulting” services outside the scope of practice of auditors.

(a) These services are prohibited even if pre-approved by the issuer's audit committee.

(b) Prohibited services include:

- Bookkeeping and related services,
- Design and implementation of financial information systems,
- Appraisal or valuation services (including fairness opinions and contribution-in-kind reports), (*Note:* The valuations relate to financial statement items and not valuations per se.)
- Actuarial services,
- Internal audit outsourcing, *Note:* "Operational" internal audits are allowed.
- Services that provide any management or human resources,
- Investment or broker/dealer services, and
- Legal and "expert services unrelated to the audit."
- Any other service that the board determines, by regulation, is impermissible.

(c) Services Not Prohibited. Firms, however, may provide tax services (including tax planning and tax compliance) or others that are not listed, provided the firm receives pre-approval from the board. However, certain tax planning products, like tax avoidance services, may be considered prohibited nonaudit services.

CHAPTER 3 OHIO ETHICS

LEARNING OBJECTIVES:

After studying this chapter you will be able to:

1. Outline the professional ethics and conduct for Ohio CPAs.
2. Summarize the ethical concepts promulgated in the Code of Professional Conduct.

False Advertising - Section 4701.12 of the Ohio Revised Code

The display or uttering by a person of a card, sign, advertisement, or other printed, engraved, or written instrument or device, bearing a person's name in conjunction with the words "certified public accountant" or any abbreviation of those words, or "public accountant" or any abbreviation of those words, shall be prima-facie evidence in any action brought under section 4701.18 or 4701.99 of the Revised Code that the person whose name is so displayed caused or procured the display or uttering of that card, sign, advertisement, or other printed, engraved, or written instrument or device, and that the person is holding self out to be a certified public accountant or a public accountant holding an Ohio permit. In any action, evidence of the commission of a single act prohibited by this section shall be sufficient to justify an injunction or a conviction without evidence of a general course of conduct.

Section 4701.14 - Unlawful Practice; Substantial Equivalency

(A) Except as permitted by rules adopted by the accountancy board, no individual shall assume or use the title or designation "certified public accountant," "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," or "registered accountant," or any other title or designation likely to be confused with "certified public accountant," or any of the abbreviations "CPA," "PA," "CA," "EA," "LA," or "RA," or similar abbreviations likely to be confused with "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant, unless the individual holds a CPA certificate and holds an Ohio permit. However, an individual who possesses a foreign certificate, has registered under section 4701.09 of the Revised Code, and holds an Ohio permit may use the title permitted under the laws of the individual's other licensing jurisdiction, followed by the name of the jurisdiction.

(B) Except as permitted by rules adopted by the board, no individual shall assume or use the title or designation "public accountant," "certified public accountant," "certified accountant," "chartered accountant," "enrolled accountant," "registered accountant," or "licensed accountant," or any other title or designation likely to be confused with "public accountant," or any of the abbreviations "PA," "CPA," "CA," "EA," "LA," or "RA," or similar abbreviations likely to be confused with "PA," or any other title, designation, words, letters, abbreviation, sign, card, or

device tending to indicate that the individual is a public accountant, unless the individual holds a PA registration and holds an Ohio permit, or unless the individual holds a CPA certificate. An individual who holds a PA registration and an Ohio permit may hold self out to the public as an "accountant" or "auditor."

(C) Except as provided in divisions (C)(1), (2), (3), and (4) of this section, no partnership, professional association, corporation-for-profit, limited liability company, or other business organization not addressed in this section that is practicing public accounting in this state shall assume or use the title or designation "certified public accountant," "public accountant," "certified accountant," "chartered accountant," "enrolled accountant," "licensed accountant," "registered accountant," or any other title or designation likely to be confused with "certified public accountant" or "public accountant," or any of the abbreviations "CPA," "PA," "CA," "EA," "RA," or "LA," or similar abbreviations likely to be confused with "CPA" or "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the business organization is a public accounting firm.

(1)(a) A partnership may assume or use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership is composed of certified public accountants if it is a registered firm, if a majority of its partners who are individuals hold a CPA certificate or a foreign certificate, and if a majority of the owners of any qualified firm that is a partner hold a CPA certificate or a foreign certificate.

(b) A partnership may assume or use the title or designation "public accountant," the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the partnership is composed of public accountants if it is a registered firm, if a majority of its partners who are individuals hold a PA registration, a CPA certificate, or a foreign certificate, and if a majority of the owners of any qualified firm that is a partner hold a PA registration, a CPA certificate, or a foreign certificate.

(2)(a) A professional association incorporated under Chapter 1785. of the Revised Code may assume or use the title or designation "certified public accountant" the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the professional association is composed of certified public accountants if it is a registered firm, if a majority of its shareholders who are individuals hold a CPA certificate or a foreign certificate, and if a majority of the owners of any qualified firm that is a shareholder hold a CPA certificate or a foreign certificate.

(b) A professional association incorporated under Chapter 1785. of the Revised Code may assume or use the title or designation "public accountant" the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the professional association is composed of public accountants if it is a registered firm, if a majority of its shareholders who are individuals hold a PA registration, a CPA certificate, or a foreign

certificate, and if a majority of the owners of any qualified firm that is a shareholder hold a PA registration, a CPA certificate, or a foreign certificate.

