

Ethikos Volume 33, Number 6. June 01, 2019 SCCE's Code of Professional Ethics: A valuable resource for compliance and ethics professionals

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Consider this: A compliance and ethics professional (CEP) learns that the organization she works for owes a substantial amount of back pay to its workers. The CEO of the company, instead of making good on these payments, is leaning toward not informing the workers of their rights and relying on a statute of limitations to run out so the company doesn't have to pay. The CEP realizes that, according to the law of the land, what the company is doing is not illegal, but it is unethical.

What can she do?

One way to navigate this issue is to rely upon the Society of Corporate Compliance and Ethics Code of Professional Conduct (<https://bit.ly/2WsY8lz>).

The very first principle in the code, Obligations to the Public, contains rules of conduct that give the CEP a roadmap for how to handle thorny issues of ethics within an organization. Specifically, Rules 1.1 and 1.4 help to address the situation described above:

R1.1 CEPs shall not aid, abet or participate in misconduct.

R1.4 If, in the course of their work, CEPs become aware of any decision by their employing organization which, if implemented, would constitute misconduct, the professional shall: (a) refuse to consent to the decision; (b) escalate the matter, including to the highest governing body, as appropriate; (c) if serious issues remain unresolved after exercising "a" and "b", consider resignation; and (d) report the decision to public officials when required by law.

The situation described above really happened. The CEP in question really did consult the code, and after reading through it, decided to escalate the problem to the board of directors. The board tends to have a longer view on things, and they let the CEO know that the risks of not paying the workers far outweighed the costs of paying what the employees were due.

So in this case, unethical conduct was averted with help from perhaps the most underutilized resource in the ethics and compliance officer's toolbox: the profession's own code of conduct.

Tricks of the trade

"I often give talks about codes of conduct," said Joe Murphy, architect of the SCCE's professional code. "And when I do, I usually start the conversation by asking everyone to put their code of conduct on a chair and keep an eye on it while I'm talking. Let me know if it does anything."^[1]

Murphy's point is well taken. If CEPs make no use of the code, then the code becomes useless. The SCCE's Code of Conduct has no binding power over compliance and ethics professionals, unlike the codes in the legal or medical professions, which have some teeth, especially on the state and local level. For the SCCE code to be useful, CEPs need to know how to wield it.

"Compliance officers could ask that the code be binding upon them as a matter of employment," Murphy said. "It may not be legally binding on them, but it is on you. Then it becomes hard to violate that code if the company were to ask you to."

And if the company were to violate the code, and a CEP were to stand up for ethical behavior, there is another "trick" that could protect the CEPs ability to act independently and be protected. "The OCED [Organization for Economic Co-operation and Development] Working Group on Bribery and Corruption issued a recommendation in 2009 to all signatories," Murphy said. "One of the attachments stated that it was good practice to prohibit retaliation for, among other things, following a professional code of ethics."

Using these two "tricks" (i.e., making the code a matter of employment, and alerting the company to these OECD guidelines) help to shield and empower the CEP to follow the code of conduct and be as competent and responsible as possible in preventing the employing organization from engaging in any type of unethical or illegal behavior.

Tough code for tough times

Rebecca Walker, a partner in Kaplan & Walker LLP, a law firm in Santa Monica, California and Princeton, New Jersey, worked with Joe Murphy in creating the SCCE Code of Conduct, and in her opinion, the profession could be using the code much more than it currently is, despite the fact that she finds herself referring to the code often with her clients.

"My clients come with really tough issues," Walker said, "such as how to handle a whistleblower report, or a situation in which general counsel wants to do this, but we want to do that. The code can be really useful helping CEPs think through their ethical issues."^[2]

One major point within the SCCE code is the need to keep leadership informed. For Walker, this means the CEPs must have appropriate access within the organization, feel empowered to speak the truth as they see it, and work hard to keep an ethical stance.

"The thing we can do, realistically, is strive to get the word out and to encourage people to refer to the code with issues or questions," Walker said. "That's the best we can do right now as a profession."

Gerry Zack, CEO of the SCCE, began his career as a fraud investigator and, as such, was subject to the Association of Certified Fraud Examiners (AFCE) code of ethics. The AFCE code often helped him in questions revolving around his investigations—how to get information, for example. "A decision might turn on a word," Zack said, "so people take tremendous care when crafting their codes."^[3]

The SCCE's Professional Code of Ethics was crafted with the same care, and has done a lot for establishing guidelines for the profession. For Gerry Zack though, guidelines are just one part of the role of a code. "A code of ethics is not merely valuable as a tool," he said. "It's also essential to establishing the credibility of a profession."

¹ From author's phone interview with Joe Murphy.

² From author's phone interview with Rebecca Walker.

3 From author's conversation with Gerry Zack.

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