

# Professional Ethics

A Higher Calling



# Why Are We Here?

- To CELEBRATE  
how well our ethics and reputations are fairing in the  
public's eye?
- Arthur Andersen
- Bernie Madoff

# Bernie Madoff

- NY TIMES HEADLINE: **Accountant for Madoff Is Arrested and Charged With Securities Fraud**
- “Mr. Friehling, 49, is facing one count of securities fraud, one count of aiding and abetting investment adviser fraud, and four counts of making false S.E.C. filings. If convicted on all six counts, he faces up to 105 years in prison.”
- From The New York Times, online edition. “Accountant for Madoff Is Arrested and Charged With Securities Fraud,” by [WILLIAM K. RASHBAUM](#) and [DIANA B. HENRIQUES](#). Published: March 18, 2009. Retrieved August 24, 2009

# Arthur Andersen – from Wikipedia

- **Arthur Andersen LLP**, based in Chicago, was once one of the "Big Five" accounting firms ... providing auditing, tax, and consulting services to large corporations. In 2002, the firm voluntarily surrendered its licenses to practice as Certified Public Accountants in the United States after being found guilty of criminal charges relating to the firm's handling of the auditing of Enron, the energy corporation, resulting in the loss of 85,000 jobs.
- Retrieved August 24, 2009, from [http://en.wikipedia.org/w/index.php?title=Arthur Andersen&oldid=304903375](http://en.wikipedia.org/w/index.php?title=Arthur_Andersen&oldid=304903375)

# Overview of Presentation

- Discuss ethics rules and enforcement that support our profession's self-governance
- Discuss available resources and the latest guidance from the AICPA
- Identify our profession's Ethics **Principles**
  - **Challenge** you to reach these Higher Principles
- Questions and answer panel discussion

# But First, the Disclaimer

- This is a non-authoritative presentation.
- You, as the professional, must always make your own judgments about ethics issues.

# Authority – Who Says We Have To?

- Membership Organizations: AICPA, and GSCPA's
  - AICPA Code of Professional Conduct
    - Section 50 - Principles of Professional Conduct
    - Section 90 - Rules: Applicability and Definitions
    - Section 100 - Independence, Integrity, and Objectivity
    - Section 200 - General Standards Accounting Principles
    - Section 300 - Responsibilities to Clients
    - Section 400 - Responsibilities to Colleagues
    - Section 500 - Other Responsibilities and Practices
  - <http://www.aicpa.org/about/code/index.html>
- Others: SEC, GAO, etc., etc.

# Authority: Who Says We Have To?

- Georgia State Board of Accountancy – Code of Conduct

- [Independence](#) - 20-12-.02
  - [Integrity and Objectivity](#) - 20-12-.03
  - [Commissions](#) - 20-12-.04
  - [Contingent Fees](#) - 20-12-.05
  - [Incompatible Occupations](#) - 20-12-.06
  - [Competence](#) - 20-12-.07
  - [Auditing Standards](#) - 20-12-.08
  - [Accounting Principles](#) - 20-12-.09
  - [Forecasts](#) - 20-12-.10
  - [Confidential Client Information](#) - 20-12-.11
  - [Records](#) - 20-12-.12
  - [Discreditable Acts](#) - 20-12-.13
  - [Acting Through Others](#) - 20-12-.14
  - [Advertising and Solicitation](#) - 20-12-.15
  - [Form of Practice](#) - 20-12-.16
  - [Firm Names](#) - 20-12-.17
  - [Communications](#) - 20-12-.18
  - [Other Professional Standards](#) - 20-12-.19
- [http://rules.sos.state.ga.us/cgi-bin/page.cgi?g=GEORGIA STATE BOARD OF ACCOUNTANCY/CODE OF PROFESSIONAL CONDUCT/index.html&d=1](http://rules.sos.state.ga.us/cgi-bin/page.cgi?g=GEORGIA%20STATE%20BOARD%20OF%20ACCOUNTANCY/CODE%20OF%20PROFESSIONAL%20CONDUCT/index.html&d=1)

