

ACFE Disciplinary Procedures Proposed Amendments

Definitions

For the purpose of these Disciplinary Procedures, the underlined terms below are defined as follows:

ACFE Bylaws – The organizational bylaws of ACFE Membership, Inc.

Board of Regents – The board of directors of ACFE Membership, Inc.

Board of Review – A committee comprised of former Board of Regents members that reviews Formal Complaints submitted to it and provides recommended actions regarding such complaints to the Board of Regents.

Formal Complaint – A written statement from an individual or entity alleging a Violation by a Member.

General Counsel – The ACFE General Counsel’s office, or a representative appointed by the ACFE to serve in the capacity of the General Counsel as described in these Disciplinary Procedures.

Hearing – The process under these Disciplinary Procedures in which a Member accused of a Violation may present a statement and answer questions directly before the Board of Review via videoconference.

Member – An individual who is a Certified Fraud Examiner, an ACFE Association Member, or member in any other membership category created by the ACFE.

Notice of Formal Complaint – The official notice from the ACFE informing a Member that the General Counsel has found credible evidence of an alleged Violation(s) by the Member and requesting the Member to provide a Response to the allegations.

Response – A Member’s formal reply to the Notice of Formal Complaint, along with any evidence provided by the Member that is relevant to the alleged Violation(s).

Temporary Member – A person who, in the event of a conflict of interest under these Disciplinary Procedures, temporarily takes the place of a Board of Review or Board of Regents member for the purposes of evaluating or deciding a Formal Complaint.

Violation – Conduct by a Member that, if proven, would constitute a violation of the ACFE Code of Professional Ethics, CFE Code of Professional Standards, or ACFE Bylaws.

Section I: Initiation of Complaint

If a ~~formal complaint~~Formal Complaint is received by the ACFE against a ~~Certified Fraud Examiner, Associate Member, or member in any other membership category (collectively referred to as “Members”)~~Member, the ACFE General Counsel’s office shall initiate the complaint procedure described below. A ~~“formal complaint” is defined as a written statement from an identified individual or entity~~

~~alleging conduct which, if proven, would constitute a violation of the ACFE Code of Professional Ethics, CFE Code of Professional Standards, or ACFE Membership Bylaws (collectively referred to as “a violation”).~~ The General Counsel’s office may also initiate a ~~formal complaint~~Formal Complaint on its own authority if it otherwise receives credible evidence that a Member has committed a ~~violation~~Violation.

Section II: General Counsel Evaluation

The General Counsel shall evaluate the ~~Formal complaint~~Complaint to determine if it is supported by credible evidence. In order to conduct the evaluation, the General Counsel is authorized to: (1) require the complainant to supply additional information; (2) independently seek out information to support or refute the complainant’s allegations; or (3) take any other steps deemed necessary to determine if there is credible evidence of a violation. The General Counsel shall have the authority to dismiss the ~~Formal complaint~~Complaint if they determine that no credible evidence is found. The General Counsel may take into consideration, but shall not be bound by, any prior ruling on the matter made by any governmental, regulatory, or professional body.

If the General Counsel determines that there is credible evidence of a violation, they shall submit a Notice of Formal Complaint to the Member, notifying the Member of the ~~charges~~alleged Violation(s) and providing copies of the evidence in support thereof. ~~The Member will be afforded the Member sixty-a~~period of sixty (60) calendar days to respond provide a Response to the ~~charges~~alleged Violation(s). At the Member’s reasonable request, the General Counsel may extend the period to submit a Response by an additional twenty (20) calendar days. The Notice of Formal Complaint should instruct the Member to indicate in the written Response whether they are requesting a Hearing (described in Section III) before the Board of Review. ~~and~~The General Counsel may conduct any other investigation deemed necessary to reasonably evaluate the ~~complaint~~Formal Complaint, including but not limited to: (1) requiring either party to supply additional information; or (2) independently seeking out information pertaining to the ~~complaint~~Formal Complaint or the Member’s ~~answer~~Response.