(3)(a) A corporation-for-profit incorporated under Chapter 1701. of the Revised Code may assume or use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the corporation is composed of certified public accountants if it is a registered firm, if a majority of its shareholders who are individuals hold a CPA certificate or a foreign certificate, and if a majority of the owners of any qualified firm that is a shareholder hold a CPA certificate or a foreign certificate.

(b) A corporation incorporated under Chapter 1701. of the Revised Code may assume or use the title or designation "public accountant," the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the corporation is composed of public accountants if it is a registered firm, if a majority of its shareholders who are individuals hold a PA registration, a CPA certificate, or a foreign certificate, and if a majority of the owners of any qualified firm that is a shareholder hold a PA registration, a CPA certificate, or a foreign certificate.

(4)(a) A limited liability company organized under Chapter 1705. of the Revised Code may assume or use the title or designation "certified public accountant," the abbreviation "CPA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the limited liability company is composed of certified public accountants if it is a registered firm, if a majority of its members who are individuals hold a CPA certificate or a foreign certificate, and if a majority of the owners of any qualified firm that is a member hold a CPA certificate or a foreign certificate.

(b) A limited liability company organized under Chapter 1705. of the Revised Code may assume or use the title or designation "public accountant," the abbreviation "PA," or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the limited liability company is composed of public accountants if it is a registered firm, if a majority of its members who are individuals hold a PA registration, a CPA certificate, or a foreign certificate, and if a majority of the owners of any qualified firm that is a member hold a PA registration, a CPA certificate, or a foreign certificate.

(D) No individual shall sign, affix, or associate the individual's name or any trade or assumed name used by the individual in the individual's profession or business to any attest report with any wording indicating that the individual is an accountant or auditor, or with any wording accompanying or contained in the attest report which indicates that the individual has expert knowledge in accounting or auditing or expert knowledge regarding compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the individual holds an Ohio permit. However, this division does not prohibit any officer, employee, partner or principal of any organization from

affixing the officer's, employee's partner's, or principal's signature to any statement or report in reference to the financial affairs of that organization with any wording designating the position, title or office that the individual holds in that organization. This division also does not prohibit any act of a public official or public employee in the performance of the public official's or public employee's duties.

(E) No person shall sign, affix, or associate the name of a partnership, limited liability company, professional association, corporation-for-profit, or other business organization not addressed in this section to any attest report with any wording accompanying or contained in the attest report that indicates that the partnership, limited liability company, professional association, corporation-for-profit, or other business organization is composed of or employs accountants or auditors or persons having expert knowledge in accounting or auditing or expert knowledge regarding compliance with conditions established by law or contract, including but not limited to statutes, ordinances, regulations, grants, loans and appropriations, unless the partnership, limited liability company, professional association, corporation-for-profit, or other business organization is a registered firm.

(F) No individual who does not hold an Ohio permit shall hold self out to the public as an "accountant" or "auditor" by use of either or both of those words on any sign, card or letterhead, in any advertisement or directory, or otherwise, without indicating on the sign, card, or letterhead, in the advertisement or directory, or in the other manner of holding out that the person does not hold an Ohio permit. An individual who holds a CPA certificate and an Ohio permit may hold self out to the public as an "accountant" or "auditor." However, this division does not prohibit any officer, employee, partner, or principal of any organization from describing self by the position, title or office the person holds in the organization. This division also does not prohibit any act of a public official or public employee in the performance of the public official's or public employee's duties.

(G) No partnership, professional association, corporation-for-profit, limited liability company, or other business organization not addressed in this section that is not entitled to assume or use the title "certified public accountant" or "public accountant" under division (C) of this section shall hold itself out to the public as a partnership, professional association, corporation-for-profit, limited liability company, or other business organization not addressed in this section as being composed of or employing "accountants" or "auditors" by use of either or both of those words on any sign, card, letterhead, or in any advertisement or directory, or otherwise, without indicating on the sign, card, or letterhead, in the advertisement or directory, or in the other manner of holding out that the partnership, professional association, corporation-for-profit, limited liability company, or other business organization is not a registered firm and is not permitted by law to practice as a public accounting firm.

(H) No person shall assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or in conjunction with the designation "and Company" or "and Co." or a similar designation if,

in any of those cases, there is in fact no bona fide partnership entitled to designate itself as a partnership of certified public accountants under division (C)(1)(a) of this section or as a partnership of public accountants under division (C)(1)(b) of this section. However, a sole proprietor or partnership that was on October 22, 1959, or a corporation that on or after September 30, 1974, has been, lawfully using a title or designation of those types in conjunction with names or designations of those types, may continue to do so if the sole proprietor, partnership, or corporation otherwise complies with this section.

(I)(1) Notwithstanding any other provision of this chapter, an individual whose principal place of business is not in this state and who holds a valid foreign certificate as a certified public accountant shall be presumed to have qualifications substantially equivalent to this state's CPA requirements and shall have all of the privileges of a holder of a CPA certificate and an Ohio permit without the need to obtain a CPA certificate and an Ohio permit if the accountancy board has found and has specified in its rules adopted pursuant to division (A) of section 4701.03 of the Revised Code that the CPA requirements of the state that issued the individual's foreign certificate are substantially equivalent to this state's CPA requirements.

