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Ethics Counts

Falling Trees and Ethics Enforcement

By David L. Cotton

Most of us are familiar with the philosophical question: “If a tree falls in a forest and no one is around to hear it, does it make a sound?”¹ Equally interesting corollary questions might be: “Does anyone know the tree fell?” and “Who cares if the tree fell?”

Now for the most pertinent question to *Journal* readers: “How does this philosophical experiment relate to AGA’s ethics enforcement process?”

Our AGA Ethics Handbook states, “AGA may publicize any disciplinary actions taken.” Historically, AGA has not published the outcomes of its ethics investigations. In the wake of recent cases, the Professional Ethics Board (PEB) decided to formulate a more cogent policy on whether, when, and under which circumstances AGA should inform members of the outcomes of ethics investigations resulting in disciplinary actions. We weighed the pros and cons of publishing or not publishing, and the pros and cons of naming disciplined AGA members and holders of the Certified Government Financial Management credential (CGFMs). We also researched other professional organizations’ policies in this regard. Ultimately, we formulated a policy that was approved by the AGA National Governing Board (NGB) at its December 5, 2019, meeting.

Pros and Cons of Publishing Ethics Decisions

The Ethics Handbook establishes: “The purpose of member discipline proceedings is to protect AGA, the public, government offices, and officials from members who have not discharged, will not discharge, or are unlikely to

properly discharge their professional duties to their clients, the public, their employer, and the government financial management profession.”

Undoubtedly, a healthy association needs a rigorous ethics enforcement process. But do clients, the public, employers and the profession need to know anything more about a process than that it existed? Arguments supporting publication of the outcomes of ethics investigations include:

- Assuring members and CGFMs that AGA takes ethics enforcement seriously.
- Safeguarding the reputation of AGA, its members and CGFMs.
- Protecting the public.
- Alerting organizations that employ AGA members and CGFMs.
- Educating AGA members on the importance of the Code of Ethics.

Arguments supporting *not* publishing the outcomes of ethics investigations include:

- Avoiding litigation.
- Preventing a perception that AGA engages in the “public shaming” of its members and CGFMs.

Of course, when a member is disciplined, particularly through suspension or termination of membership, a risk surfaces — the member may take legal action to override the PEB decision. This risk would increase if the disciplinary action were published. In addition, the “public shaming” argument is a tough one, because it implies some

degree of malicious intent. Ultimately, the PEB concluded AGA’s ethics enforcement process should remain primarily remedial rather than punitive; therefore, case characteristics and the seriousness of offenses must guide any decision to publish the outcome of a case.

Many professional associations conduct ethics investigations. So, the PEB undertook extensive research and analysis of the policies of nine such organizations, including:

- Association of Certified Fraud Examiners (ACFE)
- American Institute of Certified Public Accountants (AICPA)
- State CPA societies
- Institute of Internal Auditors (IIA)
- American Bar Association (ABA)
- State Boards of Accountancy (SBOA)
- State bar associations
- American Medical Association (AMA)
- Government Finance Officers Association (GFOA)

What Do Other Organizations Do?

The PEB learned that positions on publishing ethics decisions and publishing the names of members who were sanctioned vary widely. Some organizations publish *some* ethics enforcement outcomes and the names of members who received punishment, such as suspension or termination, but not others. Some organizations publish all outcomes and name all members sanctioned. Some organizations have



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a rigorous ethics enforcement process but maintain a policy of not publishing outcomes. One association told our researchers they take ethics very seriously but have never had to conduct an ethics investigation; thus, they have not had to formulate a policy on publishing sanctions.

A key distinction emerged as we evaluated other organizations' policies:

- Organizations that "regulate" a professional credential (e.g., ACFE, SBOAs and mandatory state bar associations²) are more aggressive in publishing both outcomes and names.
- Organizations that do not "regulate" a professional credential (e.g., ABA, voluntary bar associations, GFOA) take a less aggressive stance.

Two interesting exceptions to the above distinction emerged. First, the organization that oversees the Certified Internal Auditor (CIA) credential, IIA upholds a rigorous ethics enforcement process and reserves the right to publish sanctions, but it has adopted a policy of generally not publishing ethics investigations. The IIA policy is guided by many factors, including the international scope of the CIA credential. Second, AICPA and most state CPA societies do not actually regulate the CPA credential (the SBOAs do), yet their ethics enforcement process is among the most rigorous we found. Under the Joint Ethics Enforcement Process (JEEP), AICPA and state societies cooperate in conducting ethics investigations and uphold well-established policies concerning the publication of case outcomes. In general, they always publish outcomes resulting in suspensions or terminations — including names of CPA members who were sanctioned — while lesser penalties tend to remain confidential. Interestingly, several state CPA societies do not participate in JEEP; they simply refer ethics complaints against their members to the state's board of

accountancy. Most state boards were empowered to police CPA ethics more aggressively, after the wave of CPA scandals in 2000–2002 and the passage of the Sarbanes-Oxley Act of 2002.

The PEB and NGB Decision on the Best Policy for AGA

After research and analysis of what other organizations do, considerable discussion, and a healthy debate, the PEB and NGB formulated the following policy elements regarding information about disciplinary actions against AGA members as a result of ethics investigations.

- Publication of certain sanctions is important to:
 - Assure AGA members and CGFMs our ethics enforcement process is taken seriously.
 - Safeguard the reputation of AGA, its members and CGFMs.
 - Protect the public.
 - Alert organizations that employ AGA members and CGFMs.
- AGA will publish results of cases resulting in suspensions and terminations.
- Published suspension and termination decisions will be limited to:
 - The sanction(s) imposed.
 - A brief, factual statement of the action(s) taken by a member or CGFM that resulted in the sanction.
 - Reference to the specific provision in the Code of Ethics violated by those actions.
- Names of members or CGFMs will only be published when AGA concludes that doing so is necessary to protect the reputation of AGA, its members or CGFMs, to protect the public, or to alert organizations that employ AGA members and CGFMs.

- In cases leading to sanctions other than suspensions or terminations, the PEB will decide on a case-by-case basis whether publication is warranted, after consideration of the nature and seriousness of the offense.
- AGA legal counsel will review all disclosures prior to their publication.
- Recognizing that each case is different and that we cannot anticipate nuances of future cases, the PEB and AGA reserve the right to depart from the elements above, as specific cases may warrant.

See www.agacgfm.org/sanctions for the complete policy approved by the NGB.

Studying these issues and formulating this policy has been both thought-provoking and challenging. We believe AGA's ethics enforcement process has been strengthened as a result. The new policy will be incorporated into a revised AGA Ethics Handbook. Moving forward, when an AGA member or CGFM "falls," like the proverbial tree in the forest, our members will hear it, especially in situations in which the case outcome holds educational value and the PEB and NGB think our stakeholders need to know what happened. ■

Endnotes

1. Berkeley, George. *Treatise Concerning the Principles of Human Knowledge, Part I*. Dublin: Jeremy Pepy, 1710; section 23.
2. In some states, mandatory bar associations regulate legal licenses while, in others, state governments regulate legal licenses and offer "voluntary" bar associations. Some states maintain both types of association.



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