Once the General Counsel has completed the evaluation, they ~~General Counsel~~ shall deliver the evidence that has been gathered in ~~the~~evaluation of the complaint, including a copy of the original Formal complaint Complaint and the Member’s ~~answer~~Response, to each Board of Review member. Each member of the Board of Review will independently review the materials provided by the General Counsel.

If at any time during the evaluation of the ~~complaint~~Formal Complaint, the General Counsel finds compelling evidence that the nature of the alleged actions by the Member poses a serious threat to the public at large or the reputation of the ACFE, the General Counsel may recommend that the Board of Regents temporarily suspend the Member pending the outcome of the disciplinary process. This sanction, if ordered, shall not be published in *Fraud Magazine*.

~~If, because of the identity of the person against whom the complaint was lodged or for any other reason, the General Counsel has a conflict of interest in the case or there is the appearance of a conflict of interest, the General Counsel shall recuse themselves from the case and if necessary an Independent Counsel may be appointed by the Board of Regents with consultation from the Board of Review. If an Independent~~

~~Counsel is appointed, they will operate in the same capacity as would the General Counsel under these Disciplinary Procedures.~~

Section III: Preparation for Hearing

The ACFE will schedule a date and time for a videoconference hearing (“Hearing”) on the Formal Complaint. If the Member elected in their Response to participate in the Hearing, the Member will be consulted about the Hearing date and time. The ACFE will make reasonable efforts to accommodate the Member but is not bound by the Member’s scheduling requests. The Member may have no more than one opportunity to request a different date, provided that the Member’s request does not cause undue delay. The Member waives the Hearing if a request for the Hearing is not provided in writing in the Response by the deadline for the Response (including any extension granted by the ACFE).

Once the Hearing date has been confirmed, the ACFE will notify the parties in writing and will include the pertinent procedural rules and instructions to join the meeting.

The Board of Review may request additional information from the parties prior to the Hearing, but all such requests must be made at least fifteen days prior to the Hearing.

Section IV: Conduct of the Hearing

The ACFE Board of Review may issue procedural guidelines for the proceedings of the Hearing that are consistent with these Disciplinary Procedures, subject to approval by the ACFE Board of Regents.

Unless otherwise authorized by the Board of Review, the only parties that may attend the Hearing are the Board of Review members, staff of the General Counsel (or its appointed representative), the Member, up to one licensed legal representative representing the Member, and an interpreter. Hearings shall be conducted in English. Interpreters shall only be present if determined necessary by the Board of Review and will be paid for at the ACFE’s expense. The ACFE shall record the Hearing unless prohibited by law.

Once all parties attending have joined the videoconference and any preliminary items have been discussed, the ACFE shall commence the Hearing with an introductory statement and an outline of the alleged Violation(s). The Member or the licensed attorney/lawyer representing the Member shall have up to thirty minutes to address the Board of Review and may present any matter relevant to the allegations in the Formal Complaint. If the Member wishes to refer to any documents or other exhibits, such items should be included in the Member’s Response. After the Member’s address, the ACFE’s representative or the Board of Review may ask the Member follow-up questions pertinent to the Formal Complaint. Once the Board of Review has completed its questions, the Member or their licensed legal representative may make a closing statement of up to ten minutes.

After the close of questioning and the Member’s closing statement, the ACFE will end the Hearing and stop the recording (in cases where a recording is permissible).

Section ~~III~~IV: Board of Review Deliberation

~~Each member of the Board of Review will independently review the materials provided by the General Counsel.~~ At the close of the Hearing or at a time that the Board of Review chooses, the members of the Board of Review will enter into an executive session to consult and reach a consensus on what action the ACFE Board of Regents should take. The Board of Review may, without limitation, conduct such inquiry or investigation as it deems necessary on a case-by-case basis in making its determination. Any expenses incurred in the investigation are subject to approval of the Board of Regents.