(2) Any individual exercising the privilege afforded under division (I)(1) of this section hereby consents and is subject, as a condition of the grant of the privilege, to all of the following:

- (a) The personal and subject matter jurisdiction of the accountancy board;
- (b) All practice and disciplinary provisions of this chapter and the accountancy board's rules;
- (c) The appointment of the board that issued the individual's foreign certificate as the individual's agent upon whom process may be served in any action or proceeding by the accountancy board against the individual.

(3) The holder of a CPA certificate and an Ohio permit who offers or renders attest services or uses the holder's CPA title in another state shall be subject to disciplinary action in this state for an act committed in the other state for which the holder of a foreign certificate issued by the other state would be subject to discipline in the other state.

(4) The holder of a foreign certificate who offers or renders attest services or uses a CPA title or designation in this state pursuant to the privilege afforded by division (I)(1) of this section shall be subject to disciplinary action in this state for any act that would subject the holder of a CPA certificate and an Ohio permit to disciplinary action in this state.

Employees of Public Accountants; Incidental Practice

Section 4701.15 of the Ohio Revised Code

Nothing contained in sections 4701.01 to 4701.19, inclusive, of the Revised Code, shall prohibit any person not a certified public accountant or public accountant from serving as an employee of, or an assistant to, a certified public accountant or public accountant or partnership composed of certified public accountants or public accountants or a foreign accountant registered under

section 4701.09 of the Revised Code; provided that such employee or assistant does not issue any accounting or financial statement over his name.

Nothing contained in sections 4701.01 to 4701.19, inclusive, of the Revised Code, shall prohibit a certified public accountant or a registered public accountant of another state, or any accountant who holds a certificate, degree, or license in a foreign country, constituting a recognized qualification for the practice of public accounting in such country, from temporarily practicing in this state on professional business incident to his regular practice outside the state; provided, that such temporary practice is conducted in conformity with the regulations and rules of professional conduct promulgated by the accountancy board.

Section 4701.16 - Discipline of Registrant or Certificate Holder

(A) After notice and hearing as provided in Chapter 119. of the Revised Code, the accountancy board may discipline as described in division (B) of this section a person holding an Ohio permit, an Ohio registration, a firm registration, a CPA certificate, or a PA registration or any other person whose activities are regulated by the board for any one or any combination of the following causes:

- (1) Fraud or deceit in obtaining a firm registration or in obtaining a CPA certificate, a PA registration, an Ohio permit, or an Ohio registration;
- (2) Dishonesty, fraud, or gross negligence in the practice of public accounting;
- (3) Violation of any of the provisions of section 4701.14 of the Revised Code;
- (4) Violation of a rule of professional conduct promulgated by the board under the authority granted by this chapter;
- (5) Conviction of a felony under the laws of any state or of the United States;
- (6) Conviction of any crime, an element of which is dishonesty or fraud, under the laws of any state or of the United States;
- (7) Cancellation, revocation, suspension, or refusal to renew authority to practice as a certified public accountant, a public accountant, or a public accounting firm by any other state, for any cause other than failure to pay registration fees in that other state;
- (8) Suspension or revocation of the right to practice before any state or federal agency;
- (9) Failure of a holder of a CPA certificate or PA registration to obtain an Ohio permit or an Ohio registration, or the failure of a public accounting firm to obtain a firm registration;

(10) Conduct discreditable to the public accounting profession or to the holder of an Ohio permit, Ohio registration, or foreign certificate;

(11) Failure of a public accounting firm to comply with section 4701.04 of the Revised Code.

(B) For any of the reasons specified in division (A) of this section, the board may do any of the following:

(1) Revoke, suspend, or refuse to renew any CPA certificate or PA registration or any Ohio permit, Ohio registration, or firm registration;

(2) Disqualify a person who is not a holder of an Ohio permit or a foreign certificate from owning an equity interest in a public accounting firm or qualified firm;

(3) Publicly censure a registered firm or a holder of a CPA certificate, a PA registration, an Ohio permit, or an Ohio registration;

(4) Levy against a registered firm or a holder of a CPA certificate, a PA registration, an Ohio permit, or an Ohio registration a penalty or fine not to exceed five thousand dollars for each offense. Any fine shall be reasonable and in relation to the severity of the offense.

(5) In the case of violations of division (A)(2) or (4) of this section, require completion of remedial continuing education programs prescribed by the board in addition to those required by section 4701.11 of the Revised Code;

(6) In the case of violations of division (A)(2) or (4) of this section, require the holder of a CPA certificate, PA registration, or firm registration to submit to a peer review by a professional committee designated by the board, which committee shall report to the board concerning that holder's compliance with generally accepted accounting principles, generally accepted auditing standards, or other generally accepted technical standards;

(7) Revoke or suspend the privileges to offer or render attest services in this state or to use the CPA title or designation in this state of an individual who holds a foreign certificate.

(C) If the board levies a fine against or suspends the certificate of a person or registration of a person or firm for a violation of division (A)(2) or (4) of this section, it may waive all or any portion of the fine or suspension if the holder of the CPA certificate, PA registration, or firm registration complies fully with division (B)(5) or (6) of this section.