# Records Retention: State Board versus Code of Conduct

- **AICPA Code of Conduct:**
  - “Client records prepared by the member should be provided to the client, except that client records prepared by the member may be withheld if the preparation of such records is not complete or there are fees due the member for the engagement to prepare those records.”  
(Section 501-1)
- **Georgia State Board (Policy #5, supporting Rule 20-12-.12)**
  - “During the course of a professional engagement, a licensee may have in his possession certain records of his client, or he may have developed certain records without which the Client Records would be incomplete. Retention of Client Records after the client has made a request for them is a violation of Rule 20-12-.12. The licensee does not have a lien on these records in his possession, and they must be returned regardless of the fact that the fee of the licensee may remain unpaid.”

# GSCPA Professional Ethics Committee: Activities

## **The Ethics committee exists to Educate and Investigate**

- Fields question from members, guides member to the right answer
- Educate members on ethics issues, committee procedure, and complaint procedures
- Initiate and/or respond to proposed governance changes regarding ethics
- Disseminate State Board interpretations to members
- Cooperate with State Board on policy development
- Bill McDaniel (current chair) on this year's activities



# GSCPA Professional Ethics Committee: Activities

## **The Ethics committee exists to Educate and Investigate**

- If there is a problem with a member, the committee can 'triage' the matter
  - Can contact member and others to try and flesh out the real issues
  - Often, a quick 'mediated' agreement can be reached.
  - Saves time for everyone, satisfies the complainer, preserves member from risk of public attention.
- If the committee cannot resolve the matter, or if it is a serious issues, or if an official complaint is filed, it is **referred to the AICPA for investigation.**

# Working with the AICPA: The JEEP agreement

- Joint Ethics Enforcement Program (JEEP)
- Ethics cases are handled under agreement with the Georgia Society and the AICPA
  - Professional staff and investigators – provides uniformity
  - Dispassionate review of the situation
  - Oversight by the GSCPA Ethics Committee
- JEEP Manual of Procedure is publicly available:
- <http://www.aicpa.org/Professional+Resources/Professional+Ethics+Code+of+Professional+Conduct/Professional+Ethics/Resources+and+Tools/Members+in+Business+and+Industry/jointenforceprocedures.htm>

# Ethics Investigations: Overview of investigation process

- Complaint received
- Preliminary inquiry and analysis
- Committee votes to open a case
- Investigation
- Committee votes on case and sanctions
- Arrive at concurrence with GSCPA
- Communicate results to member
- Follow-up / monitoring
- Conclusion

# Ethics Investigations: Investigatory Burden

- Is there *prima facie* evidence that a violation has occurred
  - *Prima facie* is a lesser standard than required in courtroom
  - Means “On its face” or “self-evident from the facts”
- If violation is found, then committee deliberates on the appropriate sanctions against the member

# Ethics Investigations:

## Available sanctions / actions

- **No Violation / Dismissal**
  - Investigation found no *prima facie* evidence of a violation of the Code of Professional Conduct.
  - No provision of the Code of Professional Conduct applies to the complaint
- **No Further Action**
  - The ethics committee closed the investigation because it could not obtain sufficient evidence of a *prima facie* violation had or had not occurred. Or it decides, in its discretion, that the investigation should no longer be pursued. The right to re-open if more facts develop is preserved.

# Ethics Investigations:

## Available sanctions / actions

- **Corrective Action Required**
  - Directs a member to complete one or more of the following: up to 80 hours of specified CPE courses; submit to work product review; submit to pre-issuance review, or other sanctions.
  - The findings are NOT published
  - Takes the form of a letter of required corrective action (RCA letter)
- **Admonishment**
  - A public written reprimand
  - Publication of admonishments is mandatory.