The Chairperson of the Board of Review will prepare a letter ~~which reports~~reporting the Board of Review's recommendation in the case. The letter of recommendation shall include a complete statement of the findings of fact and conclusions reached by the Board of Review in the case. The letter of recommendation will be sent to the Board of Regents for action as set forth in Section ~~IV~~VII.

Section VI: Conflicts of Interest

If, because of the identity of the person against whom the ~~complaint~~Formal Complaint was lodged or for any other reason, the General Counsel has a conflict of interest in the case or there is the appearance of a conflict of interest, the General Counsel shall recuse themselves from the case and if necessary an ~~i~~independent c~~Counsel~~ may be appointed by the Board of Regents with consultation from the Board of Review. If an ~~i~~independent c~~Counsel~~ is appointed, they will operate in the same capacity as would the General Counsel under these Disciplinary Procedures.

If a member of the Board of Review determines that they have a conflict of interest in the case, or if there is the appearance of a conflict of interest, that member shall recuse themselves from the case as soon as practicable. If a member recuses themselves, the Board of Regents may appoint a Temporary Member for the case who otherwise meets the qualifications for service on the Board of Review. If a majority of the members of the Board of Review recuse themselves from the case, the Board of Review shall cease its deliberation and refer the case directly to the Board of Regents. The Board of Regents may choose to conduct a Hearing and deliberation on the case pursuant to Sections III, IV, and V of these Disciplinary Procedures, or it may choose to appoint Temporary Members of the Board of Review, who otherwise meet the qualifications for service on the Board of Review, to take the place of those members who have recused themselves. If Temporary Members are appointed, the case shall be referred back to the provisional Board of Review for deliberation in accordance with Sections III-III, IV, and V of these Disciplinary Procedures as set forth above.

If a member of the Board of Regents determines that they have a conflict of interest in the case, or if there is the appearance of a conflict of interest, that member shall recuse themselves from deliberations and voting regarding the case. If the remaining members of the Board of Regents constitute a quorum (as defined by the ACFE Bylaws), the Board of Regents may deliberate and make decisions regarding the case as described in these Disciplinary Procedures. If the remaining members of the Board of Regents do not comprise a quorum, the Regents may either reconvene when a quorum is present to deliberate and decide the case, or appoint a Temporary Member(s) for the case who otherwise meets the qualifications for service on the Board of Review.

Section ~~IV~~VII: Authority and Action of the Board of Regents

As further specified in the ACFE Bylaws ~~of the Association~~, the rights and privileges of all Members are subject to qualifications and requirements determined from time-to-time by the Board of Regents, within its exclusive control and authority. All of the Members accept the exclusive control and authority of the Board of Regents as a fundamental condition of the rights and privileges of membership. All disciplinary actions are within the exclusive authority and discretion of the Board of Regents, except where such authority has been delegated by the Board in these procedures or the ACFE Membership ~~Bylaws~~.

When the Board of Regents receives the recommendation letter from the Board of Review pursuant to Section III ~~V~~, it will examine the recommendation and decide on the action, if any, to be taken. The procedures for such examination, including without limitation review of the ~~original~~ case file and the conduct of further investigation, will be at the discretion of the Board of Regents as it may deem appropriate on a case-by-case basis. The Board of Regents may order expulsion, suspension for up to two years, probation, public or private reprimand, or any other disciplinary, remedial, or corrective action it deems appropriate. The decision of the Regents shall become effective at the time it is made.

The decision of the Regents is final and non-appealable. Any decision by the Board of Regents will be promptly communicated to the President of the ACFE to be carried out. The General Counsel will notify the Member and the complainant of the Regents' decision without undue delay. Notice of sanctions will be published in *Fraud Magazine*, except as provided in paragraph four of Section II. In the case of a private reprimand, the Member in question shall not be identified in the published notice of sanction.