Section 4701.17 - Reissue of Revoked Certificate

Upon application in writing and after hearing pursuant to notice, the accountancy board may reissue or reinstate a certificate to a certified public accountant whose certificate has been revoked or suspended or reregister anyone whose registration has been revoked or suspended.

The board may require a reasonable waiting period, commensurate with the offense, before a certificate holder or registrant whose certificate or registration has been revoked or suspended may apply to have the certificate or registration reissued or reinstated. The board may require compliance with any or all requirements of section 4701.06 of the Revised Code, including the taking of any examination described in division (E) of that section as a prerequisite for recertification. The board may require compliance with any or all of the requirements of section 4701.07 of the Revised Code, including the taking of any examination described in division (E) of that section as a prerequisite for reregistration.

Section 4701.18 - Injunctions or Restraining Orders

Whenever in the judgment of the accountancy board any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of section 4701.14 of the Revised Code, the board may make application to the appropriate court for an order enjoining such acts or practices, and upon a showing by the board that such person has engaged, or is about to engage, in any such acts or practices, an injunction, restraining order, or such other order as may be appropriate shall be granted by such court without bond.

Section 4701.19 - Records

(A) All statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of professional service to clients by such accountant, except reports submitted by a certified public accountant or public accountant to a client shall be and remain the property of such accountant, in the absence of an express agreement between such accountant and the client to the contrary. No statement, record, schedule, working paper or memorandum of that nature shall be sold, transferred or bequeathed without the consent of the client or the client's personal representative or assignee to any person other than one or more surviving partners or new partners of such accountant.

(B) The statements, records, schedules, working papers, and memoranda made by a certified public accountant or public accountant incident to or in the course of performing an audit of a public office or private entity, except reports submitted by the accountant to the client, are not a public record. Statements, records, schedules, working papers, and memoranda that are so made in an audit by a certified public accountant or public accountant and that are in possession of the auditor of state also are not a public record. As used in this division, "public record" has the same meaning as in section 149.43 of the Revised Code.

Section 4701.28 - Certificate or Permit Holders in Default on Child Support Orders

On receipt of a notice pursuant to section 3123.43 of the Revised Code, the accountancy board shall comply with sections 3123.41 to 3123.50 of the Revised Code and any applicable rules adopted under section 3123.63 of the Revised Code with respect to a certificate or permit issued pursuant to this chapter.

Section 4701.29 - Board Investigations

(A) The accountancy board may investigate whether a person has violated any provision of this chapter or rule adopted under it before commencing a disciplinary proceeding pursuant to section 4701.16 of the Revised Code or taking legal action pursuant to section 4701.18 of the Revised Code. An investigation under this section is not subject to Chapter 119. of the Revised Code.

The Board may appoint a committee of board members or staff employed by the board to conduct an investigation. Notwithstanding any statute or rule to the contrary, a board member who participates in an investigation may participate actively in any hearing or proceeding to the same extent as a board member who did not participate in the investigation.

(B) During an investigation, the board may administer oaths, order the taking of depositions, issue subpoenas, compel the attendance and testimony of a person at a deposition, and compel the production of any form of documentary evidence or record. Subpoenas and orders to compel under this section may be served by a designee of the board or by certified mail, return receipt requested, to the residence or place of business of the individual, professional association, firm, corporation, partnership, sole proprietorship, limited liability company, or other business organization named in the subpoena or order.

(C)(1) Any witness who appears in response to a subpoena of the board may request, and shall receive within a reasonable time after making the request, the fees and mileage provided for witnesses in civil cases in the courts of common pleas in this state.

(2) If a person fails to comply with a subpoena or order issued by the board under this section, the board may apply to the Franklin county court of common pleas for an order compelling compliance with the board's subpoena or order. Upon application by the board and upon evidence of the person's failure to comply, the court shall compel the appearance of the persons or the production of the documents named in the board's subpoena or order in accordance with the Rules of Civil Procedure. The court also may issue any contempt citation and sanction the court deems appropriate.

(D) The investigative proceedings of the board under this section are not a public record under section 149.43 of the Revised Code, are confidential, and are not subject to discovery in any civil or administrative action or proceeding.

Rule 4701-7-04 - Practice of Public Accounting

(A) "Practice of public accounting" means the performance of or offering to perform any engagement that will result in the issuance of an attest report that is in accordance with the professional standards defined in rule 4701-9-03, 4701-9-04, 4701-9-05, or 4701-9-06 of the Administrative Code.

(B) The mere use by the holder of an Ohio permit issued under division (A) of section 4701.10 of the Revised Code of the designation "certified public accountant" or "public accountant" shall not imply that the Ohio permit holder is actively engaged in the practice of public accounting as defined this rule, as long as the Ohio permit holder has fully complied with the applicable continuing education requirements outlined in Chapter 4701-15 of the Administrative Code.

(C) "Practice of public accounting" also means the performance of or offering to perform services other than those described in paragraph (A) of this rule, such as consulting services, personal financial planning services, or the preparation of tax returns or the furnishing of advice on tax matters by a sole proprietorship, partnership, limited liability company, professional association, corporation, or other business organization, that advertises to the public as a "certified public accountant" or "public accountant."