# Ethics Investigations

## Available sanctions / actions

- **Expelled or Suspended**

- A member may be expelled, or may be suspended for a period of up to two years.
- CPE, workpaper review, or other sanctions may also be levied on the member.
- Automatic expulsion or suspension if: (1) license suspended or revoked; (2) member is convicted of (i) a crime punishable by imprisonment for more than one year, or (ii) the willful failure to file / filing fraudulent tax returns (3) When a similar disciplinary action is taken against such member by an approved organization
- Publication of expulsions and suspensions are mandatory.
- Takes the form of a non-negotiable settlement agreement (NNSA)

# Ethics Investigations: Communicate findings to member

- After concurrence with GSCPAs:
  - Committee sends letter of Required Corrective Action,  
OR
  - Committee sends Non-negotiable Settlement  
Agreement
- Member can accept or reject findings.
- If member agrees to sanctions, then he or she has a specified time frame in which to comply with requirements

# Ethics Investigations: Conclusion

- Complainant is informed of findings
- Findings are published, if appropriate
- Committee follows up on required actions (i.e. CPE, work product review, agreement to not perform certain work)
- Once required actions are complete, then a closing letter is issued to member

# Ethics Investigation: If member does not agree

- If member does not agree, then the committee can elevate the situation by sending the member to the Trial Board
- Trial Board is a court-like proceeding administered by the AICPA
- Findings of Trial Board are final and binding.

# Ethics Investigations: Automatic sanctioning

- Member can be sanctioned without a hearing if a member:
  - Is convicted of a crime punishable by > 1 yr jail time
  - Fails to file a tax return for which he is responsible
  - Files a fraudulent return on behalf of a client
  - Loses his license
  - Is sanctioned by a governmental agency or other approved organization
- Automatic sanctioning guidelines are in place
- Publications of other agencies are monitored

# Ethics Committee:

## Typical inquiries / complaints received

- Fee disputes – by far the most frequent type of inquiry
- Failure to disclose a lack of independence
- Independence violations
- Records retention
  - Note: State board rules are different from AICPA Code

# Ethics Committee: Our best advice

- Act with integrity
- Get engagement letters
- Avoid conflicts of interest
- PLEASE PLEASE discuss fees in advance with your clients.
- Read the book!

# Professional Ethics: Resources

- AICPA Ethics Hotline: (888) 777-7077, #5, #2
- AICPA E-mail a question: [ethics @aicpa.org](mailto:ethics@aicpa.org)
- AICPA Ethics Page  
<http://www.aicpa.org/Professional+Resources/Professional+Ethics+Code+of+Professional+Conduct/>
- GSCPAs Ethics Page  
<http://www.gscpa.org/Content/ProfessionalResources/Ethics.aspx>
  - How to make an inquiry and how to file a complaint
  - How to respond to a complaint
  - Library and Resources
  - Ethics committee “on call” list and committee roster

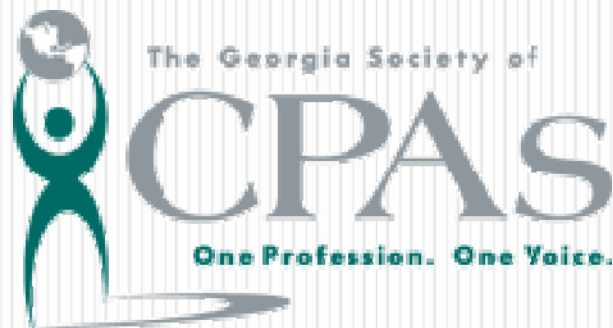
# Professional Ethics – New Guidance

- AICPA issued “Guide for Complying with Rules 102-505” as an aide to interpret these sections of the Code of Conduct
- Implements a “Threats and Safeguards” approach to analyzing your own compliance with the ethical standards.
- Available as a handout today.
- Journal of Accountancy, April 2009
- Available on AICPA website:

