

Institute of Business Appraisers

Revised 2/28/04

Rules of Professional Conduct

Preamble

A member of the Institute of Business Appraisers (IBA) assumes an obligation beyond any imposed by law. By accepting membership, the individual recognizes a responsibility to the public, to clients, intended third party users of his/her reports and to colleagues. The individual member agrees to be bound by the contents of the following Institute of Business Appraisers pronouncements, in addition to any rules set forth, herein:

- **Code of Ethics**
 - **Business Appraisal Standards** (Publication P-311c or any more recent versions of this document that may be promulgated from time to time)

The foregoing pronouncements are to be considered incorporated herein by reference.

It is the intent of these Rules to instill confidence in the public and business community that members are desirous of performing their responsibilities with the highest degree of integrity and are willing to subject themselves to discipline for any breaches of professional conduct.

A member shall be responsible to inform his or her employer, through his or her direct supervisor, that the appraiser is required to comply with the Code of Ethics, Rules of Professional Conduct and Business Appraisal Standards, and is subject to disciplinary sanctions for violations thereof. He or she shall deliver these documents to the employer if the employer does not have a copy.

Rule 1

A member should always strive to be independent in the performance of professional services. Independence shall be considered impaired under circumstances which include the following:

- a) The member has a direct or indirect financial interest in the business or entity being appraised.
- b) The member is a director, officer or trustee of the entity being valued.
- c) The member is a debtor or creditor of the entity on which a business appraisal is being performed. (Appraisal fees are excluded from consideration)
- d) There is a conflict of interest (unless the parties accept the conflict and the conflict is disclosed in the report).

Rule 2

There is a potential public perception that the appraiser's independence may be impaired when the appraiser or his/her firm performs other services for the client for whom the work is performed or for the entity being appraised. Therefore, consistent with the requirements of IBA standard 1.3, "Disinterestedness" the appraiser shall disclose such relationships in their report.

For the purpose of this rule, the "client" relationship shall be considered to be any relationship where the appraiser or his/her firm receives compensation from the client for performing professional services, as opposed to being a referral source. For example, if the client is an estate of a 10 percent shareholder, and

the appraiser's firm is the accounting firm for the business, there is a professional relationship that warrants disclosure. An attorney that regularly retains or engages the appraiser will also be considered to be a client. However, an attorney that is merely a referral source shall not be considered to be a client.

While it is not possible to provide examples of every potential client arrangement, the spirit of this rule is to require the appraiser to disclose any relationship that would allow the user of the valuation to make his or her own judgment about a potential conflict of interest that may exist. Conflicts of interest should be addressed pursuant to other IBA standards.

Rule 3

A member must competently complete the engagement, using due professional care. This includes planning and supervising employees and subcontractors. A member **shall** be responsible for the function and accuracy of all analysis tools used in an engagement including, but not limited to, computer software, financial calculators and purchased or subcontracted economic or industry reports.

Rule 4

Client data **shall not**, except under order of the following, be disclosed without a client's specific consent:

- a) Court order
- b) Order of the Ethics and Discipline Committee
- c) Order of a licensing authority
- d) Order of another professional society's equivalent to the Ethics and Discipline Committee, in which the member also holds a membership.

Rule 5

Services **shall not** be rendered where the fee is contingent upon the findings or results of such services, unless fixed by the courts or a governmental body or agency.

Rule 6

Advertising and solicitation **shall not** be false, misleading, harassing or coercive.

Rule 7

A member **shall not** commit an act discreditable to the profession.

Rule 8

Only individuals can be members of IBA. A member can hold himself or herself out to the public as a "member of IBA" as an individual only. It is strictly prohibited to put "member of IBA" on letterhead, curriculum vitae, promotional materials, web sites, or any other media in conjunction with a firm name unless that name is the individual member's name only. For example, the use of "Mary Jones - Member of IBA" is acceptable but "Mary Jones Appraisals - Member of IBA" is not.

Rule 9

The designations Certified Business Appraiser and C.B.A., Master Certified Business Appraiser and M.C.B.A., Fellow of The Institute of Business Appraisers and F.I.B.A., and other designations granted by the organization such as A.I.B.A. and B.V.A.L. are only available to those passing **ALL** of the requirements of The Institute of Business Appraisers, Inc.

A member **shall not** use any wording that misleads the public about his or her status in the organization. For example, a member shall not state that he or she passed the CBA or any other examination if passing such examination does not complete all requirements for a designation.

A member is either a "Member of IBA" or a designated member. There is no status in the organization other than this. Any inference otherwise is strictly prohibited.

Rule 10

The appraiser **shall not**, when presenting materials in any form, copy or substantially use materials prepared by another person or entity without acknowledging the source of such material. Plagiarism is considered to be an unethical practice.

Amendments and Revisions

Amendments and Revisions to the Code of Ethics, Business Appraisal Standards, and Rules of Professional Conduct must be reviewed and approved by the Ethics and Disciplinary Committee, as to language, before being implemented by the Institute or where applicable by any body of the Institute. The intent of this rule is to insure uniformity in rule making within the various groups within the Institute.