Rule 4701-9-01 - Integrity and Objectivity

(A) An Ohio permit holder shall maintain integrity and objectivity, shall not knowingly misrepresent facts, shall be free of conflicts of interest and shall not subordinate to others any professional judgment.

(B) If an Ohio permit holder has a conflict of interest between the interest of a client or employer and another person, but the Ohio permit holder believes that professional services can be performed with objectivity, this rule shall not prohibit the performance of professional services by the Ohio permit holder if the conflict of interest is disclosed to, and consent is obtained from, such client or employer and the other person.

(C) Disagreements over the application of acceptable alternatives permitted by the professional standards defined in Chapter 4701-9 of the Administrative Code do not result in any subordination of professional judgment.

Rule 4701-9-02 - General Standards

(A) An Ohio permit holder shall only undertake a public accounting engagement that can reasonably be expected by the Ohio permit holder or the Ohio permit holder's registered firm to be completed with professional competence.

(B) An Ohio permit holder shall exercise due professional care in the practice of public accounting, including adequate planning and supervision of all professional activities for which the Ohio permit holder is responsible.

(C) An Ohio permit holder who is in the practice of public accounting shall obtain sufficient relevant data to afford a reasonable basis for conclusions or recommendations in relation to any professional services performed.

Rule 4701-9-03 - Generally Accepted Auditing Standards

(A) An Ohio permit holder shall be associated with audited financial statements only if the Ohio permit holder has complied with the applicable generally accepted auditing standards defined in paragraph (B), (C), and (D) of this rule, as applicable.

(B) Generally accepted auditing standards applicable to audits of public companies required to register with the "Securities and Exchange Commission" are defined as "Auditing and Related Professional Practice Standards" issued by the "Public Company Accounting Oversight Board" and published on that agency's website (www.pcaobus.org).

(C) Generally accepted auditing standards for federal agencies or entities receiving significant federal financial assistance are defined as "Government Auditing Standards" issued by the "Comptroller General of the United States" and published on the "Government Accountability Office" website (www.gao.gov).

(D) Generally accepted auditing standards for all entities except those specified in paragraph (B) or (C) of this rule are defined as "Statements on Auditing Standards" issued by the "American Institute of Certified Public Accountants" and published on that organization's website (www.aicpa.org).

Rule 4701-9-04 - Generally Accepted Accounting Principles

(A) An Ohio permit holder may not express an opinion or state affirmatively that financial statements or other financial data of any entity are presented in conformity with generally accepted accounting principles, or express any negative assurance that such statements or data are in conformity with generally accepted accounting principles in all material respects, unless the financial statements and data are presented in conformity with generally accepted accounting principles applicable to both the entity under examination and to the particular engagement. Generally accepted accounting principles, including the pronouncements defined in paragraph (D), (E), or (F) of this rule, as applicable and the hierarchy of their application, are defined in the "Statements on Auditing Standards" issued by the "American Institute of Certified Public Accountants" and published on that organization's website (www.aicpa.org). .

(B) If the financial statements or associated data in paragraph (A) of this rule contain any departure from the pronouncements defined in paragraph (D), (E), or (F) of this rule, as applicable, that has a material effect on the financial statements and data, taken as a whole, then the Ohio permit holder cannot express an opinion on the financial statements and data unless the Ohio permit holder follows the procedure defined in paragraph (C) of this rule.

(C) If the Ohio permit holder can demonstrate that adherence to the pronouncements defined in paragraph (D), (E), or (F) of this rule, as applicable, would result in misleading financial statements or data due to unusual circumstances, the Ohio permit holder's report must describe the departure from the pronouncements, the approximate effects thereof if practicable, and the reasons why compliance with the pronouncements would result in misleading financial statements or data.

(D) The primary authoritative source of generally accepted accounting principles for non-governmental entities are defined as "Original Pronouncements: Accounting Standards" and "Current Text: Accounting Standards" issued by the "Financial Accounting Standards Board" and published on that organization's website (www.fasb.org).

(E) The primary authoritative source of generally accepted accounting principles for state and local government entities are defined as "Original Pronouncements: Governmental Accounting and Financial Reporting Standards" and "Codification of Governmental Accounting and Financial Reporting Standards" published by the "Governmental Accounting Standards Board" as of June 30, 2004.

(F) The primary authoritative source of generally accepted accounting principles for federal government entities are defined as "Original Pronouncements: Statements of Federal Financial Accounting Concepts and Standards" and "Current Text: "Statements of Federal Financial Accounting Standards" issued by the "Federal Accounting Standards Advisory Board" and published on that agency's website (www.fasab.gov).

Rule 4701-9-05 - Attestation Standards

(A) The term "attest engagement" for the purposes of this rule, is defined as one in which an Ohio permit holder is engaged to issue or does issue an examination report, a review report, or an agreed-upon-procedures report on subject matter, or an assertion about the subject matter, that is the responsibility of another party.

(B) An Ohio permit holder shall not be associated with any attest engagement, defined in paragraph (A) of this rule, unless the Ohio permit holder has complied with the applicable standards for attestation engagements defined in paragraph (C) or (D) of this rule, as applicable.

(C) Attestation standards for government agencies or entities receiving significant federal financial assistance are defined in the "Government Auditing Standards" issued by the "Comptroller General of the United States" and published on the "Government Accountability Office" website (www.gao.gov).