[http://www.aicpa.org/download/Guide for Complying with Rules 102 Through 505 11 10 08 Edited.pdf](http://www.aicpa.org/download/Guide_for_Complying_with_Rules_102_Through_505_11_10_08_Edited.pdf)

# Professional Ethics: A Higher Calling

A closer look at the Principles  
In the AICPA Code of Professional Conduct:



# Code of Professional Conduct

- AICPA Code of Professional Conduct
- Freely Available online at:  
<http://www.aicpa.org/about/code/index.html>
- Consists of:
  - Principles (provide a framework for the rules)
  - Rules
  - Interpretations
  - Rulings

# Code of Professional Conduct: Table of contents

- **Section 50 - Principles of Professional Conduct**
- Section 90 - Rules: Applicability and Definitions
- Section 100 - Independence, Integrity, and Objectivity
- Section 200 - General Standards Accounting Principles
- Section 300 - Responsibilities to Clients
- Section 400 - Responsibilities to Colleagues
- Section 500 - Other Responsibilities and Practices
- ET Appendixes
- ET Topical Index

# Code of Professional Conduct:

## Section 50 - Principles of Conduct

- First section of Code sets the bar – these are the ideals for which we should strive
- **“These Principles** of the Code of Professional Conduct of the American Institute of Certified Public Accountants express the profession's recognition of its responsibilities to the public, to clients, and to colleagues. They **guide members in the performance of their professional responsibilities and express the basic tenets of ethical and professional conduct. The Principles call for an unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.”**

# Equal time to the opposite view:



# Code of Professional Conduct: Responsibilities

## ET Section 52 - Article I—Responsibilities

*In carrying out their responsibilities as professionals, members should exercise sensitive professional and moral judgments in all their activities.*

- We are (or should be) **Professionals**
  - Set apart by our knowledge, our adherence to standards, and our self-governance.
- The Principles identify that Members have continuing responsibilities:
  - To Clients, the Public, and to Colleagues;
  - To improve the Art of Accounting;
  - To self-discipline;
  - Above and beyond the requirements of laws and regulations;
  - To uphold the tenets of ethical and professional conduct;
  - To demonstrate and unswerving commitment to honorable behavior, even at the sacrifice of personal advantage.
- ***The collective efforts of ALL members are required to maintain and enhance the traditions of the profession.***

# Code of Professional Conduct: The Public Interest

## ET Section 53 - Article II—The Public Interest

*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 **Profession** accepts its responsibility to the public.
- Our **Profession** serves an essential role in society that serves to maintain the orderly function of Commerce.
  - We have responsibilities to the public in general, and to the users of financial statements in particular.
  - Continuing responsibility to maintain the public confidence
  - Continuing responsibility to serve the public interest
  - Commitment to honor the public trust
  - Expected to act with Genuine interest in serving the public.

# Code of Professional Conduct

## Integrity

### ET Section 54 - Article III—Integrity

*To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity.*

- Integrity is fundamental to recognition as a profession.
- Integrity is measured in terms of what is right and just.
- Integrity is the **benchmark** against which members must test all decisions.
- Integrity Requires Due Care.
- Integrity Requires Objectivity.
- Members are required to be: Honest, Candid, Confidential
- Integrity cannot tolerate deceit or subordination of principle
- Integrity requires a member to observe both the spirit and the letter of technical and ethical standards. ***Circumvention of those standards constitutes subordination of judgment.***
- Personal gain and advantage takes second place to protecting the public trust.

# Code of Professional Conduct: Objectivity and Independence

## ET Section 55 - Article IV—Objectivity and Independence

*A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A member in public practice should be independent in fact and appearance when providing attestation services.*

- Objectivity is a distinguishing feature of the profession.
- Objectivity lends value to our services.
- The public relies on the objectivity and integrity of CPAs
- Objectivity requires impartiality.
- Objectivity requires intellectual honesty.
- Objectivity allows for no conflict of interest.