Section VIII: Cases not Requiring General Counsel Evaluation, Hearing, or Board of Review Deliberation

If a Member is found guilty by a court of competent jurisdiction of a crime punishable by imprisonment of more than one year, a felony, or any crime involving moral turpitude (as that term is defined in Section 5.07 of the ACFE Membership ~~Bylaws~~), a ~~complaint~~ Formal Complaint against that Member may be presented directly to the Board of Regents without regard for Sections II, ~~and~~ III, IV, and V of these procedures, except: (1) the General Counsel shall conduct such evaluation as is necessary to verify that the Member was, in fact, found guilty of such a crime; (2) the Member shall be notified of the complaint; and (3) the Member shall be afforded seven (7) days to respond. In such circumstance, the Board of Regents may expel the Member, suspend the Member pending an investigation of the ~~complaint~~ Formal Complaint, or take any other disciplinary, remedial, or corrective action it deems appropriate.

Section VII ~~X~~: Board of Review Authority to Decide Cases of CFE Exam Cheating or Dishonesty

If the ACFE finds that a Member has engaged in cheating or dishonesty during or in relation to the CFE Exam, a ~~complaint~~ Formal Complaint against that Member may be presented directly to the Board of Review without regard for Sections II, ~~and~~ III, IV, and V of these procedures, except: (1) the General Counsel shall conduct such evaluation as is necessary to verify that there is clear and convincing evidence that the Member engaged in the alleged misconduct; (2) the Member shall be notified of the ~~complaint~~ Formal Complaint; and (3) the Member shall be afforded fourteen (14) days to respond.

For Formal ~~complaints~~ Complaints brought under this Section, the Board of Review shall have the same authority and take the same actions as provided for the Board of Regents under Section IV ~~VII~~ of these

procedures. Nothing in this Section shall limit the authority of the Board of Regents or the ACFE under these procedures or the ~~ACFE Membership Bylaws~~ACFE Bylaws.

Section ~~VHX~~: Status Reports

The General Counsel and the Board of Review shall provide the Board of Regents with a written status report at ~~each of the least twice each year to be reviewed by the Board of Regents' bi-annual~~ at its board meetings. The report shall include a list of disciplinary actions taken ~~by the Board of Review~~ under Sections VII, as well as ~~complaints~~ Formal Complaints currently pending, including the name of the Member who is referenced in the complaint, the person(s)/entity submitting the complaint, a brief description as to the nature of the complaint, and the current status of the complaint. The Board of Regents may request the General Counsel and the Board of Review to provide an interim status report at any time, as deemed necessary.

Section ~~VHXXI~~: Retention of Records

The General Counsel will retain in a confidential and secure manner the disciplinary case file (including the recording of the Hearing and all pertinent records regarding the complaint) until ten years after the subject of the complaint is no longer a Member, after which point the ACFE will delete the disciplinary case file. The ACFE will permanently retain in a secure and confidential manner a complaint record summarizing the outcome of the Member's disciplinary case, including the final disposition of the case and the punishment, if any. All documents pertaining to disciplinary investigations are the property of the ACFE. Other than the publication of the Regents' decision as set forth in Section ~~IVVII~~, no disclosure or dissemination of any such documents shall be made except by a specific directive from the Board of Regents or pursuant to an order of a legal authority with competent jurisdiction.

ACFE Bylaws Section 9.04 Proposed Amendments

Section 9.04 Books and Records. The Corporation will keep correct and complete books and records of account and will also keep minutes of the proceedings of its members, Board of Regents, and committees having any of the authority of the Board of Regents, and will keep at the registered or principal office a record giving the names and addresses of the Members entitled to vote. ~~All~~The books and records of the Corporation may be inspected by any member, or their agent or attorney, for any proper purpose at any reasonable time, subject to the following limitations:-

- A. Requests for records will be limited to records in existence, and no request by members shall require the Corporation to create any new record.

- B. Except as required by court order or law, the Corporation may refuse to produce confidential or sensitive information, including ACFE member disciplinary information, personal information of ACFE members or customers, disclosures that would invade a person's privacy, litigation records, records involving attorney-client privilege or attorney work product protection, trade secrets, proprietary information, and other such information the Corporation deems to be confidential or sensitive in nature.

- A.C. The Corporation will not provide records or information when disclosure is prohibited by law.