(D) Attestation standards for all entities except those specified in paragraph (C) of this rule are defined as "Statements on Standards for Attestation Engagements" issued by the "American Institute of Certified Public Accountants", and published on that organization's website (www.aicpa.org).

(E) Examples of attest engagements include financial forecasts and projections, reports on pro forma financial information, reports on an entity's internal control over financial reporting, compliance attestations, "WebTrust" examinations, "SysTrust" examinations, and examinations or reviews of a management's discussion and analysis presentation prepared in accordance with the rules and regulations adopted by the "Securities and Exchange Commission." The above

examples are not intended to be all-inclusive.

Rule 4701-9-06 - Accounting and Review Services Standards

(A) An Ohio permit holder who is in the practice of public accounting shall be associated with unaudited financial statements only if the Ohio permit holder has complied with the applicable accounting and review services standards defined in paragraph (B) of this rule.

(B) Accounting and review services standards are defined as "Statements on Standards for Accounting and Review Services" issued by the "American Institute of Certified Public Accountants" and published in "AICPA Professional Standards, Volume 2" as of June 1, 2004. Consulting Standards

Rule 4701-9-08 of the Ohio Administrative Code

(A) An Ohio permit holder shall be associated with a consulting engagement only if the Ohio permit holder has complied with the applicable standards for consulting services defined in paragraph (B) of this rule.

(B) Consulting services standards are defined as "Statements on Standards for Consulting Services" issued by the "American Institute of Certified Public Accountants (AICPA)," published in "AICPA Professional Standards, volume 2" as of June 1, 2004.

Rule 4701-9-09 - Tax Services Standards

(A) An Ohio permit holder shall be associated with the preparation of tax returns or the furnishing of advice on tax matters only if the Ohio permit holder has complied with the applicable standards for tax services defined in paragraph (B) of this rule.

(B) Tax services standards are defined as "Statements on Standards for Tax Services" issued by the "American Institute of Certified Public Accountants" and published on that organization's website (www.aicpa.org).

Quality Control Standards

Rule 4701-9-10 of the Ohio Administrative Code

(A) A registered firm that performs accounting and auditing services in accordance with the professional standards defined in Chapter 4701-9 of the Administrative Code shall comply with the applicable standards for quality control defined in paragraph (B) of this rule.

(B) Quality control standards are defined as "Statements on Quality Control Standards" issued by the "American Institute of Certified Public Accountants" and published on that organization's website (www.aicpa.org).

PROFESSIONAL ETHICS: BEHAVIORAL STANDARDS RULES

Rule 4701-11-01 - Independence

(A) An Ohio permit holder shall be independent in the performance of audits of public companies as required by applicable standards issued by the "Securities and Exchange Commission" and published on that agency's website.

(B) An Ohio permit holder shall be independent in the performance of professional services for government agencies and entities receiving significant federal financial assistance as required by applicable standards issued by the "Comptroller General of the United States" and published on the "General Accounting Office" website.

(C) An Ohio permit holder shall be independent in the performance of professional services other than those referenced in paragraph (A) or (B) of this rule as required by the "Code of Professional Conduct" issued by the "American Institute of Certified Public Accountants" and published on that organization's website.

Rule 4701-11-02 - Confidential Client Information

(A) An Ohio permit holder shall not disclose any confidential information obtained in the course of a professional engagement except with the consent of the client.

(B) This rule shall not be construed:

(1) To relieve an Ohio permit holder of the obligation to comply with Chapter 4701-9 of the Administrative Code,

(2) To affect in any way compliance with a validly issued subpoena or summons enforceable by order of a court,

(3) To prohibit review of the professional practice of an Ohio permit holder as part of a quality review, or

(4) To preclude an Ohio permit holder from responding to any inquiry made by the professional ethics committee or trial board of a professional accounting organization of which the Ohio permit holder is a member, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes.

(C) Members of the accountancy board, a professional accounting organization ethics committee or trial board described in paragraph (B)(4) of this rule, as well as professional practice reviewers, shall not disclose any confidential client information which comes to their attention in disciplinary proceedings or otherwise in carrying out their official responsibilities. However, this prohibition shall not restrict the exchange of information with an aforementioned duly constituted investigative or disciplinary body.

Rule 4701-11-03 - Contingent Fees

(A) An Ohio permit holder or registered firm shall not:

(1) Practice public accounting for a contingent fee for, or receive such a fee from, a client for whom any of the following professional engagements are performed:

(a) An audit or review of a financial statement.

(b) A compilation of a financial statement when the Ohio permit holder expects, or reasonably might expect, that a third party may use the financial statement and if the Ohio permit holder's compilation report does not disclose a lack of independence.

(c) A report in accordance with the attestation standards defined in rule 4701-9-05 of the Administrative Code.

(2) Prepare an original or amended tax return or claim for a tax refund for a contingent fee.

(B) The prohibitions outlined in paragraph (A)(1) of this rule apply during the period in which the Ohio permit holder or the Ohio permit holder's registered firm is engaged to perform any of the services described in paragraphs (A)(1)(a), (A)(1)(b), or (A)(1)(c) of this rule, as well as during any period covered by any historical financial statements associated with those services.