Composition of the Ethics and Discipline Committee

Regular voting members of the Committee must be Certified Business Appraisers. The committee shall consist of at least five members and a nonvoting liaison between the committee and Institute staff. No person may be a committee member if they have been formally disciplined by this committee.

The Executive Director of IBA shall appoint the chairperson of the ethics and disciplinary committee. The chairperson shall appoint members of the committee. No member shall serve on the committee for more than five consecutive years. The chairperson shall not be subject to term limits. At least one member of the committee shall be replaced each year. The chairperson may reappoint a member if new members are unavailable for service.

A voting quorum consists of two-thirds of the committee members. The chairperson will not be a voting member of the committee¹. In the case of a tie vote, the liaison is given the right to cast the tie breaking vote. A simple majority of those voting constitutes passage of an item. No vote may be taken without the presence of the liaison.

An Appeals Board shall be comprised of the chairperson of the ethics and disciplinary committee, the chairperson of the standards committee and the Executive Director of IBA. Any decision to overturn the committee must be unanimous.

Methods of Discipline When Violations are Found

The ethics and disciplinary committee is empowered to impose various sanctions upon members determined to have violated the ethics, standards or code of professional conduct. Some of the sanctions that may be imposed include, but shall not be limited to, the following:

1. A member may be ordered to take a specific course or courses of instruction in order to correct skill deficiencies.
2. Reprimand in the form of a letter may be sent to the member. The reprimand becomes part of the member's file.
3. Suspension for a period of time.
4. Revocation of designation.
5. Termination of membership.

All violations shall be announced in the IBA Newsletter. The ethics and disciplinary committee shall have the right to forego public announcement upon unanimous vote of the committee.

Enforcement

1. A member **may not** resign once an investigation has commenced. Nonpayment of dues will be considered a voluntary action on the part of the member and will not cease the process.
2. Automatic suspensions will occur and coincide with suspensions from practice before governmental bodies or other professional organizations whose members perform appraisals. (Exception is made for nonpayment of dues to other professional organizations or licensing authorities.)
3. Automatic termination will occur under the following circumstances:
 - a) Conviction for a felony,
 - b) Termination from practice before a governmental body or agency, (except in situations involving nonpayment of dues),
 - c) Termination by other professional organizations whose members perform appraisals (except in situations involving nonpayment of dues), and
 - d) Failure to abide by this committee's rulings.
 - e) Failure to take the ethics examination within 60 days on the tri-annual due date of the membership dues.

The examination will be administered by a computerized examination with each question providing the section number of the document covering the test material. If a member fails the examination, a different

examination will be mailed to the member that must be completed within 30 days to avoid termination of membership. If the second examination is failed, the member will be required to complete a standards and ethics course within 60 days to avoid termination of membership.

4. Procedure for handling an ethics complaint shall be as follows:

a) IBA Headquarters shall send all complaints to the chairperson of the committee.

b) The chairperson shall be empowered to determine whether the complaint is of the type that should be forwarded to the full committee for investigation.

c) If the complaint is to be investigated, the chairperson shall send a copy of the complaint and supporting documentation to the committee for their review and determination if a violation has taken place. The committee shall respond to the chairperson within 30 days as to whether a violation has taken place and what additional documents, if any, may be required to further investigate the matter.

d) The chairperson shall notify the member that a complaint has been filed against him or her and request the additional documentation. If no additional documentation is required, the chairperson shall write to the member informing him or her of the violation and shall provide the member with the right to have either a live hearing, with fact witnesses, or a telephone or video hearing with the member only.

e) The member being charged will have the right to attend (with an attorney, if desired) the hearing. If he or she chooses not to have a hearing, the available evidence will be used in arriving at a decision. (One deferral, other than for health reasons, may be requested by the member.) A member has the right to copies of all the evidence presented to the committee. The evidence must be presented to the member at least 15 days prior to the hearing.

The member shall be responsible for all of his or her own costs pertaining to a hearing.

All decisions shall be communicated in writing to the member. However, the results of any vote count shall be destroyed, prior to issuance of the results.

The party filing the complaint will have it acknowledged by the staff. If necessary, the committee can call the complainant as a witness. No other information shall be disseminated to the complainant other than through the announcement process in the IBA Newsletter.

The results of any investigation, other than as provided under Methods of Discipline When Violations Are Found, will not be disseminated beyond the committee, other than to the member whose case has been investigated.

A disciplined member, other than for automatic termination or suspension, has 30 days to file an appeal with the staff. The staff will convene an appeals hearing within a reasonable time, thereafter.

Publication of decisions shall not occur until the later of:

a) an Appeals Board Decision

or if no appeal is made,

b) the expiration of the 30 day period to file the appeal or the issuance of the next Newsletter.

In this document, the following definitions apply:

Appraiser = member of the Institute of Business Appraisers

Member = the individual that belongs to The Institute of Business Appraisers

IBA = The Institute of Business Appraisers

Staff = IBA National Headquarters Personnel