(Even though it is technically permissible to have certain disclosed conflicts, the Principle says we Should be Free of Conflicts.)

# Code of Professional Conduct: Due Care and Scope of Services

ET Section 56 - Article V—Due Care

*A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability.*

- Due Care is the Quest for Excellence
- Due Care requires competence
  - Competence is the ability to fully complete the job, and knowing when to ask for help.
  - Competence requires a lifetime commitment to learning.
- Due Care requires diligence
  - ...requires promptness, carefulness, thoughtfulness
  - ...adherence to standards, planning, proper supervision
- Due Care requires the best of the members' ability
- Members should seek continually to demonstrate their dedication to professional excellence
- Members should strive continually to improve the quality of services

## Code of Professional Conduct: The Point

- We should be **Aspiring to these Principles.**
- These are the Principles of a Profession.
- These are the Principles of **OUR PROFESSION.**

# Code of Professional Conduct: The Point

- As a profession, are we applying an advocacy mentality to our own ethics rules?
- On tax clients, search for the edges, and use all available legal means to help clients
- BUT – when it comes to your professional responsibilities: ethics, integrity, objectivity,

**Be like the Mississippi riverboat captain:  
STAY IN THE SAFE, DEEP WATER**



# Your Questions

- Bill McDaniel  
Chairman, GSCPAs Professional Ethics Committee
- Rodney Chandler, Immediate Past Chair

# QUIZ: Question #1 – Independence?

- Question—Would independence be considered to be impaired if a member joined a trade association that is a client of the firm?
- Answer—Independence would not be considered to be impaired provided the member did not serve as an officer, director, or in any capacity equivalent to that of a member of management.

## QUIZ: Question #2 – Independence?

- Question—A client of the member's firm has not paid fees for previously rendered professional services. Would independence be considered to be impaired for the current year?
- Answer—Independence is considered to be impaired if, when the report on the client's current year is issued, billed or unbilled fees, or a note receivable arising from such fees, remain unpaid for any professional services provided more than one year prior to the date of the report.

This ruling does not apply to fees outstanding from a client in bankruptcy.

## QUIZ: Question #3 – Hold Harmless?

- Question—A member or his or her firm proposes to include in engagement letters a clause that provides that the client would release, indemnify, defend, and hold the member (and his or her partners, heirs, executors, personal representatives, successors, and assigns) harmless from any liability and costs resulting from knowing misrepresentations by management. Would inclusion of such an indemnification clause in engagement letters impair independence?
- Answer—No.

## QUIZ: Question #4 – Disclose Names?

- Question—May a member in public practice disclose the name of a client for whom the member or the member's firm performed professional services?
- Answer—It is permissible under rule 301] for a member to disclose the name of a client, whether publicly or privately owned, without the client's specific consent unless the disclosure of the client's name constitutes the release of confidential information. For example, if a member's practice is limited to bankruptcy matters, the disclosure of a client's name would suggest that the client may be experiencing financial difficulties, which could be confidential client information.

# QUIZ: Question #5 - Commissions

- Question—A member or member's firm (member) provides for a contingent fee investment advisory services, or refers for a commission products or services of a nonclient or a nonattest client, to the owners, officers, or employees of an attest client or to a nonattest client employee benefit plan sponsored by an attest client. Would the member be considered to be in violation of either rule 302 [[ET section 302.01](#)] or rule 503 [[ET section 503.01](#)]?
- Answer—No. The member would not be in violation of either rule 302 [[ET section 302.01](#)] or rule 503 [[ET section 503.01](#)] provided that, with respect to rule 503 [[ET section 503.01](#)], the member discloses the commission to the owners, officers, or employees or to the employee benefit plan. The member should also consider the applicability of interpretation 102-2, Conflicts of Interest [[ET section 102.03](#)], and his or her professional responsibility to clients under Rule 301, *Confidential Client Information* [[ET section 301.01](#)].
- Note: Source for all Quiz questions is the AICPA Code of Conduct