(C) A contingent fee is a fee established for the performance of any service pursuant to an agreement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service. However, an Ohio permit holder's fees may vary depending, for example, on the complexity of the services rendered.

(D) Fees are not regarded as being contingent if fixed by courts or other public authorities, or, in tax matters, if determined based on the results of judicial proceedings or the findings of governmental agencies.

Rule 4701-11-04 - Commissions and Referral Fees

(A) An Ohio permit holder shall not, for a commission, recommend or refer to a client any product or service, nor shall the Ohio permit holder, for a commission, recommend or refer any product or service to be supplied by a client, nor shall the Ohio permit holder receive a commission when the Ohio permit holder or the Ohio permit holder's registered firm concurrently performs for that client any of the following professional services:

(1) An audit or review of a financial statement.

(2) A compilation of a financial statement when the Ohio permit holder expects, or reasonably might expect, that a third party may use the financial statement where the Ohio permit holder's compilation report does not disclose a lack of independence.

(3) An attestation engagement defined in rule 4701-9-05 of the Administrative Code.

(B) This rule shall not prohibit payments for the purchase of an accounting practice or retirement payments to individuals formerly engaged in the practice of public accounting or payments to their heirs or estates.

(C) The prohibitions outlined in paragraph (A) of this rule apply during the period in which the Ohio permit holder is engaged to perform any of the services described in paragraph (A) of this rule as well as during any period covered by any historical financial statements involved with those services.

(D) An Ohio permit holder who is not prohibited by this rule from performing services for or receiving a commission from a client and who is paid or expects to be paid a commission by the client shall disclose that fact to any person or entity to whom the Ohio permit holder recommends or refers a product or service to which the commission relates.

(E) Any Ohio permit holder who accepts a referral fee for recommending or referring any services of an Ohio permit holder to any person or entity or who pays a referral fee to obtain a client shall disclose such acceptance or payment to the client.

(F) A commission is compensation for recommending or referring any product or service to be supplied by another person. A referral fee is compensation for recommending or referring any service of an Ohio permit holder to any person.

Rule 4701-11-05 - Form of Practice and Name

(A) An Ohio permit holder may practice public accounting, whether as an owner or employee, only in the form of a sole proprietorship, a partnership, limited liability company, professional association, corporation, or other legal entity whose characteristics conform to the Revised Code and rules of the board.

(B) A public accounting firm shall not practice under a name that is misleading to the public. However, names of one or more past partners, shareholders or members may be included in the registered firm name of a successor public accounting firm.

Rule 4701-11-06 - Retention of Client Records

(A) If a client makes a written request for records from a registered firm or Ohio permit holder, the registered firm or Ohio permit holder shall comply with the request within thirty days after receipt of the request. The thirty-day deadline may be extended by the board if the registered firm or Ohio permit holder requests an extension of time in accordance with paragraph (H) of this rule.

(B) A client's records are any accounting or other records belonging to the client that were provided to the registered firm or Ohio permit holder by or on behalf of the client, as well as records defined in paragraph (E) of this rule as client records.

(C) The workpapers of the Ohio permit holder include, but are not limited to, the following:

(1) The registered firm's or Ohio permit holder's notes or memos regarding the engagement;

(2) Records kept by the registered firm or Ohio permit holder of procedures applied, tests performed, information obtained, and pertinent conclusions reached in the engagement;

(3) Analyses and schedules prepared by the client at the registered firm's or Ohio permit holder's request, and;

(4) Audit programs, audit analyses and memoranda, letters of confirmation and representation, abstracts of company documents, and schedules or commentaries either prepared or obtained by the registered firm or Ohio permit holder.

(D) Workpapers may also be in the form of data stored on discs, tapes, films, or any media other than paper. Workpapers are considered to be the registered firm's or Ohio permit holder's property. In the event of a dispute between the registered firm or Ohio permit holder and the client concerning records, the board will determine whether or not a document may be classified either as an Ohio permit holder's or registered firm's workpaper, or as a client record.

(E) Workpapers may contain information that is not reflected in the client's books and records, with the result that the client's financial information is incomplete. These records are defined as client records, and may include but are not limited to:

(1) Adjusting, closing, combining or consolidating journal entries;

(2) Depreciation and amortization schedules, including tax carryforward information; and

(3) Information normally contained in books of original entry, as well as general ledgers and subsidiary ledgers.

(F) If the registered firm or Ohio permit holder translates client information onto computer files for use with the registered firm's or Ohio permit holder's software, then the registered firm or Ohio permit holder must return either a printout or copy of the computer files to the client that contain the information described in paragraph (E) of this rule. If the registered firm or Ohio permit holder has not been paid for professional services rendered, then the registered firm or Ohio permit holder is under no obligation to convert information that is not in electronic format to an electronic form, or provide the client with electronic files or a copy of any software. If the client has paid the registered firm or Ohio permit holder for professional services rendered, then the registered firm or Ohio permit holder must provide a copy of all relevant electronic data files to the client.

(G) If the registered firm or Ohio permit holder has provided the information described in paragraph (B) or (E) of this rule to the client, then the registered firm or Ohio permit holder need not comply with further client requests for the same information.

(H) In the event of a dispute between the client and a registered firm or Ohio permit holder over the return of records described in paragraph (E) of this rule, the Ohio permit holder may request an extension of the deadline specified in paragraph (A) of this rule in order to mediate the dispute. This request must be filed within thirty days of the date the records retention complaint is filed with the board. The mediation must be conducted before a mediator mutually agreed upon and selected by the parties, and must be completed within sixty days of the date the complaint is filed with the board. The mediator may be the executive director of the board or a designee if the parties agree. If either party is dissatisfied with the recommendations of the mediator, that party may request a hearing before the board.

Rule 4701-11-07 - Board Communications

(A) All official communications from the board are mailed to a person's last address of record as maintained by the board. All persons will be considered by the board to have received such official communications, to be aware of the contents of such official communications, and to be responsible for any actions required of them by such official communications. If a person notifies the board in writing of a failure to receive the official communication, the board will resend the official communication to the person. The board will not extend any deadlines nor abate any penalties unless it feels appropriate circumstances exist.

(B) Any change in a person's name or address must be made to the board in writing.

(C) Official communications that require a response, unless otherwise specifically designated by the board, shall require a response within fifteen business days. A business day is defined as any day, Monday through Friday excluding state holidays, that the board office is open.

(D) The board will not be responsible for any delays in communications or in the filing of any other documents or fees submitted by or on behalf of a person which are caused by any third party, whether it be an individual or an organization.

(E) For purposes of this rule, "person" shall have the same meaning as in division (T) of section 4701.01 of the Revised Code.

Rule 4701-11-09 - Acts Discreditable

(A) Section 4701.03 of the Revised Code provides that the board may promulgate rules consistent with the goal of maintaining a high standard of integrity and dignity in the accounting profession.

(B) This rule applies to acts by a person holding an Ohio permit, Ohio registration, CPA certificate, PA registration, or firm registration, by a person holding a foreign certificate whose

activities are regulated by the board, or by an owner of a public accounting firm equity interest who does not hold an Ohio permit, Ohio registration, CPA certificate, PA registration, foreign certificate, or firm registration.

(C) The following acts by a person defined in paragraph (B) of this rule are determined by the board as conduct discreditable to the accounting profession as stated in division (A)(10) of section 4701.16 of the Revised Code:

- (1) Using deceptive representations in connection with the performance of services;
- (2) Representing that services are of a particular standard when they are not;
- (3) Promoting one's professional services or registered firm in any manner which is inconsistent with upholding a high standard of integrity and dignity in the accounting profession, including, but not limited to:
 - (a) Misrepresenting facts or failing to disclose relevant facts.
 - (b) Creating false or unjustified expectation of favorable results.
 - (c) Implying abilities not supported by valid educational background, professional attainments, or licensing recognition.
 - (d) Implying the ability to influence improperly any court, tribunal or other public body or official.
- (4) Engaging in any deceptive trade practice prohibited by law.
- (5) Committing fraud or deceit in the act of verifying a CPA candidate's experience in accordance with paragraph (C) of rule 4701-7-05 of the Administrative Code, or making any false statement with respect to such verification.
- (6) Holding out to the public that an accounting credential issued in a foreign country is in good standing if that credential has been suspended or revoked under the laws of the foreign country.
- (7) The conviction of a felony or any crime involving dishonesty or fraud under the laws of a foreign country.
- (8) Failing to follow specialized professional engagement requirements of governmental bodies, commissions, or other regulatory agencies.
- (9) Assuming responsibility for, associating with, or preparing materially false or misleading financial statements, associated financial data, or accounting entries.

(10) Failing to file a tax return or failing to remit taxes collected on behalf of others in a timely manner.

(D) The examples in paragraph (C) of this rule are not intended to be all-inclusive.

Rule 4701-11-10 - Application of Ethics Rules to Non-CPA Owners

Pursuant to division (D)(8) of section 4701.04 of the Revised Code, a person who holds an equity interest in a public accounting firm, but does not hold an Ohio permit or a foreign certificate, shall be subject to the provisions of Chapter 4701-9 and Chapter 4701-11 of the Administrative Code as though the person held an Ohio permit or a foreign certificate.

GLOSSARY

ETHICS: standards of professional conduct and business practices adhered to by professionals in order to enhance their profession and maximize idealism, justice and fairness when dealing with the public, clients and other members of their profession.

LAWS: bodies of rules governing members of a community, state, organization, professional, etc ... and enforced by authority or compelling legislation.

MORAL: an accepted rule or standard of human behavior.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD (PCAOB)

(www.pcaobus.com) established in 2002 as a result of the Sarbanes-Oxley Act, a private sector, non-profit corporation set up to oversee the audits of public companies and ensure that accountancy firms should no longer derive non-audit revenue streams, such as consultancy, from their audit clients.

SARBANES-OXLEY (SOX) ACT wide-ranging U.S. corporate reform legislation, coauthored by the Democrat in charge of the Senate Banking Committee, Paul Sarbanes, and Republican Congressman Michael Oxley. The Act, which became law in July 2002, lays down stringent procedures regarding the accuracy and reliability of corporate disclosures, places restrictions on auditors providing non-audit services and obliges top executives to verify their accounts personally. Section 409 is especially tough and requires that companies must disclose information on material changes in the financial condition or operations of the issuer on a rapid and current basis.